Banking, Housing, and Urban Affairs
International Finance Subcommittee
To hold hearings on the implications of the proposed multilateral trade agreements for U.S. exports.
5302 Dirksen Building

APRIL 5

9:00 a.m.
Veterans' Affairs
To hold hearings on proposed legislation extending certain veterans' health benefits programs through FY 1980.
5110 Dirksen Building

10:00 a.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1980 for foreign assistance programs.
1114 Dirksen Building

Appropriations
HUD-Independent Agencies Subcommittee
To resume hearings on proposed budget estimates for fiscal year 1980 for the National Science Foundation, and the Office of Science and Technology Policy.
1318 Dirksen Building

Appropriations
Interior Subcommittee
To continue hearings on proposed budget estimates for FY 1980 for the Heritage Conservation and Recreation Service.
1224 Dirksen Building

Banking, Housing, and Urban Affairs
International Finance Subcommittee
To resume hearings on the implications of the proposed multilateral trade agreements for U.S. exports.
5302 Dirksen Building

APRIL 10

9:30 a.m.
Veterans' Affairs
To hold oversight hearings on the role of the Federal Government in providing educational employment.
6226 Dirksen Building

10:00 a.m.
Appropriations
Interior Subcommittee
To resume hearings on proposed budget estimates for FY 1980 for the Fish and Wildlife Service.
1223 Dirksen Building

APRIL 11

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To continue hearings on proposed budget estimates for fiscal year 1980 for the Federal Emergency Management Administration.
1318 Dirksen Building

APRIL 12

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To resume hearings on proposed budget estimates for fiscal year 1980 for the Department of the Treasury.
1318 Dirksen Building

Appropriations
Interior Subcommittee
To resume hearings on proposed budget estimates for FY 1980 for the Bureau of Mines.
1223 Dirksen Building

APRIL 24

10:00 a.m.
Appropriations
Interior Subcommittee
To resume hearings on proposed budget estimates for FY 1980 for the Bureau of Land Management.
1223 Dirksen Building

APRIL 25

9:30 a.m.
Human Resources
To hold oversight hearings on the conditions, trends, and new approaches to linking education, health, and work in the coming decade.
4232 Dirksen Building

Veterans' Affairs
To mark up S. 330, to provide for a judicial review of the administrative actions of the VA, and for veterans' attorneys fees before the VA or the courts, and on proposed legislation extending certain veterans' health benefits programs through FY 1980.
412 Russell Building

10:00 a.m.
Appropriations
Interior Subcommittee
To resume hearings on proposed budget estimates for FY 1980 for the Department of the Interior, to hear congressional witnesses.
1223 Dirksen Building

APRIL 26

9:30 a.m.
Human Resources
To continue oversight hearings on the conditions, trends, and new approaches to linking education, health, and work in the coming decade.
4232 Dirksen Building

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To continue hearings on proposed budget estimates for fiscal year 1980 for the Department of Housing and Urban Development.
1318 Dirksen Building

Appropriations
Interior Subcommittee
To continue hearings on proposed budget estimates for FY 1980 for the Office of Surface Mining Reclamation and Enforcement, Office of Water Research and Technology.
1223 Dirksen Building

APRIL 27

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To resume hearings on proposed budget estimates for fiscal year 1980 for the Department of Housing and Urban Development, and the Neighborhood Reinvestment Corporation.
1318 Dirksen Building

MAY 1

9:30 a.m.
Human Resources
Child and Human Development Subcommittee
To hold oversight hearings on the implementation of the Older American Volunteer Program Act (P.L. 93–113).
4232 Dirksen Building

MAY 2

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To continue hearings on proposed budget estimates for fiscal year 1980 for HUD and independent agencies.
1318 Dirksen Building

MAY 3

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To resume hearings on proposed budget estimates for fiscal year 1980 for HUD and independent agencies.
1318 Dirksen Building

SENATE—*Thursday, March 1, 1979*

(Legislative day of Thursday, February 22, 1979)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the Honorable EDWARD ZORINSKY, a Senator from the State of Nebraska.

PRAYER

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

Let us pray.

O Lord our God, may the days of Lent bring to each of us a new awareness of Thy presence, Thy mercy, and Thy forgiveness. Give us penitent hearts. Instill within us the Lenten disciplines of soul-scrutiny, conscience-testing, and self-assessment. Then judge us with love and lift the burden of all that alienates us from Thee and from others. Forgive us when we have failed to seek first Thy kingdom. Forgive us for turning from truth and love and justice. As we walk the way of the cross help us to understand the Gospel better, to love more deeply, to pray more fervently. And when we have completed this journey, bring us to the day of resurrection possessed of a new spirit and a new will to build a better world of peace and justice.

We pray in the Redeemer's name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 1, 1979.

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.

WARREN G. MAGNUSON,
President pro tempore.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

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

RECOGNITION OF LEADERSHIP

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

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

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

ARTHUR KUHL

Mr. ROBERT C. BYRD. Mr. President, recently the U.S. Senate has suffered a great loss with the death of one of its most senior employees, Arthur Kuhl.

At the time of his death, Mr. Kuhl was ably serving as the Assistant Secretary of this body, his last post in a career spanning over 25 years. He was truly a product of our American system. Born in the small town of Martin, Minn., he served with distinction in the U.S. Army airborne in the South Pacific during World War II. After serving with the U.S. occupational forces in Japan, he came to Washington, D.C., where he had chosen to make his career. While working on the Capitol Hill Police Force and running an elevator, he financed his own education through Georgetown and George Washington Universities where he received his B.A. in government and his law degree.

The first professional staff job Mr. Kuhl held on the Hill was as an investigator with a Senate Labor Subcommittee. Subsequently, he served 10 years as chief clerk of the Foreign Relations Committee, and in that capacity, he rendered invaluable aid to virtually every Member of the Senate. Of course, all of us are familiar with his most recent duties as the Assistant Secretary of the Senate.

He was a quiet, tranquil, and yet powerful man very much like this Nation's great wildernesses which he loved so much. Arthur had, in the words of William Wordsworth:

> Learned to look on nature not as in the hour of thoughtless youth, but hearing oftentimes the still, sad music of humanity.

Mr. President, we will miss Art Kuhl. Our condolences are expressed to his family. We sympathize with them in their hour and time of trial.

(Remarks by Mr. ROBERT C. BYRD and Mr. TOWER in connection with the nomination of George M. Seignious II, to be Director of the U.S. Arms Control and Disarmament Agency, are printed later in today's RECORD, by unanimous consent.)

Mr. TOWER. Mr. President, I am prepared to yield the floor, but I will reserve the remainder of my time.

Mr. ROBERT C. BYRD. Mr. President, I am ready to yield back the remainder of the time on the leadership side, if the distinguished Senator from Texas is ready to do so, so that we can get into special orders.

Mr. TOWER. Mr. President, I am prepared to yield back my time, and I do yield back my time.

Mr. ROBERT C. BYRD. I do so, also.

Mr. President, I ask unanimous consent that the order for the recognition of Mr. BUMPERS be vacated. He has asked that this be done.

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

SPECIAL ORDERS

The ACTING PRESIDENT pro tempore. The Senator from New York (Mr. JAVITS) is recognized for not to exceed 15 minutes.

S. 503—PRIVACY ACT AMENDMENTS OF 1979

Mr. JAVITS. Mr. President, I introduce today the Privacy Act Amendments of 1979 relating to the privacy of medical records. Its principal provisions are as follows:

The bill prohibits the disclosure of confidential information by medical care service providers, except as expressly authorized in the bill. Confidential information is defined broadly to include the fact that an individual is receiving or has sought medical care, and any information relating to that individual's treatment or attempt to secure treatment.

The "service providers" covered by the bill are defined to include hospitals, nursing facilities, intermediate care facilities, or ambulatory care facilities that receive medicare or medicaid funds, or any other facilities that receive such funds to which the Secretary of Health, Education, and Welfare may make the act or portions thereof, applicable by regulation. Also included are health maintenance organizations that receive loans, grants, or contracts under the Public Health Service Act. Once an entity is covered by the bill, all of its patient records are covered, regardless of whether the individual patient had his or her expenses reimbursed by medicare or medicaid.

Unlike S. 3450, which applied only to non-Federal facilities, this bill applies equally to federally controlled entities, such as Public Health Service hospitals. On reflection, I now believe that all similar medical records should be treated in the same way, whether the recordkeeper is governmental or nongovernmental.

I wish to make clear that the bill does not apply to recordkeeping by the single practitioner. To my knowledge most of the abuses that have occurred have not been at this level, and I am very reluctant to impose Federal regulation on the family doctor unless and until a need to do so has been demonstrated.

One of the major problems with our current system of recordkeeping is that the patient is denied access to his own records, does not know what is in them when he consents to their disclosure, and has no way of correcting any inaccurate information they may contain. The bill rectifies this situation by providing the patient with the right to see any medical records the service provider maintains on him. If the patient disagrees with an aspect of the record, the bill would permit the patient to add, pursuant to regulations issued by the Secretary, a brief statement presenting his view of the disputed record as disclosed, it would have to be accompanied by the patient's version.

The bill recognizes that there are certain instances when a patient may wish to authorize the disclosure of confidential information about himself. This is usually the case where the individual expects to obtain a benefit, such as reimbursement by an insurance company, in return for disclosure of certain information. Thus, the bill provides a procedure by which the patient may provide such consent. The consent must be in writing, and as specific as possible as to the nature of the data to be disclosed, the use to which it is to be put, and the persons who are to have access to it. Consent may be withdrawn at any time, and may not extend beyond 1 year.

The bill also recognizes that there are a limited number of situations where obtaining an individual's consent is impossible or impractical. The bill spells out those situations in detail, and provides safeguards against the redisclosure of confidential information by persons who receive such information. It is to be noted that the provisions permitting disclosure without patient consent to public health and law enforcement officials pursuant to the statute have been clarified this year to assure that these provisions are not used indiscriminately, just to satisfy official curiosity. Disclosure without consent clearly must be a limited exception, rather than rule.

The bill provides individuals who are aggrieved by an actual or attempted violation of the act with a cause of action in Federal district court for injunctive relief or monetary damages. Further, any person who knowingly and willfully discloses confidential information in violation of the act, fails to grant a patient access to his or her records, or requests or obtains information under false pretenses, is subject to criminal prosecution. Technical violations would not be subject to criminal penalties. Finally, the service provider must satisfy the Secretary of Health, Education, and Welfare that it is in substantial compliance with the act in order to continue to receive medicare or medicaid funds or funding under the Public Health Service Act.

The bill follows the recommendation of the Privacy Protection Study Commission by recognizing that there may be some instances in which disclosure to the patient may, in the judgment of the health professional, harm the patient's condition. In such cases, the health professional may withhold the record from the patient. In such cases, however, the patient has the right to appoint a representative of his own choosing, who must be granted access to the records by the service provider.

One significant change in this bill from S. 3450 is the addition of several sections governing access to medical

records by Federal, State, and local government authorities, pursuant to compulsory process. Since subpenas, summonses, and search warrants must be served on the holder of medical records—the service providers—patients whose records are sought in this manner seldom learn that they are under investigation, and have no opportunity to contest disclosure of the records. For its part, the service provider may or may not have an interest in defending an action designed to obtain its patient's records.

The major purpose of the Government access sections, therefore, is to provide a patient with notice and an opportunity to defend against the release of his medical records when he is the subject of an investigation and his records are sought by compulsory process. This portion of the act would not apply where the Government authority is seeking patient records for purposes other than an investigation of the patient.

The provisions I have included in this bill are adopted from the Financial Right to Privacy Act, which was signed into law last fall. Medical records are of course different from, and even more sensitive than, financial records. I look forward to the hearings on these provisions to determine whether modifications of the Government access formula are necessary and appropriate.

The bill would preempt State and local governments from enacting or continuing in effect laws or regulations that would provide the patient a lesser degree of protection than this legislation.

Finally, the bill contains a new section to make clear that already existing legislation and regulations protecting patients being treated for drug and alcohol abuse are not in any way affected.

Last August, I introduced S. 3450, a comparable bill to protect the confidentiality of personal medical records. While the bill was introduced too late in the session for hearings to be held, it provoked a great deal of discussion and interest as I hoped it would. I received many comments and suggestions aimed at strengthening the protections contained in the bill. I have carefully considered these comments, and where appropriate, have included them in the revised version of the bill that I am introducing today.

One of our most precious rights in a free society is our right to privacy—the right to be free from the inquisitive prying into our most personal affairs by those who are, for one reason or another, curious about us, but who do not have a right to know. This fundamental right, grounded in the Constitution, has been seriously eroded in recent years, until now, nearly every aspect of our lives is open to public viewing by those who have the persistence and desire to learn about us.

Eighteen months ago, the Privacy Protection Study Commission issued its report, "Personal Privacy in an Information Society." It identified a number of areas in which it thought legislation was necessary to halt the erosion of personal privacy, and strike the proper balance between the individual's expectation of confidentiality, and society's need to know certain information about each of us.

The bill I am introducing today seeks to address these concerns in one of the most sensitive areas of recordkeeping examined by the Commission—personal medical records. The Commission pointed out the unique nature of medical records, noting:

> The physician-patient relationship is an inherently intrusive one in that the patient who wants and needs medical care must grant the doctor virtually unconstrained discretion to delve into the details of his life and his person. As a practical matter, because so much information may be necessary for proper diagnosis and treatment, no area of inquiry is excluded. In addition to describing the details of his symptoms, the patient may be asked to reveal what he eats, how much he drinks or smokes, whether or not he uses drugs, how often he has sexual relations and with whom, whether he is depressed or anxious, where and how long he has worked, and perhaps what he does for recreation.

Traditionally, the family doctor learned much of this information about his patient by treating him or her over the years, and retained a good part of it in his memory. The family doctor's discretion was almost always sufficient to protect the patient's medical history from disclosure. Over the last three decades, however, the traditional doctor-patient relationship has been breaking down, and is gradually being replaced by a system whereby medical care is provided often by an impersonal institution, and payment for medical services is made by third parties. Such service-providing institutions, because they lack the extended personal relationship of the family doctor, require far more extensive written records about a patient's condition, in order properly to treat the individual. Simultaneously, the great advances in computer technology that we have seen over recent years have made the collection, maintenance, and dissemination of highly detailed personal medical information far easier than it ever has been before.

Not surprisingly, the existence of a large pool of confidential information about individuals has proved attractive to those who are outside the medical relationship. Insurance companies, employers, the Government, researchers, and credit reporting agencies all have varying degrees of interest in obtaining access to the data. As the Privacy Protection Study Commission noted, it is "Staggering how many people besides the medical care providers who create a medical record have access to it." At the same time the subject of the records is almost unaware of what is in the records, and to whom they are being disclosed.

The system has inevitably led to abuse. The following are representative of the types of problems that have been encountered:

> One individual was mistakenly diagnosed as an epileptic. The mistaken diagnosis was placed in her records, and discovered by an insurance company, which then refused her application for insurance coverage.
>
> A couple was denied disability insurance when the insurance company learned they had previously had marital counseling by a local minister. Having been denied insurance, and fearful that "this information is forever available to any insurance company" the couple wants to "add a statement of our side" or to remove the information from any computerized information bank.
>
> Nurses in a New York abortion clinic allegedly sold the names of patients to "pro-life" groups, which then would call the patients at home to "discuss" abortion.
>
> A Texas court recently issued an order allowing both the state and a private plaintiff in a malpractice suit to have access to the medical record of thousands of women who had obtained abortions at a chain of clinics in Texas. The U.S. Supreme Court declined to review the order.
>
> An ex-psychiatric patient wants a divorce, but her husband threatens to use the newly learned information about her psychiatric condition against her in a child custody fight. The husband's father, a lawyer had obtained the psychiatric information "through his own sources."
>
> An individual who was briefly a patient in an Ohio mental institution 10 years ago was denied access to her records. She fears future discrimination in hiring, and feels she has a right to know what is in her files.
>
> Security police in another Ohio mental health center follow the policy of citing or quoting directly from patients' records upon request of any law enforcement or related agency, such as the fire department.
>
> A physician reports harassment by several representatives of an investigative reporting agency. The representatives wanted confidential medical information to be given over the telephone, refusing first to identify who they were working for or why they wanted the information.

Mr. President, there are many other examples of abuses of confidentiality that could be cited. The bill I am introducing today is intended to help eliminate those abuses and to clarify the rights and obligations of the patient, the medical care provider and third parties with respect to medical information. As the medical care relationship continues to change and become less personalized, all parties should know how confidential medical information is to be treated.

Mr. President, I believe legislation on this subject is both timely and necessary, and hope that this bill will, after due consideration, lead to such legislation. I recognize that many of the issues covered in this bill, particularly patient access to their own records, the circumstances under which disclosure without consent is appropriate, and the provisions on Government access are the subject of widely divergent views. As the bill moves through the hearing process, I will carefully consider any suggestions or comments that might help improve it.

Mr. President, I ask unanimous consent that the bill and a section-by-section analysis of the bill be printed in the RECORD, together with a recent article that appeared in the Washington Post, entitled "Keeping the Lid on Medical Records."

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

S. 503

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 Privacy Act Amendments of 1979".

AMENDMENTS TO THE PRIVACY ACT

SEC. 2. The Privacy Act of 1974 is amended by—

(1) inserting the heading "TITLE I—GENERAL PRIVACY PROVISIONS" immediately above section 2;

(2) striking out "this Act" each place it appears in section 8 and 9 and inserting "this title"; and

(3) inserting at the end the following new title:

"TITLE II—CONFIDENTIALITY OF MEDICAL RECORDS

"FINDINGS AND PURPOSES

"SEC. 201. (a) The Congress finds that—

"(1) the right to privacy is a personal and fundamental right;

"(2) due to rapidly changing technology, recordkeepers are able to compile and disseminate detailed and highly personal information about individuals;

"(3) the collection, maintenance, use, and dissemination of confidential information about individuals by governmental and private sector organizations may threaten the individual's right to privacy;

"(4) as evidenced by the testimony of the Privacy Protection Study Commission before the Committee on Governmental Affairs of the Senate, existing statutory protection of confidential information between patients and health care service providers is inadequate;

"(5) as evidenced by the report of the Privacy Protection Study Commission—

"(A) in addition to the service provider, the number of people who have access to individually identifiable medical information is very large, although the patient is often denied access to such information, and

"(B) there is a need for the extension of statutory privacy protection to the relationship between patients and service providers; and

"(6) it is essential that patients have the right to exercise more direct control over confidential information relating to their own health care, particularly in light of the availability of such information to third parties and its effect on the individual's ability to obtain employment, insurance, medical care, and other important societal benefits.

"(b) It is the purpose of this title to—

"(1) clearly define the circumstances under which confidential health care information in individually identifiable form may be disclosed, and to whom it may be disclosed;

"(2) provide procedures by which the patient may have access to his own health care information and may take steps to assure the fairness and objectivity of those records; and

"(3) carefully balance the legitimate need of certain governmental and private sector organizations to have access to confidential information with the individual's expectation of, and right to, the confidentiality and privacy of such information.

"DEFINITIONS

"SEC. 202. For purposes of this title, the term—

"(1) 'confidential information' means data or information in any recorded medium created or maintained by a service provider that—

"(A) reveals or contains the fact that an individual is or has been a patient; or

"(B) relates to the health (including dental and mental health) history, diagnosis, condition, treatment, or evaluation of a patient;

"(2) 'patient or former patient' means an individual who consults with, or is examined, interviewed, treated, or is otherwise served by, a service provider with regard to a health condition (medical, mental, or emotional) or social deprivation or dysfunction;

"(3) 'patient identifier' means—

"(A) the patient's name, or other descriptive data from which it could be reasonably anticipated that a person—

"(i) could identify such patient, or

"(ii) be led to other data from which such patient might be identified; or

"(B) a code, number, or other means used to identify the patient in relation to confidential information regarding him;

"(4) 'person' means any individual, court, corporation, association, partnership, State or local government or agency or part thereof, or the Federal Government or agency or part thereof;

"(5) 'Secretary' means the Secretary of Health, Education, and Welfare;

"(6) 'service provider' means—

"(A) a hospital, skilled nursing facility, intermediate care facility or ambulatory care facility, as defined in title XVIII or XIX of the Social Security Act, which has been approved by the Secretary for participation under such title XVIII or certified by a State agency for participation under such title XIX;

"(B) any entity (other than an individual physician) not described in subparagraph (A) which has been approved by the Secretary for participation under such title XVIII or certified by a State agency for participation under such State plan, but only with respect to the provisions of this title which the Secretary by regulation makes applicable to such entity; and

"(C) a health maintenance organization, medical group, or individual practice association, as defined in title XIII of the Public Health Service Act, which has received a Federal grant, loan guarantee, or contract pursuant to such title, but only with respect to the provisions of this title which the Secretary by regulation makes applicable to such entity;

"(7) 'individuals employed by or affiliated with a service provider' includes—

"(A) persons engaged in good faith in training programs with a service provider, or clinical supervisors employed by the service provider, and

"(B) persons employed by the service provider who are involved in financial auditing or preparation of bills, or who are otherwise engaged in the collection of payments of charges for services to patients;

"(8) 'bona fide medical emergency' means any situation in which the health or safety of the patient or any other individual is in immediate danger;

"(9) 'qualified personnel' means persons whose training and experience are appropriate to the nature and level of the work in which they are engaged; and

"(10) 'law enforcement inquiry' means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

"PATIENT ACCESS TO INFORMATION

"SEC. 203. (a) Except as provided in subsection (c), a service provider shall, within 30 days of a written or oral request by a patient, allow the patient access to his complete health care record, for purposes of inspection and copying. The service provider may not impose a charge for permitting such an inspection, and may not impose more than a reasonable charge (in any event no greater than the charge imposed on third persons) for providing such a copy.

"(b) The service provider shall, in accordance with regulations promulgated by the Secretary, establish procedures which—

"(1) allow a patient or former patient to contest the accuracy or completeness of confidential information pertaining to that individual;

"(2) allow confidential information to be corrected upon request of the patient or former patient when the service provider concurs in the proposed correction;

"(3) allow a patient or former patient who believes that the service provider maintains inaccurate or incomplete confidential information concerning him to add a statement to the record stating what he believes to be an accurate or complete version of that information if the service provider does not so concur.

A statement added under paragraph (3) shall become a permanent part of the service provider's medical record system, and shall be disclosed to any person receiving the disputed information.

"(c) If a service provider determines that disclosure of a patient's or former patient's records to that individual would be detrimental to that individual, the service provider may refuse to disclose such information. Upon such refusal, the service provider shall advise the patient or former patient that he may appoint another individual of his own choice to be his authorized representative. The service provider shall provide access to the confidential information to the authorized representative for purposes of exercising the patient's rights under subsections (a) and (b) if the authorized representative complies with the procedures specified in section 205 (a).

"(d) If a patient or former patient is under twelve years of age, or as a consequence of physical or mental incompetence has been placed under guardianship, his parents, guardian or duly appointed legal representative may exercise all the rights set forth in subsections (a) and (b) on behalf of that individual.

"CONFIDENTIAL INFORMATION

"SEC. 204. Except as provided by this title a service provider shall not, without the authorization, as provided in section 205(a), of the patient or former patient to whom the confidential information pertains—

"(1) disclose or transmit any confidential information together with a patient identifier to any person,

"(2) disclose or transmit a patient identifier to any person, or

"(3) disclose or transmit confidential information if the person disclosing or transmitting such confidential information has reason to believe that the recipient may have a patient identifier for such information.

"AUTHORIZATION OF DISCLOSURE

"SEC. 205. (a) A patient or former patient who is twelve years of age, or older, and not physically or mentally incompetent, may authorize the disclosure of his confidential information. Such authorization shall—

"(1) be in writing and signed by the patient or former patient;

"(2) designate the nature and content of the information to be disclosed, who may disclose such information, and to whom such information may be disclosed;

"(3) designate the use of the disclosed information; and

"(4) designate the expiration date, which shall not exceed one year from the date the authorization was signed.

"(b) If a patient or former patient is under twelve years of age, or incompetent as a consequence of physical or mental disability, the patient's parents, guardian, or legal representative may authorize the disclosure of the confidential information in accordance with the authorization requirements of subsection (a).

"(c) The service provider shall retain a copy of each authorization form, and shall keep a permanent record of each disclosure made pursuant to such authorization, including the nature of the data disclosed and to whom it was disclosed. The authorization form and disclosure records shall be treated as part of the confidential information to which authorization under this section applies.

"(d) A patient or former patient may withdraw such authorization at any time by written notice to the service provider. After receipt of such written notice, or after the expiration of the authorization under subsection (a), the service provider shall not release any additional confidential information concerning such patient or former patient.

"DISCLOSURE WITHOUT AUTHORIZATION

"SEC. 206. (a) Except as provided in subsection (b), no disclosure of confidential information shall be made without authorization.

"(b) Disclosure of confidential information without authorization may be made—

"(1) to individuals employed by or affiliated with a service provider and described in section 202(7)(A), if the performance of their duties requires that they have access to such information;

"(2) to individuals employed by or affiliated with a service provider and described in section 202(7)(B) to the extent that the information is essential to financial auditing or preparation of bills and submission of claims for payment of charges for services to a patient;

"(3) subject to the provisions of subsections (e) and (f), for purposes of audit and evaluation, whether or not such audit or evaluation is required by law;

"(4) subject to the provisions of subsections (d) and (e), to Federal, State and local public health officials, if the service provider is required by law to report specific conditions to such officials;

"(5) subject to the provisions of subsections (e) and (h), to Federal, State or local law enforcement officials, if the service provider is required by law to report to such officials concerning specified items of confidential information that indicate that the patient may have been involved in, or a victim of, a violation of law;

"(6) to the parent, guardian, or legal custodian of a patient—

"(A) less than twelve years of age, or

"(B) physically or mentally incompetent, if the service provider determines that such disclosure is appropriate under the circumstances;

"(7) to medical or law enforcement personnel to the extent necessary to meet a bona fide medical emergency;

"(8) subject to the provisions of subsection (h), to the immediate family or any other individual with whom the patient is known to have a responsible relationship, if the patient is incapable of giving authorization due to a bona fide medical emergency, except that the service provider shall notify the patient at the earliest opportunity that the disclosure was made, and to whom it was made;

"(9) subject to the provisions of subsections (g) and (h), to qualified personnel for use in a biomedical, epidemiologic, or health services research projects, or a health statistics project, if the research plan is first submitted to, and approved by, an appropriate institutional review board and the director of the service provider or his designee; or

"(10) pursuant to an administrative summons, judicial subpoena, search warrant, or formal written request as provided in sections 207, 208, and 209.

"(c) Individuals receiving confidential information under paragraphs (1) and (2) of subsection (b) shall not disclose such information, except as authorized by this title.

"(d) The Secretary shall promulgate regulations to assure that disclosures of confidential information made pursuant to subsection (b)(4) are made under conditions that adequately protect the confidential information from unauthorized disclosure.

"(e) Any organization or agency to which information is disclosed under subsections (b) (3), (4), and (5) shall not disclose such information except to the extent required by Federal law, and shall destroy any patient identifiers in such information and the records containing such information at the earliest opportunity consistent with the requirements of Federal law.

"(f) In the case of a disclosure of confidential information without authorization pursuant to subsection (b)(3), for purposes of an audit or evaluation not specifically required by statute, the Secretary shall, by regulation, establish procedures to assure that adequate safeguards, including a program for removal or destruction of patient identifiers, are established by the user or recipient of confidential information to protect such information from unauthorized disclosure.

"(g) Qualified personnel granted access to confidential information under subsection (b)(9) may not identify, directly or indirectly, any individual patient in any report of such research project, or otherwise disclose the identity of a patient in any other manner.

"(h) If confidential information is disclosed under subsection (b), the service provider shall retain a record of each such disclosure.

"(i) A service provider shall not release confidential information or patient identifiers to a Federal, State, or local governmental authority until such authority certifies in writing that it has complied, or will comply, with the applicable provisions of this title.

"ADMINISTRATIVE SUMMONS OR JUDICIAL SUBPOENA

"SEC. 207. (a) For purposes of section 206 (b)(10), a Government authority may obtain confidential information pursuant to an administrative summons or judicial subpoena only if—

"(1) there is reason to believe that the information sought is relevant to a legitimate law enforcement inquiry;

"(2) a copy of the subpoena or summons has been served upon the subject of the confidential information or mailed to his last known address on or before the date on which the subpoena or summons was served on the service provider together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

'Information concerning your health care held by the health care provider named in the attached subpoena or summons are being sought by this (agency or department or authority) in accordance with title II of the Privacy Act of 1974 for the following purpose:

'If you desire that such records or information not be made available, you must:

'1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the patient or former patient whose confidential information is being requested by the Government and either giving the reasons you believe that the confidential information is not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the confidential information.

'2. File the motion and statement by mailing or delivering them to the clerk of any one of the following [ ] courts:

'3. Serve the Government authority requesting the confidential information with a copy of your motion and statement by mailing or delivering them to .

'4. Be prepared to come to court and present your position in further detail.

'5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service of this notice or fourteen days from the date of mailing of this notice, information requested therein will be made available. This information may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer.'; and

"(3) ten days have expired from the date of service of the notice or fourteen days have expired from the date of mailing the notice to the patient or former patient and within such time period the patient or former patient has not filed a sworn statement and motion to quash in an appropriate court, or the patient or former patient has complied with the provisions of this section.

"(b) Upon application of the Government authority, the notice to the patient or former patient required under subsection (a), may be delayed by order of an appropriate court if the presiding judge or magistrate finds that—

"(1) the investigation being conducted is within the lawful jurisdiction of the Government authority seeking the confidential information;

"(2) there is reason to believe that the confidential information being sought is relevant to a legitimate law enforcement inquiry; and

"(3) there is reason to believe that such notice will result in—

"(A) endangering the life or physical safety of any person;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same extent as the circumstances in the preceeding subparagraphs.

An application for delay must be made with reasonable specificity.

"(c) (1) If the court makes the findings required in paragraphs (1), (2), and (3) of subsection (b), it stall enter an ex parte order, granting the requested delay for a period not to exceed ninety days and issuing an order prohibiting the service provider from disclosing that confidential information has been obtained or that a request

for confidential information has been made, except that, if the court finds that there is reason to believe that such notice may endanger the lives or physical safety of a patient or former patient or group of patients, or any person or group of persons associated with a patient or former patient, the court may specify that the delay be indefinite.

"(2) Upon expiration of the period of delay of notification under paragraph (1), the patient or former patient shall be served with, or mailed, a copy of the process or request, together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"'Information concerning your health care held by the health care provider named in the attached process or request was supplied to or requested by the Government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under title II of the Privacy Act of 1974 that such notice might (state reason). The purpose of the investigation or official proceedings was .'.

"(d) If access to confidential information is obtained pursuant to section 210 (b) (emergency access), the Government authority shall, unless a court has authorized delay of notice pursuant to subsection (b), as soon as practicable after such records are obtained, serve upon the patient or former patient, or mail by registered or certified mail to his last known address, a copy of the request of the service provider together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"'Information concerning your health care held by the health care provider named in the attached request were obtained by (agency or department) under title I of the Privacy Act of 1974 on (date) for the following purpose: . Emergency access to such records were obtained on the grounds that (state grounds).'.

"(e) Any memorandum, affidavit, or other paper filed in connection with a request for delay in notification shall be preserved by the court. Upon petition by the person to whom such confidential information pertains, the court may order disclosure of such papers to the petitioner unless the court makes the findings required in subsection (b).

"(f) For purposes of section 206(b)(10), and in accordance with the notice provided under subsection (a) (3), within ten days of service or within fourteen days of mailing of a subpoena or summons, a patient, or former patient may file a motion to quash an administrative summons or judicial subpoena, with copies served upon the Government authority. A motion to quash an administrative summons or judicial subpoena shall be filed in the appropriate court. Such motion shall contain an affidavit or sworn statement—

"(1) stating that the applicant is a patient or former patient of the health care entity from which confidential information pertaining to him has been sought; and

"(2) stating the applicant's reasons for believing that the confidential information sought is not relevant to the legitimate law enforcement inquiry stated by the Government authority in its notice, or that there has not been substantial compliance with the provisions of this title.

Service shall be made under this section upon a Government authority by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the patient or former patient received pursuant to this title. For purposes of this section, 'delivery' has the meaning stated in rule 5 (b) of the Federal Rules of Civil Procedure.

"(g) If the court finds that the patient or former patient has complied with subsection (f), it shall order the Government authority to file a sworn response, which may be filed in camera if the Government includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed, and the motion decided within seven calendar days of the filing of the Government's response.

"(h) (1) If, after the proceedings under subsection (g), the court finds that—

"(A) the applicant is not the patient or former patient to whom the confidential information sought by the Government authority pertains, or

"(B) there is a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the information sought is relevant to that inquiry,

the court shall deny the motion, and, in the case of an administrative summons or court order other than a search warrant, order such process enforced.

"(2) If the court finds, after the proceedings under subsection (g), that the applicant is the patient or former patient to whom the confidential information sought by the Goverment authority pertains, and that—

"(A) there is not a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reason to believe that the confidential information sought is relevant to that inquiry, or

"(B) there has not been substantial compliance with the provisions of this title,

the court shall order the process quashed.

"(i) A court ruling denying a motion under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom. An appeal of a ruling denying a motion under this section may be taken by the patient or former patient—

"(1) within such period of time as provided by law as part of any appeal from a final order in any legal proceeding initiated against him arising out of or based upon the confidential information, or

"(2) within thirty days after a notification that no legal proceeding is contemplated against him.

The Government authority obtaining the confidential information shall promptly notify a patient or former patient when a determination has been made that no legal proceeding against him is contemplated. After one hundred and eighty days from the denial of the motion, if the Government authority obtaining the confidential information has not initiated such a proceeding, a supervisory official of the Government authority shall certify to the appropriate court that no such determination has been made. The court may require that such certifications be made, at reasonable intervals thereafter, until notification to the patient or former patient that a legal proceeding has been initiated.

"(j) The challenge procedures of this title constitute the sole judicial remedy available to a patient or former patient to oppose disclosure of confidential information pursuant to this title.

"(k) Nothing in this title shall enlarge or restrict any rights of a service provider to challenge requests for confidential information made by a Government authority under existing law. Nothing in this title shall entitle a patient or former patient to assert the rights of a service provider.

"SEARCH WARRANTS

"Sec. 208. (a) A Government authority may obtain confidential information if it obtains a search warrant pursuant to the Federal Rules of Criminal Procedure in the case of Federal courts or comparable rules in the case of other courts.

"(b) No later than ninety days after the Government authority serves the search warrant, it shall mail to the patients or former patient's last know address a copy of the search warrant toegther with the following notice:

'Information concerning your health care held by the health care provider named in the attached search warrant were obtained by this (agency or department) on (date) for the following purpose: . You may have rights under title II of the Privacy Act of 1974.'.

"(c) Upon application of the Government authority, a court may grant a delay in the mailing of the notice required in subsection (b), which delay shall not exceed one hundred and eighty days following the service of the warrant, if the court makes the findings required in section 207 (b). If the court so finds, it shall enter an ex parte order granting the requested delay and an order prohibiting the service provider from disclosing that confidential information has been obtained or that a search warrant for such confidential information has been executed. Additional delays of up to ninety days may be granted by the court upon application, but only in accordance with this subsection. Upon expiration of the period of delay of notification of the patient or former patient, the following notice shall be mailed to the patient or former patient along with a copy of the search warrant:

'Information concerning your health care held by the health care provider named in the attached search warrant were obtained by this (agency or department) on (date). Notification was delayed beyond the statutory ninety-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning. You may have rights under title II of the Privacy Act of 1974.'.

"FORMAL WRITTEN REQUEST

"Sec. 209. A Government authority may request confidential information under section 206(b)(10) pursuant to a formal written request only if—

"(1) no administrative summons or subpena authority reasonably appears to be available to that Government authority to obtain confidential information for the purpose for which such information is sought;

"(2) the request is authorized by regulations promulgated by the head of the agency or department;

"(3) there is reason to believe that the information sought is relevant to a legitimate law enforcement inquiry; and

"(4)(A) a copy of the request has been served upon the customer or mailed to his last known address on or before the date on which the request was made to the service provided together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Information concerning your health care held by the service provider named in the attached request are being sought by this (agency or department) in accordance with title II of the Privacy Act of 1974 for the following purpose:

"If you desire that such information not be made available, you must—

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the patient whose information is being requested by the Government and either giving the reasons you believe that the information is not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the information.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts.

"3. Serve the Government authority requesting the information by mailing or delivering a copy of your motion and statement to ————.

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the information requested therein may be made available. This information may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer; and

"(B) ten days have expired from the date of service or fourteen days from the date of mailing of the notice by the customer and within such time period the customer has not filed a sworn statement and an application to enjoin the Government authority in an appropriate court, or the customer challenge provisions of section 1110 have been complied with.

"EXCEPTIONS

"SEC. 210. (a) Nothing in this title prohibits the disclosure of any confidential information which is not identified with or identifiable as being derived from the health care records of a particular patient or former patient.

"(b) Nothing in this title shall apply when confidential information is sought by a Government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the Government authority and the patient or former patient are parties.

"(c) Nothing in this title shall apply when confidential information is sought by a Government authority pursuant to an administrative subpoena issued by an administrative law judge in an adjudicatory proceeding subject to section 554 of title 5, United States Code, and to which the Government authority and the patient or former patient are parties.

"(d)(1) Nothing in this title (except sections 206(i) and 216) shall apply when confidential information is sought by a Government authority in connection with a lawful proceeding, investigation, examination, or inspection directed at the service provider in possession of such information or at a legal entity which is not a patient or former patient.

"(2) If confidential information is sought pursuant to this subsection, the Government authority shall submit to the service provider the certificate required by section 206(1).

"(3) Confidential information obtained pursuant to this subsection may be used only for the purpose for which they were originally obtained, and may be transferred to another agency or department only when the transfer is to facilitate a lawful proceeding, investigation, examination, or inspection directed at the service provider in possession of such information, or at a legal entity which is not a patient or former patient.

"(e) Nothing in this title (except section 218) shall apply to any subpoena or court order issued in connection with proceedings before a grand jury.

"(f) This title shall not apply when confidential information is sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination or audit directed at a government authority.

"SPECIAL PROCEDURES

"SEC. 211. (a)(1) Nothing in this title (except sections 216 and 219) shall apply to the production and disclosure of confidential information pursuant to requests from—

"(A) a Government authority authorized to conduct foreign counterintelligence or foreign positiveintelligence activities for purposes of conducting such activities; or

"(B) the Secret Service for the purpose of conducting its protective functions under section 3056 of title 18, United States Code, the joint resolution entitled 'Joint Resolution to authorize the United States Secret Service to furnish protection to major presidential or vice presidential candidates', approved June 6, 1968 (Public Law 90-331; 82 Stat. 170) or section 202 of title 3, United States Code.

"(2) In the instances specified in paragraph (1), the Government authority shall submit to the service provider the certificate required in section 206(i) signed by a supervisory official of a rank designated by the head of the Government authority.

"(3) No service provider, or officer, employee, or agent of such service provider, shall disclose to any person that a Government authority described in paragraph (1) has sought or obtained access to the confidential information of a patient or former patient.

"(4) A Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this subsection was applicable.

"(b)(1) Nothing in this title shall prohibit a Government authority from obtaining confidential information from a service provider if the Government authority determines that delay in obtaining access to such records would create imminent danger of—

"(A) physical injury to any person;

"(B) serious property damage; or

"(C) flight to avoid prosecution.

"(2) In the instance specified in paragraph (1), the Government shall submit to the service provider the certificate required in section 206(i) signed by a supervisory official of a rank designated by the head of the Government authority.

"(3) Within five days of obtaining access to confidential information under this subsection, the Government authority shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the Government authority setting forth the grounds for the emergency access. The Government authority shall thereafter comply with the notice provisions of section 207(d).

"(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

"DUTY OF SERVICE PROVIDER

"SEC. 212. Upon receipt of a request for confidential information made by a Government authority under section 206(b)(10) the service provider shall, unless otherwise provided by law, proceed to assemble the confidential information requested and be prepared to deliver the confidential information to the Government authority as provided in this title.

"NOTIFICATION OF DISCLOSURES

"SEC. 213. A service provider shall notify a patient or former patient, in such form and manner as the Secretary may require, of the disclosures of confidential information concerning that patient or former patient that may be made without his authorization, and of the right of access, and any other patient protection, provided in this title. The service provider shall make such notification, unless it cannot reasonably do so under the circumstances—

"(1) when it first records any confidential information concerning that patient; and

"(2) when it first provides services after the effective date of this title.

"USE OF INFORMATION

"SEC. 214. Confidential information originally obtained pursuant to this title by a Government authority shall not be transferred to another authority unless the transferring authority certifies in writing that there is reason to believe that the information is relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving authority.

"WARNING REQUIRED

"SEC. 215. (a) All written disclosures of of confidential information shall bear the following statement: 'The protection of the confidentality of information contained herein is required by Federal law. This material shall not be disclosed to anyone without authorization as provided by law, and violations are punishable under the law.' A copy of the authorization form specifying to whom, and for what specific use, such information may be disclosed, or a statement setting forth any other statutory authorization for disclosure, shall accompany all such written disclosures.

"(b) Service providers shall insure that all persons in their employ or under their supervision are aware of their duty to maintain the confidentiality of information protected by this title, and of the existence of penalties and civil liabilities for violation of this title.

"CIVIL REMEDIES AND CRIMINAL PENALTIES

"Sec. 216. (a) Any person aggrieved by an actual or attempted violation of this title may, without regard to the amount in controversy, bring a civil action, including an action for a temporary or permanent injunction, in the district court for the district in which he or the alleged violator resides or in which violation occurred. Such action may include a claim for general or special damages, or both, reasonable attorney's fees, reimbursement for reasonable litigation costs and, in cases of willful or grossly negligent violations, punitive damages.

"(b) Any person who, knowingly and willfully—

"(1) requests or obtains, under false pretenses, confidential information concerning an individual from a service provider, or

"(2) discloses confidential information or fails to grant a patient or former patient access to his complete health record, except as provided in this title,

shall be guilty of a misdemeanor, and upon conviction shall be fined not more than $10,000 or imprisoned not more than one year, or both.

"(c) A service provider may not continue to receive Federal funds, grants, loans, or contracts in a program under title XVIII or

XIX of the Social Security Act or subchapter XI of the Public Health Service Act, unless such service provider provides adequate assurances and evidence, in such form as the Secretary may from time to time require, of substantial compliance with this title.

"SUSPENSION OF STATUTES OF LIMITATIONS

"SEC. 217. If any patient or former patient files a motion or application under this title which has the effect of delaying the access of a Government authority to confidential information pertaining to such patient or former patient, any applicable statute of limitations shall be deemed to be tolled for the period extending from the date such motion or application was filed until the date upon which the motion or application is decided.

"GRAND JURY INFORMATION

"SEC. 218. Confidential information about a patient or former patient obtained from a service provider pursuant to a subpena issued under the authority of a Federal grand jury—

"(1) shall be returned and actually presented to the grand jury;

"(2) shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure;

"(3) shall be destroyed or returned to the service provider if not used for one of the purposes specified in paragraph (2); and

"(4) shall not be maintained, or a description of the contents of such records shall not be maintained by any Government authority other than in the sealed records of the grand jury, unless such record has been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure.

"REPORTING REQUIREMENTS

"SEC. 219. (a) In April of each year, the Director of the Administrative Office of the United States Courts shall send to the appropriate committees of Congress a report concerning the number of applications for delays of notice and the number of patient challenges made pursuant to section 207 during the preceding calendar year. Such report shall include the identity of the Government authority requesting a delay of notice; the number of notice delays sought and the number granted under each subparagraph of section 207(b)(3); the number of notice delay extensions sought and the number granted; and the number of patient challenges made and the number that were successful.

"(b) In April of each year, each Government authority that requests access to confidential information of any patient or former patient from a service provider pursuant to section 206(b)(10), 207, 208, 209, or 211, shall send to the appropriate committees of Congress a report describing requests made during the preceding calendar year. Such report shall include the number of requests for records made pursuant to each section of this title listed in the preceding sentence and any other related information deemed relevant or useful by the Government authority.

"PREEMPTION

"SEC. 220. No State or political subdivision of a State may establish or continue in effect any law or regulation that is less stringent than the provisions of this title.

"EFFECTIVE DATE

"SEC. 221. This title shall take effect one hundred eighty days after enactment, and shall apply to all information maintained by service providers regardless of whether that information was first maintained prior to the effective date of this title.

"SAVINGS PROVISION

"SEC. 222. Nothing in this title shall be construed as in any way affecting, modifying, repealing or suspending the provisions of the Drug Abuse Office and Treatment Act, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act, section 303(a) of the Public Health Service Act, or section 502(c) of the Controlled Substances Act."

SECTION-BY-SECTION ANALYSIS

Section 1 provides that the Act may be cited as the Privacy Act Amendments of 1979.

Section 2 redesignates the existing provisions of the Privacy Act of 1974 as Title I of that Act, and adds a new Title II, entitled "Confidentiality of Medical Records."

Section 201 lists the Act's findings and purposes. The findings note that changing technology and the changing nature of the medical care relationship in this country has resulted in more records being kept than ever before, with less control over them by the patient. The purpose of the Act is to provide a framework to balance society's need to have access to confidential medical information with the patient's fundamental right of privacy.

Section 202 contains the Act's definitions. Confidential information, which the Act is designed to protect, is defined as any recorded information that reveals that an individual is or has been a patient, or relates in anyway to the health or treatment of a present or former patient. Patient identifiers, although a form of confidential information, are separately defined, as any data by which the identity of a patient could be established, or by which the person possessing the identifier could be led to information establishing a patient's identity. The separate definition is necessary because the bill encourages the elimination of patient identifiers obtained pursuant to the bill by parties outside the medical care relationship at the earliest practical time.

This section also contains the definition of "service provider" which establishes the medical entities to which the Act will apply. Included in this definition are hospitals, nursing homes, intermediate care facilities, or ambulatory care facilities that receive medicare or medicaid funds. Further, to the extent that the Secretary of Health, Education and Welfare determines that the Act should be applied to other entities receiving medicare or medicaid funds, such as clinical laboratories, physical therapy clinics, or home health care agencies, or to Health Maintenance Organizations receiving grants, loan guarantees or contracts under the Public Health Service Act, he may make it applicable by regulation. Single practitioners are excluded from coverage.

Section 203 governs patient access to his or her own records. The service provider must permit the patient for purposes of inspection and/or copying within 30 days of a request. The bill directs the Secretary to establish procedures permitting an individual to contest the accuracy of, and correct his or her own records. Where the service provider determines that disclosure of particular records to the patient would be harmful, it may withhold such records. However in such cases, the patient may appoint an authorized representative who must be given access by the service provider, provided that the patient has executed the appropriate consent form.

In the case of patients who are minors under 12 years of age or who are incompetent, all rights set forth in this section may be exercised by the patient's parent, guardian, or legal representative.

Section 204 provides that no service provider may disclose confidential information, except as expressly provided for by law.

Section 205 provides the mechanism by which an individual over 12 years of age or the parents or legal guardian of a minor under 12 may consent to the release of confidential information. Consent must be in writing and signed by the patient, specifically state the information that may be disclosed, and the identity of the individual(s) who may disclose it and to whom it may be disclosed. Consent may not exceed one year in duration, and may be withdrawn in writing at any time. Further, consent forms must be made part of the patient's permanent record.

Section 206 recognizes that there are a limited number of situations in which consent to disclosure cannot be obtained or is impractical, but where disclosure is nonetheless essential. Pursuant to this section, disclosure without consent may be made in any of the following situations:

1. Where disclosure to an individual employed by or affiliated with the service provider is necessary to carry out the individual's duties or for billing purposes; redisclosure by the recipient would be prohibited.

2. For purposes of audit and evaluation of the service provider, under safeguard against redisclosure specified in the bill.

3. Where a statute requires the reporting of specific conditions to public health officials, if the Secretary has determined that such disclosures are necessary to protect the public health, and that adequate safeguards exist against unauthorized redisclosures.

4. Where a statute requires the reporting of items of confidential information relating to a violation of law to law enforcement officials, and it appears that the patient may have been involved in, or a victim of, a violation of law.

5. To the parent or guardian of a minor under 12 years of age where the service provider believes such disclosure appropriate.

6. Where a medical emergency exists presenting an immediate danger to the health and safety of the patient or any other individual disclosure without consent is permissible, provided subsequent notification is provided to the individual whose records are released.

7. To qualified personnel for use in biomedical, epidemiologic, or health services research or statistics projects, provided that the persons to whom such information is released not redisclose it.

8. Pursuant to an administrative or judicial summons or subpoena, in compliance with the provisions on government access to confidential information contained in sections 207–211.

In the case of disclosure to government authorities, the service provider is required to withhold release of confidential information until the governmental authority requesting the information certifies in writing that it has complied with the provisions on government access contained in the bill.

Sections 207–211 are new this year, and describe the requirements applicable to government agencies with respect to obtaining and transferring confidential information. Section 207 provides that, in the case of an administrative or judicial summons or subpoena, the government authority seeking

confidential information pursuant to legal process must have reason to believe that the information it is seeking is relevant to a legitimate law enforcement inquiry. Further, it must provide the patient with the notice specified by the Act, and an opportunity to challenge the release of the information in court. Confidential information may be released to a government authority only after the time for filing a court challenge has passed without objection by the patient, or upon completion of court proceedings.

Subsection (b) recognizes that there are certain circumstances under which prior notification to a patient that his records are being sought is inappropriate. The subsection specifies those conditions and provides that, if a government agency has reason to believe one of them exists, it may apply to a court to delay notification to the patient.

Subsection (c)(1) specifies the procedures involved in delayed notification. If the court makes the necessary findings—that the government agency is acting within its authority, that there is reason to believe that the information sought is relevant to a legitimate law enforcement inquiry, and that one of the conditions specified in subsection (b) exists—it may delay notification to the patient for up to 90 days. Where the court finds that the lives or physical safety of a patient or former patient, or persons associated with a patient or former patient, it may delay notification indefinitely.

Subsection (c)(2) provides the form of notice that a patient must be given when the period of delay has expired. Likewise, subsection (d) provides for the form of notice that must be sent to a patient whose records were obtained pursuant to the provisions for emergency access found in section 210(b)(1).

Subsection (e) provides that all papers filed by the government supporting a request for delayed notification shall be made available to the patient upon his petition unless the court finds that revealing these documents will create one of the conditions listed in subsection (b)(3).

Subsection (f)(h) provides for the format of the court proceedings on a motion to quash a subpoena or summons. A motion may be filed within 10 days of service or fourteen days of mailing the notice required by this section. The petitioner must state that he is a patient or former patient of the health care entity from which confidential information pertaining to him has been sought, and why he believes that the information sought is not relevant to a legitimate law enforcement inquiry, or why there has not been substantial compliance with the Act. After a hearing, which may be in camera if appropriate, and must be completed within 7 days, the court shall either enforce or quash the subpoena.

Subsection (i) provides that a court decision enforcing the suponena may not be appealed except as part of the final order in the underlying legal proceedings in which the confidential information was used, or within thirty days after the patient is notified that no legal proceeding is contemplated against him.

Subsection (j) states that the provisions of this title are the sole remedy available to challenge the release of confidential information.

Subsection (k) is intended to make clear that nothing in the bill effects the rights of the service provider to challenge legal process designed to obtain confidential information.

Section 208 provides that government authorities may continue to utilize search warrants, but must provide notice to the patient or former patient within 90 days of service of the warrant. The section also provides for delay of notification if the conditions specified in section 207(b) are met.

Section 209 authorizes a service provider to release confidential information to a government authority pursuant to a formal written request. This section applies only where the government authority making the requests does not have compulsory process available to it, and has promulgated regulations governing the use of such requests. Notification requirements similar to those in the sections on compulsory process are included. It should be noted that while this section authorizes disclosure by service providers, it does not require that they do so.

Section 210 sets forth the situations in which the Act would not apply. These include situations where the information cannot be traced to a particular patient, when the patient and the government are parties to a judicial or administrative proceeding, where an investigation is aimed at the service provider rather than the patient, and for use in a GAO investigation. Confidential information is also available to grand juries, subject to the provisions of section 218.

Section 211 provides that the Act in inapplicable, (except for sections 215 and 218) to requests for confidential information by the Secret Service or intelligence agencies in the course of their official functions. The section further provides for emergency access to confidential information where the government authority seeking the information believes delay would create imminent danger of physical injury, serious property damage, or flight to avoid prosecution.

Section 212 provides that the service provider is under a duty to comply with a request made pursuant to Section 206(b)(10), dealing with summons, subpoenas, and search warrants.

Section 213 requires a service provider to notify each patient of the disclosures that section 206 of the bill authorizes without patient consent. This notification is to be provided, in such form as the Secretary may require, the first time that the service provider records confidential information.

Section 214 prohibits transfer of confidential information between agencies, unless the transferring agency certifies in writing that there is reason to believe the information is relevant to a legitimate law enforcement inquiry being carried on by the receiving agency.

Section 215 provides that all written disclosures of confidential information be accompanied by a statement setting forth the statutory authorization for disclosure, and warning that unauthorized disclosure is punishable by law. Service providers are directed to take steps to assure that all persons in their employ are aware of the requirements of the Act.

Section 216 contains the civil remedies and criminal penalties for violation of the Act. Persons aggrieved by an actual or attempted violation of the Act may bring a civil action for injunctive relief, or for monetary damages usually required to bring an action in federal court. The bill also provides for criminal penalties of up to $10,000 fine or one year in prison or both for persons who obtain confidential information under false pretenses, or who knowingly or willfully disclose confidential information or refuse to grant a patient access to his or her records, except as provided for under the Act. Finally, this section makes compliance with the Act a precondition for further medicare and medicaid programs and the Public Health Service Act.

Section 217 tolls any applicable statute of limitations during the period between the filing of a motion to quash mandatory process and the court's ruling on that motion.

Section 218 provides certain safeguards when grand juries seek to use confidential information. While their access to such information is not affected by the bill, the information must actually be presented to the grand jury, must be used only for purposes specified in subsection (2), and must be returned to the service provider or destroyed after the grand jury is through and may not be maintained or recorded by any government authority other than the grand jury.

Section 219 requires certain reports to Congress on an annual basis.

Section 220 preempts any state or local requirements that are less stringent than the provisions of this Act.

Section 221 provides that the Act shall take effect 180 days after enactment, and applies to all records maintained by the service provider, even if the information was first recorded or maintained before the Act took effect.

Section 222 makes clear that existing laws and regulations covering the confidentiality of patient records relating to treatment for drug abuse or alcoholism, are unaffected by this Act.

[From the Washington Post, Feb. 11, 1979]

KEEPING A LID ON MEDICAL RECORDS

(By Patricia McCormack)

Someone might be spying on your medical records this minute—but you'll never know.

Medical records are more than just that chart attached to the bed the last time you were in the hospital.

Lumped with medical records are physical exam reports from doctors who check you over for insurance companies.

Plus: files kept by eye doctors, psychologists, psychiatrists and the full range of specialists who ever treated you.

You say the hospital has a foolproof system to protect your privacy? You say the information in the doctors' files is safe? You say the insurance company keeps your physical exam report confidential?

The answer to all three questions: Don't bet on it.

As a result, some of the most personal and intimate details of your life may be in the hands of hundreds of persons you have never met.

Reasons for concern over casual access to medical records—and what is being done about it—were detailed by Mary Joan Wogan, president of the American Medical Record Association, and Jane Rogers, association legislative director.

Wogan is administrator of medical records as Health Sciences Center Hospital in Lubbock, Texas—affiliated with Texas Tech University School of Medicine. Rogers works at AMRA headquarters in Chicago.

The association of 22,000 medical record administrators and technicians considers the issue of confidentiality "an urgent message which must be communicated to consumers."

Some reasons for the urgency:

Not only may your records be disseminated casually but you yourself probably have no knowledge of what is contained in those records.

It is very possible that people have taken the authority to sell your medical histories. Rogers recalled a grand jury investigation in Denver, Colo., a while back over a somewhat similar circumstance. She said it was

alleged the Factual Service Bureau Inc. hired persons to pose as medical professionals to obtain medical data later sold to insurance companies.

Persons paying for such spying may use the information to vote a possible loan application, increase your insurance rates or pass you over for a promotion—all due to something in your past.

"We feel casual access is possible because usually the authorization system—involving informed consent from the individual—is not strict enough," Rogers said.

The emergence of the computer's role in the health care system increases the capacity for information storage and transfer and provides a new range of possibility for unauthorized access to patient data.

"For the most part," the association states in a report, "patients are unaware of the full range of purposes for which the record is being used, or of policies governing the release of information.

"Confidential information is being provided to insurance companies, credit agencies, attorneys, employers, educational institutions, law enforcement agencies and others who will use it for non-patient care purposes.

"The privacy protection study commission, in a report to President Carter and Congress on July 12, 1977, concluded that medical records now contain more information, are available to more users, are less well controlled and are used for more non-medical purposes than ever before."

The AMRA is a member of the National Commission on Confidentiality of Health Records.

Association officials recently reviewed and commented on a draft of a legislative proposal President Carter will make to Congress on Privacy of Medical Records. The pending bill is titled "Privacy of Medical Information Act of 1979."

Sen. Jacob Javits, R-N.Y., also has prepared privacy legislation aimed at Senate and floor action early this year.

The association spells out its policies and states as one of its goals:

"Educate the consumers of medical care to their rights of confidentiality, their right to restrict or limit dissemination of identifiable medical information and their right to access to that information."

Its recommendations include:

Protection of the patient from invasion of privacy as a result of indiscriminate and unauthorized access to confidential health information.

Proper authorization procedures in obtaining medical records and protection against release of data irrelevant to the needs of the party making the request.

Appropriate use of medical information once it is disseminated to authorized persons.

Procedures for health organizations and data users in developing more efficient collection and secure storage for data necessary to their effective functioning.

Recommended policies:

While the patient does not have property rights to his medical record, the patient should have the protected right of information and the right to have access to his own medical record.

The patient must be assured that the information shared with health care professionals will remain confidential, otherwise the patient may withhold critical information which may affect the quality of the care provided.

The release of medical information for any purpose other than direct patient care must be done only with the expressed authorization of the patient or his authorized agent.

The establishment of written policies for the collection, storage and dissemination of information.

Ongoing educational programs for all staff and personnel to enforce these policies.

Rogers said the following is the situation with respect to patient access to records:

In California, Illinois and Utah, laws give limited access through the patient's attorney. Patients can have access themselves via laws in Massachusetts, Wisconsin, New Jersey, Louisiana, Mississippi and Connecticut.

In other states, access by patients depends on hospital policy. It is not the general policy for patients to have unlimited access to their records. Doctors may not want their patients to know something that may be considered harmful.

Patients pay for the treatment and the professional service but, legally, the records are hospital property or the doctor's property in cases of non-hospital treatment.

And the medical report to the insurance company, the physical exam that decides if you are a good risk for life insurance?

That belongs to the insurance companies. And it is stored in a giant insurance industry medical information bank—which any other insurance company may tap into.

● Mr. RIBICOFF. Mr. President, I am pleased once again to join my colleague, Senator JAVITS, in sponsoring the Privacy Act Amendments of 1979, a bill to protect the confidentiality of personal medical records. This legislation stems in great measure from the work of the Privacy Protection Study Commission. The Commission found that, contrary to most people's expectations, individual medical records are not private. Insurers, researchers, credit reporting agencies, law enforcement personnel, and auditors are just some of the persons who have access to an individual's medical records. Most diclosures take place without the patient's authorization. Those authorizations that are obtained are often unnecessarily broad. Ironically, one of the few persons denied access to a medical record is the patient himself.

This bill seeks to reverse the modern specified limited exceptions. It seeks to make patient access to his own record the rule, again with some limitations.

This bill is largely the same as S. 3450 which was introduced late in the 95th Congress. It contains, however, a significant addition to S. 3450. For the first time, the bill would establish standards for access to medical records by law enforcement personnel. It would also establish procedures by which an individual could challenge access to his medical records by Government agencies. These provisions of the bill are modeled on the Right to Financial Privacy Act which was enacted into law last year. I am most interested in receiving comments from the public on these new provisions.

Mr. President, the question of how best to protect the confidentiality of medical records is a complex one. An individual's medical records contain the most personal information and should be treated confidentially. At the same time, others have needs for some access to medical records. For example, the Center for Disease Control, the National Institutes of Health, and the Occupational Safety and Health Administration, all need some access to health records for research and for protection of the public and worker health.

A balance needs to be struck between the patient's expectation of confidentiality and the legitimate needs of others for access to those records. This legislation is an attempt to strike that balance. I look forward to refining the bill even further as it moves through the legislative process.●

NEW YORK CITY—THE HEMORRHAGE OF JOBS

Mr. JAVITS. Mr. President, a recent study of employment trends in the New York metropolitan area conducted by the regional office of the U.S. Bureau of Labor Statistics bears out something I have been saying to my colleagues in the Senate for the past 10 years, to wit: New York City is suffering from and deserves help with a devastating and relentless hemorrhage of job opportunities—a decade-long drain which would have crippled any other city in the United States.

According to the Bureau of Labor Statistics, in the period 1969 to 1978, payroll employment in New York City declined by 625,000 or 16.5 percent, from 3.8 million jobs to about 3.2 million jobs. This enormous and chronic loss of income and tax paying capacity in one decade—which would have driven any other city in the United States into bankruptcy—has placed a tremendous burden on the people of New York City, on the city's economy and on its budget and is, in my judgment, chiefly responsible for the imperiled financial situation of New York City.

And with respect to near-term future employment trends in New York City, the February 1979 report ("The Job Future in New York-Northeastern New Jersey") states:

> During the period 1974–85, a total employment loss in the City of 339,000, or nearly 10 percent, is projected. The largest loss is in manufacturing, which is projected to drop to 442,000 jobs in 1985, from its 1974 level of 609,000, a loss of 27 percent. Construction and trade will be the other large job loss sectors, declining 14 percent. Transportation and public utilities, services and public administration are projected to show smaller declines. Of all major sectors, only finance is projected to gain employment, from 425,000 in 1974 to 434,000 in 1985, a rise of 2 percent. This continuing drain on employment opportunities, with losses projected in every sector except finance, bears on New York City's capacity for economic recovery.

Clearly, Mr. President, New York City is highly vulnerable to reductions in Federal assistance that would exacerbate—if that were possible—an already perilous employment situation.

This tide of job losses explains why the welfare and medicaid burden in New York City has been so large in recent years, why local tax revenues have not been adequate to support essential local public services and why continued Federal financial assistance—in the form of long-term loan guarantees; public service employment; targeted fiscal assistance; and fiscal relief from the welfare burden—is so desperately needed.

Mr. President, New York City is in the throes of a truly cataclysmic loss of productive and tax-generating jobs. In the recent debates on CETA, the long-term New York City loan guarantee program, targeted fiscal assistance and other urban-oriented programs, some may have lost sight of the fact that the decline of our cities is an endemic phenomenon. There is a tendency to get hung up on recriminations of fiscal imprudence, waste and poor administration. While perhaps these explain a part of the reason for New York City's fiscal problems, they really miss the essential point: An economic decline of major proportions hitting our older big cities—and New York City the biggest—the hardest. And they are the Nation's major Federal revenue producers.

It is for this reason that Federal financial assistance, particularly Federal jobs programs, need to be targeted more sharply at urban areas that suffer severe job losses. Recent BLS data show that severe unemployment in 1978 characterized such cities as Miami, Tacoma, Philadelphia, Newark and New Orleans, to name just a few. Clearly, while the magnitude of the problem may be far greater in New York City, it is not alone as far as the fact of job losses is concerned.

This is why recently I recommended to Secretary of Labor Ray Marshall, that some substantial part of the enormous carryover in the CETA public service employment program—which may be close to $2 billion out of the fiscal year 1979 appropriation of about $6 billion—be used to hold harmless at their fiscal year 1979 allocations in fiscal year 1980 those areas where unemployment exceeded 6.5 percent in 1978. This proposal would insure that areas which have continued to suffer from persistent severe unemployment, even as the national unemployment picture has improved considerably, would not get caught indiscriminately in the crossfire of the current movement to make draconian cuts in the public service employment program, that is, from the April 1978 actual level of 750,000 jobs to a planned September 30, 1980, level of about 450,000 jobs, a cut of almost half.

There is another very important reason why the cities need to have continued Federal jobs assistance. The Congressional Budget Office estimates (testimony of Alice Rivlin, January 25, 1979) that if Federal spending in fiscal year 1980 is reduced by $15 billion below the levels that would be required to maintain current policy—and, according to CBO, the President has proposed a cut of about $12 billion below current policy—after 8 quarters national unemployment could be about 500,000 higher than where it would have been under current policy.

Mr. President, these three separate but related developments—first, the loss of job opportunities in the cities; second, the proposed budget cuts in the public service employment program; and third, the likelihood that generally tighter Federal fiscal policy will reduce employment by some 500,000 jobs by 1981—together represent a triad of havoc that could shatter the lives of many of the citizens soon to become unemployed.

If the public service employment program is cut as the President has proposed and now hold harmless is established to cushion the blow in the really high unemployment areas of our country; and if the Congress adopts a budget resolution for fiscal year 1980 which incorporates a spending level of nearly $15 billion below current policy; then the resulting private and public job losses—combined with the kind of on-going hemorrhage of jobs I have already described—could indeed bring the hardest hit cities of our country to their knees.

Finally, Mr. President there is the very real danger that, apart from the factors I have just described, an economic recession may hit the United States in fiscal year 1980. If that happens—and many economists now are predicting that it will—there could be significant disproportional effects on those areas of our country where unemployment is already extremely high. The older big cities, particularly in the Northeast, have a high risk exposure right now, and are in a relatively far worse condition for this stage of the business cycle than they have been at any other time in the postwar era. If a recession comes late this year it will hit them very hard.

This danger has been confirmed in a recent study by Richard Syron and Lynn Browne of the Federal Reserve Bank of Boston. They conclude that a recession would have very unequal impacts in different regions of the country. They state:

> The East North Central region and New England are more exposed to short term fluctuations than the country as a whole.

The widespread unemployment that is then certain to materialize could, I believe, prove to be an economic and social disaster of major proportions.

The Congressional Budget Office has looked at the unemployment situation that may evolve and concluded as follows:

> More restrictive fiscal and monetary policies run a substantial risk of increasing disparities in unemployment rates. To begin with, cuts in spending below current policy in the employment area would have important implications for the level and composition of unemployment in both fiscal year 1980 and thereafter. In the short run, reductions in employment programs appear to have greater effects on employment and unemployment than do similar size cuts in the federal budget in general. Thus, groups that traditionally have had especially high unemployment could be faced with a dual problem in 1979: when the economy softens, the unemployment rates for such groups as blacks and youths would increase more (in percentage points) than for the labor force in general. In addition, if part of the anti-inflation strategy involves large cuts in employment programs, this would have a disproportionate effect on the groups and geographic areas most affected by softness in the economy.
>
> For the intermediate term, targeted training and employment programs and policies may be an essential component of any comprehensive strategy for achieving the reduction in unemployment and inflation called for in the Full Employment and Balanced Growth Act. Since it takes time to build up such programs (or to phase them down), major cuts in existing programs could postpone the implementation of the Full Employment and Balanced Growth Act by several years. (Source: The Fiscal Policy Response to Inflation—CBO 1/79 pp 52-53).

Mr. President, I pray we will have the wisdom and the foresight to act on the facts as I have put them before the Senate. We will not get a second chance if we miss the opportunity this year to make right what is so desperately wrong about the unemployment problem in our country. The unemployed poor of our great cities are looking to us to help stem the tide of pervasive unemployment and to break their shackles of dependence. Let us feel their plight in the coming weeks and not let them down.

Mr. President, I ask unanimous consent to have printed in the RECORD an article published in the New York Times of February 11, 1979.

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

NEW YORK CITY—JOBS

(By Damon Stetson)

A new Federal study of employment in the area of New York City and northeastern New Jersey predicts an increase in white-collar and service jobs and a decline in the blue-collar sector.

The 73-page study, made public yesterday by the regional office of the Federal Bureau of Labor Statistics, projects a total of 3,260,000 job openings for the period from 1974 to 1985, with 1.2 million in New York City. It foresees a decline in overall employment in New York City, but at a much slower rate than in the last nine years.

The figures on job openings represent mainly the replacement of jobs, as opposed to an increase in total employment.

More than two out of three job openings in the area, and three out of four in New York City, will be in white-collar categories, according to the study. Professional and technical occupational groups in the area surpassed all other major classifications in their anticipated rate of gain.

PROJECTIONS NOT PRECISE

But Herbert Bienstock, the regional commissioner for the bureau, warned that such long-term projections were imprecise. He described the study as a kind of "French impressionistic painting of job projections in 1985, as contrasted with a clear black and white photograph."

He said that government policies, economic fluctuations and international developments, together or separately, might alter the validity of the projections.

For example, the construction of the Westway, according to earlier studies, would be

expected to generate enough new business activity to create anywhere from 13,400 to 124,600 permanent new jobs in the metropolitan region.

Mr. Bienstock explained that a 333,000 employment increase projected for the area by 1985 would account for about a tenth of the area's job openings for the 11-year period. The remaining nine-tenths of projected job openings, he said, would result from the turnover of workers leaving the labor force because of retirement, illness, death or family obligations.

He said the 1.2 million New York City job openings would all be accounted for by replacement needs, as total employment is expected to decline by 339,000. Lest this be interpreted as an overly pessimistic forecast, he noted that the city's payroll employment dropped by 625,000 in the period from 1969 to 1977, but that the decline had eased in the last two years.

He said that in the period since 1974, the beginning of the study's projection period, "a goodly number" of the job losses included in the city's prospective decline—perhaps as many as 255,000—had already occurred.

In the rest of the area outside the city and in northeastern New Jersey, about two million job openings are expected, with roughly two-thirds resulting from replacement needs and one-third from a projected employment rise of 669,000.

The overall rise in employment in the area is projected at 5 percent by 1985, according to to the report. That is one-fourth of the anticipated national growth of 20 percent.

In each occupational group, the area's growth rate is projected to be lower than the rate nationally. Mr. Bienstock explained that this lower growth rate was mainly attributable to job losses anticipated in New York City. The remainder of the area, the study indicates, is expected to experience growth more closely approximating the national growth.

EIGHT-PERCENT DECLINE IN BLUE-COLLAR JOBS

As a result of the city's probable job losses, Mr. Bienstock said, its share of the area's employment will decline from 52 percent of the total in 1974 to 45 percent in 1985.

The study, in pointing to occupational trends in the area, foresaw an increase of 11 percent between 1974 and 1985 in professional and technical employment, reaching a total of 1,258,000 workers. Clerical workers represent the largest and second-fastest growing occupational group, with a projected increase of 10 percent to 1,727,000 workers.

UNITED STATES-MEXICO QUADRIPARTITE COMMISSION

Mr. JAVITS. Mr. President, on February 11, 1979, I attended a meeting of the Tourism Subcommittee of the United States-Mexico Quadripartite Commission (which is hereinafter described) in Manzanillo, Mexico. I would like to report to my colleagues on the results of that meeting. I was accompanied by my special assistant for economic affairs, Jacques J. Gorlin.

The Mexican delegation to the meeting has was headed by the Secretary of Tourism, Guillermo Rossell de la Lama; former President of Mexico Miguel Aleman; the Director General of FONATUR (The National Tourism Development Fund), Jose Antonio Murillo; and by Bernardo Quintana, President of GRUPO ICA and Mexican cochairman of the Commission. The United States representation included Assistant Secretary of Commerce for Tourism, Fabian Chavez, Jr., Edgar Molina, vice president of Ford Motor Co. and United States cochairman of the Commission, and myself. Over 60 other representatives of the private and public sectors of Mexico and the United States attended the meeting during which issues of mutual concern regarding the development of Mexico's tourism sector were thoroughly discussed.

The timing of this particular subcommittee meeting of the Quadripartite Commission was especially significant in that it occurred immediately before President Carter's meeting of February 14 and 16, 1979, with Mexican President Lopez-Portillo.

The crucial role of the private sectors of the United States and Mexico in the economic development of Mexico was clear and so recognized by the governmental representatives attending the meeting. I understand that Tourism Minister Rossell provided President Lopez-Portillo with a full report on the deliberations and conclusions of the meeting.

Upon my return to the United States, I briefed Secretary of State Vance and Assistant Secretary of State for Inter-American Affairs Vaky. U.S. Government support for the Commission was evidenced also by written greetings, which I personally delivered to the Commission members, from Secretary of the Treasury Blumenthal and Under Secretary of State Cooper. I ask unanimous consent that copies of these letters appear at the conclusion of my remarks.

Since its inception over 3 years ago, the Commission has sought to demonstrate the viability of private United States investment working in association with both governments and Mexican private enterprise in assisting Mexico's economic growth and development especially in project areas which are Mexico's national priorities. As I will describe below, the tourism sector was one of those sectors of the Mexican economy whose development was identified early in the Commission's deliberations by the Mexican members of the Commission as being of high priority. They indicated that since tourism was an important generator of domestic employment (that is, labor intensive) as well as foreign exchange it could help Mexico meet its most serious economic problems.

The priority of the tourism sector already has been recognized by the United States and Mexican Governments; in May 1978, the two governments signed a United States–Mexican Tourism Agreement which pledged cooperation not only in resolving outstanding bilateral issues but also in developing joint programs to foster tourism from third countries.

The Tourism Subcommittee represented the culmination of over 3 years of effort by me to get the commission on its way. In early 1977 I invited a distinguished colleague of ours, the Senator from Texas (Mr. BENTSEN), who accompanied the President on his recent visit to Mexico to join me in the effort. I believe that Senator BENTSEN's State and the country owe him a deep debt of gratitude for his magnificent service in behalf of improving United States-Mexico relations.

Mr. BENTSEN. Mr. President, will the Senator yield just for a minute?

Mr. JAVITS. I yield.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. BENTSEN. The Senator from New York is totally modest in his comments about the quadripartite commission.

He has been the guiding light of it and he has been tenacious in seeing that that work was carried out.

We see a lot of these commissions started with very little result but this is one because of the follow-through by Senator JAVITS from New York we are seeing some absolute concrete results that I think are going to help very substantially in the involvement of the private sector in trying to develop commerce between our two countries and further creation of jobs in Mexico that is necessary for that economy, and he is a man who has shown great perception as to the extreme importance to the United States of Mexico and whatever happens in Mexico is going to spill over on this side and vice versa.

Whether we like it or not our futures are intertwined, and I am very grateful for the work that the Senator from New York has done in that regard and pleased to assist in whatever minor way I can.

Mr. JAVITS. How very gracious and typically modest of the Senator from Texas. He adds an absolutely otherwise unavailable dimension to our effort. I am very grateful to him and believe that the country should also show its appreciation for his fine work.

Mr. President, to continue, we have been joined in this undertaking by representatives of the private sector headed by co-chairmen Quintana and Molina, who attended the Manzanillo meeting, and Ralph Pfeiffer, Jr., of IBM and Antonio Ruiz Galindo, who are the other by cochairman Quintana and Molina, United States and Mexican cochairmen respectively. Also instrumental in the founding of the Commission were J. Irwin Miller of Cummins Engine, G. A. Constanza of Citicorp, and William Hewitt of John Deere. In addition, the following corporations are represented on the Commission: DuPont, Bendix, the Sheraton Corp., Bank of America, ADELA, the Agribusiness Council, Inc., Murden & Co., and McKinsey & Co.

In putting forward the Quadripartite Commission as a vehicle to bring together the United States and Mexican private sectors to assist in Mexico's economic development under a joint governmental umbrella, these business leaders joined in underscoring the need for a special relationship between Mexico and the United States that would facilitate

the economic interdependence that our common border dictated. The nature and size of the issues that face our two governments and the required solutions in such areas as labor-intensive economic development in Mexico, Mexican energy development, and undocumented aliens, cannot be resolved by governments alone and, hence, the need, I believe, for the Quadripartite Commission to provide a necessary element to complement certain major objectives of the official relationship between our two governments.

The Commission's development had been characterized before the Manzanillo meeting by slow progress, notwithstanding the best intentions of both sides. The Commission was launched in June 1975, after an initial meeting that I had with President Echeverria in Mexico. It was subsequently fully supported by President Lopez-Portillo after he took office in 1976.

The thrust of the Commission as a vehicle for economic cooperation was confirmed 6 months later in January 1976, in a meeting in San Antonio where we agreed to form special committees to focus on the vital economic sectors of Mexico. In September and December 1976, I briefed newly elected President Lopez-Portillo in Washington, who was very supportive of the Commission idea.

As a result of my meetings with President Lopez-Portillo, a plenary meeting of the Quadripartite Commission was held in Mexico City in April 1977. The meeting was attended by myself, Senator BENTSEN, Under Secretary Cooper, Under Secretary of the Treasury Tony Solomon, Under Secretary of Commerce Sidney Harmon, senior representatives of the Mexican Government, 13 representative leaders from the U.S. private sector, and 10 representative leaders of the Mexican private sector. The meeting continued our earlier attempts to determine possible areas of participation by the private sectors in joint investment projects which were defined as Mexican national priorities. It was agreed to develop proposals in the areas of tourism, agribusiness, manpower training and technology, manufacturing, and resource development.

Since the main objective of the Quadripartite Commission was to assist Mexico in project areas of its choosing, the U.S. participants awaited the wishes of their Mexican counterparts. In August 1977, the U.S. cochairmen, Ralph Pfeiffer and Ed Molina, and my special assistant, Jacques Gorlin, met with President Lopez-Portillo in Mexico City to gage whether the Government of Mexico was still interested in the Commission. In the intervening period the two sides have had discussions both face-to-face and through diplomatic channels; and the tourism meeting which I attended was the culmination of these efforts.

The meeting provided an opportunity for tourism specialists from both the private and public sectors to focus on outstanding issues that have blocked greater United States-Mexican cooperation in the development of Mexican tourism projects. Representatives of Fonatur and the Ministry of Tourism briefed the Commission members on the potential for Mexico's tourism sector as well as on the specific objectives of Mexico's tourism policy and the role of United States investment in these plans. A frank exchange of views on Mexican legal issues relating to foreign investment and the acquisition of real property interests by foreigners in Mexico took place.

During the course of the meeting, the following issues were identified as posing problems for expanded United States-Mexican cooperation in the tourism sector:

First. The need to expand both the number of U.S. airlines servicing Mexico and the routes into Mexico. It was recommended that a bilateral air agreement be negotiated to permit the United States and Mexican airlines to work more closely in exploiting these opportunities. The Mexican side indicated that the U.S. airlines were not considering increasing their flights to Mexico because of new opportunities afforded in the domestic U.S. market and expressed concern that an exemption from the Sherman Anti-Trust Act may be necessary to permit closer collaboration between the Mexican an U.S. airlines.

Second. The possibility of having U.S. tax legislation which would create a "North American area" exemption to the present law limiting tax deductible foreign conventions to 2 a year when held outside the United States. This limitation, the Mexicans believe, has been counterproductive to the development of their tourism industry.

Third. The need for possible changes in Federal and State securities laws and regulations with respect to the registration of real estate sales and securities to account for the inability under Mexican law to provide proof of clear title for property in Mexico. The Mexican side viewed this as a major limitation on raising capital in the United States for real estate ventures.

Fourth. Article 27 of the Mexican Constitution, which created a "prohibited zone" for foreign ownership of land (all land within 100 miles from any land border and within 50 miles of the sea coasts), is a major impediment to foreign investment according to U.S. participants in the meeting. Although a 1971 Presidential decree, which was later codified in May 1973, by the Mexican Congress in a foreign investment law, has sought to alleviate the problem by permitting legally approved trust deeds of 30 years duration, legal problems dealing with successive trusts beyond the initial 30-year period remain. In addition, the U.S. participants pointed to the absence of long-term credit instruments (mortgages are presently limited to 10 years) as a further disincentive to touristic investments.

Mexico's representatives indicated their awareness of these problems and that they have sought to work within the limitations of the constitution to create new incentives, such as accelerated amortization and tax credits, for such external investment in the tourism sector.

In addition to the plenary session in which these policy issues were discussed, the representatives of the two private sectors made onsite inspections of possible areas for joint tourism investments.

Two joint venture agreements negotiated under the auspices of the Quadripartite Commission between the ICA group and the Sheraton Corp. and between Howard Johnson and the Marcos Russek group of Mexico were signed at the close of the final session of the Commission. These agreements provided tangible evidence of private sector interest in Mexico's economic development.

The Commission plans to expand its work and concentrate its efforts further in tourism as well as in agribusiness and other labor-intensive sectors of the Mexican economy that have been identified by Mexico as priority areas.

The Commission has executive offices in New York, under the executive direction of Jeffrey Peters, and in Mexico City, under the direction of Alberto Velasco, who serves also as an assistant to President Lopez-Portillo.

The importance of this subcommittee meeting transcends the tourism sector and should not be underestimated. The meeting was tangible evidence of the developing interest in the Commission on the part of Mexico. The meeting could not have taken place without the active leadership of Tourism Secretary Rossell and the personal bureau of the President of Mexico. Given the close working relationship between government and the private sector in Mexico, continued Commission activity in other sectors of the Mexican economy will require also the leadership of other Mexican ministers to support the Commission's objectives.

Throughout the development of the Commission in the last 3 years, I have kept Secretary of State Vance and his predecessor, former Secretary of State Henry Kissinger, fully informed about the Commission's work. The State Department has lately recognized the Commission's importance in implementing any United States-Mexico policy for economic development which includes a significant role for the United States and Mexican private sectors. President Carter also has shown the importance that he attaches to continued close United States-Mexican private sector endeavors such as the Quadripartite Commission as a necessary complement to the official relationship between our two governments.

The President and the Congress must even more look to the private sector as a full partner in the implementation of the foreign relations of this Nation. There is priceless expertise in the private sector as well as resources, and we must avail ourselves fully of that knowledge and the willingness to serve the United States that are to be found in the U.S. private sector.

One possible approach relating directly to the vital U.S. relationship with Mexico would be the establishment of a private sector advisory group on Mexico to advise the Department of State which would draw upon the work of the Quadripartite Commission members as well as of other private sector groups which are knowledgable about Mexican affairs.

While it has taken over 3 years to get the Quadripartite Commission off the ground, there is no doubt in my mind that it is highly relevant to the very real economic issues that face—and all too often divide—the United States and Mexico. In a sense, the Quadripartite Commission may have been ahead of its time in recognizing the importance of strong United States-Mexico economic relations and the need for positive efforts on the part of both partners to make that objective a reality. But the times have now caught up and the effort looks most hopeful and worthwhile.

I ask unanimous consent that the letters be printed in the RECORD.

There being no objection the letters were ordered to be printed in the RECORD, as follows:

THE SECRETARY OF THE TREASURY,
Washington, D.C., February 6, 1979.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR JACK: Thank you for informing me of the February 9–12 meetings of the U.S.-Mexico Quadripartite Commission.

I am happy to hear that the Commission is now looking at joint ventures in the tourism field. As you know, we welcome close cooperation between the United States and Mexico and between their private sectors. We believe the work of this Commission is extremely useful in stimulating and maintaining such cooperation. Please convey my sincere wishes for success to the participants in the upcoming Tourism Subcommittee meetings.

Best regards.

Sincerely,

W. MICHAEL BLUMENTHAL.

UNDER SECRETARY OF STATE
FOR ECONOMIC AFFAIRS,
Washington, D.C., February 8, 1979.

Hon. JACOB K. JAVITS,
U.S. Senate.

DEAR SENATOR JAVITS: I was pleased to learn from your letter of January 30 that progress is being made by the U.S. private sector in pursuing areas of joint investment in Mexico. This effort by the U.S. private sector representatives appears to be a promising revenue for involving their Mexican counterparts.

Enclosed is a letter which you requested for the meeting of the Tourism Subcommittee.

With best regards,

Sincerely,

RICHARD N. COOPER.

UNDER SECRETARY OF STATE
FOR ECONOMIC AFFAIRS,
Washington, D.C., February 8, 1979.

To the Members of the Tourism Subcommittee:

I wish to extend to you my wholehearted support and best wishes for success in your efforts to promote tourism between our two countries through private investment in specific projects. Successful projects of this sort could serve as a model for joint endeavors by the private sector in other sectors of the Mexican economy. This cooperative effort by U.S. and Mexican free enterprise complements in an important way the cooperation at the Government level now being carried out by the US-Mexico Consultative Mechanism.

President Carter's visit to Mexico, which will take place in a few days, reaffirms the importance he gives to increased official cooperation and consultation between Mexico and the United States. However, governments are able to go only so far in cementing the relations between their countries. Beyond that it is essential to have the sort of people-to-people contact exemplified by your group in its efforts to carry out joint investment projects.

Sincerely,

RICHARD N. COOPER.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Florida (Mr. CHILES) is recognized for not to exceed 15 minutes.

The Senator from Florida.

RULE 29.5

Mr. CHILES. Mr. President, a major challenge facing the new 96th Congress is how to demonstrate to the people of this country that Government services can be delivered with a minimum of paperwork, redtape, and regulation and that their tax dollars can be spent effectively, and without fraud or abuse.

One way we can begin tackling the paperwork and redtape dilemma faced by almost every American is to begin following our own rules here in the Senate.

We have a rule, Senate rule 29.5, enacted at the beginning of the 95th Congress, which states very clearly that each committee report of each and every public bill and joint resolution contain a statement which spells out the paperwork impact the legislation would have.

The statement—the regulatory impact evaluation—is to tell us who will be affected by the legislation, the impact on personal privacy of individuals, as well as determining the amount of additional paperwork that will result from passage of the bill or resolution.

If an evaluation is impracticable, the committee is to state why. Our rule exempts only the Appropriations Committee from this requirement.

Rule 29.5 also declares that it is not in order for the Senate to consider any bill or joint resolution that does not have that accompanying statement.

We have, however, broken that rule many times.

THE SENATE RECORD

A review by my staff and the Congressional Research Service reveals that 216 of the 688 committee reports which fell under the rule's scope simply ignored rule 29.5.

Almost a third of the reports—31.4 percent—did not even refer to the rule and made no statement whatsoever to the requirement that regulatory, economic, privacy, and paperwork impacts of legislation be considered.

Many of the 216 bills and resolutions are now public law. The fact that 31 percent did not follow the rule is a simple, stark statistic which shows the Senate has not been all that serious about reducing paperwork.

The strategy this rule provides to attack paperwork and excessive regulation must be followed. The Senate cannot tolerate an utter disregard for its own rules.

I plan to bring to the Senate's attention any bill or joint resolution reported to the floor that ignores rule 29.5. A number of other Senators have joined with me in this regard: Senators NUNN, HUDDLESTON, BENTSEN, DOMENICI, ROTH, and DOLE. I invite my colleagues to join with me in monitoring committee reports.

I believe the result will be to reduce the headaches as well as the financial cost of regulatory and paperwork requirements that find their way into reauthorization or new legislation.

By doing this, Mr. President, we will demonstrate to the taxpayers that we in the Senate are serious about reducing paperwork.

I recall the Paperwork Commission's conservative estimate that it cost $100 billion a year to meet the paperwork demands imposed on citizens, State and local governments, and private businesses. Any 1-percent reduction in this growing figure would represent $1 billion.

Senator BENTSEN recently told me that the Joint Economic Committee has found businesses will spend more than $102 billion in 1979 to comply with Federal regulations, an increase of 50 percent since 1976.

Rule 29.5 is a vehicle to discipline the committees of the Senate and to address these costs at their source, where laws are made. We can say all we want to about bureaucrats who run amuck and I believe strongly much can be done through better oversight. But if we are serious about it, Mr. President, we have got to realize that the process starts with us, with the legislation that we initiate. Unless we are willing to follow our rule and do something about it, it is going to be very hard to expect that we can get the bureaucrats or anyone else to pay attention.

Ideally committee work should crank in the analysis of executive branch agencies, interested public groups, and the General Accounting Office in performing evaluations.

Members would then have a better basis to pick the way to do the best job with the least amount of paperwork.

There are limitations to the requirements of the rule. The rule does not, for example, get to amendments made to bills already reported or conference reports. Regulatory, economic and paperwork impacts are not always easy to measure exactly, but a quick look at the

survey results that follow show the Senate has hardly tried to follow its rule.

I think, Mr. President, it is time we start trying to follow rule 29.5.

Mr. President, I ask unanimous consent that survey results of Senate performance on rule 29.5, 95th Congress, and a letter dated February 15, 1979, from the Comptroller General of the United States be printed in the RECORD.

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

Survey results of Senate performance on Rule 29.5, 95th Congress

(Total number of committee reports reviewed was 688).

	Number of reports	Percentage of reports
Reports which included a separate and specifically designated regulatory impact statement	472	68.6
Reports which did not	216	31.4
Reports which contained a statement explicitly waiving the impact statement requirement	9	1.3
Reports which did not	679	98.7
Reports which stated that the impact statement is based upon information provided by the executive branch	3	0.6
Reports which did not	460	99.4
LENGTH OF THE IMPACT STATEMENT		
One paragraph or less	185	40.0
More than one paragraph but no more than one page	229	49.5
Two to five pages	45	9.7
More than five pages	4	0.9
HOW THE IMPACT STATEMENT CHARACTERIZED THE INDIVIDUALS AND BUSINESSES TO BE REGULATED		
No characterization	316	68.2
Qualitative identification	101	21.8
Quantitative estimate	46	9.9
HOW THE IMPACT STATEMENT ASSESSED THE REGULATORY IMPACT OF THE MEASURE		
Not a regulatory measure	109	23.5
No regulatory impact	152	32.8
No increase in existing regulations	114	24.6
Increase in existing regulations	29	6.3
Decrease in existing regulations	12	2.6
No assessment	47	10.2
HOW THE IMPACT STATEMENT ASSESSED THE ECONOMIC IMPACT OF THE MEASURE		
No significant economic impact	129	27.9
Positive economic impact	56	12.1
Negative economic impact	7	1.5
Mixed economic impact	9	1.9
Discussions of economic impact without assessment	4	0.0
No assessment	258	55.7
HOW THE IMPACT STATEMENT ASSESSED THE IMPACT OF THE MEASURE ON PERSONAL PRIVACY		
No significant impact	291	68.9
Positive impact on privacy	1	0.2
Negative impact on privacy	15	3.2
Mixed impact on privacy	9	1.9
Discussion of impact on privacy without assessment	1	0.2
No assessment	146	31.5
HOW THE IMPACT STATEMENT ASSESSED THE IMPACT OF THE MEASURE ON FEDERAL PAPERWORK		
No significant impact	252	34.4
Positive impact—reduced paperwork	29	6.3
Negative impact—increased paperwork	44	9.5
Mixed impact	19	4.1
Discussion of impact on paperwork without assessment	1	0.2
No assessment	118	25.5
HOW THE IMPACT STATEMENT ASSESSED THE IMPACT OF THE MEASURE ON PRIVATE RECORDKEEPING		
No significant impact	96	20.7
Positive impact—reduced record-keeping	7	1.5
Negative impact—increased record-keeping	33	7.1
Mixed impact	6	1.3
No assessment	321	69.3
Impact statements which include data, specifications, or examples of paperwork or record-keeping to be affected by the measure	26	5.6
Statements which did not	437	94.4

The above data reflects characterizations and evaluations that are necessarily subjective. In many cases, differences of interpretation are certainly possible. Inconsistencies have been minimized, however, by subjecting all reports to review by the same individuals. This report focuses only on separate and specifically designated impact statements. Information pertinent to the requirements of the rule may often be included elsewhere in the texts of committee reports. The only reports accompanying bills and joint resolutions have been excluded from this review are those of the Committee on Appropriations and those that provide for the relief or name persons or entities. Many of the reports that have been examined accompany measures so limited in scope and effect that they would not be expected to have a discernible regulatory impact. A few committee reports have not been available for examination, but they are too few in number to have a significant effect on the data.

Number of reports by committee which did not refer to rule 29.5

Agriculture, Nutrition, and Forestry	0
Armed Services	20
Banking, Housing, and Urban Affairs	30
Commerce, Science and Transportation	0
Energy and Natural Resources	3
Environment and Public Works	13
Finance	0
Foreign Relations	4
Governmental Affairs	6
Human Resources	12
Judiciary	76
Rules and Administration	15
Veterans' Affairs	0
Select-Indian Affairs	34
Select-Intelligence	3
Select-Small Business	0

WASHINGTON, D.C.,
February 15, 1979.

Hon. LAWTON CHILES,
Chairman, Subcommittee on Federal Spending Practices and Open Government, Committee on Governmental Affairs, U.S. Senate.

DEAR MR. CHAIRMAN: As the 96th Congress convenes, controlling the growth of Federal regulatory and paperwork burdens is high on the agenda of issues to be addressed. Because of your interest and prior efforts in this area, I want to share my thoughts with you on what I believe to be potentially one of the most useful tools available to the Senate in achieving that objective. That tool is Senate Rule 29.5.

Rule 29.5, adopted in February 1977, requires that the report accompanying each public bill or joint resolution coming to the Senate floor, except appropriations bills, include an evaluation of the regulatory impact which would be incurred in carrying out the bill or joint resolution. The evaluation should include:

(a) estimates of the numbers and classes of individuals and businesses regulated,

(b) estimates of the economic impact on those affected,

(c) an assessment of the impact on personal privacy of the individuals affected, and

(d) estimates of the amount of additional paperwork, including recordkeeping, which would be required.

The rule provides that, in lieu of such an evaluation, the report should include a statement of the reasons why preparation of the required evaluations is impracticable.

The evidence available indicates that implementation of the rule to date has not been good. I believe this may be due, in part, to a misunderstanding of the rule's intent as to (1) who has responsibility—and capability—for developing the required impact evaluations, (2) at what point in the legislative process the input is required, and (3) the degree of precision expected or possible in the analyses. I would like to give you our views on these points.

We believe that, in most cases, the committee staffs do not have the time or ready access to the required information to prepare the impact evaluations. In our view, the agency which would administer the proposed legislation is the most knowledgeable source for developing the evaluations required by the rule. Input from those who would be affected would also be useful. We also believe that impact evaluations should be available to the committees when legislation is being considered. This would provide the opportunity to consider alternative ways to achieve the desired objectives. However, it must be recognized that the impacts called for in the rule simply cannot be measured with precision. Rough estimates are the best that can be hoped for.

As a further thought along these lines, it might be worthwhile to request the Director of the Office of Management and Budget to ensure that agency testimony or other comments on bills address the impact issues called for by Rule 29.5. Alternatively, the committees could request the agencies under their jurisdiction to address the rule's impact requirements in their testimony and comments. Either of these approaches could aid in putting the agencies on notice to develop the best information they could for the committees' consideration.

Recognizing that the data available will always have limitations, I believe Senate Rule 29.5 can serve an extremely valuable function to assist the legislative committees as they hold hearings and consider comments and testimony from the implementing agencies and those who will be affected by the legislation. Accordingly, I have directed my staff to carry out the following tasks:

Prepare guidelines to assist in developing the required impact evaluations,

Consider and address the Rule 29.5 impact issues in GAO comments on proposed legislation, and

Evaluate, when requested, impact analyses developed for the committees.

The product I envision in the way of guide-

lines would be one or more booklets including a range of questions to be addressed in impact statements and suggestions on methodology. If we are successful, the results could provide a useful tool for both the committees and the agencies in developing impact statements and considering alternatives to limit the adverse impacts of proposed legislation.

We are routinely asked to provide comments and views on many legislative proposals of a public nature. We will consider and address, to the extent feasible, the Rule 29.5 impact questions in developing our comments on proposed legislation.

Finally, on a request basis and within the limits of our resources, our staff will be available to work with the committees informally to assist in evaluating impact material developed by the executive agencies.

I hope you will find these thoughts useful. We will continue to work with you to assist in accomplishing the objectives of the rule to the greatest degree possible.

Sincerely yours,

ELMER R. STAATS,
Comptroller General of the United States.

Mr. BENTSEN. Mr. President, will the Senator from Florida yield to the Senator from Texas?

Mr. CHILES. Yes.

Mr. BENTSEN. First, Mr. President, I congratulate the Senator from Florida who has developed quite a reputation in his time here in the Senate for his deep concern for the cost of Government in the effective delivery of services to the taxpayers of this country with a minimum of frills and a minimum of expense.

In bringing to the attention of this Senate the lack of enforcement of rule 29.5 he is rendering a further service.

I think it is interesting to note that Senator TALMADGE, our great friend, is here today. He is the author, the sponsor, of 29.5, who understands the burden of the paperwork in this country.

I had a secretary of one of the departments testifying before our committee, and I asked, "Have you followed the rule that the President has asked for every head of every department that they read every regulation that comes out of their department each year?" I was speaking to the Secretary of Commerce, Mrs. Krebs, and she said:

No, I have not. It has been an impossible task for me.

Can you then imagine the responsibilities and the problems of a small businessman? In 1955 you had 10,000 pages of regulations in the Federal Register published. In 1978, you had 70,000 pages of them.

Mr. President, it is particularly appropriate that our distinguished colleague, Senator TALMADGE, should return to the Senate during the discussion of Senate rule 29.5. Senator TALMADGE was the author and sponsor of rule 29.5. This rule will have a significant impact on regulatory costs and inflation if it is adhered to during the 96th Congress.

During the hectic closing days of the 95th Congress, the Senate passed a number of major bills in violation of rule 29.5, which requires that each bill reported by committee for Senate action be accompanied by a regulatory impact analysis. Even during the earlier part of the 95th Congress, when the pace was much more measured, a large percentage of bills—almost a third—got through the Senate without any kind of analysis of their regulatory impact on American taxpayers, consumers, and businesses.

I am very disturbed by this lack of congressional concern for the regulatory costs that are imposed on the private sector when legislation is passed that has not been thoroughly examined.

We must do better during the 96th Congress. If we do not improve—if we continue to pass legislation without examining the regulatory and paperwork impact—we will just end up stimulating more inflation and stifling the entrepreneurship and productivity of American businesses.

In April of last year the Joint Economic Committee published a study showing that businesses will spend over $102 billion in 1979 to comply with Federal rules and regulations, an increase of almost 50 percent since 1976.

In November of last year after the 95th Congress adjourned, the General Accounting Office submitted a report to the JEC showing that American businesses "take about 69 million hours annually at an estimated cost of over $1 billion to respond to the more than 2,100 U.S. reporting requirements" that have been approved by the OMB and GAO under the Federal Reports Act. And this figure, as astonishing as it is, does not even include business forms that have to be submitted to the Internal Revenue Service, the Federal Reserve Board, or the Securities and Exchange Commission.

These growing regulatory costs are a significant cause of inflation. They must be brought under control soon, or our fight against inflation will be much more difficult.

I see little hope right now, though, for a tapering off of regulatory costs unless we adhere to rule 29.5. Otherwise, Congress will continue to enact new laws that give the regulatory agencies more duties and more reasons to issue more and more costly regulations.

At the beginning of the 95th Congress, the Senate passed rule 29.5 to require Senate committees to consider regulatory costs when they report new legislation. In a speech on October 14, 1978, the last day of the 95th Congress, Senator CHILES pointed out that too much legislation was reported without the required regulatory impact analysis. He also pointed out that many of the analyses submitted were perfunctory or useless.

We in Congress complain quite readily about the regulatory costs imposed by the regulatory agencies and their "faceless bureaucrats." Certainly, the agencies must take some of the blame for rising regulatory costs. But how can we force the regulatory agencies to take seriously the task of reducing regulatory costs if we fail to toe the mark ourselves?

During this Congress, rule 29.5 must be complied with much more vigorously and consistently.

The first step toward controlling regulatory costs must be the control of costly legislation. We must all be Horatios at the bridge on this. I look forward to working with Senator TALMADGE and Senator CHILES, and my other distinguished colleagues, to give real meaning to rule 29.5 during the 96th Congress.

Mr. TALMADGE. Mr. President, will the Senator from Florida yield?

Mr. CHILES. I thank my distinguished colleague, and I will yield in just one moment.

I just want to take one moment to express to the Senator from Texas my appreciation for what he is doing in the Joint Economic Committee, and to say that I know the feeling he has for how our private enterprise system must work. If we do not do something in controlling these regulations, especially where they are needless, where they are duplicative or where they gather information, much of which is never even looked at by the people who gather the information, then we suffer a total loss to our economy, totally inflationary, and we have lost credibility with the people out there. I am delighted to have his support in it.

I want to also say that I join in his mention of the Senator from Georgia (Mr. TALMADGE), the father of rule 29.5. It was amended on his motion, and it was overwhelmingly adopted by the Senate on February 1, 1977.

Certainly the wisdom that was shown by the senior Senator from Georgia 2 years ago is coming to everybody's attention, and all of us are joining in. The Senator from Georgia saw the wisdom of this 2 years ago, when he saw that we needed to do something. I think it is very significant to note that the Agriculture Committee provided impact statements in their reports, without exception. I have been told that members of the committee have found that the information generated was very helpful.

The Senator from Georgia has been the pioneer in this. I am delighted to yield to him on this subject that we now follow, a subject that he started.

Mr. TALMADGE. I thank the distinguished Senator from Florida.

THE TALMADGE RULE—2 YEARS LATER

Mr. President, on February 1, 1977, the Senate approved an amendment to rule 29 of the Standing Rules of the Senate to require that a regulatory impact statement be included in the report which accompanies every bill or joint resolution reported to the Senate by any committee of the Senate. The Senate adopted this amendment overwhelmingly on a rollcall vote of 74 to 20.

I would like to commend the Senator from Florida (Mr. CHILES), the Senator from Texas (Mr. BENTSEN), the Senator from Kentucky (Mr. HUDDLESTON), and my colleague from Georgia (Mr. NUNN) for their efforts in bringing to the attention of the Senate the failure to comply with the requirements of rule 29.5. I applaud the concern my colleagues have shown regarding the need for adherence to this rule, and I pledge my total cooperation in a renewed effort to bring this problem to the attention of the full Senate.

Now, over 2 years after the adoption of my amendment, we should examine the extent to which it has been effective and, if not, what should be done.

Under the amended rule 29, committees must include in their reports on legislation a statement of the regulatory impact which would be incurred in carrying out the bill or joint resolution. This evaluation is to include, first, an estimate of the numbers and types of individuals and businesses who would be regulated; second, a determination of the economic impact of the regulation on the individuals, consumers, and businesses affected; third, a determination of the impact on the personal privacy of the individuals affected; and fourth, a determination of the amount of additional paperwork that will result. The paperwork determination is to include the amount of time and the costs to be required of those affected and an estimate of the recordkeeping requirements that may be associated with the legislation.

Mr. President, I became interested in amending the Senate rules to require a regulatory impact statement because of my own experiences in the legislative process. Time after time since I have been in this body, I have seen the Congress enact broad and sweeping legislation to regulate entire sectors of the economy and great numbers of people. We did so in good faith and with all good intentions. We did so in response to some real or imagined problem which seemed urgent at the time.

In many cases, we failed to thoroughly evaluate who we were regulating and how much it was going to cost the people who were being regulated. We have done this time and time again over a period of several years—piling one regulatory program on top of another—seldom wiping from the books outdated and unnecessary programs—until we have placed an intolerable burden on the people of this country and on the Nation's economy.

We have greatly limited the ability of our economy to grow and we have hindered the ability of industry to increase productivity. We have limited the capacity of the Nation's economy to provide the standard of living that our people have come to expect. Estimates of the cost of complying with Federal regulatory programs run over $100 billion annually.

When our constituents cry out against Government regulation, we blame the bureaucrats. We entertain measures to limit the power of bureaucrats. We talk about increased congressional oversight. All too often we have legislated unlimited mandates for regulation on one hand, while crying bureaucratic interference on the other. We have blamed the bureaucracy. We have blamed everybody but ourselves. Never, with the exception of our improvements to rule 29, have we made an attempt to place the blame where it squarely belongs and put our own house in order.

Certainly, the bureaucrats are partially to blame. It is in the nature of the Federal bureaucracy to constantly seek more power, more funding, and more personnel for itself.

However, the Congress must share equal blame, because no bureaucrat can issue a regulation without a statutory basis for that regulation. No bureaucrat has the personnel to implement a new regulatory program without appropriations by the Congress.

Upon the adoption of this rule in 1977, I wrote to President Carter and to the Director of the Office of Management and Budget to request that the President, by Executive order, require all executive branch agencies to include in their reports on legislation a regulatory impact statement. President Carter has now established a new Regulatory Council to coordinate regulatory policy and to take into account the economic impact and the inflationary potential of Federal regulatory policies. I applaud the President for his efforts in this regard. Unfortunately, the President is being strongly criticized by some Members of Congress for his efforts. I believe that the President has heard the voice of the people speaking on this issue, and I suggest that we in Congress had also better listen to this voice.

Mr. President, I think the last election sent a strong message to many elected officials. The message that the voters sent us was that they are fed up, not only with excessive Government spending, but also with excessive Government regulation.

I hope that the 96th Congress will take concrete action to address both of these issues. I will certainly do my part to see that we do take the appropriate action on these issues. I suggest that the time has ended when we can legislate willy-nilly without any real concern for the regulatory impact, economic cost, or the effect on individual privacy. We have a responsibility as legislators to refrain from any legislation until we can answer these basic questions: First, who will the legislation affect? Second, what will the legislation cost those to be regulated? Third, what will it cost the Government? Fourth, how much new paperwork and redtape will result?

We must insist on answers to each of these questions before we enact legislation.

This year, the final report on Federal regulation issued by the Senate Governmental Affairs Committee recommended that all regulatory agencies be required to estimate and then publicly project cost benefits and other impacts before they can issue a new rule or regulation. Senator RIBICOFF and others have introduced legislation, S. 262, to implement this recommendation.

Other well-considered proposals have also been offered by a number of our colleagues, and they will warrant very thorough study in the months ahead. The Senator from Texas (Mr. BENTSEN), the Senator from Florida (Mr. CHILES), the Senator from Kentucky (Mr. HUDDLESTON), my colleague from Georgia (Mr. NUNN), and others have been conscientiously applying their energies to this critical matter, and I look forward to working closely with them as we move toward enactment of vitally needed improvements in this area of regulatory concern.

As has been pointed out by the distinguished Senator from Florida and the distinguished Senator from Texas, the American people are fed up with regulation from the cradle to the grave by every agency of the Federal Government.

As the Senator from Texas has pointed out, many of these regulations are worthwhile, many of them are necessary. But every time we pass a simple law, as the Senator from Florida and the Senator from Texas have pointed out, the Federal agencies write rule after rule, and American businesses today, from the peanut vendor to the largest corporation in America, are overwhelmed with paperwork. It is adding to the inflationary spiral, they tell us, at least $100 billion a year.

It is time for the committees of the U.S. Senate, when we are acting on a bill that has been reported from the committees, to state who is being regulated, the extent of that regulation, and the cost of the regulation.

That will enable the Senate to stop, look, and listen before we pass more laws that will place more burdens on the American electorate. I commend you, and pledge my total cooperation with your effort.

Mr. CHILES. I thank the distinguished Senator very much for his remarks. I know that his support, as in the original adoption of the bill, is going to be very important to this body, in seeing that we begin this discipline with ourselves, and then taking steps to assure that we will be able to enforce it in the bureaucracy.

Mr. DOMENICI. Mr. President, will the Senator yield me 30 seconds.

Mr. CHILES. I am delighted to yield to the distinguished Senator from New Mexico, who has joined in this effort and agreed that he will help in monitoring the bills that come before the Senate to see that we have this rule enforced. The work he has done on the Budget Committee and the other committees on which he has served shows his interest in this effort.

Mr. DOMENICI. I thank my good friend from Florida. I simply wish to congratulate him on his effort. It was my privilege to discuss this matter with him. He has mentioned that I joined with him; I reaffirm that, and wish to say that I am delighted to be here.

I think the real issue, Mr. President, is, if we are going to have a Senate rule that purports to put us on some kind of notice about the expensiveness that might be flowing from one of our bills or resolutions in terms of regulations of our people, the issue is whether we are going to be credible. That is why I came down. I think if we are going to say something in our rules that is supposed to have a salutary impact in this area, we ought to follow it. We ought to protect our people.

So I hope we will get our committees to comply, and I hope they will be serious in their evaluation. I hope we will live up not only to the spirit of the resolution, but also to its letter in considering its implications.

Mr. CHILES. I thank the Senator. I think the Senator from New Mexico

makes a very valid point. It is one thing to put into the law some language to say we have studied the impact, and it is another to have the committees really take this up as part of their deliberations and be conscious that there is going to be an impact, how the bureaucrats are going to treat it, and what kind of regulations the measure leaves it open for them to introduce. If there is some way we can narrow the area, so that if information is available from other sources, we can tell them to use that information, for goodness sake, and not draw up another form.

If the committees just make some kind of boiler plate stamp that they put on there, we will not accomplish much. I think it is going to take more and more of us sitting on the committees, not just policing the floor, to accomplish that.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. TALMADGE. Mr. President, does the Senator from Georgia have 15 minutes allotted to him on this colloquy?

The ACTING PRESIDENT pro tempore. There is 15 minutes allotted to the Senator from West Virginia.

Mr. TALMADGE. I yield 2 minutes of my time at this time to the distinguished Senator from Florida.

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

Mr. CHILES. I yield to the Senator from Louisiana.

Mr. LONG. Mr. President, I congratulate the Senator from Georgia and the Senator from Florida for what they are doing in this area, and also the Senator from Texas for the diligent effort he has made to reduce needless Federal regulations.

It occurs to me that in addition to what the Senator is advocating, it would be well if we could make each department or each agency within each department come up with an estimate, every year, of what it is costing the American people to comply with the regulations and the redtape of their departments.

The Secretary of HEW was in my office the other day, and he said—and I am happy to receive the word—that he has succeeded in reducing the regulations of HEW by about 10 percent.

That is a good sign. But there is still a long way to go. For example, a study was done in California of the work necessary to process one welfare claim. The study concluded that if all the necessary forms were placed end to end, the paper necessary to process one claim would be 70 feet long, or roughly about 70 pages. They concluded that you do not need all that; all you really need is about a 4-page statement, with one blank sheet to put in any relevant additional information that might occur to the person interviewing the applicant. That is a far cry from filling out 70 pages of information.

I am sure that there are many other areas where, if one would just analyze everything being done that is not really necessary, enormous savings could be made, and of course, those savings could be used to help reduce the budget deficit.

Mr. CHILES. I think the Senator raises a very valid point of having some kind of estimate or requirement for the agencies as to what the cost would be. I was sitting in the Budget Committee today, listening to private economists. One of the private economists was testifying just this morning. He said that while we do not ever expect to get the money back for the regulations, it would be sort of nice if the American people knew what kind of a tax they placed on us by virtue of these regulations we have to comply with. The bureaucracy, when they issue one of these regulations, considers that it is sort of free, that we have to do it, they are not going to pay us to do it. As he said:

> We do not feel like we even get credit for the fact that it is costing us umpty dollars in a hidden tax. That is what it amounts to.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. TALMADGE. I yield 1 additional minute to the Senator from Florida, and ask that he yield me 15 seconds.

Mr. ROBERT C. BYRD. Mr. President, may I be recognized under my order?

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. I yield the Senator from Florida 5 minutes.

Mr. CHILES. I yield to the Senator from Georgia.

Mr. TALMADGE. Mr. President, I express my deep appreciation to the distinguished Senator from Louisiana and the distinguished Senator from New Mexico for the comments they have made.

Mr. BENTSEN. Mr. President, I ask for 1 minute from the Senator from Florida.

Mr. CHILES. I yield.

Mr. BENTSEN. Let me say that the Senator from Louisiana is absolutely right on the question of regulatory cost and its imposition. I would ask the Senator to look at a piece of legislation I have introduced, that we have a budget requirement on every agency and every department as to how much they can spend. I think it is time we have a budget guideline on how much they can make the people spend. We have no measurement on that, and we ought to be working on it. We ought to be working on a regulatory budget for this country, so that we may have some kind of understanding as to what kind of impact we are going to have in this area. The testimony before our committee last year was such as to indicate that one-half of the loss of increased productivity in this country was the result of that.

I would urge very strongly that the Members of this body take a look at that piece of legislation and see if they cannot support it.

Mr. CHILES. Mr. President, I yield 2 minutes to the distinguished Senator from Kansas, who has also been one of those who has evidenced his support in helping monitor the bills that have come before the Senate, to see that there is an effort to make sure that we do strictly observe Senate rule 29.5. The Senator from Kansas, as a member of the Budget Committee, has on every occasion I have heard, when he had an opportunity to do so, expressed his concern about the growing cost of paperwork and regulations.

Mr. DOLE. I thank my distinguished colleague. I think the statement the Senator from Kansas will make has been made a number of times.

I commend the distinguished Senator from Florida. I would hope that we would follow the rule. Certainly, the Senator from Kansas, as every other Senator in this body, is concerned about paperwork. I would hope that this colloquy this morning will give it more emphasis.

Mr. President, the Senator from Kansas is pleased to offer his support to the effort to monitor committee reports to insure that rule 29, clause 5 of the Senate rules is enforced.

FEDERAL BUREAUCRACY

The Federal bureaucracy is clogged with paperwork. The effective implementation of governmental services is often hindered by the abundance of paperwork and excessive regulation. Congress can prevent the creation of a greater paperwork burden, by evaluating the possible paperwork that proposed legislation may generate. Rule 29, clause 5 of the Senate rules requires that a committee report accompany a bill or joint resolution of a public character. The report should include an evaluation of the amount of additional paperwork that the bill or joint resolution would create. Only the Appropriations Committee is exempt from this requirement.

REQUIREMENTS OF RULE 29.5

Rule 29, clause 5 further requires that committee reports analyze bills or joint resolutions of a public character, to determine which citizens will be affected and the probable economic consequences of regulation.

HISTORY OF RULE 29.5

The Senator from Kansas encourages Members of the Senate to comply with Senate rule 29, clause 5 so that taxpayers dollars can be most effectively allocated. This requirement was incorporated into the Senate rules during the 95th Congress although it was not wholeheartedly enforced. During the 95th Congress almost one-third of the committee reports on public bills and resolutions did not include the required regulatory impact evaluation.

SANCTIONS OF RULE 29, CLAUSE 5

The Senator from Kansas hopes that the Senate follows the direction of Senate rule 29, clause 5 by declaring that it is not in order for the Senate to consider any bill or joint resolution that is not accompanied by the required regulatory impact evaluation.

Mr. TALMADGE. Will the Senator yield me 10 seconds?

Mr. CHILES. I yield.

Mr. TALMADGE. I express my appreciation and commendation to the distinguished Senator from Kansas.

Mr. CHILES. Mr. President, I have a statement from the junior Senator from Georgia (Mr. NUNN) which I would like to have inserted in the RECORD.

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

STATEMENT BY SENATOR NUNN

I am pleased to join with my good friend Senator Talmadge and other of my distinguished colleagues here today to speak on one of the most critical problems facing our economy, and that is the crushing burden of excessive government regulation and federal paperwork. If we are ever to begin to bring inflation under control and restore our economy to full health, we cannot afford to continue to ignore the effects of the spiraling costs of government regulation to businesses and consumers.

The Commission on Federal Paperwork, established during the 93rd Congress with my full support, has described the costs of Federal paperwork and red tape as a "heavy hidden tax" which must be borne by the American people. I couldn't agree more. This burden falls on everyone's lives, either directly or indirectly, and the tens of billions of dollars that it costs each year to simply fill out and process Federal forms are as much a levy on the incomes of our Nation's citizens as any tax that I know of.

The total cost of federal paperwork is enormous; the Paperwork Commission estimated that it may exceed $100 billion each year. Of this, between $25 and $32 billion falls on private business, and almost $9 billion is shouldered by individuals.

However, the burdens of paperwork go beyond the simple dollar costs of filling out forms. Economic costs result when a school disregards a $4,500 grant because it would have required $6,000 in paperwork; psychological burdens are imposed when a college level reading ability is needed to understand the instructions for the simplest of federal income tax forms; and the cumulative burdens become crushing when one company has to comply with Federal requests for 8,800 reports from 18 different agencies in one year.

The message with respect to levying taxes is: Like shearing sheep, you stop when you reach the skin. I believe that we have reached that very point in terms of the "Hidden Tax" of paperwork. Today, the rules promulgated by the more than 60 Federal agencies with power to regulate our lives are pervasive. Virtually every facet of our society and economy is restricted by unelected bureaucrats who are fast becoming the fourth branch of government. If this trend is allowed to continue, we will find ourselves in a position where everything that is not prohibited is mandatory.

The message that our citizens are sending us is loud and clear: enough is enough! The burdens of Federal Red Tape and paperwork, and the stranglehold of Federal regulations are intolerable.

While there are several steps which should be taken in order to provide relief for the "hidden tax"-payer, I believe that we in the Congress should first get our own house in order. Beginning in the 94th Congress, I joined with several of my colleagues here today in circulating a letter to members of the Senate which announced our intention to question the paperwork impact of legislation reaching the floor of the Senate. Once again, in the 95th Congress, a similar letter was circulated. Several Senators, I am pleased to note, indicated their willingness to help in this effort. Shortly thereafter, during consideration of Senate Resolution 4, the Committee Reorganization Bill, the Senate as a whole gave a similar commitment to this cause when an amendment which I joined my distinguished senior colleague from Georgia, Senator Talmadge, in offering was overwhelmingly adopted. This amendment is now Rule 29, Section 5(A)(1)(D) of the Senate Rules: It requires that each bill reported out of Committee be accompanied by an estimate of the regulatory impact of the measure—both who will be regulated and how much they will be regulated. Under the rule, bills that do not include such statements are not in order for the Senate to consider.

Unfortunately, the Senate's performance during the 95th Congress on this rule was poor. Out of 688 Committee Reports that fall under the rule, 216 did not make any statement whatsoever regarding the Rule's requirements. I have therefore, once again, joined with Senators Chiles, Bentsen, Huddleston and my other good friends here today in alerting our colleagues of our intention to monitor committee reports and bring to the full Senate's attention any committee reports which make no attempt to follow this rule.

It is time to stop paying lip-service to the goal of reducing federal paperwork; I can think of few better times to consider the paperwork and regulatory impact than at the beginning of the legislative process. Committees must therefore begin to request paperwork analyses of executive branch agencies who will be implementing the law, public groups who will have to bear its burdens, and the GAO, who can help to estimate costs. In this fashion, the Senate will have a better basis from which to select the least burdensome way to get a job done.

Last June, I was pleased to take part in a hearing chaired by my good friend, Senator Chiles, Chairman of the Subcommittee on Federal Spending Practices and Open Government of the Senate Governmental Affairs Committee, on Federal efforts to reduce paperwork. At that time, the General Accounting Office offered its assistance in the process of fully implementing Rule 29.5. As I noted at that time, it is time to take the Comptroller up on his offer. I therefore want to reaffirm my willingness to take the cause of the "hidden tax"-payer to the floor of the Senate. We owe our citizens, our businesses, and our state and local governments no less.

THE BURDEN OF PAPERWORK AND REGULATION

● Mr. HUDDLESTON. Mr. President, there can be no doubt that the tremendous burden of paperwork and regulation being pressed upon so many American citizens and American businesses should be of the utmost concern to those of us who serve in the Senate. The paperwork problem is not a new one. However, it is one which we must address if the productivity of our business community is to be protected and the growing suspicion that Government no longer trusts responsible citizens is to be eliminated. Notwithstanding the progress being made on the recommendations of the Federal Commission on Paperwork and despite some gains by the executive branch, it is my very strong feeling that not nearly enough has been done here in the legislative branch to avoid the "hidden taxes" that are imposed by the laws we enact.

A recitation of the outrageous paperwork problems which beset the American public will do no good. What will help and could perhaps turn out to be the biggest step forward in this battle is for the Senate to begin to keep its own house in order.

Specifically I refer to adherence to rule 29, clause 5. As all of my colleagues should be aware, this rule requires that a regulation and paperwork evaluation be included in the committee report accompanying each bill or joint resolution of a public character. To say that we have been lax thus far in complying with this rule would be an understatement. The distinguished senior Senator from Florida, Senator CHILES, in his position as chairman of the Subcommittee on Federal Spending Practices, has made an exhaustive survey of the results of our performance on this rule. I believe that a cursory examination of this survey will prove conclusively that we have been extremely negelectful. I commend Senator CHILES for his efforts in this matter and exhort our colleagues to examine his report.

Recently Senator CHILES, Senator NUNN, Senator BENTSEN, and I contacted Members of the Senate regarding actions which we plan to take relative to rule 29. I sincerely hope that you will review this correspondence carefully and join us in our efforts.

Certainly key questions that need to be answered in complying with rule 29 are:

First, who will have to file and complete reports after the Federal bureaucrats take our legislation and publish their regulations? For instance, we may want to know how a piece of legislation will affect our small business or our elderly citizens.

Second, how long will it take the person affected by the regulations to fill out the required paperwork? Some bureaucrats call this "number of man-hours of reporting."

Third, what steps do the sponsors or floor managers of the bills we question expect a Federal agency to take to limit the number of forms and the amount of time it takes to fill them out? We will also question the costs to the person who fills out the forms. We all know that many of those people who would have to fill out the forms are already hard at work complying with the existing paperwork burden.

Fourth, what steps can be taken to insure that there is no unnecessary duplication in paperwork when the regulatory authority we give an agency already exists somewhere else and may have led to a reporting requirement?

We do not intend to tie up the business of the Senate with our activities. However, it should be made clear to all those involved in the development of committee reports that we mean to assure that the rules of the Senate are followed. Only in this manner can we hope to begin to stem the ominous tide of unnecessary paperwork.●

Mr. CHILES. Mr. President, I yield the floor.

EXTENSION OF TIME FOR ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the period for morning business be extended to not to exceed 60 minutes with statements limited therein to 10 minutes each.

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

Mr. ROBERT C. BYRD. I yield 1 minute to the Senator from California.

Mr. HAYAKAWA. I thank the distinguished majority leader.

SENATOR TALMADGE

Mr. HAYAKAWA. Mr. President, may I take a moment first of all to congratulate Senator TALMADGE on his return to the floor, his recovering his health, his

strong voice heard again on the floor, and his obvious good looks, indicating that he is in fine, fine health. I welcome him back to the chairmanship of the Agriculture Committee on which we missed him very much.

Mr. McGOVERN. I join with the Senator in those comments.

Mr. TALMADGE. If the Senator will yield, I express my deep appreciation to the Senator from California for his statement, for which I am grateful.

I also express my deep appreciation to the distinguished Senator from South Dakota, who served as acting chairman of the Agriculture Committee during my absence and did an excellent job, for which I am grateful.

Mr. ROBERT C. BYRD. Mr. President, I want to express my appreciation, gratitude, satisfaction, and pleasure in seeing the distinguished senior Senator from Georgia (Mr. TALMADGE) back in the Chamber following his short stay away from the Senate. We missed him. He looks hale and hearty. He has demonstrated once again his very acute mind, his quick and agile way of responding in repartee, and also his clear understanding of the issues being discussed here earlier which, as was indicated, he helped to initiate in connection with the standing rules of the Senate.

Mr. HOLLINGS. Mr. President, I join with the distinguished Senator from West Virginia, our majority leader, in his comments.

Mr. President, for just a moment, I have served in public office now for 30 years. I have known Senator TALMADGE for all those years. We do not have a stronger or wiser voice in my section of the United States than that of the distinguished Senator from Georgia.

The record will show that during those 30 years he has been the most diligent, hardworking fellow in public office I have ever met. If he suffered any illness, it has been from the strain of hard work and dedication on behalf of the people. He is not a philanderer. He is not like some of these youngsters taking trips and doing other things from time to time. He is there working day and night. Perhaps that is one of his faults. He works too hard at it. I am glad to see he is fully recovered and in harness back here in the Senate Chamber. We need his voice, his judgment, and his counsel, particularly in these trying times. He has the experience and has proved himself throughout the years. I join in the remarks of our distinguished majority leader in welcoming him back.

(Mr. FORD assumed the chair.)

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from South Carolina.

Again, I want to welcome, with all the warmth, appreciation, and pleasure that I can bring to bear with my words, HERMAN TALMADGE on his return to the Senate.

Mr. BAKER. Will the Senator yield?

Mr. ROBERT C. BYRD. I yield to the distinguished Republican leader.

Mr. BAKER. Mr. President, I join my colleagues on the other side in extending to the distinguished Senator from Georgia a very warm welcome.

He is such a fixture in this Chamber, I must say that when I came in this morning and saw him in the Chamber holding forth with his usual strength and eloquence, I hardly felt he had been gone at all.

I am delighted he is back. The Senate is better for it.

I am delighted and happy to see him so well and so vigorous.

Mr. ROBERT C. BYRD. I thank the minority leader.

Mr. LONG. Mr. President, I join my colleagues in welcoming back the Senator from Georgia.

I have benefited from his friendship. From the day he came here, many times it has been my privilege to lean on him to preside over the committee. He has done much of the very difficult detail work that had to be done on the Finance Committee.

He has been a tower of strength and has demonstrated more good common sense—which I think is probably the greatest and scarcest commodity we have around here—than really any Member of this body during the time he has been here.

I am pleased to say we have managed to make it and keep the business rolling along in his absence, but we are happy to have him back because we have some hospital cost containment bills, hospital legislation, which will require his attention.

Some of us can play a part, but I do not believe there is anyone who more thoroughly understands the problems inherent in health legislation and the hospital containment problems than does the Senator from Georgia.

We are glad to have him back and see him looking like a million dollars.

Mr. CHURCH. Mr. President, I just want to join with the others here this morning in welcoming back the distinguished Senator from Georgia.

He and I came to the Senate at the same time. We have worked together through the years. It just did not seem natural not to have him with us these past few weeks.

I am glad to see him back again looking so hale and hearty.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. I thank the Senator for yielding to me for one sentence on the Senator from Georgia. I may have to leave the floor on a compelling matter.

I have oftentimes referred to the Senator's work as being a "battleax"—a battleax here in the Senate regarding anything he takes after.

I am glad to see this morning that the Senate's battleax is back and in trim shape and form.

Mr. MATSUNAGA. Mr. President, I wish to join with my colleagues in welcoming back the Senator from Georgia (Mr. TALMADGE).

I am privileged to serve on the subcommittee which he chairs, the Subcommittee on Health of the Finance Committee. In this role and in his other positions he has shown farsighted leadership.

It is frequently the case, as Shakespeare said, that "The good is oft interred with the bones." But that can never be the case with HERMAN TALMADGE.

We can never forget the good that HERMAN TALMADGE has done. The programs he has fought for, stand as permanent testimony of our debt to him.

For example, he was the author of landmark legislation in 1970 to expand the national school lunch program; the Talmadge legislation sought to provide meals for every needy school child in the Nation. He also championed the cause of rural development and pushed through the Rural Development Act in 1972 to improve financially small communities and farms. He was instrumental in shaping the 1962 Trade Expansion Act to foster international trade. He has championed the cause—as chairman of the Subcommittee on Health—of medicare cost containment and catastrophic health insurance. He has also authored legislation providing employment and job training to welfare recipients under the work incentive programs.

These are just a few of HERMAN TALMADGE's many achievements which have benefited, and continue to benefit, the entire country. The good he has done will never be interred, his good works stand as living testimony to this honored and revered Senator, HERMAN TALMADGE.

Mr. TALMADGE addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. TALMADGE. Mr. President, I am overwhelmed by the warm, generous, and eloquent statements of my colleagues this morning.

I desire to express my deepest, heartfelt appreciation to the distinguished majority leader, the Senator from West Virginia; the distinguished minority leader, the Senator from Tennessee; the distinguished Senator from South Carolina; the chairman of the Senate Finance Committee, the distinguished Senator from Louisiana (Mr. LONG); my distinguished colleague, the Senator from Idaho (Mr. CHURCH), the chairman of the Committee on Foreign Relations, the distinguished Senator from Mississippi (Mr. STENNIS), the chairman of the Armed Services Committee; my distinguished colleague on the Senate Finance Committee (Mr. MATSUNAGA).

Their generosity, warmth, and friendship mean a great deal to me. I shall always cherish the friendship of these gentlemen, and of all my colleagues in the U.S. Senate.

Mr. DOLE. Mr. President, let me say, as I intended to say a little later on, that I certainly join my colleagues. Having had the high privilege of being the ranking Republican on the Senate Agriculture Committee and working very closely with my distinguished chairman (Mr. TALMADGE), I can say without equivocation or hesitation that I do not know of a fairer chairman than Senator TALMADGE, and I might add, Senator LONG.

But, in any event, having worked very closely in good times and bad times on the Senate Agriculture Committee, as the distinguished Senator from Georgia understands, I do not believe we have

ever had any real partisan differences. I think that has been the strength of the Senate Agriculture Committee—it is a bipartisan effort to approach some of the farmers problems.

The distinguished Senator from Hawaii pointed out the school lunch program, the food stamp program, a whole series of programs that are addressed by that committee.

I know everyone on that committee joins the Senator from Kansas in welcoming the Senator from Georgia back. We need his leadership. We need his insight. We need his input. Above all, we need his support, and he has ours.

I thank the Chair.

Mr. TALMADGE. Mr. President, I desire to express my heartfelt appreciation for the warm words of friendship of the distinguished Senator from Kansas.

As he has stated, he has been the ranking minority member of that Committee on Agriculture, Nutrition, and Forestry for a number of years. He and I have had the privilege of working together hand in glove, trying to improve the income and lot of the people who produce the food and fiber in this country.

I am very proud of the fact that I have served on the Committee on Agriculture, Nutrition, and Forestry now for a little more than 22 years. I have never seen a party line vote on the Committee on Agriculture, Nutrition, and Forestry during that period.

We recognize the fact that agricultural issues are not partisan. Agriculture is a matter that addresses itself above and beyond partisanship. That is the way we operate in the Senate Committee on Agriculture, as the Senator knows and has stated.

Also, in the Subcommittee on Health of the Senate Finance Committee, the distinguished Senator from Kansas is the ranking minority member. We have worked hand in glove, not just this year, not just last year, but for several years on health care costs. We saw the problems in this area even before President Carter took office.

I will introduce on behalf of the Senator from Kansas and myself this morning a bill to try to control the cost of medicare and medicaid.

I appreciate the Senator's cooperation and his friendship greatly.

SPECIAL ORDER

The PRESIDING OFFICER. The Senator is recognized in his own right. The Senator from Georgia has 14 minutes.

Mr. TALMADGE. I yield myself such time as I may require.

S. 505—MEDICARE-MEDICAID ADMINISTRATIVE AND REIMBURSEMENT REFORM ACT OF 1979

Mr. TALMADGE. Mr. President, on behalf of myself and Senator DOLE, I am introducing today the Medicare-Medicaid Administrative and Reimbursement Reform Act of 1979.

This proposal is similar to legislation which I sponsored in the two previous Congress—S. 3205 in the 94th Congress and S. 1470 in the last Congress.

The substance of S. 1470 was subsequently reported by the Committee on Finance as an amendment to H.R. 5285 and passed by the Senate shortly before the end of the last Congress.

Unfortunately, the House did not have time to act on the bill.

The current version of the bill contains a number of provisions that were added to the previous bill by the committee and during its consideration by the Senate.

Like its predecessors, the bill deals with many of the problems we face in the medicare and medicaid programs.

The most pressing of these problems is the continued explosion in the costs of those programs.

Medicare and medicaid will cost the Nation's taxpayers more than $55 billion in fiscal 1980.

That enormous expenditure is up from $44 billion in fiscal 1978 and up from $39 billion in fiscal 1977.

The numbers alone clearly indicate that change is necessary.

The bill makes orderly modifications in various aspects of physician reimbursement, long-term care and general provisions of medicare and medicaid.

Benefit improvements such as dropping the limitation on home health services under medicare and waiving deductible and coinsurance requirements for ambulatory surgery are also included.

Clearly, however, the most significant provision of the committee bill is section 2—reform of hospital reimbursement under medicare and medicaid.

The essence of that reform involves abandoning the present system which has been characterized as: "The more you spend—the more you get paid."

In place of that open-ended approach, the bill provides for a system whereby the reasonableness of a given hospital's costs would be determined by comparing those costs with the average costs in similar hospitals.

It is a system which provides incentive payments as a reward for efficient hospital operation and which reduces payments in the case of inefficient operation.

It is a system which, by means of a health care facilities costs commission, has a mechanism for ongoing refinement and improvement as the "state of the art" of hospital costs comparison develops.

It is a system which provides for orderly extension of reasonable limitations—along with rewards and penalties—to all hospital costs, not just routine costs, as soon as appropriate and equitable methods of comparing those nonroutine costs are developed.

Mr. President, I would like to emphasize that section 2 of the current bill is similar to section 2 of the bill as it was introduced in the last Congress.

It would change the way medicare and medicaid reimburse hospitals.

It is not patterned after the provision that the Senate adopted as a substitute which would have established a system for controlling all hospital costs.

The bill I am introducing does not involve Government in its role as regulator—it is the Government in its role as a purchaser of hospital care, the Government as a prudent buyer.

For example, when the Federal Government purchases automobiles, it tries to buy those cars at the lowest cost it can negotiate.

That is not the same thing as placing price controls on the entire automobile industry.

Regardless of what may be done about overall hospital costs containment, the Government, in its direct expenditure of taxpayer dollars, has an obligation to spend those dollars as reasonably and as efficiently as possible.

That is what the bill seeks to do.

The bill is not designed to limit all hospital revenues.

This is not a bill to indiscriminately cut and gut hospital operations.

This is a bill, Mr. President, which seeks to do no more—and no less—than to reform Government payment methods to hospitals with a system designed to encourage moderation by rewarding efficiency and not paying for inefficiency.

It is also appropriate to point out that, like its predecessors, S. 3205 and S. 1470, it is a bipartisan proposal.

In particular, the many hours of knowledgeable and dedicated effort of Senator BOB DOLE, ranking minority member of the Subcommittee on Health, are noteworthy.

Senator DOLE worked long and hard during the drafting process and, following introduction, the extensive hearings which followed.

The bill reflects his conscientious efforts and concern.

Mr. President, I ask unanimous consent that the bill and a summary description be printed in the RECORD.

There being no objection, the bill and summary were ordered to be printed in the RECORD, as follows:

S. 505

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 "Medicare-Medicaid Administrative and Reimbursement Reform Act of 1979".

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CRITERIA FOR DETERMINING REASONABLE COST OF HOSPITAL SERVICES

SEC. 2. (a) (1) The first sentence of section 1861(v)(1)(A) of the Social Security Act is amended by striking out "The" and inserting "Subject to subsection (bb), the".

(2) Section 1861(v) of such Act is further amended by adding at the end thereof the following new paragraph:

"(8) For additional requirements applicable to determination of reasonable cost for services provided by hospitals, see subsection (bb) and section 1127(c)(3).".

(b) Section 1861 of such Act is amended by adding after subsection (aa) the following new subsection:

"Criteria for Determining Reasonable Cost of Hospital Services

"(bb)(1) In order more fairly and effectively to determine reasonable costs incurred in providing hospital services, the Secretary shall, not later than April 1, 1980, after consulting with appropriate national organizations, establish a system of hospital classification under which hospitals furnishing services initially will be classified—

"(A) by size, with each of the following groups of hospitals being classified in separate categories: (i) those having more than 5, but fewer than 25 beds, (ii) those having more than 24, but fewer than 50 beds, (iii) those having more than 49, but fewer than 100 beds, (iv) those having more than 99, but fewer than 200 beds, (v) those having more than 199, but fewer than 300 beds, (vi) those having more than 299, but fewer than 400 beds, (vii) those having more than 399, but fewer than 500 beds, and (viii) those having more than 499 beds;

"(B) by type of hospital, with (i) short-term general hospitals being in a separate category, (ii) hospitals which are primary affiliates of accredited medical schools being in one separate category (without regard to bed size), and (iii) psychiatric, geriatric, maternity, pediatric, or other specialty hospitals being in the same or separate categories, as the Secretary may determine appropriate, in light of any differences in specialty which significantly affect the routine costs of the different types of hospitals;

"(C) as rural or urban; and

"(D) according to such other criteria as the Secretary finds appropriate, including modification of bed-size categories;

but the system of hospital classification shall not differentiate between hospitals on the basis of ownership.

"(2) The term 'routine operating costs' used in this subsection does not include—

"(A) capital and related costs,

"(B) direct personnel and supply costs of hospital education and training programs,

"(C) costs of interns, residents, and nonadministrative physicians,

"(D) energy costs,

"(E) malpractice insurance expense, or

"(F) ancillary service costs.

"(3)(A) During the calendar quarter beginning on January 1 of each year, beginning with 1980, the Secretary shall determine, for the hospitals in each category of the system established under paragraph (1), an average per diem routine operating cost amount which shall (except as otherwise provided in this subsection) be used in determining payments to hospitals.

"(B) The determination shall be based upon the amount of the hospitals' routine operating costs for the most recent accounting year ending prior to October 1 of the calendar year preceding the calendar year in which the determination is made. If, for any accounting year which starts on or after July 1, 1980, a hospital's actual routine operating costs are in excess of the amount allowed for purposes of determining payment to the hospital pursuant to this subsection and subsection (v), only one-half of such excess shall be taken into account in making any determination which the Secretary shall make under this paragraph.

"(C) In making a determination, the routine operating costs of hospitals in each category shall be divided into personnel and nonpersonnel components.

"(D)(i) The personnel and nonpersonnel components of routine operating costs for hospitals in each category (other than for those excluded under clause (ii)) shall be divided by the total number of days of routine care provided by such hospitals to determine the average per diem routine operating cost for such category.

"(ii) In making the calculations required by subparagraph (A) the Secretary shall exclude any newly opened hospital (as defined in the second sentence of paragraph (4)(F)), and any hospital which he determines is experiencing significant cost differentials resulting from failure of the hospital fully to meet the standards and conditions of participation as a provider of services.

"(E) There shall be determined for each hospital in each category a per diem target rate for routine operating costs. Such target rate shall equal the average per diem routine operating cost amount for the category in which the hospital is expected to be classified during the subsequent accounting year, except that the personnel component shall be adjusted using a wage index based upon general wage levels for reasonably comparable work in the areas in which the hospitals are located. If the Secretary finds that, in an area where a hospital in any category is located for the most recent twelve-month period for which data with respect to such wage levels are available, the wage level for such hospital is significantly higher than such general wage level in that area (relative to the relationship within the same hospital group between wages and such general wages in other areas), then such general wage level in the area shall be deemed equal to the wage level for such hospital, only with respect to the hospital's first accounting year beginning on or after July 1, 1980.

"(4)(A)(i) The term 'adjusted per diem target rate for routine operating costs' means the per diem target rate for routine operating costs plus the percentage increase in costs determined under the succeeding provisions of this subparagraph.

"(ii) In determining the adjusted per diem target rate, the Secretary shall add an annual projected percentage increase in the cost of the mix of goods and services (including personnel and nonpersonnel costs) comprising routine operating costs, based on an index composed of appropriately weighted indicators of changes in the economy in wages and prices which are representative of services and goods included in routine operating costs. Where actual changes in such weighted index are significantly different (at least one-half of 1 percentage point) from those projected, the Secretary shall issue corrected target rates on a quarterly basis. At the end of the hospital's accounting year, the target rate shall be adjusted to reflect the actual changes in such weighted index. Adjustments shall also be made to take account of changes in the hospital's classification.

"(B) For purposes of payment the amount of routine operating cost incurred by a hospital for any accounting year which begins on or after July 1, 1980, shall be deemed to be equal—

"(i) in the case of a hospital which has actual routine operating costs equal to or greater than that hospital's adjusted per diem target rate for routine operating costs, to the greater of—

"(I) the hospital's actual routine operating costs, but not exceeding—

"(a) in the case of the first accounting year of any hospital which begins on or after July 1, 1980, and prior to July 1, 1981, an amount equal to the aggregate of (1) 100 percent of the hospital's adjusted per diem target rate for routine operating costs, plus (2) 15 percent of the amount described in clause (1), and

"(b) in the case of any accounting year after the accounting year described in clause (a), an amount equal to the aggregate of (1) 100 percent of the hospital's adjusted per diem target rate for routine operating costs for such year, plus (2) a dollar amount equal to the dollar amount determined under clause (a)(2) for the category of such hospital, or

"(II) the amounts determined for the hospital under division (I) if it had been classified in the bed-size category which contains hospitals closest in bed-size to such hospital's bed-size (with a hospital which has a bed-size that falls halfway between two such categories being considered in the category which contains hospitals with the greater number of beds), but not exceeding the hospital's actual routine operating costs; and

"(ii) in the case of a hospital which has actual routine operating costs which are less than that hospital's adjusted per diem target rate for routine operating costs, to (I) the

amount of the hospital's actual routine operating costs, plus (II) the smaller of (a) 5 percent of the hospital's adjusted per diem target rate for routine operating costs, or (b) 50 percent of the amount by which the hospital's adjusted per diem target rate for routine operating costs exceeds the hospital's actual routine operating costs.

"(C) Any hospital (other than a newly opened hospital) excluded by the Secretary under paragraph (3)(D)(ii), shall be reimbursed for routine operating costs on the basis of the lesser of (i) actual costs or (ii) the reimbursement determined under this subsection.

"(D) On or before April 1 of the year in which the Secretary determines the amount of the average per diem operating cost for each hospital category and the adjusted per diem target rate for each hospital, the Secretary shall publish the determinations, and he shall notify the hospital administrator and the administrative governing body of each hospital with respect to all aspects of the determination which affect the hospital.

"(E) If a hospital is determined by the Secretary to be—

"(i) located in an underserved area where hospital services are not otherwise available,

"(ii) certified as being currently necessary by an appropriate planning agency, and

"(iii) underutilized,

the adjusted per diem target rate shall not apply to that portion of the hospital's routine operating costs attributable to the underutilized capacity.

"(F) If a newly opened hospital is determined by the Secretary to have greater routine operating costs as a result of the cost patterns associated with newly opened hospitals, the adjusted per diem target rate shall not apply to that portion of the hospital's routine operating costs attributable to such patterns. For purposes of this subparagraph a 'newly opened hospital' means a hospital which has not satisfied the requirements of paragraphs (1) and (7) of subsection (e) of this section (under present or previous ownership) for at least twenty-four months prior to the start of such hospital's accounting year.

"(G) If a hospital is determined by the Secretary to have greater routine operating costs as a result of changes in service on account of consolidation, sharing, or addition of services, where such consolidation, sharing, or addition has been approved by the appropriate State Health Planning and Development Agency or Agencies, the adjusted per diem target rate shall not apply to that portion of the hospital's routine operating costs attributable to such changes in service.

"(H)(i) If a hospital satisfactorily demonstrates to the Secretary that, in the aggregate, its patients require a substantially greater intensity of care than generally is provided by the other hospitals in the same category, resulting in unusually greater routine operating costs, then the adjusted per diem target rate shall not apply to that portion of the hospital's routine operating costs attributable to the greater intensity of care required.

"(ii) To the extent that a hospital can demonstrate that it experiences routine operating costs in excess of such costs for hospitals having a reasonably similar mix of patients on account of consistently shorter lengths-of-stay in such hospital, which result from the greater intensity of care provided by such hospital, the excess routine operating costs shall be considered attributable to the greater intensity of care required.

"(I) The Secretary may further increase the adjusted per diem target rate applicable in Alaska and Hawaii to reflect the higher prices prevailing in such States.

"(J) Where the Secretary finds that a hospital has manipulated its patient mix, or patient flow, or provides less than the normal range and extent of patient services, or that an unusually large proportion of routine nursing service is provided by private-duty nurses, the routine operating costs of that hospital shall be deemed equal to the lesser of (i) the amount determined without regard to this subsection, or (ii) the amount determined under subparagraph (B).

"(5) Where any provisions of this subsection are inconsistent with section 1861(v), this subsection supersedes section 1861(v).

"(6)(A) Notwithstanding any other provision of this Act, in the case of any State which has established a reimbursement system for hospitals, hospital reimbursement in that State under this title and under the State plan approved under title XIX shall, with respect to the services covered by such system, be based on that State system, if the Secretary finds that—

"(i) the State has mandated the reimbursement system and it at least applies to the same hospitals in the State, and to the same costs, as the Federal reimbursement reform program established by this subsection;

"(ii) every hospital in the State with which there is a provider agreement under this title or under the State plan approved under title XIX conforms to the accounting and uniform reporting requirements of section 1121 of this Act, and furnishes any appropriate reports that the Secretary may require; and

"(iii) such State demonstrates to his satisfaction that the total amount payable, with respect to inpatient hospital costs, in the State under this title and under the State plan approved under title XIX will be equal to or less than an amount equal to (i) the amount which would otherwise be payable for inpatient hospital costs in such State plan without regard to the incentive payments provided by subparagraph (B)(ii) of paragraph (4), less (ii) the amount of any incentive payments which are allowed under the State's reimbursement system in recognition of demonstrated efficiencies.

If the Secretary finds that any of the above conditions in a State which previously met them have not been met for a two-year period, the Secretary shall, after due notice, reimburse hospitals in that State according to the provisions of this Act (other than this paragraph) unless he finds that unusual, justifiable and nonrecurring circumstances led to the failure to comply.

"(B) If the Secretary finds that, during any two-year period during which hospital reimbursement under this title and under the State plan approved under title XIX was based on a State system as provided in subparagraph (A), the amount payable by the Federal Government under such titles for inpatient hospital costs in such State was in excess of the amount which would have been payable for such costs in such State if reimbursement had not been based on the State system (as estimated by the Secretary), the adjusted per diem target rate for routine operating costs (as determined under the preceding paragraphs of this subsection) for hospitals in such State shall be reduced (by not more than 1 percent in any year) until the Federal Government has recouped an amount equal to such excess payment amount.

"(C)(i) The Secretary shall pay to any State in which hospital reimbursement under this title is based on a State system as provided in subparagraph (A), an amount which bears the same ratio to the total cost of administering the State system (including the cost of initially putting the system into operation) as the amount paid by the Federal Government under this title in such State for inpatient hospital costs bears to the local amount of inpatient hospital costs in such State which are subject to the State system.

"(ii) Payments under clause (i) shall be made from funds in the Federal Hospital Insurance Trust Fund.

"(iii) An amount which bears the same ratio to the total cost of administering the State system (including the cost of initially putting the system into operation) as the amount paid under the State plan approved under title XIX in such State for inpatient hospital costs bears to the total amount of inpatient hospital costs in such State which are subject to the State system, shall, for purposes of title XIX, be considered to be an amount expended for the administration of such State plan.".

(c) Part A of title XI of the Social Security Act is amended by adding after section 1126 the following new section:

"HEALTH FACILITIES COSTS COMMISSION

"SEC. 1127. (a) There is established a commission to be known as the Health Facilities Costs Commission (hereinafter in this section referred to as the 'Commission').

"(b)(1) The Commission shall be composed of fifteen members appointed by the Secretary—

"(A) at least three of whom shall be individuals who are representatives of hospitals;

"(B) at least eight of whom shall be individuals who represent public (including Federal, State, and local) health benefit programs; and

"(C) the remainder of whom shall be, as a result exceptionally well qualified to assist in serving and carrying out the functions of the Commission. One of the members of the Commission, at the time of appointment, shall be designated as Chairman of the Commission. The Secretary shall first appoint members to the Commission not later than January 1, 1980.

"(2) The Chairman of the Commission shall designate a member of the Commission to act as Vice Chairman of the Commission.

"(3) A majority of the members of the Commission shall constitute a quorum, but a lesser number may conduct hearings.

"(4) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as that herein provided for the appointment of the member first appointed to the vacant position.

"(5) Members of the Commission shall be appointed for a term of four years, except that the Secretary shall provide for such shorter terms for some of the members first appointed so as to stagger the date of expiration of members' terms of office.

"(6) No individual may be appointed to serve more than two terms as a member of the Commission.

"(7) Each member of the Commission shall be entitled to per diem compensation at rates fixed by the Secretary, but not more than the current per diem equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission, and all members of the Commission shall be allowed, while away from their homes or regular places of business in the performance of service for the Commission, travel expenses (including per diem in lieu of subsistence) in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

"(8) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission; but meetings of the Commission shall be held not less frequently than once in each calendar month which begins after a majority of the authorized membership of the Commission has first been appointed.

"(c)(1) It shall be the duty and function of the Commission to conduct a continuing study, investigation, and review of the reim-

bursement of hospitals for care provided by them to individuals covered under title XVIII or under State plans approved under title XIX, with particular attention to the criteria established by section 1861(bb) with a view to devising additional methods for reimbursing hospitals for all other costs, and for reimbursing all other entities which are reimbursed on the basis of reasonable cost. These methods shall provide for appropriate classification and reimbursement systems designed to ordinarily permit comparisons (A) of the cost centers of one entity, either individually or in the aggregate, with cost centers similar in terms of size and scale of operation, (B) prevailing wage levels, (C) the nature, extent, and appropriate volume of the services furnished, and (D) other factors which have a substantial impact on hospital costs. The Commission shall also develop procedures for appropriate exceptions. The Commission shall submit to the Congress reports on its progress in addressing these issues at least once every six months during the three-year period following the date of the enactment of this section.

"(2) The Commission shall study appropriate methods for classifying and comparing hospitals which, with respect to any accounting year, derive 75 percent or more (as estimated by the Secretary) of their inpatient care revenues from one or more health maintenance organizations. The Commission shall consider recommending the classification and comparison of such hospitals as a separate category in recognition of the differences in the nature of their operations as compared with other hospitals.

"(3) The Secretary, taking account of the proposals and advice of the Commission, shall by regulation make appropriate modifications in the method of reimbursement under titles V, XVIII and XIX for routine hospital costs, other hospital costs and costs of other entities which are reimbursed on the basis of reasonable costs.

"(d) The Secretary shall provide such technical, secretarial, clerical, and other assistance as the Commission may need.

"(e) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Commission, any such department or agency shall furnish any such data or information to the Commission.

"(f) There are hereby authorized to be appropriated such sums as may be necessary to carry out this section.

"(g) Section 14 of the Federal Advisory Committee Act shall not apply to the Commission.".

(d)(1) Section 1866(a)(1) of the Social Security Act is amended—

(A) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", and"; and

(B) by inserting after subparagraph (D) the following new subparagraph:

"(E) not to increase amounts due from any individual, organization, or agency in order to offset reductions made under section 1861(bb) in the amount paid, or expected to be paid, under this title.".

(2) Section 1902(a)(27) of the Social Security Act is amended by striking out "and" at the end of clause (A) and by inserting before the semicolon at the end of clause (B) the following: ", (C) not to increase amounts due from any individual, organization, or agency in order to offset reductions made pursuant to the requirements contained in section 1902(a)(13)(D) in the amount paid, or expected to be paid under the State plan".

(e) Section 1902(a)(13)(D) of the Social Security Act is amended to read as follows:

"(D) for payment of the reasonable cost of inpatient hospital services provided under the plan, applying the methods specified in section 1861(v) and section 1861(bb), which are consistent with section 1122; and".

PAYMENTS TO PROMOTE CLOSING AND CONVERSION OF UNDERUTILIZED FACILITIES

SEC. 3. (a) Part A of title XI of the Social Security Act is amended by adding after section 1127 (as added by section 2 of this Act) the following new section:

"PAYMENTS TO PROMOTE CLOSING AND CONVERSION OF UNDERUTILIZED FACILITIES

"SEC. 1128. (a)(1)(A) Before the end of the third full month following the month in which this section is enacted, the Secretary shall establish a Hospital Transitional Allowance Board (hereinafter in this section referred to as the 'Board'). The Board shall have five members, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, who are knowledgeable about hospital planning and hospital operations.

"(B) Members of the Board shall be appointed for three-year terms, except some initial members shall be appointed for shorter terms to permit staggered terms of office.

"(C) Members of the Board shall be entitled to per diem compensation at rates fixed by the Secretary, but not more than the current per diem equivalent at the time the service involved is rendered for grade GS-18 under section 5332 of title 5, United States Code.

"(D) The Secretary shall provide such technical, secretarial, clerical, and other assistance as the Board may need.

"(2) The Board shall receive and act upon applications by hospitals, certified for participation (other than as 'emergency hospitals') under titles XVIII and XIX, for transitional allowances.

"(b) For purposes of this section—

"(1) The term 'transitional allowance' means an amount which—

"(A) shall, solely by reason of this section, be included in a hospital's reasonable cost for purposes of calculating payments under the programs authorized by title V, XVIII, and XIX of this Act; and

"(B) in accordance with this section, is established by the Secretary for a hospital in recognition of a reimbursement detriment (as defined in paragraph (3)) experienced because of a qualified facility conversion (as defined in paragraph (2)).

"(2) The term 'qualified facility conversion' means closing, modifying, or changing the usage of an underutilized hospital facility which is expected to benefit the programs authorized under title V, title XVIII and title XIX by (A) eliminating excess bed capacity, (B) discontinuing an underutilized service for which there are adequate alternative sources, or (C) substituting for the underutilized service some other service which is needed in the area and which is consistent with the findings of an appropriate health planning agency.

"(3) A hospital which has carried out a qualified facility conversion and which continues in operation will be regarded as having experienced a 'reimbursement detriment'—

"(A) to the extent that, solely because of the conversion, there is a reduction in that portion of the hospital's costs attributable to capital assets which are taken into account in determining reasonable cost for purposes of determining amount of payment to the hospital under title V, title XVIII, or a State plan approved under title XIX;

"(B) if the conversion results, on an interim basis, in increased operating costs, to the extent that operating costs exceed amounts ordinarily reimbursable under title V, title XVIII and the State plan approved under title XIX; or

"(C) in the case of complete closure of a private nonprofit hospital, or local governmental hospital, other than for replacement of the hospital, to the extent of actual debt obligations previously recognized as reasonable for reimbursement, where the debt remains outstanding, less any salvage value.

"(c)(1) Any hospital may file an application with the Board (in a form and including data and information as the Board, with the approval of the Secretary, may require) for a transitional allowance with respect to any qualified conversion which was formally initiated after December 31, 1979. The Board, with the approval of the Secretary, may also establish procedures, consistent with this section, by means of which a finding of a reimbursement detriment may be made prior to the actual conversion.

"(2) The Board shall consider any application filed by a hospital, and if the Board finds that—

"(A) the facility conversion is a qualified facility conversion, and

"(B) the hospital is experiencing or will experience a reimbursement detriment because it carried out the qualified facility conversion,

the Board shall transmit to the Secretary its recommendation that the Secretary establish a transitional allowance for the hospital in amounts reasonably related to prior or prospective use of the facility under title V, title XVIII and the State plan approved under title XIX, for a period, not to exceed twenty years as specified by the Board, and, if the Board finds that the criteria in subparagraphs (A) and (B) are not met, it shall advise the Secretary not to establish a transitional allowance for that hospital. For an approved closure under subsection (b)(3)(C) the Board may recommend or the Secretary may approve, a lump-sum payment in lieu of periodic allowances, where such payment would constitute a more efficient and economic alternative.

"(3)(A) The Board shall notify a hospital of its findings and recommendations.

"(B) A hospital dissatisfied with a recommendation may obtain an informal or formal hearing, at the discretion of the Secretary by filing (in the form and within a time period established by the Secretary) a request for a hearing.

"(4)(A) Within thirty days after receiving a recommendation from the Board respecting a transitional allowance or, if later, within thirty days after a hearing, the Secretary shall make a final determination whether, and if so in what amount and for what period of time, a transitional allowance will be granted to a hospital. A final determination of the Secretary shall not be subject to judicial review.

"(B) The Secretary shall notify a hospital and any other appropriate parties of the determination.

"(C) Any transitional allowance shall take effect on a date prescribed by the Secretary, but not earlier than the date of completion of the qualified facility conversion. A transitional allowance shall be included as an allowable cost time in determining the reasonable cost incurred by the hospital in providing services for which payment is authorized under this Act, except that the transitional allowance shall not be considered in applying limits to costs recognized as reasonable pursuant to the third sentence of section 1861 (v)(1) and section 1861(bb) of this Act, or in determining the amount to be paid to a provider pursuant to section 1914 (b), section 1933(a)(2), section 1910(i)(3), and section 506(f)(3) of this Act.

"(d) In determining the reasonable cost incurred by a hospital with respect to which

payment is authorized under a State plan approved under title V or title XIX, any transitional allowance shall be included as an allowable cost item.

"(e)(1) The Secretary is authorized to establish transitional allowances only as provided in paragraph (2) and (3).

"(2) Prior to January 1, 1983, the Secretary is authorized to establish a transitional allowance for not more than fifty hospitals.

"(3) On and after January 1, 1983, the Secretary is authorized to establish a transitional allowance for any hospital which qualifies for such an allowance under the provisions of this section.

"(4) On or before January 1, 1982, the Secretary shall report to the Congress evaluating the effectiveness of the program established under this section including appropriate recommendations.".

(b) The amendments made by subsection (a) shall apply only to services furnished by a hospital during any accounting year beginning on or after October 1, 1979.

FEDERAL PARTICIPATION IN HOSPITAL CAPITAL EXPENDITURES

(d) Section 1122(c) of the Social Security Act is amended to read as follows:

"(c) The reasonable expenses incurred in carrying out the activities referred to in subsection (b) by the designated planning agencies (disregarding any expenses for which the agency is authorized to be reimbursed from other sources) shall be payable from—

"(1) funds in the Federal Hospital Insurance Trust Fund,

"(2) funds in the Federal Supplementary Medical Insurance Trust Fund, and

"(3) funds appropriated to carry out the health care provisions of the several titles of this Act,

in such amounts as the Secretary finds result in a proper allocation. The Secretary shall transfer money between the funds as may be appropriate to settle accounts between them. The Secretary shall pay the designated planning agencies without requiring contribution of funds by any State or political subdvision thereof.".

(e) Section 1122(d) of such Act is amended to read as follows:

"(d)(1) Except as provided in paragraph (2), if the Secretary determines that—

SEC. 4. (a) Section 1122 of the Social Security Act is amended to read as follows:

"(a) The purpose of this section is to assure that Federal funds appropriated under title V, XVIII, and XIX are not used to support unnecessary capital expenditures made by or on behalf of health care facilities (including those of health maintenance organizations) and home health agencies which are reimbursed under any of such titles and that, to the extent possible, reimbursement under such titles shall support planning activities with respect to health services and facilities in the various States.".

(b) Section 1122(b) of the Social Security Act is amended by striking out "(which shall be an agency described in clause (ii) of subsection (d)(1)(B) that has a governing body or advisory board at least half of whose members represent consumer interests)" and inserting in lieu thereof "(the agency designated under section 1521 of the Public Health Service Act)".

(c) Paragraphs (1) and (2) of Section 1122(b) are amended to read as follows:

"(1) make, and submit to the Secretary together with such supporting materials as he may find necessary, findings and recommendations with respect to capital expenditures proposed by or on behalf of any health care facility (including those of a health maintenance organization) or home health agency in such State within the field of its responsibilities.

"(2) receive from the Health Systems Agencies designated under title XV of the Public Health Service Act, and submit to the Secretary together with such supporting material as he may find necessary, the findings and recommendations of such agencies with respect to capital expenditures proposed by or on behalf of health care facilities (including those of health maintenance organizations) or home health agencies in such State within the fields of their respective responsibilities, and".

"(A) the designated planning agency had not approved the proposed expenditure; and

"(B) the designated planning agency had granted to the person proposing the capital expenditure an opportunity for a fair hearing with respect to the findings;

then, in determining Federal payments under titles V, XVIII, and XIX for services furnished in the health care facility for which the capital expenditure is made, the Secretary shall not include any amount attributable to depreciation, interest on borrowed funds, a return on equity capital (in the case of proprietary facilities), other expenses related to the capital expenditure, or for direct operating costs, to the extent that they can be directly associated with the capital expenditure, unless the designated planning agency for the States determines, in accordance with an agreement entered into under subsection (b) or under a certificate of need program which is applicable to such expenditure and which meets the requirements of title XV of the Public Health Service Act, that such capital expenditures are needed and meet criteria adopted by such agency. In the case of a proposed capital expenditure in a standard metropolitan statistical area which encompasses more than one jurisdiction, that expenditure shall require approval of the designated planning agency of each jurisdiction, which shall jointly review the proposal. Where the designated planning agencies do not unanimously agree, the proposed expenditures shall be deemed disapproved. Where the designated planning agencies do not act to approve or disapprove the proposed expenditure within one hundred and eighty days after the submission of the request for approval, the proposed expenditure shall be deemed approved. Any deemed approval or disapproval shall be subject to review and reversal by the Secretary following a request, submitted to him within sixty days of the deemed approval or disapproval, for a review and reconsideration based upon the record. With respect to any organization which is reimbursed on a per capita, fixed fee, or negotiated rate basis, in determining the Federal payments to be made under titles V, XVIII and XIX, the Secretary shall exclude an amount reasonably equivalent to the amount which would otherwise be excluded under this subsection if payment were made on other than a per capita, fixed fee, or negotiated rate basis.

"(2) If the Secretary, after submitting the matters involved to the advisory council established under subsection (i), determines that an exclusion of expenses related to any capital expenditure would discourage the operation or expansion of any health care facility or health maintenance organization which has demonstrated to his satisfaction proof of its capability to provide comprehensive health care services (including institutional services) effectively and economically, or would be inconsistent with effective organization and delivery of health services, or the effective administration of title V, XVIII, or XIX), he shall not exclude the expenses pursuant to paragraph (1).".

(p) Section 1122(g) of the Social Security Act is amended to read as follows:

"(g) For purposes of this section, a 'capital expenditure' is an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which (1) exceeds $15,000, (2) changes the bed capacity of the facility, or (3) substantially changes the services of the facility, including conversion of existing beds to higher cost usage. The cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment shall be included in determining whether the expenditure exceeds $150,000. For purposes of this section, 'capital expenditure' does not include an expenditure for the purpose of acquiring (either by purchase or under lease or comparable arrangement) an existing health care facility, the utilized services and bed capacity of which are not increased as a result of the acquisition.".

(g) Section 1861(z) of the Social Security Act is amended to read as follows:

"Institutional Planning

"(z) An overall plan and budget of a hospital, skilled nursing facility, or home health agency shall—

"(1) provide for an annual operating budget which includes all anticipated income and expenses related to items which would, under generally accepted accounting principles, be considered income and expense items (except that nothing in this paragraph shall require that there be prepared in connection with any budget an item-by-item identification of the components of each type of anticipated expenditure or income);

"(2) provide for a capital expenditures plan for at least a five-year period (including the year to which the operating budget applies) which identifies in detail the sources of financing and the objectives of each anticipated expenditure in excess of $150,000 related to the acquisition of land, improvement of land, buildings, or equipment, and the replacement, modernization, or expansion of the buildings and equipment, and which would, under generally accepted accounting principles, be considered capital items, and such capital expenditures plan shall be a matter of public record and available in readily accessible form and fashion;

"(3) provide for annual review and updating; and

"(4) be prepared, under the direction of the governing body of the institution or agency, by a committee consisting of representatives of the governing body, administrative staff, and medical staff (if any) of the institution or agency.".

(h) The amendments made by this section shall become effective on January 1, 1980, and shall be effective with respect to determinations made by the Secretary on or after such date.

AGREEMENTS WITH PHYSICIANS TO ACCEPT ASSIGNMENTS

SEC. 5. (a) Title XVIII of the Social Security Act is amended by adding the following new section:

"AGREEMENTS WITH PHYSICIANS TO ACCEPT ASSIGNMENTS

"SEC. 1868. (a) For purposes of this section the term 'participating physician' means a doctor of medicine or osteopathy who has in effect an agreement with the Secretary by which he agrees to accept an assignment of claim (as provided for in section 1842(b)(3)(B)(ii)) for each physicians' service (other than those excluded from coverage by section 1862) performed by him in the United States for an individual enrolled under part B. The assignment shall be in a form prescribed by the Secretary. The agreement may be terminated by either party upon 30-days' notice to the other, filed in a manner prescribed by the Secretary.

"(b) To expedite processing of claims from participating physicians, the Secretary shall establish procedures and develop appropriate forms under which—

"(1) each physican will submit his claims on one of alternative simplified approved bases including multiple listing of patients, and the Secretary shall act to assure that these claims are processed expeditiously, and

"(2) the physician shall obtain from each patient enrolled under part B (except in cases where the Secretary finds it impractical for the patient to furnish it) and shall make available at the Secretary's request, a signed statement by which the patient (A) agrees to make an assignment with respect to all services furnished by the physician and (B) authorizes the release of any medical information needed to review claims submitted by the physician.

"(c)(1) Participating physicians shall be paid administrative cost-savings allowances (as determined under paragraph (2)) in addition to the reasonable charges that are payable.

"(2) The administrative cost-savings allowance shall be $1 for each claim the participating physician submits in accordance with the simplified billing procedure referred to in subsection (b) and these payments shall be treated as an administrative expense to the medical insurance program, except that—

"(A) not more than $1 shall be payable to a physician for claims for services furnished to any particular patient within any 7-day period;

"(B) no administrative cost-savings allowance shall be payable for services performed for a hospital inpatient or outpatient unless:

"(i) the services are surgical services, anesthesia services, or services performed by a physician who, as an attending or consulting physician, personally examined the patient and whose office or regular place of practice is located outside a hospital, and

"(ii) the physician ordinarily bills directly (and not through such hospital) for his services; and

"(C) no administrative cost-savings allowance shall be payable for services which consist solely of laboratory or X-ray services which are for hospital inpatients or outpatients or are performed outside the office of the participating physician.".

(b) The amendments made by subsection (a) shall become effective on July 1, 1980.

HOSPITAL-ASSOCIATED PHYSICIANS

SEC. 6. (a)(1) Section 1861(q) of the Social Security Act is amended by adding "(1)" immediately after "(q)" and by adding, immediately before the period at the end thereof, the following: "; except that the term does not include any service that a physician may perform as an educator, an executive, or a researcher; or any professional patient care service unless the service (A) is personally performed by or personally directed by a physician for the benefit of the patient and (B) is of such nature that its performance by a physician is appropriate".

(2) Section 1861(q) is amended by adding the following paragraphs at the end:

"(2) In the case of anesthesiology services related to the surgical or obstetrical care of a patient, a procedure shall be considered to be 'personally performed' in its entirety by a physician where a physician performs for the benefit of the patient the following activities:

"(A) preanesthetic evaluation of the patient;

"(B) prescription of the anesthesia plan;

"(C) personal participation in the most demanding procedures in this plan, including those of induction and emergence and assuring that a qualified individual, who need not be his employee, acting under such physician's direction, performs any of the less demanding procedures which the physician does not personally perform;

"(D) following the course of anesthesia administration at frequent intervals;

"(E) remaining physically available for the immediate diagnosis and treatment of emergencies; and

"(F) providing indicated postanesthesia care:

Provided however, That during the performance of the activities described in subparagraphs (C), (D), and (E), the physician is not responsible for the care of more than one other patient. Where a physician performs the activities described in subparagraphs (A), (B), (D), and (E) and another individual performs the activities described in subparagraph (C), the physician will be deemed to have personally directed the services if he was responsible for no more than four patients while performing the activities described in subparagraphs (D) and (E), and the reasonable charge for his personal direction shall not exceed one-half the amount that would have been payable if he had personally performed the procedure in its entirety.

"(3) Pathology services shall be considered 'physicians' services' to patients only where the physician personally performs acts or makes decisions with respect to a patient's diagnosis or treatment which require the exercise of medical judgment. These include operating room and clinical consultations, the required interpretation of the significance of any material or data derived from a human being, the aspiration or removal of marrow or other materials, and the administration of test materials or isotopes. Such professional services shall not include professional services such as the performance of autopsies, and services performed in carrying out responsibilities for supervision, quality control, and for various other aspects of a clinical laboratory operations that are appropriately performed by nonphysician personnel.

(3) Section 1861(b) of such Act is amended—

(A) by striking out "or" at the end of paragraph (6),

(B) by striking out the period at the end of paragraph (7) and inserting "; or", and

(C) by adding at the end of the following paragraph:

"(8) a physician, if the services are not physicians' services (within the meaning of subsection (q)).".

(b)(1) Section 1861(s) of the Social Security Act is amended by adding at the end: "The term 'medical and other health services' shall not include services described in paragraphs (2)(A) and (3) if furnished to inpatients of a provider of services unless the Secretary finds that, because of the size of the hospital and the part-time nature of the services or for some other reasons acceptable to him, it would be less efficient to have the services furnished by the hospital (or by others under arrangement with them made by the hospital) than to have them furnished by another party.".

(2) Section 1842(b)(4) of such Act, as added by section 10 of this Act, is amended by adding at the end thereof the following subparagraph:

"(G) The charge for a physician's or other person's services and items which are related to the income or receipts of a hospital or hospital subdivision shall not be considered in determining his customary charge to the extent that the charge exceeds an amount equal to the salary which would reasonably have been paid for the service (together with any additional costs that would have been incurred by the hospital) to the physician performing it if it had been performed in an employment relationship with the hospital plus the cost of other expenses (including a reasonable allowance for traveltime and other reasonable types of expense related to any differences in acceptable methods of organization for the provision of services) incurred by the physician, as the Secretary may determine to be appropriate.".

(c) Section 1861(v) of such Act is amended by adding after paragraph (8) (as added by section 2 of the act) the following new paragraph:

"(9)(A) Where services are furnished by a physician under an arrangement (including an arrangement under which the physician performing the services is compensated on a basis related to the amount of the income or receipts of the hospital or any department or other subdivision) with a hospital or medical school, the amount included in any payment to the hospital under this title as the reasonable cost of the services (as furnished under the arrangement) shall not exceed an amount equal to the salary which would reasonably have been paid for the services (together with any additional costs that would have been incurred by the hospital) to the physician performing them if they had been performed in an employment relationship with the hospital (rather than under such arrangement) plus the cost of other expenses (including a reasonable allowance for traveltime and other reasonable types of expense related to any differences in acceptable methods of organization for the provision of the services) incurred by the physician, as the Secretary may determine to be appropriate."

(d)(1) Section 1833(a)(1)(B) of the Social Security Act is amended by inserting "(except as provided in subsection (i)) immediately after "amounts paid shall".

(2) Section 1833(b)(2) of such Act is amended by inserting "(except as otherwise provided in subsection (i))" immediately after "amount paid shall".

(3) Section 1833 of such Act is amended by redesignating the second subsection (g) thereof as subsection (h) and by adding the following new subsection:

"(i) The provisions of subsection (a)(1)(B) and clause (2) of the first sentence of subsection (b) shall not apply to any physician unless he has entered into an agreement with the Secretary under which he agrees to be compensated for all such services on the basis of an assignment the terms of which are described in section 1842(b)(3)(B)(ii).".

(e) The amendments made by this section shall, except those made by subsection (d), apply to services furnished in accounting periods of the hospital which begin after the month following the month of enactment of this Act. The amendment made by subsection (d) shall be effective July 1, 1979.

USE OF APPROVED RELATIVE VALUE SCHEDULE

SEC. 7. Part A of title XI of the Social Security Act is amended by adding after section 1128 (as added by section 3 of this act) the following new section:

"USE OF APPROVED RELATIVE VALUE SCHEDULE

"SEC. 1129. (a) To provide common language describing the various kinds and levels of medical services which may be reimbursed under title V, XVIII, and XIX of this Act, the Secretary shall establish a system of procedural terminology, including definitions of terms. The system shall be developed by the Health Care Financing Administration with the advice of other large health care purchasers, representatives of professional groups and other interested parties. In developing the system, the Health Care Financing Administration shall consider among other things, the experience of third parties in using existing terminology systems in terms of implications for administrative and program costs, simplicity and lack of ambiguity, and the degree of acceptance and use.

"(b) Upon development of a proposed system of procedural terminology and its approval by the Secretary the system shall be published in the Federal Register. Interested parties shall have not less than six months in which to comment on the proposed system and to recommend relative values to the Secretary for the procedures and services designated by the terms. Comments and proposals shall be supported by information and documentation specified by the Secretary.

"(c) The good faith preparation of a relative value schedule or its submission to the Secretary by an association of health practitioners solely in response to a request of the Secretary as authorized under this section shall not in itself be considered a violation of any consent decree by which an association has waived its right to make recommendations concerning fees. The proposed relative value schedule shall not be disclosed to anyone other than those persons actually preparing it or their counsel until it is made public by the Secretary.

"(d) The Health Care Financing Administration shall review materials submitted under this section and shall recommend that the Secretary adopt a specific terminology system and its relative values for use by carriers in calculating reasonable charges under title XVIII of this Act, but only after—

"(1) interested parties have been given an opportunity to comment and any comments have been considered;

"(2) statistical analyses have been conducted assessing the economic impact of the relative values on the physicians in various specialties, geographic areas and types of practice, and on the potential liability of the program established by part B of title XVIII of this Act;

"(3) it has been determined that the proposed terminology and related definitions are unambiguous, practical, and easy to evaluate, in actual clinical siituations and that the unit values assigned generally reflect the relative time and effort required to perform various procedures and services; and

"(4) it has been determined that the use of the proposed system will enhance the administration of the Federal health care financing programs.

"(e) A system of terminology, definitions, and their relative values, as approved by the Secretary, shall be periodically reviewed by him and may be modified. An approved system (as amended by any modification of the Secretary) may subsequently be used by any organization or person for purposes other than those of this Act. Nothing in this section shall be considered to bar the Secretary from adopting a uniform system of procedural terminology in situations where a relative value schedule has not been approved.".

TEACHING PHYSICIANS

SEC. 18. Section 15(d) of Public Law 93-233 (as amended by section 7(c) of Public Law 93-368, the first section of Public Law 94-368, and section 7 of Public Law 95-292) is amended by striking out "October 1, 1978" and inserting in lieu thereof "October 1, 1979".

CERTAIN SURGICAL PROCEDURES PERFORMED ON AN AMBULATORY BASIS

SEC. 7. Part B of title XVIII of the Social Security Act is amended by adding at the end thereof the following new section:

"SPECIAL PROVISIONS RELATING TO CERTAIN SURGICAL PROCEDURES PERFORMED ON AN AMBULATORY BASIS

"SEC. 1845. (a) The Secretary shall, in consultation with the National Professional Standards Review Council and appropriate medical organizations, specify those surgical procedures which can be safely and appropriately performed either in a hospital on an inpatient basis or on an ambulatory basis—

"(1) in a physician's office; or

"(2) in an ambulatory surgical center or hospital.

"(b)(1) If a physician performs in his office a surgical procedure specified by the Secretary pursuant to subsection (a)(1) on an individual insured for benefits under this part, he shall, notwithstanding any other provision of this part, be entitled to have payment made under this part equal to—

"(A) 100 percent of the reasonable charge for the services involved with the performance of such procedure (including all pre- and post-operative physicians' services performed in connection therewith), plus

"(B) the amount established by the Secretary pursuant to paragraph (2),

but only if the physician agrees with such individual to be paid on the basis of an assignment under the terms of which the reasonable charge for such services is the full charge therefor.

"(2) The Secretary shall establish with respect to each surgical procedure specified pursuant to subsection (a)(1), an amount established with a view to according recognition to the special costs, in excess of usual overhead, which physicians incur which are attributable to securing, maintaining, and staffing the facilities and ancillary services appropriate for the performance of such procedure in the physician's office, and to assuring that the performance of such procedure in the physician's office will involve substantially less total cost than would be involved if the procedure were performed on an inpatient basis in a hospital. The amount so established with respect to any surgical procedure periodically shall be reviewed and revised and may be adjusted, when appropriate, by the Secretary to take account of varying conditions in different areas.

"(c)(1) Payment under this part may be made to an ambulatory surgical center for ambulatory facility services furnished in conection with any surgical procedure, specified by the Secretary pursuant to subsection (a)(2), which is performed on an individual insured for benefits under this part in an ambulatory surgical center, which meets such health, safety, and other standards as the Secretary shall by regulations prescribe, if such surgical center agrees to accept in full payment of all services furnished by it in connection with such procedure, the amount established for such procedure pursuant to paragraph (2).

"(2) The Secretary shall establish with respect to each surgical procedure specified pursuant to subsection (a)(2), a reimbursement amount which is payable to an ambulatory surgical center for its services furnished in connection with such procedure. The amount established for any such surgical procedure shall be established with a view to according recognition to the costs incurred by such centers generally in providing the services involved in connection with such procedure, and to assuring that the performance of such procedure in such a center involves less cost than would be involved if such procedure were performed on an inpatient basis in a hospital. The amount so established with respect to any surgical procedure shall periodically be reviewed and revised and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

"(3) If the physician, performing a surgical procedure (specified by the Secretary under subsection (a)(2)), in a hospital on an outpatient basis or in an ambulatory surgical center with respect to which payment is authorized under the preceding provisions of this subsection, or a physician performing physicians' services in such center or hospital directly related to such surgical procedure, agrees to accept as full payment for all services performed by him in connection with such procedure (including pre- and post-operative services) an amount equal to 100 percent of the reasonable charge for such services, he shall be paid under this part for such services an amount equal to 100 percent of the reasonable charge for such services.

"(d)(1) The Secretary is authorized by regulations to provide that in case a surgical procedure specified by the Secretary pursuant to subsection (a)(2) is performed on an individual insured for benefits under this part in an ambulatory surgical center which meets such health, safety, and other standards as the Secretary shall by regulations prescribe, there shall be paid with respect to the services furnished by such center and with respect to all related services (including physicians' services, laboratory, X-ray, and diagnostic services) a single all-inclusive fee established pursuant to paragraph (2), if all parties furnishing all such services agree to accept such fee (to be divided among the parties involved in such manner as they shall have previously agreed upon) as full payment for the services furnished.

"(2) In implementing this subsection, the Secretary shall establish with respect to each surgical procedure specified pursuant to subsection (a)(2) the amount of the all-inclusive fee for such procedure, taking into account such factors as may be appropriate. The amount so established with respect to any surgical procedure shall periodically be reviewed and revised and may be adjusted, when appropriate, to take account of varying conditions in different areas.

"(e) The provisions of section 1833 (a) and (b) shall not be applicable to expenses attributable to services to which subsection (b) is applicable, to ambulatory facility services (furnished by an ambulatory surgical center) to which the provisions of subsection (c)(1) and (2) are applicable, to physicians' services to which the provisions of subsection (c)(3) are applicable, or to services to which the provisions of subsection (d) are applicable.".

CRITERIA FOR DETERMINING REASONABLE CHARGE FOR PHYSICIANS' SERVICES

SEC. 10. (a) Section 1842(b) of the Social Security Act is amended—

(1) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6);

(2) by striking out so much of paragraph (3) as follows the first sentence; and

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

"(4)(A) In determining the reasonable charge for services for purposes of paragraph (3) (including the services of any hospital-associated physicians), there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services.

"(B)(i) Except as otherwise provided in clause (iii), no charge may de determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (I) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (II) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the last preceding calender year elapsing prior to the start of the fiscal year in which the bill is submitted or the request for payment is made.

"(ii) In the case of physician services, the prevailing charge level determined for purposes of clause (i)(II) for any fiscal year beginning after June 30, 1973 may not (except as otherwise provided in clause (iii)) exceed (in the aggregate) the level deter-

mined under such clause for the fiscal year ending June 30, 1973, except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by economic changes. Moreover, for any twelve-month period beginning on July 1 of any year (beginning with 1980), no prevailing charge level for physicians' services shall be increased to the extent that it would exceed by more than one-third the statewide prevailing charge level (as determined under subparagraph (E)) for that service.

"(iii) Notwithstanding the provisions of clauses (i) and (ii) of this subparagraph, the prevailing charge level in the case of a physician service in a particular locality determined pursuant to such clauses for the fiscal year beginning July 1, 1975, shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1975.

"(C) In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under circumstances specified by the Secretary. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1861(s)(6), charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality.

"(D) The requirement in paragraph (3)(B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (i) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, or agent of the Department of Health, Education, and Welfare performing functions under this title and acting within the scope of his or its authority, and (ii) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected.

"(E) The Secretary shall determine separate statewide prevailing charge levels for each State that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 50 percent of the customary charges made for similar services in the State during the last preceding calendar year elapsing prior to the start of the fiscal year in which the bill is submitted or the request for payment is made. In States with more than one carrier, the statewide prevailing charge level shall be the weighted average of the fiftieth percentiles of the customary charges of each carrier.

"(F) Notwithstanding any other provision of this paragraph, any charge for any particular service or procedure performed by a doctor of medicine or osteopathy shall be regarded as a reasonable charge if—

"(i) the service or procedure is performed in an area which the Secretary has designated as a physician shortage area,

"(ii) the physician has a regular practice in the physician shortage area,

"(iii) the charge does not exceed the prevailing charge level as determined under subparagraph (B), and

"(iv) the charge does not exceed the amount generally charged by such physician for similar services.".

(b) Sections 506(f)(1) and 1903(i)(1) of the Social Security Act are each amended by striking out "the fourth and fifth sentences of section 1842(b)(3)" and inserting in lieu thereof in each instance "subparagraphs (B)(ii), (B)(iii), (C), and (F) of section 1842(b)(4)".

(c) The amendments made by this section shall become effective on July 1, 1980.

PAYMENT FOR CERTAIN ANTIGENS UNDER PART B OF MEDICARE

SEC. 11. (a) Section 1861(s)(2) of the Social Security Act is amended—

(1) by striking out "and" at the end of clause (E),

(2) by inserting "and" at the end of clause (F), and

(3) by adding after clause (F) the following new clause:

"(G) antigens (subject to reasonable quantity limitations determined by the Secretary) prepared by an allergist for a particular patient, including antigens he prepares which are forwarded to another qualified person for administration to the patient by or under the supervision of a physician;"

(b) The amendments made by subsection (a) shall apply to items furnished after the month of enactment of this Act.

PAYMENT UNDER MEDICARE OF CERTAIN PHYSICIANS' FEES ON ACCOUNT OF SERVICES FURNISHED TO A DECEASED INDIVIDUAL

SEC. 12. (a) Section 1870(f) of the Social Security Act is amended by striking out the matter following clause (2) thereof and inserting in lieu thereof the following: "payment for such services shall be made (but only in such amount and subject to such conditions as would have been applicable if the individual who received the services had not died) to—

"(A) the physician or other person who provided such services, but only on the condition that such physician or person agrees that the reasonable charge is the full charge for the services, or

"(B) the spouse or other legally designated representative of such individual, but only if (i) the condition specified in subparagraph (A) is not met, and (ii) such spouse or representative requests (in such form and manner as the Secretary shall by regulations prescribe) that payment be made under this subparagraph.".

(b) The amendment made by subsection (a) shall apply only to payments made after the month of enactment of this Act.

HOSPITAL PROVIDERS OF LONG-TERM CARE SERVICES

SEC. 13. (a) Section 1861 of the Social Security Act is amended by adding after subsection (bb) (as added by section 2 of this Act) the following:

"Hospital Providers of Extended Care Services

"(cc)(1)(A) Any hospital (other than a hospital which has in effect a waiver of the requirement imposed by subsection (e)(5)) which has an agreement under section 1866 may (subject to paragraph (2)) enter into an agreement with the Secretary under which its inpatient hospital facilities may be used for the furnishing of services of the type which, if furnished by a skilled nursing facility, would constitute posthospital extended care services.

"(B)(i) Notwithstanding any other provision of this title, payment to any hospital for services furnished under an agreement entered into under this subsection shall be based upon the reasonable cost of the services as determined under this subparagraph.

"(ii) The reasonable cost of the services shall consist of the reasonable cost of routine services and ancillary services. The reasonable cost of routine services furnished during any calendar year by a hospital under an agreement under this subsection shall equal the product of the number of patient-days during the year for which the services were furnished and the average reasonable cost per patient-day. The average reasonable cost per patient-day shall be established as the average rate per patient-day paid for routine services during the previous calendar year under the State plan (of the State in which the hospital is located) approved under title XIX to skilled nursing facilities located in such State and which meet the requirements specified in section 1902(a)(28). The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided as inpatient hospital services.

"(2) The Secretary shall not enter into an agreement under this subsection with any hospital unless—

"(A) the hospital is located in a rural area and has less than 50 beds, and

"(B) the hospital has been granted a certificate of need for the provision of long-term care services from the agency of the State (which has been designated as the State health planning and development agency under an agreement pursuant to section 1521 of the Public Health Service Act) in which the hospital is located.

"(3) An agreement with a hospital entered into under this section shall, except as otherwise provided under regulations of the Secretary, be of the same duration and subject to termination on the same conditions as are agreements with skilled nursing facilities under section 1866, and shall, where not inconsistent with any provision of this subsection, impose the same duties, responsibilities, conditions, and limitations, as those imposed under such agreements entered into under section 1866; except that no such agreement with any hospital shall be in effect for any period during which the hospital does not have in effect an agreement under section 1866, or during which there is in effect for the hospital a waiver of the requirement imposed by subsection (e)(5). A hospital with respect to which an agreement has been terminated shall not be eligible to undertake a new agreement until a two-year period has elapsed from the termination date.

"(4) Any agreement with a hospital under this subsection shall provide that payment for services will be made only for services for which payment would be made as posthospital extended care services if those services had been furnished by a skilled nursing facility under an agreement entered into under section 1866, and any individual who is furnished services for which payment may be made under an agreement shall, for purposes of this title (other than this subsection), be deemed to have received posthospital extended care services in like manner and to the same extent as if the services furnished to him had been posthospital extended care services furnished by a skilled nursing facility under an agreement under section 1866.

"(5) During a period for which a hospital has in effect an agreement under this subsection, in order to allocate routine costs between hospital and long-term care services for purposes of determining payment for inpatient hospital services (including the application of reimbursemtnt limits specified in section 1861(bb)), the total reimbursement due for routine services from all classes of long-term care patients, including title XVIII, the State plan approved under title XIX, and private pay patients, shall be subtracted from the hospital's total routine costs before calculations are made to determine title XVIII reimbursement for routine hospital services.

"(6) During any period during which an agreement is in effect with a hospital under this subsection, the hospital shall, for services furnished by it under the agreement, be considered to satisfy the requirements,

otherwise required, of a skilled nursing facility for purposes of the following provisions: sections 1814(a)(2)(C), 1814(a)(6), 1814(a)(7), 1814(h), 1861(a)(2), 1861(i), 1861(j) (except 1861(j)(12)), and 1861(n); and the Secretary shall specify any other provisions of this Act under which the hospital may be considered as a skilled nursing facility.

"(7) The Secretary may enter into an agreement under this subsection on a demonstration basis with any hospital having more than 49 beds, but less than 101 beds, if such hospital otherwise meets the requirements of this subsection.

"(8) Within three years after the date of enactment of this subsection, the Secretary shall provide a report to the Congress containing an evaluation of the program established under this subsection concerning—

"(A) the effect of the agreements on availability and effective and economical provision of long-term care services;

"(B) whether the program should be continued; and

"(C) whether eligibility should be extended to other hospitals, regardless of bed siz or geographic location, where there is a shortage of long-term care beds.".

(b) Title XIX of such Act is amended by adding at the end thereof the following new section:

"HOSPITAL PROVIDERS OF SKILLED NURSING AND INTERMEDIATE CARE SERVICES

"SEC. 1913. (a) Notwithstanding any other provision of this title, payment may be made, in accordance with this section, under an approved State plan for skilled nursing services and intermediate care services furnished by a hospital which has in effect an agreement under section 1861(cc).

"(b)(1) Payment to any such hospital, for any skilled nursing or intermediate care services furnished pursuant to subsection (a) shall be at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under the State plan to skilled nursing and intermediate care facilities located in the State in which the hospital is located. The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

"(2) With respect to any period for which a hospital has in effect an agreement under section 1861(cc), in order to allocate routine costs between hospital and long-term care services, the total reimbursement for routine services due from all classes of long-term care patients, including title XVIII, the State plan, and private pay patients, shall be subtracted from the hospital total routine costs before calculations are made to determine reimbursement for routine hospital services under the State plan.".

(c) Section 1861(j) is amended by inserting "and except as provided in subsection (cc)" after "subsection (a)(2)".

(d) The amendments made by this section shall become effective on the date on which final regulations, promulgated by the Secretary to implement the amendments, are issued; and those regulations shall be issued not later than the first day of the sixth month following the month in which this Act is enacted.

REIMBURSEMENT RATES UNDER MEDICAID FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITIES

SEC. 14. (a) Section 1902(a)(13)(E) of the Social Security Act is amended by inserting "(and which may, at the option of the State, include reasonable allowances for the facilities in the form of incentive payments related to efficient performance)" after "cost related basis".

(b) The amendment made by subsection (a) shall become effective on October 1, 1979.

MEDICAID CERTIFICATION AND APPROVAL OF SKILLED NURSING AND INTERMEDIATE CARE FACILITIES

SEC. 15. (a) Section 1910 of the Social Security Act is amended to read as follows:

"CERTIFICATION AND APPROVAL OF SKILLED NURSING AND INTERMEDIATE CARE FACILITIES

"SEC. 1910. (a) The Secretary shall make an aggreement with any State which is willing and able to do so whereby the State health agency or other appropriate State or local agencies (whichever are utilized by the Secretary pursuant to section 1864(a)) will be utilized to recommend to him whether an institution in the State qualifies as a skilled nursing facility (for purposes of section 1902(a)(28)) or an intermediate care facility (for purposes of section 1905(c)).

"(b) The Secretary shall advise the State agency administering the medical assistance plan of his approval or disapproval of any institution certified to him as a qualified skilled nursing or intermediate care facility for purposes of section 1902(a)(28) or section 1905(c) and specify for each institution the period (not to exceed twelve months) for which approval is granted, except that the secretary may extend that term for up to two months, provided the health and safety of patients will not be jeopardized, if he finds that an extension is necessary to prevent irreparable harm to the facility or hardship to the facility's patients or if he finds it impracticable within the twelve-month period to determine whether the facility is complying with the provisions of this title and applicable regulations. The State agency may, upon approval of the Secretary, enter into an agreement with any skilled nursing or intermediate care facility for the specified approval period.

"(c) The Secretary may cancel approval of any skilled nursing or intermediate care facility at any time if he finds that a facility fails to meet the requirements contained in section 1902(a)(28) or section 1905(c), or if he finds grounds for termination of his agreement with the facility pursuant to section 1866(b). In that event the Secretary shall notify the State agency and the skilled nursing or intermediate care facility that approval of eligibility of the facility to participate in the programs established by this title and title XVIII shall be terminated at a time specified by the Secretary. The approval of eligibility of any such facility to participate in the programs may not be reinstated unless the Secretary finds that the reason for termination has been removed and there is reasonable assurance that it will not recur.

"(d) Effective July 1, 1980, no payment may be made to any State under this title for skilled nursing or intermediate care facility services furnished by any facility—

"(1) which does not have in effect an agreement with the State agency pursuant to subsection (b), or

"(2) with respect to which approval of eligibility to participate in the programs established by this title or title XVIII has been terminated by the Secretary and has not been reinstated, except that payment may be made for up to thirty days for skilled nursing or intermediate care facility services furnished to any eligible individual who was admitted to the facility prior to the effective date of the termination.

"(e) Any skilled nursing facility or intermediate care facility which is dissatisfied with any determination by the Secretary that it no longer qualifies as a skilled nursing facility or intermediate care facility for purposes of this title shall be entitled to a hearing by the Secretary to the same extent as is provided in section 205(b) and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). Any agreement between such facility and the State agency shall remain in effect until the period for filing a request for a hearing has expired or, if a request has been filed, until a decision has been made by the Secretary; except that the agreement shall not be extended if the Secretary makes a written determination, specifying the reasons therefor, that the continuation of provider status constitutes an immediate and serious threat to the health and safety of patients, and the Secretary certifies that the facility has been ratified of its deficiencies and has failed to correct them.".

(b) Section 1869(c) of the Social Security Act is amended by adding at the end thereof the following sentence: "If the Secretary's determination terminates a provider with an existing agreement pursuant to section 1866(b)(2), or if such determination consists of a refusal to renew an existing provider agreement, the provider's agreement shall remain in effect until the period for filing a request for a hearing has expired or, if a request has been filed, until a final decision has been made by the Secretary; except that the agreement shall not be extended if the Secretary makes a written determination, specifying the reasons therefor, that the continuation of provider status constitutes an immediate and serious threat to the health and safety of patients and if the Secretary certifies that the provider has been notified of such deficiencies and has failed to correct them.".

(c) The amendments made by the preceding provisions of this section shall become effective on the date on which final regulations, promulgated by the Secretary to implement the amendments, are issued; and those regulations shall be issued not later than the first day of the sixth month following the month in which this Act is enacted.

(d) Title XIX of the Social Security Act is amended by adding after section 1910 thereof the following new section:

"CERTIFICATION AND APPROVAL OF RURAL HEALTH CLINICS

"SEC. 1910A. (a) Whenever the Secretary certifies a facility in a State to be a qualified rural health clinic under title XVIII, such facility shall be deemed to meet the standards for certification as a rural health clinic for purposes of providing rural health clinic services under this title.

"(b) The Secretary shall notify the State agency administering the medical assistance plan of his approval or disapproval of any facility in that State which has applied for certification by him as a qualified rural health clinic.".

(e) Section 1866(c)(2) of the Social Security Act is amended by striking out "1910(a)" and inserting in lieu thereof "1910".

VISITS AWAY FROM INSTITUTION BY PATIENTS OF SKILLED NURSING OR INTERMEDIATE CARE FACILITY

SEC. 16. (a) Section 1903 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(r) In the administration of this title, the fact that an individual who is an inpatient of a skilled nursing or intermediate care facility leaves to make visits outside the facility shall not conclusively indicate that he does not need services which the facility is designed to provide; however, the frequency and length of such visits shall be considered, together with other evidence, in determining whether the individual is in need of the facility's services.".

(b) The amendment made by subsection (a) shall become effective on October 1, 1979.

NOTIFICATION TO STATE OFFICIALS

SEC. 17. Part A of title XI of the Social Security Act is amended by adding after section 1129 (as added by section 7 of this Act) the following new section:

"NOTIFICATION TO STATE OFFICIALS

"SEC. 1130. If the Secretary notifies a State of any audit, quality control performance report, deficiency, or any reduction, termi-

nation, or increase in Federal matching, under the State plan for any program for which Federal payments are made under this Act, simultaneous notification shall also be made to the Governor of the State and the respective chairmen of the legislative and appropriation committees of that State's legislature having jurisdiction over the program affected.".

REPEAL OF SECTION 1867

SEC. 18. Section 1867 of the Social Security Act is repealed.

PROCEDURES FOR DETERMINING REASONABLE COST AND REASONABLE CHARGE

SEC. 19. (a) Part A of title XI of the Social Security Act is amended by adding after section 1131 the following new section:

"EXCLUSION OF CERTAIN ITEMS IN DETERMINING REASONABLE COST AND REASONABLE CHARGE

"SEC. 1132. (a) Except as otherwise provided in subsection (b), in determining the amount of any payment under title XVIII, under a program established under title V, or under a State plan approved under title XIX of this Act, when the payment is based upon the reasonable cost or reasonable charge, no element comprising any part of the cost or charge shall be considered to be reasonable if, and to the extent that, such element is—

"(1) a commission, finder's fee, or for a similar arrangement, or

"(2) an amount payable for any facility (or part or activity thereof) under any rental or lease arrangement, which is, directly or indirectly, determined, wholly or in part as a percentage, fraction, or portion of the charge or cost attributed to any health service (other than the element) or any health service including, but not limited to, the element.

"(b) The Secretary shall by regulations establish exceptions to the provisions of subsection (a) with respect to any element of cost or charge which consists of payments based on a percentage arrangement, if such element is otherwise reasonable and the percentage arrangement—

"(1) is a customary commercial business practice, or

"(2) provides incentives for the efficient and economical operation of the health service.".

(b) Section 506 of such Act is amended by adding at the end thereof the following new subsection:

"(h) For additional exclusions from reasonable cost and reasonable charge see section 1132.".

(c) Section 1842(b)(4) of such Act (as amended by sections 6 and 10 of this Act) is further amended by adding at the end thereof the following new subparagraph:

"(H) For additional exclusions from reasonable cost and reasonable charge see section 1132.".

(d) Section 1861(v) of such Act is amended by adding after paragraph (9) (as added by section 6 of this Act) the following new paragraph:

"(10) For additional exclusions from reasonable cost and reasonable charge see section 1132.".

(e) Section 1903 of such Act is amended by adding after subsection (r) (as added by section 16 of this Act) the following new subsection:

"(s) For additional exclusions from reasonable cost and reasonable charge see section 1130.".

AMBULANCE SERVICE

SEC. 20. (a) Section 1861(s)(7) of the Social Security Act is amended by inserting after "ambulance service" the following: "(including ambulance service to the nearest hospital which is (A) adequately equipped, and (B) has medical personnel qualified to deal with, and available for the treatment of, the individual's illness, injury, or condition)".

(b) The amendment made by subsection (a) shall apply to services furnished on or after the first day of the first month which begins more than 180 days after the date of the enactment of this Act, or, if earlier, the effective date of regulations promulgated by the Secretary to implement such amendment.

GRANTS TO REGIONAL PEDIATRIC PULMONARY CENTERS

SEC. 21. (a) Section 511 of the Social Security Act is amended—

(1) by inserting "(a)" after "SEC. 511", and

(2) by adding at the end thereof the following new subsection:

"(b)(1) From the sums available under paragraph (2) the Secretary is authorized to make grants to public or nonprofit private regional pediatric pulmonary centers, which are a part of (or are affiliated with) an institution of higher learning, to assist them in carrying out a program for the training and instruction (through demonstrations and otherwise) of health care personnel in the prevention, diagnosis, and treatment of respiratory diseases in children and young adults, and in providing (through such program) needed health care services to children and young adults suffering from such diseases.

"(2) For the purpose of making grants under this subsection, there are authorized to be appropriated, for the fiscal year ending September 30, 1980, and each of the next four succeeding fiscal years, such sums (not in excess of $5,000,000 for any fiscal year) as may be necessary. Sums authorized to be appropriated for any fiscal year under this subsection for making grants for the purposes referred to in paragraph (1) shall be in addition to any sums authorized to be appropriated for such fiscal years for similar purposes under other provisions of this title.".

(b) Section 502(2) of such Act is amended by inserting "(a)" after "511".

WAIVER OF HUMAN EXPERIMENTATION PROVISION FOR MEDICARE AND MEDICAID

SEC. 22. Any requirements of title II of Public Law 93-348 otherwise held applicable are hereby waived with respect to coverage, or copayments, deductibles, or other limitations on payment for services (whether of general application or in effect only on a trial or demonstration basis) under programs established under titles XVIII and XIX of the Social Security Act. Notwithstanding the first sentence of this section, the Secretary in reviewing any application for any experimental, pilot or demonstration project pursuant to the Social Security Act shall apply any appropriate requirements of title II of Public Law 93-348 and any regulations promulgated thereunder in making his decision on whether to approve such application.

DISCLOSURE OF AGGREGATE PAYMENTS TO PHYSICIANS

SEC. 23. Section 1106 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(f) The Secretary shall not make available, nor shall the State title XIX agency be required to make available to the public, information relating to the amounts that have been paid to individual doctors of medicine or osteopathy by or on behalf of beneficiaries of the health programs established by title XVIII or XIX, as the case may be, except as may be necessary to carry out the purposes of those titles or as may be specifically required by the provisions of other Federal law.".

RESOURCES OF MEDICAID APPLICANT TO INCLUDE CERTAIN ASSETS PREVIOUSLY DISPOSED OF FOR SUBSTANTIALLY LESS THAN MARKET VALUE

SEC. 24. (a) Section 1904 of the Social Security Act is amended by adding at the end thereof the following sentence "The Secretary shall not find that a State has failed to comply with the requirements of this title solely because it denies medical assistance to an individual who would be ineligible for such assistance if, in determining whether he is eligible for benefits under title XVI of this Act, or in the case of an individual who is not included under section 1902(a)(13)(B), in determining whether he is eligible for benefits under title XVI of this Act, or, in the case of an individual who is not included under section 1902(a)(13)(B), in determining whether he is eligible for medical assistance under the State plan, there was included in his resources any asset owned by him within the preceding twelve months to the extent that he gave or sold that asset to any person for substantially less than its fair market value for the purpose of establishing eligibility for medical assistance under the State plan (and any such transaction shall be presumed to have been for such purpose unless such individual furnishes convincing evidence to establish that the transaction was for some other purpose).".

(b) Section 1902(a) of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (39);

(2) by striking out the period at the end of paragraph (40) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(41) contain provisions reasonably directed at the denial of eligibility for medical assistance under the State plan to an individual who would be ineligible for such assistance except for the transfer of assets, for substantially less than fair market value; except that such denial shall be made only to the extent authorized under the last sentence of section 1904 or under other provisions of this title.".

(c)(1) The amendment made by subsection (a) shall become effective on October 1, 1979.

(2)(A) The amendment made by subsection (b) shall, except as otherwise is provided in subparagraph (B), become effective on July 1, 1980.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by subsection (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature which begins after the date of enactment of this Act.

RATE OF RETURN ON NET EQUITY FOR FOR-PROFIT HOSPITALS

SEC. 25. Section 1861(v)(1)(B) of the Social Security Act is amended—

(1) in the first sentence thereof, by inserting "a hospital or" immediately after "Such regulations in the case of";

(2) in the second sentence thereof, by striking out "one and one-half times" and inserting in lieu thereof "the percentages, specified in the next sentence, of"; and

(3) by inserting after the last sentence thereof the following new sentence: "For hospital and skilled nursing facility accounting years beginning before July 1, 1980, the percentage referred to in the previous sen-

tence is 150 percent and for subsequent accounting years, the percentage is—

"(i) 150 percent with respect to a skilled nursing facility;

"(ii) 150 percent with respect to a hospital which, during such accounting year, had actual routine operating costs which were greater than the maximum allowable routine operating costs of such hospital as determined under section 1861(bb)(4)(B)(i);

"(iii) 250 percent with respect to a hospital which, during such accounting year had actual routine operating costs which were less than the hospital's adjusted per diem target rate for routine operating costs as determined under section 1861(bb)(4); and

"(iv) 200 percent with respect to other hospitals.".

DEDUCTIBLE NOT APPLICABLE TO EXPENSE FOR CERTAIN INDEPENDENT LABORATORY TESTS

SEC. 26. (a) The first sentence of section 1833(b) of the Social Security Act is amended—

(1) by striking out "and" at the end of clause (1), and

(2) by inserting immediately before the period the following: ", and (3) such total amount shall not include expenses incurred for diagnostic tests with respect to which the provisions of subsection (a)(1)(D) are applicable".

(b) The amendments made by subsection (a) shall be applicable with respect to services provided on or after the first day of the first calendar month which begins more than 60 days after the date of enactment of this Act.

PAYMENT FOR LABORATORY SERVICES UNDER MEDICAID

SEC. 27. (a)(1) Section 1902(a)(23) of the Social Security Act is amended by inserting "(A)" before "has entered into" and by inserting before the semicolon at the end the following: ", or (B) during the three-year period beginning on the date of enactment of the Medicare-Medicaid Administrative and Reimbursement Reform Act, has made arrangements through a competitive bidding process or otherwise for the purchase of laboratory services referred to in section 1905(a)(3), if the Secretary has found that (i) adequate services will be available under such arrangements, (ii) such laboratory services will be provided only through laboratories (I) which meet the requirements of section 1861(e)(9), paragraphs (10) and (11) of section 1861(s), and such additional requirements as the Secretary may require, and (II) no more than 75 per centum of whose charges for such services are for services provided to individuals who are entitled to benefits under this title or under part A or part B of title XVIII, and (iii) charges for services provided under such arrangements are made at the lowest rate charged (determined without regard to administrative costs which are related solely to the method of reimbursement for such services) for comparable services by the provider of such services, or, if charged for on a unit price basis, such charges result in aggregate expenditures not in excess of expenditures that would be made if charges were at the lowest rate charged for comparable services by the provider of such services".

(2) The Secretary shall evaluate arrangements made for the purchase of laboratory services under section 1902(a)(23)(B) of the Social Security Act and shall transmit that evaluation to the Congress, together with recommendations as to whether such section 1902(a)(23)(B) should be extended or modified, no later than twenty-four months after the date of enactment of this Act.

(b) Section 1902(a)(28) of such Act is amended by inserting before the semicolon the following: ", and provide that any laboratory services (other than such services provided in a physician's office) paid for under such plan must be provided by a laboratory which during the three-year period beginning on the date of enactment of the Medicare-Medicaid Administrative and Reimbursement Reform Act meets the requirements of section 1861(e)(9), paragraphs (10) and (11) of section 1861(s) or, in the case of a rural health clinic, subsection 1861(aa)(2)(G)".

(c) Section 1902(a)(30) of such Act is amended by inserting before the semicolon following: "; and, in the case of laboratory services referred to in section 1905(a)(3), such payments do not exceed the lowest amount charged (determined without regard to administrative costs which are related solely to the method of reimbursement for such services) to any person or entity for such services by that provider of laboratory services".

(d)(1) The amendments made by subsections (b) and (c) shall (except as otherwise provided in paragraph (2)) apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act, on or after the first day of the first calendar quarter that begins more than 30 days after the date of enactment of this Act.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (b) or (c), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act.

CONFIDENTIALITY OF PSRO DATA

SEC. 28. Section 1166(a) of the Social Security Act is amended by inserting "which identifies (either by name or by inference) an individual patient, practitioner, provider, supplier or reviewer" immediately after "functions".

REMOVAL OF THREE-DAY HOSPITALIZATION REQUIREMENT AND ONE HUNDRED-VISIT LIMITATION FOR HOME HEALTH SERVICES

SEC. 29. (a) Section 1811 of the Social Security Act is amended by striking out "posthospital".

(b) Section 1812(a)(3) of such Act is amended to read as follows:

"(3) home health services.".

(c) Section 1812(d) of such Act is repealed.

(d) Section 1812(e) of such Act is amended—

(1) by striking out "(c), and (d)" and inserting in lieu thereof "and (c)"; and

(2) by striking out "post-hospital extended care services, and post-hospital home health services" and inserting in lieu thereof "and post-hospital extended care services".

(e) Section 1814(a)(2)(D) of such Act is amended—

(1) by striking out "post-hospital"; and

(2) by striking out "for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1861(e)) or post-hospital extended care services".

(f) Section 1814(i) of such Act is amended—

(1) by striking out "Posthospital" in the heading thereof; and

(2) by striking out "posthospital" in paragraph (1).

(g) Section 1832(a)(2)(A) of such Act is amended by striking out "for up to 100 visits during a calendar year".

(h) Section 1834 of such Act is repealed.

(i) Section 1861(n) of such Act is repealed.

(j) Section 1861(e) of such Act is amended—

(1) by striking out " subsections (i) and (n)" in the matter preceding paragraph (1) and inserting in lieu thereof "subsection (i)"; and

(2) by striking out "subsections (i) and (n)" in the third sentence and inserting in lieu thereof "subsection (i)".

(k) Section 226(c)(1) of such act is amended—

(1) by striking out "and post-hospital home health services" and inserting in lieu thereof "and home health services"; and

(2) by striking out "or post-hospital home health services" in clause (B).

(l) Section 7(d)(1) of the Railroad Retirement Act is amended by striking out "post-hospital home health services" and inserting in lieu thereof "home health services".

(m) The amendments made by this section shall be effective with respect to services provided on or after July 1, 1980.

PAYMENT FOR DURABLE MEDICAL EQUIPMENT

SEC. 30. Section 1833(f)(3) of the Social Security Act is amended to read as follows:

"(3) For purposes of determining the amount payable with respect to durable medical equipment furnished an individual as described in section 1861(s)(6), the Secretary shall, to the extent feasible, calculate at least annually the reasonable charge on a prospective basis and shall take into account, in addition to the customary charges for such equipment, the acquisition costs of such equipment, appropriate overhead (taking into consideration the level of delivery services and other necessary services actually provided by the supplier), and a reasonable margin of profit."

DEVELOPMENT OF UNIFORM CLAIMS FORMS FOR USE UNDER HEALTH CARE PROGRAMS

SEC. 31. (a) Part A of title XI of the Social Security Act is amended by adding after section 1132 (as added by section 19 of this Act) the following new section:

"DEVELOPMENT OF UNIFORM CLAIMS FORMS

"SEC. 1133. (a) Within the 2-year period commencing on the date of the enactment of this section, the Secretary shall to the maximum extent feasible develop and require to be employed, in the administration of the health insurance for the aged and disabled program established by title XVIII and the medical assistance programs approved under title XIX, uniform claims forms which shall be utilized in making payment for health services under such programs. Such claims forms may vary in form and content, but only to the extent clearly required.

"(b) The Secretary shall require forms developed pursuant to subsection (a) to be utilized in the administration of health care programs (other than those referred to in subsection (a)) but over which he has administrative responsibility, if he determines that such use is in the interest of effective administration of such programs.

"(c) The Secretary, in carrying out the provisions of subsection (a) shall consult with those charged with the administration of Federal programs (other than those referred to in subsections (a) and (b)) and with other organizations and persons that pay for health care, and with the concerned providers of health care services, with the objective of having a broad representation of such programs and plans to facilitate and encourage maximum use by other programs of such uniform claims forms."

(b) The Secretary shall make a report to the Congress, within 21 months after the

enactment of this Act, covering the following points:

(1) his assessment of what his actions will be in carrying out the provisions of section 1133 of the Social Security Act,

(2) the success or lack of success in encouraging third party payors generally to adopt the uniform claims forms required under such section, and

(3) his recommendations as to what action, legislative or otherwise, needs to be taken in order to maximize the use of such uniform claims forms.

COORDINATED AUDITS UNDER THE SOCIAL SECURITY ACT

SEC. 32. (a) Title XI of the Social Security Act is amended by inserting after section 1133 (as added by section 31 of this Act) the following new section:

"COORDINATED AUDITS

"SEC. 1134. If an entity provides services reimbursable on a cost-related basis under title V or XIX, as well as services reimbursable on such a basis under title XVIII, the Secretary shall require, as a condition for payment to any State under title V or XIX with respect to administrative costs incurred in the performance of audits of the books, accounts, and records of that entity, that these audits be coordinated through common audit procedures with audits performed with respect to the entity for purposes of title XVIII. The Secretary shall apportion to the program established under title V or XIX that part of the cost of coordinated audits which is attributable to each such program and which would not have otherwise been incurred in an audit of the program established under title XVIII. Where the Secretary finds that a State has declined to participate in such a common audit with respect to title V or XIX, he shall reduce the payments otherwise due such State under such title by an amount which he estimates to be the amount that represents the duplication of costs resulting from such State's failure to participate in the common audit.".

(b)(1) Section 1902(a) of the Social Security Act (as amended by section 24 of this Act) is further amended—

(A) by striking out "and" at the end of paragraph (40);

(B) by striking out the period at the end of paragraph (41) and inserting in lieu thereof "; and"; and

(C) by inserting after paragraph (41) the following new paragraph:

"(42) provide (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for such entities also providing services under part A of title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such title, and (C) for payment of the portion of the costs of each such common audit of such an entity equal to the portion of the cost of the common audit which is attributable to the program established under this title and which would not have otherwise been incurred in an audit of the program established under title XVIII.".

(2)(A) The amendments made by paragraph (1) shall (except as otherwise is provided in subparagraph (B)) apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act, on or after the first day of the first calendar quarter which begins more than 30 days after the date of enactment of this Act.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by subsection (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature which begins after the date of enactment of this Act.

(c)(1) Section 505(a) of the Social Security Act is amended—

(A) by striking out "and" at the end of paragraph (14);

(B) by striking out the period at the end of paragraph (15) and inserting in lieu thereof "; and"; and

(C) by inserting after paragraph (15) the following new paragraph:

"(16) provides (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for such entities also providing services under part A of title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such part, and (C) for payment of the portion of costs of each such common audit of such an entity equal to the portion of the cost of the common audit which is attributable to the program established under this title and which would not have otherwise been incurred in an audit of the program established under title XVIII.".

(2) The amendments made by paragraph (1) shall apply to services provided, under a State plan approved under title V of the Social Security Act, on or after the first day of the first calendar quarter which begins more than 30 days after the date of enactment of this Act.

(d) The Secretary shall report to Congress, not later than March 31, 1981, on actions the Secretary has taken (1) to coordinate the conduct of institutional audits and inspections which are required under the programs funded under title V, XVIII, or XIX of the Social Security Act and (2) to coordinate such audits and inspections with those conducted by other cost payers, and he shall include in such report recommendations for such legislation as he deems appropriate to assure the maximum feasible coordination of such institutional audits and inspections.

ENCOURAGEMENT OF PHILANTHROPIC SUPPORT FOR HEALTH CARE

SEC. 33. Title XI of the Social Security Act is amended by inserting after section 1134 (as added by section 32 of this Act) the following new section:

"ENCOURAGEMENT OF PHILANTHROPIC SUPPORT FOR HEALTH CARE

"SEC. 1135. (a) It is the policy of the Congress that philanthropic support for health care be encouraged and expanded, especially in support of experimental and innovative efforts to improve the health care delivery system and access to health care services.

"(b)(1) For purposes of determining, under title XVIII or XIX, the reasonable costs of any service furnished by a provider of health services—

"(A) except as provided in paragraph (2), unrestricted grants, gifts, and endowments and income therefrom, shall not be deducted from the operating costs of such provider, and

"(B) grants, gifts, and endowment income designated by a donor for paying specific operating costs of such provider shall be deducted from the particular operating costs or group of costs involved.

"(2) Income from endowments and investments may be used to reduce interest expense, if such income is from an unrestricted gift or grant and is commingled with other funds, except that in no event shall any such interest expense be reduced below zero by any such income.".

STUDY OF AVAILABILITY AND NEED FOR SKILLED NURSING FACILITY SERVICES UNDER MEDICARE AND MEDICAID

SEC. 34. (a)(1) The Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the "Secretary") shall conduct a thorough study and investigation of the availability and need for skilled nursing facility services covered under part A of title XVIII of the Social Security Act and under State plans approved under title XIX of such Act.

(2) Such study shall include—

(A) an investigation of the desirability and feasibility of imposing a requirement that skilled nursing facilities (i) which furnish services to patients covered under State plans approved under title XIX of the Social Security Act also furnish such services to patients covered under part A of title XVIII of such Act, and (ii) which furnish services to patients covered under such title XVIII also to furnish such services to patients covered under such State plans,

(B) an evaluation of the impact of existing laws and regulations on skilled nursing facilities and individuals covered under such State plans and under part A of such title XVIII, and an evaluation of the extent to which existing laws and regulations encourage skilled nursing facilities to accept only title XVIII beneficiaries or title XIX recipients, and

(C) an investigation of possible changes in regulations and legislation which would result in encouraging a greater availability of skilled nursing services.

(3) In developing such study, the Secretary shall consult with professional organizations, health experts, private insurers, nursing home providers and consumers of skilled nursing facility services.

(b) Within 6 months after the date of enactment of this Act the Secretary shall complete such study and investigation and shall submit a full and complete report thereon, together with recommendations with respect to the matters covered by such study and investigation (including any recommendations for administrative or legislative changes), to the Committee on Finance of the Senate and to the Committee on Ways and Means and the Committee on Interstate and Foreign Commerce of the House of Representatives.

COVERAGE UNDER MEDICARE OF CERTAIN DENTISTS' SERVICE

SEC. 35. (a) Clause (2) of the first sentence of section 1861(r) of the Social Security Act is amended to read as follows: "(2) a doctor of dentistry or of dental or oral surgery who is legally authorized to practice dentistry by the State in which he performs such function, but only with respect to (A) a function (i) which he is legally authorized to perform as such by the State in which he performs such function, and (ii) which, if performed by an individual described in clause (1), would constitute physicians' services, or (B) the certification required by section 1814(a)(2)(E) of this Act,".

(b) The amendment made by subsection (a) shall be effective with respect to service provided on or after October 1, 1979.

COVERAGE UNDER MEDICARE OF OPTOMETRISTS' SERVICES WITH RESPECT TO APHAKIA

SEC. 36. (a) The first sentence of section 1861(r) of the Social Security Act is amended, in clause (4) thereof, by—

(1) inserting "(i)" immediately after "with respect to", and

(2) inserting immediately after "lenses,"

the following: ", and (ii) any function with respect to aphakia which he is legally authorized to perform as such by the State in which he performs such function,".

(b) The amendments made by subsection (a) shall be effective with respect to services provided on or after October 1, 1979.

STUDY OF CRITERIA EMPLOYED FOR CLASSIFYING A FACILITY AS A SKILLED NURSING FACILITY

SEC. 37. (a) The Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the "Secretary") shall conduct a special study, investigation, and review of the criteria presently employed in determining whether a facility is a "skilled nursing facility" as that term is used in paragraph (2) of section 1861(a) of the Social Security Act (relating to definition of "spell of illness"), with a view to determining, and recommending to the Congress, such modifications in such criteria as he may consider appropriate.

(b) The Secretary shall not later than December 31, 1980, submit to the Congress a full and complete report on such study, investigation, and review, together with his recommendations for any modification in the criteria referred to in subsection (a).

AUTHORITY FOR CERTAIN STATES TO BUY-IN COVERAGE UNDER PART B OF MEDICARE FOR CERTAIN MEDICAID RECIPIENTS

SEC. 38. Section 1843 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(i) Any State, which prior to the date of enactment of this subsection—

"(A) has not entered into an agreement under the preceding provisions of this section, may enter into such an agreement at any time within the twelve-month period which begins with the month following the month in which this subsection is enacted, and any such agreement shall conform to the modifications prescribed by the Secretary (as referred to in the third sentence of subsection (b)) and may, at the option of the State, contain any provision authorized under subsections (g) and (h) with respect to modifications of agreements with States entered into under the preceding provisions of this section; or

"(B) has entered into an agreement under the preceding provisions of this section which has not been modified pursuant to the authority contained in subsection (g) or (h), may within the twelve-month period which begins with the month following the month in which this subsection is enacted modify such agreement in like manner as if the date referred to in subsections (g)(1) and (h)(1) were the day following the close of such twelve-month period.".

HEALTH MAINTENANCE ORGANIZATIONS ENROLLING OVER 50 PERCENT MEDICARE OR MEDICAID RECIPIENTS

SEC. 39. Section 1903(m)(2)(C) of the Social Security Act is amended by striking out "the date the entity enters into a contract with the State under this title for the provision of health services on a prepaid risk basis" and inserting in lieu thereof "the date the entity qualifies as a health maintenance organization (as determined by the Secretary)".

SUMMARY: MEDICARE-MEDICAID ADMINISTRATIVE AND REIMBURSEMENT REFORM ACT OF 1979

Section 1.—Title.

Provides for the proposal to be called the "Medicare-Medicaid Administrative and Reimbursement Reform Act of 1979."

Section 2.—Criteria for Determining Reasonable Cost of Hospital Services.

The bill modifies the method of reimbursement for hospitals under the Medicare and Medicaid programs. Under the new method, to be effective with hospital reporting periods that begin after June 30, 1980, reimbursement for most of a hospital's inpatient routine costs (essentially costs other than such ancillary expenses as laboratory, X-ray, pharmacy, etc.) would be related to a target rate based on similar costs incurred by comparable hospitals.

This initial system, described more fully below, would be studied and extended on an as-ready basis. Based on recommendations of a proposed Health Facilities Costs Commission, a permanent system would be developed over time which would establish payment rates and provide incentive payments with respect to all hospital costs and to costs of other institutions and organizations which are reimbursed on a cost basis. Continuing efforts would be undertaken by the Commission to refine and improve the system of classification and comparison so as to achieve the greatest equity possible.

The Secretary would appoint the members of the new Health Facilities Costs Commission on or before January 1, 1980. The Commission would consist of 15 persons who are expert in the health facilities reimbursement area. At least three of the members would be representatives of hospitals and at least eight would be representatives of public (Federal, State and local) health benefits programs.

The method of reimbursement established by the bill for routine hospital costs would be as follows. Comparisons among hospitals would be made by:

1. Classifying hospitals in groups by bed size, type of hospital, rural or urban location, or other criteria established by the Secretary.

2. Including all routine costs (as defined in applying medicare routine cost limits under present law) except for the following variable costs: capital and related costs; costs of education and training programs; costs of interns, residents, and nonadministrative physicians; energy costs; and malpractice insurance costs. When classifying hospitals by type, hospitals which are primary affiliates of accredited medical schools would be a separate category, without regard to bed size.

A per diem target rate for routine operating costs would be determined for each hospital by:

1. Calculating the average per diem routine operating cost for each group of hospitals under the classification system (excluded would be newly-opened hospitals and hospitals which have significant cost differentials because they do not meet standards and conditions of participation as providers of services); and

2. Determining the per diem rate for each hospital in the group by adjusting the labor cost component of the group's average per diem routine costs for area wage differentials. In the first year of the program only, an adjustment would be allowed where the hospital can demonstrate that the wages paid to its employees are significantly higher than the wages other employees in the area are paid for reasonably compared work (as compared to the ratio for other hospitals in the same group and their areas).

Hospitals whose actual routine operating costs fell below their target rate would receive one-half of the difference between their costs and their target rate with the bonus payment limited to 5 percent of their target rate. In the first year, hospitals whose actual costs exceeded their target rate, but were no more than 115 percent of that rate, would be paid their actual costs. Those with costs above 115 percent of their target rate would have their reimbursement limited to 115 percent of the target rate.

In the second and subsequent years of the program, the hospital's maximum payment rate would be increased by the actual dollar increase in the average target rate for its group during the preceding year. In calculating the group averages, one-half of costs found excessive would be excluded from the calculation.

Adjustments to a hospital's target rate would be made for (1) changes in the hospital's classification; and (2) hospitals which manipulate their patient mix or patient flow, reduce services, or have a large proportion of routine nursing services provided by private-duty nurses. Also, a hospital would qualify for any higher target rate that is applicable to the hospitals placed in the bed-size category which contains hospitals closest in bed-size to its actual bed-size.

Exceptions to the target rates would be made for hospitals which demonstrate that their costs exceed their rates because of (1) low utilization justified by unusually high standby costs necessary to meet the needs of a particular area; (2) atypical cost patterns of newly opened hospitals; (3) changed services for such reasons as consolidation, sharing, and approved addition of services among hospitals (e.g., costs associated with low utilization of a new wing); and (4) greater intensity of patient care than other hospitals in the same category. Some hospitals have consistently shorter lengths-of-stay in treating patients than their group average for a reasonably similar mix of patients with comparable diagnoses. To the extent that a hospital can demonstrate that the shorter stays result from an "intensity" of service which makes it necessary for the hospital to incur additional costs, such additional costs per day, to the extent reasonable, should be recognized under the "intensity" exception provision.

Hospitals would be exempted from the proposed cost limits if: (a) the hospital is located in a State which has a hospital reimbursement control system which applies at least to the same hospitals and costs as are subject to the new reimbursement reform system; and (b) the State requests use of its own system and demonstrates to the satisfaction of the Secretary that, using the State's system, total medicare and medicaid reimbursable costs for hospitals in the State will be no greater than if the Federal system had been applicable. A State which exceeds, in the aggregate, the costs which would otherwise have been paid under the Federal programs for any two-year period that would be covered under the Federal limits beginning with the subsequent year. The amount of the excessive payments would be recouped over subsequent periods through appropriate reduction (not in excess of one percent annually) in the cost limits otherwise applicable.

States which obtain a waiver would be reimbursed for the medicare program's proportionate share of the cost of operating the State reimbursement control system. The State's medicaid program would pay its proportionate share of costs which would be matchable with Federal funds as an administrative expense.

Medicare and medicaid would also pay a proportionate share of startup costs of approved State reimbursement control systems. The Federal share of the startup costs would be the same proportion as the Federal payment for inpatient hospital costs in the State bears to the total inpatient hospital costs which are subject to the State system. For example, if the Federal Government pays, through medicare and medicaid, 40 percent of the total hospital costs in the State that are subject to the State system, it would be liable for 40 percent of the State program's startup costs.

Section 3.—Payments to Promote Closing and Conversion of Underutilized Facilities.

The bill provides for including in hospital reasonable cost payments. reimbursement for capital and increased operating costs associated with the closing down or conversion

to approved use of underutilized bed capacity or services in nonprofit short-term hospitals. In the case of for-profit short-term hospitals, reimbursement would be limited to increased operating costs. This would include costs which might not be otherwise reimbursable because of payment "ceilings", severance pay, "mothballing" and related expenses. In addition, payments could be continued for reasonable cost capital allowances in the form of depreciation or interest which would ordinarily be applied toward payment of debt outstanding and incurred in connection with the terminated beds. In the case of complete closing down of a hospital, payments would continue toward repayment of any debt, to the extent previously recognized by the program, and actually outstanding.

The Secretary would establish a Hospital Transitional Allowance Board which shall consider such payments. Appropriate safeguards are to be developed to forestall any abuse or speculation. Prior to January 1, 1983, not more than 50 hospitals could be paid a transitional allowance in order to permit full development of procedures and safeguards. This limited application will also provide Congress with an opportunity to assess the effectiveness and economic effect of this approach in encouraging hospitals to close or modify excess and costly capacity without suffering severe financial penalty.

Section 4.—Federal Participation in Hospital Capital Expenditures.

The bill provides for changes to be made in the current law limitations on medicare and medicaid payments related to hospital capital expenditures. These changes link the procedure directly to the Federal health planning law (Public Law 93-641) and require that the designated planning agency (the State Health Planning and Development Agency as designated under section 1521 of the Public Health Service Act) approve capital expenditures in excess of $150,000 as a condition of medicare and medicaid reimbursement for both capital and direct operating costs associated with those expenditures. The committee believes that regulations developed by the Department to implement this section should allow for speedy replacement of capital plant and equipment in certain emergency situations.

A special procedure is established for approval of proposed capital expenditures in metropolitan areas which include more than one State or jurisdiction. In such cases the designated planning agencies of all the States or jurisdictions in the area must approve the expenditure, or it would be considered disapproved for purposes of reimbursement, subject to review and reversal by the Secretary.

The bill amends Section 1122(g) of the Social Security Act to clarify that notice, approval and reimbursement penalty requirements contained in that section with respect to approval of health care facility capital expenditures do not apply to simple changes of ownership (either by purchase, or under lease or comparable arrangement) of existing and operational facilities which create no new beds or services.

Section 5.—Agreements by Physicians to Accept Assignments.

The bill provides incentives for physicians to accept assignments for all their Medicare claims. Under the bill there would be "participating" physicians, a concept employed by many Blue Shield plans.

A "participating" physician is an M.D. or D.O. who voluntarily agrees to accept the medicare reasonable charge, as payment in full for all services to all his medicare patients. Agreements would be cancellable or concluded on the basis of 30 days' notice. "Nonparticipating" physicians could continue to elect to use the assignment method of billing on a claim-by-claim basis, as under present law.

To expedite payment of claims from participating physicians, the bill provides that the Secretary would establish appropriate procedures and forms whereby: (1) such physicians may submit claims on one of various simplified bases and these claims would be given priority handling by the part B carrier; and (2) such physicians may obtain signed forms from their patients making assignment for all services furnished to them and authorizing release of medical information needed to review the claim.

The bill provides for the payment of an "administrative" cost-savings allowance of $1 per eligible patient to a participating physician covering all services included in a multiple billing listing. Two separate allowances would not be made for billing on two listings of items ordinarily included in a single visit or service; nor for different services which were provided to the same patient within a 7-day period. With respect to inpatient or outpatient hospital care, the administrative allowances would be payable only in the case of a surgeon or anesthesiologist, or attending physician or consultant whose principal office and place of practice is outside the hospital, and only where such physicians ordinarily bill and collect directly for their services. No administrative allowance would be payable in the case of claims solely for laboratory tests and X-rays undertaken outside of the office of the billing physician.

The committee expects the revised procedures to improve program efficiency and encourage more physicians to accept assignment. For example, if a physician who does not accept assignments today, and whose routine office visit charge is $10, became a "participating" physician, he would receive an extra $1 allowance for that visit plus probably save at least another $1 in billing, collection and office paperwork costs. In effect, his net practice income from that visit could increase by 20 percent as a result of "participation". The physicians with the lowest charges (often those in rural or ghetto areas) would benefit most from participation, as the cost-savings allowance and the office administrative cost reduction would represent a greater percentage of their charges.

Section 6.—Hospital-Associated Physicians.

Another section preserves the eligibility of radiologists, pathologists and anesthesiologists to be paid by Medicare and Medicaid on a fee-for-service basis for patient care services which they personally perform or personally direct. The bill provides that reimbursement for the portion of his services which the physician may perform for the hospital as an executive, educator or supervisor would be paid on a basis related to what would be paid in the case of a salaried physician performing similar work for an institution. Percentage or lease arrangements would ordinarily not be recognized for Medicare and Medicaid reimbursement purposes. These provisions were developed with the help of representatives of the American College of Radiology and the American Society of Anesthesiologists. This section will avoid excessive payment to some physicians for services which they do not personally provide.

The provision in present law which permits 100 percent payment for inpatient radiology and pathology tests, instead of 80 percent as is the case with all other physician services under Medicare, would be restricted to physicians who agree to become "participating physicians."

Section 7.—Use of Approved Relative Value Schedules.

The bill authorizes the Secretary to approve the use of terminology systems and relative value schedules by physicians in billing Medicare, Medicaid and for other purposes. The purpose of this amendment is to establish a common language to describe the kinds of services that are covered under public and private health benefits plans and to provide for a more rational basis for evaluating the reasonableness of fees.

Section 8.—Teaching Physicians.

The bill would extend, from October 1, 1978 to October 1, 1979, the implementation date for section 227 of Public Law 92-603. This provision of present law is intended to make it clear that, under Medicare and Medicaid, fees-for-service should be paid for medical care in teaching hospitals only where a bona fide private doctor-patient relationship exists. A further delay in the provision's implementation is needed to afford the Secretary of HEW additional time to consult with members of the medical education community and publish the necessary regulations.

Section 9.—Certain Surgical Procedures Performed on an Ambulatory Basis.

The bill would permit medicare reimbursement on the basis of an all-inclusive rate to free-standing ambulatory surgical centers and to physicians performing surgery in their offices for a listed group of surgical procedures. Such procedures include those which are often provided on an inpatient hospital basis but can, consistent with sound medical practice, be performed on an ambulatory basis. The rate would encompass reimbursement for the facility, physician and related services, including normal pre- and post-operative visits and routine laboratory and other diagnostic tests usually associated with the procedure.

The list of procedures eligible for such reimbursement would be specified by the Secretary following consultation with the National Professional Standards Review Council and appropriate medical organizations including specialty groups. Subsequently, procedures could be added or deleted as experience dictated.

The provision will encourage performance of surgery in generally lower cost ambulatory settings, where appropriate, instead of the more expensive hospital inpatient setting. It anticipates that States will want to monitor the effectiveness of the new benefit with a view toward making similar modifications in their medicaid programs.

Normal review of such claims by Professional Standards Review Organizations, carriers and other present review mechanisms should work to safeguard against inappropriate performance of procedures on an ambulatory basis.

Currently, medicare can reimburse the physician for his professional services in any setting. Also, the institutional costs of ambulatory surgery in a hospital outpatient department can be reimbursed. However, a charge for the use of special surgical facilities in a physician's private office or a free-standing surgical facility that is not hospital affiliated is not reimbursable.

Under the bill the physician performing surgery in his office would be compensated for his special, surgical overhead through the all-inclusive rate if he accepts an assignment; there would be no deductible and coinsurance applied in such cases.

Similarly, reimbursement would be provided for the use of the facilities in an ambulatory surgical center, without deductible or coinsurance, where the center accepts assignment. In the case of an ambulatory surgical center, the overhead allowance could be paid directly to the center and the professional fee could be paid directly to the physician. The deductible and coinsurance would be waived for the physician fees for services performed in connection with listed surgical procedures in hospital outpatient departments and other ambulatory surgical

centers where the physicians accept assignment.

The overhead factor is expected to be calculated on a prospective basis (and periodically updated) utilizing sample survey and similar techniques to develop reasonable estimated overhead allowances for each of the listed procedures which take account of volume (within reasonable limits). The committee does not intend that an individual physician's financial records be audited in order to determine his specific overhead allowance. Again, what is intended is a reasonable estimate of such costs for physicians generally performing such procedures.

Section 10.—Criteria for Determining Reasonable Charge for Physicians' Services.

Medicare currently utilizes more than 200 different "localities" throughout the country for purposes of determining part B "reasonable" charges. For example, one State has 28 different localities. The committee notes that this has led in many instances to marked and unjustified disparities in areas of the same State in the prevailing charges for the same service. Additionally, under present law, all prevailing charges are annually adjusted upward to reflect changes in the costs of practice and wage levels. The effect of present law is to further widen the dollar gap between prevailing charges in different localities.

The bill provides for the calculation of statewide median charges (in any State with more than one locality) in addition to prevailing charges in the locality. To the extent that any prevailing charge in a locality was more than one-third higher than the statewide median charge for a given service, it would not be automatically increased each year. This provision would not reduce any prevailing charges currently in effect. However, it would operate, to the extent given charges exceed the statewide average by more than one-third, to preclude automatically increasing those charges.

Under existing law, medicare allows a new doctor to establish his customary charge at not greater than the 50th percentile of prevailing charges in the locality.

The bill would permit new physicians in localities, designated by the Secretary as physician shortage areas, to establish their customary charges at the 75th percentile of prevailing charges (rather than the 50th) as a means of encouraging doctors to move into these communities. It would also permit doctors presently practicing in shortage areas to move up to the 75th percentile on the basis of their actual fee levels.

Section 11.—Payment for Certain Antigens Under Part B of Medicare.

The bill amends current law to permit payment under Medicare for the preparation by an allergist of a reasonable supply of antigens dispensed or administered under the supervision of a physician.

Current Medicare law does not permit reimbursement for an antigen prepared by a physician unless he also administers it. However, it is a common practice, especially in rural areas, for other dispensary practices to be followed—e.g., for a doctor to refer a patient to an allergist who prepares a supply of antigens for the referring doctor's use.

Section 12.—Payment on Behalf of Deceased Individuals.

The bill would permit payment by medicare to be made to the spouse or other legal representative of a deceased medicare beneficiary on the basis of a nonreceipted bill for care.

Under present law, medicare can only pay a claim on behalf of a deceased beneficiary where the physician accepts an assignment or where the family has actually paid the bill. Where a physician refuses an assignment families have encountered difficulties in raising sufficient cash to pay the bill in order to be eligible for payment by medicare.

Section 13.—Hospital Providers of Long-Term Care Services.

Many rural hospitals are the only source of acute care in their communities and as such are a necessary and vital resource to the people they serve. Although many of these hospitals have recognized that the use of their acute care beds for needed long-term care services during periods of excess bed capacity would be desirable, current program participation requirements under medicare and medicaid have discouraged these hospitals from doing so.

Under present law, a hospital-based skilled nursing facility can participate in medicare and medicaid only if the facility is an identifiable, separate unit within the institution.

This requirement was developed primarily to establish a separate cost center for purposes of program reimbursement. However, it has proven to be administratively burdensome and financially detrimental to many small hospitals. In addition, the identification of specific beds, staffing and other program requirements have not allowed sufficient flexibility in meeting episodic demand for acute beds—an important consideration when working with the small total bed complement characteristic of many rural hospitals.

The bill establishes a simplified cost reimbursement formula which would permit small rural hospitals to avoid the requirement for separate patient placement within the facility and separate cost finding.

Reimbursement for routine SNF services under medicare would be at the average rate per patient-day paid for routine services during the previous calendar year under medicaid to SNFs located in the State in which the hospital is located. Reimbursement under medicaid would be at the rate paid to SNFs and ICFs in the previous year. Reimbursement for ancillary services would be determined in the same manner as under present law.

Reimbursement under the new formula would be allowed in a hospital which (1) has less than 50 beds; (2) is located in a rural area; and (3) has been granted a certificate of need for the provision of long-term-care services.

Since the general staffing pattern in small rural hospitals is relatively fixed due to minimum staffing requirements, there should be opportunities for providing needed long-term-care services at very little additional cost.

The proposed new reimbursement method is optional and hospitals may continue to elect to establish distinct part SNFs as provided for under existing law. In addition, it is not the intention that this provision prohibit States from continuing to use other approved reimbursement methods under State medicaid plans.

The bill provides, that within 3 years after enactment, the Secretary shall report to Congress concerning whether a similar provision should be extended to other hospitals where there is a shortage of long-term-care beds, regardless of number of beds or geographic location.

Section 14.—Reimbursement Rates Under Medicaid for Skilled Nursing Facilities and Intermediate Care Facilities.

The bill allows States the option, when computing reimbursement rates under medicaid to a SNF or ICF, to include reasonable allowances for the facility in the form of incentive payments related to efficient performance.

Present law requires States participating in medicaid to pay SNFs and ICFs on a reasonable cost-related basis. This requirement, added by section 249 of the Social Security Amendments of 1972, gives States the option of using medicare's reasonable cost reimbursement formula for purposes of reimbursing SNFs and ICFs or developing other reasonable cost-related methods of reimbursement acceptable to the Secretary.

There has been considerable controversy over whether the reimbursement mechanisms developed under section 249 may include an allowance in the form of incentive payments related to efficient performances by providers.

There was no intent, in enacting section 249, to preclude such allowances if they are related to efficient provider performance. The proposed clarifying provision would insure that States have the option to include incentive allowances related to efficient performance in reimbursement formulas under section 249 of Public Law 92-603.

Section 15.—Medicaid Certification and Approval of Skilled Nursing and Intermediate Care Facilities.

The bill provides that final determinations of basic eligibility of skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) under medicaid be made by the Secretary.

Under present law the State medicaid agency makes the decision as to whether a SNF or ICF applying to participate in the medicaid program only is qualified to participate in the program. However, for a SNF participating in medicare only, or both medicare and medicaid, the Secretary makes the decision as to whether the facility is qualified to participate in the programs.

State certification of SNFs and ICFs results in lack of uniformity in the application of the Federal standards to which all such facilities are subject.

The bill would establish a uniform health care facility certification process for medicare and medicaid long term care facilities. As under present law, the appropriate State health agency would survey facilities wishing to participate in either (or both) medicare or medicaid. The bill provides, however, that the Secretary make a determination as to eligibility and advise the State if a facility meets the basic requirements for participation as a medicaid SNF or ICF. The Secretary would specify the length of time (not to exceed 12 months) for which approval could be granted.

Facilities dissatisfied with the findings of the Secretary would be entitled to a hearing by the Secretary and to judicial review.

Section 16.—Visits Away From Institution By Patients of Skilled Nursing or Intermediate Care Facilities.

Until recently, HEW policy has limited Federal payments for the cost of reserving beds in skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) for medicaid patients temporarily away from the institution. The regulations permitted Federal funds to be used to reserve a bed for 15 days each time a patient was in a hospital for acute care. They also permitted Federal contributions for a total of 18 days during a 12-month period when patients were visiting their homes or other places for therapeutic reasons.

The Health Care Financing Administration has amended the regulations to remove all limitations on Federal funding of therapeutic absences. Currently, however, there are no requirements in existing law setting forth policies with respect to reserving beds in SNFs and ICFs.

The bill provides that visits outside of the SNF or ICF would not necessarily constitute conclusive proof that the individual is no longer in need of the services of the SNF or ICF. However, the length and frequency of visits must be considered, together with other evidence, when determining whether the individual is in need of the facility's

services. The provision thus prohibits the Secretary from imposing numerical limits. Such matters should be left to professional medical judgment.

Section 17.—Notification to State Officials.

The bill provides, under certain circumstances, for notification of the Governor and appropriate committee chairmen in a State legislature of any audits, quality control performance reports, deficiencies, or changes in Federal matching payments affecting programs authorized under the Social Security Act.

There have been instances where the Governors and chairmen of the appropriate legislative and appropriation committees in State legislatures have not been informed on a timely basis of deficiencies or potential compliance issues involving Federal-State programs authorized under the Social Security Act.

The bill provides that if the Secretary notifies a State of any audits, quality control performance reports, deficiencies, or changes in Federal matching payments under programs authorized under the act, simultaneous notification would also be made to the Governor of the State and the respective chairmen of the legislative and appropriation committees of that State's legislature having jurisdiction over the affected program.

Section 18.—Repeal of Section 1867.

The bill terminates the Health Insurance Benefits Advisory Council.

The original 1965 medicare legislation provided for the establishment of the Health Insurance Benefits Advisory Council (HIBAC). This Council was to provide advice to the Secretary on matters of general policy with respect to the administration of medicare. The Social Security Amendments of 1972 modified the role of the Advisory Council so that its function would be that of offering suggestions for the consideration of the Secretary on matters of general policy in both the medicare and medicaid programs.

In view of the establishment of other advisory groups, and the Secretary's authority to establish ad hoc advisory bodies, the bill would terminate HIBAC.

Section 19.—Procedures for Determining Reasonable Cost and Reasonable Charge.

The bill provides, except under certain specified circumstances, that reimbursement to contractors, employees or related organizations, consultants, or subcontractors at any tier would not be recognized where compensation or payments (in whole or part, in cash or kind) as based upon percentage arrangements.

Such arrangements can take several forms. For example, some involve business contracts for such support services as computer and data processing, financial and management consulting, or the furnishing of equipment and supplies to providers of health services, such as hospitals. Charges for such services are subsequently incorporated into the cost base against which medicare and medicaid make their payment determinations.

The contracts for these support services specify that the remuneration to the suppliers of the services shall be based on a percentage of the gross or net billings of the health care facilities or of individual departments. Other examples involve landlords receiving a percentage of provider gross (or net) income in return for office space, equipment, shared waiting rooms, laboratory services, custodial and office help and administrative services. Such arrangements can be highly inflationary and add costs to the programs which may not reflect actual efforts expended or costs incurred.

The prohibition against percentage arrangements contained in this section of the bill would include payment of commissions and/or finders' fees and lease or rental arrangements on a percentage basis. It would also apply to management or other service contracts or provision of services by collateral suppliers such as pharmacies, laboratories, etc. The percentage prohibition would flow both ways either from the supplier or service agency back to the provider or organization, or from the original provider or organization to the supplier or service agency.

There is no intent, however, to interfere with certain types of percentage arrangements which are customarily considered normal commercial business practices such as the Commission paid to a salesman. Further, the bill does not prohibit reimbursement for certain percentage arrangements such as a facility management contract where the arrangement contributes to efficient and economical operation.

For example, under some existing management contracts, the contractor receives both a percentage of operating expenses as a base management fee, and a share of the net revenues of the institution after all costs have been met. Where the contractor's percentage share of net revenues exceeds the percentage on which the base management fee is calculated, the contractor could have a strong incentive to contain operating expenses. Of course, under such circumstances, the reasonableness of the percentages applicable to the operating expenses would have to be considered in terms of comparison with the costs incurred in the management and/or operation of reasonably comparable facilities which do not utilize such contracts.

Section 20.—Ambulance Service.

Under present law, medicare will pay for ambulance services to the nearest participating institution with appropriate facilities where the use of other means of transportation is contraindicated by the individual's condition. The term "appropriate facilities" means that the institution is generally equipped to provide the needed hospital or skilled nursing care for the illness or injury involved. The individual physician who practices in a hospital is not a consideration.

Occasionally, the nearest hospital with appropriate facilities does not have a physician available to undertake the required specialized care. The present alternatives are to bring the physician to the patient—a possible misuse of physician time—or to transport the patient to the more distinct facility at his own expense.

The bill provides for medicare reimbursement for ambulance services to a more distant hospital when the nearest hospital does not have staff qualified to undertake the required care.

In some areas of the country, particularly rural areas, radiation for cancer therapy is provided by radiation clinics rather than in a hospital. In these areas patients who require transportation by ambulance—where other forms of transportation are medically contraindicated—to a radiation clinic cannot qualify for medicare reimbursement. It is intended that the ambulance benefit be extended to cover patients who require ambulance transportation to receive radiation therapy in clinics in areas where the treatment is not available in a hospital.

Section 21.—Grants to Regional Pediatric Pulmonary Centers.

This section of the bill is identical (except for effective dates) to an amendment approved by the Senate in 1972.

The bill authorizes up to $5 million annually for grants to public or nonprofit private regional pediatric pulmonary centers which are part of (or affiliated with) institutions of higher learning. These grants are to assist institutions in the training of health care personnel in the prevention, diagnosis, and treatment of respiratory diseases and providing needed services for children and young adults suffering from such diseases.

Section 22.—Applicability of Human Experimentation Provision for Medicare and Medicaid.

The bill waives requirements of the human experimentation statute which may otherwise be held applicable for purposes of Medicare and Medicaid. For example, the bill waives such requirements with respect to coverage, or copayment, deductibles or other limitations on payment for services.

The bill further provides that the Secretary, in reviewing any application for any experimental, pilot or demonstration project pursuant to the Social Security Act, would apply any appropriate requirements of the human experimentation law and regulations in making his decision on whether to approve the application.

The provision would apply only to Medicare and Medicaid reimbursement or administrative activities not designed to directly experiment with the actual diagnosis or treatment of patients.

Section 23.—Disclosure of Aggregate Payments to Physicians.

The bill prohibits the Secretary of HEW from routinely releasing medicare information, and provides that State agencies shall not be required to release medicaid information, relating amounts paid to physicians under the respective programs, except as otherwise specifically required by Federal law.

Recent disclosures of physicians receiving large payments under medicare have served unjustifiably to embarrass physicians who serve a large number of elderly patients. The disclosures have also been characterized by a high degree of inaccuracy which has unfairly embarrassed some physicians.

Section 24.—Resources of Medicaid Applicant to Include Assets Disposed of at Substantially Less than Fair Market Value.

The bill requires States to deny medicaid eligibility in cases where an otherwise ineligible aged, blind, or disabled person disposes of significant assets by either giving them away or selling them for less than fair market value in order to establish medicaid eligibility.

Under present law, States which use the SSI criteria in determining medicaid eligibility for the aged, blind, and disabled may not impose transfer of assets restrictions on those applicants. Thus, an applicant who wants medicaid coverage can transfer assets which could be applied to the cost of medicaid-financed services and immediately become eligible for medicaid. This situation damages program credibility by allowing relatively well off individuals to become eligible for medicaid. It also increases program costs, especially for expenditures for institutional care. The aged, blind, and disabled account for some 64 percent of all program expenditures. They are most likely to need hospital, skilled nursing, and intermediate care facility services which comprise two-thirds of medicaid benefit costs.

Some 25 to 30 States are currently imposing restrictions on the transfer of assets on some medicaid groups but not on others. Title IV-A of the act does not prohibit such State eligibility conditions. Further, those States which choose to use the more restrictive standards for medicaid eligibility for the aged, blind, and disabled rather than the SSI criteria can impose the eligibility condition if they did so in January 1972.

The only way a State can impose restrictions on asset transfers by SSI recipients is to use the more restrictive standards of medicaid eligibility for the aged, blind and disabled permitted under section 1902(f) of the Social Security Act. However, most States

do not choose this option because they either contract with the Secretary (the Social Security Administration) under section 1634 of the Social Security Act to do medicaid eligibility determinations of SSI recipients, or rely on the SSI eligibility lists transmitted from the Social Security Administration for making their own medicaid eligibility determinations.

The bill requires States to deny eligibility for medicaid in cases where an otherwise eligible aged, blind, or disabled person disposes of significant assets by giving them away or selling them for substantially less than their fair market value in order to establish medicaid eligibility. Any such transaction will be presumed to be for the purpose of establishing medicaid eligibility unless and until the individual submits adequate evidence to rebut that presumption. States may be allowed some flexibility with regard to procedures which demonstrably are not cost/beneficial, but States will be required to make a good-faith effort to enforce this requirement. Where a State finds that a disposal of assets has occurred, the difference between the fair market value of the asset and the actual amount the individual received for it will continue to be considered as his asset for purposes of medicaid eligibility for a period of 12 months.

This authority would be administered by the States even though other elements of medicaid eligibility may be determined by the Social Security Administration under the agreements entered into pursuant to section 1634 of the Social Security Act. It is expected, however, that the Social Security Administration would agree to reasonable State requests for referral of SSI applicants to appropriate State or county agencies for determination of this additional eligibility factor.

The provision is aimed at abusive situations where assets are sold for substantially less than their fair market value. It is not intended, for example, that the provision would be used to call into question the sale of a piece of land for $1,000 or $2,000 in which the sale price may fall short of the agency's estimate of fair market value by $100 or $200.

Section 25.—Rate of return on net equity for nonprofit hospitals.

The bill changes the allowed rate of return on for-profit hospitals' net equity, which under present law is equal to 1½ times the current rate of return on social security trust funds. The new rate of return multiplier would be: 2½ times for hospitals entitled to an incentive payment under the incentive reimbursement system in section 2 of the bill; 2 times for hospitals that are reimbursed only their reasonable costs; and 1½ times for hospitals with costs in excess of their routine cost limits. The new rates of return would become effective at the same time as the new incentive reimbursement system—i.e., July 1, 1980.

Section 26.—Deductible not applicable to expenses for certain independent laboratory tests.

Legislation enacted in 1972 (section 279 of Public Law 92-603) was designed to avoid the unreasonably high administrative costs that independent laboratories and the medicare program incur in the billing and processing of typically inexpensive diagnostic tests. That provision was intended to reduce these billing and processing costs by authorizing the Secretary of HEW to negotiate payment rates with individual laboratories which medicare would pay in full, without any need for the laboratory to bill the patient for the $60 deductible and 20 percent copayment amounts. The negotiated rates could be no higher than medicare would have paid in the absence of the new provision.

The new billing procedure was never utilized because, as a result of a drafting error, the $60 deductible was retained. Thus, since laboratories still have to bill patients for deductible amounts, and since medicare must still determine each patient's deductible status, the savings to laboratories and medicare cannot now be achieved.

The bill waives the $60 deductible in applying the special laboratory billing procedure, as was intended by section 279 of Public Law 92-603.

Section 27.—Payment for laboratory services under medicaid.

The bill allows a State to purchase laboratory services for its medicaid population through competitive bidding arrangements for a 3-year experimental period.

The committee notes that the Comptroller General, in a July 1, 1978, report to the Congress, recommended that States be given greater latitude in paying for independent laboratory services under medicaid. States have been restrained in adopting cost-saving contract bidding and negotiated rates with laboratories by an interpretation of the present "freedom of choice" provision. That provision was intended to permit medicaid recipients to choose from among any qualified doctors, drugstores, etc. It was not intended to apply to the types of care or services, such as laboratory services, which the patient ordinarily does not choose.

The committee bill allows a State to purchase laboratory services for its medicaid population through competitive bidding arrangements for a 3-year experimental period. Under this provision, services may be purchased only: (1) from laboratories meeting appropriate health and safety standards; (2) no more than 75 percent of the charges for such services are for services provided to medicare and medicaid patients; and (3) only if the laboratories charge the medicaid program at rates that do not exceed the lowest amount charged to others for similar tests. The bill would also make conforming changes in title XIX to provide that medicaid payments generally may be made only to clinical laboratories meeting applicable standards.

Section 28.—Confidentiality of PSRO Data.

In authorizing the PSRO program in 1972, the Congress set forth principles, in section 1166 of the Social Security Act, that were to serve as the basis for regulations governing both the disclosure and the confidentiality of information acquired by PSRO's in the exercise of their duties.

Confidentiality is critical to the success of PSRO's because they rely on voluntary service by local physicians. Should all data acquired by PSRO's be disseminated without safeguards, recruitment of physicians to perform PSRO functions would become increasingly difficult. Moreover, the intent of peer review, as opposed to Government regulation, is to allow the profession to attempt to regulate itself with some degree of privacy and candor. In addition, subjecting PSRO's to the Freedom of Information Act (FOIA) would result in increased administrative burdens, large additional expenses for the defense of lawsuits and great uncertainty and delay in the performance of PSRO functions.

However, on April 27, 1978, the U.S. District Court for the District of Columbia held that a PSRO is an "agency" of the Federal Government for purposes of the FOIA and is thus subject to its disclosure requirements of this later legislation. This decision, which is currently being appealed, means that the data and information in control of the PSRO must be disclosed, on request, unless the particular information to be protected is specifically identified.

Therefore, the bill provides for the confidentiality of PSRO information that identifies an individual patient, practitioner, provider, supplier or reviewer. As under section 1166, as presently worded, information may be disclosed to the extent necessary to carry out program purposes, to assist with the identification of fraudulent and abusive activities, and to assist in the conduct of health planning activities.

It should be noted that the Secretary of HEW in his regular review of PSRO performance can, under present law, evaluate the review activities—including practitioner profiles of practice—and thus safeguard against any general indiscriminate or willful action or inaction by a given PSRO with respect to practitioners.

Section 29.—Repeal of 3-day hospitalization requirement and 100-visit limitation for home health services.

The bill removes the provision in existing law that limits medicare home health benefits to 100 visits per spell of illness under part A and 100 visits per year under part B. In addition, the bill removes the requirement that a beneficiary has to be an inpatient in a hospital for at least 3 days before he can qualify for part A home health benefits.

Under present law, a beneficiary is eligible for 100 home health visits per spell of illness under part A of medicare following an inpatient stay in a hospital of at least 3 days. Beneficiaries are also eligible for 100 home health visits per calendar year under part B of medicare whether or not they had been hospitalized previously. By removing the numerical limit on home health visits and the 3-day prior hospitalization requirement, the committee believes that the home health benefit will become more widely available to eligible persons in need of such care.

Section 30. Payment for durable medical equipment.

Under the medicare law, reimbursement for the rental or purchase of durable medical equipment is based largely on the supplier's customary charge for the item and on the prevailing charge for the equipment in the locality. Medicare has experienced problems with this method of reimbursement because of the lack of uniformity in suppliers' billing and charging practices; differences in the level of services offered by different suppliers; the different approaches medicare carriers follow in calculating allowances for medical equipment; and because equipment charges are not set in a broadly competitive marketplace.

The bill establishes a new reimbursement methodology for medical equipment intended to correct these problems. Under the new method, reasonable charges for durable medical equipment would be calculated on a prospective basis and would take into account, in addition to the customary charges, the acquisition costs of the equipment, appropriate overhead (considering the level of delivery services and other necessary services provided by the supplier), and a reasonable margin of profit.

An additional problem has arisen as a result of the provision of present law which authorizes lump-sum payments by medicare for durable medical equipment where purchase would be more economical than rental. In these, cases the patient is responsible for paying (in addition to any deductible and coinsurance amounts) any difference between the supplier's charge for the item and the medicare allowable charge. This difference can be substantial since the medicare allowable charge is based on charge levels as they existed from 12 to 24 months in the past. The bill would eliminate this lag where the medicare allowable charge is calculated in accordance with the new methodology by permitting the allowable charges to be calculated (no less often than annually) on a prospective basis.

Section 31.—Development of uniform claims forms for use under health care programs.

The bill requires HEW to adopt, to the extent feasible, standardized claims forms for

medicare and medicaid within 2 years of enactment. Such forms could vary in a given State for medicaid if the Secretary determined that, in that State, a uniform national medicare-medicaid claims forms could not be utilized.

The bill requires the Secretary, in carrying out the requirements of this section, to consult with those charged with the administration of other Federal health care programs, with other organizations that pay for health care, and with providers of health services to facilitate and encourage maximum use by other programs of the uniform claims forms. The bill further requires the Secretary to report to the Congress within 21 months of enactment on: (1) what actions he will take pursuant to this section; (2) the degree of success in encouraging third parties generally to adopt uniform claims forms, and (3) his recommendations for legislative and other changes needed to maximize the use of such forms.

Section 32.—Coordinated Audits Under the Social Security Act.

The duplication of identical or similar auditing procedures used for the purpose of determining reimbursement under various Federal health benefit programs is costly to both the programs and the entity (such as a hospital, skilled nursing facility, or home health agency) participating in the program.

The bill therefore requires that, if an entity provides services reimbursable on a cost-related basis under title XVIII and titles XIX or V, audits of books, accounts, and records of that entity for purposes of the State programs are to be coordinated through common audit procedures with audits performed for the purposes of reimbursement under title XVIII. Where a State declines to participate in such common audits, the Secretary is to reduce payments that would have been made to the State under titles V or XIX by the amount attributable to the duplicative State audit activity. A State participating in the common audit procedure would continue to receive Federal matching for administrative costs associated with any additional or supplemental audit data or audits that may be necessary under their medicaid and maternal and child health programs.

Section 33.—Encouragement for Health Care of Philanthropic Support.

Under present medicare policy, in determining the reasonable costs of services furnished by a provider of health services, unrestricted grants, gifts and income from endowments are not deducted from reimbursable costs of the provider. The bill provides a statutory base for this policy.

Section 34.—Study of Availability and Need for Skilled Nursing Facility Services Under Medicare and Medicaid.

The bill directs the Secretary of HEW to conduct a study of the availability and need for skilled nursing facility services under the Medicare and Medicaid programs. The study would consider the desirability of requiring facilities that wish to participate in one program to participate in both. The study would also investigate possible changes in regulations and legislation which would result in encouraging a greater availability of skilled nursing services.

In developing the study, the Secretary would consult with professional organizations, health experts, private insurers, nursing home providers and consumers of skilled nursing facility services. A report on the Secretary's findings and recommendations would be due six months after the date of enactment.

Section 35.—Coverage Under Medicare of Certain Dentists' Services.

The bill extends the coverage of dental services under medicare to include any services performed by a doctor of dental surgery or of dental medicine which he is legally authorized to perform in cases where the services would be covered if performed by a physician.

Under present law, medicare covers the services of dentists when they are performed by a licensed doctor of dental or oral surgery only with respect to (1) surgery related to the jaw or any structure contiguous to the jaw, or (2) the reduction of any fracture of the jaw or any facial bone. The law, therefore, excludes from coverage certain nonsurgical procedures which dentists and oral surgeons are professionally trained and licensed to perform even though the same services are covered when performed by a physician.

Section 36.—Coverage Under Medicare of Optometrists' Services With Respect to Aphakia.

The bill authorizes medicare part B reimbursement to optometrists for covered services related to aphakia which are within the scope of licensed optometric practice.

Current medicare law provides reimbursement for diagnosis and treatment of the diseases of the eye when such services are provided by physicians. Certain diseases of the eye result in surgical removal of the lens. The resulting condition, i.e., absence of the lens of the eye, is known as aphakia. Eyeglasses (or contact lenses) which serve as the prosthetic lens for aphakia are covered under the program. In addition to physicians, optometrists are reimbursed under the program for services to aphakic patients. These reimbursable services are limited, however, to dispensing services in connection with the actual fitting and provision of prosthetic lenses. Section 109 of Public Law 94-182 required HEW to conduct a study concerning the appropriateness of medicare reimbursement of services performed (but not presently reimbursed) by optometrists in providing prosthetic lenses for patients with aphakia. In a report transmitted to the Congress on January 12, 1977, HEW recommended that those covered services related to aphakia and within the scope of optometric practice be reimbursable under part B of medicare when provided by optometrists. The bill incorporates this recommendation.

Section 37.—Renewal of Benefits.

Under present law, a beneficiary must remain, for 60 consecutive days, out of an institution which is determined to be primarily engaged in providing skilled nursing care and related services in order to renew his medicare eligibility for additional days of hospital and skilled nursing facility benefits. Regulations of the Secretary establish the criteria which define the institutions where patients cannot renew benefit eligibility. In general these institutions consist of: all skilled nursing facilities which participate in medicare and medicaid, some of the intermediate-care facilities that participate in medicaid, and additional nursing care institutions that participate in neither program.

The intent of the provision was to permit beneficiaries to renew their benefit eligibility once they have ended a spell of illness (and, thus, for at least 60 days, no longer needed skilled nursing).

However, beneficiaries in skilled nursing institutions who have exhausted their benefits are sometimes prevented from renewing their eligibility even though they actually receive little or no skilled care. This is especially a problem in States which require the availability of nurses in institutions that are largely for patients who do not need skilled nursing.

The bill directs the Secretary to review current procedures for applying the benefit-renewal criteria to make sure that they are not too restrictive. The Secretary would report his findings and conclusions to the Congress within 9 months of enactment, together with any legislative recommendations he may wish to propose.

Section 38.—State Medicare "Buy-In."

The medicare law gave States until January 1, 1970, to request enrollment of their public assistance beneficiaries in part B of the medicare program. States that entered into these so-called "buy-in" agreements pay the part B premiums for the public assistance enrollees. The "buy-in" provision was designed to encourage the highest possible participation of the elderly in the part B program. Alaska, Louisana, Oregon, Puerto Rico, and Wyoming did not make timely arrangements to enroll their public assistance beneficiaries in the part B program.

The bill would give the States that wish to do so an additional period of 12 months in which they could elect to make the necessary coverage arrangements.

Section 39.—Health Maintenance Organizations Enrolling Over 50 percent Medicare or Medicaid Recipients.

Present law prohibits a health maintenance organization (HMO), which contracts with a State to provide prepaid health services under Medicaid, from having more than one-half of its members covered by Medicaid and/or Medicare. HMO's are given 3 years from the date of their contract with the State Medicaid program to meet this condition.

Occasionally, because of administrative delays, an HMO may have difficulty signing up nonmedicaid/medicare members by the end of that 3-year period, and thus be forced to reduce its coverage of Medicaid beneficiaries in order to achieve the 50-50 requirements.

This situation would be remedied under the bill by providing that HMO's contracting with States to provide health services under Medicaid would have up to 3 years after the date the HMO is formally found qualified by the Department of Health, Education and Welfare to meet the 50-percent requirement.

Mr. TALMADGE. Mr. President, I yield such time as he may desire to the distinguished Senator from Kansas, the ranking minority member of our subcommittee.

Mr. DOLE. Mr. President, I thank my distinguished colleague.

This is another demonstration of leadership on the part of the distinguished senior Senator from Georgia. It is a matter that has been under consideration, as the Senator just pointed out, not just for a month or a year, but is the result of years and years of tireless efforts on the part of the distinguished Senator from Georgia.

Mr. President, I am pleased to join with the distinguished chairman of the Finance Health Subcommittee, Senator TALMADGE, in introducing legislation providing constructive reform of the administrative and reimbursement mechanisms for the medicare and medicaid programs. As the ranking Republican member of the Finance Committee and its Health Subcommittee, I have a particular interest in seeing that meaningful improvements are made in these programs. Not only do medicare and medicaid present an inpenetrable maze to the providers serving program beneficiaries, they are now a serious burden on the Federal Budget. The legislation introduced today is similar to bills introduced in both the 94th and 95th Congresses. The problems associated with escalating health care costs have increased in recent years, making passage that much more critical.

COST OF HEALTH CARE

During the past 10 years, the number of poor, disabled, and aged enrolled in governmental health programs have greatly increased. The costs of providing benefits for these people also continue to increase. Federal, State, and local governments are now facing serious budgetary problems because of the growing amount of health care services purchased by governmental programs and the rapidly increasing costs of those services; 12.5 percent of our Federal taxes are now spent for health care. Increasing hospital costs present one of the most serious problems. Between 1975 and 1977, hospital costs increased between 14 and 20 percent annually.

It is important to note that there has been an improvement in this situation during the past year due to the voluntary efforts of the health care industry to hold down their costs; but the Government must also do its part by managing its programs in a cost-efficient manner.

During the last congressional session, I indicated my support of voluntary efforts to control hospital costs. I continue to believe that we should avoid heavy-handed Federal regulation whenever possible. The health care industry has devised a program to slow the rate of growth in national health care expenditures, and are meeting established targets, the most recent one falling under 13 percent. However, I am still of the opinion that basic reform in medicare and medicaid to create the necessary incentives for cost control will assist this effort and set us on a path of solving this long term problem.

During hearings on medicare reimbursement reform proposals in the past, I have been exposed to the concerns of those who fear that without some form of hospital cost restraint other national priorities will be downplayed if we are to retain any semblance of fiscal solvency. We are all familiar with the figures which indicate that total health care spending comprised 4½ percent of the GNP in 1950, while today it approaches 9 percent of our gross national product. Medicare and medicaid programs have contributed markedly to the rapid increase in total health care expenditures.

MEDICARE/MEDICAID PROGRAMS

When the medicare/medicaid programs were initially considered, I expressed serious reservations as to their design and their ability to provide the best possible access to health care services for the individuals they sought to assist. I continue to remind you today, as I have in the past, that hindsight now demonstrates that my original observations were not entirely inaccurate. Medicare recipients continue to face rapid increases in out-of-pocket costs and medicaid beneficiaries continue to see curtailment of services initially provided to them. Most individuals today do not need to be confronted with facts and figures to tell them that it is simply costing them more to obtain adequate health care.

RESPONSIBLE ALTERNATIVE

The bill being introduced today builds on our experience of the last two congressional sessions. It has been improved by suggestions we have received and starts us on a road to long-term, sensible cost moderation policy. This proposal demonstrates a recognition that the delivery system itself is not completely responsible for generating inflationary pressures for the cost of health care. Rising labor and supply costs: the need to constantly upgrade equipment and facilities; skyrocketing malpractice premiums; and compliance with a proliferation of new regulations have all played a part in the dilemma we have managed to reach today.

The complexities of this situation have apparently continued to go unnoticed by the administration who has sent the Congress a budget with estimated savings in the medicare-medicaid programs of $1.8 billion for fiscal year 1980. These savings, which are based on the administration's so-called cost containment program, remain unrealistic. Singling out the hospital industry with an arbitrary 9.7-percent cap on revenue increases is inequitable in that these institutions still have no ability to control the price increases in the goods and services which they must purchase and inevitably must be reflected in their costs. The fact is that even if we were to accept the administration's approach, the savings projected in their budget would only be realized if permitted increases for 1980 would be limited to 6.4 percent. There must be more realistic approaches to cost containment which take into account hospitals' individual circumstances and needs.

In my opinion, the proposal we are introducing today represents a responsible alternative to the President's cost containment plan. This bill addresses medicare/medicaid administrative and reimbursement procedures in three major areas: Hospital reimbursement, practitioner reimbursement, and long-term care. The new method of reimbursement for routine operting costs for hospitals would be markedly improved by the incentive system this bill creates. It also simplifies the procedures for practitioner reimbursement and encourages the most appropriate management of patients who require long-term care. If there are savings to be realized from increased efficiency in Federal program administration, then the provisions of this bill are designed to bring them about while maintaining a realistic view of changes which providers are and are not able to make.

OTHER PROVISIONS

Among the various provisions included in this bill I would like to take particular note of several provisions in which I have a special interest. The bill provides for the use of medicare audit findings in the administration of medicaid and the maternal and child health program. Elimination of the present duplication of identical or similar auditing procedures used for the purpose of determining reimbursement under various Federal health benefit programs could save as much as $26.5 million in the coming year. This provision is a classic example of how to cut waste from Government programs. The provision which creates incentives for the establishment and maintenance of physician practices in low-fee physician shortage areas by increasing relative reimbursement levels is particularly important for my own State of Kansas. Kansas contains many areas in which physicians are badly needed, but recruitment efforts have been hampered in part by the discriminating nature of the current medicare reimbursement practices. Hopefully, the change suggested in this legislation will be a positive means of reversing that trend.

A third section of this legislation, in which I have a special interest, is the prohibition of publication of physicians medicare earnings data. In the past, I brought to the attention of this body the inexcusably large number of errors included in the medicare "100,000 club" listing by HEW. This section of the legislation is designed to protect against another unnecessary violation of personal privacy by the publication of another list.

CONCLUSION

It is our intention to hold hearings again as we did during the previous congressional session as refinements of this bill are certainly possible. I am particularly encouraged by the success of some State controlled hospital rate programs and other medicare cost saving initiatives that have occurred in recent months.

My cosponsorship of this legislation does not necessarily reflect a complete embracement of all its provisions, for certainly there is room for difference of opinion and further constructive input. I commend Senator TALMADGE for his dedicated effort at bringing about the kind of reform it will take to achieve some measure of control in our medicare and medicaid budgets. I welcome the opportunity to support the thrust of this reform effort while continuing to remain open to suggestions for its refinement.

It is my firm hope that we, as legislators, can meet our part of the commitment necessary to control the escalating cost of health care. This will only be done with a cooperative approach where providers, intermediaries, beneficiaries, and administrators all come to grips with the fiscal challenges we must face. Is is in the spirit of this joint obligation that I join my colleagues in introducing the Medicare/Medicaid Administrative and Reimbursement Reform Act of 1979.

MAX FRIEDERSDORF

Mr. DOLE. Mr. President, today Max L. Friedersdorf will be sworn in as one of the six Commissioners of the Federal Election Commission. Mr. Friedersdorf is an excellent choice and will prove himself to be a valuable addition to the FEC.

Mr. Friedersdorf has served for 2 years as the Washington staff director of the Senate Republican Policy Committee. He received his bachelor of arts degree from American University in 1963 and his master's of arts degree from American University in 1970. Mr. Friedersdorf has held many positions in Government. For 10 years he was the administrative assistant to Congressman Roudebush of

Indiana. In 1970 he became the Director of the Congressional Relations Office of Economic Opportunity. He joined the White House Congressional Relations Office in 1971. From 1975 until 1976 he served as an Assistant for Legislative Affairs to former President Gerald Ford. The Senate Republican Policy Committee will sorely miss Mr. Max Friedersdorf's expertise and wisdom. I am sure my colleagues join me in wishing Max a very successful future as he assumes his new responsibilities at the Federal Election Committee.

The PRESIDING OFFICER. Under the previous order, the Chair recognizes the Senator from Michigan (Mr. LEVIN).

REDUCE OIL CONSUMPTION

Mr. LEVIN. Mr. President, I am very happy to note that the United States will propose at the International Energy Agency's meeting in Paris today and tomorrow that the Agency's 19 members undertake concerted action to reduce oil consumption by 3 to 5 percent. This is the kind of strong action in dealing with our energy problem that the American people have been expecting from our Government, and it would demonstrate to them and to the rest of the world that our commitment to dealing effectively with the problem is more than just rhetoric.

Mr. President, when I raised this issue yesterday at a hearing of the Governmental Affairs Subcommittee on Energy, Nuclear Proliferation and Federal Services, Energy Secretary James Schlesinger stated that the adoption of international conservation measures would be complicated by the fact that not all of the IEA members see eye to eye about the appropriate means for reducing oil consumption. I regret that the Secretary did not see fit to be more candid with the subcommittee about the administration's plans in this regard. Candor is an essential requirement of a cooperative relationship between the administration and the Congress in formulating energy policy. In any event, the IEA's problem is an understandable one; even within our own country, we can expect a heated debate on that controversial issue. But any differences of approach we may have should not be allowed to divert us from the fundamental point: that the instability in the oil markets, and the psychological dangers that carries with it, result from a supply-demand imbalance in crude oil trade, and that in the short term the most effective thing that we, and all consuming nations, can do to redress that imbalance is to reduce our consumption of petroleum products through conservation measures. I hope that all of the industrial nations who are members of IEA can agree on that, and can then proceed to discuss the specific questions of how much of a reduction in oil consumption is necessary and how it should be achieved.

Let me briefly review the oil shortage situation that faces us today. Before the recent disruption of oil production, Iran was exporting about 5 million barrels of oil a day, or somewhat more than 10 percent of the non-Communist world's requirements. Because of step-ups in oil production by Saudi Arabia and other nations, we are facing a world shortfall of about 2 to 3 million barrels a day. The United States is considerably less dependent, percentagewise, on Iranian oil than many other nations, but our national appetite for oil is so voracious, in absolute terms, that we expect to bear a considerable portion of the Iranian shortfall, estimated at about 500,000 barrels per day, or about 2.5 percent of our domestic consumption. This shortfall could rise to as much as 1 million barrels per day if any of the IEA signatory nations invoke the mandatory sharing agreements, as they are entitled to do when facing a shortfall of 7 percent or more.

Because the United States is the largest importer of OPEC oil, it is incumbent upon us to take the lead in any international conservation effort. Moreover, because of the confluence of two important events this month, we have a particularly auspicious opportunity to undertake such an effort. The International Energy Agency (which could be appropriately renamed OPIC, or the Organization of Petroleum Importing Countries) is meeting today and tomorrow in Paris. OPEC will be meeting March 26 in Geneva, presumably to rationalize (and, I fear, to institutionalize at some level) the price increases which have already been adopted by Saudi Arabia, Abu Dhabi, Qatar, Kuwait, Libya, Iraq, and Venezuela.

The OPEC countries have long ago learned, and learned well, one of the basic laws of economics: That price is a function of the relationship between supply and demand. Given the current imbalance between the two, it is clear what the outcome of their meeting will be. But in deciding what price increases to establish over the long term, they will have to consider also the trends for industrial world oil consumption. If the industrial nations of the world demonstrate a real commitment to reducing their oil usage, OPEC will find it much more difficult to adopt a significant price increase.

It is for this reason that we must act now, in concert with other major oil consuming nations, to respond to the challenge of the current shortage. If Americans are called upon to conserve, then let us leverage our conservation effort into a truly international one which would have a much greater impact. I urge the administration to pursue this course vigorously in the IEA forum and elsewhere.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Michigan has 2 minutes remaining.

Mr. LEVIN. I yield that time back to the Chair, Mr. President.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. With all time having been yielded back by the distinguished Senator from Michigan, under the previous order there will now be a period for the transaction of routine morning business not to exceed 60 minutes with statements therein limited to 10 minutes each.

THE RETIREMENT OF OLIVER J. DOMPIERRE

Mr. BAKER. Mr. President, I want to express my appreciation for the extraordinary and devoted service of Oliver J. Dompierre to the U.S. Senate. On yesterday, Dom retired from his position as assistant to the Republican leader after 48 years and 8 months of service to his country. The bulk of that service was with the U.S. Senate, and most of it in the Republican leader's office.

The late Senator Bill Knowland first brought Oliver Dompierre to the leader's office, where he served as administrative assistant to the leader under both Senator Knowland and my father-in-law, Senator Everett Dirksen. When Senator Hugh Scott became Republican leader, he named Dom to be assistant to the Republican leader for floor operations, a position he continued during my tenure as leader until his retirement yesterday.

Oliver J. Dompierre has served the United States in an important capacity during the administrations of nine Presidents. Dom's tenure in the Senate predates that of every Member presently in this body, or in the House of Representatives for that matter. Few Americans have labored so long for the United States Senate, have been such a part of Senate history, nor served the U.S. Senate and the United States of America better.

We shall all miss Dom. And as we salute and applaud him for his exceptional past service, I know my colleagues will join me in wishing Dom, his lovely wife, Randy, and the Dompierre family all the best for the future.

FOREIGN DEBTS OWED THE UNITED STATES

Mr. HARRY F. BYRD, JR. Mr. President, China, Russia, Taiwan, Cuba, Vietnam, and Iran have at least two things in common. One, they owe us money. Two, they are not paying us back.

These countries are not alone.

In recent hearings before the Subcommittee on Taxation and Debt Management of the Finance Committee, of which I am chairman, Assistant Secretary of the Treasury for International Affairs, C. Fred Bergsten, testified that 169 countries and territories plus 19 international institutions and regional groups owe the United States money.

Thus, debtors to the United States exceed the number of countries in the world, which are only 159; membership in the United Nations now totals 151 countries.

The list includes the Vatican City, our own Pacific Island Territories, and countries with which we have no diplomatic relations, such as Cuba. Just about the only country which does not owe the United States money is Albania.

Not only have we lent money to almost every country in the world, last year we had the distinction of lending more money than we received in payments. While we loaned approximately $6.7 billion, the United States received back only approximately $3 billion.

As a result, the amount of debt owed to the United States has increased by $3.7 billion as of this past September. The recipients of this increase include countries such as Korea, Mexico, and Brazil.

The magnitude of this debt deserves close attention. As of September 30, 1978, outstanding World War I debts were $27.5 billion; and post-World War II repayable debts and other foreign credits were $45.7 billion.

The total debt, therefore, is now in excess of $73 billion. This does not include $13.3 billion of contingent liabilities. When this figure is added into the amounts owed to the U.S. Government, we have a potential risk of more than $86 billion.

Private banks now have claims of $200 billion upon foreign countries. Our Government debt exceeds 42 percent of the $200 billion which private banks have lent to foreign countries.

This debt represents American capital which taxpayers have loaned abroad.

These loans are in addition to our foreign aid program in which authorized expenditures are estimated to be $12.3 billion in fiscal year 1979.

Our loans are not gifts. Even though many of the loans are made at low interest rates with liberal repayment terms, repayment is expected.

If not repaid, these loans are just another form of foreign aid—an additional handout abroad, this being on top of our foreign aid grant programs.

In terms of domestic programs, the money which we have lent abroad is approximately one-half of the Pentagon's budget in 1979 and would pay for most Federal social programs.

Despite the size of the debt, there is very little concern in official Washington shown about its collection.

The World War I debt of $27.5 billion is way past due and is no longer carried as an arrearage. Even though the interest rate is less than 4 percent per year on this debt. the interest now exceeds the principal. No effort is made to collect either the interest or the principal.

On debt owed after World War II, total arrearages and delinquencies are $612 million. This is $21 million higher than delinquencies just 1 year earlier. Over 100 countries are now delinquent in paying their debts.

These are delinquencies for 90 days or more. The Treasury has no record as to delinquencies which have been outstanding for over 1 year.

Compared to the zeal of our domestic debt collection agencies, particularly the Internal Revenue Service, concern over collecting foreign debts owed to our Nation is nonexistent.

Although Congress has urged a vigorous debt collection policy, and indeed prohibits foreign aid to countries in default, Treasury and State Department officials testified that they have not actually cut off foreign aid even though foreign debts were overdue.

This lack of enthusiasm is nothing new. In the past, we have settled debts owed to us by the Soviet Union, the Indian Government, and the French Government for little more than 3 cents on the dollar.

The Soviet Union World War II lend-lease debt is instructive of the way in which official Washington works.

The U.S. Government, after writing off nearly $9 billion of lend-lease assistance to the Russian Government during World War II, refused to write off an additional $2.6 billion owed to it.

In 1972, the State Department negotiated what it called a settlement of this $2.6 billion debt.

It agreed to accept in payment $722 million. Russia has paid the United States $48 million, but has not paid any of the remaining $674 million.

The reason the Russians have given for failing to pay the additional money is that they were not granted most-favored-nation status and are therefore not eligible for Export-Import Bank credits.

As a result of this lack of access to U.S. funds provided by the American taxpayer—namely the working men and women of our Nation—Russia has refused to pay the additional $674 million of the debt she owes to the United States.

The settlement of the Russian debt by President Nixon's State Department in 1972 was, in my judgment, one of the most foolish agreements our country has made.

In effect, what our State Department negotiators did was this: They agreed to settle the $2.6 billion debt owed by Russia to the United States for 3 cents on the dollar—plus another 24 cents, provided the American taxpayers loan Russia the money to pay for it.

How foolish can we get?

The Russian debt is important because we are now embarking on trade and diplomatic relations with the People's Republic of China. There is a potential for a similar outcome.

Currently, there are now $196 million in private claims against China. In addition, we have World War II arrearages and unpaid Export-Import Bank loans to China which account for over $150 million.

However, at this time, there is no official policy for the collection of this debt. In fact, there seems to be no total figure as to the amount which the Chinese owe to the U.S. Government. This is the case, even though some of the obligations go back as far as 30 years.

Future negotiations with the Chinese Government must establish a policy for repayment of this debt.

Another example is Iran now owes $37 million principal and interest.

Often, when debts are not repaid, we generously reschedule these debts. As of 1974, the Congress prohibited full forgiveness of debts without a congressional resolution. The alternative to forgiveness is rescheduling. Since 1970, the U.S. Government has engaged in nearly 20 debt reschedulings.

These reschedulings are:

Year	*Country*	*Amount of U.S. debt rescheduled (millions)*
1970	Indonesia	$215
1971	India	9
1971	Yugoslavia	59
1971	Egypt	145
1972	Chile	110
1972	Pakistan	51
1972	India	29
1973	Poland	32
1973	Pakistan	23
1973	India	29
1974	Chile	232
1974	Pakistan	196
1974	India	45
1975	Chile	95
1976	Zaire	46
1977	Zaire	68
1978	Turkey	191
1978	Peru	104

The most recent debt reschedulings have been with Turkey and Peru. With regard to Turkey, $191 million of debt falling due from May 20, 1978, through June 30, 1979, was rescheduled.

The history of our debt collection practices is poor. There seems to be no concern for the fact that these monies come from the pockets of American taxpayers.

The Department of State has primary responsibility for collecting foreign debts owed to the United States. It must exercise vigorously this responsibility.

When debts are forgiven or rescheduled, it is the American taxpayer who is losing money.

Periodically, Congress must review and approve programs and expenditures for foreign aid and international financial institutions. Officials in the Treasury and Department of State should be on notice that Congress does not view foreign debts independently from other programs. Congress must not permit foreign countries to avoid paying their debts and still receive foreign aid. Foreign loans should not be turned into another foreign aid grant program.

I wish to share with my colleagues tables showing arrearages and amounts of debt outstanding which were presented to the subcommittee in the recent hearings.

Mr. President, I ask that these tables be printed in the RECORD.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

Total foreign debt outstanding to the U.S. government as of September 30, 1978

[In millions of dollars]

	Outstanding
I. World War I indebtedness [1]	$27,463
World War I credit	25,541
German World War I indebtedness [2]	1,922
II. Post World War I indebtedness on USG credits	45,715
A. Long-term credits	45,013
Foreign assistance and related acts	20,403
Export-Import Bank Act	11,436
Agriculture Trade Development and Assistance Act	7,029
Lend-lease and other war accounts	1,336
Commodity Credit Corp. export credits	1,916
Other credits	2,893
B. Accounts receivable credit	414
Military logistical support	218
Military Sales Act	37
Atomic Energy Act	93
Other	66
C. Short-term credits	288
Commodity Credit Corp.	288
III. Public and private U.S. claims settled by the U.S. Government [3]	32
Grand total	73,210

[1] Includes interest due and unpaid.

[2] Actual indebtedness is denominated in Reichmarks. These figures are estimates only.

[3] Includes 1966 "Freeloc" settlement with France.

Arrearages of 90 or more days on foreign loans and credits of U.S. Government agencies excluding World War I debts)

[In millions of dollars]

	September 30, 1978
I. Extraordinary political arrearages:	
1. Authorities on Taiwan	[1] $107.6
2. Cuba	76.0
3. Vietnam and Cambodia	24.3
4. Unresolved Korean war logistical support	199.7
Total political	407.6
(Percent of overall total)	(67)
II. Major arrearages—Public long-term:	
1. Iran	36.1
2. Zaire	[2] 34.0
Total major arrearages	70.1
(Percent of overall total)	(11)
III. Other major arrearages:	
A. Public:	
1. Long-term	34.9
2. Short-term and accounts receivable, of which:	84.1
Foreign military sales, logistical support, M.A.A.G.	46.1
Lend-lease	.6
Post Office	18.6
Other	18.8
B. Private:	
1. Long-term	13.0
2. Short-term and accounts receivable	2.1
Total other arrearages	134.1
(Percent of overall total)	(22)
IV. Overall total—Groups I, II, III	612.0

NOTE.—Items may not add to totals due to rounding.

[1] Excludes, as of September 30, 1978, $49.8 million of principal and interest due from the authorities on Taiwan from assets left on the Asian continent, for which Export-Import Bank by agreement with that government has deferred from pressing.

[2] Includes amounts rescheduled by bilateral rescheduling agreement with Zaire. T.I.A.S. No. 8731 (1976). Once implementing agreements have been concluded by the agencies concerned, these amounts will no longer be reported as being in arrears. Negotiations are being finalized to reschedule 1977 arrearages.

CHART 3.—LONG-TERM DEBT OUTSTANDING TO THE U.S. GOVERNMENT BY PROGRAM, EXCLUDING WORLD WAR I DEBT

[In millions of dollars and equivalents]

	Dec. 31, 1974	Dec. 31, 1975	Dec. 31, 1976	Dec. 31, 1977	Sept. 30, 1978
Foreign Assistance Act related programs:					
Development assistance	12,635	12,998	13,435	14,010	14,872
Military sales	1,627	2,270	3,462	4,779	5,531
Export-Import Bank Act	8,126	9,621	10,594	10,949	11,436
Agricultural Trade Development and Assistance Act	5,040	5,721	6,208	6,578	7,029
Other programs [1] [2]	5,352	4,979	5,122	5,294	6,165
(Lend-lease/surplus property and other war accounts)	(1,649)	(1,520)	(1,421)	(1,368)	(1,336)
Total	32,780	35,589	38,821	41,610	45,033

[1] Primarily 1946 British loan, lend-lease and other war accounts, and Commodity Credit Corporation.

[2] Includes 1966 "Freeloc" agreement with France.

CHARTER DAY CEREMONIES

Mr. HARRY F. BYRD, JR. Mr. President, on January 29, Mr. Justice Lewis F. Powell, Jr., of the U.S. Supreme Court, delivered the address at the charter day ceremonies of the Marshall-Wythe School of Law at the College of William and Mary.

The College of William and Mary was the first in our country to establish a chair of law, in 1779. The first occupant of the chair was George Wythe, a distinguished Virginia attorney, one of the leaders in our Revolutionary period and a signer of the Declaration of Independence.

Among his pupils were Thomas Jefferson, John Marshall, and Henry Clay.

On charter day, Mr. Justice Powell spoke eloquently of the accomplishments of George Wythe and the history of the great law school which bears his name and that of his great pupil, Chief Justice John Marshall.

This charter day marked the bicentennial of the establishment of the chair which George Wythe first occupied, and on that occasion commendation to Marshall-Wythe Law School came from the General Assembly of Virginia, the Supreme Court of Virginia, the Supreme Court Historical Society, the American Bar Association, the Virginia State Bar and the Virginia Bar Association.

Mr. Justice Powell added to the plaudits when he said to the students, faculty, and guests at the charter day ceremony:

> You have a heritage possessed by few other law schools: the names of Jefferson, Marshall and Wythe have inspired millions of Americans. For faculty and students privileged to attend your law school, this heritage must be uniquely inspiring.

Mr. President, at this point I shall yield to my distinguished colleague from Virginia and then after that I shall ask unanimous consent on behalf of Senator WARNER and myself to print the full text of Mr. Justice Powell's address in the RECORD.

I yield to my colleague from Virginia.

The PRESIDING OFFICER. The junior Senator from Virginia.

Mr. WARNER. Thank you, Mr. President.

Mr. President, I rise to ask that I join in the remarks of my distinguished senior colleague from the State of Virginia, and we should also, I suggest to Mr. HARRY F. BYRD, JR., note for the record reference to the fact that the dean of the William and Mary Law School is one of my predecessors in this Chamber, the former U.S. Senator from Virginia, William Spong.

I thank the Chair.

Mr. HARRY F. BYRD, JR. I thank my colleague from Virginia.

I wish to say in regard to former Senator Spong that he is doing an outstanding job as dean of the Marshall-Wythe Law School at the great College of William and Mary.

At this point, Mr. President, I ask unanimous consent that the text of Mr.

Justice Powell's address be printed in the RECORD.

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

ADDRESS OF LEWIS F. POWELL, JR.

I

The invitation to speak on Charter Day at this venerable college was one I could not refuse. Two institutions have made this ancient town famous throughout the civilized world: the College of William and Mary and Colonial Williamsburg Foundation. I have treasured associations with both for many years, and happily they complement and support each other.

It has been said that this restored 18th Century town is "a beacon light of freedom to the world". It also can be said that the town would have shed little light of any kind had it not been a well-spring of our nation's early political history. The college played a key role in that history.

There are many fascinating "firsts" in the history of William and Mary. It is the mother of Phi Beta Kappa. It introduced the first elective system of study in the United States. And even the University of Virginia and Washington and Lee, both proud of their ancient honor systems, would acknowledge that this college also led in recognizing that lying, cheating and stealing have no place—and should not be tolerated—on the campus of an institution of higher learning.

We are gathered here today to talk about a different "first". In 1779 William and Mary established the first American chair of law. This marked the beginning of university-related legal education in America.

At times there has been argument as to where the teaching of our law commenced. Dean John Ritchie, in his recently published admirable history of the first century of the Law School of the University of Virginia, has set the record straight. William and Mary was first. A proprietary law school was opened at Litchfield, Connecticut, five years later, and a chair of law was founded at Harvard about a generation later, in 1818.

II: GEORGE WYTHE

The occupant of the first chair of law was George Wythe. Had he been a lesser figure, there would be little one could say beyond identifying the event. But George Wythe was a towering figure, not in the sense of holding the highest offices, but because of his influence on those who did.

As historians have paid scant attention to Wythe, even his name is largely unknown beyond Virginia. It is appropriately ironic that his portrait was left off of our modern two dollar bill when the Treasury's designer's found that Trumbull's painting of the signers of the Declaration was too crowded for their purpose.

Various reasons have been advanced for Wythe's relative obscurity. In the long reach of history, it is difficult for a lawyer or a professor to leave behind him an enduring reputation unless he has held high office or written extensively. And Wythe did neither of these. Moreover, he was essentially a modest and self effacing man. The Rev. Lee Massey of Fairfax County, who had been a lawyer before taking on the cloth, had an opinion of Wythe that I hesitate to share with you. The Rev. Massey declared that Wythe was "the only honest lawyer he ever knew".

It also was said by some of his contemporaries that Wythe would not accept a case unless he believed his client was in the right, and that he refunded the fee and retired from the case if he discovered that he had been misled. No doubt this attests to Wythe's probity and uprightness. But I must say, if this standard were applied by lawyers today, that a high percentage of clients would go unrepresented, and a good many lawyers would go bankrupt.[1]

However accurate these reports may be, Wythe was admired—even revered—in his time. Following Wythe's death, Jefferson spoke of his friend and tutor:

"No man ever left behind him a character more venerated than George Wythe. His virtue was of the purest tint; his integrity inflexible, and his justice exact; of warm patriotism, and, devoted . . . to liberty and the natural and equal rights of man . . . a more disinterested [meaning impartial] . . . person never lived."

He was one of the most courtly men in Virginia, even in an era when good manners were exalted. He also was gentle and warm with people, and especially with children. Dr. Oscar L. Shewmake, a student of Wythe's life, described him as a gentleman in every respect, "trusted and beloved friend of Presidents, and ministers of state, stray dogs and little children."

Wythe was not merely a human being of rare quality. He was a lawyer, judge and scholar—distinguished in each of these endeavors. Although he neither sought nor held the highest offices, he was a conspicuous leader of public affairs.

His teaching career is perhaps best known. Few, if any, teachers in our history have taught such an exceptional group of students. In addition to Jefferson, there were John Marshall; Henry Clay; John Breckenridge, who became Jefferson's Attorney General; Judge Spencer Roane, famous for his decision in *Kamper* v. *Hawkins*, Va. Cas. 20 (1793) that anticipated *Marbury* v. *Madison*; and numerous other persons of prominence in and after the revolutionary era.

Through his pupils, Wythe's influence scarcely can be overstated. It has been said that "the mind of George Wythe, acting through those whom he had taught, dominated the policies of this republic for fully 50 years, and is still a potent force".

The best known of his pupils, of course, is Thomas Jefferson. Through his influence on Jefferson, perhaps one could say that Wythe was the godfather of the Declaration of Independence. We should resist the temptation to make too much of it, but the long and close association between Wythe and Jefferson suggests almost a father-son relationship.

Jefferson did not serve as an apprentice under Wythe. Rather, recognizing Jefferson's genius, Wythe outlined a course of study, and then allowed Jefferson to pursue his studies largely in his own way. This process no doubt contributed to both the depth and original turn of Jefferson's highly discriminating mind.

The young Jefferson was required to probe the origins of Roman, Saxon and English law, and encouraged to read Greek and Latin in the original, rather than translation. Wythe also instructed Jefferson in history, ethics, science and literature, and encouraged him to read Italian and French.[2]

Indeed, the young Jefferson was even instructed in manners and hygiene. In sum, the tutelage under Wythe was the equivalent for Jefferson of the most exacting of university educations—indeed, far more demanding than what is called a university education today.

In acknowledging Wythe's influence, Jefferson referred to his old teacher as "my earliest and best friend. . . . To him I am indebted for first impressions which have had the most salutary influence on the course of my life".

The questions often are asked: how did Wythe become such a wise and influential scholar of the law? Where—and by whom—was he taught? The fact is that Wythe, not extraordinary in the 18th Century, was largely self-taught. He attended a neighborhood private school long enough, as he said, to learn "reading and writing English and the first five (tables) of arithmetic". His self education apparently never ceased. It was after receiving a license to practice law at the age of 20 that Wythe pursued his most serious studies. He is said to have exhausted the Greek and Roman classics without a guide or tutor. He studied thoroughly the origins of English law. To the dismay of opposing lawyers, he used his new store of knowledge in the courtroom, supporting arguments with scholarly quotations.

Jefferson recalled one minor case—long since forgotten—in which Wythe fired a bewildering barrage of authorities at his adversary. He cited Virginia and British statutes, decisions of the British courts, sections of Justinian's Roman Code, Cicero's Orations.

I hardly need add, as noted recently by Chief Justice Burger, that comparable erudition is rarely if ever heard in arguments before the Supreme Court of the United States.

The one negative report about Wythe as an advocate was that, although profound, persuasive and urbane, he was lacking in wit and slow with repartee. As Jefferson said, Wythe was not "quick of apprehension, but with a little time, (was) profound in penetration . . ."

In any case, Wythe was admired and respected by lawyers and laymen alike. He was repeatedly elected to the House of Burgesses, and served on important committees. In 1768, Wythe was elected Clerk of the House, a post he filled until the Revolution.

Wythe was no Patrick Henry in urging revolution, but he did assume leadership when it became clear that British policy was inflexible and unjust. Though he was the last of the seven Virginians to sign the Declaration of Independence—he signed in September—Wythe wrote his name above six signatures that had been affixed in July. He signed his name fully as "George Wythe" rather than G. Wythe—his customary signature. As was said of Charles Carroll of Carrolltown, he wished to identify himself unmistakably as a revolutionary.

Wythe also sought to enlist in the cause. When militiamen appeared on a Williamsburg green near his house, the 49-year-old

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[1] Of course, as lawyers know, it is the function of the judge or jury—not the lawyers—to determine in a litigated case which of the contesting parties is "right". Each party is entitled to the benefit of counsel. The line is drawn by scrupulous lawyers, not whether the lawyer believes his client to be "right" but rather whether the client deceives—by false testimony or otherwise—either the lawyer or the court.

[2] Wythe identified the scope of his learning and instruction in a notice appearing in the Virginia Gazette in July 1787, reading as follows:

"I propose in October, when the next lectures in law and police will commence, to open a school for reading some of the higher Latin and Greek classics and of the approved English poets and prose writers, and also for exercises in arithmetic".

10 William and Mary Quarterly (First series, Historical and Genealogical Notes, 273, 274.)

lawyer put on a hunting shirt, took his musket, and sought to join the young men of the militia. He was gently but firmly rejected, but his ardor for the cause did not cool. It is reported that near the end of the war, Wythe and a couple of hunting companions opened fire with shotguns on a party of British soldiers in boats near Jamestown.

Happily, Wythe's place in history does not depend upon his military record. It was after independence had been won that again he achieved leadership and prominence. He chaired the Committee of the Whole when the Virginia Convention adopted the Constitution, and was one of the leaders of that historic convention.

The college in Williamsburg lost him in 1791 when he moved to Richmond to become the presiding judge of the High Court of Chancery. His service there merits more careful study. At least one of his early decisions is noteworthy. He believed, as did other Virginia lawyers and judges, that the judiciary had authority to determine the law of the land. In the case of *Commonwealth* v. *Caton*, 4 Call (Va.) 5 (1782), he declared:

". . . If the whole legislature . . . should attempt to overleap the bounds prescribed by . . . the people, I, in administering the public justice . . . will meet the united powers at my seat in this tribunal, and pointing to the Constitution, will say to them, 'here is the limit of your authority; and hither shall you go, but no further' ".

This was one of the first recorded judicial assertions of supremacy of the law, and one prophetic of things to come.

To the last hours of his life, this singular man—George Wythe—remained serene, wise and dispassionate. On his death bed, after having been poisoned by a nephew eager to inherit. Wythe spoke of his nephew: "I shall die leaving him my forgiveness".

To this point, I have presented only brief vignettes of the life of one of the most fascinating characters in American history. Perhaps I have said enough to make clear why his stature and influence loom large two centuries after he became our country's first formal professor of law.

III: THE MARSHALL-WYTHE SCHOOL OF LAW

I turn now to what one may fairly describe as Wythe's enduring legacy: the Marshall-Wythe School of Law.

The instruction of law did not commence on this campus at an auspicious time. The British armies were beginning to ravage Virginia. Washington's ragged troops were near starvation, and the outcome of the war was gravely in doubt. Yet Jefferson—then Governor of Virginia—urged the creation of the new chair of law, with Wythe as its occupant.

The timing of this event, 1779, is put in perspective when one remembers that it occurred only 21 years after Oxford established the Vinerian Chair of Law, occupied at the time by Sir William Blackstone.

Wythe's title was Professor of Law and Police—the latter encompassing political science in general. One of the first students to enroll for Wythe's lectures was Jefferson's distant cousin and future adversary, John Marshall—then on furlough from Washington's army. Other students included two of Wythe's successors as Professor of Law. The first, St. George Tucker, was the author of the first American notes on Blackstone's *Commentaries on the Laws of England*. The second was Tucker's son Nathaniel Beverley, whose work, *Principles of Pleading* was an important publication of 1846.[3]

As happened elsewhere particularly in the South, legal instruction ended with the outbreak of the War Between the States. And in the long and dreary decades of Reconstruction, it was difficult for law schools with limited constituencies to open or to operate. It was not until early in this century that President J. A. C. Chandler, as a part of the "renaissance" of this college revived legal education as a formal part of the college's program.

Since gaining independent status following World War II the law school's progress has been notable. I comment briefly on some of the highlights.

Your law school already has attained national recognition of its graduate program in law and taxation with the students of that program being recruited by government as well as the leading law firms. The summer school in England also has attracted favorable attention and students who have attended it are enthusiastic. A contemporary example of the type of innovative thinking by your faculty is the Conference on Environmental Law taking place here this weekend.

The Commonwealth of Virginia is blessed—indeed few states can equal it—in having four first-rate law schools. In addition to Marshall-Wythe the University of Virginia and Washington and Lee are nationally known. The T.C. Williams Law School of the University of Richmond is also a school of high quality that has produced many of the ablest Virginia lawyers. This is not an easy time for law schools. More than 150 are accredited and they graduate some 33,000 young people each year. There is increasing evidence that the needs of our system—as lawyer-oriented as it is—do not require such a large annual infusion of lawyers. The satisfactory placement of graduates is no longer taken for granted.

Paradoxically this apparent "over-supply" comes at a time when the young people graduating from the better laws schools are exceptionally well trained and are highly qualified to serve society—in the law and other roles.

It seems to me that Marshall-Wythe is well situated to confront this challenge. The graduates of the stronger law schools always will be in demand, certainly those with good records. Marshall-Wythe is a strong law school, and it will be stronger.

In Bill Spong, whom I have known well for at least a quarter of a century, you have one of the best law school deans in America. You also have strengthened your faculty and staff. and soon will move into a fine new building appropriate for a school of your quality. The location here of the National Center for State Courts also is a strengthening factor.

In short you merit the commendation that has come to you on this Bicentennial occasion from the General Assembly of Virginia, the Supreme Court of Virginia, the Supreme Court Historical Society, the American Bar Association, the Virginia State Bar, the Virginia Bar Association, and many others.

You have a heritage possessed by few other law schools: the names and careers of Jefferson, Marshall and Wythe have inspired millions of Americans. For faculty and students privileged to attend your law school, this heritage must be uniquely inspiring.

In concluding, I not only add my congratulations and wish you well; I also can say that you have every reason to look forward with confidence to many more generations of service to Virginia and our nation.

[3] It is of more than passing interest to Virginians that Tucker descendants have followed the family tradition as lawyers, professors and deans. Two deans of the Washington and Lee School, late in the 19th and early in the 20th Centuries were Tuckers: Henry St. George and John Randolph—both also serving as President of the American Bar Association.

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The PRESIDING OFFICER. The Senator from Illinois is recognized for 10 minutes.

A FARM POLICY TO SERVE FARMERS, CONSUMERS, AND THE WORLD'S HUNGRY

Mr. STEVENSON. Mr. President, the conflicts competing for world attention today would once have gone unnoticed as local matters of little concern to others. But the old era has passed. While political, and in some instances religious, differences ignite these conflicts, underlying each one—revolution in Iran, military conflicts in Southeast Asia and the Arabian Peninsula, continuing differences between Israel and Egypt—is the excruciating issue of access to vital resources, including oil.

In the politics of petroleum the industrial nations of Europe are following policies shaped by their dependence on Middle East oil. Last Sunday the Secretaries of the United States Departments of Defense and Energy spoke on national television of plans to enlarge the military presence of the United States in the Middle East to protect the production of oil and its transportation through the Persian Gulf. At the same time, the oil-producing nations are raising prices and limiting production, seeking the best possible return for what they know is a depleting resource, and the only real wealth they have.

Amid the crises we forget that the United States has one enormous resource that is as vital to the world as oil, and is, if we manage it properly, infinitely renewable—our capacity to produce great quantities of food, far more than we ourselves can consume.

We live in a hungry world. Its population is likely to rise by more than 50 percent by the end of the century. World food production, although it has increased somewhat in recent years, will not keep pace with population. Meanwhile, improving economic conditions in some parts of the world are making possible increases in per capita consumption of food. The developing nations are feeling the pressure of rising demand for food and are desperately trying to raise their own production. The Chinese want American technical help with food production and processing. The Soviet Union buys our feed grains to provide more meat for its people. And a leader of the Islamic political movement in Iran

recently acknowledged that Iran would still need American technology, particularly in agriculture.

World food production and distribution must be improved. But few areas in the world can expect to be self-sufficient in food production. They simply do not have the land and the climate. Increasingly, they must look to the North American continent for basic commodities such as wheat and feed grains.

My concern is that we are mismanaging and squandering this great resource. Instead of recognizing its value, protecting it from depletion, using it to enhance our economic strength, and planning for the future, we are pursuing shortsighted, irrational and, in my view, immoral policies. Other food-producing nations are equally guilty. We are all seeking to protect our farmers in the short-run, neglecting future needs.

In fact, agriculture may be the world's most protected industry. The European Community's common agricultural policy is essentially a complex system of price supports, minimum import prices, stockpiling and export subsidies. It is designed to keep internal farm prices high by insulating them from foreign competition. Quotas, as in Japan, and other nontariff barriers such as artificial quality standards and inspection rules are subtle but effective barriers to farm and nonfarm goods alike.

The United States supports the prices of its grain producers, helping to keep meat and dairy prices high, and then protects its meat and dairy producers from lower cost foreign competition. The current debate over sugar is a classic: We subsidize cane and beet producers to maintain their prices and then protect them from foreign competition by import duties. The consumer pays for the subsidies and for high priced sugar. Because we are maintaining high food prices and are failing to compete effectively in world markets, our farmers are producing surpluses and we face large carry-over stocks. The land set-aside programs intended to reduce production are not working. Production has not been cut proportionately. For example, corn production in 1978 topped 7 billion bushels, a record crop. Yet total payments for all land diversion programs last year cost the taxpayers almost $600 million.

Altogether, farm price support programs will cost over $5 billion in public funds this year. In addition, the American consumer, whose grocery bill went up 10 percent in 1978, may be facing another 10 percent increase this year. The inflation rate, as reported last week, has reached 12 percent, and a major component is the increase in food costs. A sizable portion of last month's increase in food costs went to farmers. Our Government is causing inflation in food prices in order to protect farmers from inflation. Yet, farmers complain, with some justification, that their increased income is offset by inflated costs.

Over the long run the most destructive aspect of our farm policy is its failure to protect the land. Farmers are setting aside their least productive land but squeezing maximum production out of their good land with heavy applications of chemicals and little attention to dangerous losses of topsoil and sinking water tables. Furthermore, our farm policies are encouraging farmers to acquire additional land and machinery, each to justify the other, and driving up the prices of both. We have spent billions for soil and water conservation in recent decades but have achieved little for the long-term protection of our most productive cropland.

I believe the time has come to reconsider our management of the Nation's greatest resource and to develop a coherent policy that will best serve the American farmer, the consumer, and the world's hungry people.

I suggest first that we drop the land set-aside and diversion programs. They are expensive and they do not work well anyway. Furthermore, a policy that pays farmers to refrain from producing food in a hungry world is, it seems to me, immoral. If we must control production during the next few years, we ought to do it by protecting future productive capacity. We should insist that the farmer, in return for fair income protection, devote not only his poorest but some of his best land to long-term conservation measures aimed at saving the topsoil and the water table and preventing stream pollution and sedimentation.

Loan programs should be greatly reduced if not eliminated. Beyond the amounts needed for reserves, the loan programs encourage the creation of huge carry-over stocks. Instead, we ought to work out a target price system that would give farmers a fair return while permitting the market to control commodity prices. To the extent that prices declined, the American consumer, as well as livestock, poultry, and dairy producers, would benefit. Furthermore, we could expect world markets to expand as our prices become more competitive and developing nations are better able to buy. If prices did fall below the targets, deficiency payments to the farmer might be higher, but they could cost less than the $5 billion we now spend for the whole range of price-support activities, not all of which directly benefit farmers. Such a system, unlike our present one, would not raise both public and private costs simultaneously.

Statesmanship will be needed to enhance world agricultural trade and provide continuing assistance for the poor and for emergencies. Breaking down the barriers to trade is a difficult job, best achieved through reciprocal concessions in multilateral trade negotiations. I have stressed to Ambassador Strauss the need for progress on agricultural barriers. If we are to have a trade agreement, it must include concessions that will improve competitive opportunities for American agriculture.

Congress has already provided some of the steps needed to help open new markets. We have directed the Secretary of Agriculture to appoint additional agricultural attachés to work with U.S. industries and trade associations seeking foreign markets. I believe that some of the foreign barriers would be broken down if consumers in other nations could sample U.S. grain-fed meat and other excellent U.S. food products.

We have also responded to some of the financial needs by giving the Commodity Credit Corporation the authority to extend intermediate credit terms up to 10 years to meet foreign competition. And we have made the People's Republic of China eligible for CCC credits.

Other steps are needed. For example, it makes little sense to make CCC credits available to China but not to the Soviet Union. We ought to deal with both nations cautiously and even-handedly, subjecting their eligibility for credit and trade agreements to periodic review of their conduct across the entire range of U.S. interests. I have already introduced such legislation for the Export-Import Bank. The same policy should be developed for the Commodity Credit Corporation. It would create the framework within which political and economic relationships can develop together, keeping the United States neutral as between the two.

In the name of free enterprise we have left the American farmer defenseless in transactions between the international grain traders and such nonmarket economies as the Soviet Union, and now the People's Republic of China. The infamous Russian wheat deals should not be repeated. I suggest that we make the Commodity Credit Corporation our sole trader with the nonmarket countries which have the power to invade our markets quietly when prices are low and then sell when the word is out and prices have risen. CCC could make the deals in Government-to-Government negotiations. It would enter the market, perhaps at harvest when prices are lower and its purchases would help the farmer. No other nation lets its farmers be exploited in these transactions. Why should we? We sell food, as we buy oil, through multinational companies accountable to themselves and sometimes to foreign nations, but never to the American public.

In summary, Mr. President, I believe we must consider American agriculture not simply as the source of a series of economic problems—low farm income, shrinking numbers of family farms, surpluses, deteriorating land, and high food costs—but as a great asset. With wisdom and foresight on our part, it will not only strengthen the Nation but feed millions of the world's hungry people. I intend to introduce legislation to establish a food policy along these lines.

PEACE NEGOTIATIONS BETWEEN EGYPT AND ISRAEL

Mr. MOYNIHAN. Mr. President, I would now like to turn to a matter that absorbs the attention not just of our Nation, but of much of the world at this moment. That is the profound difficulties that have arisen in the United States effort to be a friendly party in the negotiation of a peace between Egypt and Israel. The high hopes of Camp David seem to be fading precipitously just now. I would like to comment on what seems

to me to be a source of the difficulty with the American role.

In this morning's press, specifically the Washington Post, one reads that Prime Minister Begin of Israel has sharply disputed a statement of President Carter's on Tuesday night, "absolutely insignificant differences are now creating insurmountable obtacles" to peace.

The President stated that the differences were "absolutely insignificant." Mr. President, I cannot understand what the President had in mind, or why he would so describe differences which, to my judgment, seem to be of a profound order.

The first question at issue in this treaty is whether or not it is a treaty or whether it is merely a statement of the present disposition of the parties, and not binding in the future. The Israel negotiators have raised what is for them a properly significant question, which is whether or not the agreement they are entering into will be binding on the party they are entering it with.

The party with which they are negotiating—Egypt—clearly is not willing to make that kind of commitment, and yet the President calls this difference "insignificant."

There is, in fact—and this is not meant to be disparaging of either party—a difference between the approach of the Israel Government and the approach of the Egyptian Government in this negotiation. The Israel Government assumes it must abide by whatever it agrees to do. This is a traditionalist view and a legalistic view. It is, on the other hand, the very basis upon which we must pin any hope for maintaining world order.

The Egyptian Government has a very different basis for reviewing what it is undertaking. I would make a further point: In 1971, Egypt entered a treaty with Syria and Libya, creating the Federation of Arab Republics. It was formally endorsed by solemn referendums in each of the three countries.

The Constitution of the Federation of Arab Republics requires that if any one of the countries enters into a treaty with another nation or international organization, it must be ratified by the other two members. Thus, to be specific, any treaty Egypt enters into with Israel must be ratified by Syria and Libya, or it is not valid.

When one inquires at our Department of State about what is the condition of the Federation of Arab Republics, has it ever been dismantled, the answer is no it has not.

Well then, one asks, what is the status of the obligation so entered into? One is thereupon informed that the organization is "moribund," and the parties can no longer be considered bound by it.

What then can Israel be expected to give up to Egypt in return for a treaty with a party which clearly does not consider itself bound by previous agreements, and which the United States does not expect to consider itself bound? It is the United States which, at the highest level, has made it clear that the details of this treaty do not matter. Well, they may not matter to one government, but they matter very much to the other, and this is not an "absolutely insignificant" difference; it is the most profound difference possible.

What has happened in the Middle East, Mr. President, is as clear as a matter could be. It is not simple, but it is clear. Both Egypt and Israel are being sucked into the vortex of Iran, and the capacity of the United States both to sponsor and, in effect, to guarantee an agreement is diminishing daily. Yet there are different consequences for the two parties. The consequences for the two parties are not equal.

The consequences for Egypt include, among other things, the fact that its military potential is more important to the other Arab States than it may have been. For Israel, the consequence is that the Persians have joined the Arabs in their opposition to the very existence of the Israeli State. When he was still in Paris, and being praised by officials of the United States, the Ayatollah Khomeini called for the "elimination" of the state of Israel.

In today's Washington Post you will find, again, a report that yesterday the ayatollah, in a national broadcast, called for his leaders to "root out" the remnants of "American, British, and Zionist colonialism" in Iran.

The threat to the very existence of the state of Israel is posed in the aftermath of the collapse of the most important Islamic power in the Middle East, and the United States acts as if the matter were insignificant in its effect upon the Israeli negotiators.

Mr. President, 10 days ago, on the 19th of February, in New York, I spoke to this matter, and stated what seemed to me to be the very grim prospect for renewed meetings between the Egyptians and the Israelis at Camp David.

I stated that it seemed to me that the prospects were increasingly perilous, and that we had not begun to assess what had to be the impact upon the negotiators.

What I said at that time was:

I have said before that the Soviets show signs of behaving as if they believe they are now the militarily ascendant power—and that our own government is starting to behave as if it also believes this. The Soviet military buildup of the last decade is a fact. Its strategic and diplomatic implications may now be unfolding. A vast umbrella of Soviet strategic, conventional, and naval forces has been created; beneath it, it appears as if the Soviets can employ both internal and external violence with relative impunity, so as to advance their position in world affairs. What seemed unlikely a few years ago has now become routine—Afghanistan, being one form, the Soviet-underwritten invasion of Cambodia by Vietnam another variety.

Now all these developments inform and influence the prospect of diplomacy in the Middle East. It is wrong and dangerous to think otherwise. For there remains in this country—and in Israel—a notion that the relationship between the two countries exists outside the usual framework of world affairs, the notion that there is a "special" relationship. I say to you today, the idea of Israel's exceptionality is increasingly without influence in the councils of government and in the workings of politics at large. And I must say, further, that the current disintegration in the Near East will be used as an argument for a further separation of American and Israeli interests, not as an argument for their strengthening and augmentation.

I ask unanimous consent that the entire address be printed in the RECORD.

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

ADDRESS BY SENATOR DANIEL PATRICK MOYNIHAN

In two days (February 21), Foreign Minister Dayan, Prime Minister Mustafa Khalis and Secretary of State Cyrus R. Vance, will meet at Camp David to resume negotiations for a formal peace treaty. The promise of the dramatic breakthrough at Camp David of last September 18 remains a tantalizing mirage on the horizon, still unsuspectible to concrete implementation. The outside observer finds it difficult to assess the possibilities for success. But this much is certain. The atmosphere of the coming round of Camp David talks is much different from that of four months ago.

What was implicit then is explicit now. The structure of Western influence in the strategic Middle East is crumbling before the eyes of the world. The pro-Soviet coup in Afghanistan of last April leads now to the murder of American Ambassador Adolph Dubs—with Soviet "advisors" having planned and helped carry out a reckless attack which resulted in the death of Ambassador Dubs. Still a greater breach of diplomatic procedure was the fact that this action was taken directly against the instructions of American officials in Kabul, the Soviets having refused to even consult with the American Embassy. The political movement directed against the Shah of Iran leads now to a struggle between those committed to a fundamentalist theocracy and those who seek a Marxist totalitarianism. And yesterday in Tehran the new government turned over the Israeli mission to Yasser Arafat who triumphantly proclaimed it the PLO's first embassy. The Iranian vice premier declined to say if the PLO would receive Iranian arms.

Those instruments of influence, customarily available to the United States in past years, appear now as pale reflections of their former selves. We read, for example, that 69 American Marines and six helicopters were mobilized to rescue American nationals in Iran, but that Turkey refused them landing rights. Our Secretary of Defense visited Saudi Arabia February 10 on a mission described as one of reassurance for traditional American friends in the region. Meantime, Boris Ponomarev, a non-voting member of the Soviet Politburo who has as his responsibility liaison with nongoverning Communist parties, "welcomed the victory of socialism in Iran." Usually, it is not the practice of such as Ponomarev to let the cat out of the bag prematurely; yet one senses in such a pronouncement an assertion of Soviet self-confidence, followed by an unstated, though strongly implied parenthesis: And there really isn't a hell of a lot you Americans can—or at least will—do about it.

I have said before that the Soviets show signs of behaving as if they believe they are now the militarily ascendant power—and that our own government is starting to behave as if it also believes this. The Soviet military buildup of the last decade is a fact. Its strategic and diplomatic implications may now be unfolding. A vast umbrella of Soviet strategic, conventional, and naval forces has been created; beneath it, it appears as if the Soviets can employ both internal and external violence with relative impunity, so as to advance their position in world affairs. What seemed unlikely a few years ago has now become routine—Afghanistan, being one form, the Soviet-underwritten invasion of Cambodia by Vietnam another variety.

Now all these developments inform and

influence the prospect of diplomacy in the Middle East. It is wrong and dangerous to think otherwise. For there remains in this country—and in Israel—a notion that the relationship between the two countries exists outside the usual framework of world affairs, the notion that there is a "special" relationship. I say to you today, the idea of Israel's exceptionality is increasingly without influence in the councils of government and in the workings of politics at large. And I must say, further, that the current disintegration in the Near East will be used as an argument for a further separation of American and Israeli interests, not as an argument for their strengthening and augmentation.

The signs of this are already apparent. The Department of State in its report on the human rights situation in countries receiving American assistance (released February 12) has in a certain sense joined the ideological assault directed against Israel. It does not matter that this is something our Secretary of State would not do on his own. It was done for him. It is an assault whose origins you know well. You remember the despicable United Nations resolution of November, 1975, which declared Zionism a form of racism and racial discrimination. In that obscene campaign, originating in the propaganda organs of the Soviet Union, one saw the Orwellian corruption of language at its zenith. Put plainly, this was an effort to equate Israel with Nazi Germany—horrible, almost impossible to absorb in its monstrosity—but that was the Soviet purpose. On November 10, 1975, I said in the General Assembly that "the United States of America declares that it does not acknowledge, it will not abide by, it will never acquiesce in this infamous act." Yet there is a plain and palpable effort, now, to define Israel as a unfit associate for the United States—and on human rights grounds. Not Syria. Not Iraq. Israel.

Why is this happening? It is happening in part because those who make the Middle East policies of the United States come increasingly to believe that the preservation of Democracies as such in the Middle East ought not to be a primary objective of our strategic policy. Instead, they are of the belief that the relationship with Israel is "irrational" in a proper strategic calculus. Sustained not because it is in the logical "national interest" of the United States, but because, and solely because, of the exigencies of domestic politics. They are of the belief that our backing ought to rest with states like Egypt and Saudi Arabia.

They believe, further, that the instability in the region derives primarily from a presumed "abnormality"—namely, that there is no Palestinian state to give political self-expression to the Palestinian Arabs.

If you do not believe this is so—especially as it relates to the question of preserving democracies as such—then you must look at the recent history of Lebanon. Soviet arms and Soviet clients—Syria, the PLO—have destroyed the Lebanese democracy. Indeed, in what is now a depressing pattern, our Ambassador to Lebanon, Francis Meloy was murdered in Beirut in June, 1976. Yet one searches in vain in American policy for something other than tacit acquiesence. And what is more, the defenders of Lebanon's constitutional order became "right wing Christians."

Perhaps it is too hard to imagine that it will become fashionable, sometime, to characterize the Israeli polity in this manner. Or perhaps that time is closer than one thinks. What is undeniable, however, is that there are already ample indications that the American government regards the workings of the Israeli polity with increasing distress. The American government manages to convey an air of studied exasperation with Israel's approach to the peace negotiations. You know the familiar references: "legalistic nitpicking," "interminable cabinet debates," "undue responsiveness to alleged extremist elements," and all the rest. In this view, the Israeli democracy becomes not an asset to the United States, but a bother.

What is lost, of course, is the sense that Israel cares about the terms of the treaty—cares about their precision—precisely because Israel intends to abide by the treaty once it is signed. Indeed, Israel is the only Middle Eastern government involved, directly or indirectly, which understands that commitments of their government are necessarily durable. For Israel is the only Middle Eastern state whose governmental system, whose fundamental political nature, *is* durable—in the sense that it can and will survive changes of governmental leadership.

States where governments and constitutions are as apt to be changed by assassination or military coup as not, tend to regard treaties as documents of convenience, not as long term commitments. The Israelis understand this, even if Americans may not. There is, for example, the case of the merger of Egypt, Libya, and Syria into the Federation of Arab Republics in 1971. That Federation has never normally been dissolved. The Constitution which binds the three states was formally ratified September 1, 1971 and is technically, I suppose, still in force. That Constitution states, inter alia, that the powers of the Federation, as distinct from those of its constituent members, include the following jurisdictions:

". . . prepare the basis of the foreign policy and standardize the policies of the republics in their international relations . . . . ratification of international treaties and agreements with foreign states and international organizations on matters that come under the Federation's jurisdiction." (Constitution of the Federation of Arab Republics, part II, Article 14, parts A and D.)

When one inquires of the State Department as to the meaning of this, as to its implications for the ability of Egypt to conclude treaties at all, one is told that the Federation is "moribund," that such unification schemes speckle inter-Arab history, and are "symbolic." And yet one is forced to ask: what can be more fundamental than a decision by a state to bind itself to another in the manner of the Federation of Arab Republics? Is it the case that Egypt will treat its solemn undertakings with other Arab states as moribund symbols, but its treaty with Israel as a solemn vow? More to the point what would the reaction of the American government be to any Israeli decision to scrap a treaty on the grounds that it had become "moribund," and, that consent to the treaty in the first place had been nothing but a "symbolic" act?

In fact, what is happening here is that Israel's view that law really matters is a kind of implied rebuke to an American government, which acts increasingly as if law doesn't matter. We live in a time when the language of law, especially international law and especially in the United Nations, has become perverted almost beyond recognition. Once again, in the manner of Orwell, naked aggression becomes "national liberation," state-sponsored terrorists become "freedom fighters," and acts of conquest and annexation are routinely acquiesced in. The United States, prime originator of the U.N. Charter and properly its prime custodian, hopes that the impulses that give rise to such behavior, will somehow dissolve of their own accord.

What is ultimately troubling about the posture of the United States toward Middle East diplomacy, however, is that the strategic rationale which underlies the persistent effort to "demystify" Israel is simply wrong. It is a rationale that is not in the strategic interest of the United States, nor of the Europeans nor the Japanese, nor of the "moderate" Arab regimes which still exist in the Region.

The effort to "shore up" Egypt and Saudi Arabia is surely well-taken, but it cannot be achieved at the expense of Israel's security or vitality. This is the point that must be made. If the Saudis, for example, are concerned about the American position in the Middle East, then they must be concerned about Israel. For Israel is *the* American position in the Middle East. If the Saudis or the Egyptians do not yet grasp this, they must be persuaded to. One needs only to remember that last January 13 when the United States ferried 12 F-15 fighter aircraft to Saudi Arabia as a show of support, those airplanes made a somewhat tortuous journey. Spain did not afford refueling privileges, and so they refueled at the Azores. Turkey, as was mentioned above, was not interested in allowing American helicopters to land there, even with the purpose of rescuing *Americans*. And so it goes.

What, exactly, does Saudi Arabia think the United States is going to do for it—without Israel? How do the Saudis believe that pro-Western influences will be brought to bear in the region generally if they urge upon the United States a strategy of pressuring and isolating Israel? Which is the better hope for stability over the longer run—Israel, or some People's Democratic Republic of Palestine?

It is not surprising, I suppose, that the American government is not making this case to moderate Arab States. For it needs, first, to understand it, itself. I see no indication that this is happening. And when one senses that the case is not being made inside the government, one feels obliged to make the case from the outside, as it were.

We must grasp, especially in the light of recent events, that there are powerful forces at work, manipulated by ruthless and brutal men who seek to transform the world order as we have known it. They seek especially the demise of the Democratic societies, for the flourishing of the democracies is the strongest obstacle to their ambitions. They are determined to remove those obstacles, and they have invested billions in acquiring the military power—plain military power—with which to do it. Meanwhile, the democracies have become a small band, outnumbered in quantity, but let us hope not in spirit or intelligence or in will power. It is now for the United States to rediscover—in the Middle East and elsewhere—where its true interests lie.

Mr. MOYNIHAN. Mr. President, I do not think that was a mistaken impression. The weekend that followed, the talks collapsed, and then our President stated that they had done so because of "absolutely insignificant differences, which are now creating insurmountable obstacles" to peace.

I ask, is our Government preparing to blame Israel for the collapse of these talks? Is it, in the pattern I spoke about on the 19th of February, commencing to make the case that intransigence on the part of the Israelis led to the failure of the hopes of Camp David? If so, this is shameful, because it is not true. The Israelis have acted throughout this matter as a party in earnest, pursuing their interests, but doing so in the context of the understanding that whatever they agree to they will abide by; an honorable sense of what the consequences of entering treaty agreements are. There has been no comparable or reciprocal concern on the other side.

In the interval, the position of Israel has been profoundly affected by the col-

lapse of the former Government of Iran, by the coming to power of a government committed to the elimination of the Israeli state, by the open and really brazen assertion by Boris Ponomarev in Moscow that he "welcomed the victory of socialism in Iran," which could only be a phrase suggesting expansionist ambitions.

We have made no allowance for that change whatsoever. To the contrary, we are commencing to blame our own impotence in the Middle East upon the intransigence of Israel.

Mr. President, I do not wish to go beyond that statement save for two things: One, that what seems to be our present situation was foreseeable, and two, that we are in the danger of making a profound mistake if we are to blame our failures on the honorable and legitimate concerns of a small democratic nation in the Middle East, one of the remaining few in an increasingly totalitarian world.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

REBUTTAL OF 12 TREATY TERMINATION ACTIONS ARGUED BY STATE DEPARTMENT

Mr. GOLDWATER. Mr. President, after 2 months of waiting, the Justice and State Departments have finally filed a reply in court to the lawsuit I instituted on December 22, with 25 other Members of Congress, to test the constitutionality of President Carter's attempted abrogation of the defense treaty with Taiwan.

In an effort to support President Carter's totally unprecedented action, the executive branch is repeating its previously expressed claim that there are supposedly 12 precedents for the President's action.

Mr. President, my lawyers will file the appropriate response with the court in the near future as to matters of law. But the so-called precedents are not legal issues. They are matters of historical fact, and I would like to discuss them at this time.

Frankly, I am surprised at the flagrant omissions and distortions of the historical record which are made in the arguments presented on behalf of the President. These arguments are based on research done at the State Department. The President's case, in so far as it rests on these 12 claimed precedents, is filled with factual errors.

In the first place, 2 of the 12 incidents claimed for Presidential treaty termination do not even involve terminations. They are situations where Presidents first gave notice of terminations, but then pulled them back before either treaty was actually terminated.

Next, 2 of the 10 other treaties did not contain notice provisions. Since President Carter is basing the legality of his action on his purported right to give notice under a provision of the defense treaty itself, the two cases are not applicable where no such treaty provisions existed. In fact, these particular two treaties were cancelled after first being denounced by the foreign governments, a far cry from the situation of the Taiwan Defense Treaty where the other country wants the agreement to remain applicable.

That leaves eight incidents. The terminations of three of these treaties were necessitated by inconsistent acts of Congress. In this situation, the President is doing no more than acting under the implied authority of congressional statutes. It is well-settled by American courts that the last expression of sovereign will must control.

Another treaty termination clearly was authorized under no less than four separate acts of Congress. And another was terminated under the clear authority of a treaty later in time.

The final three treaties became inoperative under the well-settled principle of international law which holds that a treaty ceases to be binding when the basic conditions on which it was founded have ceased to exist or have essentially changed.

None of the 12 incidents involved a treaty of mutual defense.

Therefore, none of the incidents cited for Executive authority have anything to do with the Taiwan Defense Treaty. On the other hand, I have identified 51 treaties, which have been terminated with legislative action.

From this, the clear instruction of history is that treaties are generally terminated in the United States only with some form of legislative approval, either by the advice and consent of two-thirds of the Senate, or, as is the case with respect to the repeal of any other law, by a majority of both Houses of Congress, in each case in participation with the President.

Mr. President, my office has compiled a detailed, 27-page discussion of the 12 incidents relied upon the State Department as precedents for President Carter's action, and I ask that the paper be printed at this point in the RECORD.

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

ANALYSIS OF 12 TREATY TERMINATIONS ARGUED BY STATE DEPARTMENT

(By J. Terry Emerson)

1. 1815: President Madison's administration exchanged correspondence with the Netherlands which allegedly established that the 1782 Treaty of Amity and Commerce had been annulled.

Analysis: There is strong historical evidence the treaty was not annulled in 1815, but remained in effect. Assuming the treaty was then annulled, the cause was the wartime destruction of one of the governments and nations, not independent Presidential power. Also, President Madison did not give notice of the treaty's termination; the foreign government first denounced the treaty.

Discussion: The Netherlands took the initiative in insisting the treaty of 1782 had expired because of the Napoleonic wars, during which the United Netherlands, with whom the treaty was made, was absorbed into the French Empire, entirely disappearing as a separate nation. After the war, it was transformed into a new nation unlike the original one. According to Samuel Crandall in his Treaties: Their Making and Enforcement, the state thus formed "differed in name, territory, and form of government from the state which had entered into the treaty of October 8, 1782, with the United States." (p. 429)

In response to a letter from the government of the new state, in 1815 Secretary of State Monroe appeared to acknowledge the Netherlands' claim that the treaty had been annulled. However, when Monroe became President, he himself repudiated this interpretation. His Secretary of State John Q. Adams argued in 1818 that the 1782 treaty was still operative. (U.S. Foreign Relations 722 et seq. (1873)) In 1831, the Supreme Court of North Carolina enforced the treaty as law in *University* v. *Miller*, 14 N.C. 188, 193.

At most, the incident is a precedent for termination of a treaty in agreement with the other government. Obviously, in the present case, the Republic of China wishes the 1954 treaty to remain in effect.

It is true that much later in 1873, the State Department informed the Minister of Holland that "The Treaty of 1782 is no longer binding on the parties." However, the State Department did not claim President Madison had terminated it. Rather, in a list of treaties that have been abrogated, which was prepared and published by the State Department in 1889, the Department included the Netherlands treaty under a category entitled "Treaties with Powers that have been absorbed into other nationalities."

The Department explained the termination of the treaty as follows:

The principle of public law which causes Treaties under such circumstance to be regarded as abrogated is thus stated: "The obligations of Treaties, even where some of their stipulations are in their terms perpetual, expire in case either of the contracting parties losses its existence as an independent State, or in case its internal constitution is so changed as to render the Treaty inapplicable to the new condition of things." (U.S. Treaties and Conventions 1776–1887 (1889), at 1236–1236).

Thus, the real ground for termination of the treaty, as interpreted by the State Department itself, is the extinction of the state with whom the treaty was originally made. As explained by most writers on international law, the execution of the treaties of a state are conditioned upon its power to exercise sovereignty and this power is lost when the state is extinguished by forcible annexation or absorption into another state. (*Research in International Law*, American Journal of International Supplement, vol. 29, 1935, p. 1165.)

From this it is clear President Madison did not cause the treaty's annulment by his independent action. The treaty expired automatically under a well-established principle of international law. In contrast, here President Carter seeks to terminate the defense treaty with the Republic of China by his own action and at his own initiative. The two situations are as different as day and night.

2. In 1899, President McKinley gave notice to the Swiss Government of intent "to arrest the operations" of certain articles of the 1850 Convention of Friendship, Commerce and Extradition.

Analysis: The Convention was superseded by a later Act of Congress inconsistent with the earlier treaty. That statute conferred implied authority on the President.

Discussion: The State Department in its memorandum of December 15, 1978, admits the Presidential notice "may have been necessitated by the Tariff Act of 1897." (p. 9) This disqualifies the incident as a precedent for notice where there is no accompanying legislative action.

Following enactment of the Tariff Act of 1897, the United States entered into an agreement with France under authority granted by that law. The Swiss government thereupon claimed the right to enjoy the same concessions for Swiss imports as was granted French products, but refused to make reciprocal con-

cessions. The United States rejected the Swiss demand because, in the words of the State Department memo: "It was contrary to U.S. general policy and to the policy of the Tariff Act to make trade concessions in the absence of a reciprocal arrangement." (p. 9, emphasis added) Section 3 of the Tariff Act denied the President authority to negotiate trade agreements unless "reciprocal and equivalent concessions may be secured in favor of the products and manufactures of the United States." (30 Stat. 203) Since Congress had passed a law clearly inconsistent with an earlier treaty, the President was compelled to enforce the later expression of legislative will.

This principle has been followed by the Supreme Court. In *Van der Weyde v. Ocean Transport Co.*, the court upheld the validity of executive termination of certain provisions of a treaty with Norway in conflict with the 1915 Seamen's Act, even though Congress had not specifically directed the President to terminate those particular provisions. The Court said it "was incumbent upon the President, charged with the conduct of negotiations with foreign governments and also with the duty to take care that the laws of the United States are faithfully executed, to reach a conclusion as to the inconsistency between the provisions of the treaty and the provisions of the new law." (297 U.S. 114, 118, (1936), emphasis added)

Rather than recognize any general power in the President to terminate treaties, the Court narrowly limited the President's right of termination to the single situation of an inconsistency between the treaty and another law, and then only because he is required to faithfully execute the laws, of which the later in time is superior.

As the Supreme Court has ruled on numerous occasions, nothing in the Constitution gives a treaty any superiority over an act of Congress: "[I]f the two are inconsistent, the one last in date will control the other." (*Head Money Cases*, 112, U.S. 580, 599 (1884); *Whitney v. Robertson*, 124 U.S. 190, 194 (1888); *The Chinese Exclusion Case*, 130 U.S. 581, 600 (1888); *Fong Yue Ting v. U.S.*, 149 U.S. 698, 720 (1893); *La Abra Silver Mining Co. v. U.S.*, 175 U.S. 423, 460 (1899))

Unlike the 1899 incident, there is no subsequent statute which President Carter claims is in conflict with the Mutual Defense Treaty of 1954. To the contrary, there are numerous statutes and treaties which reinforce the purpose of that treaty.

3. In 1920, President Wilson "by agreement" terminated the 1891 Treaty of Amity, Commerce, and Navigation with the Congo.

Analysis: The treaty was terminated following Congressional action affecting that treaty. It was denounced in its entirety by the foreign government, not by notice of the United States.

Discussion: In the Seamen's Act of 1915, Congress ordered President Wilson to notify several countries of the termination of all articles in treaties and conventions of the United States "in conflict with this act." (38 Stat. 1184) The authority of Congress to impose this obligation on the President was upheld by the Supreme Court in *Van der Weyde v. Ocean Transport Co.*, 297 U.S. 114, 118 (1936).

In accordance with this statutory mandate, President Wilson notified Belgium of his intention to terminate Article 5 of the 1891 treaty. (The treaty contained no provision for notice. It was originally concluded with the independent state of the Congo, which later came under Belgian control. The change of governments further weakens the incident as a precedent for termination of the Mutual Defense Treaty since the identical governmental authorities on Taiwan with whom we made the treaty are still in effective control of the treaty covered by that treaty.)

In view of the Congressionally-mandated termination of a substantive article of the treaty, Belgium replied that it wanted to terminate the entire treaty. A month later, Belgium sent a second note instructing the United States that its first note was intended as formal notice of termination of the treaty. In acknowledgement of this notice, the United States regarded the treaty as expiring one year later.

The situation is entirely different from the 1954 Mutual Defense Treaty with the Republic of China. The 1891 treaty was terminated with the agreement of both parties. The Republic of China, however, does not wish to terminate the 1954 treaty.

4. In 1927, President Coolidge gave notice of termination of the 1925 Convention with Mexico on the Prevention of Smuggling.

Analysis: The Convention was terminated during an unsettled period in relations with Mexico which caused a fundamental change in conditions essential to its continued effectiveness. The President did not inform Congress, depriving legislators of an opportunity to challenge his action.

Discussion: In 1927, United States relations with Mexico were unsettled because of alleged religious persecution within Mexico and confiscation of American-owned private and oil lands. In fact, President Coolidge claimed Mexico was smuggling arms and ammunition to revolutionists in Nicaragua, indicating Mexico was not a reliable treaty partner under a Convention relating to the prevention of smuggling of any articles.

During the period from March 1926, the effective date of the Convention, to March 1927, when notice of termination was given, President Coolidge enforced a strict embargo on the shipment of arms and ammunition to Mexico (see proclamation of January 7, 1924, Foreign Relations, 1924, vol. II, p. 428); Secretary of State Kellogg called in the Mexican Ambassador to protest mistreatment of American Catholics in Mexico, including their arrest and expulsion (Foreign Relations, 1927, vol. III, p. 639); the Mexican Government enacted laws for the confiscation of American-owned oil rights and agricultural lands and cancelled drilling permits previously issued to American companies, effectively suspending drilling operations (Foreign Relations, 1927, vol. III, pp. 180–182); Secretary of State Kellogg presented the Senate Foreign Relations Committee with documented evidence of Bolshevik plans to use Mexico as a base of operations against the United States (Foreign Relations, 1927, vol. I, p. 356); and in his annual address to Congress, President Coolidge criticized Mexico on the basis of "the most conclusive evidence," for supplying "arms and munitions in large quantities" to the revolutionists in Nicaragua, contrary to his requests for an embargo on such supplies (Foreign Relations, 1927, vol. III, p. 294).

As President Coolidge summed up the difficulties with Mexico in a speech on April 25, 1927:

"We have had claims against that country running over a long series of years, growing out of the death of many of our citizens and the loss of their property, running into hundreds of millions of dollars. A very considerable portion of these cases has been due to revolutionary activities and other forms of public violence. Public order has never been entirely complete in that country. But lately our difficulties have been increased by the enactment of laws by the Government itself, which we feel threaten the virtual confiscation of the property of our citizens, even where their holdings are under title which have been established for scores of years." (Id. p. 216).

President Coolidge explained that these laws were contrary to an understanding our government had reached with the President of Mexico in 1923, as a result of which we had recognized the government. (Id.)

In the circumstances, there was a dramatic change for the worse in relations between the United States and Mexico from March of 1926 to March of 1927, which made the anti-smuggling convention inapplicable. Although these conditions were not described in the notice of termination due to diplomatic niceties, their existence and effect upon the Convention are undeniable. Obviously, conditions presumed to be necessary for the enforcement of the Convention, stability, public order, and government willingness to implement it, did not exist.

The situation in Mexico in March of 1927 fits the classic circumstances for application of the principle of *rebus sic stantibus*. The doctrine is explained in an opinion by Acting Attorney General Biddle to President Roosevelt in 1941. That opinion holds that a treaty "ceases to be binding when the basic conditions upon which it was founded have essentially changed." (40 Opinions Attorneys' General 121)

Actually, Biddle's opinion is an official admission of the necessity for legislative concurrence in the decision to provide notice under a treaty provision relating to withdrawal. Although his opinion concluded that the International Load Line Convention governing ocean tanker loadage had become inoperative because of war conditions, he rejected any idea that the President alone could give notice under the convention itself. Biddle wrote: "It is not proposed that the United States denounce the convention under Article 25 (47 Stat. 2256), nor that it be otherwise abrogated. *Consequently, action by the Senate or by the Congress is not required.*" (Emphasis added)

Article 25 of the convention provided for withdrawal by any contracting government twelve months after notification to the other parties. The article is similar to Article X of the R.O.C. defense treaty. Thus, it is clear that Biddle believed legislative approval was necessary to authorize presidential action pursuant to the terms of a treaty in circumstances parallel to those asserted by President Carter as the sole ground for his unilateral action. According to the doctrine of the Biddle opinion, President Carter could not exercise the notice provision without further legislative authority. Nor could he invoke the principle of changed conditions as a purported basis of his right to give notice; the Biddle opinion makes it clear that action under the principle of *rebus sic stantibus* is entirely separable and distinct from action under the notice provision of a treaty.

The doctrine of *rebus sic stantibus* can be traced to principles of ordinary contract law. It is an implied condition of a contract (or treaty) known to the Framers of the Constitution and was given judicial recognition by Mr. Justice Davis, in the context of treaty law, in *Hooper* v. *United States*, 22 Court of Claims, 1887, p. 408. The doctrine is universally considered as an exception to the continuing validity of treaties and does not support any general rule of treaty termination by the Executive. (Crandall, Treaties, Their Making and Enforcement, 2d Ed., 1916, pp. 440–442)

President Carter has already rested his action solely upon his interpretation of the notice provision in the defense treaty; but in any event he could not invoke *rebus sic stantibus* as to the ROC treaty. For an essential requirement of the doctrine is that the change in conditions must not be the result of action by the party seeking to involve it. (See 1969 Vienna Convention on the Law of Treaties, Articles 61, 62; Restatement of the Law 2d, Foreign Relations Law of the U.S., 1965, pp. 467–470)

Moreover, the Coolidge incident is not a valid precedent since Congress was not in-

formed of the notice at the time and thus it went unchallenged.

5. In 1933, President Roosevelt withdrew the United States from the 1927 Convention for the Abolition of Import and Export Prohibitions and Restrictions.

Analysis: The 1927 Convention was inconsistent with and had a restrictive effect on the National Industrial Recovery Act of 1933. Therefore, the President applied the later expression of Congressional will. It also was terminated due to a fundamental change in conditions, not the result of any action by the United States.

Discussion: The official papers published in connection with the termination of the 1927 Import-Export Convention prove that the provisions of the National Industrial Recovery Act, a later statute, were instrumental in moving the President to give notice. (W. McClure, 1941, *International Executive Agreements*, p. 18)

On June 19, 1933, Acting Secretary of State Phillips initiated steps towards withdrawal from the agreement by writing the Chairman of the American Delegation to the Monetary and Economic Conference, Cordell Hull, as follows: "This action by the British Government (withdrawal) and certain provisions of the new Recovery Act which authorize the President to license imports and impose embargoes make it imperative that we give immediate consideration to the question of what the United States should do in respect of this Convention." Emphasis added. (Foreign Relations, 1933, vol. 1, p. 784) Thus, Secretary Phillips expressly identified the Recovery Act as one of the developments which made it "imperative" to consider denouncing the convention.

Hull's reply of June 23, 1933, makes it clear that the statute was unmentioned in the U.S. notice not because it was not significant to our decision, but because of diplomatic posturing. He recommended that we withdraw, but in such a way "that it not be construed as evidence of any new decision by the Government to shape its policy on domestic, rather than on international lines." Accordingly, the official notice concealed the relationship of the domestic Recovery Act to our decision as originally emphasized by Secretary Phillips. (*Id.*, pp. 784–785)

The incident stands as no more than an example of the President implementing the latest expression of Congressional intent. Since the President cannot enforce two laws which are in conflict, as the 1927 convention and 1933 statute were, he is compelled to select the one which reflects the current will of Congress. (*Presidential Amendment and Termination of Treaties: The Case of the Warsaw Convention*, 34 U. Chic. L. Rev., 1967, p. 592)

As mentioned, the U.S. Government notice gave as the sole reason for withdrawal the fact that several other nations had already withdrawn, thereby defeating the original purpose and assumption for the convention. Eleven countries out of an anticipated original 19 had ceased to be bound by the convention on June 20, 1933, when the United States gave its notice. Accordingly, our notice stated that while it "had been hoped that the principle embodied in the convention would be widely accepted", the "reverse" has been true.

These circumstances fit the classic example of *rebus sic stantibus*, where a basic set of conditions or expectations were assumed to exist as the basis for carrying out the treaty, but due to changed conditions, those original purposes or expectations are no longer present. When such a fundamental change occurs, the treaty is no longer operative or binding.

The principle was recognized by Mr. Justice Davis, who wrote, in *Hooper v. United States*, that a "treaty might be construed as abrogated when material circumstances on which it rested changed." (22 Court of Claims 408 (1887)).

Thus, rather than asserting any general power to withdraw the nation from all treaties having a notice provision, President Roosevelt's 1933 notice itself clearly limits the basis of his action to the change in conditions. As the State Department memo states: "A convention on the abolition of import and export prohibitions and restrictions clearly needed widespread acceptance to be effective . . ." (p. 18)

In contrast to the 1927 convention, there is no change in circumstances which prevents the 1954 Mutual Defense Treaty from being effective. The same regime with which we concluded the treaty remains in effective control of the territory of Taiwan and the Pecadores, regardless of derecognition. The territory governed by those authorities remains a critical and strategic link in the entire chain of Pacific Basin security bases from which the United States supports its national security and the security of allies with whom we have formal defense treaties. And, in view of the current massive invasion by the People's Republic of China across its entire joint border with Vietnam, supported by an invasion force of 250,000 troops, Taiwan's need for protection under the defense treaty is greater than ever.

Even if derecognition were viewed as a basic change, it cannot be invoked as a reason for terminating the 1954 treaty. Under customary international law, a nation cannot use a change of conditions as a ground for terminating a treaty if the change is the result of its own action, inconsistent with the original purposes of the treaty.

In any event, President Carter is not asserting changed circumstances as a ground of his notice; he claims implied authority solely under the notice provision of the treaty. Thus, the 1933 incident has no similarity to the present case.

6. In 1933, President Roosevelt gave notice of termination of the 1931 Treaty of Extradition with Greece.

Analysis: The treaty was not terminated. Notice was withdrawn. The sole basis for the President's notice was violation of the treaty by the other nation, an exception that does not apply to the Republic of China.

Discussion: The incident is not a precedent for Presidential treaty termination because the treaty was not terminated. President Roosevelt did give notice, but withdrew it. Whether he would have completed the termination is speculation; the strongest evidence points to his purpose only of using the threat of termination as pressure for negotiating purposes.

The President's action was initiated because Greece had refused to extradite an individual accused of fraud as required under the extradition agreement. Clearly, his action was founded on the fact the treaty had already been violated by breach of the other party. The President may have power to determine that a treaty has become void in this narrow situation under the principle of traditional contract law whereby a party is released from a contract obligation if the other party is guilty of a substantial breach.

In *Ex parte Charlton*, the Supreme Court appears to have recognized the principle of termination in case of adverse breach. In this case, the Supreme Court held that a violation of the obligation of a treaty which, in international law, would have justified the United States in denouncing it, makes the treaty "only voidable" and not automatically "void." There the court said the Executive Branch chose to waive the right to free the United States from the 1884 extradition treaty with Italy after that country refused to surrender its citizens as agreed under the treaty. (229 U.S. 447 (1931))

The Department of State has previously recognized the existence of an exception to the power to terminate treaties based upon "the principles governing the operation of contracts." (See memorandum prepared by Secretary of State Hughes, October 8, 1921, reprinted in Hackworth, Digest of International Law, 1943, vol. V, pp. 324–326, especially p. 325.) As Secretary of State Rusk testified in 1963, relative to a possible breach by the Soviet Union of limits on nuclear testing, "it is clearly established . . . that where the essential consideration in a treaty or agreement fails through violation on the other side that we ourselves are freed from those limitations." (Hearings before the Senate Comm. on Foreign Relations on the Test Ban Treaty, 88th Cong., 1st Sess., p. 37) Secretary Rusk submitted a legal brief on this exception to the Senate Committee which specifically distinguished between withdrawal by invoking the notice provision of a treaty and the right of voiding the treaty because of a breach by the other government. (See opinion, dated August 12, 1963, of the Legal Adviser, *id.*, pp. 37–40).

Accordingly, the principle of termination because of breach by another party is recognized by the State Department itself as a limited power which is entirely different from any authority conferred by the notice clause of a treaty. Obviously, the principle has no application to the defense treaty with the Republic of China. Here President Carter is purportedly acting solely under the notice provision. He has not attempted to invoke the principle of violation by another party, nor could he. There is no allegation that the Republic of China has failed in any sense whatever to meet its obligations under the defense treaty. In contrast, the 1933 notice by President Roosevelt clearly identified the violation by Greece of the treaty as the reason for the notice.

7. In 1936, President Roosevelt signed a protocol agreeing with Italy to terminate the 1871 Treaty of Commerce and Navigation.

Analysis: The 1871 treaty had become inconsistent with a later Act of Congress which conferred implied authority upon the President. Also, the treaty was terminated in joint action with the other country by a protocol mutually agreed upon. In contrast, the Republic of China wishes to keep in effect the 1954 defense treaty.

Discussion: President Roosevelt's action in agreeing with Italy to terminate the 1871 treaty arose directly out of and was tied to the 1934 trade law enacted by Congress. That law authorized the President to suspend beneficial duties to imports from any country discriminating against our exports. Since American commerce was being subjected to what the State Department described as "highly prejudicial treatment" by the trade control measures of Italy, the Department warned the President he "would be placed in the position of having to choose between the execution of the act and observance of the treaty."

In order to avoid being forced to breach the treaty or ignore the obvious intent of the statute, the State Department advised the President to notify Italy of our intent to terminate the treaty. (G. Hackworth, 5 Digest of International Law 330–331 (1943)).

Thus, the statute conferred implied authority on the President to take action leading to termination of the treaty. In the present case, President Carter has no implied or express authority under a separate statute.

Moreover, instead of giving the initial, formal notice to Italy of the treaty's termination as suggested, President Roosevelt approved a joint protocol entered into between the United States and Italy announcing the intention of each government to terminate the treaty. Thus, the treaty was not cancelled by Presidential notice alone, as is proposed in the case of the 1954 treaty with the Republic of China, but by mutual agreement with the other government.

8. In 1939, President Roosevelt gave notice of termination of the 1911 Treaty of Commerce and Navigation with Japan.

Analysis: The 1911 commercial treaty was clearly terminated pursuant to national policy authorized by the Nine Power Treaty of 1922. Also the 1911 treaty had become inoperative due to wartime conditions.

Discussion: The termination of the 1911 commercial treaty with Japan is not an example of independent Presidential power. Under the Treaty on Principles and Policies Concerning China of 1922, known as the Nine Power Agreement, the United States was bound to participate with other governments in respecting the territorial integrity of China. In the first article of that treaty, the contracting governments pledged to "respect the sovereignty, the independence, and the territorial and administrative integrity of China," promised to give China the opportunity to develop a stable government, and to respect an open door for commerce and industry. (Foreign Relations, 1922, vol. I, pp. 278–279)

As early as February of 1932, Secretary of State Stimson made it clear this treaty was being violated by Japan. He hinted future American action to implement our responsibilities under the treaty and was a well-known advocate of strong economic sanctions against Japan as a means of pressuring her to uphold the Nine Power Treaty and the Kellogg-Briand Pact of 1928, which purportedly renounced war as an instrument of national policy. (See text of letter reprinted in 84 Cong. Rec. 10751–10752; as to Stimson's approach to Japan, see W. Neumann, *America Encounters Japan*, 1963, pp. 195–201)

Partly because Japan was the third largest purchaser of American exports at a time when foreign trade was considered vital to economic recovery, President Hoover and then President Roosevelt refused at first to be pushed into extreme acts of economic warfare against Japan. But continued Japanese aggression and the U.S. commitment to China caused a turn in American policy. (Neumann, *id.*, pp. 212–227)

For in the early 1930's, Japan repudiated the Kellogg-Briand Pact, withdrew from the 1921 treaty restricting naval fleets, and overran Manchuria. After she entered upon all-out war against China in 1937, it was apparent that Imperial Japan had the same designs in the Far East that Nazi Germany had in Europe. (Barck, Wakefield, Lefler, *The United States: A Survey of National Development*, 1950, pp. 899–900)

The outbreak of war in 1937 led to strong public appeals for a boycott of Japanese goods and for the application of other economic pressures which would cause Japan to withdraw from China. President Roosevelt moved in the direction of this changing public opinion when he made his famous "Quarantine" speech on October 5, 1937. In this speech, he declared that war was becoming a contagion whose spread could be stopped only by a "quarantine" against aggressors. The Japanese made a partial answer to this speech on December 12, 1937, when their planes sunk the U.S. gunboat Panay in the Yangtze River, with the loss of two dead and 30 wounded, and destroyed three American merchantmen.

According to historian William Neumann, "the subject of economic sanctions was studied and discussed in the State Department" throughout 1938. (Neumann, *id.*, p. 253) In fact, by the middle of 1938, the State Department informed all manufacturers and exporters of aircraft and airplane parts that it frowned upon the sale of such commodities to countries, as Japan, which indiscriminately bombed civilians. In 1939, this voluntary ban was extended to high octane gasoline. These warnings were heeded by the producers with the result that a virtual embargo on planes, parts and gasoline was raised against Japan. In a similar approach, the State Department gradually ended the extension of credit to Japan by American citizens after 1938. (Barck, Wakefield, Lefler, *id.*, p. 904)

Stanley K. Hornbeck, Adviser on Political Relations to the Secretary of State, was one of the most influential believers in economic pressure as an instrument of American policy in Asia. In December of 1938, he specifically proposed to Secretary Hull the denunciation of the 1911 commercial treaty with Japan in order to clear away legal difficulties to such a program of economic sanctions. (Neumann, *id.*, pp. 240-246, 253)

Thus, in July of 1939, when Secretary Hull finally informed Tokyo that the United States would abrogate the commercial treaty, his action was part-and-parcel of an ongoing American embargo that had already been mounted against Japan, primarily by moral persuasion. Neumann writes that termination of the commercial treaty was necessary to enable the Roosevelt administration "to begin full scale economic war against Japan" as a measure designed to help China. (Neumann, *id.*, pp. 254–255)

In similar vein, Charles E. Neu writes that Roosevelt gave notice so that "the way would be open for trade restrictions" which would warn Tokyo and "strengthen the morale of China." (Neu, *The Troubled Encounter: The United States and Japan*, 1975, p. 163) And James H. Herzog writes that with notice of the treaty's termination, the United States had taken a positive step "which would allow economic sanctions to be used against Japan." He, too, specifically links the notice with Japan's aggression against China. (Herzog, *Closing the Open Door: American-Japanese Diplomatic Negotiations 1936–1941*, 1973, pp. 46–47)

From this, it is undeniable that the notice was an integral part of American policy which took a no-compromise stand on behalf of the territorial integrity of China. Clearly, this policy of morality on behalf of the welfare of China was exactly the type of governmental action contemplated and authorized by the Nine Power Treaty. Thus, President Roosevelt's notice was authorized by a formal treaty ratified with the advice and consent of the Senate.

The aggression by Japan, even against U.S. vessels, also created a fundamental change in circumstances not the result of our personal actions. Absent a Supreme Court decision of the issue, it is not known whether the President acts legally when he invokes the doctrine of *rebus sic stantibus, but* this principle of international law would at least have given President Roosevelt an additional plausible ground for independent action.

In the present case, neither any asserted authority under a related treaty subsequent in time to the 1954 treaty, nor the principle of *rebus sic stantibus* has been invoked by President Carter.

9. In 1944, President Roosevelt gave notice of denunciation of the 1929 Protocol to the Inter-American Convention for Trademark and Commercial Protection.

Analysis: Denunciation of the 1929 Protocol is at most an example of an international agreement becoming inoperative when the basic conditions upon which it was founded have essentially changed and the change is not the result of any action by the nation deciding to withdraw. Moreover, Congress was not informed of the notice and was denied any opportunity to challenge the action.

Discussion: The notice of denunciation of the 1929 protocol expressly stated that it had failed to serve any purpose. Secretary of State Hull explained the United States had decided to withdraw from the protocol "in view of past ineffectiveness and absence of any evidence of future increased activity."

Accordingly, the situation fits the classic case of invoking the principle of international law known as *rebus sic stantibus*, described in an Attorneys' General Opinion of July 28, 1941, as "a declaration of the inoperativeness of a treaty which is no longer binding because the conditions essential to its continued effectiveness no longer pertain." (40 OP. A.G. 119)

Even so, the incident may have been an improper exercise of power by the President. Assuming for the sake of argument, however, that the notice was legally made, the action can be explained under the principles of ordinary contract law. The principle of *rebus sic stantibus* was known to international law authorities at the time of the Constitutional Convention of 1787. Vattel, Grotius and other writers, whose works were read by several of the Framers, each mentioned that one of the implied conditions inherent in public contracts, such as a treaty, was the right of a government to consider itself no longer bound by the agreement when fundamental conditions assumed as the basis of the contract no longer existed.

There is no similar, well-established principle of international law, however, providing that in a government of divided powers as ours, the Executive alone possesses a general power of treaty termination. The principle of *rebus sic stantibus* does not apply to President Carter's notice affecting the treaty with the Republic of China; nor has he sought to invoke the principle. Rather, he is claiming a general power of terminating any treaty which includes a notice provision regardless of any special surrounding circumstances.

Moreover, the State Department memo admits at page 27 that there "was no prior or subsequent communication" of the 1944 notice with the Senate or Congress. Thus, the notice was in effect kept secret from Congress and did not present an opportunity for challenge in the courts.

10. In 1954, President Eisenhower gave notice of withdrawal from the 1923 Convention on Uniformity of Nomenclature for the Classification of Merchandise.

Analysis: The United States withdrew from the 1923 Convention because it had been "rendered inapplicable" by a basic change in conditions not the result of our governments' actions. Also, termination of the Convention was done with the agreement of other parties.

Discussion: The 1954 notice is a classic example of the application of the principle of international law known as *rebus sic stantibus*, discussed above.

The 1923 Convention relied on use of the Brussels nomenclature of 1913 in statistical reporting of international commerce. In the words of the State Department memo, at page 29, "the Brussels system of 1913 had become outdated."

In 1950, the United Nations Economic and Social Council had urged governments to use a new system known as the Standard International Trade Classification instead of the Brussels system. Then in 1954, the 10th Inter-American Conference of American States adopted a resolution on customs nomenclature which specifically declared that "the Brussels nomenclature of 1913 has become outdated and has thereby rendered

inapplicable the Santiago Convention on Uniformity of Nomenclature for the Classification of Merchandise . . . " The resolution urged member nations to abandon the 1923 Convention and adopt the new United Nations-sponsored system.

The United States notice of withdrawal from the convention acted upon the wide agreement of other governments, who were parties to it, that the convention was no longer applicable to current conditions. It is obvious a fundamental change of conditions had occurred. If the basic system of statistical reporting had become "outdated" and governments generally wished to adopt a new system to replace the old, and if governments generally viewed this change as having "rendered inapplicable" the 1923 Convention which utilized the earlier reporting system, these facts surely must constitute a fundamental change in the basic conditions upon which the convention was founded.

Unlike the situation as to the 1923 convention, there is no argument by President Carter that a basic element of the Mutual Defense Treaty with the Republic of China has become "outdated." Nor is there any claim the defense treaty has been "rendered inapplicable." To the contrary, it has an even greater significance to the people and authorities of Taiwan after the recognition of the Peoples Republic of China by the United States; and it remains significant to United States security interests in the Pacific Basin.

Moreover, unlike the situation with the 1923 convention, where there was widespread agreement among parties to the convention that it should be abandoned, here the Republic of China wishes to keep the defense treaty in effect. Whatever the President's power may be to act by agreement with other parties to a treaty in denouncing it, this does not create a general power of unilaterally deciding to withdraw from a bilateral treaty when the other nation does not agree or join his action.

One of the specific defects meant to be corrected by the Framers of the Constitution was the unfaithfulness of the United States under the Articles of the Confederation in keeping its treaty obligations. Several of the Framers declared the Constitution was supposed to aid in restoring respect to the United States as a treaty partner. Thus, it is exactly the easy escape from a treaty represented by President Carter's unilateral notice, not in agreement with our foreign treaty partner, that the Framers wanted to prevent.

11. In 1962, President Kennedy gave notice of termination of the 1902 Convention on Commercial Relations with Cuba.

Analysis: The President's action clearly was authorized by several statutes and one other treaty.

Discussion: The termination of the 1902 commercial convention was an integral part of the U.S. economic embargo of Castro Cuba, declared on February 2, 1962, in which we were joined by the Organization of American States. (13 CQ Almanac 295–298, 331, 333 (1962)).

President Kennedy's notice of August 21, 1962, occurred only eight weeks before the naval blockade of Cuba. He had ample authority to impose a trade embargo under provisions of the Foreign Assistance Act of 1961, the Export-Control Act of 1948, the Trading with the Energy Act, and Battle Act of 1954. Termination of the convention was also authorized pursuant to the Inter-American Treaty of Reciprocal Assistance of 1947, which contemplated a "partial or complete interruption of economic relations" as a means of enforcement. Thus, notice of terminating the commercial convention was given pursuant to a national policy authorized and developed with full legislative participation.

Moreover, the notice may have been authorized under implied authority conferred by Congress when it enacted the Tariff Act of 1945 (59 Stat. 410).

Under the specific authority granted by this statute, the United States Government had entered into numerous trade agreements with other nations by executive agreement through the General Agreement on Tariffs and Trade (GATT). Pursuant to authority delegated by the same trade statute, the commercial treaty with Cuba had already been suspended by an executive agreement with Cuba in 1947. Then, only three months before President Kennedy gave notice, Congress itself effectively suspended the operation of the 1902 treaty by enacting section 401 of the Tariff Classification Act of 1962 on May 21, 1962 (76 Stat. 72, 78). In this provision, Congress declared that Cuba was dominated or controlled by the Soviet Union and mandated suspension of tariff preferences for Cuban articles and suspension of the Act of December 17, 1903, and section 316 of the Tariff Act of 1930, both relating to implementation of the 1902 treaty. The fact that Congress specifically addressed the 1902 treaty shortly before notice was given is clear evidence that termination was linked to punitive measures against Communist Cuba.

Assuming, for the sake of discussion, that notice of termination would have occurred even had the United States not instituted an embargo of Cuba, the notice would still have been authorized by the enabling statute which set in motion the GATT process on the part of the United States. Thus, in either event, the President's action was exercised under authority delegated by Acts of Congress. In contrast, there is no past or current statute which is cited as having any plausible bearing on the notice given by President Carter. His notice was given in the absence of any separate, supporting legislative enactment and rests solely on the President's unilateral and self-serving interpretation of the Mutual Defense Treaty.

12. In 1965, President Johnson gave notice of denunciation of the 1929 Warsaw Convention limiting claims by passengers on international air carriers.

Analysis: Our government's participation in the Convention was not terminated; President Johnson withdrew the notice. It is not a precedent for Presidential termination. The Convention was widely viewed in this country as being outdated and, in fact, was being ignored by American courts. At most, the incident is an example of a treaty becoming inoperative due to changed conditions.

Discussion: The United States did not withdraw from the Warsaw Convention. It is pure speculation to assume President Johnson would have denounced the agreement unilaterally. To the contrary, it appears he used the threat of U.S. withdrawal as leverage in negotiations with other nations leading to acceptance of a protocol to the convention favorable to our wishes for a sizable increase in the ceiling on claims awarded to air passengers. The incident is not a precedent for Presidential termination of a treaty because President Johnson did not actually denounce a treaty.

There was strong support in the Senate and the country for U.S. withdrawal from the convention. An unfortunate tragedy had befallen then Senator Capehart, whose son and daughter-in-law were killed in a plane crash in Jamaica on January 21, 1960, leaving four young children orphaned. The survivors were clearly entitled to recover damages against the grossly negligent airline, however the Warsaw Convention limited liability to $8,300. Lawyers for the airline literally waved the convention in Senator Capehart's face in refusing initially to pay a realistic award to his relatives. Only court proceedings eventually forced the airline to settle at a higher amount.

With the personal experience of one of their colleagues much in mind, many Senators were revolted at the deficiencies in the Warsaw Convention. Their attitude was reinforced by testimony before the Foreign Relations Committee by trial attorneys who demonstrated that the convention was "outdated, archaic" and further that the proposed Hague Protocol to the convention was inadequate in lifting airline liability to a sufficient amount.

It was established at the Senate hearings that American courts had successfully avoided the limits of the convention by developing a judicial principle which allowed exceptions to the convention in cases of "willful misconduct" by an airline. The exception had become the norm in U.S. courts and the convention had been effectively replaced by legal practice. (Hearings on the Hague Protocol before Senate Foreign Relations Committee, 89th Cong., 1st Sess., 1965, at 41, 59).

In this setting, there was a basic change in conditions. The convention had become inapplicable in U.S. courts and outdated as practical matter. Moreover, its original purpose had been met. It was adopted to help fledging airlines, now become strong carriers. If President Johnson had denounced it, his action would have been consistent with the principle of international law known as *rebus sic stantibus*, discussed above. The principle has no application to the defense treaty with the Republic of China. Unlike the history of the Warsaw Convention in the mid-1960's, there is no line of consistent judicial decisions disregarding the defense treaty. There is no similarity between the two situations.

Moreover, as Lee S. Kreindler, Chairman, Aviation Law Section, American Trial Lawyers Association, testified at the Senate Committee hearings: "It should be pointed out that the Warsaw Convention is a 'private law' treaty which only regulates rights and liabilities as between private individuals and corporations. It does not involve real interests of governments as such. Whatever reluctance there might be to withdraw from a public law treaty involving the performance of governmental responsibilities, it does not apply to the Warsaw Convention which only regulates rights between private persons." (Hearings at 106)

Thus, there is a critical difference between the Warsaw Convention and the Mutual Defense Treaty. The latter is a "public" treaty involving the performance of governmental duties. Even if, for the sake of argument, the President has power to terminate treaties involving "private rights," it does not follow that he has power to revoke a treaty which involves fundamental policy for the country on a matter of vital interest to all the people.

It is true, 29 Senators joined in sponsoring a Senate Resolution urging President Johnson to denounce the Warsaw Convention. The resolution was introduced several months after he had given notice and anticipated that the notice might be withdrawn. It is wrong to infer from this that the 29 Senators, or majority of the Senate, believed the President possessed authority to denounce the convention absent legislative action. In fact, the very act of introducing or cosponsoring the legislation was an affirmative action which in the normal process of legislative activity would result, if successful, in a grant of authority or ratification by the Senate of Presidential action as required by the Constitution. From this, the logical conclusion is that the Senators sponsoring the resolution believed legislative participation was necessary to fulfill the decision to denounce the convention.

THE CASE AGAINST SALT II

Mr. GOLDWATER. Mr. President, the coming debate on SALT II promises to be a very interesting one and the results of the debate probably as important to the future of peace in the world and the peace of our country as anything we have undertaken in recent years. Mr. Eugene V. Rostow, who is sterling professor of law at Yale, has written a commentary, a very understandable, intelligent argument against SALT II. For the benefit of my colleagues I ask that it be printed at this point in the RECORD.

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

THE CASE AGAINST SALT II

(By Eugene V. Rostow)

In human disputation justice is only agreed on when the necessity is equal; whereas they that have the odds of power exact as much as they can, and the weak yield to such conditions as they can get—THUCYDIDES, *History of the Peloponnesian War*

Over the last century, the yearning for peace has given rise—especially Great Britain, the United States, Scandinavia, the Netherlands, and Canada—to the belief that disarmament agreements, or agreements for arms limitation are an important means for securing peace. It would be more accurate to say that settled expectations of peace between nations result in disarmament. When neighbors share the same goals, agreements on arms limitation or disarmament can be of marginal utility. For example, the celebrated agreement between Great Britain and the United States providing that no warships be stationed in the Great Lakes has become the symbol for the general policy of Canada and the United States with respect to their common border. And many countries have had unarmed borders for years without benefit of a formal treaty. But the enthusiastic advocates of arms limitation treaties tend to forget that such agreements cannot achieve their goals when some of the parties pursue quite different policies.

The arguments made for SALT II today are the same as those put forward on behalf of the Washington Naval Treaty of 1922 and the other arms-limitation and arms-reduction arrangements on which the Western governments lavished so much time, attention, and hope during the 20's and 30's.

The Washington Naval Treaty and its progeny did not prevent Pearl Harbor. We, the British, and the French, lulled by the treaty, and hardpressed in any event to find money for naval-building programs, let our navies slide. We did not build our full quotas or modernize our ships. The Japanese and later the Germans, on the other hand, took full advantage of their quotas. We should recall what the phrase "pocket battleship" meant. The pocket battleship, which the Japanese and the Germans used with such great effect in World War II, was a cruiser with the striking power of a battleship—a powerful modern man-of-war built within the tonnage limits of the treaty.

The post-World War I arms-limitation agreements—demilitarization of the Rhineland as well as the various naval agreements—failed to prevent World War II. Indeed, those agreements helped to bring on World War II, by reinforcing the blind and willful optimism of the West, thus inhibiting the possibility of military preparedness and diplomatic actions through which Britain and France could easily have deterred the war. Churchill never tired of pointing out that World War II should be called the "Unnecessary War," a war which Anglo-French diplomacy could have prevented.

Despite this melancholy history, we are told everywhere that the SALT II agreement now in the final stages of negotiation will be "politically stabilizing"; and that the breakdown of the SALT negotiations, or the rejection of the prospective treaty by the Senate, would "end detente," "bring back the cold war," increase the risk of nuclear and of conventional war, and revive "the arms race," which would cost us another $20, $70, or $100 billion.

Emotionally and politically, this is the strongest argument for ratification: that even a bad agreement with the Soviet Union is better than no agreement at all. The issue presented by SALT, Senator George McGovern has said, is that "the alternative to arms control and detente is the bankruptcy and death of civilization." And in a speech in London on December 9, Secretary of State Vance said that "without an agreement, our technological and economic strength would enable us to match any strategic buildup, but a good agreement can provide more security with lower risk and cost. And we recognize that without SALT the strategic competition could infect the whole East-West political relationship, damaging the effort to create a less dangerous world which is at the heart of Western foreign policies." Since, however, we were infinitely more secure without an arms-limitation agreement during the period 1945-72 than we have been since, the logic of this argument is not immediately apparent.

The claim that a SALT II agreement would be politically stabilizing, and would foster Soviet-American cooperation in other areas, is just as empty. We have had the Interim Strategic Arms Limitation Agreement with the Soviet Union—SALT I—since 1972. Far from stabilizing world politics, the Interim Agreement has been an important structural feature of the most turbulent and dangerous period of the cold war (the period ironically known as "détente").

Thus, during the six-and-a-half years following President Nixon's trip to Moscow in 1972, we have endured a series of major Soviet offensives. First, the Soviet Union defaulted on its obligations as a guarantor of the peace agreements of 1973 in Indochina. These agreements, for which Mr. Kissinger received a Nobel Prize, were treated by the Soviet Union as scraps of paper. The final North Vietnamese invasions of South Vietnam in 1974 could never have taken place without Soviet equipment and other help. Then the Soviet Union, which had promised President Nixon to cooperate with him in seeking peace in the Middle East, violated those promises by supplying, planning, encouraging, and even participating in the Arab aggression against Israel in October 1973.

So far as the 1972 Interim Agreement itself is concerned, Secretary of State Rogers testified to the Senate that we had made a number of unilateral interpretations of the agreement and that we should regard any breach of these policies by the Soviet Union as a violation of the "spirit" of the treaty. All these unilateral interpretations of the agreement were violated by the Soviet Union. We did nothing about them.

But the ultimate absurdity is the claim that SALT II would limit or reduce either arms or arms expenditures. The one thing the 1972 Interim Agreement on Offensive Strategic Arms did *not* do was to limit Soviet arms development or expenditure, or the growth of the Soviet nuclear arsenal.

The SALT I Interim Agreement was presented to Congress and the country with fanfares from President Nixon, Secretary of Defense Laird, and Mr. Kissinger, as he then was. We were assured that the agreement would slow down the Soviet buildup of strategic offensive weapons; discourage the Soviets from adopting counterforce strategies; and enhance peace and our security in other unspecified ways. But the principal claim made for the agreement was that it would apply "brakes to the momentum of Soviet strategic missile deployments," in Secretary Laird's words.

Yet instead of stabilizing or reducing its strategic offensive strength during the period of the Interim Agreement, the Soviet Union has moved ahead rapidly: far more rapidly, in fact, than had been predicted as possible by American intelligence. It has successfully MIRVed (that is, placed several warheads on a single missile) its ICBM (intercontinental ballistic missile) forces, taking advantage of their greater delivery capacity (throw-weight) to develop missiles with as many as 10 warheads per missile, as compared with 3 on our Minuteman III missile. It has improved the accuracy of its missiles and developed new and improved missiles to replace older ones within its forces. One of the most significant of these developments is the Soviet production of mobile ICBM's. President Carter has said that the Soviet Union has actually deployed mobile ICBM's.

Whether or not this has happened to a significant extent, the experts agree that the Soviet Union could do so quickly and on a large scale. Mobile ICBM's would completely alter the nuclear equation, making ICBM's almost as elusive as submarines, and making it impossible, or much more difficult, to target a nuclear strike against them. The Soviet Union has also adopted "cold-launch" methods which permit a greater throw-weight with a given missile, and the more rapid reloading of a launcher after use.

As a result of these changes, the Soviet strategic nuclear force has been radically enlarged since 1972 in all categories and, according to present estimates, will be far stronger by the early 1980's. At the time of the Interim Agreement, the aggregate throw-weight of the Soviet ICBM's was twice that of the American force. In the early 1980's, it will be about four times as large. The throw-weight of our own ICBM's is unchanged, and is not expected to change during the treaty period.

The Soviet Union is believed to have had 1,600 warheads available to its ICBM force in 1972, compared to our 2,154. In the early 1980's, we shall have the same number, 2,154, but the Soviet figure will rise to between 6,500 and 9,200, even under the limitations expected in a SALT II treaty. The Soviet Union is producing between 150 and 200 ICBM's a year. We make none. The area-destructive power of Soviet warheads will increase by a half; ours by an eighth. The capability of Soviet weapons to knock out hardened (defended) targets, such as missile silos, will have increased tenfold. If our cruise missiles, now under development, fulfill present expectations, ours will have increased fourfold.

In the category of submarines, the Soviets are believed to have had 845 SLBM's (submarine-launched ballistic missiles) at the time of the 1972 agreement, and presently are near the ceiling of 950. Some Soviet SLBM's as as large or larger than our Trident I, which we have not yet introduced. Our figure will not change. In warheads, we are believed still to have a substantial lead. In 1972 we had about 3,000 SLBM warheads; our present figure of 5,400 is not expected to change during the next few years—while it is anticipated that the Soviet figure of 845 will increase some fivefold as they MIRV their SLBM's.

The comparison of bomber forces is more difficult, depending on whether so-called

medium bombers are included. Our heavy bomber force, still based on the out-of-date B-52, is declining, and President Carter has canceled its replacement, the B-1. We had 450 heavy bombers in 1972 to 140 for the Soviet Union, which also had 1,100 "medium" bombers assigned to missions in Europe or Japan, but available for attacks against the United States as well. In addition, the Soviet Union has and is manufacturing a new bomber, the Backfire, two-thirds the size of the B-1. It is not to be counted under the limits established by SALT II, although the State Department concedes that it can be used for intercontinental missions. By 1985, the Soviet Union will have 300 to 400 Backfire bombers. We will have no comparable planes by 1985 beyond our less proficient and much less numerous FB-111's.

While it is difficult to compare the bomber strength of the two nations in the field of intercontinental strategic nuclear weapons, there can be no question about the steady decline of our bomber superiority, which was one of the key premises of the 1972 agreement. That decline is measured not only in the comparison of the planes themselves, but in the development of Soviet air defenses, which we have decided to ignore altogether. The Soviet Union has a large and widespread network of fighter planes deployed for air defense, thousands of SAM's and other antiaircraft weapons, and at least one antiballistic-missile (ABM) system in operation. The Soviets have actively continued ABM research and development since 1972, and presumably would be able to deploy more units on short notice. These defensive measures would exact a heavy toll in the course of any attack, and therefore create doubt about the perceived deterrent effect of our bomber and missile forces.[1]

In short, instead of applying "brakes to the momentum of Soviet strategic missile deployments," SALT I served to increase that momentum. On the United States, SALT I had the opposite effect. Lulled by the treaty—as well as by illusions about "overkill," and by the high hopes we had invested in détente—into thinking that the "arms race" was being brought under control, we allowed ourselves to fall behind in most relevant categories of military power; behind in production; behind in research and development; and behind in programming.

As for the claim that a SALT II treaty will reduce the cost of our own defense programs, General George M. Seignious II, the new director of the Arms Control and Disarmament Agency, said on December 13 that the SALT II agreement, as it seemed likely to emerge, coupled with the further development of the Soviet nuclear arsenal made possible by the agreement, "is going to require additional money to modernize the strategic systems we have." In his final press conference on October 30, 1978, Paul Warnke, the outgoing director of the Arms Control and Disarmament Agency, said that while he believed SALT II would save us money, by restraining certain forms of Soviet expansion we should otherwise have to match, it was not possible to "point to some form of saving" that the treaty would accomplish. For by establishing certain quantitative limits, the treaty would shift Soviet efforts to the quest for qualitative superiority. The effort to match qualitative improvements, based on active research and the development of new technologies, is hardly more economical than the repetitive manufacture of old-model weapons.

Yet the proponents of SALT II claim that the failure to achieve or ratify the treaty would add as much as $100 billion to our defense budgets over a five-year period. Those figures of extra costs if the SALT negotiation fails, or if the Senate refuses to consent to the treaty, are just as fanciful as President Nixon's claims that he had ended the cold war and achieved "détente."

There is no case, then, for SALT II as a step toward peace. The record is clear that the first SALT agreement on the limitation of offensive strategic weapons contributed to an intensification, not a lessening, of tensions between the United States and the Soviet Union throughout the world. The rapid Soviet buildup of new and advanced strategic weapons under the agreement gave rise to charges of "deception," "breach of faith," and indeed of breach of the agreement. And the 1972 Interim Agreement gave the Soviet Union certain great and tangible advantages. For example, we halted the development of our ABM systems, in which we had a technological lead. They, as already noted, have continued their research and development in that important field. There is no reason to believe that the process of continued negotiation with the Soviet Union would change this pattern.

II

According to information now generally available, the SALT II agreement will consist of a Treaty, a Protocol, and a Statement of Principles. The Treaty would expire on December 31, 1985, the Protocol on a date not yet agreed in 1981, either June 30 or December 31. The Statement of Principles concerns the agenda for the negotiations of SALT III and has no terminal date.

The key provision of the SALT II treaty is that each side would be permitted to have the same number of strategic nuclear launch vehicles—2,400 until a date in 1982, and then 2,250. Within this limit, there is a sublimit of 1,320 on the number of launchers carrying multiple independently-targeted reentry vehicles (MIRV's)—ICBM's, SLBM's, and aircraft equipped to carry air-launched cruise missiles (ALCM's) with a range greater than 600 kilometers. At this writing there is still reported to be a dispute between the American and Soviet negotiators as to whether all armed cruise missiles should be covered, or only cruise missiles armed with nuclear weapons.

There are two further sublimits within the category of 1,320 MIRVed launchers: (1) a limit of 1,200 on the number of MIRVed ICBM launchers plus MIRVed SLBM launchers; and (2) a sublimit of 820 on the number of MIRVed ICBM launchers. Within that limit of 820, the Soviet Union would be allowed to have a number of fixed modern large ballistic-missile launchers (MLBM) equal to their present force in this category, either 308 or 326. This force includes the formidable Soviet SS-18's, which we believe now carry up to 10 separate megaton-range warheads. The SS-18 and SS-19 are capable of destroying protected missile housings and command centers. The Soviet SS-18 force by itself could destroy more than 90 per cent of our land-based missile force, which consists of 54 Titans, 450 Minuteman II's, and 550 Minuteman III's, at one blow. The United States now has no such weapons, and the treaty would deny the United States the right to build any during the treaty period.

The treaty contains a number of limits on the modification of existing ICBM's, primarily the rule that any test of an ICBM with more reentry vehicles (RV's) than had previously been tested will cause it to be classified as a "new type"; each side is limited to testing one "new-type" ICBM during the treaty period. The United States has tested 3 RV's on Minuteman III and the Soviet Union has tested 4 RV's on the SS-17, 6 RV's on the SS-19, and 10 RV's on the SS-18. There may also be agreement that no "new-type" ICBM can have more RV's than the maximum already tested for existing ICBM's—10 per missile for the Soviet Union, 3 for the United States. A late rumor suggests that both sides may have the limit of 10. Because of the delays in our MX program, however, there is no possibility that the United States can deploy a "new-type" ICBM prior to the expiration of the treaty.

The Soviet Union has made great progress in fractionizing its missiles, including those targeted against Europe which do not come under the treaty. There is agreement that the treaty should establish a limit of 14 RV's per missile for submarine-launched missiles, and of 20 or 35 (not agreed) for the number of cruise missiles on a single aircraft.

United States B-52's and our 4 B-1 test aircraft, and Soviet Bisons and Bears are to be counted as heavy bombers for purposes of the treaty. The Soviet Backfire bomber, much discussed in the negotiations, will not be counted, although it is capable of reaching targets throughout the United States, and is being produced steadily.

The treaty does not attempt to limit the number of missiles or warheads which may be produced and stored. And "reductions" in the Soviet-deployed nuclear force required by the treaty need not result in the destruction of the weapons, but only their transference to a warehouse.

Both sides have agreed that neither side will take any action which would circumvent the purposes of the agreement. This provision raises serious problems with regard to the possible transfer of cruise missiles or cruise-missile technology to our allies. Whether this question has been satisfactorily resolved in the negotiations is not now clear. Similarly, there is agreement that each side would refrain from interfering with the other side's national means of verification. Here, too, damaging controversies have already developed, particularly with regard to Soviet encoding of "telemetry," which would enable them to circumvent our monitoring devices.

The protocol would ban the flight testing or deployment of mobile ICBM's and air-to-ground missiles and the deployment of ground- and sea-launched cruise missiles with a greater range than 600 kilometers during a three-year period. At this time, the provisions with respect to ground- and sea-launched cruise missiles, of special concern to our NATO allies, are reported to be still in negotiation.

III

The provisions of the prospective SALT II treaty are highly technical and are difficult for the layman to judge. But the treaty as a whole can be measured by the layman against our goal in the continuing process of negotiating agreements with the Soviet Union on nuclear arms. That goal is to guarantee a nuclear stalemate—that is, to keep nuclear weapons from being used or brandished in world politics. It is an altogether sound goal, which has been the lodestar of American policy since we proposed the Baruch Plan in the late 40's. The operative principle of both the SALT I Interim Agreement and SALT II, in the American view, is to prevent the development of a situation in which either side might be in a position to gain a great advantage by a first strike—an advantage so dazzling that political leaders might be tempted to seize it.

What, then, do the data suggest by way of an answer to the basic question of how the prospective SALT agreement would affect the adequacy of our second-strike capability?

In attempting to answer this question, we must first realize that the deck now consists almost entirely of Jokers. Nonetheless, the attempt must be made. In formulating

[1] For a fuller discussion of the American-Soviet military balance, see Edward N. Luttwak's article, "Defense Reconsidered," in the March 1977 Commentary.

an answer, we must consider the number and vulnerability of missiles and warheads, their accuracy, their ability to reach key targets, and the effects of active and passive defense programs on the vulnerability of Soviet targets of all kinds.

As mentioned previously, the Soviet Union is continuing to build and modernize its strategic nuclear missile force at an alarming rate—150 to 200 ICBM's a year, compared to a rate of zero for the United States; 6 ballistic-missile submarines a year, as compared to zero for the United States (1½ a year in the 1980's); and 30 to 50 intermediate- to long-range bombers a year, as compared to zero for the United States. The Soviet Union builds missiles of a far greater throw-weight than ours, and can therefore put more or larger MIRVed warheads on each missile than we can, so that even under the proposals we made in March 1977, it could have twice as many ICBM warheads of five times the individual yield of ours. The figures reported in current drafts of the treaty would be even less favorable. And to make matters worse, the Soviets have made rapid advances in catching up on our previous technological advantages in MIRVing, accuracy, and smaller RV's.

With these trends in mind, former Deputy Secretary of Defense, Paul Nitze, who helped negotiate SALT I, concludes that SALT II in its present form will leave the United States without a credibly adequate second-strike capability. In a speech on December 5, he said: "Over the past fifteen years it would not have profited either side to attack first. It would have required the use of more ICBM's by the attacking side than it could have destroyed. By the early 1980's, that situation will have changed. By that time, the Soviet Union may be in a position to destroy 90 per cent of our ICBM's with an expenditure of only a third of its MIRVed ICBM's. Even if one assumes the survival of most of our bombers on alert and our submarines at sea, the residue at our command would be strategically outmatched by the Soviet Union's retained warmaking capability."

In its study, *Is America Becoming Number 2?: Current Trends in the U.S.-Soviet Military Balance,* released on October 5, 1978, the Committee on the Present Danger adds:

"We do not have to assume that the Soviet Union will actually attack U.S. strategic forces. The point is that they will have the capacity to *increase their advantage* with a counterforce first strike. After such a first strike, the United States would still have a capability for a second-strike retaliation against Soviet economic and political targets—in plain words, against their "hostage" cities and industrial centers. If Soviet civil defense failed, we could do "unacceptable damage" to them, but their forces held in reserve would still be greater than ours, and we have no effective civil (or air) defense. Their third-strike potential would make our second-strike less credible. It would leave the U.S. with a dangerously inadequate deterrent."

In presenting SALT II, the administration dismisses such concerns. Spokesmen for the administration concede that Soviet progress in strategic arms and particularly in ICBM's makes our own ICBM force vulnerable, and that our old bombers would have a hard time penetrating Soviet anti-aircraft defenses either to launch cruise missiles or to drop bombs. But, they say we still have a great many MIRVed submarine-launched missiles, and therefore, perhaps, still an edge in the total number of warheads.

Yet our present substantial advantage in warheads is a transient one. The inherent flexibility afforded by large throw-weight Soviet ICBM's and the momentum of the Soviet MIRV program can soon erase the United States advantage in numbers of warheads (unless, that is, we shift gears promptly and on an adequate scale).

Secondly, our increasing reliance on submarine-launched missiles presents problems of its own. Such missiles are still notably less accurate than ICBM's, and therefore less capable of striking at the Soviet missile sites and other military targets than at hitting cities.

In August 1978, the U.S. Arms Control and Disarmament Agency attempted to dispel these doubts in a "dynamic" study of U.S. and Soviet strategic capability through the mid-1980's, and to escape from the logic of what it called "static" measures of the two strategic forces. The study does not measure the capacity of each side to destroy the other, but purports to calculate the capacity of Soviet and American strategic forces to destroy a hypothetical set of 1,500 "hard" (or defended) and 5,000 "soft" (i.e., undefended) targets. It thus assumes away the important disparities between the number and hardness of the targets in each country. The Soviet Union now has more hard targets than the United States, and is rapidly hardening soft targets, while we are standing still, even with regard to command-and-control centers. By the mid-1980's, the Soviet Union will have twice as many hard targets as the United States.

The ACDA study also makes unrealistic assumptions about the destructibility of soft targets as the result of the explosion of a single weapon, whatever its size and yield. It makes inadequate allowance for anti-aircraft and anti-missile defenses and the effect of Soviet civil-defense measures.

But there is a deeper problem with the ACDA analysis, which runs through the whole of the administration's case for SALT II. Our leaders tell us that the Soviet rulers will be restrained by their knowledge of our capability to inflict unacceptable damage on their people and their society if they push us too far.

However plausible this argument may have been up to the time of the Cuban missile crisis, when we still enjoyed overwhelming nuclear superiority, it has long since lost even the appearance of conviction. But Secretary of Defense Brown, Ambassador Paul Warnke, and other official spokesmen for the administration continue to repeat it as gospel. It remains the heart of their argument for SALT II. Indeed, for all practical purposes it is the whole of it.

I have always had the greatest difficulty in accepting this theory—Robert McNamara's theory of mutual assured destruction (MAD)—according to which we and the Soviets would hold each other's cities and people hostage, thus preventing any first strike, and neutralizing nuclear weapons. I find it hard to imagine that the President of the United States would actually order the destruction of Moscow or Leningrad, save under circumstances of the most extreme provocation, such as the actual prior destruction of major American cities. I find such a step nearly inconceivable if our major cities had not been destroyed, and the exchange would result in the immediate destruction of New York and Washington, even if our ICBM's had been destroyed. Secretary Brown's threat to blow up Soviet cities in retaliation for a Soviet first strike against our satellites or our ICBM's would be less than credible if the Soviets had enough weapons left in reserve to blow up our cities and possessed substantial enough reserves to dominate the postwar world. A Soviet arsenal of that size could neutralize our nuclear forces and emasculate our second-strike capability. It would thereby make us vulnerable to Soviet political coercion.

It is this analysis of the diminishing credibility of our threat to blow up the Soviet population which puts the argument of "overkill" into perspective. The possibility of using our submarine forces in an immediate strike against Soviet cities, always dubious, is now close to the margin of futility. The same cannot be said for the growing Soviet capacity to attack our ICBM's and other military targets. If we allow Soviet superiority to reach a certain level, the Soviets will have checkmated our threat to attack their soft targets.

In addition to its reliance on an increasingly dubious second-strike capability against cities and people, SALT II would inhibit us from reestablishing our second-strike capability against hardened military targets—in the current state of the nuclear balance, the retaliatory possibility which has the most credibility as a deterrent, and as an option for action if deterrence fails.

To deal with the threat of a Soviet first-strike capacity, and to restore the strategic balance generally by the early 1980's, will not be easy. The President's decisions to cancel or delay the B-1 bomber, the MX missile, and the Trident submarine make it nearly impossible for those weapons to be available before the late 1980's, even assuming that the decisions against them are reversed. It probably would take nearly as long, and cost nearly as much, to deal with the problem in the short run by reviving the production of Minuteman III's (or B-52's). The Minuteman III production line has been closed recently. And a crash program along these lines or its equivalent, would be prevented by the numerical ceilings established in SALT II.

At this time, it seems probable that the treaty would also prevent the United States from adopting the only feasible "quick fix" for dealing with the problem, the promising plan for deploying missiles using a multiple aim-point system (MAPS), the so-called "shell game." Under this proposal, the United States would construct a large number of vertical protective shelters or silos, each capable of holding an ICBM and its launcher. Some would be empty. The missiles would be moved periodically, to make a first-strike against them highly problematical. According to reports, the Soviet Union has rejected an American inquiry about the compatibility of this idea with the treaty.

These are the basic reasons why critics have said that SALT II would freeze us in a position of inferiority, and deny us an opportunity to redress the balance before the critical period of the early 1980's, when all the indices would have turned against us.

As to the problem of verifiability, several thoughtful students of the subject have expressed the view that technological developments have by now made it altogether impossible to regulate nuclear arms by verifiable arms-control treaties. There is certainly merit in their contention. For example, what are politely called "national means of verification"—satellite photography and electronic surveillance, largely—cannot answer many of the questions posed by the newer technologies. And satellites themselves have become vulnerable, a development Paul Warnke has called "alarming." No camera can tell how many separate warheads are carried by a single missile, or measure its thrust, its accuracy, or the explosive power of the weapons it carries. Nor can it see or otherwise identify the missiles kept in warehouses or factories, although missiles can be fired from such locations as well as from launchers, and can be deployed quickly in crisis situations to change the equations of deterrence.

IV

The administration was campaigning hard to sell the SALT treaty even before it was negotiated. That campaign has given rise to a large number of speeches, memoranda, and articles pleading the case for SALT II. Among them, Jan M. Lodal's recent piece[2] is typical in outlook and more detailed than most in analysis. It invokes three of the same criteria for judgment used here: (1) that the treaty contribute to the stability of the

[2] "SALT II and American Security," *Foreign Affairs,* Winter 1978–79, pp. 245–68.

strategic balance; (2) that it be verifiable by national means; and (3) that it not adversely affect the security of our allies. But Mr. Lodal seems to reach a different conclusion. I say "seems to reach" because his treatment of each issue supports a negative judgment on the treaty; nonetheless, at the end Mr. Lodal says that SALT II cannot "be opposed on its technical merits."

1. In contending that SALT II would contribute to strategic stability, Mr. Lodal points to the fact that the treaty specifies an equal number of launchers for both sides. He does not consider the problem posed by the agreement not to include the Soviet Backfire bomber—which, as already mentioned, can be targeted against the entire United States—in the number of bombers permitted under the treaty. But more important, he ignores the fact that the treaty does not cover the manufacture and storage of missiles. As Paul Nitze has commented, "The basic currency of the negotiations . . . became limits on the number of launchers, not limits on missiles and their characteristics." This, adds Nitze, "has proven to be the wrong currency." Obviously, no situation can be considered stable if it can be changed in hours by the movement of missiles from warehouses to launchers, some of which are already mobile, as Mr. Lodal himself notes.

Mr. Lodal concedes that by the early 1980's the Soviet Union will lead the United States by most measures of nuclear power. We will be ahead only in the relative number of warheads deployed—and that lead will be diminishing rapidly. And Mr. Lodal also admits the main point—that the Soviet Union will soon have the capacity to destroy our ICBM sites, airfields, and other military targets with a fraction of their ICBM force. He argues, however, that by the mid-1980's our airborne missiles, if they are developed successfully, would significantly offset Soviet superiority in ICBM's and thus maintain stability. He does not consider the vulnerability of our bomber-cruise-missile system (based on the aging B-52) to various kinds of attack. In fact, he does not mention Soviet active defenses at all, nor does he consider their grave implications for stability.

Mr. Lodal's position would be that such vulnerabilities are not significant. His ultimate contention is that the possibility of retaliation against Soviet cities and other soft targets, using our submarine-launched missiles, assures strategic stability even in the face of the growth of the MIRVed Soviet ICBM force. He does not mention the disquieting reports, which have now become public, of Soviet gains in anti-submarine warfare.

He does, however, grant that the assumptions of the McNamara doctrine are now subject to "serious argument" and that no President would want to face a crisis with only the options of doing nothing or launching an all-out attack on Soviet cities. Nevertheless, that is exactly the position he accepts. He dismisses the bearing of Soviet civil-defense programs on strategic stability in a footnote, suggesting that we could substantially offset the Soviet advantages derived from their programs of civil defense by using a small number of heavier bombs with high radioactive fallout—a most unattractive possibility, and totally inadequate to boot. And he even contends that after we have deployed cruise missiles and MX—it is hoped by the late 1980's—we could counter a Soviet threat by launching a counterforce first strike of our own. This is the course we refused to consider during the period of our nuclear monopoly. To suggest it now is the counsel of desperation.

Mr. Lodal concludes that unless the Soviet Union agrees early in the SALT II negotiations to significant reduction in land-based ICBM's, "the strategic balance in the mid-1980's is likely to be determined to a much greater extent by the force-deployment programs of the two sides than it is by the provisions of arms-control agreements." Since he also observes that the Soviet Union cannot be expected to make unilateral concessions simply because we have chosen to forgo certain programs of our own, it is difficult to see how Mr. Lodal's argument supports his conclusion that SALT II would contribute to strategic stability.

2. With regard to verification, Mr. Lodal's case is equally mystifying. He does not mention Secretary Brown's public warnings about the Soviet capacity to destroy our satellites. Nor does he mention missiles kept in reserve, which are not covered by the agreement and cannot be verified by national means.

Mr. Lodal takes at face value the provisions in the treaty purporting to limit the number of warheads on missiles and their throw-weights. But he admits that we could not verify compliance with such limits, unless the Soviets should agree to cooperative procedures for verification. As of this writing, they have not done so. Yet Mr. Lodal has confidence in the possibility of Soviet cooperation in verification. He bases this confidence on two instances of Soviet "cooperation"—their agreement to rules through which we might distinguish heavy bombers carrying weapons from those used as tankers; and the Soviet promise not to deploy intercontinental SS-16 ICBM's. The SS-16's are indistinguishable from SS-20's, the mobile, MIRVed, intermediate-range missiles now causing so much alarm in Europe. The SS-20's can easily be converted into SS-16's by adding another stage. This gives the Soviet Union the capacity to break out of the limits of the treaty rapidly. It is hard therefore to understand Mr. Lodal's satisfaction in the Soviet "concession." It hardly makes the counting process verifiable by national means.

3. Mr. Lodal admits that European concern with the implications of SALT II for the defense of Europe is justified in view of the massive Soviet deployment of conventional and theater-nuclear arms (including chemical-warfare equipment) facing Europe. The answer, he says lamely, is that Europe must accept "the proposition that the 'nuclear umbrella' can go only so far in providing security for Europe," and that Europe must improve its conventional forces. And he hopes that the SALT III negotiations will correct the present NATO imbalance, assure European security, and prevent the decoupling of the alliance.

Given the nature of Soviet negotiating habits, it is hard to detect any basis for such hopes. If we could not prevent a weakening of our nuclear relation with Europe during the SALT II negotiations, how could we expect to do so during the SALT III negotiations, when our military position, and therefore our bargaining position, are expected to be weaker?

V

The security implications of nuclear weapons, however, go far beyond the question of intercontinental nuclear exchanges between the United States and the Soviet Union, the subject to which SALT II is confined. The United States nuclear arsenal is the fulcrum on which the possibility of deterrence at every level depends. To change the metaphor, it is the center of a web of relationships which define the political as well as the military power of the United States. The SALT II treaty cannot be judged in isolation, because the universe of nuclear weapons is not a self-contained and disagreeable subject, isolated from the daily business of government. SALT II poses the ultimate question of national security, the connection between military power and political influence.

To repeat it once again, the goal of our nuclear weapons is to deter the use of, or the credible threat to use, nuclear arms in world politics. But the mission of our nuclear forces goes beyond making it too expensive for the Soviet Union to consider launching a nuclear attack against the United States. They must also provide a nuclear guarantee for our interests in many parts of the world, and make it possible for us to defend those interests by diplomacy or by the use of theater military forces whenever such action becomes necessary. The preceding sentence deserves underlining, for most people do not yet realize the many connections between the strategic nuclear balance, on the one hand, and ordinary diplomacy and the use of conventional and other theater forces in aid of diplomacy, on the other. Behind the shield of our second-strike capability, we carry on the foreign policy of a nation with global interests, and defend them if necessary by conventional means or theater forces.

Secretary of State Dulles tried to change this policy by announcing the doctrine of "massive retaliation." We should not fight protracted land wars, he said, in places chosen by the Soviet Union for confrontation, but use our nuclear power instead to strike at the Soviet Union, the source of the danger. It was an empty threat. In fighting border wars, where absolutely vital American interests were not at issue, we were unwilling to consider using nuclear weapons against the Soviet Union, even during the period of our nuclear superiority. This policy is rooted in our national character and the nature of our civilization. It will not change. Even where the defense of Europe is concerned our reflex response to the change in the nuclear balance is to enlarge NATO conventional forces, to reduce the risk that nuclear weapons would have to be used in the event of a Soviet attack.

The Soviet doctrine with regard to the utility of nuclear weapons is quite different. As we are finally beginning to realize, the Soviets are not interested in mutual deterrence and nuclear stalemate. To the Soviets, clear nuclear superiority is the ultimate weapon of coercive diplomacy—the Queen of their chess set, through which they think they could achieve checkmate without having to fight either a nuclear or a conventional war.[3]

Effective American nuclear deterrence alone cannot keep the Soviet Union from using conventional forces, at least against targets they think we regard as secondary, like Korea, Vietnam, or Ethiopia. In most such situations, except for massive attacks on our most vital interests, like Western Europe or Japan, defense has to be provided by conventional forces in the first instance. But the absence of effective American nuclear deterrence—that is, the erosion or neutralization of our second-strike capability—would deny all credibility to our conventional-force deterrent. No one would believe that we would send in the Marines if they could be counterattacked by locally superior Soviet or satellite troops and our second-strike capability was in doubt.

The point is brought out by a quick review of our experience with the problem since 1945.

In the early postwar years, we had a monopoly of nuclear weapons. And for a decade or so after that—until the middle or late 60's—we had overwhelming nuclear superiority. Nonetheless, in that period we had to deal with a long series of Soviet-managed attacks on our interests, from the early threats to Iran, Greece, and Turkey to the Berlin airlift, the war in Korea, the Cuban missile crisis, the war in Indochina, and the recurrent crises in the Middle East and Africa.

We dealt with those threats by diplomacy or, when diplomacy failed, by the use of, or

[3] See "Why the Soviet Union Thinks It Could Fight and Win a Nuclear War" by Richard Pipes, COMMENTARY, July 1977.

the credible threat to use, conventional forces. But the nuclear weapon was always the decisive factor in the background. During the Berlin airlift, the shadow of our nuclear monopoly kept the Soviets from firing on the allied planes, and then persuaded the Soviet Union to end the blockade. The exercise had too many uncertainties and had become too risky, so the Soviet Union gave it up.

The essence of the problem is illustrated by the Cuban missile crisis of 1962. There, the Soviet Union secretly undertook to introduce land-based nuclear missiles into Cuba, in violation of their assurances to us, and in the face of private and public warnings from the President of the United States. Such action would have altered the basic equation of nuclear deterrence, and gravely affected the credibility and effectiveness of American diplomatic warnings to the Soviet Union. At that time, we had unchallengeable nuclear superority. If there had been a nuclear exchange, the Soviet Union would have suffered about 100 million casualties and the United States 10 million. We had equally obvious conventional-force superiority in the area. If we had invaded Cuba, the Soviet Unioin could not have opposed the invasion effectively with either conventional or nuclear forces. By mobilizing an invasion force in Florida and instituting a limited naval blockade of Cuba, we demonstrated our will to insist on the evacuation of the Soviet missiles from Cuba, at a minimum. Confronted by these realities, the Soviet Union backed down.

Since the late 50's, the Soviet Union has been engaged in a massive military buildup, both in nuclear and conventional forces, designed to reverse the relationships which determined the outcome of the Berlin airlift, the Korean war, and the Cuban missile crisis. It is a buildup without parallel in modern history. Over the last sixteen years it has been proceeding steadily at a rate of at least 4 percent to 5 percent a year in real terms. In strategic weapons, the rate of increase has been at least 8 percent a year. Increases compounded at the rate of 5 percent or 8 percent a year over so long a period make the Soviet military establishment formidable and sinister.

The first result of this Soviet buildup was evident in Vietnam. In the late 60's and early 70's, our nuclear superiority was no longer so evident as it had been at the time of the Cuban missile crisis; indeed, superiority had given way to stalemate. The deterioration of our nuclear advantage led to the erosion of our position and profoundly affected the final stages of the conflict.

There can be no question that since Vietnam our nuclear position has slipped from stalemate to the borders of inferiority. While the experts argue about whether we are already inferior to the Soviet Union in overall nuclear power, they are agreed that if present trends continue we shall be significantly inferior—and soon. Some careful studies contend that the strategic force relationships which dominated the Cuban missile crisis will soon be reversed, unless we undertake a crash program immediately—that in the event of a nuclear exchange we should risk 100 million casualties and the Soviet Union 10 million. Even if the figure were 100 to 20 or 30, it is not difficult to anticipate what would happen if we were to allow such a situation to develop. A perceptive student of the problem has remarked that, confronting such a scenario, even General Curtis LeMay would advise "accommodation." Our foreign policy and our conventional forces would be impotent, and we would acquiesce.

It is the first objective of Soviet policy to achieve such a situation. This—not nuclear war itself—is what our nuclear-weapons program and the SALT negotiations are all about. The Soviets have prolonged the negotiations over SALT II as long as possible—just as Hitler prolonged arms-control negotiations in the 30's—since we continue to mark time in our own military and political programs during SALT negotiations, and obligingly make decisions, like the cancellation of B-1, the postponement of MX and Trident, and the deferring of the enhanced-radiation warhead (the so-called neutron bomb), in the vain hope of inducing similar restraint on the Soviet side. The Soviets view SALT II as a major instrument for lulling American anxieties until it is too late to do anything to reduce them. Meanwhile, they move rapidly and effectively to seize control of the entire Persian Gulf area in the belief that such a position would permit them to bring Europe, Japan, and the Arab world to their knees because the United States would not have the usable military power to oppose it.

Many tend to dismiss the vision of nuclear war as unthinkable. But the vision of Soviet political coercion, backed by overwhelming nuclear and conventional forces, is so far from unthinkable as to have become a likely possibility, thanks to the drift of American foreign and defense policy in the post-Vietnam period.

VI

The debate over ratification of the SALT II treaty requires Congress and the American people to pass judgment on that policy as a whole. It is the only context in which the problem of nuclear arms becomes intelligible.

At the present time our foreign defense policy is rich in contradictions. On the one hand, the President says that all our security treaties will be honored as in our national interest. On the other hand, he refuses to ask for the naval forces which would be necessary to fulfill those treaties, in view of the size of the Soviet navy and other military forces, and the nature of the Soviet Union's policy of indefinite expansion into the military vacuums of world politics. There are many other such paradoxes—the withdrawal of our ground forces from Korea, for example. Does that step mean that the President is prepared to use nuclear weapons if necessary to stop an attack on an area vital to the security of Japan? The list could be extended indefinitely, from our refusal to cooperate in the restoration of a stable monetary system to the passivity of our response to Soviet actions in Africa and the Persian Gulf area.

The actions and vocabulary of the Carter administration in the field of foreign and defense policy derive from two entirely different conceptions of the national interest. On the one hand, many cling to the 19th-century isolationist view, given new life (and a new rhetoric) by the Vietnam catastrophe, that the United States can be safe, perhaps with our Western European friends, as a small, rich, industrialized enclave in a world dominated by hostile forces. The major premise of the alternative theory, which has dominated our foreign policy from Truman's day, is that the United States can continue to develop as a free and open society only in a stable world order, a world of wide horizons, in which aggression is prevented, or defeated when it occurs, by collective security and other arrangements of collective defense; a world in which political, social, and economic progress is sought by international cooperation; and one in which the United States necessarily plays a full and responsible part.

These two conceptions of American foreign policy cannot be reconciled or compromised.

Thus far, however, President Carter has refused to choose between them. In recent months, his words have sounded more Trumanesque, but his actions have remained McGovernite. Many believe that a clear choice would revive the divisions in the nation, particularly in the Democratic party, which exploded with such force during the final stages of the Vietnam war. The President has preferred to let sleeping dogs lie.

That comfortable posture has become impossible. The pressures of Soviet policy at a dozen points around the world, most particularly the bold Soviet thrust in the Persian Gulf region, would make it suicidal to continue on such a course. Yet the SALT II agreement, coupled with our continued retreats and withdrawals, and the inadequacy of our military programs, would also make it nearly impossible for us to restore and stabilize the world balance of power on which our safety as a nation depends.

Some experts in the field assume that we must accept SALT II despite its potential for condemning us to strategic inferiority, because the American people are unwilling to take "the giant strides forward" which would be required to assure nuclear parity and to maintain a credible and usable second-strike capacity. This defeatism is altogether unwarranted. The American people will spend and do whatever is required to assure the safety of the nation, if their leaders tell them the truth, as President Truman did, and explain the central importance of nuclear weapons to our security and to the foreign policies we employ to protect it.

Because the debate over SALT II presents a unique opportunity for telling this truth, it may well become a major turning-point for the future. If, mesmerized by old illusions about disarmament and new ones about détente, we accept the treaty, we will be taking not a step toward peace but a leap toward the day when a President of the United States will have to choose between the surrender of vital national interests and nuclear holocaust. No President should ever be put into such a corner. But if, overcoming these illusions, we permit ourselves to see the SALT II treaty for what it truly is—an expression of American acquiescence in the Soviet drive for overwhelming military superiority—we will give ourselves a last chance to restore the strategic balance that is the only guarantee of peace in the nuclear age and the only context in which the survival of our civilization and its values can be safely assured.

OPPOSING THE RELOCATION OF AMTRAK

Mr. GOLDWATER. Mr. President, the Amtrak service provides a vital transportation link to the communities of northern Arizona which is extremely important because a large part of the economy of northern Arizona is dependent upon the movement of tourists. And there are some times during the year when snowstorms close the roads and airports leaving train travel as the only means of transportation. Because of this, the Coconino County Board of Supervisors is upset to learn of proposed plans to move the Amtrak services out of northern Arizona and has gone on record in a formal resolution in opposition to the proposed change.

I ask unanimous consent that the resolution adopted by the Coconino County Board of Supervisors be printed at this point in the RECORD.

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

A RESOLUTION OPPOSING THE RELOCATION OF AMTRAK

Whereas, the Coconino County Board of Supervisors has recently become aware of the proposed plan to move the Amtrak Services out of northern Arizona and further to the south; and

Whereas, the Amtrak Service provides the vital transportation link to the communities of northern Arizona; and

Whereas, in the wintertime, the roads and airports are closed because of snow storms, the only means of transportation is the train; and

Whereas, all of the transportation plans which have been approved by various cities, counties and state were designed on an integrated plan, including air, highway and rail; and

Whereas, a large part of the economy of northern Arizona is dependent upon tourism, and the removal of Amtrak Services would eliminate a means of transportation of a large number of these tourists.

Now, therefore, be it resolved that the Coconino County Board of Supervisors opposes the removal of Amtrak Services from northern Arizona.

FEBRUARY GOLDEN FLEECE AWARD GOES TO NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Mr. PROXMIRE. Mr. President, the Golden Fleece Award for February goes to the National Highway Safety Traffic Administration for spending $120,126 to build a low-slung, backward steering motorcycle that no one could ride. The bureaucrats gave the taxpayers a bum steer on this one.

AGENCY WARNED BACKWARD MOTORCYCLE UNRIDEABLE

The agency insisted on building the motorcycle in spite of repeated warnings beforehand that the contraption simply could not be ridden by even the most expert motorcycle rider. This is the ultimate example of the taxpayer being taken for a ride.

In September 1977, the agency issued the $120,126 contract to a California firm to design and test a motorcycle with a low center of gravity powered by the front wheel and steered by the back wheel. Agency officials thought this low-slung backward configuration would make the motorcycle safer. However, the agency's own tests completed before the granting of the contract showed that the backward motorcycle would be difficult if not impossible to steer. But the agency insisted upon going ahead and therefore searched for a firm willing to take on this backward concept. There was something magical in the backward angle that the highway boys could not resist.

CONTRACTOR UNABLE TO MAKE MOTORCYCLE RIDEABLE

The contractor dutifully sought to improve the design of the bike, but every computer simulation it ran showed the backward bike was harder to control than the toughest bucking bronc. On January 9, 1978, the contractor reported, "the major problem at this point is the lack of controllability of the rear steered configuration indicated by computer results obtained so far." The persistent and determined agency officials told the contractor to try again.

On February 3, both the contractor and the subcontractor, who were by this time trying to build the backward bike, were ready to give up on the project. They asked the Agency to allow them to stop work on the backward bike design. But again Agency officials insisted upon the backward project going forward and demanded that the bike be built and tested.

In their view, if it was backward, it had to be right. After all, this country has been going forward long enough.

What a perfect answer to a bureaucratic dream, going forward with a backward project. That is even better than going backward with a forward project.

By April 1978, all the building, testing and reviewing were completed, and the contractor reported what everyone except the National Highway Traffic Safety Administration had known all along: That the rear steering motorcycle was completely unrideable whether going forward, backward or sideways. In fact, the bike builders had to add training wheels to the backward motorcycle in order to prevent serious injury to the rider. In some of the tests expert motorcycle riders could not even keep the motorcycle upright for an instant. The longest ride of 2.5 seconds appeared to merely involve the luck of the rider turning the wheel at the right time.

AGENCY INSISTS ON BUILDING LOW SLUNG MODEL

By this time agency officials finally admitted their mistake in insisting upon the completion of the backward motorcycle's testing. However, the bureaucratic urge to compound errors resulted in the agency deciding to continue work on a front steering, low-slung model in spite of warnings raised by the contractor and other experts. While the contractor pointed out the problems of controlling the motorcycle at rest and reduced rider and passenger comfort, the editors of Cycle magazine pointed out even greater dangers of the low slung motorcycle, to wit:

> [The contractor] is currently working on a Honda with a seat height comparable to that of an average car—about sixteen to twenty inches. That puts a motorcyclist's head right at headlight level and removes from him one of his great advantages: his ability to see over the tops of cars, and to be seen by the occasional driver.

So here as the supreme machine. It could not work going forward. It did not work backwards. And whichever way it went, if you were driving it, you could not see where you were going. This was the perfect vehicle for a Member of Congress.

Nevertheless, the iron-willed officials of the Agency, insisting that the low slung motorcycle might handle somewhat better than the conventional model, again persisted and a final report on the "Advanced Concept Motorcycle" with a low center of gravity will be submitted shortly by the contractor.

After recent experiences in Iran and elsewhere, they should be able to sell a few thousand of the "don't work forward, don't work backward, can't see where you're going" beauties to the CIA.

For spending $120,126 on a concept which everyone said would not and could not work, the backwards bureaucrats at the National Highway Safety Administration receive this month's Golden Fleece Award.

HUMAN RIGHTS: THE STATE DEPARTMENT'S REPORT

Mr. PROXMIRE. Mr. President, the State Department on February 8 issued a report to the Senate Foreign Relations Committee and the House Committee on Foreign Affairs concerning human rights practices in countries receiving United States aid. Among the report's findings were the conclusions that first world awareness of human rights issues is increasing, and second, that the United States has played a significant role in this increase.

Specifically, the report states:

> The Department of State believes the country reports that follow reflect an increased awareness of human rights around the world. As the President noted on December 6, 1978, in commemorating the Thirtieth Anniversary of the Universal Declaration of Human Rights, there is now "an atmosphere of change that has encouraged progress in many places. In some countries, political prisoners have been released. In others, the brutality of repression has been lessened. In still others, there is movement toward democratic institutions of the rule of law."

The report continues:

> While we do not take credit for particular instances of human rights progress, we believe we have helped to create an atmosphere in which improvements are more likely to occur.

Mr. President, I am encouraged by the State Department's findings. I believe that they represent an initial step towards implementing the Congressional view of foreign policy, stated in section 502B of the Foreign Assistance Act, "that a principal goal of the foreign policy of the United States is to promote the increased observance of internationally recognized human rights by all countries."

But, Mr. President, we cannot be content with this initial step. We must continue to make concrete efforts to insure world recognition of basic human rights.

What, then, should we do? The State Department report recommends two methods for promoting world concern for human rights.

First, our concern over human rights violations can be reflected in the channeling of our bilateral assistance programs with other nations. As President Carter stated last December:

> In distributing the scarce resources of our foreign assistance programs, we will demonstrate that our deepest affinities are with nations which commit themselves to a democratic path of development.

Second, we must make full use of the variety of diplomatic tools available to us. These tools include both direct and frank negotiation with foreign leaders as well as more symbolic acts such as official meetings or visits and tactful issuing of public statements. Whenever possible, we should join together with our allies in promoting international recognition of human rights.

Mr. President, we in the Senate have the opportunity to take a concrete step toward an international recognition of the most fundamental of human rights. The Genocide Convention—a treaty which guarantees the right to live to all racial, ethnical, national, and religious groups—stands unacted on by the Senate. It is this body—and this body alone—which has the power to act on this issue.

Mr. President, we must join with our

allies in condemning the hateful crime of genocide. We must become a party to the Genocide Convention.

RULES OF PROCEDURE, COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Mr. PROXMIRE. Mr. President, in accordance with section 133B of the Legislative Reorganization Act of 1946, as amended, I hereby submit for the RECORD the Rules of Procedure for the Committee on Banking, Housing, and Urban Affairs.

The material is as follows:

RULES OF PROCEDURE FOR THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

(Adopted in executive session, February 23, 1977)

RULE 1.—REGULAR MEETING DATE FOR COMMITTEE

The regular meeting day for the Committee to transact its business shall be the last Tuesday in each month; except that if the Committee has met at any time during the month prior to the last Tuesday of the month, the regular meeting of the Committee may be canceled at the discretion of the Chairman.

RULE 2.—COMMITTEE

(a) *Investigations.*—No investigation shall be initiated by the Committee unless the Senate or the full Committee has specifically authorized such investigation.

(b) *Hearings.*—No hearing of the Committee shall be scheduled outside the District of Columbia except by agreement between the Chairman of the Committee and the ranking minority member of the Committee or by a majority vote of the Committee.

(c) *Confidential testimony.*—No confidential testimony taken or confidential material presented at an executive session of the Committee or any report of the proceedings of such executive session shall be made public either in whole or in part by way of summary, unless specifically authorized by the Chairman of the Committee and the ranking minority member of the Committee or by a majority vote of the Committee.

(d) *Interrogation of witnesses.*—Committee interrogation of a witness shall be conducted only by members of the Committee or such professional staff as is authorized by the Chairman or the ranking minority member of the Committee.

(e) *Prior notice of mark-up sessions.*—No session of the Committee or a Subcommittee for marking up any measure shall be held unless (1) each member of the Committee or the Subcommittee, as the case may be, has been notified in writing of the date, time, and place of such session at least 48 hours prior to the commencement of such session, or (2) the Chairman of the Committee or Subcommittee determines that exigent circumstances exist requiring that the session be held sooner.

(f) *Prior notice of first degree amendments.*—It shall not be in order for the Committee or a Subcommittee to consider any amendment in the first degree proposed to, any measure under construction by the Committee or Subcommittee unless a written copy of such amendment has been delivered to each member of the Committee or Subcommittee, as the case may be, and to the office of the Committee at least 24 hours before the meeting of the Committee or Subcommittee at which the amendment is to be proposed. This subsection may be waived by a majority of the members of the Committee or Subcommittee voting. This subsection shall apply only when at least 48 hours written notice of a session to mark up a measure is required to be given under subsection (e) of this rule.

(g) *Cordon rule.*—Whenever a bill or joint resolution repealing or amending any statute or part thereof shall be before the Committee or Subcommittee, from initial consideration in hearings through final consideration, the Clerk shall place before each member of the Committee or Subcommittee a print of the statute or the part or section thereof to be amended or repealed showing by stricken-through type, the part or parts to be omitted, and in italics, the matter proposed to be added. In addition, whenever a member of the Committee or Subcommittee offers an amendment to a bill or joint resolution under consideration, those amendments shall be presented to the Committee or Subcommittee in a like form, showing by typographical devices the effect of the proposed amendment on existing law. The requirements of this subsection may be waived when, in the opinion of the Committee or Subcommittee chairman, it is necessary to expedite the business of the Committee or Subcommittee.

RULE 3.—SUBCOMMITTEES

(a) *Authorization for.* A Subcommitee of the Committee may be authorized only by the action of a majority of the Committee.

(b) *Membership.*—No member may be a member of more than three Subcommittees and no member may chair more than one Subcommittee. No member will receive assignment to a second Subcommittee until, in order of seniority, all members of the Committee have chosen assignments to one Subcommittee, and no member shall receive assignment to a third Subcommitee until, in order of seniority, all members have chosen assignments to two Subcommittees.*

(c) *Investigations.*—No investigation shall be initiated by a Subcommittee unless the Senate or the full Commitee has specifially authorized such investigation.

(d) *Hearings.*—No hearing of a Subcommittee shall be scheduled outside the District of Columbia without prior consultation with the Chairman and then only by agreement between the Chairman of the Subcommittee and the ranking minority member of the Subcommittee or by a majority vote of the Committee.

(e) *Confidential testimony.*—No confidential testimony taken or confidential material presented at an executive session of the Subcommittee or any report of the proceedings of such executive session shall be made public, either in whole or in part or by way of summary, unless specifically authorized by the Chairman of the Subcommittee and the ranking minority member of the Subcommittee, or by a majority vote of the Subcommittee.

(f) *Interrogation of witnesses.*—Subcommittee interrogation of a witness shall be conducted only by members of the Subcommittee or such professional staff as is authorized by the Chairman or the ranking minority member of the Subcommittee.

(g) *Special meetings.*—If at least three members of a Subcommittee desire that a special meeting of the Subcommittee be called by the Chairman of the Subcommittee, those members may file in the offices of the Committee their written request to the Chairman of the Subcommittee for that special meeting. Immediately upon the filing of the request, the Clerk of the Committee shall notify the Chairman of the Subcommittee of the filing of the request. If, within 3 calendar days after the filing of the request, the Chairman of the Subcommittee does not call the requested special meeting to be held within 7 calendar days after the filing of the request, a majority of the members of the Subcommittee may file in the offices of the Committee their written notice that a special meeting of the Subcommittee will be held, specifying the date and hour of that special meeting. The Subcommittee shall meet on that date and hour. Immediately upon the filing of the notice, the Clerk of the Committee shall notify all members of the Subcommittee that such special meeting will be held and inform them of its date and hour. If the Chairman of the Subcommittee is not present at any regular, additional, or special meeting of the Subcommittee, the ranking member of the majority party on the Subcommittee who is present shall preside at that meeting.

(b) *Voting.*—No measure or matter shall be recommended from a Subcommittee to the Committee unless a majority of the Subcommittee are actually present. The vote of the Subcommittee to recommend a measure or matter to the Committee shall require the concurrence of a majority of the members of the Subcommittee voting. On Subcommittee matters other than a vote to recommend a measure or matter to the Committee no record vote shall be taken unless a majority of the Subcommittee are actually present. Any absent member of a Subcommittee may affirmatively request that his vote to recommend a measure or matter to the Committee or his vote on any such other matter on which a record vote is taken, be cast by proxy. The proxy shall be in writing and shall be sufficiently clear to identify the subject matter and to inform the Subcommittee as to how the member wishes his vote to be recorded thereon. By written notice to the Chairman of the Subcommittee any time before the record vote on the measure or matter concerned is taken, the member may withdraw a proxy previously given. All proxies shall be kept in the files of the Committee.

RULE 4.—WITNESS

(a) *Filing of statements.*—Any witness appearing before the Committee or Subcommittee (including any witness representing a Government agency) must file with the Committee or Subcommittee (before noon, 48 hours preceding his appearance) 75 copies of his statement to the Committee or Subcommittee. In the event that the witness fails to file a written statement in accordance with this rule, the Chairman of the Committee or Subcommittee has the discretion to deny the witness the privilege of testifying before the Committee or Subcommittee until the witness has properly complied with the rule.

(b) *Length of statements.*—Written statements properly filed with the Committee or Subcommittee may be as lengthy as the witness desires and may contain such documents or other addenda as the witness feels is necessary to present properly his views to the Committee or Subcommittee. It shall be left to the discretion of the Chairman of the Committee or Subcommittee as to what portion of the documents presented to the Committee or Subcommittee shall be published in the printed transcript of the hearings.

(c) *Fifteen-minute duration.*—Oral statements of witnesses shall be based upon their filed statements but shall be limited to 15 minutes duration. This period may be extended at the discretion of the Chairman presiding at the hearings.

(d) *Subpoena to witness.*—Witnesses may be subpoenaed by the Chairman of the Committee or a Subcommittee with the agreement of the ranking minority member of the Committee or Subcommittee or by a majority vote of the Committee or Subcommittee.

(e) *Counsel permitted.*—Any witness subpoenaed by the Committee or Subcommittee to a public or executive hearing may be accompanied by counsel of his own choosing who shall be permitted, while the witness is testifying, to advise him of his legal rights.

* Conforms the Committee's subcommittee selection procedures to those contained in S. Res. 4, the Committee System Reorganization Amendments of 1977.

(f) *Expenses of witnesses.*—No witness shall be reimbursed for his appearance at a public or executive hearing before the Committee or Subcommittee unless such reimbursement is agreed to by the Chairman and ranking minority member of the Committee or by a majority vote of the Committee.

(g) *Limits of questions.*—Questioning of a witness by members shall be limited to 10 minutes duration, except that if a member is unable to finish his questioning in the 10-minute period, he may be permitted further questions of the witness after all members have been given an opportunity to question the witness.

Additional opportunity to question a witness shall be limited to a duration of 10 minutes until all members have been given the opportunity of questioning the witness for a second time. This 10-minute time period per member will be continued until all members have exhausted their questions of the witness.

RULE 5.—VOTING

(a) *Vote to report a measure or matter.*—No measure or matter shall be reported from the Committee unless a majority of the Committee are actually present. The vote of the Committee to report a measure or matter shall require the concurrence of a majority of the members of the Committee who are present.

Any absent member may affirmatively request that his vote to report a matter be cast by proxy. The proxy shall be sufficiently clear to identify the subject matter, and to inform the Committee as to how the member wishes his vote to be recorded thereon. By written notice to the Chairman any time before the record vote on the measure or matter concerned is taken, any member may withdraw a proxy previously given. All proxies shall be kept in the files of the Committee, along with the record of the rollcall vote of the members present and voting, as an official record of the vote on the measure or matter.

(b) *Vote on matters other than a report on a measure or matter.*—On Committee matters other than a vote to report a measure or matter, no record vote shall be taken unless a majority of the Committee are actually present. On any such other matter, a member of the Committee may request that his vote may be cast by proxy. The proxy shall be in writing and shall be sufficiently clear to identify the subject matter, and to inform the Committee as to how the member wishes his vote to be recorded thereon. By written notice to the Chairman any time before the vote on such other matter is taken, the member may withdraw a proxy previously given. All proxies relating to such other matters shall be kept in the files of the Committee.

RULES 6.—QUORUM

No executive session of a Committee or a Subcommittee shall be called to order unless a majority of the Committee or Subcommittee, as the case may be, are actually present. Unless the Committee otherwise provides or is required by the Rules of the Senate, one member shall constitute a quorum for the receipt of evidence, the swearing of witnesses, and the taking of testimony.

RULE 7.—STAFF PRESENT ON DAIS

Only members and the Clerk of the Committee shall be permitted on the dais during public or executive hearings, except that a member may have one staff person accompany him during such public or executive hearing on the dais. If a member desires a second staff person to accompany him on the dais he must make a request to the Chairman for that purpose.

RULE 8.—PUBLIC ATTENDANCE AT MEETINGS

Except in the case of the conduct of hearings (which are provided for in section 112(a) of the Legislative Reorganization Act of 1970), or in the case of any meeting (other than a hearing) to consider the nomination of an individual submitted by the President to the Senate for its advice and consent, all meetings for the transaction of business, including sessions for marking up bills and resolutions, of the Committee and Subcommittees thereof shall be open to the public unless the Committee or Subcommittee (as the case may be) in open session and with a quorum present, by majority vote conducted by rollcall, determines that all or part of the remainder of the meeting on that day shall be closed to the public. In the case of any such meeting with respect to a nomination, the Committee or Subcommittee in executive session may, with a quorum present and by majority vote conducted by rollcall, determine that the meeting for that day shall be open to the public.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BRADLEY). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nomination of Mr. George M. Seignious II.

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

The PRESIDING OFFICER. The nomination will be stated.

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

The assistant legislative clerk read the nomination of George M. Seignious II, of South Carolina, to be Director of the U.S. Arms Control and Disarmament Agency.

Mr. ROBERT C. BYRD. Mr. President, I hope we may be able to get an agreement and vote today no later than, say, 5 p.m., earlier, if possible, on the nomination.

If there is anyone who feels constrained to object to such a request, I hope we will hear from them forthwith and promptly.

For the moment, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I have not heard from any of the Senators on my side, in writing or otherwise, who have any objection, or indicated they have any objection, to a time agreement on this nomination.

I, therefore, ask unanimous consent that the vote on the nomination occur no later than 5 p.m. today, or earlier; as far as I am concerned, it could be a voice vote.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, I would only advise the majority leader that a canvass of our side of the aisle also does not disclose any desire for a record vote, as far as we can ascertain, and I think we may be able to dispose of this matter well in advance of 5 o'clock, and probably by voice vote.

I have conferred with those Senators who voted against reporting the nomination in the committee. I think it is likely that we can conclude this matter after a relatively brief time.

There is one Member on this side, the distinguished senior Senator from Utah, who wishes a half hour. I do not know that it is necessary to include it in the order, if I can have the assurances of the distinguished manager of the nomination of the calendar item that Senator GARN will be entitled to half an hour to make his presentation.

Mr. CHURCH. Of course.

Mr. BAKER. Then I have nothing further. I was sure of that. I appreciate the further assurance.

Mr. President, I have no objection to the request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, may I ask the distinguished chairman of the Committee on Foreign Relations what the situation is with respect to the legislation dealing with Taiwan, the committee report, and so forth.

Mr. CHURCH. Mr. President, the committee report is available, printed, and Senators wishing to obtain it may do so today.

I would think that it should, therefore, be possible to bring up the legislation on Tuesday of next week, if that should be the wish of the majority leader.

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

The 3-day rule will expire on Monday evening, so that the legislation would qualify to be called up on Tuesday.

I wonder if there would be any objection to calling it up on Monday with the understanding that there would be no rollcall votes on Monday, thus giving Senators an opportunity to at least speak to it?

Mr. BAKER. Mr. President, if the Senator will yield to me, I personally have no objection to that, but there would be an objection to that arrangement on this side.

Mr. ROBERT C. BYRD. On Monday.

Mr. BAKER. Yes.

ORDER FOR RECESS TO MONDAY, MARCH 5, 1979

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent inasmuch as an agreement has been entered into to vote on Mr. Seignious no later than 5 p.m. today, that when the Senate completes its business today it stand in re-

cess until the hour of 12 noon on Monday.

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

Mr. ROBERT C. BYRD. I thank all Senators. I thank the minority leader and the chairman of the Foreign Relations Committee.

Mr. CHURCH addressed the Chair.

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

Mr. CHURCH. Mr. President, as chairman of the Committee on Foreign Relations, I rise in support of the nomination of George M. Seignious II to be Director of the Arms Control and Disarmament Agency.

Mr. Seignious retired from the Army in 1974 with the rank of lieutenant general to become president of the Citadel. He took office as Director of the Agency on December 1, 1978, under a recess appointment by the President. His nomination was received on January 18.

Unlike his predecessor, the Honorable Paul C. Warnke, who served both as Director of the Arms Control and Disarmament Agency and as chairman of the U.S. SALT delegation, the President has nominated Mr. Seignious to serve in a single post as Director of the Agency. The SALT negotiations are to be conducted by the Honorable Ralph Earle II, who was confirmed by the Senate on May 9, 1977, as alternate chairman of the U.S. SALT delegation,and on October 17, 1977, as special representative for Arms Control and Disarmament Negotiations.

As my fellow Senators are aware the selection of a former military man to head the Arms Control and Disarmament Agency charged with primary responsibility for arms control within the executive branch raised a number of questions and occasioned considerable controversy. The Committee on Foreign Relations heard Mr. Seignious in public session on January 25. The following day the committee heard testimony regarding the nomination from seven nongovernmental witnesses.

The committee was careful to allow all persons who expressed an interest in testifying in regard to the nomination an opportunity to do so. The committee weighed carefully the concerns and objections which were raised, as well as the commendations of Mr. Seignious.

The committee's consideration of Mr. Seignious' nomination centered around his qualifications to serve effectively as Director of the Agency and the appropriateness of having a retired military man serve in that capacity. At the first hearing, the committee discussed at length with Mr. Seignious the central questions surrounding his nomination, as well as his own views of the relationship of arms control to national security, the merit of arms control negotiations now under way, and his own views as to the importance of arms control to the United States.

Mr. Seignious' nomination was endorsed strongly by both the senior and the junioir Senator from South Carolina (Mr. THURMOND and Mr. HOLLINGS), his home State Senators. Mr. THURMOND told the committee:

> Mr. Chairman, in my opinion the President has selected a competent, experienced, courageous, and outstanding citizen to serve in this capacity. General Seignious has served his country in war, he has served it in peace. He is not just a soldier, he is an educator. I can think of no one who has a finer background to serve in this capacity than he.

The junior Senator from South Carolina reminded the committee that he has known Mr. Seignious for a number of years and has followed his career closely, since their college days together, including Mr. Seignious' tenure from 1974 until last fall as president of the Citadel. Senator HOLLINGS told the Committee:

> Classmates, to a man, would tell you that there could be no more well-rounded gentleman of judgment than General Seignious. If he was one of the military people who was student, unyielding, and was not understanding in his general demeanor or manner, one of us would be here saying that he was entirely too military and that was all he knew and nothing else. But on the contrary, that great diversity that came out of that class and that has followed him over the years would unanimously endorse him today.

Some opponents of the nominatiion simply do not believe that a general should be allowed to head the Arms Control and Disarmament Agency. They were not basing their opposition so much on any views of Mr. Seignious personally, but on his former rank and the implications of his confirmation. Others argued additionally that Mr. Seignious is not an appropriate choice for the post.

Representing the Federation of American Scientists, Dr. Jeremy Stone, the federation's director, urged the committee to turn down the nomination, first, because of "the question of excessive military influence in the councils of Government"; second, "the question of destroying the Arms Control and Disarmament Agency as a countervailing influence to the Defense Department"; and third, "if these reasons were not enough, we find in this individual an inappropriate personality to lead an embattled agency. He has given already important evidences—some of which the committee is aware, and others of which it is not, although they have appeared before the committee—of being excessively naive."

Having heard all the testimony, pro and con, I believe it is fair to say that most Members concluded that, since the Arms Control and Disarmament Agency statute does not bar active or retired military men from directing the Agency, and, since there is no legislative history to support the contention that it was the intent of Congress to bar military men from this post, it would be wrong to bar Mr. Seignious from this post simply because of his military background.

However, as my fellow Senators are aware, certain prohibitions have been applied to other agencies. Neither active-duty nor retired military officers may serve as Secretary of Defense nor as Deputy Secretary of Defense. Either the Director or the Deputy Director of the Central Intelligence Agency may be an active duty or a retired military officer, but not both. The committee will be exploring at a later date whether some sort of statutory formulation placing certain restrictions on military officers in senior positions in ACDA would be appropriate in the future.

I do believe it is important to note that the committee, in recommending the confirmation of General Seignious, does not intend to set a precedent. I personally think it would be a mistake to have a succession of military officers to direct ACDA. Just as it may not have been appropriate to ban Mr. Seignious from this position, because he is a military man, it would not be appropriate to select future directors, because they are military men.

I should note in this connection that Mr. Seignious, in response to a question from Senator GLENN, said:

> It has always been my intention to have a Deputy drawn from civilian life.

I can appreciate the concerns of many who have devoted great effort to the pursuit of effective arms control. Some of them feel that Mr. Seignious will be close to elements of the national security establishment and not to them. They fear, clearly, that Mr. Seignious will keep them at arm's length. In that regard, it would be very useful to recall one matter which was raised in the hearing with Mr. Seignious Senators explored with Mr. Seignious in detail the circumstances surrounding his joining the Coalition for Peace Through Strength last summer and abruptly resigning. Mr. Seignious told the committee that he was not familiar with the position of the coalition on a number of national security issues when he joined and said that he resigned when he came to the conclusion that the coalition position was inconsistent with his service at that time as a member of the U.S. SALT delegation. Mr. Seignious obviously regrets that incident. I thought it significant, however, that he made the point to the committee, having reviewed his association with the coalition, that—

> . . . I do think that men who are interested in the security of the Nation, such as a lot of the distinguished Americans who are associated with the American Security Council, as am I, can have opposing views. I think that such men should put their talents together rather than being divisive. I was the cause of some of that divisiveness and I regret that.

Mr. President, I concur with Mr. Seignious in his judgment on the importance of putting talents together rather than being divisive. Sound national security policy can be best derived when a multiplicity of views are received and pondered. I hope and expect that Mr. Seignious intends to have a broad constituency as Director of the Agency and to be receptive to all responsible points of view on national security and arms control questions. With such an approach, there is no question in my mind that he would be taking a major step toward distinguished service as Director of ACDA.

The committee considered carefully whether Mr. Seignious, on the basis of his demonstrated character and background, is qualified to serve as Director of the Agency. In the course of our inquiry, we found no reason to conclude that he would not perform creditably

and effectively as Director of the Arms Control and Disarmament Agency. Having found no evidence of any compelling reason not to support his nomination, I believe most Members concluded that the President is entitled to put together his own team. I see no reason to quarrel with the President's judgment that Mr. Seignious would be a valued member of that team.

(The following statements by Mr. ROBERT C. BYRD and Mr. TOWER were made earlier and are printed at this point by unanimous consent.)

Mr. ROBERT C. BYRD. Mr. President, I want to state my support for the nomination of Gen. George Seignious II to the directorship of the Arms Control and Disarmament Agency.

Mr. Seignious brings to this position extensive experience as a military leader, having held a series of high-level positions in the Pentagon during a 32-year military career. More recently he served as president of the Citadel, in addition to having been a member of the U.S. delegation to the strategic arms talks in Geneva.

Mr. President, there is some similarity in the Seignious nomination to the nomination of Leonard Woodcock as Ambassador to China, which the Senate considered and approved a few days ago.

There were those who sought to use the consideration of Mr. Woodcock's nomination as an occasion for a broader debate on issues relating to China and the future security of Taiwan. Likewise, there have been suggestions that the consideration of the Seignious nomination might be the occasion for debate in regard to the proposed SALT II Treaty.

This is not the time for a SALT debate. That issue is not before us. Indeed, a SALT II Treaty has not been completed at this time. When and if such a treaty is agreed to, I will do all that I can to see that it receives the most thoroughgoing scrutiny by the Senate and its committees.

The question before us today will be whether Mr. Seignious is a qualified nominee for the ACDA directorship. Would he be an effective leader of this important agency?

Mr. President, I believe that he is suitably qualified and an appropriate nominee for this position. I believe that he will provide ACDA with the effective leadership it needs.

Questions have been raised about the advisability of naming someone with a military background to this post. During its 2 days of hearings and subsequent deliberation on this nomination, the Committee on Foreign Relations came to the view that Mr. Seignious should not be disqualified from serving in this position, because of his military background. I am in complete agreement with the committee in this view. Certainly there is no legal prohibition on having a former military officer serve as ACDA director and in this case, at least, I believe the choice is entirely appropriate.

Therefore, Mr. President, I would urge Senators to concentrate on the issue before the Senate—the nomination of George Seignious II. I believe the nomination should be approved.

Mr. TOWER. Mr. President, I wish to associate myself with the view expressed by the distinguished majority leader that this should not be the occasion for a debate on the merits of SALT II.

I trust that there will be an extensive debate on that subject at the proper time. It is a matter that has to be gone into in great depth with due consideration being given to the implications of ratification on the matter of America's strategic posture into the eighties and the nineties.

I also share the view of the majority leader that General Seignious should not be disqualified, because he is a man of military background and experience. As a matter of fact, I feel a little bit safer knowing that we have a man in charge of the Arms Control and Disarmament Agency who believes that we must maintain a strong strategic posture, and that we cannot take steps toward unilateral disarmament without seriously imperiling the future security of the United States and the free world. Disarmament is something that should not be undertaken lightly.

I am convinced on the basis of my personal conversations with General Seignious, although I may disagree with him on some matters, that certainly his instincts are right and he does have the desire to see that the United States maintain a military capability that is at least comparable to that of the Soviet Union.

So I join with the majority leader in expressing the hope that we do not get into the SALT debate on this issue. This is not the appropriate time.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Texas (Mr. TOWER) for his statement.

Mr. GARN. Mr. President, I speak today on this matter not to oppose the nomination of General Seignious, but I think the Senate's debate on the nomination of Gen. George Seignious to become the Director of the Arms Control and Disarmament Agency provides an excellent opportunity to reflect on the role of ACDA and to address ourselves to those assumptions and theories which provide the basis for the purpose of the administration's negotiating posture in the SALT II talks.

I have had the opportunity to visit with General Seignious. He is a very capable, articulate, intelligent man, and I expect that he will be able to do a good job as head of this Agency. At the same time, I think he is being used as a pawn by the administration in their SALT selling activities.

It appeared to some of us on the Armed Services Committee and on the Arms Control Subcommittee—when we went to Geneva last April, when SALT was supposed to be signed, and in June, and in September, and finally in October it appeared that it was once again getting to the point where it would be signed—that Mr. Warnke had to be released. He was a lightning rod. He had received 40 or 41 votes against him in his nomination proceedings. Therefore, some felt that he would cause difficulty merely by his presence and that the best possible thing the administration could do would be not only to remove Mr. Warnke at that point but also to replace him with a general. How could anyone think that a military man would endanger in any way the security of this country? I do not think General Seignious would.

But the administration needed a new image for their arms control director. They needed a military man to take that position. That is a good SALT-selling technique.

But I do think this is a fitting occasion to review what ACDA has become and what effect it has had on the policy and behavior of the U.S. Government. Perhaps we can give General Seignious some insight into his agency.

About 20 years ago, when deterrence theories and arms control were accepted as important aspects of defense and foreign policy, ACDA was established to insure that arms control issues were considered in the formation of policy. ACDA was to provide expertise for domestic and international arms control deliberations and to manage our negotiating efforts.

However, over the years, ACDA's "expertise" has moved increasingly toward a set of arms control theories which have come to be considered as fact and reality. As with all trends and fads, these fashionable assumptions and theories will undoubtedly someday be replaced—I hope by more realistic concepts. But while they are current, they can do great damage, because they coincide with a period of great danger for this country and they cripple our response to it.

Briefly stated, this approach to arms control holds that the greatest evil that can befall mankind is nuclear war and that any steps are justified to avoid this ultimate disaster.

I do not disagree that possibly the greatest evil that could befall this world is to have nuclear war. But where I disagree is on the question of how we avoid that war.

The fundamental approach of ACDA is to avoid any appearance of preparation for or willingness to fight a nuclear war in order to prevent it. Consequently, the theory goes, our weapons must be designed to attack only the enemy's civilians and industry. As a Navy and Air Force pilot, I was taught that it was the function of military forces to attack the enemy's forces in order to reduce the enemy's ability to inflict damage. Weapons capable of this now seem to be undesirable, because they might make the enemy nervous at the prospect of a disarming attack.

Certainly, we do not want to be destablizing and upset the Soviet Union.

While there is some merit to the argument, reality requires that there be a balance between opposing forces; one side cannot practice this approach while the other side builds counterforce weapons as the Soviet Union has been doing at an unbelievable rate.

Having declared that nuclear war is unthinkable, fashionable arms controllers naturally refuse to think about it. In their minds, we have entered a new era when old strategies and old wisdom no longer hold. The Roman principle that "If you wish peace, prepare for war" is ignored, as is much of the experience of

mankind in the affairs of nations. Today's arms controllers are unwilling to admit that weakness might invite attack, or that large wars might still be waged under the shadow of full scale nuclear exchanges. Extremists among them believe that a minimal ability to harm the enemy—perhaps, one Poseidon submarine—combined with peaceful pronoucements should suffice to protect our Nation.

Perhaps the greatest mistake is to assume that the Soviet Union accepts these same theories of deterrence, and our "arms-controllers" applaud when Soviet propagandists echo them. The assumption underlying this theory is that our civilians must be kept vulnerable, as we hope theirs are. So we forego ballistic missile defense and civil defense in order that the Soviet Union not mistakenly conclude that we intend to protect our civilians, which might be seen as a step toward the ability to fight a nuclear war. And when the Soviet Union shows signs of protecting its civilians with a very sophisticated civil defense system, ACDA denies the evidence or protests that Soviet measures would be ineffective because we could destroy their shelters or pursue fleeing civilians into the countryside with ground-burst nuclear explosions to shower them with deadly radioactive debris.

This school of arms control has developed into an ideology of assured destruction with zealous advocates who represent themselves as the only people interested in peace. It would be more accurate to describe the so-called strategy of this group not as mutual assured destruction, or MAD, though the term fits, but as self-assured destruction, or SAD. Proponents of forms of self-defense, such as counterforce capabilities, or civil defense, or ballistic missile defense are attacked as warmongers, when they should be considered good citizens who have the courage to suggest clothing the emperor for his health as well as his dignity.

In our dealings with the Soviet Union, we are constantly on the defensive, because this administration is apparently sympathetic to the popular slander that America is what is wrong with the world, that we invented and perpetuate many of the world's worst problems, chief among them the nuclear arms competition. The President and his advisers sometimes seem incapable of disinguishing our actions and motivations from those of Communist dictatorships.

A perfect example of this is a recent interview on foreign policy in which the President said:

> The Soviets take advantage, I believe, of opportunities throughout the world to enhance their own influence in a country or among a region whenever the opportunity arises, at our expense sometimes, sometimes when we do not suffer in the competitive relationship. I have to say that we do the same.

We do the same?

Have we done the same as the Soviets in Iran, Angola, Somalia, Ethiopia, Southern Africa, South Yemen, Afghanistan, and other areas around the world?

In contrast to the President's suspension of moral judgment in these cases are his high moral positions on arms control. For example, he has set as his goal the elimination of all nuclear weapons from the face of the Earth—a worthy goal, and I could agree with him, but this goal was recognized as unachievable when it was first proposed more than 30 years ago. Granted, it has a grand ring to it, and it appeals to mankind's fear of nuclear war. The Soviets recognize this, and they have used it well, making lofty proposals on disarmament while at the same time straining to catch and surpass the United States in nuclear weaponry. And when the United States bargains in SALT, will the Soviets forget that the American President hates nuclear weapons?

I am not suggesting that the President is posturing cynically. He believes what he says, though he may not always understand its ultimate effect and he has proven his sincerity with cancellations and delays of major nuclear weapons systems.

He also believes that the Soviets share his wish for disarmament and peace. After all, they have said so. They have also said that peace must be on their terms, but the administration has chosen not to hear that.

For more than 15 years, the Soviet Union has pursued a relentless expansion of its military forces. The quantitative and qualitative advances made by the Soviets in their nuclear and conventional forces are staggering. Soviet military expenditures have increased at an annual average rate of 4 to 5 percent, a total of 11 to 13 percent of Soviet GNP. By comparison, U.S. defense spending has actually shrunk from 7 percent of GNP in 1965 to 4.9 percent today. And Soviet rubles are spent on teeth.

Over 70 percent of their military budget is spent on hardware, on research and development and procurement, compared to less than 50 percent for the United States.

We have an all-volunteer military that is very expensive, and 55 cents of our military dollar are spent for people, not for airplanes, guns, tanks, or nuclear weapons.

The Carter administration's track record on defense issues is dismal. This administration's contribution to U.S. security has been one of unilateral restraint and disarmament. We have allowed all three legs of our strategic triad of forces to deteriorate to a dangerous degree. The President has unilaterally cancelled the B-1 bomber, delayed production of the Trident submarine, and has only recently decided to proceed with full-scale development of the MX. No decision on how this new missile will be based has yet been reached, despite repeated urgings by the Congress.

Those repeated urgings occurred over a period of 2 years in the Armed Services Committee on the defense authorization bills and in report language asking for a decision by the Defense Department on the basing mode for MX. Because we were ignored by the administration, I introduced an amendment in the Armed Services Committee last year that made it a statutory requirement that they report to us by September 30 of 1978.

However, in order to be able to get it through the House we had to put in an escape clause for the administration, which provided that if they could not tell us by September 30, they could explain to the Congress each month why they have not made a decision. So, faithfully, each month, Chairman STENNIS of the Armed Services Committee, gets a letter with some excuse which states that, despite years of study, they have not been able to make up their minds on the MX basing mode. Meanwhile, the Soviets have several generations of new misiles in deployment or under development.

The President's decisions were taken without the least reciprocity on the part of the Soviets. We seem locked into the view that U.S. constraint will stimulate an equal restraint on Soviet strategic weapons programs.

Back in 1967 we made a unilateral decision that we would not have more than 1,054 deployed ICBM's. The Soviets at that time had approximately 500. In 1979, 12 years later, we have 54 Titans and 1,000 Minuteman II's and III's, and they have more than 1,600 ICBM's.

We cancelled the B-1 bomber; they built the Backfire, and are talking about an additional supersonic penetrating bomber. I could go on and on and on with examples of where we have unilaterally sacrified strategic advantage. And yet there are those in our society who continue to say that all we have to do to stop the arms' race is for us to stop developing arms and the Soviets will follow suit.

I challenge them to show me one example of where the Soviets have followed suit and stopped any weapons system in response to our unilateral restraint in any area. The evidence is lacking. In fact, Soviet spending on strategic weapon systems actually increased since the signing of SALT I in 1972.

In an attempt to set the record straight for the impending debate on ratification of SALT II, I wish to point out that the President has indirectly acknowledged two major points previously the monopoly of those of us in the opposition: That SALT II is linked to other international developments, and that Soviet acquisition of sufficient accurate warheads to threaten our ICBM's would have grave consequences for strategic stability.

Admittedly, the President acknowledges linkage only insofar as it supports SALT II. He asserts that:

> A SALT agreement is a fundamental element of strategic and political stability . . . which can provide the necessary political basis for us to contain the kind of crises that we face today.

Likewise, we are warned of dire consequences if SALT fails. In his mind, SALT can influence global developments, but it can not be influenced by them.

This concept would be valid only if SALT II were without fault, a sort of useful tool that was above criticism, but that is certainly not the case. From what we know of the draft treaty, it is a flawed product of a highly political

process. SALT II depends on external factors, such as Soviet cooperation, for any hope of achieving its objectives. It is not only proper but vital and necessary to consider SALT II in the light of Soviet behavior—and, for that matter, American behavior.

Although President Carter has on occasion seemed to subscribe to the theory of minimum deterrence, he now appears to agree with SALT critics that "vast" increases in Soviet warheads have "grave implications for the strategic balance." Presumably he has realized that the sudden destruction of all our most powerful, accurate, and controllable missiles would affect our military strength and prestige. However, he falls short of admitting that the 5,000–10,000 additional warheads allowed the Soviet Union—under the SALT II he intends to propose—constitute the vast increase he referred to.

If we ever hope to get arms control agreements with the Soviet Union that genuinely contribute to this Nation's security, we must know our objectives, establish principles to reach them, and adhere to those principles.

If we hope to achieve reductions in nuclear weapons, we cannot accept agreements that legitimize immense increases in those weapons.

If we believe equity is essential, we cannot allow the Soviets to have types, sizes, or numbers of weapons that we are not permitted, while allowing them to have equivalents of everything we do have.

If we believe that verification is essential, we must insist that the Soviets tell us the characteristics of their weapons, then not interfere with our monitoring of those characteristics.

If we want crisis stability, we cannot agree to terms that allow the Soviets a first-strike capability against our ICBM's.

If we value NATO, we must not provide wedges for the Soviets to drive between us and our allies in Western Europe.

In 1853, Lord Palmerston observed that "Russian policy tends to impose its will on indifferent and weak governments while it withdraws in the face of active resistance, waiting for the opportunity to come back." George Kennan described these same traits almost a hundred years later, and the new tsars in Moscow have not changed. We ignore this sobering fact only at our own peril.

If the President wants to build a new foundation, SALT would be a good place to start, because the old one is crumbling. We have established a negotiating approach that insures that SALT will not promote military balance or good relations with the Soviet Union. We cannot continue accepting bad SALT agreements with the explanation that the next agreement will remedy the failings of its predecessors. We heard that on SALT I, that "some of the things that we cannot take care of or agree on in SALT I we will take care of in SALT II."

That is one of the things that we hear from the opponents of SALT II. The opponents of SALT II are now telling us, "Yes, there are some problems, but we will take care of that in SALT III," and I suppose in SALT III, if we are still around, we will hear that they will take care of some of the problems in SALT IV!

This treaty is seriously flawed. General Seignious will be in a position to have little or no impact on it. It has already been agreed to; there is no doubt about that in my mind. We are facing serious strategic imbalances. By the mid-1980's, the Soviets have a potential war-winning capability, an ability to knock out our Minuteman III sites. We are cutting off the legs of the triad by cutting off the B–1 bomber, impending the development and deployment of the MX missile, and delaying the development of the Trident, at a time when the Soviets are building up at the most rapid rate in their history.

Now we are being asked to agree to a SALT II treaty that will legitimize and guarantee Soviet superiority in the mid-1980's. This Senator will do everything he can, when the SALT treaty has been signed and when it comes before this body, to see that it is defeated. It must be defeated in the security interests of this country. I intend to participate actively in the lengthy and extensive debate that will occur when this treaty is presented to the Senate. And I am confident that my colleagues in this body will not allow this dangerous treaty to be crammed down our throats by the "SALT-sellers" in the Carter administration.

(The following colloquy occurred earlier and is printed at this point by unanimous consent.)

Mr. PERCY. Mr. President, will my distinguished colleague yield, without interrupting his own comments? Does he mind yielding to the Senator from Illinois for 1 minute?

Mr. GARN. I will be happy to yield as it does not interrupt my comments.

Mr. PERCY. I thank my distinguished colleague. I have a 1:30 meeting.

I wish to say, with all respect for my distinguished colleague who does an admirable job of researching and thinking through his position, I had come to a conclusion, after meeting privately with General Seignious, after questioning him at considerable length in the Foreign Relations Committee hearings and listening to the questioning of others and listening to his own testimony, that in this particular case, without precedent for military personnel taking on this kind of responsibility, we do at this particular time need someone who is well versed in military systems, who thoroughly understands the complexity of the balancing that we are trying to do, who would be perceptive and who would be in close touch with the Joint Chiefs of Staff should there be any concern that our balance is being tipped.

I feel that his military background, plus the absolute assurance that the Senator from Illinois has that General Seignious is taking fully into account, there can be no satisfactory agreement acceptable to the Senate, acceptable to the American people that is not adequately verified and that in any way relative to the Soviet Union weakens the United States. That is a judgment question that we are coming to, and I am not reaching a judgment ahead of time, because we have not been privy to all of the information that we will be thoroughly studying, but in this case I feel comfortable that General Seignious is able to give us an insight into this matter, is able to represent us in these negotiations and that the background that he has qualifies him for his particular position.

I thank my distinguished colleague for yielding to me and again reiterate that the continuity of the speech of my distinguished colleague should not be interrupted by this interjection.

Mr. GARN. I would only reply to my distinguished colleague from Illinois with what I said in my opening statement: That I was not rising to oppose General Seignious. I agree with much of what the Senator has said.

I only say that in my opinion, as a member of the Arms Control Subcommittee for 2 years, and following SALT very closely, that General Seignious will have had no impact on the treaty whatsoever. I wish he would have, rather than his predecessor, Mr. Warnke.

There is no doubt in my mind that SALT II has been essentially complete for at least 6 months. I think that is timed with the departure of Mr. Warnke. My experience in the Soviet Union, and in conversations with Mr. Brezhnev there in January, convinced me that we were only talking about some very small, final details, and the only reason it was not signed in December was because of the recognition of Red China and the Soviets' irritation with the fact that Teng Hsiao-ping was coming to the United States.

So I expect it will be signed soon. I do not really expect that General Seignious will have any impact on it whatsoever because it is essentially complete. I wish he could have had an impact. I wish he had been there rather than Mr. Warnke. So I do not rise to oppose him. I rise to talk about ACDA and the general posture of the United States.

I thank my colleague.

(Conclusion of earlier proceedings.)

Mr. DANFORTH. Mr. President, I understand there is some likelihood that there will not even be a rollcall vote on the confirmation of the nomination of General Seignious. If there is a rollcall vote, from what I understand the vote would be very heavily in favor of his confirmation. If I have to vote on General Seignious' nomination, my inclination would be to vote for it. I have met the general, I think, on two occasions. From what I have seen of him, he appears to be a sensible person, a man with a reasonably sound notion of where he is going.

My only sense of hesitation stems not from the merits of General Seignious, but from the fact that this is something of a foreign policy question. During the time when the nomination of Ambassador Warnke was before the Senate for confirmation, I pointed out that when we vote to confirm or not to confirm the nomination of a person in a foreign policy position, the Senate has an op-

portunity to make its views known on substantive issues under the guise of voting on a confirmation. As a matter of fact, the Constitution of the United States only gives us a couple of explicit ways of participating in the formation of foreign policy. One way is to vote on the confirmation of Presidential nominations for positions related to foreign policy, such as, for example, that of the Director of ACDA, and the other is by voting on the ratification of a treaty, which we will have to do, of course, when SALT is submitted to us.

What I do not want to do at this point is create the impression that by voting for the confirmation of the nomination of General Seignious, I would be triggering any support for the SALT treaty when it arrives in the Senate. I am one of, I guess, a majority or at least a substantial number of Senators who are uncommitted, and genuinely so, on how we will vote when that treaty comes before us. I think it would be premature at this point for me to take a position on the merits of that document.

But beyond the SALT treaty itself, I am a little bit hesitant in connection with this particular nomination, not that I intend to vote against General Seignious, because I will in fact vote for him; but what gives me pause is that this is a foreign policy question, and I have to say to the Senate that this is one Senator who has deep and very much growing concern about the course and the direction, if any, of the foreign policy of the United States of America.

In trying to formulate, in my own mind, an analysis of what our foreign policy is, I have difficulty verbalizing it to myself. It seems to me that when a nation participates in world events, it should have a clear presentation to its own people and to the rest of the world as to where it stands, what it stands for, and where it is going.

I must say that such a clear presentation of a foreign policy has, in the opinion of this Senator, been lacking. I say this not as a partisan attack on President Carter at all. Indeed, I think President Carter is a very nice man, and a very well-meaning and hard-working man. But it seems to me that since the time of the war in Vietnam and since the time of Watergate, which was a problem of my party, we have had difficulty, as a country, coming to grips with exactly what we mean by foreign policy, what it is, what it is all about, and where we are heading, and that the trend in the world is not running in favor of the United States of America or our interests in world events today.

I know that President Carter takes an opposite view, and that Mr. Brzezinski points out that in his view the tide of events is flowing in our favor and against the interests of the Soviet Union. But I must say that I doubt that. When the Government of Iran, once a strong ally of the United States, is toppled, when the American ambassador is kidnapped, the American ambassador in Afghanistan is murdered, the Secretary of the Treasury goes over to China, registers our verbal protests of the Chinese invasion of Vietnam, and is publicly ignored—and in fact at the time he is in China it is announced that maybe China is not going to stay in Vietnam for just a short period of time after all—and when I think we have a situation in our foreign policy today where it is unclear exactly what we stand for, where we are heading, or why, then the trend is not in favor of the United States, and, with respect to military policy in general and strategic policy in particular, again it is unclear exactly what we have in mind, with or without SALT.

Suppose we had SALT; what do we intend to do with respect, for example, to the MX missile, its development and its deployment?

As far as I know, that kind of a clear message has not been given to the Senate, to the Congress, to the American people, or to the world.

So what I am concerned about in this particular vote, if there is a rollcall vote or even if it is just a voice vote, is that the administration will again say to the world:

> Well, everything is just going fine. Our foreign policy is in very good shape. We are heading in the right direction. We have had a resounding vote of confidence from the Senate in our foreign policy.

I would be remiss not to use this opportunity to state that despite my vote on General Seignious, I do not have confidence in our foreign policy. I do not have confidence that we even have a foreign policy. I do not have confidence that we have any sense of where we are going, or why.

I think this is what leadership is all about. If the administration does not provide the leadership, then the Senate should. But I do not want to signal, by this vote, any degree of confidence in where we are heading.

Mr. JAVITS. Will the Senator yield?

Mr. DANFORTH. I yield.

Mr. JAVITS. Notwithstanding that I am joining in confirming the nomination, and I shall support General Seignious for reasons which I shall explain in due course, I do not wish my vote to be taken as a blank check or the imprimatur of approval. I doubt that any of us do. It is my conviction that this situation is so difficult, that we have made so many mistakes, we have been caught flatfooted so many times, that we have been behind instead of in front of events so many times, that some new way of handling the foreign policy of the Nation needs to be developed.

I believe a way which appeals to me, and it is not the solution but it is a solution, is some way in which the Congress and the President can be joined in policy so that when the United States speaks, it speaks for the whole Government, to wit, the legislative, which is so critical, and the executive. This carries with it the need for concurrence by a substantial majority. I would say, as an estimate, two-thirds. Really, policy ought to be made in this country now, considering the troubles we are in, considering the low state in which the President is and we are.

Those of us in opposition like to say that the President is not doing very well. But we are not doing very well either, and probably for many of the same reasons. I believe it will help us both and it will help the Nation. So I am hoping now that we can. It is a great opportunity for Senator CHURCH, the chairman, to really develop again that fortress of strength which was the bipartisan foreign policy. It may be called something else, or it may be a different kind of a coalition.

The Vandenberg bipartisan policy happened to represent a unique blend with a President with whom a great many of the Senate agreed, and that probably had a lot to do with shaping policy before it got to the Foreign Relations Committee. That may not be the technique now.

Again, on the basis of a solution rather than the solution, I welcome any other suggestions. My thought, however, is if we can work out procedures by which it will be clear to the country that when the President and the Congress speak it represents the best fruit of their judgment in the sense that it is the President plus a good, substantial majority, which I define as two-thirds, then I think we will begin to see better policy. I think we would begin to reestablish that credibility in the people of our country which is indispensable to the implementation of policy. After all, who is going to put up this money and who is going to put up these lives that security demands and the survival of freedom demands?

We have to remember that, and we have to remember that that comes only from the base of support, which is the people. I thank my colleague.

Mr. DANFORTH. I have to say that I agree with the comments of the Senator from New York, as I often do in many regards, and I certainly do in this regard.

I believe in a bipartisan foreign policy. As a matter of fact, if we do not have a broad consensus of support for foreign policy, it is very hard to formulate a foreign policy.

I am hardly a student of foreign policy history, but I do believe that it is clear that one of the great tragedies of the war in Vietnam was that the kind of consensus that we always relied on in America for taking a resolute position in the world was the broad consensus that the President had. When the President spoke, he was able to speak with the confidence that he spoke not only for himself and the executive branch, but for the overwhelming majority of those in the Congress and for the country as a whole.

Now we have had, over the period of the last 10, 12, or 15 years, a steady breakdown, a steady erosion of that kind of support for a consistent, comprehensive foreign policy. The result is that right now we just do not have it. We do not have that sense that we have a policy which is comprehensible and comprehensive which the President is articulating on behalf of the administration, on behalf of the Congress, and on behalf of the American people.

It is going to be very hard to regain the position that we had before the war

in Vietnam, and it is going to be very difficult. In foreign policy in the old days you could send the troops up San Juan Hill. Now instead of a cavalry we have nuclear weapons. Saber rattling is rattling nuclear weapons. You cannot just move out into the world with the same degree of confidence and, if you make a mistake, "So what?" that you could, say, 50 years ago, not in today's world. But the fact that it is more difficult does not mean that we should not strive to reach some sort of national consensus on where we are heading.

It seems to me to be tragic that the most divisive issues that we have had since I have been in the Senate have been foreign policy issues. One after another, the hot issues last year before the Senate, beginning with the Panama Canal Treaty through the Turkish arms embargo, were foreign policy issues.

If we are going to form a consensus, it seems to me that this is what leadership is all about. And that the job of leadership is to state where we are and where we are heading in a fashion which is understandable and which can be supported by the vast majority of the American people.

I would only suggest that one of the problems with our foreign policy may be that there is just too much razzle-dazzle in it; that there is just too much complexity, sudden moves, hastily called 15-minute television shows, gala performances in Kennedy Center; that there have been too many big media events and too little effort to put together in a less spectacular but sounder and clearer fashion a presentation of a good, purposeful, directed foreign policy.

I really think we lack leadership in this country today. I think that is true with respect to the economy. I think it is true with respect to energy. I think it is true with respect to foreign policy.

I am not faulting the President alone. I am faulting the Congress. I am faulting those of us who are on the floor today.

Mr. JAVITS. Mr. President, I deeply appreciate the Senator's intercession in this debate and this small exchange which we have had.

I can pledge to the Senator that old phrase from the British Parlaiment, "The way to resume is to resume."

That is what we are going to try to do. I thank the Senator.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER (Mr. HEFLIN). The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, let me first address my remarks on the nomination of Lt. Gen. George M. Seignious, the Director of the United States Arms Control and Disarmament Agency, and note the change of command of our Foreign Relations Committee.

I appeared with General Seignious at his hearings before the committee. I want to thank the committee for their deliberate and comprehensive treatment of this particular nomination, the many courtesies extended the nominee, and the thorough way in which they approached it and reported it here to the U.S. Senate. Senator CHURCH and Senator JAVITS have been very helpful and very objective.

As they have indicated already in their comments, the confirmation itself is not any indication whatever of further disposition of SALT II. But that should not forego the fact that they have been very helpful and have done, in my opinion, an outstanding job in bringing this nomination to the floor.

Mr. President, it gives me a great privilege to address some comments with respect to some of the misgivings appearing here in the debate today and in the hearings before the Senate Foreign Relations Committee on the appointment of General Seignious as a general, or any general or officer in the armed services, for that matter, as being fitting to serve as the director of disarmament in our Government.

First, with respect to the earlier remarks by my distinguished friend from Utah (Mr. GARN) about the demise of Paul Warnke, the former Director, and the allusion to the fact that the administration was worried about him—that is, Mr. Warnke—selling the SALT II treaty agreement to the U.S. Senate. Therefore, the call for a military man to come, and under the cover of military approval, thereupon, the Senate would then give its approval. Or at least those, perhaps, of my ilk and kind who believe in the military, who are looked upon, perhaps, on the conservative side of some issues, would say, "Well, if the general himself saw this as a good agreement, then certainly, who am I to question him?"

On that particular score, let me say, here and now, if I voted in the next 2 minutes on SALT II, as I have heard it reported and watched it, and I have watched it very closely, I would vote in the negative.

So I am not appearing under any false colors or clever language or trying to be coy with my colleagues, or anything of that kind. I have followed SALT II and I have followed it very closely because I had the occasion to follow SALT I.

I went with the then distinguished majority leader, Mr. Mansfield, to the Helsinki meetings of the SALT I team. We met in the meeting at that particular time with then Mr. Paul Warnke, and now later and still an opponent to SALT II, with Harold Brown, now the Secretary of Defense, with Ambassador Gerald Smith, who was the Director of Arms Control and the chief negotiator for the SALT I treaty, and others at that particular time, and we thought we had a pretty good agreement, and this is the time of August 1971.

However, the agreement of 1972, confirmed as the SALT I treaty by the United States Senate, submitted by then President Nixon, had all kinds of inequalities, obvious inequalities. Any youngster without any training could look and see the unequal numbers of launchers, submarine launched ballistic missiles, Poseidon ships, and everything else of that kind, ICBM's and everything otherwise.

When we argued at that time, they said, "We know that, but this is only for 5 years and this will really get us on to SALT II and there is a tremendous value," the argument was, "in actually getting the Soviets to negotiate." That, in and of itself, was of tremendous value, and while there were certain inequalities, we had better accuracy, more MIRVing, and everything else, and while they might catch up the thought being it would take them 5 years or more but they did in 1 year.

But, in any event, they said, "We are going to get SALT II and equalize it."

So I looked at SALT II to look for the equalization and, of course, it has not occurred. In fact, it is even again more to the disadvantage of the United States, and I am prepared at this moment to oppose SALT II.

But the appointment of General Seignious is much like Voltaire's approach to the right of free speech and truth. He said, "I may disagree with everything that you say, but I would defend to the death your right to say it."

I may just there disagree with my good friend, Gen. George Seignious, but I would defend to the end his right to serve.

His nomination is not an administration ploy. If it had been a ploy, I have been in the game 30 years and I think I could recognize and see it. I would think that having been the only living Senator now that did vote against SALT I, and since General Seignious is from my State, they would have sort of maneuvered me into the appointment and made me a part of it. They do those kinds of things.

We have a textile arrangement—I do not know if it is announced or not announced. I know one of the maneuvers is to maneuver me into that particular administration position taken as a result of their veto message on my textile bill.

I have gone along with removing my objection to the countervailing duty measure so we can finalize it, but I want to see the implementation. I want to see the agreements on Hong Kong. I want to see the agreement we have with Korea. I want to see the administration carry it out in good faith, and I say that the administration did act in good faith in bringing this about, and I want to see it is carried out in good faith before I make a judgment on the multilateral trade negotiation later this summer.

But I know my good friend, the Ambassador, would love to have me come and say, "Whoopee, now with the textile arrangement we will count on you to help us pass the MTN."

I cannot do that. He knows it.

Similarly, here. Ambassador Strauss spoke to me. I am saying that the administration does know how to maneuver you into the part and to the announcement and to the selection, you might say, of Lieutenant General Seignious. I was never contacted by the White House, and I was never made part of the particular appointment, although no one is more proud of General Seignious and this appointment than I. It points up the fact that the President chose General Seignious not as a ploy but, rather, because of his experience, his judgment, his awareness, and his sensitivity to the disarmament question.

Speakers come in and talk about General Seignious. I quote the distinguished Senator from Utah:

He is very capable, articulate, and intelligent.

I quote again:

At the same time, I think he is being used as a pawn by the administration in their SALT selling activities.

In SALT selling activities, as a man, yes; as a military officer, no. As a man, he has served in other capacities, giving him a particular talent in this field.

General Seignious, early on, as a young colonel in the Army, served with the International Security Affairs Agency, the Defense Security Assistance Agency, and became familiar in that role with the arms question. He served on the American-Brazil Inter-Military Conference as well as in many other capacities.

He learned the value and the danger of arms. As an old-time friend of mine, we crossed paths in Europe. He was with the 2d Armored Division and I was with the 7th Army, and he crossed in front, going across the Danube. He knows war, and he knows arms, and he knows their value and the terrible destruction that results. He also has experience as an adviser to the President of the United States about arms limitation and the SALT II treaty.

I referred earlier to Secretary of Defense Harold Brown. He was the public adviser to the SALT II negotiations prior to the appointment of General Seignious. When Secretary Brown was appointed Secretary of Defense, it was thereupon that President Carter appointed General Seignious as the public adviser and observer at the SALT II negotiations in Geneva and Moscow and Washington, as they continued over the past several years. No doubt he was chosen for various reasons.

General Seignious served as the Berlin commander. You do not just march people around as commander of Berlin. You have to get water and sewer lines, and you have to get public services and bakeries operating. You not only take care of security; you take care of all the political needs of people, as the commander in Berlin. The job has a comprehensive scope.

He served as an advisor to Ambassador—I call him Governor—Averell Harriman, to Paul Warnke, and to Cy Vance, as the negotiating team at the Paris peace treaty accords with Vietnam. He was an advisor there on making peace, and he was recommended by Governor Harriman and Secretary Vance to this post.

We see too often that the media are looking for a story and are not trusting anybody and immediately jump to a wrong conclusion. In this case, it is a wrong one, because the ones who strongly support Senator Hubert Humphrey's move for disarmament, starting back in 1962, for limitations on all arms—the Ave Harrimans, the Cy Vances, the Paul Warnkes—were the ones who recommended General Seignious for this post. The President, as a result of his original recognition of the capabilities of General Seignious, put him in there as a public observer and adviser to the SALT II team.

So when the vacancy occurred at the end of last year, when Mr. Warnke retired to private life, as he said he was going to do at the time he was appointed, it was a natural and normal thing to take someone attuned to the particular treaty, having participated for a couple of years with President Carter's negotiation team in Geneva, and have him come in as Director, with proven administrative capabilities.

When you look for the director of the Joint Chiefs of Staff, you look for the man who is going to run the Defense Department; because the poor Chairman of the Joint Chiefs that four-star general or admiral—in this particular case, General Jones, and it was Admiral Holloway—have to appear and testify, hither and yon. We had a problem in Iran; they have to observe and report on Indochina; and they do many other things.

For the administration, in day-to-day control, you have to have a top individual. Lt. Gen. George Seignious served in an outstanding fashion as director of the Joint Chiefs of Staff. Let me go not only to his capabilities, his awareness, and his familiarity with the problem and his expertise, but also, finally, to the principle of a military man serving. We had this out before the Foreign Relations Committee. I do not think it should be categorical.

I necessarily would look at an arms control role with some question with respect to an Army officer being appointed. That would be a natural thing. I can think of many, many Army officers, good friends of mine, who would not have the balanced judgment and would not have the sensitivity and the feel for a particular role in disarmament. You would not appoint Gen. Curtis LeMay, and I readily acknowledge that. If there is anybody who likes the General LeMay type—and I say that respectfully, because I think we need a little more fire and toughness now than we have—you certainly would not put him in that particular role. He would not have any credibility.

On the other hand, you can look at the record of a civilian and say that he is pretty good and totally competent, that he could handle those particular negotiations. It is a tough role. There are many concerns to be satisfied. In the end, it has to be sold to 100 U.S. Senators and politicians.

So it is not necessarily a civilian or a military man in the job description for Director of the Arms Control and Disarmament Agency. I cannot go along with the idea that, ipso facto, a military man has to be bad.

We have had some of the best in the business, such as General Clay, when he took over Owens-Corning, and General Wood of Sears, Roebuck. I could go right down the list.

The average corporation certainly would not have generals coming in and running their businesses. But there have been outstanding exceptions who have come in and brought these industries and businesses from next to nothing to a very viable, competitive, and very successful private corporate entity.

The most up-to-date example, of course, is Frank Borman. It might be said that he had been studying the blood count and flow and all the various things that go into an astronaut's role. He probably has not been flying a plane too much, because of being engaged as an astronaut, and it might be said that he did not know the ramifications of a worldwide air service. But he has taken Eastern Airlines and has led it to great heights.

Similarly, in the U.S. Senate, we would not say that we want civilian control, and certainly we do not have to have generals and those who have served in the Navy and the Coast Guard coming in and voting on these budgets. That is why we have civilian control. If we are going to have civilian Secretaries, let us not cancel that out by having military officers like General Goldwater and General Thurmond and General Cannon and Colonel Glenn and start making appropriations for these branches of the service.

We do not do that on ourselves. We would be laughed off the floor if we proposed it.

I am not laughing at the proposal of my distinguished colleague from Iowa, Senator CULVER, about his misgivings of the military services, but I know him to be too smart an individual and too broad in his judgment and vision to categorize any particular class or group and say, "Thou shalt not serve."

We have the committee to investigate nominations. The Foreign Relations Committee has done just that. They have gone very, very thoroughly into the qualifications of the nominee.

At this moment I see the distinguished colleague from Wisconsin. He is waiting to perhaps talk on this matter.

Let me yield at this particular time to the Senator from Wisconsin. I will have some further remarks.

I ask unanimous consent that my complete statement be printed in the RECORD at this point.

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

STATEMENT OF SENATOR HOLLINGS

Mr. President, I rise today to speak in support of the nomination of George M. Seignious II to be Director of the U.S. Arms Control and Disarmament Agency. President Carter has made an outstanding nomination, and I a very pleased that General Seignious has responded affirmatively to the call of the President. Whenever his country has called, whenever duty has summoned him, George Seignious has responded with affirmation, with dedication, and with character.

I have known George Seignious since we attended school together at The Citadel, the military college of South Carolina. And I think the best service I can offer the Senate during consideration of this nomination is to detail something of my own personal experiences with the nominee.

At the Citadel, Obbe Seignious was the top academically, he was the most popular member of the class, and received an appointment directly into the Army. During the Second World War, he served with courage and distinction overseas. In fact, even during the war, our paths crossed. I remember coming up out of the Seventh Army; we crossed the Rhine, and when we came to the Danube, Obbe had left a sign "You are now crossing the beautiful Danube courtesy of the Second Army Division." He had gotten in there ahead of us by a few days.

When the war ended and we all came

home, I continued to follow his career with interest. I do not wish to take the time of the Senate in reciting chapter and verse the many assignments he held and the accomplishments he achieved.

Let me just say that in every endeavor he has exceeded even the high expectations we had for him. From his student days, his classmates knew he would excel in the military. The Distinguished Service Medal with 2 oak leaf clusters—the Silver Star—the Joint Services Commendation with 2 oak leaf clusters—these comprise only a partial listing of the recognitions which testify to the accomplishments of his military service. As United States Commander in Berlin, as Commanding General of the Third Infantry Division in Germany, as staff director of the Organization of the Joint Chiefs of Staff, and in the other sensitive and important assignments he has undertaken, George Seignious has always performed with brilliance and commitment.

I would stress the breadth of experience which he has. I mention this in the context of those who argue that the General's background is not what we should have in the post for which he has been selected. When some say they want to write a statute excluding military men, they are totally disregarding what a military man really is in this day and age. They don't just go off to military college, graduate, and then spend the rest of their days in reveille and marching and officers' clubs. Look at their experiences, and his in particular. Thirty years ago he was on the Joint Brazil-United States Military Commission as a junior officer and was already working with civilian personnel in that capacity. Twenty-five years ago he was at the Joint Services Staff College at Latimer House in London, exposed to other than just military education. From 1957–1960 he was executive military assistant to the civilian Secretary of the Army, Wilbur Brucker. In 1968–1969, he was adviser to Governor Averell Harriman, and I know how highly the Governor feels both about this man and the President's appointment of him to this particular post.

When he was Commandant in Berlin, he was of course advising our Ambassador, Kennether Rush, on the most sensitive kinds of questions. I could go on, with his work at the International Security Affairs Agency, the Defense Security Assistance Agency, and his advising on the SALT talks. But the conclusion should be obvious—here is a gentleman of the most sensitive intelligence and the widest kind of experience. He understands the fine points of policy and the nuances of national security.

We all had great pride in him, and we worked hard to realize our hope that he could become President of The Citadel. He did, in 1974, and the college has made tremendous strides under his administration. Always a fine school, The Citadel is today a better institution than it was, and the primary credit goes to the dedicated and untiring effort which he put into his work as President. He came with a vision of what he knew The Citadel could be, and he came with the talent of organizing and inspiring his associates and the community and all concerned to make that vision a reality .

And, again, I don't just refer to the military. I mean the academic and summer school activities. We have women on campus now, and graduate degrees, night school, and everything else characterizing a first-rate university. Let me add that General Seignious knows how to talk to the politicians, too. He has been to our South Carolina General Assembly to obtain funds.

And while it is no doubt frightening enough to appear before Congress in quest of money. I don't know of anything so potentially intimidating than going to the Statehouse in Columbia and asking for money, just when they all got elected on the theme of balancing the budget. That theme, by the way, has a longer history in South Carolina politics than it does here in the Congress.

I hate to see General Seignious leave our college. But he is answering to the call of the President and the persuasion of the Secretary of State and many others. The call he hears is duty, and to that clarion call, he has always answered with certainty.

We still do not have arms control and meaningful arms reductions. Arms control is difficult business, and if ever we are to make real progress, it will take all of our nation's talent and dedication to do so. It will take diplomats, but just as much it will take military expertise and the experience and appreciation which go with that kind of basic knowledge. We don't say military men can't run for Congress. We don't say they cannot serve as President. Why we should turn around on this post and say a military man cannot run the agency to deal with military arms reduction is beyond my power of understanding. To say that would be to bespeak a fundamental misunderstanding of what the military is like and of what those who have seen war most closely understand about the necessity to control arms.

Mr. President, George Seignious is superbly-qualified to discharge the responsibilities of this important post. I am confident that his service will make the Senate proud, and I urge my colleagues to give their wholehearted support to his nomination.

Mr. PROXMIRE. I thank my good friend from South Carolina. He is very accommodating, as always, and I deeply appreciate it.

Mr. President, I oppose the nomination of General George M. Seignious as Director of the Arms Control and Disarmament Agency. I do so for several reasons.

First, the General, as chief spokesman for the U.S. arms control community, is already on record as stating that it should be the policy of the United States to increase its strategic capability even with a successful SALT II treaty. There is great irony in this position. It echos the private and increasingly public statements coming out of the Pentagon—that the United States must build up after SALT just as we would have to build up in the absence of SALT. Specifically, General Seignious seems to have given his approval for the MX. In his first press conference he stated that Soviet weapons buildup under SALT "will produce such an inventory of strategic arms that it doubtlessly will propel the United States into seeking an alternative to the vulnerability of our Minuteman field."

Now of all the new strategic weapon systems on the drawing board, the MX poses the most serious arms control problems. It could encourage the widespread use of deceptive strategies by the U.S.S.R.—thus complicating if not making impossible any future SALT agreements. It would be inordinately expensive—$30 billion by many estimates. It could cause significant environmental damage in its ground-based mode. It may give rise to first strike fears by the Soviets and encourage a reaction that would further complicate the delicate balance of strategic forces. In short, this endorsement of the MX by the future Director of the Arms Control and Disarmament Agency displaces the check and balance between ACDA and the Pentagon that is so important in the forming of national policy.

The confirmation of General Seignious would also continue what is fast becoming the militarization of American policymaking. We have an admiral at the CIA, generals or military leaders at DIA and NSA and now a general for ACDA.

We need to adhere to the policy of civilian control at the helm of our Government.

We have been advised by everyone from Washington to Eisenhower of being sure that we have civilians at the helm of our Government. We have restrictions in the law that state that the Secretary of Defense and his two principal deputies, for example, must be civilians. The same policy should exist for the Arms Control and Disarmament Agency.

We must guard against establishing a pattern of relying exclusively on advice from the military ranks. ACDA is a counterbalance to the Department of Defense and must continue to play that role.

That makes it important that the Director of ACDA not be drawn from the ranks of the military where directly or indirectly he has been associated with the thought process that is largely antithetical to the Arms Control and Disarmament Agency.

After all, it is a rare general or admiral who is not interested in building up the military force, and that is his job; that is his responsibility. To expect him to move from that position to a position of advocating arms control and disarmament is expecting far more than we can realistically expect to have.

It is difficult to be a "team player" as General Seignious calls himself when one must debate within the administration with the Pentagon.

Mr. President, it should be noted that General Seignious cannot hide behind his rank. He is outranked by scores of officers at the Pentagon. Those he will be debating with at the Pentagon will outrank him in every conference. The prestige of the rank will be of little use to him and may be a disadvantage.

Finally, Mr. President, there is a question about the strength with which the general holds to positions and investigates those positions in advance.

That is going to be his job. And we have to rely on a man who has thought carefully about the complications of these treaties before he makes recommendations to us.

He has admitted joining the Coalition for Peace Through Strength—an organization with the goal of disapproving the SALT Treaty. He says he joined on the recommendation of several close military colleagues. He now rejects the aims of this organization. My question is "Is this the kind of close analytical care we need in the review of an admittedly complex SALT Treaty?"

Does this represent an attitude that will prevail after he is Director of the Arms Control and Disarmament Agency? Will his military colleagues have the same influence over him in his new

capacity? As I point out, Mr. President, his military colleagues will in many cases outrank him. Perhaps they will not influence him in that way, I hope not. It could well be that this was an event totally unrelated to his professional responsibilities, but it does raise unanswered questions about his thoroughness and clarity of vision.

For this reason, Mr. President, if there is not a rollcall, and I understand there will not be, I want to be sure that I am on record as opposed to the nomination of General Seignious, and if there is a rollcall, I will vote in the negative.

Mr. President, I think the distinguished Senator from South Carolina wanted to speak further. So on the assumption he will be back momentarily, I yield.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, I shall support the confirmation of the nomination of George Seignious to be Director of the Arms Control and Disarmament Agency, and I shall do so on the following grounds:

I do not believe that, with the law as it is—if we change the law that is another matter—there should be any built-in bar to a former military officer becoming the Director of this Agency. Indeed, some of the most devoted and convinced advocates of the reduction of armaments of all kinds have been military people.

Nobody knows the horrors of war better than a professional military officer. I have served, and some of the others here have served, in the Armed Forces. I was not a foxhole soldier, and many others have not been, but you sure see and feel it in an unparalleled way, and it burns itself into your soul. It was heavily attributable to that fact that I went into public life after being mustered out of the Army after World War II.

Second, I believe the decisions coming up make this a proper nomination. With this kind of background and training, he may be very useful to us in terms of the abilities of Mr. Seignious, formerly General Seignious, to add the element of professional knowledge to the consideration of the limitation and disarmament matters which will be before Congress in such a critical way.

Last, the President has decided that Mr. Seignious will be the Director; he will not be the Ambassador negotiating in respect of all five ongoing negotiations, Ambassador Earle being the negotiator already confirmed by the Senate in respect of the SALT negotiations.

Interestingly enough, one of the public witnesses, in my judgment, phrased this matter the best at our hearings, and his testimony is found at page 136 of the hearings. Sandford Zee Persons, vice president of the World Federalist Association, testified as follows:

> We hope that with his unique background and first-hand knowledge of war, he—

Meaning Mr. Seignious—

> will provide leadership toward the creation of a new world security system, one which will provide truly rewarding and cost effective national security to the United States of America and its citizens, as well as to all our fellow citizens of planet Earth.

I would like to point out how this ties in, also, with the testimony of Mr. Seignious himself. I asked him, at page 36 of the hearings:

> Senator JAVITS. What about the substantive proposition? What do you believe, as contrasted with the declaration of the Coalition for Peace Through Strength, regarding military superiority over the Soviet Union?

I would interject, to explain my reference, by pointing out that one of the things which Mr. Seignious was asked to explain was his joining this Coalition for Peace Through Strength, one of the primary objectives of which was military superiority over the Soviet Union.

This is what Mr. Seignious said:

> Mr. SEIGNIOUS. Well, I tried to answer that a moment ago by saying that in the broad range of military security there is a lot more than military equipment.

I wish to repeat that phrase:

> In the broad range of military security there is a lot more than military equipment.

Again quoting Mr. Seignious:

> I think you are explicitly referring to SALT II here and that I subscribed to the fact that military strategic equivalence is what we are negotiating, that we are negotiating from a position that recognizes that neither side should be advantaged or have an advantage over the other through the process of the negotiation.

I then asked:

> Senator JAVITS. Do you believe in that as a general, as an American, and as a prospective Director of the ACDA?
>
> Mr. SEIGNIOUS. I believe in it on all counts, and I can say further that it is inconceivable to me that one side can, even if it wanted to, even if it were willing to spend $100 billion, gain a strategic advantage over the other in the strategic central systems. I think it is an impossibility.

That, to me, is the essence of an understanding and balanced view of why these negotiations are a critical element in the security of our country, and it is that kind of thinking which I think the General exhibited to us.

Finally, in answer to a question by Senator BIDEN which is found on page 22 of the record, the questioner asked:

> What role do you see for the ACDA as part of the executive branch's national security structure?

He answered as follows—I read just the first two sentences, because I think that tells the story:

> It is high time in the structure of government that arms control be recognized as a legitimate form of national security, and if you start with that premise, you must start with another premise, and that is that the agency has to do its homework, it has to be at the seat of government, it has to influence policy, and it has to have a voice.

I like that attitude very much. Arms control must be recognized as a legitimate form of national security.

That has a little analogy to the conservation of gasoline, Mr. President. It has been properly said on this floor, I think, by Senator PERCY, that every gallon saved is a gallon of additional gasoline which we have got without importing it. That is very much the tenor of what Mr. Seignious said in our proceedings.

Finally, I would mention the general's association with this Coalition for Peace Through Strength. He apparently agreed, while still president of the Citadel, which was his last job—a great military school and training institution—on July 7, 1978, to be a member of the Coalition for Peace Through Strength and a member of the American Security Council.

I am not arguing with the purposes of the organization at all; it is a legitimate American organization. But one of the goals of its program was to "stop SALT II," and also one of its declarations was that it would seek to bring the United States into a condition of superiority over the Soviet Union in respect of armed strength.

The only difficulty which one finds with that statement is that it rules out the ability to negotiate any disarmament or arms limitation agreements. Mr. Seignious claims that he joined the coalition "to associate myself" with two members of the senior advisory committee of the Citadel, retired Gen. Lyman L. Lemnitzer and retired Adm. Thomas H. Moorer. He resigned on October 17 of the same year, only a few months after he joined.

When he resigned, he said in his letter:

> The content of your position is not a responsible position on SALT II.

Now I taxed him on the inconsistency of joining and then resigning abruptly. I told him it occasioned quite a good deal of comment. This is what he said, and I quote it, because I think it is an essential element of the record:

> If I am to be faulted, and I can be faulted, it is because I joined an organization and did not look thoroughly enough at its program . . . so my membership in the Coalition for Peace Through Strength was of short duration. It would have been just as short if I had not been asked to serve as Director of the Agency. I know that I am not immune to the sensitivities and the appearances of this situation. I am very sensitive to this point, and it does not reflect a prudent administrator joining and then unjoining. But that is the extent of my indiscretion.

Mr. President, I feel that it was an indiscretion. I feel that General Seignious has learned something from that experience and that this will be very instructive to him in his work which he will undertake, assuming Senate confirmation.

Upon all those grounds I have stated, Mr. President, I shall vote to confirm this nomination.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CHURCH. 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. CHURCH. Mr. President, having conferred with the ranking minority member of the committee (Mr. JAVITS), and having learned from him that there is no request on the Republican side for a rollcall on this nomination, and knowing no request by any Senator on the Democratic side for a rollcall, I believe the Senate is prepared to proceed to a vote.

Therefcre, I move that the nomination of Mr. Seignious be confirmed.

Mr. THURMOND. Mr. President, I rise today in support of the confirmation of Gen. George M. Seignious II (U.S. Army, retired), as Director of the Arms Control and Disarmament Agency. General Seignious is an experienced and capable man who has continuously demonstrated an outstanding willingness and dedication to serving his country throughout his long and distinguished career. It should also be noted, Mr. President, that General Seignious has served as an educator of eminent distinction as president of the Citadel military college in my home State of South Carolina.

After much debate and careful deliberation, the Senate Foreign Relations Committee recommended to the Senate by a vote of 13 to 2 that General Seignious be confirmed. Although General Seignious and I may, in the coming months, disagree on certain points of a negotiated SALT II treaty, I strongly feel that the Senate should today follow the recommendation of the Foreign Relations Committee and confirm his nomination.

Mr. President, I ask unanimous consent that the statement I made before the Foreign Relations Committee on behalf of General Seignious be printed in the RECORD at this point.

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

STATEMENT OF SENATOR STROM THURMOND

Mr. Chairman, it is indeed a pleasure to introduce General George M. Seignious, II (U.S. Army, Retired), to this Committee. Throughout his long career, he has always demonstrated an outstanding willingness and dedication to serving his Country.

George M. Seignious, II, was born in Orangeburg, South Carolina, on June 21, 1921. He was graduated from high school in Kingstree, South Carolina, in 1938, and from The Citadel, Charleston, South Carolina in 1942, at which time he was awarded a Regular Army Commission as a second lieutenant of Infantry.

General Seignious' service during World War II was with the 10th Armored Division at Camp Gordon, Georgia, and in the European Theater of Operations; from platoon leader to operations officer, 20th Armored Infantry Battalion, and assistant operations officer of the division. He returned to the United States in March 1946.

In 1947–1948 General Seignious (then Major) attended the advanced course of the Armor School, Fort Knox, Kentucky. He was then assigned with the Joint Brazil-United States Military Commission in Brazil, where he served as armored training officer; assistant chief of staff, Armored Unit; and acting assistant chief of staff, Intelligence and Operations. In November 1949 he was moved to Headquarters, Caribbean Command, Quarry Heights, Canal Zone. He served as assistant plans and operations officer, assistant intelligence officer, and aide-de-camp to the commander-in-chief Caribbean.

He returned to the United States in early 1951 and served as operations officer and executive officer of the 714th Tank Battalion, Fort Bragg, North Carolina. From August 1951 to May 1952 he was commanding officer of the 44th Tank Battalion, Fort Bragg, North Carolina, and Fort Irwin, California.

In July 1952, he was assigned to the Office of the Joint Chiefs of Staff as assistant executive secretary, JCS, where he served until June 1955.

From August 1955 to February 1956 he attended the Joint Services Staff College, Latimer House, England. In March 1956 he was assigned to the Army Section, Military Assistance Advisory Group in Spain, as chief Training Branch, Plans and Training Division, where he served until June 1957.

He returned to the United States and from July 1957 to August 1960 served as military assistant and executive to Secretary of the Army Wilber M. Brucker. He attended the National War College, graduating in June 1961.

General Seignious served the next four years in Europe as commanding officer, 11th Armored Calvary Regiment, U.S. Army, Europe; chief, Plans and Requirements Branch, Operations Division, Headquarters, U.S. Army, Europe; and chief of staff, 3rd Armored Division, U.S. Army Europe.

In July 1965 he was promoted to brigadier general and assigned to the Office of the Assistant Secretary of Defense (International Security Affairs) as the director, Policy Planning Staff, and military member of Secretary Rusk's delegation of ANZUS and SEATO in 1966.

From November 1966 to August 1967, he was assigned to the 2d Infantry Division, Eighth United States Army, Korea, as assistant division commander for maneuver to assist in operations and control in the violation of the Demilitarized Zone by the Communists.

He returned to the United States in September, 1967, was promoted to major general, and assumed the duties of deputy director, Plans and Policy Directorate (J–5), Joint Staff, Organization of the Joint Chiefs of Staff.

On June 19, 1968 the President appointed him to replace General Andrew J. Goodpaster as the military adviser to Governor Harriman and Ambassador Vance at the Paris Peace Talks of Vietnam.

On March 19, 1969 he became commander general, 3d U.S. Infantry Division in Germany.

Major General Seignious assumed the duties of United States commander, Berlin on February 28, 1970, where he remained until May 13, 1971. He was advisor to Ambassador Kenneth Rush during the successful Quadripartite negotiations on Berlin in 1971.

Lt. Gen. Seignious became the deputy assistant secretary of defense, International Security Affairs (Military Assistance and Sales), on July 31, 1971, and with the establishment of the Defense Security Assistance Agency on September 1, 1971, he assumed the attendant duties and title of director, Defense Security Assistance Agency.

Effective June 12, 1972, Lt. General Seignious became the director, Joint Staff, Organization of the Joint Chiefs of Staff.

Lt. General Seignious returned to his Alma Mater to become President of The Citadel on August 1, 1974.

During his long and distinguished career, General Seignious has received numerous awards which include: Distinguished Service Medal with 2 oak leaf clusters; Silver Star; Bronze Star with 2 oak leaf clusters: Legion of Merit with 3 oak leaf clusters; Joint Services Commendation Medal; Army Commendation with 2 oak leaf clusters; American Campaign; Europe, Asia, Middle Eastern Campaign; Army Occupation (Germany); World War II Victory; Combat Infantry Badge; National Defense Service Medal with 1 oak leaf cluster; and Armed Forces Expeditionary Medal (Korea).

While President of The Citadel, President Jimmy Carter on September 20, 1977, named General Seignious delegate-at-large on the United States delegation to the Strategic Arms Limitation Treaty (SALT) negotiations at Geneva.

On December 4, 1978, General Seignious was sworn in as Director of the Arms Control and Disarmament Agency.

Mr. Chairman, as the wisdom of this Committee has been demonstrated many times in the past, I am confident of your careful consideration of General Seignious and equally sure that your judgment will be sound. Although General Seignious and I may, in the coming months, disagree on certain points of a negotiated SALT II Treaty, he is an experienced and capable man, who, in my opinion, should be confirmed as Director of the Arms Control and Disarmament Agency.

Mr. PELL. Mr. President, I am concerned that a military officer, Gen. George Seignious II, has been chosen by the President to direct the Arms Control and Disarmament Agency, although I will not oppose his confirmation.

As chairman of the Subcommittee on Arms Control, Oceans, International Operations, and Environment of the Committee on Foreign Relations, I have a particular interest in and responsibility for the Arms Control and Disarmament Agency. It is a small agency with a very limited budget. Yet, we expect that Agency to take the lead in making sure that arms control initiatives are considered as alternatives to or as complements to new weapons programs as a means of enhancing our national security.

If the Arms Control and Disarmament Agency is to be effective, it must have strong, intelligent, and capable leadership that will bring an effective advocacy of arms control to bear on national security issues. In this regard, I have reservations that a former military officer is the right kind of person to pursue alternatives to weapons programs, although I have the highest regard for General Seignious as a person.

As my fellow Members are aware, General Seignious was an active duty military officer for 32 years, until his retirement in 1974 as a lieutenant general. Yet, I am persuaded that the Agency, as a general rule, should have civilian leadership. Such a policy would be completely consistent with that applied to the Secretary and Deputy Secretaries of Defense since the inception of the Department of Defense after World War II.

I do not make this point, because of a belief that military officers are by nature unqualified to serve in this position. I do believe, however, that it will be difficult for military officers to become strong advocates of arms control against a background in which arms control has received very limited attention and consideration and in which their general efforts have been directed to more and better weapons.

I expect that the Committee on Foreign Relations will be considering later this session legislation which would impose certain restrictions upon military officers

holding the positions of Director and Deputy Director of the Agency in the future. I support such legislation as I believe that an effective rule should be imposed which would insure that an arms control point of view is effectively represented in the highest positions of the Agency.

No matter what the outcome of that deliberation, I have concluded that, despite my reservations about General Seignious' military background, he should not be affected. There is no law now which would prohibit his service, nor is there any evidence in the legislative history of an intent by Congress to bar active or retired military officers from this position. Accordingly I believe it would be unfair to General Seignious to subject him to a standard which does not presently exist.

Moreover, because of my particular responsibilities in regard to the Arms Control and Disarmament Agency, I was especially careful during the Foreign Relations Committee's hearing to satisfy myself that General Seignious deserved to be an exception to what I believe should be the general rule. General Seignious appears to be a fine person, a man of intelligence, character, and integrity. Accordingly I will support his nomination as an exception with the hope and expectation that he will be able to rise above his background and prove himself to be of unique value as a champion of arms control during his tenure as Director of the Arms Control and Disarmament Agency.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a statement by the Senator from Tennessee (Mr. SASSER), who is in support of the nomination, be printed in the RECORD at this point.

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

The statement follows:

STATEMENT BY SENATOR SASSER

I support the confirmation of General George Marion Seignious II as Director of the Arms Control and Disarmament Agency. This appointment comes at a critical juncture in U.S. defense and foreign policy, and I believe that General Seignious is uniquely qualified to assume the post of Director of ACDA.

The challenge before us as a nation is to reduce the possibility of global nuclear holocaust, while maintaining a strong national defense to deter aggression and protect our interests and our allies. This is a very delicate balance. Achievement of that balance demands priority consideration of the factors included in the legislative mandate for ACDA: "This organization must have the capacity to provide the essential scientific, economic, political, military, psychological, and technological information upon which a realistic arms control and disarmament policy must be based."

I believe a key word here, in terms of the selection of General Seignious, is "realistic." He knows what it means to need the firepower, the equipment and the support to meet the enemy. And he knows what it means to send troops to their death. My good friends and colleagues from South Carolina, Senator Thurmond and Senator Hollings, have testified before the Foreign Relations Committee, and have convinced me, that General Seignious is acutely sensitive to both sides of the paradox of military leadership. And herein we find the balance required of any individual seeking to balance our realistic defense needs with our will to survive in the nuclear age.

Referring again to the ACDA mandate, I have complete confidence in General Seignious to spearhead the agency's scientific, economic and technological mission for he has presided with great imagination and success at the Citadel, where he served as President for the past four years. I have complete confidence in General Seignious to analyze the military and psychological ramifications of arms control, for among the awards he has earned during his distinguished military career are the Distinguished Service Medal with two oak leaf clusters, the Silver Star, the Bronze Star with two oak leaf clusters, and the Joint Services Commendation with two oak leaf clusters.

His experience as Deputy Assistant Secretary of Defense for International Security Affairs; Director of the Defense Security Assistance Agency; Director, Joint Starr, Organization of the Joint Chiefs of Staff; and Delegate-at-Large on the United States Delegation to the Strategic Arms Limitation negotiations at Geneva has provided him with the political background to deal very effectively in that arena.

President Carter has chosen well. He has recognized the vital need at this point in our history to select an individaul with broad-based qualifications and personal involvement with the issues at hand. President Carter has had the good fortune to find such a man in General George Seignious, who is also a gentleman of character who will represent the American people with honor and dedication to duty. I am honored to support his nomination.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of George M. Seignious II, of South Carolina, to be Director of the U.S. Arms Control and Disarmament Agency. (Putting the question.)

So the nomination was confirmed.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. CHURCH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JAVITS. Mr. President, I ask that the President be immediately notified of the confirmation of the nomination.

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

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

Mr. HELMS. Will the Senator withhold that?

The PRESIDING OFFICER. Does the Senator withhold his call for a quorum?

Mr. CHURCH. Yes; I am happy to withhold.

The PRESIDING OFFICER. The Senator from North Carolina.

LEGISLATIVE SESSION

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

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

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Since nothing is before the Senate, Mr. President, under the rule no Senator can speak. I ask unanimous consent that there be a period for the transaction of routine morning business, with statements limited therein to 10 minutes each, and that the period not extend beyond 20 minutes.

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

S. 519—ACADEMIC FREEDOM ACT OF 1979

Mr. HELMS. Mr. President, the policy of Congress against Federal intervention in the American system of higher education is consistent and long standing. Congress has recognized on many occasions that the fundamental premise of academic freedom is academic autonomy. On numerous occasions Congress has enacted laws to guarantee the autonomy of higher education. Even when Congress substantially increased Federal financial assistance to education in legislation such as the Higher Education Act of 1965, it provided:

Nothing contained in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, or over the selection of library resources by an educational institution.

Yet, in the face of this clear intent of Congress to prohibit Federal intervention in the operation of America's colleges and universities, Federal bureaucrats have entangled college administrators and professors in a web of Federal regulations, reports and controls which have caused educators across the country to warn that the very existence of independent education in the United States is being threatened. These educators point with concern to the emergence in reality, if not yet in name, of a new and unauthorized national "Ministry of Education." I believe, Mr. President, it is time for Congress to fulfill its responsibility and regulate the Federal regulators, before Federal regulation of colleges and universities becomes Federal strangulation. Therefore, I am today introducing legislation to reduce the adverse effects of Federal regulation in interpreting congressional enactments which go beyond the scope of such legislation and impose upon academic freedom.

PAPERWORK MEASURED BY THE POUND, NOT THE PAGE

America's colleges and universities are laboring under a staggering amount of federally required paperwork. Government demands upon collegiate institutions to gather, analyze, and transmit information in confusing and sometimes contradictory form is increasing each year. Federal bureaucrats are producing a constant flood of new and revised laws, regulations, and guidelines that often leave college administrators confused, frustrated, and exhausted. Today, Federal paperwork is measured by the pound, not the page. For example, one report from the University of North Carolina in Greensboro to the Office of

Civil Rights weighed more than 12 pounds.

Recently, the Southern Association of Colleges and Schools studied the impact of Federal regulation on its member colleges. The report found that the cost of compliance with Federal regulations required some institutions to spend as much as 50 cents to administer every Federal dollar received. Other stated that they must spend more to comply with Federal regulations than they do to operate many academic departments. One college reported spending over $2 million in a single year merely to comply with various Federal requirements. The response of one administrator was typical:

All of us agree that for the most part the ideas behind the regulations are good and worthy; the difficulty is that when bureaucrats begin to write regulations, they become extremely complicated and, in many instances, difficult to administer as well as expensive in time and effort. They are becoming so numerous that they involve a genuine encroachment on the freedom of action of the private colleges.

This destructive governmental interference with academic freedom is not peculiar to universities located in Southern States. Bureaucratic regulatory overkill is nationwide. Derek Bok, president of Harvard University, asserted recently that 60,000 hours of faculty time at Harvard were spent complying with Federal regulations during 1975. Administrators at North Carolina State University estimate that, during the same year, their faculty and staff spent at least 61,000 hours in complying with Federal regulations.

Change magazine recently estimated that the cost to institutions of higher education of federally mandated programs reached $2 billion in 1976. This $2 billion figure is shocking in itself, but the real cost to colleges is revealed when it is remembered that the total amount of voluntary private contributions to institutions of higher education that year was approximately $2 billion. Change also estimates that for every new bureaucrat added to oversee university compliance another 150 university administrators must be hired to keep up with the increased workload.

Terry Sanford, president of Duke University, observes:

The avalanche of recent Government regulations threatens to dominate campus management. At the present rate, it is not difficult to imagine a day when facilities and administrators spend all their time filling out Government forms. It is just preposterous. The regulators must be regulated.

Over 25 years ago, President Eisenhower warned that "the prospect of domination of the Nation's scholars by Federal Government, project allocation, and the power of money is ever present, and is gravely to be regarded." Today, American educators too often echo President Eisenhower's warning. Charles Saunders of the American Council on Education recently asked:

Is regulation strangulation? The question aptly conveys our uneasy awareness that government legislation and court decisions are increasingly influencing the shape of higher education in America. . . . In practice, federal regulations too often impede and subvert the educational process by stifling diversity and imposing costly, burdensome, and unnecessary requirements.

During 1976, four private universities located in Washington, D.C.—American, Georgetown, Catholic, and George Washington—issued an unprecedented public declaration of independence from Federal control resolving to—

. . . affirm our intention to maintain institutional independence from any external intervention which threatens the integrity of our institutions, including refusal of Federal funds which carry such threats.

The cost of implementing Federal regulations adversely affects minority students as well. For example, at Duke University the cost per student of implementing federally mandated social programs has increased from $58 in 1968 to $451 in 1975. The cost of compliance has affected other private universities even more drastically. To take another example, the cost at Georgetown University has risen from only $16 per student in 1965 to $356 in 1975. This increase in the cost of attending college most affects minority and low-income students. These students can lease afford any increase in the cost of attending school. Minority and low-income students are most dependent upon financial aid. The millions of dollars which are today spent implementing Federal regulations could be spent providing thousands of minority and low-income students with a college education.

A recent study by the American Council on Education of the cost of complying with Federal regulations at six institutions of higher learning in the United States found that the combined cost for only six colleges is approximately $10 million. And this $10 million figure does not include the cost of implementing those regulations which apply particularly to educational institutions under title IX of the Education Amendments of 1972 and the so-called Buckley amendment regarding student privacy. If the cost of these programs are also added, the cost per student would be much greater.

The cost of developing and implementing affirmative action and equal employment opportunity programs constitutes a substantial share of the total cost of Federal regulation. The impact is substantial on both large State universities and small junior colleges. For example, at the University of Illinois equal employment and affirmative action requirements consume 64 percent of all funds spent to comply with Federal mandates, and at Miami-Dade Junior College 40 percent of all compliance funds are used for that purpose. Simply developing an affirmative action plan can cost hundreds of thousands of dollars. For example, a single affirmative action plan cost $400,000 to develop at the University of California at Berkeley, while the one developed at the University of Michigan cost $350,000.

The total amount of money actually spent by such institutions to comply with all regulations usually runs into the millions of dollars. In 1975, the University of Illinois spent $1,302,545; Georgetown University spent $3,603,243; and Duke University spent $3,618,070. And according to the report of the American Council on Education, the cost impact of affirmative action programs "has only just begun to be felt."

No only do compliance requirements cost millions of dollars, but they also divert existing resources from their intended purposes. At the University of North Carolina at Greensboro, compiling 10 reports required by HEW "swamped" the University's computer facilities. The director of institutional research recalled: "All other uses of the computer stopped. For a 6-month period we did nothing but HEW reports."

Federal law affecting higher education generally directs Federal bureaucrats to enforce its provisions among institutions of higher learning "receiving Federal financial assistance." Hence, what constitutes a "recipient institution" under the regulations adopted pursuant to and within the scope of Federal law determines, in large part, the extent of the bureaucracy's power under the statute. HEW has interpreted the word "receive" in such a fashion as to gain control over almost every aspect of university life in the United States.

The HEW regulations provide that not only does "Federal financial assistance" include grants and other funds given directly to the institutions themselves or to one of their programs or activities, but also scholarships, loans and other funds made directly to students. For example, title IX provides that Federal agencies administering its provisions may withhold or terminate "Federal financial assistance" to institutions which do not comply with their implementing regulations. The immense power such a provisions grants Federal regulators is obvious. HEW and other Federal agencies have used this power to impose affirmative discrimination by requiring quotas and goals under the threat of the termination of Federal funds for noncompliance. However, the Federal bureaucracy has not found this provision sufficient to implement many of its regulations which have proved widely unpopular and of questionable legality.

In 1975, HEW adopted regulations implementing title IX which took the position that all educational programs and activities of a "recipient institution" benefited from Federal financial assistance to any program or activity. The regulation defines "recipient" as any institution that "operates an education program or activity which receives or benefits from such assistance." This assertion by HEW, that it may regulate all aspects of all education activities of an institution of higher education which receives Federal funds for any program, has allowed HEW, without congressional authorization, to direct almost every aspect of university life in almost every college in the United States. According to Dr. Dallin Oaks, president of Brigham Young University and director of the American Association of Presidents of Independent Colleges and Universities, the effect of this HEW action is such that—

* * * if an educational institution has received even indirectly, a single dollar of federal money, every decision, activity, facility, educational policy or communication of that institutions is subject to review and regulation by the Department * * * The Department has therefore taken the position that if a college or university receives some direct or indirect financial assistance for its department of chemistry it must accept government supervision of all of its other academic departments, its dormitories, its admissions and financial aids policies, and every other aspect of its operations.

HEW has adopted a philosophy of regulation regarding higher education described by Kingman Brewster, president of Yale University, as "now that I have bought the button, I have a right to design the coat." Many private universities have refused Federal assistance in the form of grants and other aid on the grounds that such assistance must necessarily entangle them in Federal controls. They hold that the Constitution's first amendment freedoms create a wall of separation between Government and academia. Indeed, the U.S. Supreme Court has recently stated:

The right of freedom of speech and press includes not only the right to utter or print, but * * * the freedom of the entire university.

Many colleges have never accepted Federal assistance and, therefore, fell outside title IX enforcement provisions regarding the loss of Federal funds. To overcome these obstacles, HEW has gone beyond the intent and scope of title IX.

Thus, HEW interpreted a "recipient institution" to include an institution whose students receive Federal assistance in the form of scholarships, loans, grants, or other funds. Under the HEW formulation a college with a student who receives Federal assistance, also "receives" such assistance. Such a holding not only distorts the purpose of such assistance, but it also distorts the meaning of the word "receive" itself.

According to the legal encyclopedia, "Corpus Juris Secondum," volume 72, page 643, the word "receive" is defined in reference to "a change of possession, as when one parts with the control of a thing and another takes and accepts it."

Clearly under the conventional and legal definition, the act of receiving Federal financial assistance is complete when the student receives the assistance, whether it be in the form of veterans educational benefits or national student defense loan. The impropriety of HEW's application of the term is evident when applied to other situations. Applying HEW's interpretation, Nobel Prize winner, Prof. Milton Friedman has pointed out:

The corner grocer and the A & P are "recipient institutions" because some of their customers receive social security checks. The New York Times and The Chicago Tribune are federal contractors because welfare recipients buy papers.

As Professor Friedman concludes:

No argument is too silly to serve as a pretext for extending still further the widening control over all of our lives that is being exercised by government.

Yet the results are anything but funny. Many private colleges and universities have, as a matter of academic or religious principle refused Federal assistance suspecting that Federal control would soon follow. In the case of title IX, administrators of religious colleges like Dr. Willis Weatherford of Berea College, observe that HEW's implementing regulations would force the college to violate its religious principles in regard to the subjects of marriage, abortion, and pregnancy. Others agree with Dr. George Roche of Hillsdale College, that—

Rather than allow such a federal takeover of our campus, we are prepared to refuse compliance with the government edicts.

However, this position should not underestimate the power of the Federal Government to harass and even destroy institutions which refuse to comply. There are many institutions with such a large number of students receiving Federal assistance, that should this regulation be allowed to stand, their only alternatives, according to Prof. Virgil Mitchell will be to "obey the Federal Government or cease to exist."

AMERICAN ASSOCIATION OF PRESIDENTS OF INDEPENDENT COLLEGES AND UNIVERSITIES ENDORSES THE ACADEMIC FREEDOM ACT OF 1979

Mr. President, I am pleased to announce that the Board of Directors of the American Association of Presidents of Independent Colleges and Universities has endorsed the Academic Freedom Act of 1979.

Although the provisions of this bill are not restricted to private colleges and universities, it is apparent from many of the examples which I have just discussed that the adverse impact of Federal regulation is often most greatly felt by these schools. Unlike their counterparts in the public sector, private colleges do not have the ability to pass along to the taxpayers of their State the increased costs of Federal regulation. Recently, many small private colleges have closed their doors and gone out of existence, in part due to the spiraling costs of Federal intervention.

Additionally and perhaps most importantly, private colleges and universities are least likely to possess the resources necessary to withstand this Federal assault and preserve their institution's independent existence. Dr. Dallin H. Oaks, president of the American Association of Presidents of Independent Colleges and Universities, stated in an address to the Western College Association, in regard to academic freedom:

An institution which lacks freedom from government interference in the management of its educational functions cannot protect its faculty from government interference in theirs.

The board of directors of the American Association of Presidents of Independent Colleges and Universities adopted the following resolution:

The proposed Academic Freedom Act of 1979 is a sound legislative corrective for serious problems that beset the private sector of higher education. We support it in principle and request congressional hearings in which AAPICU and its members can give suggestions on specific phraseology.

CONCLUSION

Mr. President, the Academic Freedom Act of 1979 would do much to solve the problem of Federal entanglement in higher education. First, it requires that any Federal agency issuing a rule affecting institutions of higher education must adopt an education impact statement which shall determine whether any information sought under the rule is already available from or being gathered by another Federal agency, and also assess the cost and time involved by institutions in complying with such rule. Second, it provides for the maintenance of educational standards by prohibiting a rule which would directly or indirectly require, promote, or encourage the abandonment or reduction of academic requirements for admission to any undergraduate or graduate degree program. In addition, it would prohibit any rule which would directly or indirectly encourage or promote the abandonment of any graduate or undergraduate degree program itself. Third, it provides an exemption from Federal regulation for any institution which, during the last fiscal year, does not receive more than $300,000 or 5 percent of its annual current funds budget in Federal assistance. Fourth, it provides that Federal regulations may apply only to those educational programs or activities which are direct recipients of Federal financial assistance. Fifth, it limits the power of a Federal agency to terminate financial assistance only to a program which is in noncompliance with a lawful regulation and prohibits that program from being used as the basis for terminating assistance to other programs of the institution which are in compliance with that regulation. Sixth, it provides that scholarships, loans, grants, wages, or other funds extended to an institution on behalf of students or extended directly to students shall not be construed as Federal financial assistance to that institution. And, seventh, it provides that no Federal financial assistance shall be terminated, withheld, or otherwise encumbered on the basis that the institution is in noncompliance with a Federal regulation when the institution has sought judicial review and until all appeals of such action have been exhausted.

Mr. President, I ask unanimous consent that the Academic Freedom Act of 1979 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. 519

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 "Academic Freedom Act of 1979".

FINDINGS

SEC. 2. The Congress finds that—

(1) the excessive demands on time which administrators and teachers of institutions of higher education must utilize in order to responsively reply and conform with regulations, reporting, requirements, compliance proposals, and other administrative regulations adversely affects the financial resources of such institutions and the educational quality of such institutions;

(2) increasing Federal intrusion into the curriculums and grading, admission, and hiring policies of institutions of higher education in the United States is endangering the academic freedom of such institutions;

(3) the diversity and independence of higher education in the United States, founded on the philosophy of local autonomy and service to a local community, offers Americans the greatest freedom to pursue their education and exercise their first amendment freedoms; and

(4) it is necessary and proper that the Congress pursuant to the powers granted to it by the Constitution of the United States, including, but not limited to, the first and fourteenth amendments thereof, should take action to enhance and to promote its long standing protection of academic freedom among institutions of higher learning.

DEFINITION

SEC. 3. As used in this Act the term:

(a) "Regulation" means any rule, guideline, interpretation, order, or requirement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy and includes recordkeeping or reporting requirements imposed by any agency or authority of the United States.

(b) "Institution of higher education" means an educational institution in any State which—

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association listed by the Commissioner of Education pursuant to section 601(e) of the Elementary and Secondary Education Act of 1965 or licensed by the State in which it is operated.

(c) "Federal financial assistance" includes, but is not limited to, grants, loans, and any other payments made out of appropriated funds including funds made available under any contract to which the United States is a party or with respect to which the United States is a beneficiary.

EDUCATION IMPACT STATEMENT

SEC. 4. Notwithstanding any other provision of law, no regulation affecting any institution of higher education in the United States, promulgated on or after the date of enactment of this Act, shall become effective unless a copy of such agency causes to be published in the Federal Register a copy of such proposed regulation together with an educational impact assessment statement which shall—

(1) determine whether any information required to be transmitted under such regulation is already being gathered by or is available from any other agency or authority of the United States; and

(2) assess the cost and time involved in complying with such regulation by institutions of higher education which would be affected thereby.

Notwithstanding the exception provided under section 553(b) of title 5, United States Code, such statement shall be based upon the record established under the provisions of section 553 of title 5, United States Code, compiled during the rulemaking proceeding regarding such regulation.

MAINTENANCE OF EDUCATIONAL STANDARDS

SEC. 5. No agency or authority of the United States shall promulgate or enforce any regulation under any Act of Congress or pursuant to any Executive order which directly or indirectly requires, promotes, or encourages, the abandonment or reduction of academic requirements for admission to any program or activity, or to any undergraduate or graduate degree program of such institution of higher education, or the abandonment of any undergraduate or graduate degree program.

HIGHER EDUCATION FINANCIAL ASSISTANCE LIMITATION

SEC. 6. (a) As used in this section the term "current funds budget" means all anticipated operating revenues, expenditures, transfers, and allocations applied to all operations and activities for the educational and general functions and auxiliary enterprises of any institution of higher education, includng anticipated uses of current funds, revenues for purposes other than current operations, and restricted current funds.

(b) (1) No institution of higher education shall be deemed to be the recipient of Federal financial assistance under any equal employment opportunity law or order, when the total Federal financial assistance received by such institution during the last fiscal year does not exceed $300,000 or 5 per centum, whichever is greater, of such institution's annual current funds budget.

(2) Nothing contained in this subsection shall prohibit the maintenance and filing of records in compliance with laws governing the normal financial administration of such Federal financial assistance.

(c) No officer or employee of the United States shall have the authority to issue any regulation pursuant to any Act of Congress or Executive order with respect to educational programs or activities of any institution of higher education which is the recipient of Federal financial assistance unless such educational program of such institution is the direct recipient of such Federal financial assistance.

(d) Termination of, refusal to grant, or to continue Federal financial assistance to education programs or activities of any recipient institution of higher education or to any such institution pursuant to the provisions of any Act of Congress or any Executive order shall apply only to the specific program or activity in which a finding of noncompliance with a lawful regulation with respect thereto has been made. A finding of such noncompliance in one program or activity of such an institution to which Federal financial assistance has been extended does not empower or otherwise authorize any officer of the United States administering such assistance to terminate such assistance to other educational programs or activities conducted by the recipient institution of higher education or to such recipient institution itself.

(e) For purposes of this section, scholarships, loans, grants, or wages or other appropriated funds extended to any institution of higher education for payment to or on behalf of students admitted to such institution, or extended directly to such students for payment to such institution, shall not be construed as Federal financial assistance to such institution for any purpose under any Act of Congress or any Executive order, even where such assistance to such institution constitutes a reimbursement for the administration of other funds or other substitutable funds.

JUDICIAL REVIEW

SEC. 7. No Federal financial assistance granted to any institution of higher education which is a party to any action in the courts of the United States alleging in whole or in part the failure of such institution to comply with any regulation or that any regulation is unlawful or otherwise improper in its substance or in the administration or application thereof may be terminated, withheld, or otherwise encumbered until all appeals of such action have been exhausted.

Mr. HELMS. Mr. President, I send the bill to the desk in connection with the statement I have just made and ask that it be given immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. BAYH. A parliamentary inquiry, Mr. President. Does that request require a unanimous-consent?

The PRESIDING OFFICER. It would take unanimous consent to consider the bill at this time.

Mr. BAYH. I do not want to be discourteous to my friend from North Carolina. I do not have any idea what is in it and if we are going to consider it immediately——

Mr. HELMS. I merely wanted to get on the calendar.

Mr. BAYH. If the Senator from North Carolina objects, I will accept his objection.

Mr. HELMS. I will not object.

The PRESIDING OFFICER. The clerk will read the title of the bill.

The assistant legislative clerk read as follows:

A bill (S. 519) to preserve the academic freedom and the autonomy of institutions of higher education and to condition the authority of officials of the United States to issue rules, regulations, or orders with respect to institutions of higher education.

Mr. BAYH. Mr. President, I object.

The PRESIDING OFFICER. Is there objection to its immediate consideration?

Mr. BAYH. I object, with all deference to my friend from North Carolina.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. HELMS. No, Mr. President, objection was heard to its immediate consideration. I beg the Chair's pardon.

The PRESIDING OFFICER. The Chair stands corrected.

First reading having occurred, the bill will remain at the desk pending its second reading on a different legislative day.

Mr. HELMS. That is correct.

I thank the Chair.

S. 520—CONSTITUTIONAL CONVENTION PROCEDURES ACT

Mr. HELMS. Mr. President, I send another bill to the desk and ask that it be stated and I ask for its immediate consideration.

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

The assistant legislative clerk read as follows:

A bill to provide procedures for calling constitutional conventions for proposing amendments to the Constitution of the United States, on application of the legislatures of two-thirds of the States, pursuant to Article V of the Constitution.

Mr. BAYH. Mr. President, reserving the right to object, one can gather from the title what the subject of it is.

I think that perhaps I am chairman of the committee that has jurisdiction

over that matter. I am very familiar with it. It is very complicated and a very important piece of legislation.

I certainly, with all respect to the Senator from North Carolina, would object to its immediate consideration.

The PRESIDING OFFICER. Objection having been heard to its immediate consideration, the bill having been read once will be held at the desk pending its second reading on the next legislative day.

Mr. HELMS. I thank the Chair.

Mr. President, before I yield the floor, I want to assure the distinguished Senator from Indiana that he has this bill available to his subcommittee. I, indeed, hope he will give it immediate consideration, or its consideration as soon as practicable and possible in terms of the time the Senator has.

I will further add that this bill is the same legislation that has passed the Senate twice under the sponsorship of our former distinguished colleague from North Carolina, Mr. Ervin.

It has been changed only slightly to update it.

Again, I do hope the Senator from Indiana and his subcommittee and the full Judiciary Committee will give it consideration as soon as it may be possible.

I thank the Chair and I yield the floor.

JUVENILE CRIME

Mr. HEINZ. Mr. President, while many Americans have expressed concern for their own safety and well-being due to an increase in criminal activity in their communities committed by youth, it is pleasing to know that in some cities in this country there are concerned dedicated people who are willing to do more than worry about that problem.

A recent article appearing in the New York Times described the quiet, effective work of David and Falaka Fattah, two Philadelphians who are working in their community to bring a sense of peace and unity to troubled youth. They have, through their caring and understanding of the problems of young people, managed to bring about a dramatic decrease in the number of gang deaths in a city which once averaged 39 such deaths a year.

The author of the article, "A Local Approach to Curbing Juvenile Crime," is Robert L. Woodson, a resident fellow at the American Enterprise Institute for Public Policy Research and former director of the National Urban League's criminal justice department. His challenge to the traditional criminal justice system—to observe and learn from the successful programs established by those working at the community level like the Fattah's—deserves serious consideration as proven, results-oriented, alternatives to the research-oriented activities funded by the Justice Department in the past.

Mr. President, I ask that the full text of Mr. Woodson's article be printed in the RECORD at this time.

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

A LOCAL APPROACH TO CURBING JUVENILE CRIME

(By Robert L. Woodson)

WASHINGTON.—In the mid-1960's, Philadelphia, plagued with youth-gang violence for several decades, had the unenviable reputation as the "youth-gang capital of America." Each year an average of 39 black youths died on the streets and hundreds more were left maimed for life. As gun warfare raged, the general crime rate continued to soar upward and innocent bystanders were often felled by stray bullets.

The number of gang deaths declined in 1978 to one. In addition, the crime rate is also abating now, and west Philadelphia is coming back to life, almost solely because of the efforts of a couple named David and Falaka Fattah, who are founders of the House of Umoja, a unique neighborhood organization (the word "umoja" means "unity" in Swahili). With unorthodox ideas, no formal training in social work and virtually no Government support, the Umoja program has taken embraced some of Philadelphia's toughest gang members in a new concept of peace. Umoja is by no means the only such neighborhood program in the United States dealing directly and successfully with the needs of troubled youngsters.

In Puerto Rico, the community service center of Ponce, organized by untrained, nonprofessionals, has worked for the last seven years with young people to unite them in a common effort to rid their community of crime. The center tries to provide hope instead of despair to its young and poor with programs of job development and other activities geared to uplifting the spirit of the community.

In Hartford, Conn., recently, an unusual dance was organized by members of six or seven gangs—not allies but rivals. The proceeds were used, by agreement, for a Halloween party for younger children and to buy food for a number of elderly people.

Last year, the New York State Legislature appropriated $5 million for the State Division for Youth in order to fund local juvenile-delinquency-prevention programs. Over 900 applications were received from neighborhood organizations requesting a total of $70 million, clearly indicating high interest in addressing the problem of youth crime. Considering that the state spends more than $67,000 per year for each youth in its maximum-security prisons, directing funds to a local organization, aside from being a more sensible approach to curbing youth crime, is also less expensive.

All too often this interest and creative and effective indigenous neighborhood efforts are ignored by criminal-justice professionals and policymakers because they fail to understand or refuse to accept phenomena outside their own theoretical beliefs or because these programs require skills that they do not possess. Perhaps it is this attitude possessed by many professionals that has led to the failure of the Federal program to combat youth crime.

A review of the activities of the Justice Department's delinquency-prevention program reveals a pattern of waste, inefficiency and appalling lack of sensitivity to self-help endeavors in high-crime communities. As of 1978, $181 million was appropriated by the Congress for the delinquency-prevention office for use by states in locally-initiated programs to combat youth crimes, but because of bureaucratic conflicts states were unable to spend the funds. At present, $144 million remains unspent and out of the reach of needy youths.

Instead of encouraging such local efforts in high-crime areas, the juvenile-justice office has concentrated on the de-institutionalization of "status offenders"—those youngsters who are truants, runaways or who have committed other acts that would not be considered crimes if the youngsters were adults.

Most of the Federal Government's money has been spent on consulting firms, on the expansion of criminal-justice bureaucracies and in support of university-based researchers who have offered little in the way of solutions except the continued "academization" of the youth-crime issue.

The trend also has been to fund programs away from major metropolitan high-crime areas. For example, the state of Washington, with fewer than 500,000 youths between the ages of 14 and 19, received a total of $1.6 million from the Office of Juvenile Justice. Pennsylvania, with a youth population of over 1.3 million, received a total of $444,629 in grants.

The net result is that those youths who have committed minor offenses are being screened out of the criminal-justice system, but, at the same time, the more troubled youths in inner-city areas are receiving no help, and in fact are left to the adult criminal-justice system.

If no answers to the youth-crime problem are forthcoming from the programs undertaken by the Office of Juvenile Justice, policy-makers and politicians and the American public understandably will conclude that the noncoercive crime-control programs do not work. Support will build for regressive legislation for longer and longer sentences for younger and younger children. The punitive measures designed for the small group who commit violent acts will be extended to youths charged with nonserious delinquent acts. The result will be that we will continue to fund our fears while failing to mount an effective effort to address the problem of youth crime.

INDEPENDENCE OF LITHUANIA

Mr. HEINZ. Mr. President, the declaration of the independence of the sovereign state of Lithuania is now being celebrated in its 61st year. Regrettably that celebration will be in spirit only as the independence of Lithuania lasted only 22 years.

Since 1940 more brave people have been placed under the yoke of oppression and dominance of the Soviet Union. The Soviet occupation of Lithuania for the past 38 years has by no means lessened the aspirations of these brave people to preserve their national identity and heritage. This unusual showing of solidarity is worthy of our attention in view of the burdens that the Lithuanians have been forced to bear. Since the Soviet invasion, it has been estimated that close to 200,000 Lithuanians have been deported to Siberia.

While the great majority of these deportations occurred during the Stalin years, Soviet harassment and persecution of Lithuanians has by no means vanished. Within the last few years there have been numerous reports seeping out of occupied Lithuania of "kangaroo" courts convicting Lithuanians for "crimes against the state." In these cases individuals were attempting to exercise freedom of speech and religion, which we here in America hold so dear and essential.

Sentencing following these unwarranted convictions, in many cases, reached tens of years in slave labor camps.

Balys Gajauskas, a notorious victim of

the Soviet's unrelenting terror against the Lithuanian people, was sentenced last year to 10 additional years in labor camps and 5 years of exile. This most recent "crime" was the collection of historical materials that dealt with the Lithuanian anti-Soviet guerrilla movement in 1948–51.

Viktoras Petkus, who has been detained by Soviet authorities since 1977 and faces in all probability stiff sentencing in a Soviet court, has in the past been involved in verifications and implementation of the Helsinki accords as a member of the Lithuanian Helsinki Group.

Petrus Plumpa, a strong advocate of both religious and political freedom in Lithuania, was sentenced to 8 years strict regime for his alleged printing of the Chronicle of the Lithuanian Catholic Church.

Most of the Lithuanian dioceses are ruled not by bishops, but administrators, thanks to Soviet religious persecution, illustrated by the banishment of Bishops Julijus Steponvicius and Vincentas Sladkevicius from their dioceses for over 15 years thus far without trial.

As you have heard, Mr. President, Soviet policy has attempted to lessen Lithuanian religious and nationalistic zeal by state doctrine and subtle discrimination. Their attempts have fortunately not broken the will and determination of the Lithuanian people to preserve their identity and heritage.

We here in the United States must herald these brave people and support their endeavors. In the era of human rights, it is most important that the full implementation of such agreements as the Helsinki accords as supplemented by the Belgrade Conference and the United Nations Universal Declaration of Human Rights be implemented to the fullest. We must strongly oppose Soviet harassment of all individuals such as Viktoras Petkus who support and verify the implementation of those accords which the Soviet Union has accepted.

The United States must continue to speak out in favor of the Lithuanians and all of the peoples of the Baltic States. America's credibility as a free and Democratic country depends on our continuing firm commitment to the oppressed people of Lithuania. Independence and personal freedoms are virtues that we must consistently strive for. May the people of Lithuania continue in their quest for such freedoms as well.

PROPOSED REGULATIONS OF THE FEDERAL ELECTION COMMISSION

Mr. PELL. Mr. President, on February 16, 1979, the Federal Election Commission transmitted to the Senate proposed regulations governing the Presidental Primary Matching Fund, chapter 96 of title 26, United States Code.

The Commission is permitted to prescribe these proposed regulations in final form if they have not been disapproved by either the Senate or the House of Representatives within 30 legislative days. According to 26 U.S.C. section 9039 (c)(3), a legislative day is a calendar day when both the Senate and House are in session. Through February 26, 1979, only 4 legislative days will have expired. In exercising its disapproval power, should it choose to do so, the Senate has the statutory right to disapprove any provision or series of interrelated provisions stating a single separable rule of law (26 U.S.C. § 9039(c)(4)).

The proposed regulations governing the Presidential Primary Matching Account represent the first part of the FEC's effort to rewrite and update regulations governing Federal elections, last undertaken 3 years ago.

Since that time, numerous FEC advisory opinions and court decisions have been handed down, necessitating revision and clarification of FEC policies. The experience gained by the Commission in administering the campaign laws has given the Commission a better idea of how to implement and interpret the Federal Election Campaign Act more fairly and efficiently. In redrafting regulations to chapter 96 the Commission conducted public hearings on operation of the Presidential Primary Matching Fund during the 1976 campaign. These hearings provided a forum for candidates and parties to express their views on revision of regulations in this area.

By promulgating new regulations section by section instead of all at once, the Commission is giving the public and Congress a better opportunity to review and comment. Likewise, candidates and other filers with the Commission will have ample time to understand the rules governing campaign financing before the election year begins.

The revised regulations to the Presidential Primary Matching Fund further refine the following aspects of chapter 96: Definitions, eligibility for payments, entitlements, expenditure limitations, certifications by the Commission, payments, and examinations and audits. Copies of the proposed regulations are available from the Committee on Rules and Administration, 310 Russell Senate Office Building (224–5647), or from the Federal Election Commission, 1325 K Street NW., Washington, D.C. 20463 (800–424–9530). Members of the Senate and the public are requested to forward any comments they may have with respect to these proposed regulations to the committee.

WILLIAM J. LYNCH

Mr. PELL. Mr. President, this Saturday night in Providence, R.I., the State Council, Knights of Columbus, will present their biennial Hope Award.

In the words of the K of C, this award is presented to an individual who "by his or her life and labor and humanitarian influence has made an exceptional and significant contribution to the building of a better Rhode Island community."

Mr. President, I can think of no person more deserving of this honor, no person who more fully meets the requirement that his or her life have been dedicated to helping others in our State, than this year's recipient: William J. Lynch.

Some may suspect that my view is biased because Bill Lynch served on my staff in Providence for the past 7 years. But I am sure that the thousands of Rhode Islanders whose lives have been touched, whose burdens lightened, whose problems alleviated by Bill Lynch will surely agree this award is most fitting.

For 30 years Bill Lynch has dedicated his life in the most selfless and tireless way to helping others. From the moment he joined the staff of the late Congressman John Fogarty in 1949 until his retirement at the end of 1978, his was a life of commitment and compassion.

His personal philosophy was best expressed in his own words in a recent article marking his retirement: "It's been personally a very, very satisfying career because it has involved people," Bill said. "You get a real bang out of it when you help people who don't have anywhere to go."

And possibly no person in memory in my State has actually, personally helped as many people as Bill Lynch. He never thought of people as "cases" or his work as "casework", but as people with problems and he approached every one of those problems with unshakeable commitment to help.

And help he has. He has helped find jobs for an untold number of Rhode Islanders. He has helped eliminate the problems which many thousands of Rhode Islanders have experienced with social security, veterans programs, immigration laws, and a myriad of other Federal programs.

And for Bill Lynch the challenge of helping people had no 9 to 5 limit. People called and came to his home seeking his help. People approached him on weekends, at church, at the meetings of the many philanthropic organizations with which he served, and even in his favorite tavern. And every one of them received the same courteous and compassionate commitment to help.

Mr. President, to me Bill Lynch is the personification in my life of the old fashioned Irish politician: He believed that the business of politics was helping people and he conducted that business with a style and a dedication that may never be matched.

This tribute by the Rhode Island State Council, Knights of Columbus, could not be more fitting and I applaud the council on their perfect choice.

I ask unanimous consent that a recent article in the Evening Bulletin of Providence marking the retirement of Bill Lynch be printed in the RECORD at this point.

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

[From the Providence (R.I.) Evening Bulletin, Dec. 29, 1978]

"UNBELIEVABLE GUY" LEAVES LIFE OF SERVICE

(By S. Robert Chiappinelli)

PROVIDENCE.—To put it in strictly journalistic terms: William J. Lynch, 72, retired today from the staff of Sen. Claiborne Pell.

To put it in human terms is a lot more difficult and requires a lot more space for Bill Lynch has been, in the words of Thomas G. Hughes, administrative assistant to Sen.

Claiborne Pell, "like the fifth member of Congress in Rhode Island."

"We tend to think people come to senators and congressmen for help," Hughes said. "We have a huge number of people who walk into our office and want to talk to Bill Lynch. If he's not there they don't want to be helped."

"He's just an incredibly compassionate guy," said John A. Cummings, Pell's executive assistant who has worked with Lynch for the last three years and has seen him help countless people get jobs and solve government snafus.

Bill Lynch, a former aide to the late Rep. John E. Fogarty, is one of the last of the political breed that never missed a wake or funeral, always was ready to help a constituent and knew just about everyone and everything in government.

"He's just an unbelievable guy," Hughes said. "He's the most natural Irish, compassionate politician I have ever known. I'm constantly astounded in the 30 or so years he's worked for the federal government the things he's done for people."

Rep. Edward P. Beard said today that no files could hold the list of people that Lynch has helped over the years.

"This guy for 30 years gave everything," Beard said of Lynch, whom he also described as almost an additional member of the Rhode Island Congressional delegation. "This closes a chapter of an era of dedication that it's hard to duplicate," Beard said.

"I don't think they're going to make them like that anymore," said Charles J. Fogarty, brother of the late congressman and district director of the Small Business Administration here where Lynch worked for five years.

"He's that old style," Fogarty said. "He never misses a wake or a funeral. He's just the old school."

Fogarty also describes his friend as a great student of the English language who does a lot of writing. "Words flow out of him," Fogarty said. "Any letter he sends under Congressional seal it's a masterpiece."

"His reputation knows no bounds," Cummings said. "He's just an amazing man. that's all. He knows people in every little city and town and hamlet in this state."

Senator Pell was planning to take Lynch and the rest of the staff out to lunch today in recognition of Lynch's service but at 11:45 a.m. Lynch was still working.

"I got three more cases right here on my desk and when I get these completed I will have worked right up to the deadline and I can leave with a clear conscience," he said.

"It's been personally a very, very satisfying career because it has involved people," said Lynch. "You get a real big bang out of it when you help people who don't have anywhere to go," he added.

"I came up the hard way myself," explained Lynch, whose father worked for about 60 years as a gardener at the Swan Point Cemetery and whose mother worked in a factory to put him through college. That gave him an appreciation of the needs of people, Lynch said.

Lynch, a graduate of the old Providence Technical High School and Providence College, joined Representative Fogarty's staff in 1949 and served with him until Fogarty's death in January, 1967.

For five years after that he worked for the Small Business Administration in Rhode Island and then in 1971 he joined Pell's staff.

He praised the competence of the Pell staff and said his boss had the same kind of overriding concern for people that Fogarty did. "That's why I've been so happy. I've worked for two wonderful bosses," the Smithfield resident said. Friends say Lynch has remained unassuming despite countless accolades and at least four testimonials, including one in which 1,800 people crammed into Rhodes on the Pawtuxet. "I think if they had another testimonial, they couldn't hold it inside," Fogarty said, referring to the large number of people who would want to attend.

Lynch, who is a former two-time district deputy of the Knights of Columbus, a member of the board of directors of the Big Brothers of R.I. Inc. and active in numerous other volunteer organizations, says he will have plenty to keep him busy in retirement.

The real question seems to be what will happen to the people he has served so personally over the years.

"I don't know what people are going to do who have just been used to picking up the phone and calling him," Fogarty said.

MESSAGES FROM THE PRESIDENT RECEIVED DURING THE RECESS

Under authority of the order of the Senate of February 26, 1979, the Secretary of the Senate on February 27 and February 28, 1979, received messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received on February 27 and February 28, 1979, are printed at the end of the Senate proceedings.)

PRELIMINARY PROPOSALS FOR INITIAL FUEL ASSURANCE—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 28

Under authority of the order of the Senate of February 22, 1979, the Secretary of the Senate, on February 23, 1979, received the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

Pursuant to Section 104(b) of the Nuclear Nonproliferation Act of 1978, enclosed is a report on Preliminary Proposals on Initial Fuel Assurances.

As indicated in the report, we are continuing our assessment of alternative fuel assurances schemes and will inform you of any proposals as these assessments are concluded. The current alternatives envision uranium stockpiles with size ranges between 2 million and 10 million separative work units. Present estimates of the costs for these program alternatives, based on the current market value of the uranium fuel and the enrichment services, are approximately a half billion to more than 2 billion dollars.

JIMMY CARTER.

THE WHITE HOUSE, *February 23, 1979.*

REPORT ON THE INTERNATIONAL EXCHANGE-OF-PERSONS PROGRAM—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 29

Under authority of the order of the Senate of February 22, 1979, the Secretary of the Senate, on February 23, 1979, received the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

In response to Section 203 of the Foreign Relations Authorization Act (P.L. 95-426), I take this opportunity to inform you of the Administration's current plans to increase exchange-of-persons activities administered by the International Communications Agency (USICA). A significant expansion of financial support for these activities is contained in the FY 1980 budget submission for USICA. The Administration's review of the USICA-administered cultural and educational exchange programs has also produced an agenda of important questions to be addressed in the year ahead. I enclose a detailed report on these matters provided to me by the Director of USICA.

As I stated in my message transmitting Reorganization Plan No. 2 of 1977: "Only by knowing and understanding each other's experiences can we find common ground on which we can examine and resolve our differences . . . As the world becomes more and more interdependent, such mutual understanding becomes increasingly vital." Because direct personal contact is such an effective and lasting form of communication, exchange-of-persons activities are fundamental to the achievement of these objectives.

Unfortunately, the vital long-term role played by these programs in our international affairs is too often obscured by more visible, more immediate, but frequently less fundamental matters. The recent administrative reorganization which established USICA affords an excellent opportunity to reexamine this important dimension of our international relations.

The reassessment is complex and difficult, but nonetheless essential to the development of a sound program. Because some critical data will require more time to collect, our reassessment will require a good deal of work beyond that already accomplished. However, some preliminary conclusions are reflected, already, in USICA's plans for FY 1979, its proposed budget for FY 1980, and planning levels for subsequent years.

Including domestic and overseas staff costs, the USICA FY 1979 budget for exchange programs is approximately $75 million. The FY 1979 allocation represents a program increase of $4-350,000 over FY 1978. Over sixty percent of the increase is allocated to already established programs with particular emphasis on projects involving African and Middle Eastern Countries. Initiatives being financed from increased funds include new projects with the People's Republic of China, the Hubert H. Humphrey Fellowship program, and additional counseling services for foreign students seeking admission to, or already attending, U.S. universities.

For FY 1980, an additional $4,450,000 is being proposed for the first full year of the Humphrey Fellowship program;

an increase of $800,000 is being requested to extend and improve student counseling services; and an additional $350,000 is planned for exchanges with China.

For the period FY 1981–83, annual program increases of $5 million are currently being projected. The plan, thus, calls for a total increase in exchange programs of approximately $25 million over the period FY 1979-83. For this same period, further increases of over $30 million are projected to cover overseas costs increases.

This plan will, of course, be reevaluated on an annual basis. Final budget proposals and areas of priority emphasis will be subject to our continuing assessment of these programs, as well as to international developments and the Administration's over-all budgetary goals.

Finally, I should like to emphasize the Administration's readiness to work with the Congress on strengthening these programs. We need your counsel; we welcome your advice; we look forward to your support.

JIMMY CARTER.

THE WHITE HOUSE, *February 23, 1979.*

PROPOSED FEDERAL CIVIL JUSTICE REFORM—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 30

Under authority of the order of the Senate of February 26, 1979, the Secretary of the Senate, on February 27, 1979, received the following message from the President of the United States, which was referred to the Committee on the Judiciary:

To the Congress of the United States:

Today I am announcing my program to reform the Federal civil justice system. My proposals are intended to increase the efficiency, cut the cost, and maintain the integrity of our Federal courts. I hope that the same spirit of cooperation which led to the 95th Congress' passage of historic civil service reform legislation, which had similar goals for the Executive Branch, will mark Congressional-Administration efforts in reforming the Judicial Branch.

The American system of justice—and the part our Federal courts play in it—has long been the envy of people throughout the world. An impartial and talented judiciary protects the rights of all Americans, ensuring due process guarantees and fair adjudication of disputes. But the courts cannot perform their traditional and essential function if they are required to operate with inadequate resources, saddled with outmoded procedures, and burdened with more business than they can fairly dispose of within a reasonable time. Nor can our citizens avail themselves of their "day in court" if, as is too often true in these days of rising litigation expenses, the price of participation in litigation is beyond their means.

Delay and expense play a part in our civil justice system. We have long recognized that justice delayed is justice denied. For many injured parties, having to wait a year or two to obtain legal relief in the courts is extremely harmful. The benefits of a legal victory are sometimes outweighed by the costs of achieving it. As litigation expenses and the size of court dockets increase, this seems to be happening with increasing frequency. Legal redress should not consume years of time and thousands of dollars.

These problems are not merely the special concern of a particular economic class or radical group, nor are they limited to certain geographic regions; they affect all segments of American society, in all areas of the country.

I am committed to improving access to justice by ensuring that every person involved in a legal controversy has a readily available forum in which that controversy can be resolved speedily, fairly, and at reasonable cost. To achieve this goal, we must do two things. First, we must develop new means for handling disputes that do not necessarily require full court resolution. Second, we must provide the courts with sufficient resources and improved procedures so that they can function fairly and effectively in those cases that must be brought before them.

I know that the Congress shares my concerns and is equally committed to taking effective remedial action. Last year the Congress made an excellent beginning when it created 152 new Federal judgeships and carefully reviewed a number of other legislative proposals designed to improve the administration of justice. But unless we improve the system of justice itself, we may find that the additional judges have been swallowed up by outmoded procedures and by an ever-rising volume of cases. We must take prompt and effective steps to eliminate the remaining obstacles to efficiency in the justice system, and to increase access to Federal courts by those with Federal claims.

Five of the specific measures by which we hope to accomplish these ends have previously been proposed, in whole or part, by my Administration, in the 95th Congress, dealing with arbitration, United States magistrates, the diversity of citizenship jurisdiction of the Federal courts, the Supreme Court's obligatory jurisdiction, and minor dispute resolution. Both before and during the last legislative session, each of these proposals received a great deal of careful Congressional thought and attention. They are introduced again, some with modifications discussed in the last Congress. Each is now ripe for favorable action.

The arbitration proposal would provide an innovative means for resolving speedily, fairly, and at reduced cost certain types of civil cases in which the main dispute is over the amount of money that one person owes to another. This legislation is modeled on court-annexed arbitration plans that have proved successful in several States, including Ohio, Pennsylvania and New York. It would allow Federal district courts to adopt a procedure requiring that tort and contract cases involving less than $100,000 to be submitted to arbitration. This approach has been tested since early last year in three Federal courts and the experiences so far have been quite promising. Both litigants and the courts are benefiting from the procedure. Cases going to arbitration are being resolved faster than they otherwise could be and at significantly less expense to the parties. It is time that these benefits were extended to litigants in all Federal trial courts.

The second major element of our comprehensive civil justice program is a bill to enlarge the civil and criminal jurisdiction of Federal magistrates. These judicial officers, who are appointed by the district courts, constitute a potential resource of great value. If magistrates were given broader authority to decide civil cases and to handle less serious criminal matters, as we have proposed, the capacity of the Federal courts would be substantially increased. The result, especially in districts which currently have large case backlogs, would be speedier and less costly dispositions for the litigants.

The third measure that we regard as essential to improving the civil justice system would curtail the exercise of diversity of citizenship jurisdiction in the Federal courts. Too many cases now jamming the dockets in Federal courts involve solely issues of State law that would be more properly and more efficiently disposed of in State courts. The historical basis for permitting these claims to be heard in Federal court—presumed prejudice towards citizens of one State in the courts of another—no longer appears valid. Moving these State law cases to the State courts where they belong would not create an undue burden on any State, but would enable the Federal courts to concentrate on serving the needs of those whose disputes involve questions of Federal law. Under my proposal, diversity jurisdiction would be abolished totally and cases could be brought in Federal court only where Federal law is involved.

The next component of our judicial reform package is a bill that would permit the Supreme Court to exercise greater control over its own docket. By eliminating the Supreme Court's mandatory jurisdiction, except for appeals in three-judge cases, this proposal would do away with the artificial and out-dated distinction between discretionary review and review of right. The change would enable the Court to focus its limited resources on the cases and issues truly deserving of its attention. This, in turn, would permit speedier clarification of the law, to the benefit not only of litigants in the lower courts but also persons wishing to avoid legal controversies.

The last of the proposals carried over from the previous Congress is a bill to improve the means available to the people of the United States for resolving everyday disputes, such as complaints by neighbors, customers, tenants, and family members. Everyday problems, small or large, if left unsettled, can fester and grow. They can lead to breakdowns in otherwise harmonious neigh-

borhood relationships. They can even lead to crime. This legislation, entitled the Dispute Resolution Act, would provide Federal assistance to the States to improve the institutions that deal with these programs. The programs established by this bill would promote improvements in small claims courts and more widespread use of Neighborhood Justice Centers, a new concept that the Department of Justice is presently testing in Los Angeles, Kansas City, and Atlanta. This legislation would enable the Federal and State governments to work in partnership to improve the delivery of justice to all the people of the United States. No additional funding is being sought; existing funds in the Law Enforcement Assistance Administration will be used to finance these programs.

Passage of these five bills would be a major step in eliminating excessive delays, red tape, and exorbitant costs within the civil justice system. These bills have been discussed in the 95th Congress, and I hope that after further careful examination these bills will be enacted during the 96th Congress. These measures are necessary if we are to derive maximum benefit from the newly authorized judgeships. We will work for their enactment.

In addition to these bills, the Attorney General will transmit to Congress additional proposals to improve the courts which have been developed in consultation with Congressional leaders in this area. These new measures would solve a variety of problems relating to administration of the Federal judiciary, as well as practice and procedure in the courts in the following ways:

—Create a new intermediate Federal appellate court on the same tier as the existing courts of appeals. The new court, which would be known as the "United States Court of Appeals for the Federal Circuit", would be formed by merging the Court of Claims and the Court of Customs and Patent Appeals into a single appellate tribunal with expanded, nationwide jurisdiction for appeals in patent and trademark cases as well as other matters. This new forum would induce economies from the combination of the two existing courts. Most important, however, it would expand the Federal judicial system's capacity for definitive adjudication of national law and thereby contribute to the uniformity and predictability of legal doctrine in these areas, which have long been marked by inconsistent appellate decisions, encourage industrial innovation, and in the long run reduce patent and trademark litigation. I further note that a similar need exists for uniformity and predictability of the law in the tax area, where conflicting appellate decisions encourage litigation and uncertainty. The Justice and Treasury Departments will work with Congress to develop an appropriate solution.

—Permit more effective means of rulemaking and administration within the Federal judiciary through the implementation of two proposals. One proposal requires each court of appeals to appoint an advisory committee composed of persons outside the court to make recommendations on the rules of practice and operating procedure within that court. These committees should do much to assist the courts in formulating sounder rules. The other proposal would restructure the membership of the circuit judicial councils, the governing administrative bodies in the eleven judicial circuits. The councils will be made smaller and more efficient and will include district judges in their membership for the first time. If enacted, these proposals will help assure that the Federal courts conduct their business so as to serve the public more effectively.

—Allowing equitable interest on claims and judgments. There is a serious backlog in civil litigation. Sometimes years pass between the time of an injury and the granting of a judgment. More years may pass while that judgment is appealed. Current Federal law is ambiguous about whether and under what circumstances interest may be paid for the period prior to judgment, and permits unrealistically low as well as conflicting rates of interest while the decision is under appeal. Yet such interest may be essential in order to truly compensate the plaintiff or to avoid the unjust enrichment of the defendant. For instance, a plaintiff who is unlawfully deprived of the use of $20,000 in 1976 and who does not receive a judgment until 1979, could have obtained $4,500 in those three years by investing the money at 7% compounded interest. If a judgment on appeal is entered at a rate well below the prime interest rate, the losing party may well profit from the appeal. The bill proposes that where a defendant knew of his potential liability, interest be awarded for the pre-judgment period where necessary to compensate the plaintiff for his losses or to avoid the unjust enrichment of the defendant. Post-judgment interest rates would no longer be left to inconsistent State laws, but along with the new pre-judgment interest standard, would be based on a nationally uniform rate. Litigants would be encouraged to settle cases, and not drag them out needlessly causing additional expense.

—Other measures relating to the sound administration of the Federal judiciary are proposals providing more reasonable terms for chief judges, enhanced integrity for appellate panels, and easier transfer for any case inadvertently started in the wrong Federal court to the proper court without loss of litigants' rights and with savings of time and money.

Finally, I urge the Congress to give serious consideration to improving procedures for litigating class actions, especially for those cases where the alleged economic injury is widespread and large in the aggregate, yet small in its impact on each individual. The Justice Department will continue to have my support in working with Congress to devise class action procedures which will develop methods for courts to handle these complex cases more effectively and at less cost to the taxpayers and the parties involved.

The members of the Judiciary Committees of both houses have shown outstanding leadership in developing answers to the problems facing the justice system. It is now time for Congress as a whole to take action so that the American people will benefit from a more effective civil justice system.

JIMMY CARTER.

THE WHITE HOUSE, *February 27, 1979.*

REPORT ON THE CASH AWARDS PROGRAM—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 31

Under authority of the order of the Senate of February 26, 1979, the Secretary of the Senate, on February 28, 1979, received the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Armed Services:

To the Congress of the United States:

In accordance with the provisions of 10 U.S.C. 1124, I am forwarding reports of the Secretary of Defense and the Secretary of Transportation on awards made during Fscal Year 1978 to members of the Armed Forces for suggestions, inventions and scientific achievements.

The participation of military personnel in the cash awards program was authorized by the Congress in 1965. More than two million submissions since that time attest to the program's success in motivating military personnel to find ways of reducing costs and improving efficiency. Of the suggestions submitted, more than 325,000 have been adopted, with tangible first-year benefits of more than a billion dollars.

Of the 98,011 suggestions submitted by military (including Coast Guard) personnel during Fiscal Year 1978. 14,830 were adopted. Cash awards totalling $1,001,257 were paid for adopted suggestions during Fiscal Year 1978. These awards were based not only on the tangible first-year benefits of $37,263,734 realized from adopted suggestions during Fiscal Year 1978, but also on many additional benefits and improvements of an intangible nature.

Enlisted people received $820,006 in awards during Fiscal Year 1978, representing 81 percent of the total cash awards paid during the periods. Officers received $181,251 during Fiscal Year 1978.

The attached reports of the Secretaries of Defense and Transportation contain statistical information on the military awards program and brief descriptions of some of the more noteworthy contributions of military personnel during Fiscal Year 1978.

JIMMY CARTER.

THE WHITE HOUSE, *February 28, 1979.*

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer laid before the Senate a message from the President of the United States submitting the nomination of Kurt W. Muellenberg, of Maryland, to be Inspector General. General Services Administration; which was referred to the Committee on Governmental Affairs.

ENERGY CONSERVATION CONTINGENCY PLANS—MESSAGE FROM THE PRESIDENT—PM 32

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying documents, which was referred to the Committee on Energy and Natural Resources:

To the Congress of the United States:

As required by Section 201 of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6261, I am hereby transmitting to the Congress for its approval the following three energy conservation contingency plans: Emergency Weekend Gasoline Sales Restrictions, Emergency Building Temperature Restrictions and Advertising Lighting Restrictions. I have also today directed the Secretary of Energy to publish these conservation plans in the *Federal Register*, as the final step in my prescribing these plans as required by Sections 202 and 523 of the EPCA.

The plans which I am transmitting are the product of extensive plan development and refinement. They can be effective tools in reducing consumption of energy in the event of a severe energy supply emergency. Work on the development of contingency plans is continuing and any additional measures will be transmitted for approval pursuant to Section 201 of the EPCA upon their completion.

Together with the Standby Gasoline Rationing Plan which I am also transmitting to the Congress today under separate letter, these energy conservation contingency plans could help mitigate the effects upon the United States of a severe energy supply interruption. These measures, along with voluntary conservation efforts and other measures contained in existing legislation and the Department of Energy's present contingency programs, will provide the government with several options to deal with energy emergencies of varying types and degrees of severity. Such flexibility is essential if we are to prevent unnecessary hardship to our citizens and harm to our economy in the event of future curtailments of our energy supplies.

As required by Section 201(f) of the EPCA, each energy conservation contingency plan is accompanied by an analysis which assesses the economic impacts of the plan.

The procedures for approval by Congress of a contingency plan are detailed in Section 552 of the EPCA, and require among other things that a resolution of approval be passed by each House of Congress within 60 days of submittal of the plan. The EPCA does not specify the form which the resolution of approval is to take. It is my view and that of the Attorney General that actions of the Congress purporting to have binding legal effect must be presented to the President for his approval under Article I, Section 7 of the Constitution. Therefore, I strongly recommend that Congressional approval of these plans be in the form of a joint resolution. If this procedure is followed, the plans themselves, agreed to by Congress and the President, will not later be subject to possible judicial invalidation on the ground that the President did not approve the resolution.

I urge the prompt and favorable consideration by the Congress of these plans.

JIMMY CARTER.

THE WHITE HOUSE, *March 1, 1979.*

STANDBY GASOLINE RATIONING PLAN—MESSAGE FROM THE PRESIDENT—PM 33

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying documents, which were referred to the Committee on Energy and Natural Resources:

To the Congress of the United States:

As required by Section 201 of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6261, I am hereby transmitting to the Congress for its approval a Standby Gasoline Rationing Plan. I have also today directed the Secretary of Energy to publish the Plan in the *Federal Register*, as the final step in my prescribing a gasoline rationing plan by rule, as required by Sections 203 and 523 of the EPCA.

The Standby Gasoline Rationing Plan which I am transmitting today is the result of an extensive rulemaking proceeding in which over 1,100 comments from citizens throughout the United States were received and considered. I believe this plan, which would be implemented only in a severe energy supply emergency, would equitably allocate gasoline supplies and minimize economic hardships to the maximum extent possible without undue administrative costs and complexity.

Together with the energy conservation contingency plans which I am also transmitting to the Congress today under separate letter, the Standby Gasoline Rationing Plan would help mitigate the impact of a severe energy supply interruption. These measures, along with voluntary conservation efforts and other measures contained in existing legislation and the Department of Energy's present contingency programs, will provide the government with several options to deal with energy emergencies of varying types and degrees of severity. Such flexibility is essential if we are to prevent unnecessary hardship to our citizens and harm to our economy in the event of future curtailments of our energy supplies.

As required by Section 201(f) of the EPCA, the Standby Gasoline Rationing Plan is accompanied by an analysis which assesses the economic impacts of the Plan.

The procedures for approval by Congress of a contingency plan are detailed in Section 552 of the EPCA, and require among other things that a resolution of approval be passed by each House of Congress within 60 days of submittal of the plan. The EPCA does not specify the form which the resolution of approval is to take. It is my view and that of the Attorney General that actions of the Congress purporting to have binding legal effect must be presented to the President for his approval under Article I, Section 7 of the Constitution. Therefore, I strongly urge that Congressional approval of this plan be in the form of a joint resolution. If this procedure is followed, the plan itself, agreed to by Congress and the President, will not later be subject to possible judicial invalidation on the ground that the President did not approve the resolution.

I urge the prompt and favorable consideration by the Congress of this plan.

JIMMY CARTER.

THE WHITE HOUSE, *March 1, 1979.*

AGREEMENT BETWEEN THE UNITED STATES AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY—MESSAGE FROM THE PRESIDENT—PM 34

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers, which was referred to the Committee on Finance and the Committee on Foreign Relations, jointly, by unanimous consent:

To the Congress of the United States:

Pursuant to section 233(e)(1) of the Social Security Act as amended by the Social Security Amendments of 1977 (P.L. 95-216; 42 U.S.C. 1305 note), I am transmitting the Agreement between the United States of America and the Federal Republic of Germany (F.R.G.), signed on January 7, 1976, the Final Protocol to the 1976 Agreement, also signed on January 7, 1976, and the Administrative Agreement to implement the 1976 Agreement, signed on June 21, 1978.

These U.S.-F.R.G. agreements are similar in objective to the U.S.-Italian social security agreements which I submitted to the Congress on February 28, 1978. Such bilateral agreements, which are generally known as totalization agreements, provide for limited coordination between the United States and foreign social security systems to overcome the problems of gaps in protection and of dual coverage and taxation. In addition to remedying these problems, the 1976 U.S.-F.R.G. Agreement and Administrative Agreement would extend under specified conditions voluntary coverage rights under the F.R.G. system to U.S. citizens who have a prior connection with the F.R.G. system or who reside in the United States and were victims of persecution.

I also transmit for the information of

the Congress a comprehensive report prepared by the Department of Health, Education, and Welfare, which explains the provisions of the Agreement and provides data on the number of persons affected by the agreements and the effect on social security financing as required by the same provision of the Social Security Amendments of 1977.

The Department of State and the Department of Health, Education, and Welfare join in commending this Agreement, Protocol, and Administrative Agreement.

JIMMY CARTER.

THE WHITE HOUSE, *February 28, 1979.*

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a message received yesterday from the President of the United States, transmitting a Social Security Agreement between the United States and the Federal Republic of Germany, be jointly referred to the Committees on Finance and Foreign Relations.

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

JOINT REFERRAL OF NOMINATIONS

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that the nomination of Dennis R. Wyant, of Maryland, to be Deputy Assistant Secretary of Labor for Veterans' Employment, which was received by the Senate during the recess on February 27, be jointly referred to the Committees on Human Resources and Veterans' Affairs.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that nominations to the office of Inspector General, established by Public Law 95-452, in various Government departments and agencies be referred in each case to the committee having substantive jurisdiction over the department or agency, and if and when reported in each case, then to the Committee on Governmental Affairs for not to exceed 20 days.

It is my understanding this has been cleared with the minority all the way around.

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

MESSAGE FROM THE HOUSE RECEIVED DURING THE RECESS

Under the authority of the order of the Senate of February 26, 1979, the Secretary of the Senate on February 28, 1979, received a message from the House of Representatives which reported that the House has passed S. 37, an act to repeal a section of Public Law 95-630, without amendment.

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 11:21 a.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 37. An act to repeal a section of Public Law 95-630; and

H.R. 1902. An act to amend the Bank Holding Act Amendments of 1970.

The enrolled bills were subsequently signed by the Acting President pro tempore (Mr. ZORINSKY).

The message also announced that, pursuant to the provisions of 23 United States Code 101, the Speaker has appointed Mr. HOWARD, Mr. ANDERSON of California, Mr. FLORIO, Mr. OBERSTAR, Mr. SNYDER, and Mr. SHUSTER as members of the National Transportation Policy Study Commission on the part of the House.

The message further announced that, pursuant to the provisions of section 5 (b), Public Law 93-642, the Speaker has appointed Mr. SKELTON and Mr. TAYLOR as members of the Board of Trustees of the Harry S. Truman Scholarship Foundation on the part of the House.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, March 1, 1979, he presented to the President of the United States the following enrolled bill:

S. 37. An act to repeal a section of Public Law 95-630.

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC-614. A communication from the Administrator, United States Environmental Protection Agency, transmitting a draft of proposed legislation to extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for two years; to the Committee on Agriculture, Nutrition, and Forestry.

EC-615. A communication from the Assistant Secretary of the Interior, reporting, pursuant to law, on a soil survey and land classification of lands in the Panoche Water District and Westlands Water District, Central Valley Project, California; to the Committee on Appropirations.

EC-616. A communication from the Secretary of the Navy, transmitting a draft of proposed legislation to amend title 10, United States Code, to remove chaplains from under the cognizance of the Chief of Naval Personnel; to the Committee on Armed Services.

EC-617. A communication from the General Counsel of the Department of Defense, reporting, pursuant to law, on requested supplemental appropriations for the Department of Defense for fiscal year 1979; to the Committee on Armed Services.

EC-618. A communication from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to authorize appropriations for civil defense programs for fiscal years 1980 and 1981, and for other purposes; to the Committee on Armed Services.

EC-619. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the major issues on the Maverick/Close Air Support Weapons Systems Program; to the Committee on Armed Services.

EC-620. A communication from the Comptroller General of the United States, transmitting pursuant to law, a report on the major issues, concerning the F-18 Naval Strike Fighter weapon system; to the Committee on Armed Services.

EC-621. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the major issues concerning the Army's Standoff Target Acquisition System; to the Committee on Armed Services.

EC-622. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the major issues concerning the Navy's wide aperture array sonar program; to the Committee on Armed Services.

EC-623. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report on the financial condition and operations of the Railroad Rehabilitation and Improvement Fund and the Obligation Guarantee Fund; to the Committee on Commerce, Science, and Transportation.

EC-624. A communication from the Secretary of Commerce, transmitting a draft of proposed legislation to authorize appropriations for the fiscal year 1980 and 1981 for certain maritime programs of the Department of Commerce, and for other purposes; to the Committee on Commerce, Science, and Transportation.

EC-625. A communication from the Secretary of Transportation, transmitting a draft of proposed legislation to authorize appropriations for the Coast Guard for fiscal years 1980 and 1981, and for other purposes; to the Committee on Commerce, Science, and Transportation.

EC-626. A communication from the President, National Railroad Passenger Corporation, transmitting, pursuant to law, a report on the Northeast Corridor; to the Committee on Commerce, Science, and Transportation.

EC-627. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report on the utilization of the authority granted in 14 U.S.C. 475 (a), (b), (c), and (d) to designate and rent inadequate quarters, lease housing, and hire quarters, for calendar year 1978; to the Committee on Commerce, Science, and Transportation.

EC-628. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report of activities pursuant to the Emergency Rail Services Act of 1970, and an evaluation of the financial condition of railroads which have outstanding certificates guaranteed under the Act; to the Committee on Commerce, Science, and Transportation.

EC-629. A communication from the President, National Railroad Passenger Corporation, transmitting, pursuant to law, a report on legislative recommendations; to the Committee on Commerce, Science, and Transportation.

EC-630. A communication from the Secretary, Interstate Commerce Commission, reporting, pursuant to law, the Commission's determination to extend the period for acting upon the application pending before the Commission in Docket No. AB-9 (Sub-No. 9F), St. Louis, San Francisco Railway Company Abandonment Between East Lynne and Bolivar, Missouri; to the Committee on Commerce, Science, and Transportation.

EC-631. A communication from the Administrator, United States Environmental Protection Agency, transmitting a draft of proposed legislation to extend Title I of the Marine Protection, Research and Sanctuaries Act, as amended, for two years; to the Committee on Commerce, Science, and Transportation.

EC-632. A communication from the Under Secretary of the Interior, transmitting a draft of proposed legislation to amend the Revised Organic Act of the Virgin Islands, and for other purposes; to the Committee on Energy and Natural Resources.

EC-633. A communication from the Acting Assistant Secretary of the Interior, transmitting, pursuant to law, the eighth annual report on the operation of the Colorado River; to the Committee on Energy and Natural Resources.

EC-634. A communication from the Secretary of Energy, transmitting a draft of proposed legislation to enable the Secretary of Energy to utilize revenues to carry out

his responsibilities related to Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration, and for other purposes; to the Committee on Energy and Natural Resources.

EC-635. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Mining Law Reform and Balanced Resources Management," February 27, 1979; to the Committee on Energy and Natural Resources.

EC-636. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, report entitled (1) "Petroleum Market Shares: Report on Sales of Refined Petroleum Products" and (2) "Petroleum Market Shares: Report on Sales of Retail Gasoline"; to the Committee on Energy and Natural Resources.

EC-637. A communication from the Secretary of the Interior, transmitting, pursuant to law, a report entitled "Report of Review and Revision of Royalty Payments for Fiscal Years 1977 and 1978 for Federal Onshore and Outer Continental Shelf (OCS) Oil and Gas Leases"; to the Committee on Energy and Natural Resources.

EC-638. A communication from the Acting Secretary of the Interior, transmitting, pursuant to law, a report entitled "Appropriate Federal Actions to Mitigate Economic Impacts Due to Expansion of Redwood National Park," January 1, 1979; to the Committee on Energy and Natural Resources.

EC-639. A communication from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed contract with Colorado State University, Fort Collins, Colorado, for a research project entitled "Load Haul Dump Tree Clump Transplanter Attachment"; to the Committee on Energy and Natural Resources.

EC-640. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, an annual report of the Federal Disaster Assistant Administration for fiscal year 1978; to the Committee on Environment and Public Works.

EC-641. A communication from the Administrator, United States Environmental Protection Agency, transmitting, pursuant to law, a report entitled "EPA 1978 Needs Survey, Cost Estimates for Construction of Publicly-Owned Wastewater Treatment Facilities"; to the Committee on Environment and Public Works.

EC-642. A communication from the Administrator, United States Environmental Protection Agency, transmitting a draft of proposed legislation to extend provisions of the Noise Control Act of 1972, as amended for two years; to the Committee on Environment and Public Works.

EC-643. A communication from the Administrator, United States Environmental Protection Agency, transmitting a draft of proposed legislation to extend the Resource Conservation and Recovery Act, as amended, for two years; to the Committee on Environment and Public Works.

EC-644. A communication from the Administrator, United States Environmental Protection Agency, transmitting a draft of proposed legislation to authorize appropriations for environmental research, development, and demonstrations for fiscal years 1980 and 1981; to the Committee on Environment and Public Works.

EC-645. A communication from the Administrator, United States Environmental Protection Agency, transmitting a draft of proposed legislation to amend and extend a provision of the Federal Water Pollution Control Act, as amended; to the Committee on Environment and Public Works.

EC-646. A communication from the Administrator, United States Environmental Protection Agency, transmitting a draft of proposed legislation to extend certain provisions of Title XIV of the Public Health Service Act for two years; to the Committee on Environment and Public Works.

EC-647. A communication from the Chairman, United States Nuclear Regulatory Commission, transmitting a draft of proposed legislation to amend the Atomic Energy Act of 1954, as amended, to provide for the protection from unauthorized disclosure of safeguards information, and for other purposes; to the Committee on Environment and Public Works.

EC-648. A communication from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to extend the authorization for appropriations to carry out the Endangered Species Act of 1973, as amended; to the Committee on Environment and Public Works.

EC-649. A communication from the Administrator, United States Environmental Protection Agency, transmitting, pursuant to law, a report on the study of the efficiency of, and the need for, Industrial Cost Recovery (ICR); to the Committee on Environment and Public Works.

EC-650. A communication from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report on the Child Support Enforcement program; to the Committee on Finance.

EC-651. A communication from the Special Representative for Trade Negotiations, reporting, pursuant to law, on the reviews and hearings conducted during the preceding six-month period; to the Committee on Finance.

EC-652. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Actions Needed to Stop Excess Medicare Payments for Blood and Blood Products," February 26, 1979; to the Committee on Finance.

EC-653. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Sugar and Other Sweetners: An Industry Assessment," February 26, 1979; to the Committee on Finance.

EC-654. A communication from the Administrator, Agency for International Development, Department of States, reporting, pursuant to law, a determination that it would further the foreign policy interests of the United States to provide a $20 million commodity import program loan to Zambia from funds of the Southern Africa Program of the Economic Support Fund; to the Committee on Foreign Relations.

EC-655. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmiting, pursuant to law, international agreements other than treaties entered into by the United States within sixty days after the execution thereof; to the Committee on Foreign Relations.

EC-656. A communication from the Chairman, Japan-United States Friendship Commission, transmitting, pursuant to law, the Commission's second annual report, covering fiscal year 1978; to the Committee on Foreign Relations.

EC-657. A communication from the Director, International Communication Agency, transmitting a draft of proposed legislation to authorize appropriations for the U.S. International Communication Agency for the fiscal years 1980 and 1981; to the Committee on Foreign Relations.

EC-658. A communication from the Secretary of State, transmitting a draft of proposed legislation to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act, and for other purposes; to the Committee on Foreign Relations.

EC-659. A communication from the Acting Secretary of State, transmitting a draft of proposed legislation to amend the Foreign Assistance Act of 1961 to authorize development assistance programs for fiscal years 1980 and 1981, to make certain change in the authorities of that Act, to authorize the establishment of an Institute for Technological Cooperation and for other purposes; to the Committee on Foreign Relations.

EC-660. A communication from the Chairman, United States Nuclear Regulatory Commission, transmitting a draft of proposed legislation to amend the Energy Reorganization Act of 1974, as amended, to provide for statutory creation of the Office of Inspection and Enforcement of the Nuclear Regulatory Commission; to the Committee on Governmental Affairs.

EC-661. A communication from the Comptroller General of the United States, transmitting, pursuant to law, report entitled "Conversion of Urban Waste to Energy: Developing and Introducing Alternate Fuels From Municipal Solid Waste," February 28, 1979; to the Committee on Governmental Affairs.

EC-662. A communication from the Administrator, National Aeronautics and Space Administration, reporting, pursuant to law, with respect to the scope of the specialized or technical services provided to State or local governments by NASA during calendar year 1978 under Title III of P.L. 90-577; to the Committee on Governmental Affairs.

EC-663. A communication from the Assistant Executive Secretary, Federal Deposit Insurance Corporation, transmitting pursuant to law, a report on changes to existing systems and request for waiver of sixty-day advance notice, Privacy Act of 1974; to the Committee on Governmental Affairs.

EC-664. A communication from the Chairman, United States Nuclear Regulatory Commission, transmitting a draft of a proposed amendment to section 201(a)(1) of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5841(a)(1); to the Committee on Governmental Affairs.

EC-665. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "The Department of Justice Should Improve Its Equal Employment Opportunity Programs," February 23, 1979; to the Committee on Human Resources.

EC-666. A communication from the Director of Information, Department of Energy, transmitting, pursuant to law, a report relating to the Freedom of Information Act; to the Committee on the Judiciary.

EC-667. A communication from the Administrative Director, United States Arms Control and Disarmament Agency, transmitting, pursuant to law, a report relating to the Freedom of Information Act; to the Committee on the Judiciary.

EC-668. A communication from the Staff Secretary, National Security Council, reporting, pursuant to law, relating to the Freedom of Information Act; to the Committee on the Judiciary.

EC-669. A communication from the Chairman, Council on Environmental Quality, Executive Office of the President, transmitting, pursuant to law, a report relating to the Freedom of Information Act; to the Committee on the Judiciary.

EC-670. A communication from the Attorney General, transmitting a draft of proposed legislation to provide for improvements in the administration of justice, greater efficiency in the federal appellate courts, and more uniform decisions in those courts, and for other purposes; to the Committee on the Judiciary.

EC-671. A communication from the Chairman, National Transportation Safety Board, reporting, pursuant to law, relating to the Freedom of Information Act; to the Committee on the Judiciary.

EC-672. A communication from the Executive Director, Marine Mammal Commission, transmitting, pursuant to law, a report re-

lating to the Freedom of Information Act; to the Committee on the Judiciary.

EC-673. A communication from the Executive Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, a report relating to the Freedom of Information Act; to the Committee on the Judiciary.

EC-674. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report relating to the Freedom of Information Act; to the Committee on the Judiciary.

EC-675. A communication from the Secretary, Foundation of the Federal Bar Association, transmitting, pursuant to law, its financial report for the fiscal year ending September 30, 1978; to the Committee on the Judiciary.

EC-676. A communication from the Administrator, Veterans Administration, transmitting, pursuant to law, a report relating to a scientific study to determine if there is a casual relationship between the amputation of an extremity and the subsequent development of cardiovascular disorders; to the Committee on Veterans' Affairs.

EC-677. A communication from the Secretary of Labor, transmitting, pursuant to law, the 1977 annual report on the administration of the Employee Retirement Income Security Act of 1974; to the Committee on Human Resources and the Committee on Finance, jointly, by unanimous consent.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that an annual report transmitted by the Secretary of Labor, relative to the Employee Retirement Income Security Act of 1974, be referred jointly to the Committees on Human Resources and Finance.

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

EC-678. A communication from the Administrator, United States Environmental Protection Agency, transmitting a draft of proposed legislation to extend certain provisions of the Toxic Substances Control Act for two years; to the Committee on Commerce, Science, and Transportation and the Committee on Environment and Public Works, jointly, by unanimous consent.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a communication transmitted by the Administrator of the U.S. Environmental Protection Agency, relative to extending certain provisions of the Toxic Substances Control Act, be referred jointly to the Committees on Commerce, Science, and Transportation, and Environment and Public Works.

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

EC-679. A communication from the Secretary of Energy, transmitting a draft of proposed legislation to provide for the timely management of the spent fuel from nuclear reactors; to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works, jointly, by unanimous consent.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a communication transmitted by the Secretary of Energy, relative to the proposed Spent Nuclear Fuel Act of 1979, be referred jointly to the Committees on Energy and Natural Resources, and Environment and Public Works.

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

PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM-50. A concurrent resolution adopted by the Legislature of the State of Texas; to the Committee on Agriculture, Nutrition, and Forestry:

"HOUSE CONCURRENT RESOLUTION No. 31

"Whereas, Agriculture is the largest industry in the State of Texas and the nation and is the largest employer of our people; and

"Whereas, We are blessed with rich resources of land, water, and climate, along with farm families who have the ability and eagerness to produce food and fiber in sufficient quantity to feed and clothe their fellow citizens and share with a hungry world; and

"Whereas, The low price agricultural policy of our federal government is causing disastrously low prices to producers, inflated food prices to consumers, and windfall profits for commodity speculators and multinational corporations; and

"Whereas, Our productive land, America's most valuable and cherished asset, which thousands of our young men fought and died protecting, now is being taken away from our family farmers and ranchers through bankruptcy, in many cases falling into the hands of nonresident alien investors; and

"Whereas, A healthy agriculture, earning fair and equitable prices, never causes inflation or unemployment but instead creates an unending supply of new wealth for the nation; now, therefore, be it

"Resolved by the House of Representatives, the Senate concurring, That the 66th Legislature of the State of Texas hereby call upon the Congress of the United States of America to bring about an end to this most serious condition which prevails in rural America today by insisting that Secretary of Agriculture Bob Bergland implement the 1977 farm program to its fullest extent, by raising loan levels to 90 percent of parity along with any necessary set-aside, all as provided for in the current law; and, be it further

"Resolved, That official copies of this resolution be prepared and forwarded to the President of the Senate and the Speaker of the House of Representatives of the United States Congress and to all members of the Texas delegation to the congress with the request that this resolution be officially entered in the Congressional Record as a memorial to the Congress of the United States of America."

POM-51. A concurrent resolution adopted by the Legislature of the State of Texas; to the Committee on the Judiciary:

"HOUSE CONCURRENT RESOLUTION No. 13

"Whereas, The overwhelming endorsement by California voters of Proposition 13 has spurred a nationwide taxpayer's revolt against high taxes and excessive government spending; and

"Whereas, While numerous local governments and states, including Texas, are sincerely responding to citizen demands for tax limitations coupled with responsible spending, the federal government, where budget restraint is most needed, has reacted to the message of Proposition 13 in a halfhearted and disappointing manner; and

"Whereas, The federal budget is increasing at an alarming rate, several times that of inflation, as seen by a 140 percent increase since 1970; and

"Whereas, The federal government through many years of deficit spending has incurred a national debt of astronomical and dangerous proportions; the gross national debt is currently estimated to be almost $800 billion, over twice the figure for 1962 and about 40 percent of the nation's gross national product; and

"Whereas, Statutorily imposed "permanent" debt ceilings, repeatedly raised by Congress, have proved to be no impediment to the monstrous growth of the national debt; this disgraceful legacy for future generations has swollen by $177 billion over the past three years and has fostered an interest payment of $50 billion for this year; and

"Whereas, Persistent deficit financing is a major factor contributing to income-robbing inflation, high interest rates, and an unstable, unpredictable economy, and results in the funding of government programs of questionable benefit and need; and

"Whereas, Texas' enviable financial position among state governments is largely due to its "pay-as-you-go" constitutional provision restricting deficit spending by the legislature; and

"Whereas, During the 1977 regular session, this legislature adopted House Concurrent Resolution No. 31 memorializing congress to initiate a constitutional amendment that would similarly prevent deficit spending and therefore halt the growth of the national debt, the greatest threat to this nation's future well-being; now, therefore, be it

"Resolved by the House of Representatives of the State of Texas, the Senate concurring, That the 65th Legislature, 2nd Called Session, hereby reaffirm the provisions of House Concurrent Resolution No. 31 calling for an amendment to the United States Constitution requiring a balanced annual federal budget and hereby request the Texas congressional delegation to sponsor this vital amendment; and, be it further

"Resolved, That this amendment require the achievement of a balanced budget within a reasonable period after adoption and establish a procedure for amortizing the national debt; and, be it further

"Resolved, That the Governor of Texas be hereby requested to actively seek the sponsorship of the amendment by the Texas congressional delegation and to use the financial resources of his office to promote support for the amendment; and, be it further

"Resolved, That the governor, lieutenant governor, and speaker of the house be hereby requested to contact government leaders of other states to solicit and encourage support for the amendment; and, be it further

"Resolved, That the lieutenant governor and speaker of the house be authorized to designate separate or joint committees or individual legislators to represent them and the state in this endeavor and that reasonable expenses incurred by them or their designees in efforts to initiate the amendment be paid from the contingent expense fund of the appropriate house; and, be it further

"Resolved, That official copies of this resolution be prepared and forwarded to the President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the United States Congress, and to all members of the Texas delegation to the Congress with the request that this resolution be officially entered in the Congressional Record as a memorial to the Congress of the United States of America."

POM-52. A resolution adopted by the Board of Supervisors of the City and County of San Francisco, urging the Registrar of Voters to convey to President Jimmy Carter and the leadership of the Congress the text and vote on Proposition V; to the Committee on the Budget and the Committee on Appropriations, jointly, pursuant to order of January 30, 1975.

POM-53. A resolution adopted by the City Council of New Bedford, Massachusetts, relating to fishing; to the Committee on Commerce, Science, and Transportation.

POM-54. A petition from a citizen, relating to diplomatic relations with Taiwan; to the Committee on Foreign Relations.

POM-55. A joint resolution adopted by the Legislature of the State of Virginia; to the Committee on Finance:

"SENATE JOINT RESOLUTION No. 113

"Whereas, in nineteen hundred seventy-four the General Assembly enacted legislation to provide for subsidies for the adoption of children who are handicapped or have other special needs and who are in the custody of local boards of welfare; and

"Whereas, as of December one, nineteen hundred seventy-eight, subsidies have been authorized for one hundred twenty-four children in Virginia (*only twelve of which were granted to cover medical costs*), and (*only thirty-seven out of a total number of one hundred twenty-five*) local welfare agencies participate in the program; and

"Whereas, a major problem attributed to the underutilization of State-subsidized adoption programs is the exclusion from coverage by Medicaid of children who are adopted, except for a child with special needs who is adopted by a family which is financially eligible for Medicaid; and

"Whereas, a significant number of children in foster care have serious handicaps which can preclude their adoption because of the potential adoptive parent's inability to handle the financial burden of the medical treatment needed by the child; *unless state and local governments can assume financial responsibility for such costs which were covered by Medicaid prior to the child's adoption; now, therefore, be it*

"Resolved by the Senate of Virginia, the House of Delegates concurring, That the Congress of the United States is hereby memorialized to amend *appropriate federal laws* to provide Medicaid eligibility after a final order of adoption is entered for children who have handicaps (*requiring medical care*) and other special needs (*which constitute barriers to adoption of the child, regardless of the income level of the adoptive parents*) and, be it

"Resolved further, That the Clerk of the Senate of Virginia is directed to send copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate and the members of the delegation to the Congress of the United States from this Commonwealth in order that they may be apprised of the sense of this Body."

POM-56. A joint resolution adopted by the Legislature of the State of Virginia; to the Committee on Governmental Affairs:

"SENATE JOINT RESOLUTION No. 114

"Whereas, local governments have become increasingly dependent upon real and personal property taxation as a source of revenue to provide the services required of its citizens; and

"Whereas, the real and personal property tax base is drastically reduced in many local jurisdictions by the presence of substantial amounts of nontaxed federally-owned real property, machinery and equipment; and

"Whereas, the presence of such federally-owned property directly increases the burden of taxation on the remainder of local property owners; and

"Whereas, the Advisory Commission on Intergovernmental Relations has identified payments in lieu of taxes as one of the major needs of local governments throughout the country, and is presently conducting a study of the over-all impact of the federal presence on local government taxation; and

"Whereas, Congress has provided for payments in lieu of taxes for counties by the adoption of Public Law 94-565; now, therefore, be it

"Resolved by the Senate of Virginia, the House of Delegates concurring, That the General Assembly of Virginia hereby memorializes the Congress of the United States to adopt legislation authorizing and funding a method of payment in lieu of taxes for federally-owned property within local governmental jurisdictions; and, be it

"Resolved further, That the Clerk of the Senate is hereby instructed to transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate and to the Members of the Virginia Delegation to the Congress of the United States in order that they may be apprised of the sense of this body."

POM-57. A resolution adopted by the Legislature of the State of Illinois; to the Committee on the Judiciary:

"HOUSE RESOLUTION No. 28

"Whereas, the Illinois House of Representatives believes that the United States Constitution should permit a moment of silent prayer in the classrooms of the public schools of this nation; and

"Whereas, A moment of silent prayer of reflection is a positive act which adds to the growth of an individual; and

"Whereas, We believe that a moment of silent prayer is denominationally neutral and is not the manifestation of an official religion or an interference with the free exercise of any person's religion or system of belief; and

"Whereas, Affording a student in the public schools a moment of silent prayer provides students the option of using this time for such purposes or not, without fear of reprisal or comment by teachers or peers; and

"Whereas, There are many manifestations in our public life of belief in God; and

"Whereas, Such belief has been part of the leaven stimulating the growth of this nation; therefore, be it

"Resolved, by the House of Representatives of the Eighty-first General Assembly of the State of Illinois, That we respectfully petition the Congress of the United States to propose an amendment to the Constitution of the United States to permit a moment of silent prayer in the public schools; and, be it further

"Resolved, That copies of this resolution be transmitted to the President of the Senate of the United States, the Secretary of the Senate of the United States, the Speaker of the House of Representatives of the United States, the Clerk of the House of Representatives of the United States and to each member of the Congress from this State."

POM-58. A resolution adopted by the Legislature of the State of Illinois; to the Committee on the Judiciary:

"HOUSE RESOLUTION No. 29

"Whereas, The Illinois House of Representatives believes that the United States Constitution should permit the singing of Christmas carols by students of public educational institutions; and

"Whereas, The singing of Christmas carols is an expression of the goodwill and joy which the season heralds and the holiday urges us to share with each other; and

"Whereas, We believe that the singing of Christmas carols in the public schools is denominationally neutral and not the manifestation of an official religion or creed; and

"Whereas, The singing of carols during the Christmas season in this nation's schools has traditionally been part of our great heritage; therefore, be it

"Resolved, by the House of Representatives of the Eighty-First General Assembly of the State of Illinois, That we respectfully petition the Congress of the United States to propose an amendment to the Constitution of the United States to permit the singing of Christmas carols in the public schools; and, be it further

"Resolved, That copies of this resolution be transmitted to the President of the Senate of the United States, the Secretary of the Senate of the United States, the Speaker of the House of Representatives of the United States, the Clerk of the House of Representatives of the United States and to each Member of the Congress from this State."

POM-59. A memorial adopted by the Legislature of the State of Florida; to the Committee on the Judiciary:

"SENATE MEMORIAL

"Whereas, it is estimated, as of August, 1975, that the federal debt at the end of the 1975 fiscal year will be $558.637 billion, and

"Whereas, the fiscal year deficit for 1976 will be the largest in our history, between $70 and $80 billion, and

"Whereas, the growing debt is a major contributor to inflation, lagging economic investment, excessive interest rates, and the resulting unemployment, and

"Whereas, the economic welfare of the United States and its citizens depends on a stable dollar and sound economy, and

"Whereas, the National Conference of State Legislatures passed Resolution No. 11 at its Annual Business Meeting on October 10, 1975, urging the Congress to take prompt and affirmative action to limit federal spending, and

"Whereas, there is provision in Article V of the Constitution of the United States for amending the Constitution by the Congress, on the application of the legislatures of two-thirds of the several states, calling a convention for proposing amendments which shall be valid to all intents and purposes when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, now, therefore,

"Be It Resolved by the Legislature of the State of Florida:

"That the Legislature of the State of Florida does hereby make application to the Congress of the United States pursuant to Article V of the Constitution of the United States to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.

"Be it further resolved, That a copy of this memorial be transmitted to the presiding officers of the Senate and the House of Representatives of Congress, the members of the Congressional delegation from the State of Florida and to the presiding officers of each house of the several state legislatures."

POM-60. A memorial adopted by the Legislature of the State of Florida; to the Committee on the Judiciary:

"HOUSE MEMORIAL No. 2801

"Whereas, the United States Government has, over the past three decades, embarked on a course of continuous and ever increasing deficit spending, and

"Whereas, the public debt engendered thereby now far exceeds 300 billion dollars, and current budget proposals include provision for a further deficit of 43 billion dollars, and

"Whereas, such national debt is, in and of itself, a major contributor to the very inflation to which the United States is committed to eradicating, and

"Whereas, this massive national debt is inimical to the public welfare, limiting the amount of credit available to private citizens, thus curtailing opportunities for needed economic growth, and

"Whereas, continued fiscal irresponsibility can only result in an eventual financial debacle of the sort recently experienced by New York City, and

"Whereas, payment of the massive interest required to service national debt imposes an undue hardship on the citizenry, particularly those on fixed incomes, and

"Whereas, the ability of the Federal Government to avoid the difficult budgetary choices posed by zero debt financing has resulted in a lack of ob ective budgetary analysis, and thus the funding of unnecessary or inefficient programs, now, therefore,

"Be it Resolved by the Legislature of the State of Florida:

"That pursuant to Article V of the Constitution of the United States, the Legislature of the State of Florida does hereby apply to the Congress of the United States for a convention to consider the following amendment to the United States Constitution:

"Section 1. Except as provided in section 3, the Congress shall make no appropriation for any fiscal year if the resulting total of appropriations for such fiscal year would exceed the total revenues of the United States for such fiscal year.

"Section 2. There shall be no increase in the national debt, and the existing debt, as it exists on the date on which this amendment is ratified, shall be repaid during the one hundred-year period following the date of such ratification. The rate of repayment shall be such that not less than one-tenth of the debt shall be repaid during each ten-year period.

"Section 3. In times of national emergency, declared by the concurrent resolution of three-fourths of the membership of both Houses of Congress, the application of section 1 may be suspended, provided that such suspension shall not be effective past the two-year term of the Congress which passes such resolution. If such a national emergency continues to exist, a suspension of section 1 may be reenacted pursuant to the provisons of this section. National debt incurred pursuant to this section shall be repaid under the provisons of section 2; provided, however, that the repayment period shall commence upon the expiration of the suspension under which it was incurred.

"Section 4. This article shall apply to fiscal years that begin six months after the date on which this article is ratified.

"Section 5. Congress shall provide by law for strict compliance with this amendment.

"Be it further resolved that the purview of any convention called by the Congress pursuant to this resolution be strictly limited to the consideration of an amendment of the nature as herein proposed.

"Be it further resolved that this application by the Legislature of the State of Florida constitutes a continuing application pursuant to Article V of the United States Constitution, until such time as two-thirds of the Legislatures of the several states have made similar application, and the convention herein applied for is convened.

"Be it further resolved that a duly attested copy of this resolution be immediately transmitted to the President of the United States, to the Secretary of the United States Senate, to the Clerk of the United States House of Representatives, to each member of the Florida delegation to the United States Congress, and to the presiding officer of each house of each state Legislature in the United States."

POM-61. A joint resolution adopted by the Legislature of the State of South Dakota; to the Committee on the Judiciary:

"A JOINT RESOLUTION

"Whereas, with each passing year this nation becomes more deeply in debt as its annual expenditures frequently exceed annual available revenues, so that the public debt also steadily increases to a size of inordinate proportions; and

"Whereas, unified budgets do not necessarily reflect actual spending because of the exclusion of special spending outlays which are not included in the budget nor are subject to the statutory legal public debt limit; and

"Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all federal spending and be in balance; and

"Whereas, we believe that fiscal irresponsibility at the federal level, with the inflation which results primarily from this policy, is the greatest threat which faces our nation, and that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

"Whereas, under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by Congress whenever two-thirds of both houses deem it necessary, or on the application of the legislatures of two-thirds of the several states the Congress shall call a constitutional convention for the purpose of proposing such amendments:

"Be it resolved by the Senate of the State of South Dakota, the House of Representatives concurring therein:

"That the Legislature does hereby make application to the Congress of the United States that procedures be instituted in the Congress to add a new article to the Constitution of the United States, and that the Legislature of the state of South Dakota hereby requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency, as defined by law, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

"Be it further resolved, that alternatively, this Legislature hereby makes application under said Article V of the Constitution of the United States and with the same force and effect as if this Resolution consisted of this portion alone and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States requiring in the absence of a national emergency, as defined by law, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

"Be it further resolved, that this application and request be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose; and

"Be it further resolved, that this application by this Legislature constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made applications for similar relief pursuant to Article V, but, if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this Joint Resolution then this petition for a Constitutional Convention shall no longer be of any force or effect; and

"Be it further resolved, that this Legislature also proposes that the legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the Federal Constitution, or requiring the Congress to call a constitutional convention for proposing such an amendment to the Federal Constitution; and

"Be it further resolved, that copies of this Joint Resolution be sent by the Secretary of State to each member of the South Dakota Congressional Delegation; and

"Be it further resolved, that the Secretary of State is directed to send copies of this Joint Resolution to the presiding officers of both Houses of the Legislature of each of the other states in the Union, the Clerk of the United States House of Representatives, Washington, D.C. and the Secretary of the United States Senate, Washington, D.C."

POM-62. A joint resolution adopted by the Legislature of the State of New Mexico; to the Committee on the Judiciary:

"SENATE JOINT RESOLUTION

"Be it resolved by the Legislature of the State of New Mexico:

"Whereas, with each passing year this nation become more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars; and

"Whereas, the annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues; and

"Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

"Whereas, knowledgeable planning, fiscal prudence and plain good sense require that the budget reflect all federal spending and be in balance; and

"Whereas, believing that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is the greatest threat which faces our nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

"Whereas, under article 5 of the constitution of the United States, amendments to the federal constitution may be proposed by the congress whenever two-thirds of both houses deem it necessary, or on the application of the legislatures of two-thirds of the several states, the congress shall call a constitutional convention for the purpose of proposing amendments; we believe such action vital;

"Now, therefore, be it resolved by the Legislature of the State of New Mexico that this body proposes to the congress of the United States that procedures be instituted in the congress to add a new article to the constitution of the United States, and that the legislature of the state of New Mexico requests the congress to prepare and submit to the several states an amendment to the constitution of the United States, requiring in the absence of a national emergency that the total of all federal appropriations made by the congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

"Be it further resolved that, alternatively, this body makes application and requests that the congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the federal constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

"Be it further resolved that this body also proposes that the legislatures of each of the several states comprising the United States apply to the congress requesting the enactment of an appropriate amendment to the federal constitution; or requiring the congress to call a constitutional convention for proposing such an amendment to the federal constitution; and

"Be it further resolved that copies of this resolution be sent by the secretary of states to the members of New Mexico's delegation to the congress of the United States; and

"Be it further resolved that the secretary of state of this state is directed to send copies of this joint resolution to the secretary of state and presiding officers of both houses of the legislature of each of the other states in the union, the clerk of the United States house of representatives, Washington, D.C. and the secretary of the United States Senate, Washington, D.C."

POM-63. A joint memorial adopted by the Legislature of the State of Idaho; to the Committee on Finance:

"SENATE JOINT MEMORIAL No. 104

"Whereas, the production of sugar beets and of beet sugar is important in the State of Idaho and makes significant contributions to the State's and the Nation's economy; and

"Whereas, legislative and administrative actions taken thus far have not been adequate to restore the needed stability to sugar markets for domestic producers; and

"Whereas, sugar beet producers and beet sugar processors are not receiving prices for their product which allow them to remain in business on a profitable basis; and

"Whereas, the loss of sugar beet growing and beet sugar processing would have serious repercussions on the economy of the nation since it would mandate the importing of sugar from abroad, drive the domestic price of sugar up, further increase the U.S. balance of trade deficit, and continue to weaken the already depressed dollar on world money markets; and

"Whereas, the loss of the domestic sugar industry would mandate U.S. farmers to convert their land to other crops and further depress farm prices which would make farm families unable to make a living from their land as well as cause the countless other workers who find employment in sugar mills and processing to face unemployment and cause welfare costs to rise; and

"Whereas, legislation introduced during the 2nd Session of the 95th United States Congress would have remedied many of the economic problems of sugar beet producers and beet sugar processors if it had passed.

"Now, therefore, be it resolved by the members of the First Regular Session of the Forty-fifth Idaho Legislature, the Senate and the House of Representatives concurring therein, that we respectfully request and urge the Congress of the United States to consider and enact legislation which will insure the continued existence, stability and profitability of the total domestic nutritive sweetener industry, and that the President sign and administer such legislation.

"Be it further resolved that the Secretary of the Senate be, and she is hereby authorized and directed to forward copies of this Memorial to the President of the United States, Jimmy Carter, the Secretary of Agriculture, Robert Bergland, and the President of the Senate and the Speaker of the House of Representatives of Congress and the honorable congressional delegation representing the State of Idaho in the Congress of the United States."

POM-64. A concurrent resolution adopted by the Legislature of the State of Idaho; to the Committee on the Judiciary:

"HOUSE CONCURRENT RESOLUTION No. 7

"Whereas, with each passing year this Nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars; and

Whereas, the annual federal budget continually demonstrates an unwillingness or ability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues; and

"Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

"Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all federal spending and be in balance; and

"Whereas, believing that fiscal irresponsibilities at the federal level, with the inflation which results from this policy, is the greatest threat which faces our Nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

"Whereas, under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever two-thirds of both Houses deem it necessary, or on the application of the Legislatures of two-thirds of the several states the Congress shall call a Constitutional Convention for the purpose of proposing amendments. We believe such action vital.

"Now, therefore, be it resolved by the members of the First Regular Session of the Forty-fifth Idaho Legislature, the House of Representatives and the Senate concurring, that the Legislature proposes to the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that the legislature requests the Congress to prepare and submit to the several states an amendment to the constitution of the United States, requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

"Be it further resolved, that, alternatively, the Legislature makes application and requests that the Congress of the United States call a Constitutional Convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

"Be it further resolved, that this application by this Legislature constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the Legislatures of the several states have made similar applications pursuant to Article V, but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this resolution then this petition for a Constitutional Convention shall no longer be of any force or effect; and

"Be it further resolved, that this application and request be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose; and

"Be it further resolved, that this Legislature also proposes that the Legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the Federal Constitution; or require the Congress to call a Constitutional Convention for proposing such an amendment to the Federal Constitution; and

"Be it further resolved, that the Clerk of the House of Representatives be and he is hereby directed to forward copies of this resolution to the Secretary of State and presiding officers of both Houses of the Legislatures of each of the other States in the Union, the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Congress of the United States representing the State of Idaho."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHURCH, from the Committee on Foreign Relations, with an amendment and an amendment to the title:

S. 245. A bill to promote the foreign policy of the United States through the maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis, and for other purposes (together with additional views) (Rept. No. 96-7).

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation, with an amendment:

S. 233. A bill to amend the International Travel Act of 1961 to authorize additional appropriations, and for other purposes (Rept. No. 96-8).

By Mr. PELL, from the Committee on Rules and Administration, with an amendment:

S. Res. 42. A resolution authorizing additional expenditures by the Committee on Agriculture, Nutrition, and Forestry for inquiries and investigations (Rept. No. 96-9).

S. Res. 81. A resolution authorizing additional expenditures by the Committee on Armed Services for inquiries and investigations (Rept. No. 96-10).

S. Res. 57. A resolution authorizing additional expenditures by the Committee on Banking, Housing, and Urban Affairs for inquiries and investigations (Rept. No. 96-11).

S. Res. 73. A resolution authorizing additional expenditures by the Committee on the Budget for inquiries and investigations (Rept. No. 96-12).

S. Res. 26. A resolution authorizing additional expenditures by the Committee on Commerce, Science, and Transportation for inquiries and investigations (Rept. No. 96-13).

S. Res. 60. A resolution authorizing additional expenditures by the Committee on Energy and Natural Resources for inquiries and investigations (Rept. No. 96-14).

S. Res. 43. A resolution authorizing adtional expenditures by the Committee on Environment and Public Works for inquiries and investigations (Rept. No. 96-15).

S. Res. 52. A resolution authorizing additional expenditures by the Committee on Finance for inquiries and investigations (Rept. No. 96-16).

S. Res. 75. A resolution authorizing additional expenditures by the Committee on Foreign Relations for inquiries and investigations (Rept. No. 96-17).

S. Res. 79. A resolution authorizing additional expenditures by the Committee on Governmental Affairs for inquiries and investigations (Rept. No. 96-18).

S. Res. 31. A resolution authorizing expenditures by the Committee on Human Resources for inquiries and investigations (Rept. No. 96-19).

By Mr. PELL, from the Committee on Rules and Administration, with amendments:

S. Res. 48. A resolution authorizing additional expenditures by the Committee on the Judiciary for inquiries and investigations (Rept. No. 96-20).

By Mr. PELL, from the Committee on Rules and Administration, with an amendment:

S. Res. 66. A resolution authorizing additional expenditures by the Committee on

Veterans' Affairs for inquiries and investigations (Rept. No. 96-21).

S. Res. 69. A resolution authorizing additional expenditures by the Select Committee on Small Business for inquiries and investigations (Rept. No. 96-22).

By Mr. PELL, from the Committee on Rules and Administration, with amendments:

S. Res. 65. A resolution authorizing expenditures by the Special Committee on Aging (Rept. No. 96-23).

By Mr. PELL, from the Committee on Rules and Administration, with an amendment:

S. Res. 76. A resolution authorizing additional expenditures by the Select Committee on Intelligence (Rept. No. 96-24).

S. Res. 70. A resolution authorizing expenditures by the Select Committee on Indian Affairs for inquiries and investigations (Rept. No. 96-25).

By Mr. PELL, from the Committee on Rules and Administration, without amendment:

S. Res. 44. A resolution authorizing the printing of the committee print entitled "Study on Federal Regulation, Framework for Regulation, Appendix to Volume VI" as a Senate document (Rept. No. 96-26).

S. Res. 45. A resolution authorizing the printing of the committee print entitled "Study on Federal Regulation, Volume VI, Framework for Regulation," as a Senate document (Rept. No. 96-27).

S. Res. 51. A resolution authorizing additional expenditures by the Committee on Finance for routine purposes (Rept. No. 96-28).

S. Res. 53. A resolution authorizing additional expenditures by the Committee on Appropriations for routine purposes (Rept. No. 96-29).

S. Res. 82. A resolution authorizing additional expenditures by the Committee on Armed Services for routine expenses (Rept. No. 96-30).

S. Res. 86. An original resolution to pay a gratuity to Mary Lucy Kuhl Haworth, Frances T. Kuhl, Pius A. Kuhl, James H. Kuhl, and Richard A. Kuhl.

FOREIGN CURRENCY REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following report(s) of standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE—16TH CONGRESSIONAL DELEGATION TO THE PEOPLE'S REPUBLIC OF CHINA: TRAVEL AUTHORIZED BY MAJORITY LEADER, FROM JAN. 2 TO JAN. 16, 1978

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Alan Cranston:									
Japan	Yen	10,991	45.51	642	2.66			11,634	48.17
People's Republic of China	U.S. dollar		975.00						975.00
Transportation to/from PRC [1]					2,897.40				2,897.40
Senator James Abourezk:									
Japan	Yen	18,113	75.00	642	2.66			18,755	77.66
People's Republic of China	U.S. dollar		975.00						975.00
Transportation to/from PRC [1]					2,897.40				2,897.40
Senator Gary Hart:									
Japan	Yen	12,972	53.71	642	2.66			13,614	56.37
People's Republic of China	U.S. dollar		1,050.00						1,050.00
Transportation to/from PRC [1]					2,897.00				2,897.00
Senator Richard Lugar:									
Japan	Yen	11,080	45.88	642	2.66			11,722	48.54
People's Republic of China	U.S. dollar		975.00						975.00
Transportation to/from PRC [1]					2,897.40				2,897.40
Senator Charles McC. Mathias, Jr.:									
Japan	Yen	10,990	45.51	642	2.66			11,632	481.7
People's Republic of China	U.S dollar		975.00						975.00
Transportation to/from PRC [1]					2,897.40				2,897.40
Staff: Allyn Kreps:									
Japan	Yen	12,613	52.23	642	2.66			13,255	54.89
People's Republic of China	U.S. dollar		975.00						975.00
Transportation to/from PRC [1]					2,897.40				2,897.40
Total			6,242.84		17,400.36				23,643.20

[1] Transportation to/from PRC by military aircraft (equivalent commercial rate).

Feb. 6 1979.

ALAN CRANSTON, Chairman.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE—COMMITTEE ON APPROPRIATIONS (AMENDED REPORT): TRAVEL AUTHORIZED BY SENATOR WARREN G. MAGNUSON, CHAIRMAN, FROM JAN. 1 TO DEC. 31, 1978

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Charles McC. Mathias:									
Japan	Yen	10,990	45.51	642	2.66			11,632	48.17
Peoples Republic of China	Dollar		975.00		[1] 2,897.40				3,872.40
Balance forward			8,064.22		10,810.32				18,874.54
Total			9,084.73		13,710.38		0		22,795.11

[1] Transportation to and from Peoples Republic of China by military aircraft (equivalent commercial rate).

Feb. 13, 1979.

WARREN G. MAGNUSON, Chairman.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE—COMMITTEE ON GOVERNMENTAL AFFAIRS, TRAVEL AUTHORIZED BY SENATOR ABE RIBICOFF, FROM DEC. 3 TO DEC. 17, 1978

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S currency
Theodore J. Jacobs: [1]									
United Kingdom	Pound	129.40	254.60					129.40	254.60
France	Franc	1,903.10	432.30					1,903.10	432.30
Switzerland	Sw. franc	486.65	285.00					486.65	285.00
Sweden	S. kroner	1,120.90	253.60	209	47.29			1,329.90	300.89
Total			1,225.50		47.29				1,272.79

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE—COMMITTEE ON GOVERNMENTAL AFFAIRS, TRAVEL AUTHORIZED BY SENATOR ABE RIBICOFF, FROM DEC. 3 TO DEC. 17, 1978—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
FROM NOV. 18 TO NOV. 24-28, 1978									
Leonard S. Spector:[2]									
Switzerland	Sw. franc	102	61					102	61.00
Austria	Aus. schilling	4,421	309					4,421	309.00
Italy	Lt. lire			255,800	309.19			225,800	308.19
Ellen S. Miller:[3]									
Switzerland	Swiss franc	115.40	69.77	4.54	2.75	60.36	36.50	180.30	109.02
Austria	Schilling	4,399.03	316.24	347.75	25.00	584.22	42.00	5,331.00	383.24
England	Pound	85.39	169.07					85.39	169.07
Total			925.08		336.94		78.50		1,339.52
FROM MAY 24 TO JUNE 6, 1978									
Arthur H. House:									
Switzerland	Franc	693	351.86	40	20.31	56	28.43	789	400.60
United Kingdom	Pound	205.55	378.75	5.00	9.21	11.46	21.12	222.01	409.08
United States	Dollars				12.50				12.50
Total			730.61		42.02		49.55		822.18
FROM FEB. 10 TO FEB. 21, 1979									
Dwight H. Perkins:									
Japan	Yen	12,980	54.15					12,980	54.15
China (People's Republic)	Yuan eq	1,014.60	600.00					1,014.60	600.00
					1,860.40				1,860.40
Thomas Bernstein:									
Japan	Yen	15,448	64.44					15,448	64.44
China	Yuan eq	1,014.60	600.00					1,014.60	600.00
					1,860.40				1,860.40
Dorothy Fosdick:									
Japan	Yen	17,031	71.04					17,031	71.04
China	Yuan eq	1,014.60	600.00					1,014.60	600.00
					1,853.40				1,853.40
Total			1,989.63		5,574.20				7,563.83
FROM JAN. 7 TO JAN. 18, 1978									
Ellen S. Miller:[4]									
Netherlands	Guilders	346.16	150.00					346.16	150.00
Germany	Marks	168	70.00					168	70.00
France	Francs	1,007.50	214.36					1,007.50	214.36
England	Pounds	152.69	296.22					152.69	296.22
Brian Conboy:[5]									
Netherlands	Guilders	346.16	150.00					346.16	150.00
Germany	Marks	160	70.00					168	70.00
France	Francs	1,007.50	214.36					1,007.50	214.36
England	Pounds	152.69	296.22					152.69	296.22
Total			1,461.16						1,461.16

[1] Returned $14.50 (55.90 francs, 6.20 Sw. kroners, 0.21 pence, Great Britain pounds).
[2] Returned $217.
[3] Returned 372.10 shillings ($26.76), 6.10 pounds ($12.20).
[4] Returned 153 marks, 50 francs, 1 pound.
[5] Returned 156 marks, 54 francs, 7 pounds, 6 guilders.

ABE RIBICOFF, Chairman.

Jan 25, 26, 1979.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE—JAMES A. SHARP, JR. (SENATOR DONALD W. RIEGLE, JR.), TRAVEL AUTHORIZED BY MAJORITY LEADER, FROM NOV. 29, TO DEC. 2, 1978

Name and country	Name of currency	Per diem		Transportation		Other Purpses		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency[1]	Foreign currency	U.S. dollar equivalent or U.S. currency[1]	Foreign currency	U.S. dollar equivalent or U.S. currency[1]	Foreign currency	U.S. dollar equivalent or U.S. currency[1]
Mexico	Pesos (22.60 Pesos per U.S. dollar).	6,780	300	None	None	None	None	6,780	300

[1] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

RECAPITULATION

Foreign currency (pesos) (total) 6,780.00

JAMES A. SHARP, Jr.
United States-Mexico Commission on Drug Abuse.

Dec. 28, 1978.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. JAVITS (for himself, Mr. RIBICOFF, Mr. COHEN, Mr. LEVIN, Mr. MATHIAS, and Mr. SASSER):

S. 503. A bill to amend the Privacy Act of 1974 to provide for the confidentiality of medical records, and for other purposes; to the Committee on Governmental Affairs and the Committee on the Judiciary, jointly, by unanimous consent, and if and when ordered reported by one committee, the other committee has not to exceed 30 days.

By Mr. BAKER (for Mr. PACKWOOD):

S. 504. A bill to amend section 21 of the Second Liberty Bond Act to require the President to submit an alternate balanced budget whenever the regular budget would result in an increase in the public debt limit or a deficit, to require the President to identify revenue increase attributable to inflation, and for other purposes; read the first time and, by unanimous consent, ordered held at the desk.

By Mr. TALMADGE (for himself and Mr. DOLE):

S. 505. A bill to provide for the reform of the administrative and reimbursement procedures currently employed under the medicare and medicaid programs, and for other purposes; to the Committee on Finance.

By Mr. MATHIAS (for himself, Mr. BAYH, Mr. METZENBAUM, Mr. JAVITS, and Mr. HEINZ):

S. 506. A bill to amend title VIII of the act commonly called the Civil Rights Act of 1968 to revise the procedures for the enforcement of fair housing, and for other purposes; to the Committee on the Judiciary.

By Mr. DOLE (for himself and Mr. TALMADGE):

S. 507. A bill to amend the Social Security Act to provide for improvements in the medicare and medicaid programs; to the Committee on Finance.

By Mr. DOLE (for himself, Mr. TALMADGE, Mr. HEINZ, Mr. RIBICOFF, Mr. MOYNIHAN, and Mr. COCHRAN):

S. 508. A bill to amend the Social Security Act to provide that the Administrator of the Health Care Financing Administration henceforth shall be appointed by the President by and with the advice and consent of the Senate; to the Committee on Finance.

By Mr. RIBICOFF (by request):

S. 509. A bill to amend title 5, United States Code, to provide survivor benefits to certain dependent children; to the Committee on Governmental Affairs.

S. 510. A bill to establish a Department of Education, and for other purposes; to the Committee on Governmental Affairs.

By Mr. MATSUNAGA:

S. 511. A bill to amend section 457 of the Internal Revenue Code of 1954 to extend to deferred compensation plans maintained by tax exempt organizations the treatment conferred upon such plans maintained by State and local governments by the Revenue Act of 1978; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 512. A bill exempting employees serving 60 days or less from the financial reporting requirements of the Ethics in Government Act of 1978; to the Committee on Governmental Affairs.

S. 513. A bill to extend for 2 years at its present level the program of general revenue sharing provided under the State and Local Fiscal Assistance Act of 1972; to the Committee on Finance.

By Mr. BELLMON:

S. 514. A bill to amend the Emergency Petroleum Allocation Act of 1973 to exempt from price controls economically marginal crude oil production; to the Committee on Energy and Natural Resources.

By Mr. JOHNSTON:

S. 515. A bill to establish interest rates on SBA disaster loans for disasters occurring between October 1, 1978, and October 1, 1982; to the Select Committee on Small Business.

By Mr. BELLMON:

S. 516. A bill to count injection wells as wells for stripper purposes; to the Committee on Energy and Natural Resources.

By Mr. RANDOLPH (for himself, Mr. TALMADGE, Mr. STONE, Mr. DURKIN, Mr. THURMOND, and Mr. STAFFORD):

S. 517. A bill to redesignate May 30 of each year as Memorial Day and to make such a day a legal public holiday; to the Committee on the Judiciary.

By Mr. BUMPERS:

S. 518. A bill to amend the Poultry Products Inspection Act so as to restrict the authority of the Secretary of Agriculture to regulate the speed of processing poultry on the basis of state, region, or other area, or on the basis of a lack of inspectors; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HELMS:

S. 519. A bill to preserve the academic freedom and the autonomy of institutions of higher education and to condition the authority of officials of the United States to issue rules, regulations, or orders with respect to institutions of higher education. Read the first time.

S. 520. A bill to provide procedures for calling constitutional conventions for proposing amendments to the Constitution of the United States, on application of the legislatures of two-thirds of the States, pursuant to article V of the Constitution. Read the first time.

By Mr. THURMOND (for himself, Mr. KENNEDY, and Mr. HOLLINGS):

S. 521. A bill to provide for the payment of losses incurred as a result of the ban on the use of the chemical Tris in apparel, fabric, yarn, or fiber, and for other purposes; to the Committee on the Judiciary.

By Mr. BAYH (for himself, Mr. MATHIAS, Mr. SCHMITT, and Mr. BUMPERS):

S. 522. A bill to amend title 28 of the United States Code to change the composition of the judicial councils, and to provide procedures within the judicial councils of each circuit for the processing of complaints and for the administration of disciplinary action, if necessary, with respect to the conduct of the Federal judiciary within that circuit; to the Committee on the Judiciary.

By Mr. HART:

S. 523. A bill to amend chapter 5 of title 37, United States Code, to revise the special pay provisions for certain health professionals in the uniformed services; to the Committee on Armed Services.

By Mr. MORGAN:

S. 524. A bill to establish a Solar Energy Development Bank to provide long-term, low-interest loans for the purchase and installation of solar energy equipment in commercial and residential buildings in the United States; to the Committee on Banking, Housing, and Urban Affairs.

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

S. 525. A bill to amend the Drug Abuse Office and Treatment Act of 1972, and for other purposes; to the Committee on Human Resources.

By Mr SCHWEIKER:

S. 526. A bill to amend title XI of the Social Security Act to provide that a Professional Standards Review Organization shall not be considered to be an agency of the Federal Government; to the Committee on Finance.

By Mr. KENNEDY (by request):

S. 527. A bill to authorize appropriations for activities for the National Science Foundation for fiscal years 1980 and 1981, and for other purposes; to the Committee on Human Resources.

By Mr. TSONGAS:

S. 528. A bill for the relief of Bernard Robert Pages; to the Committee on the Judiciary.

By Mr. JOHNSTON:

S. 529. A bill for the relief of Bing Yu Cheng; to the Committee on the Judiciary.

By Mr. MELCHER:

S. 530. A bill for the relief of Ivan Mauricio Mas-Jaccard and Carmen Mas-Jaccard, husband and wife, and Clifford and Jonny Mas-Jaccard, their children; to the Committee on the Judiciary.

By Mr. BAKER:

S.J. Res. 42. A joint resolution providing for the designation and adoption of the American marigold as the national floral emblem of the United States; to the Committee on the Judiciary.

By Mr. DURKIN:

S.J. Res. 43. A joint resolution to proclaim March 21, 1980 "National Energy Education Day"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JAVITS (for himself, Mr. RIBICOFF, Mr. COHEN, Mr. LEVIN, Mr. MATHIAS, and Mr. SASSER):

S. 503. A bill to amend the Privacy Act of 1974 to provide for the confidentiality of medical records, and for other purposes; to the Committee on Governmental Affairs and the Committee on the Judiciary, jointly, by unanimous consent, and if and when ordered reported by one committee, the other committee has not to exceed 30 days.

(The remarks of Mr. JAVITS when he introduced the bill appear elsewhere in today's proceedings.)

By Mr. BAKER (for Mr. PACKWOOD):

S. 504. A bill to amend section 21 of the Second Liberty Bond Act to require the President to submit an alternate balanced budget whenever the regular budget would result in an increase in the public debt limit or a deficit, to require the President to identify revenue increases attributable to inflation, and for other purposes; read the first time and, by unanimous consent, ordered held at the desk.

ALTERNATIVE BUDGET ACT OF 1979

Mr. BAKER. Mr. President, on behalf of the distinguished junior Senator from Oregon (Mr. PACKWOOD), I send a bill to the desk and ask for its first reading.

The PRESIDING OFFICER. The bill will be read the first time by title.

The legislative clerk read as follows:

A bill (S. 504) to amend section 21 of the Second Liberty Bond Act to require the President to submit an alternate balanced budget whenever the regular budget would result in an increase in the public debt limit or a deficit, to require the President to identify revenue increases attributable to inflation, and for other purposes.

Mr. BAKER. Mr. President, I ask unanimous consent that a statement by Senator PACKWOOD, together with the text of the bill, be printed in the RECORD.

There being no objection, the statement and text of the bill were ordered printed in the RECORD, as follows:

STATEMENT BY SENATOR PACKWOOD

Each month we get the bad news on inflation, and each month concern mounts over the primary cause of inflation: the growth of federal spending and the need to reduce draining federal deficits. There is no problem more important to the American people—there is no problem more important to this Congress. If a balanced budget is to be more than a goal which eludes us year after year, we must take concrete steps now, realistic steps now.

Today, I am introducing a bill which I believe would be a responsible, realistic step to stop the needless growth of government debt. In addition, this bill will, for the first time, require disclosure of the tax increases imposed on all Americans by inflation. The companion bill in the House of Representatives is being introduced by the distinguished Representative Barber Conable (R-N.Y.).

TRUTH IN SPENDING

The bill has three major provisions. The first provision requires the President to submit a balanced budget in any year in which the recommended Presidential budget calls for a deficit. This also applies if the budget calls for raising the public debt limit to a dollar figure higher than that provided in the temporary debt limit.

The purpose of this provision is to provide the information needed to work towards a balanced budget. The alternative budget would clearly state the differences between the recommended Presidential budget and the balanced budget. This would enable Members of Congress to see which additional cuts would be the best targets for savings.

This provision will provide a detailed roadmap for reducing federal deficits. It will put—for the first time—the full talents of government budget officials behind developing a balanced budget. Then, depending on economic conditions, Congress would be able to pare spending as needed.

Adoption of a responsible federal budget is a shared responsibility of both the Congressional and Executive branches. It would be unrealistic for Congress to begin the process of developing a balanced budget after the Executive branch budget is proposed.

Preparation of the federal budget begins at the program and agency level within departments. Budget officials in each department and independent agency then make requests and recommendations to the Office of Management and Budget then prepares the final Executive budget for the President's approval. It is forwarded to Congress in January. Spending levels and program effectiveness are considered throughout this Executive branch review. This bill would, in effect, harness these resources to produce a balanced budget. It is not realistic to skip this phase of the budget process if we are serious about achieving a balanced budget.

Preparation of an alternate balanced budget can increase the government's flexibility in dealing with changed circumstances that occur between submission of the Presidential budget in January and adoption of the First Concurrent Resolution in May. For example, this year, President Carter submitted a budget providing a $29 billion deficit. Less optimistic economic assumptions or additional financial burdens of the government, such as costs associated with the Camp David accord, could cause this estimate to increase. But if Congress had before it an alternate balanced budget identifying the best ways to cut $29 billion of federal expenditures, it could more easily hold to the $29 billion figure.

This proposal is not a new idea. Congress in 1909 added to the law the requirement that the President submit spending reduction alternatives for any year the Secretary of the Treasury projects a deficit.

Specifically, the Sundry Appropriations Act of 1909 provided that, in a year for which a deficit is projected, the President shall—

"* * * advise the Congress how in his judgment the estimated appropriations could with least injury to the public service be reduced so as to bring the appropriations within the estimated revenues, or, if such reduction be not in his judgement practicable without undue injury to the public service, that he may recommend to Congress such loans or new taxes as may be necessary to cover the deficiency." P.L. 60–328, sec. ¶.

The Congressional debates in 1909 on this provision contain arguments that are still valid today:

"Mr. SMITH of Iowa. The object of this is simply to put upon the President of the United States, who is the head of all the departments, a measure of responsibility to see that the estimates are cut within the revenues, or else call upon him to propose a bond issue or new taxes covering the deficiency, and thereby take the odium that it would bring to his administration.

"Mr. FINLEY. Does not the gentleman think that it is the business of Congress to cut the appropriations to fit the revenues?

"Mr. SMITH of Iowa. It is important that we should have Congress, as well as the Executive, to state where the cut ought to be made. It is possible for Congress to do much in that direction; but the President, being the head of all the departments, can greatly aid in pointing out where these reductions can be made with the least injury to the public service." Cong. Rec.—House, Feb. 26, 1909, page 3310.

Unfortunately, the requirement that the President submit spending reduction alternatives is no longer in the law. The successor statute, 31 U.S.C. 13, drops the requirement that the President submit an alternative balanced budget. The Packwood-Conable proposal reinstates this requirement.

LIVING WITHIN OUR BUDGET

Another section of this bill helps to avoid increases in the deficit or spending during a fiscal year beyond that which was projected at the beginning of the fiscal year. It does this by requiring the President to submit spending reduction alternatives to Congress during any year that spending or the deficit increases beyond that projected in the Second Concurrent Resolution on the Budget. Similarly, the President would be required to submit a spending reduction plan in any year that the public debt limit is required to be increased to an amount greater than that provided in the Second Concurrent Resolution on the Budget, if attributable to reduced revenues or exceeding spending limits provided in the Second Concurrent Resolution.

This provision does not dictate spending reductions. This is because there may be situations where it is in the Nation's interest to increase spending or incur deficits during a fiscal year, such as in response to a recession However, the purpose of this provision is to assure that Congress has the information it needs to stick to the budget. Today, government budgetary officials are not required to provide them with information to make the choice.

The provision, if in effect today, could have a dramatic effect on spending during the current year, fiscal year 1979. This is because spending has grown by $2–3 billion since adoption of the Second Concurrent Resolution in September, 1978. The primary cause for the increase is the increase in interest rates and the resultant increased cost in borrowing funds to finance the deficit provided for the year. In other words, Congress is going to be faced with making a dramatic increase in this year's spending simply because the cost of paying for the deficit has increased. Congress may or may not adopt spending cuts to offset this increase; but it ought to be given the choice.

TRUTH IN TAXING

The third provision of the bill is designed to help break the cycle of unlegislated tax increases caused by inflation. Inflation causes "taxation by stealth," in the words of former O.M.B. Deputy Director Paul O'Neill. Inflation erodes the value of the personal exemption, the standard deduction, it pushes low, middle and upper income taxpayers into higher and higher tax brackets, and it makes a mockery of other fixed dollar limits provided in the Internal Revenue Code.

The enormous revenue gains attributable to inflation have permitted Congress to adopt so-called "tax cuts" almost annually. However, these tax cuts are frequently less than the unlegislated tax increase attributable to inflation.

This bill addresses this problem by requiring the President to include in his annual budget an estimate of the amount of tax increase which will occur because of inflation. The President would be required to indicate the amount of such tax increases, and to indicate its distribution by income group and family size. The estimate by the President would include revenue gain attributable to loss in value of fixed dollar limits in the Internal Revenue Code and any other factor which the Department of the Treasury can reasonably take into account.

The President would also be required to recommend whether or not these unlegislated tax increases should be permitted to go into effect. These recommendations would then be considered in connection with Congressional deliberations on the budget.

We must make controlling spending and taxing a priority. This bill is a means to that end. It will change the rules of the game to help achieve these goals.

Representative Conable and I welcome any suggestions for improving this bill.

S. 504

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 "Alternative Budget Act of 1979".

SEC. 2. (a) Section 21 of the Second Liberty Bond Act (31 U.S.C. 757b) is amended by inserting "(a)" after "Sec. 21". and by adding at the end thereof the following new subsection:

"(b)(1) Whenever the budget for a fiscal year transmitted by the President to the Congress under section 201 of the Budget and Accounting Act, 1921, (hereinafter referred to as the 'Budget'), which, if adopted, would result in an increase, either permanent or temporary, in the limit prescribed by subsection (a), or would result in a deficit, the President shall also transmit an alternate budget providing for a level of outlays which, if adopted, would not result in an increase in such limit or in a deficit. Such alternate budget shall be transmitted at the same time and manner, and shall be in the same form, as the Budget and, except as provided in paragraph (2), shall be in such detail as the President determines necessary to carry out the purposes of this subsection.

"(2) An alternate budget for a fiscal year transmitted under paragraph (1) shall include a clear and understandable explanation of the differences between the Budget and the alternate budget.

SEC. 3. After the House of Representatives and the Senate have agreed to the concurrent resolution on the budget for a fiscal year required under section 310 of the Congressional Budget Act of 1974 (31 U.S.C. 1331), if the President determines that—

(1) the statutory limit on the public debt will have to be increased during such fiscal year to an amount in excess of the amount set forth in such concurrent resolution, or

(2) the amount of deficit for such fiscal year will exceed the amount of deficit set forth as appropriate in such concurrent resolution, or

(3) the amount of total budget outlays for such fiscal year is expected to exceed the amount of total budget outlays set forth as appropriate in such concurrent resolution,

he shall submit to the Congress a plan for reducing outlays during such fiscal year by an amount equal to the greater of the excess determined under paragraph (1) or the excess determined under paragraph (2).

SEC. 4. (a) In the budget transmitted to the Congress under section 201 of the Budget and Accounting Act, 1921, for each fiscal year, the President shall set forth the increases in estimated receipts under the internal revenue laws for such fiscal year over such receipts for the fiscal year in progress which are attributable to—

(1) inflation, and

(2) tax increases first effective during the fiscal year which result from—

(a) provisions of existing law, or

(b) legislation proposed by the President.

The President shall indicate the total amount of such increases, and also classify them by income level and family size.

(b) The President shall also recommend any changes in the internal revenue laws which he considers advisable to offset such increases in receipts.

SEC. 5. This Act shall become effective beginning with the fiscal year beginning on October 1, 1980.

Mr. BAKER. Mr. President, I ask unanimous consent that the bill be held at the desk pending further disposition.

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

By Mr. TALMADGE (for himself and Mr. DOLE):

S. 505. A bill to provide for the reform of the administrative and reimbursement procedures currently employed under the medicare and medicaid programs, and for other purposes; to the Committee on Finance.

(The remarks of Mr. TALMADGE when he introduced the bill appear elsewhere in today's proceedings.)

By Mr. MATHIAS (for himself, Mr. BAYH, Mr. METZENBAUM, Mr. JAVITS, and Mr. HEINZ):

S. 506. A bill to amend title VIII of the act commonly called the Civil Rights Act of 1968 to revise the procedures for the enforcement of fair housing, and for other purposes; to the Committee on the Judiciary.

FAIR HOUSING AMENDMENTS ACT OF 1979

● Mr. MATHIAS. Mr. President, last year the National Committee Against Discrimination in Housing, conducted a housing survey of the practices of 3,000 brokers and rental agents in 40 metropolitan areas. The survey, conducted under contract with HUD, found that discrimination in the sale and rental of housing continues to exist 10 years after the passage of the Civil Rights Act of 1968.

I will cite here just one example of discrimination recounted by the NCDH testers. I have omitted the name of the city in which the incident occurred:

In one real estate office in (name of town omitted) the black auditor got no reponse from the agent. The secretary was told to tell the auditor that the company handled only commercial and industrial real estate. However, the white auditor was asked to be seated, offered a business card and asked questions about the kind of home she wished to purchase. The agent offered to obtain financing for her, and even picked her up the next day so they could look at homes together. She was shown three homes, all in her price range and with good financing available. One white auditor reported that the agent "said I must have been from out of town to be requesting 'East Side' housing" . . . said it was "against the law for her to make references to 'mixed neighborhoods' but thought I'd better know first—she didn't want me to be walking in 'cold' and then coming down on her because she was showing me 'mixed areas.'" The auditor was shown homes in "non-mixed" areas.

The NCDH survey documented that based on race equal treatment was not accorded persons seeking housing. Subsequent analysis by HUD showed that equal treatment was extended to blacks as well as whites in only 30 percent of the rental market and only 10 percent of the sales markets surveyed by the National Committee Against Discrimination in Housing.

Under title VIII of the Civil Rights Act of 1968, the Department of Housing and Urban Development has very weak powers to enforce the fair housing law of the land. Essentially HUD's powers are confined to documenting instances of discrimination and attempting to bring the two parties together for conciliation. HUD lacks a "big stick" of enforcement powers which could serve as an incentive to the disputing parties to reach a mutually acceptable settlement.

The Government Accounting Office in a report in February of 1978, made the following findings about HUD's fair housing efforts:

The Department's efforts to resolve discrimination complaints in the private sector have also been ineffective. GAO reviewed 332 complaints received by three regional offices between January 1, 1973, and April 30, 1976, and found that the Department was unable to resolve 247 for lack of clear evidence of discrimination. In 57 cases the Department was able to determine that discrimination occurred; 36 cases were resolved. Twenty-one of the 36 received housing and/or monetary compensation.

Since that time, HUD has made a significant reduction in its housing discrimination caseload and has expedited the disposition of pending cases.

However, the Secretary of HUD was quite candid in her testimony on this subject last year. I quote Secretary Harris:

The lack of adequate enforcement power has been the most serious obstacle to the developmtnt of an effective fair housing program within HUD. Our present authority is limited to a purely voluntary process of "conference, conciliation, and persuasion." I will not dwell upon the ironies associated with a law that mandates HUD to investigate and to establish the existence of violations of law, and then limits the Secretary to asking the discovered lawbreaker whether he wants to discuss the matter. Simply put, "conciliation" all too often has proved inadequate means of securing compliance with the substantive provisions of Title VIII.

Based on this evidence, I am again introducing, on behalf of Senators BAYH METZENBAUM, JAVITS, and HEINZ, a bill strengthening HUD's enforcement powers under Title VIII of the Civil Rights Act of 1968. An identical bill is being introduced today in the House by Representatives DON EDWARDS and ROBERT F. DRINAN. And I am pleased to report that this legislation has the support of the administration. I ask unanimous consent that the text of a letter to me from Mr. Stuart Eizenstat, Assistant to the President for Domestic Affairs and Policy, be printed at this point in the RECORD.

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

THE WHITE HOUSE,
Washington, February 22, 1979.

Hon. CHARLES MATHIAS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MATHIAS: Thank you for your recent letter to the President in which you indicated your intention to introduce legislation to improve the enforcement of national fair housing policy.

The President shares your concern and has pledged to work with you to correct the inadequacy of the current law. In the written State of the Union Message transmitted to the Congress on January 25 the President stated the following:

"* * * we need to correct a weakness in an existing civil rights law. Title VIII of the Civil Rights Act of 1968, which prohibits discrimination in housing, remains largely an empty promise because of the lack of an adequate enforcement mechanism.

"I will soon propose to the Congress that this problem be alleviated by providing the Department of Housing and Urban Development with cease and desist powers. That Department, which now investigates and makes findings upon individual complaints, would then be able to enjoin further discriminatory acts and to direct an appropriate remedy. My Administration will work with the Congress to see that this proposal is given prompt and favorable consideration."

We look forward to working closely with you to see that the proposed legislation becomes law.

Sincerely,

STUART E. EIZENSTAT,
Assistant to the President for Domestic Affairs and Policy.

Mr. MATHIAS. Mr. President, title VIII specifically prohibits discrimination in the sale or rental of housing because of race, color, religion, national origin, or sex. This legislation authorizes HUD to enter Federal suits for relief on behalf of individual complainants; provides HUD with cease and desist authority; establishes within HUD an administrative hearing process; and provides for the court award of civil penalties.

At present, HUD has no power to issue cease and desist orders, which can serve to maintain the status quo of a housing unit in question while HUD attempts to resolve the complaint through conciliation. The bill provides HUD with such powers.

It spells out the alternative routes which a person alleging a discriminatory housing practice can pursue at the Federal level. It gives the complainant the option of taking his/her complaint to district court or of filling a formal complaint with HUD where an administrative hearing would be held. This bill further insures that HUD refers those cases to State and local agencies which HUD has determined have "substantially equivalent" rights, remedies, and procedures to those of title VIII. At present, 8 such States are designated by HUD.

Once a complainant has come to HUD, this legislation provides that HUD may, with reasonable cause, issue cease-and-desist orders; subpena documents and witnesses; issue interrogatories; make findings of fact and conclusions of law; order relief; and impose a civil penalty.

The complainant is also given the option of commencing a civil action up to 3 years after the alleged discriminatory housing practice. In such cases, the court can appoint an attorney for the plaintiff, and award monetary relief, declaratory relief, and/or punitive damages. The prevailing party in cases before HUD or the courts may also be awarded reasonable attorneys' fees.

Over 80 percent of the Nation's housing is covered by title VIII. The remainder is covered by the Civil Rights Act of 1866 with respect to racial discrimination. Our bill clarifies the definition of those who are covered by title VIII to include the physically or mentally impaired.

I would point out that the sponsors of this bill do not intend that any person selling or renting housing must modify that housing to accommodate such mentally or physically impaired persons. Rather, we wish to make clear that housing so designed for such handicapped persons must be made available on a nondiscriminatory basis. Clearly, the intent is not to retrofit the entire Nation's housing stock to accommodate handicapped persons. We encourage the new construction or modification of

existing housing to meet those needs and will continue to work for incentives to bring such housing into being.

Lastly, this bill continues to exempt single, shared units from title VIII coverage, insuring that persons in individual apartments and houses have the right to choose those with whom they share common facilities.

Within HUD, the responsibility for implementing title VIII is delegated to the HUD regional offices. Each regional office has an Assistant Regional Administrator for Fair Housing and Equal Opportunity who have staffs for compliance, field support, and evaluation. A little over half of this staff's time is spent on enforcement of title VIII and practically all that effort relates to processing of complaints.

The Department of Housing and Urban Development reports continuing progress in reducing its fair housing complaint backlog. During fiscal year 1978, HUD processed 3,910 title VIII complaints, substantially reduced its processing time, and virtually eliminated its case backlog. Of those 3,910 complaints, the Department successfully conciliated 341 cases or 8 percent of the cases referred to it. This data indicates the weakness of the conciliation powers with which HUD is now vested. If it had a bigger stick; namely, powers to go to court on behalf of individual complainants, I think those conciliation cases would move along a good deal more quickly and many more would be resolved.

I think my colleagues would agree that the time has come for HUD to have the authority to take positive action in the field of fair housing and equal opportunity.

I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 506

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Fair Housing Amendments Act of 1979".

SHORT TITLE FOR 1968 ACT

SEC. 2. The Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting immediately after the comma at the end of the enacting clause the following: "That this Act may be cited as the Civil Rights Act of 1968.".

SHORT TITLE FOR TITLE VIII

SEC. 3. Title VIII of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting immediately after the title's catchline the following new section:

"SHORT TITLE

"SEC. 800. This title may be referred to as the 'Fair Housing Act'.".

AMENDMENTS TO DEFINITIONS SECTION

SEC. 4. (a) Section 802(f) of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by striking out "section 804, 805, or 806" and inserting "this title" in lieu thereof.

(b) Section 802 of such Act is amended by adding at the end the following:

"(h) 'Handicap' means, with respect to a person, (1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment.

"(i) 'Aggrieved person' includes any person who is adversely affected by a discriminatory housing practice that has occurred, is occurring, or is about to occur.".

MODIFICATION OF OWNER-OCCUPIED EXEMPTION

SEC. 5. Section 803 of the Act entitled "An Act to prescribe penalties for cetrain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended—

(1) by inserting "and before the date of the enactment of the Fair Housing Amendments Act of 1979," immediately after "1968," in subsection (a)(2);

(2) by striking out "Nothing in section 804 (other than subsection (c))" in subsection (b) and inserting in lieu thereof the following: "Before the date of the enactment of the Fair Housing Amendments Act of 1979, nothing in section 804 (other than subsections (c) and (e))"; and

(3) by adding at the end the following:

"(d) After the date of the enactment of the Fair Housing Amendments Act of 1979, subject to the provisions of section 807, the prohibitions set forth in section 804 of this title shall apply to all dwellings, except that the prohibitions set forth in section 804(a), (b), and (d) shall not apply with respect to the renting of space within a single family dwelling unit by the occupant of such unit to any other person or persons.".

DISCRIMINATORY HOUSING PRACTICE AMENDMENTS

SEC. 6. (a) The catchline of section 804 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by adding at the end the following: "AND OTHER PROHIBITED PRACTICES".

(b) Section 804 of such Act is amended by inserting ", 803(d)," immediately after "803(b)".

(c) Section 804 of such Act is amended by adding at the end the following:

"(f) For a person in the business of insuring against hazards to refuse to enter into, or discriminate in the terms, conditions, or privileges of, a contract of insurance against hazards to a dwelling because of the race, color, religion, sex, handicap, or national origin of persons owning, or residing in or near, the dwelling.".

(d) Sections 804, 805, and 806 of such Act are each amended by inserting "handicap," immediately after "sex," each place it appears.

(e) Section 805 of such Act is amended by—

(1) inserting "(a)" immediately after "SEC. 805.";

(2) inserting "of persons residing in the vicinity of such dwelling, or" immediately after "or national origin"; and

(3) by adding at the end the following:

"(b) After the date of the enactment of the Fair Housing Amendments Act of 1979, it shall be unlawful for any person or other entity to refuse to buy a debt, or negotiable evidence of a debt, secured by real property because of the race, color, religion, sex, handicap, or national origin of persons residing in or in the vicinity of such real property.".

FUNCTIONS OF SECRETARY

SEC. 7. (a) Section 808(d) of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting "(including any Federal agency having regulatory authority over financial institutions)" after "urban development".

(b) Section 808(e)(3) of such Act is amended by inserting "financial and" immediately before "technical".

ENFORCEMENT CHANGES

SEC. 8. The Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by striking out sections 810 through 814 and inserting in lieu of the matter so stricken the following:

"ENFORCEMENT BY SECRETARY; PRELIMINARY MATTERS

"SEC. 810. (a)(1) Whenever an aggrieved person, or the Secretary on the Secretary's own initiative, files a charge alleging a discriminatory housing practice, the Secretary shall serve a notice of the alleged discriminatory housing practice on the party charged (hereinafter in this title referred to as the 'respondent') within 10 days after such filing, and shall make an investigation thereof. Such charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Secretary requires. An aggrieved person shall file a charge under this section with the Secretary not later than one year after the alleged discriminatory housing practice occurred or terminated. The Secretary may also investigate housing practices to determine whether charges should be brought under this section or new rules should be made under this title.

"(2)(A) In connection with any investigation of such charge or of a housing practice, the Secretary shall, at reasonable times, have access to, and the right to copy, any information that relates to such charge or housing practice. The Secretary may issue subpenas to compel such access to or the production of such information, or the appearance of persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Secretary may administer oaths.

"(B) Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpenas issued by the Secretary under clause (A) of this paragraph.

"(C) Witnesses summoned by subpena of the Secretary under this title shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees to a witness summoned by a subpena requested by the respondent shall be paid by the respondent.

"(D) The Secretary or other party at whose request a subpena is issued under this title may enforce such subpena in appropriate proceedings in the United States district court for the district in which the person to whom the subpena was addressed resides, was served, or transacts business.

"(E) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in such person's power to do so, in obedience to the subpena or lawful order of the Secretary under this title, shall be fined not more than $1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Secretary shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to the Secretary's subpena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary

evidence, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(3) Whenever a charge alleges a discriminatory housing practice within the jurisdiction of a State or local public agency certified by the Secretary under this paragraph, the Secretary may, before taking any action with respect to such charge and with the consent of the aggrieved person, refer such charge to that certified agency. Except with the consent of such certified agency, the Secretary shall, after that referral is made, take no further action with respect to such charge. No agency may be certified under this paragraph unless the Secretary determines that the substantive rights protected by that agency, the procedures followed by that agency, and the remedies available to such agency, are substantially equivalent to those created by and under this title. Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.

"(4) The Secretary and other Federal agencies having authority to prevent housing discrimination shall cooperate and seek to avoid duplication of effort in the exercise of their several authority. The Secretary and such other Federal agencies shall notify each other of any allegation of housing discrimination which may be within their respective responsibilities. The Secretary or such other Federal agency shall, upon such notification, take additional appropriate action.

"(b) If the Secretary determines any time after the filing of a charge that prompt action is necessary to carry out the purposes of this title, the Secretary, after notice and opportunity to be heard has been given the respondent, may order temporary or preliminary relief pending the final disposition of such charge. The Secretary may enforce such an order in appropriate proceedings in the United States district court for the district in which the party to whom such order was made resides, was served, or transacts business.

"(c) If the Secretary determines, after an investigation under this section, that reasonable cause exists to believe the charge is true, the Secretary shall file an administrative complaint under section 811(a) of this title or refer the matter to the Attorney General for the filing of an appropriate civil action under section 813(b) of this title.

"ENFORCEMENT BY SECRETARY; HEARING PROCESS

"SEC. 811. (a) Upon filing an administrative complaint, the Secretary shall cause a copy of such complaint to be served on the respondent, together with a notice of opportunity for a hearing on the record at a place and time (not less than 30 days after the service of such complaint) specified in such notice. Any resolution of a charge or complaint by means of conciliation shall require the consent of the person who filed the charge, and any such resolution following the service of a complaint under this subsection shall also require the approval of the Secretary. The respondent shall have the right to file an answer to the administrative complaint and to appear in person or otherwise and give testimony at a hearing on the record. Any aggrieved person shall be allowed to intervene in the proceeding, to appear in person or otherwise, to obtain the issuance of a reasonable number of subpenas in the manner set forth in section 810 of this title, and to present testimony. After the conclusion of such hearing, the person conducting the hearing shall make findings of fact and conclusions of law, and may issue an order providing such relief as may be appropriate, and may impose a civil penalty of not to exceed $10,000. Any order issued under this subsection is subject to review and modification by the Secretary.

"(b) The findings of fact and conclusions of law made with respect to a final order issued under subsection (a), together with a copy of such order, shall be served on each aggrieved person and each respondent in the proceeding.

"(c) Any petition for judicial review of a final order under subsection (a) shall be filed in the appropriate court of appeals not later than 60 days after the entry of such final order by the Secretary. Such judicial review of a final order shall be in the manner provided under chapter 158 of title 28 of the United States Code. For the purposes of judicial review of such an order, any aggrieved person shall be deemed a party in the administrative proceedings reviewed. The findings of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole. No objection not urged before the Secretary (or other person holding the hearing) shall be considered by the court unless the failure or neglect to urge such objection should be excused because of extraordinary circumstances.

"(d) 1) Any person who violates a final order of the Secretary under subsection (a) shall be subject to a civil penalty assessed by the Secretary of not more than $1,000 for each day during which such violation continues after the date on which such final order becomes unreviewable.

"(2) For the purposes of paragraph (1) of this subsection, a final order becomes unreviewable—

"(A) if a petition for review has not been filed in the appropriate reviewing court, on the day 60 days after the entry of such final order, or

"(B) if such a petition is so filed within such 60-day limit, on the date on which the last appellate court's decision becomes final and not subject to any further appellate proceeding.

"PRIVATE ENFORCEMENT

"SEC. 812. (a)(1) An aggrieved person may commence a civil action in an appropriate United States district court or State court at any time not later than three years after the alleged discriminatory housing practice occurred or terminated.

"(2) After an aggrieved person has commenced a civil action under this section, the Secretary may not commence or continue proceedings toward the issuance by the Secretary of a remedial order based on such charge.

"(3) An aggrieved individual shall not commence a civil action under this subsection with respect to a charge made by that individual to the Secretary if the Secretary (or a State or local agency to which the Secretary refers such charge) has commenced the hearing on the record with respect to that charge.

"(4) upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance.

"(b) Upon application by an aggrieved person, any trial or appellate court may, in such circumstances as it deems just, appoint an attorney for such person and may authorize the commencement or continuation of the action without the payment of fees, costs, or security.

"(c) If the court finds in a civil action under this section that an alleged discriminatory housing practice has occurred, is occurring, or is about to occur, the court shall award such relief as may be appropriate, which may include money damages, equitable and declaratory relief, and, in the case of a willful violation, punitive damages.

"ENFORCEMENT ROLE OF ATTORNEY GENERAL

"SEC. 813. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may bring a civil action in an appropriate United States district court.

"(b) The Attorney General may bring a civil action in an appropriate United States district court (1) to enforce any final order under section 811(a) of this title that is referred for enforcement by the Secretary; (2) to collect any civil penalty assessed by the Secretary under section 811 of this title; and (3) to remedy any discriminatory housing practice (A) with respect to which the Secretary has made a finding that reasonable cause exists under this title and (B) which the Secretary refers to the Attorney General for enforcement under this subsection.

"(c) The court may award such relief in any civil action under this section as is authorized in section 812(c) of this title in cases brought under that section.

"(d) A person may intervene in any civil action commenced under this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person.

"ATTORNEY FEES AND OTHER COSTS AND EXPEDITION OF PROCEEDINGS

"SEC. 814. (a) In any action or proceeding under this title, the court, in its discretion, may allow a prevailing party (other than the United States with respect to attorney fees) reasonable attorney fees as part of the costs, and the United States shall be liable for such costs the same as a private person. Such costs may also be awarded upon the entry of any interlocutory order which determines substantial rights of the parties.

"(b) In any administrative proceeding based on a charge under section 810(a) of this title, the Secretary may award to any prevailing party (other than tne United States with respect to attorney fees) reasonable attorney fees as a part of a final order under section 811(b) of this title.

"(c) Any court in which a proceeding is instituted under this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.".

INTERFERENCE, COERCION, OR INTIMIDATION

SEC. 9. Section 817 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90–284, approved April 11, 1968) is amended by striking out "section 803, 804, 805, or 806." and inserting "this title." in lieu thereof.

CONFORMING AMENDMENT TO TITLE IX OF 1968 CIVIL RIGHTS ACT

SEC. 10. Section 901 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90–284, approved April 11, 1968) is amended by inserting", handicap (as defined in section 802 of this Act)," immediately after "sex" each place it appears.

CONFORMING AMENDMENTS TO TITLE 28 OF UNITED STATES CODE

SEC. 11. (a) Section 2341(3)(B) of title 28 of the United States Code is amended by inserting "or the Secretary of Housing and Urban Development, as the case may be" immediately after "the Secretary of Agriculture".

(b) Section 2342 of such title 28 is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting "; and" in lieu thereof; and

(3) by adding immediately after paragraph (6) but before the final sentence, the following:

"(7) all final orders of the Secretary of Housing and Urban Development under the Fair Housing Act.".●

Mr. BAYH. Mr. President, more than 10 years ago, the Senate passed a bill which became Public Law 90-284, the Civil Rights Act of 1968. Title VIII of that act was designed to insure that all Americans had an opportunity to get good and decent housing. This fair housing law was supposed to end forever the practice of racial or ethnic discrimination in housing. The promise of that law has never been kept. The fact that we are here once again to introduce a bill to amend title VIII, is further evidence that this law and others related to it have failed to achieve their goals of open decent housing for all Americans.

The President recently pointed out in his state of the Union message the need for legislation to amend title VIII, and his domestic policy staff has recently confirmed the President's commitment of support for the legislation Senator MATHIAS and I are introducing today. The President said in his message that—

. . . we need to correct a weakness in an existing civil rights law. Title VIII of the Civil Rights Act of 1968, which prohibits discrimination in housing, remains largely an empty promise because of the lack of an adequate enforcement mechanism.

I will soon propose to the Congress that this problem be alleviated by providing the Department of Housing and Urban Development with cease and desist powers. That Department, which now investigates and makes findings upon individual complaints, would then be able to enjoin further discriminatory acts and to direct an appropriate remedy. My administration will work with the Congress to see that this proposal is given prompt and favorable consideration.

Why is it that the President, the Secretary of Housing and Urban Development and the Attorney General have joined with the Senator from Maryland and myself to call for a revision of a law that plainly outlawed discriminatory housing practices 11 years ago? It is because the law was stripped of any real enforcement power back in 1968. As the law now stands, a person who is subject to housing discrimination bears the burden of litigation to end the discriminatory acts the law prohibits, except in cases where the Attorney General finds a pattern or practice of housing discrimination. The Government's duty is merely to identify and forbid any practice, including those in mortgage financing, that would tend to discriminate against persons, because of race, color, religion, sex, or national origin. The law only requires the Secretary to study and report on this type of discrimination and its effects. Even if a violation is found, the Secretary can only seek to conciliate the opposing parties. If this conciliation fails, the Government withdraws its protective and, heretofore, helpful arm and leaves the plaintiff to act on his own. Not only does he lose the help of the Government sworn by law to protect him, but he finds in most cases he must pay to have his rights upheld, for the law requires a plaintiff to be both discriminated against and destitute before attorneys' fees will be awarded. In short, the law provides neither for the Attorney General to vindicate the rights of plaintiffs in housing discrimination cases, nor for plaintiffs to act as "private Attorneys General" as is the case under all other civil rights laws. As the law now stands, it is little wonder housing discrimination like that just described by the Senator from Maryland, still exists and continues to threaten to undo all the gains made for racial justice in the 25 years since Brown.

While housing discrimination is a far more subtle force than discrimination in voting or in public accommodations, it is an underlying factor in most continuing segregation. It is housing discrimination that has tied black Americans to the ghetto. It is housing discrimination that has robbed communities of its leaders and the monetary strength needed to help themselves. It is housing discrimination that has kept the handicapped from living their own lives and realizing their full potential. It is housing discrimination that has turned the neighborhood school effectively into a method of continuing segregated education. In short, it is housing discrimination that continues to keep the American people, black, white, hispanics, ethnics, women, and the handicapped, apart and unequal.

The bill we are introducing today would provide remedies to end this inequality. The Mathias-Bayh bill would make the following changes in title VIII:

First. It would provide HUD with "cease-and-desist" power and (in the alternative) standing to go to court through the Attorney General to enforce the fair housing laws;

Second. It would also give Justice the power to intervene in individual court actions (brought by individual aggrieved persons);

Third. It would retain justice's present authority to bring "pattern and practice" suits;

Fourth. It would provide an aggrieved person with two enforcement routes—one, administrative, through HUD, and the other judicial, through the Federal courts (with rights of appeal in both cases);

Fifth. It would allow attorneys' fees for prevailing parties under both enforcement mechanisms; and

Sixth. It would expand the law's reach by adding handicap as a protected class and by removing most of the so-called "Mrs. Murphy" exemptions from the law.

Therefore, I am pleased to join with the Senator from Maryland (Mr. MATHIAS), the Senator from New York (Mr. JAVITS), the Senator from Pennsylvania (Mr. HEINZ), and the Senator from Ohio (Mr. METZENBAUM) in renewing our effort to end this invidious discrimination by sponsoring S. 506. I believe that this is a first step on a long legislative road in the Senate and the Congress that will need to be traveled to end housing discrimination once and for all.

Mr. President, I would like at this time to announce that the Subcommittee on the Constitution of the Committee on the Judiciary will hold hearings on S. 506 on March 21, 22, and 27, 1979.

Mr. President, I ask unanimous consent that a section-by-section analysis of S. 506 be inserted in the RECORD at this point.

Mr. President, I also ask unanimous consent that a letter from the Assistant Attorney General, in support of S. 506 be printed in the RECORD at this point.

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

SECTION-BY-SECTION ANALYSIS OF THE FAIR HOUSING AMENDMENTS ACT OF 1979

Section 1. Provides that the short title of this Act will be the Fair Housing Amendments Act of 1977.

Section 2. Provides in the law that the short title of the 1968 Act (which is being amended) will be the Civil Rights Act of 1968. This simply establishes in the law itself the short title which is usually used when referring to the 1968 Act.

Section 3. Provides that the short title of Title VIII of the 1968 Act shall be the Fair Housing Act. Again, this simply establishes in the law a title normally used when referring to Title VIII.

Section 4(a). Broadens the definition of "discriminatory housing practice" to include any violation under the Act and not merely those made illegal under Section 804, 805, or 806.

Section 4(b). Provides a definition of handicap (identical to that used in other federal laws, including the Rehabilitation Act of 1973); defines "aggrieved person," thereby clarifying issues of standing in fair housing cases.

Section 5. Narrows the owner-occupied exemption in present law which allows discrimination generally in the sale or rental, by owners of single family dwellings and in the rental of units in owner-occupied dwellings with four or less independent units. The new exemption, to apply prospectively, would apply only to a single-family by an occupant of the dwelling in which space is being rented.

Section 6. Subsection 6(a). Amends the catchline of section 804 of the Act by indicating that other practices, in addition to discrimination in the sale or rental of housing, will be made unlawful in section 804, as amended.

Subsection 6(b). Amends section 804 of the Act by providing that the new and narrower owner-occupied exemption, discussed above, exempts certain housing from the section 804 prohibitions dealing with the sale or rental of housing.

Subsection 6(c). Amends section 804 of the Act by making it unlawful for insurance companies and their agents to refuse to write home insurance because of the race, color, religion, sex, handicap or national origin of the owners, residents or neighbors of the home.

Subsection 6(d). Amends sections 804 by adding "handicap" as another prohibited ground for discriminating in housing activities covered in section 805. Thus, discrimination in the sale, rental, financing, insuring, location, etc., of housing because of handicapped status, will be prohibited. However, it is not intended that this bill require retrofitting to remove architectural barriers, although reasonable accommodations (at the expense of the buyer of lessee) would have to be permitted.

Subsection 6(e). Amends section 805 of the Act by explicitly prohibiting the practice of mortgage redlining by the primary and secondary mortgage market. Although there is precedent indicating that redlining is already prohibited under Title VIII, this amendment is proposed solely for purposes of clarification.

Section 7(a); This provision clarifies the inclusion of the federal financial regulatory as an executive agency of responsibility to administer their programs in a manner affirmatively to further the purposes of the Federal Fair Housing Act. The Federal Home Loan Bank Board, the Comptroller General, and the Federal Deposit Insurance Corpora-

tion agree with this interpretation of existing law, but clarification is needed.

Section 7(b). Amends section 808(e) (3) of the Act by giving HUD the authority to provide financial as well as technical assistance to public and private civil rights organizations seeking to remedy housing discrimination.

Section 8. Revises the enforcement mechanisms in the Act. Under present law HUD has only the authority to investigate and conciliate violations. This section would give HUD the authority to issue cease and desist orders through administrative proceedings.

The new section 810 and 811 added by this section of the bill, provides for the filing of housing discrimination charges with HUD by the Secretary and by aggrieved persons. HUD is authorized to investigate such charges and when reasonable cause exists to believe that the charges is true, the HUD Secretary must either refer the charge to Justice for suit, refer the charge to a certified state or local agency, or file an administrative complaint (based on the charge) on which there shall be notice and opportunity for a hearing.

A final order of the HUD Secretary is appealable in an appropriate court of appeals and, in such an appeal, the findings of the Secretary shall be conclusive if supported by substantial evidence.

The Secretary is authorized to assess civil penalties against persons who violate final orders of the Secretary once those orders become unreviewable.

The new section 812, added by this section of the bill, outlines private judicial enforcement rights. An aggrieved person may file a civil action to remedy a discriminatory housing practice. The statute of limitations is lengthened. However, such a suit may not be filed if the aggrieved person has filed the charge with HUD, and a hearing on the record has commenced by HUD or the state or local agency (to which HUD has referred the charge).

The court, in cases brought by aggrieved persons, may appoint an attorney and authorize the commencement of actions without fees. The Attorney General may intervene in such cases, where the case involves issues of general public importance.

The new section 813, added by this section of the bill, outlines the enforcement role of the Attorney General. The Attorney General is authorized to file on the Attorney General's own initiative, civil actions intended to remedy pattern or practice violations or to remedy violations against groups of persons when the isues involved are of general public importance.

The Attorney General may bring civil actions necessary to enforce the Secretary's final orders, to collect any civil penalties assessed by the Secretary, and to remedy discriminatory housing practices when the Secretary has found reasonable cause and referred the matter to the Department of Justice.

The new section 814, added by this section of the bill, provides that attorney fees may be awarded to prevailing parties in both judicial and administrative proceedings.

Section 9. Amends section 817 of the Act by broadening that section to provide a civil remedy for interferences with or intimidations relating to the exercise of rights granted by the title. Present law technically provides such remedies only for violations of sections 803, 804, 805, and 806 of the Act.

Section 9 of the bill redesignates the present sections 803, 804, 805, and 806 of the Act as "this title."

Section 10. Conforms Title IX of the 1968 Act (criminal penalties for intimidations) to add "handicap" as a basis for a criminal violation.

Section 11. Amends Title 28 of the United States Code to provide for judicial review of HUD Secretary orders in the court of appeals.

WASHINGTON, D.C.,
March 1, 1979.

HON. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: The Department of Justice was pleased to receive your letter of February 15, 1979, advising that you planned to introduce a revised version of H.R. 3504 from the last Congress. The draft which you enclosed with your letter, we understand, represents a great deal of staff work in redrafting and, of course, it benefits from the hearings on fair housing which were held in both Houses of Congress last year.

We are pleased to note the current proposal contains improvements over the bill introduced last year. The proposed administrative procedures do not carry the same risk of unconstitutionality as did the procedures in the previous bill, and the removal of the questionable "economic" discrimination provision makes the proposed draft bill a much more desirable measure. The bill still contains the broadened remedies which we supported last year.

Most significantly, the proposed draft provides important improvements in enforcement powers under Title VIII which the President noted in his written State of the Union Message are essential for fulfilling our fair housing objectives.

One particular problem I would like to bring to your attention at this point is the lack of clarity in the bill in the scope of the proposed protection for handicapped persons. We noted in testimony last year that the problems of handicapped persons are generically different from those of racial minorities and, therefore, adding "handicap" in a series with race and color would make interpretation and litigation unduly complex. Perhaps putting handicap protections in a separate section specifically addressed to identified kinds of discrimination would be a useful effort. We will be prepared to provide more detailed comments and suggestions about other concerns when we present our testimony on this bill.

Undoubtedly, there will be modifications of the bills as they proceed through the Congress, and we may wish to take a position on various issues as they arise. In this regard, we hope we can be of assistance in refinement of the bills as the respective committees begin their work on them. Except as noted, I can advise you that the Department of Justice strongly supports the enhanced enforcement powers to achieve fair housing represented by your draft bill.

PATRICIA M. WALD,
Assistant Attorney General,
Office of Legislative Affairs.

Mr. HEINZ. Mr. President, I am pleased to join my colleagues, Senator MATHIAS and Senator BAYH, in introducing the Fair Housing Act Amendments of 1979.

The promise of decent shelter has been an enduring dream for all Americans, but the reality for too many citizens has been otherwise. Despite the commitment of this Nation under the Housing Act of 1949 to provide every American family a decent home and suitable living environment as soon as feasible, many of our fellow citizens, particularly those who are female heads of family, handicapped, or minority, have encountered hatred rather than a decent shelter.

Since the Civil Rights Act of 1966, the Congress has demonstrated its intent to guarantee equal rights in housing. Unfortunately, the demonstrations of purpose have been more impressive than the results. In 1962, President Kennedy issued Executive Order 11063, directed at newly constructed housing financed with FHA or VA insured or guaranteed loans. This order applied to less than 1 percent of the housing market. Title VI of the Civil Rights Act of 1964 added a prohibition against discrimination in low-rent public housing and urban renewal programs. Finally, in the year of Dr. Martin Luther King's tragic death—the same year as the issuance of the Kerner Commission report—the Fair Housing Act, title VIII of the 1968 Civil Rights Act, was signed into law. This act covered dwellings operated by the Federal Government, those under State and local agencies receiving Federal assistance, as well as dwellings purchased or leased through conventional financing. Under this law, an extensive range of discriminatory housing activities was expressly forbidden.

Specifically, the Fair Housing Act prohibited:

A refusal to sell, rent, negotiate for sale or rental, or otherwise make a dwelling unavailable to any person after a bona fide offer has been made;

Discrimination in the terms, conditions, or privileges of sale or rental, or in the provision of services or facilities in connection with sales and rentals;

Representation of a dwelling as unavailable for inspection, sale, or rental, when in fact it is available;

Interference, coercion, or intimidation of any person exercising rights granted by this act;

Blockbusting;

Steering;

Denying persons access to multiple listing services; and

Discrimination in the financing of housing.

The Fair Housing Act was an impressive, concerned, and serious response to the Kerner Commission report which forecast two Americas: One white and one black. After devastating riots whose emotional impact was far greater than the physical damage, the act appeared a determined and sympathetic effort to heal and restore the Union in the tradition of Abraham Lincoln.

The response was auspicious. The most important section granted enforcement authority to the Attorney General on pattern and practice cases. The remedies available to the Justice Department included injunctive relief and restraining orders. In my estimation, this section of the legislation has been the single most effective action taken by the Congress against discrimination in housing since the Civil Rights Act of 1966.

Unfortunately, this long-awaited and much-heralded fair housing law, for all its strength, has been singularly ineffective in assisting the individual victims of discrimination in our country. For the individual who is handicapped, for the mother with four children to raise, for the black American, for the Indian, housing discrimination is but another barbed-wire fence preventing access to what are minimal human rights. The powerlessness of the Department of Housing and Urban Development to provide meaningful assistance in these cases is distressing. It is in behalf of these persons and their lives that I

join in seeking a more equitable answer, a more human approach.

For an aggrieved individual, there are few avenues for redress. Despite Congress clear intent to prohibit the insidious indignity of discrimination with regard to access to shelter, it is widespread and prevalent. While the law provides a substantive remedy in cases of pattern and practice fair housing violations, it provides no such enforcement powers for individual cases.

Under existing law, the Department of Housing and Urban Development maintains a hotline for housing discrimination complaints. Once a complaint is received, HUD may undertake an investigation. Should the investigation demonstrate that the individual problem brought to its attention is part of a larger pattern or practice, it may refer the matter to the Justice Department. If the investigation discloses that it is an individual incident, HUD may either seek to resolve the matter through conciliation or through referring the case to a State or local fair housing agency.

The situation from the other perspective, that of the victim, is grim, indeed. Of the complaints received, many cannot be investigated. For those which are investigated, and where valid grounds are disclosed, HUD may request a conciliation conference. But the alleged violator is under no obligation to attend. If the violator does attend, there is no obligation or incentive to accept conciliation. Of 3,391 complaints received in 1977 by HUD, only 298 were successfully resolved.

Given the impotence of existing legislation to respond to this issue through the Government, an individual does have one other route to pursue a remedy—private litigation. If seeking enforcement of the Federal law through the Government is discouraging, however, this method is even more so. The victim bears the burden of proof not only of demonstrating a violation of title VIII, but also that he or she is destitute. Otherwise, the victim bears all costs and attorney's fees. Because it is all that any person can do to meet rising housing costs—and this is especially true for those who are most likely to be the victims of housing discrimination—the litigation route is prohibitive. Moreover, even for those willing to shoulder this burden, there is neither substantive success nor is there a substantive deterrent to the violator. The outcome of litigation is likely to come long after a home has been sold or rented to another, and the maximum punitive damages of $1,000 are nearly meaningless to a major builder or apartment owner.

Evidence of inadequacies of the enforcement powers of existing legislation is overwhelming. Because there is so little recourse under existing law, there is not any means to determine the magnitude of this problem. Suffice it to say that the U.S. Civil Rights Commission, the General Accounting Office, the American Bar Association, and numerous other groups have indicated that the implementation of title VIII has had little impact on our Nation's housing discrimination problems, examples of which I ask unanimous consent to have printed in the RECORD.

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

EXAMPLES OF DISCRIMINATION CITED BY TESTERS

In Oklahoma City, the black auditor was very impressed with the kindness and courtesy of the agent. "She seemed unbothered about showing me houses where no blacks apparently live," the auditor reported. However, the auditor didn't realize that although the down payment mentioned to her for a particular house was 20% of the purchase price, the white auditor was told it was 10%. In the same city, a black auditor was greeted by a secretary in a real estate office. As the secretary was showing the auditor the listing book, the agent arrived. He apparently panicked. He did show the black auditor one house, but said the other house wouldn't be ready for inspection for an hour. He arranged to meet the auditor at the real estate office; however, when she arrived, she was told he'd gone on to the house. She drove to the house but there was no agent, and a "sold" sign appeared in the front yard. And the agent had never asked her name or given his.

And another black auditor in Oklahoma City twice found doors locked at a small realty company. Not unusual—but in her words, "I waited 10 minutes, I believe. Before I could get out of the driveway the shades went up."

In Nassau County, New York, the black auditor reported she was told "no agent was available, two other people at desks were not sales-persons, one at funeral, another sick, and he couldn't leave the office." He didn't ask her to sit down, and suggested she look in another neighborhood which is 60% black.

In Westbury, New York, the agent got a computer printout of the multiple listings for the white auditor, but not for the black one. He took the black auditor to see a house, which he then claimed he couldn't find. The white auditor reported that the "agent asked if I knew this was an integrated area . . . said the areas he was showing me had some blacks but he couldn't tell their houses from the others . . . said Westbury School System wasn't as good as East Meadow because it had so many blacks."

One black auditor was only shown one house because the salesman said he had just returned from vacation and didn't know what was available. A black auditor was kept waiting for an hour before being shown unsuitable houses. She was also asked if her husband was going to live with her. A white auditor reported that when a white agent was late for an appointment, the agent explained that the previous day had been hectic. "She said she had had one black person waiting for her when she opened the office, and three telephone calls during the day from 'black people' she could tell by their voices. She has to be very careful because they could be from the state department or civil rights group." Her caution was wasted. The black person waiting for her was indeed an auditor, and the agent did clearly discriminate. (She could only find two houses to show her, she kept her waiting, and she didn't show her the homes in white neighborhoods that she showed to the white auditor.

One agent had the black auditor follow her in his own car, because she didn't want to be seen showing a home to a black in a white ethnic neighborhood. That was after telling him at great length about a black family that got bombed when they moved into that neighborhood.

The price of a house in Rye City, New York, was $83,000 to the white auditor on June 13, and $87,000 to the black auditor on June 16. Same agent. One black auditor had a white broker say to a salesman, "I won't let her go into one of those prejudiced neighborhoods (Bronxville, N.Y.); near me in East Mt. Vernon is a lovely Tudor house just right for her."

An agent in Riverside, California, in the same area showed both the black and white auditors the same house—but the black auditor was told the down payment was 20 percent, while the white was told it was 10 percent.

In Savannah, Georgia, a white auditor was told by an agent, "This area is not all, shall we say, caucasian." She also told her she wouldn't want to live in the downtown area because she would have to buy burglar bars.

In Saginaw, Michigan, the price of a house went up by $7,600 when it was shown to the black auditor. On June 22 at 3:15 p.m., it was $41,900 (to the white auditor) and on June 23 at 10:15 a.m., it was $49,500 (to the black auditor). It was the same agent.

A white auditor was asked if he was married to a black woman, since he had requested to look at homes in an integrated neighborhood.

In Woburn, Massachusetts, an agent absolutely refused to show a black woman auditor any houses, despite the fact she called for an appointment first. The agent claimed she would only show houses to husbands and wives together, yet another agent in the same small office had shown homes earlier that day to a white female auditor who was alone.

In Atlanta, Georgia, a white tester went first. She and the agent spotted a house as they were driving around and went to look at it. They found it to be overpriced, but later that afternoon, the same agent showed the house to the black tester and told her that the down payment was 10 percent instead of the 5 percent the white tester had been quoted.

Mr. HEINZ. Mr. President, the people of this country believe that this is the land of the free. No human being in this country should suffer the indignity of not being permitted to make a free choice as to his or her family's place of shelter. What I am seeking is protection against those few who would mock our intent and who would detract from those who adhere to our laws.

The President announced an urban policy when he took office, and he directed his staff to seek a massive infusion of Federal aid to our urban areas. Injecting money is a Band-Aid approach which ignores the reality of the expanding curtain of discrimination around our metropolitan areas. Census Bureau statistics demonstrate that metropolitan areas in the United States are expanding at a rate of approximately one-half million acres per year, but the white populations of these same areas are decreasing proportionately. The percentage of whites in urban areas is expected to decrease from 40 percent in 1970 to a projected 25 percent by the year 2000. Families headed by women comprised 20.7 percent within cities by 1977, as opposed to just over 10 percent in the suburbs. The proportion of poor people rose from 34 percent in the cities in 1970 to 38 percent in 1978. This segregation and division of America is neither a matter of free choice nor economics. It is a pattern predicted by the Kerner Commission report which called for action 11 years ago, action which is still needed today.

I do not believe that we are helpless or that these problems are insoluble, or that more money will make them go away. I do believe that if a woman is widowed and has the burden of bringing up her family, she should be entitled to

equal housing opportunities. I believe that if a person is born black or brown or Catholic, or Polish, or Jewish, or whatever, that the fact of birth should not preclude equitable choice of shelter. I believe that if a person is handicapped, if anything, we should go out of our way to insure that person the same right as anyone else to live where he or she wants to. The degradation of any victim because of the inadequacy of existing law is insupportable against our concepts of justice and compassion. I believe we can and should do better.

Granting the administration the power to initiate civil action against a party which violates title VIII is a means by which 27 States have sought to act in the absence of congressional and Presidential leadership. Simple justice demands that the Federal Government have the same means through which to make the law tear down the barriers which have confronted so many in the housing market. Commenting on the inability of the Government to make title VIII meaningful, former HUD Secretary Carla Hills said:

> Respondents know all too well that HUD has no meaningful enforcement power. Many have virtually ignored our conciliation efforts because they have no inducement to cooperate. In effect, the present law, in relying on conciliation, is an invitation to intransigence.

The legislation which I am sponsoring provides two avenues to equitable remedies. In the event that a victim decides to pursue the course of private litigation, the existing law would be changed to permit the prevailing party to be eligible for reasonable attorney fees, thus enabling an aggrieved party to undertake this personal route in an affordable manner. The second major change would be to provide HUD with enforcement powers. Under this change, the Secretary could subpena the alleged violator in order to hold an administrative hearing. If, as a result of the hearing, the Secretary determined that there had been discrimination, she would be empowered to refer the case to the Justice Department or to act in behalf of the victim. If she deemed prompt action necessary, she could order temporary relief, pending final hearings, after which she could impose a civil penalty not to exceed $10,000. This final determination would be appealable to Federal court within a 30-day period.

Our cities do not need to be a patchwork of future problems and antagonisms. The practices in some cities of steering potential renters and buyers based upon complicated written and unwritten classifications breaking down potential buyers and renters into upward of 20 classifications has no place in this country. Through this means, housing discrimination has become so subtle and insidious that some of these lists would prevent Members of the U.S. Senate from purchasing homes in some neighborhoods of this Nation's suburbs. Apartheid is untenable in a free society no matter how sophisticated or subtle it might be.

I would like to add, Mr. President, that I do have one concern with regard to this legislation, and it is my hope that the Congress will give this concern careful consideration in the deliberative process. Although I share the view that immediate action is necessary to prevent an incident of blatant housing discrimination and thus concur in the need for a mechanism to prevent a discriminatory action which would effectively preclude a victim from the rental or purchase of housing; nevertheless, I am apprehensive about any legislation which, in effect, permits an administrative agency to be accuser, judge, jury, and enforcer. This bill necessarily gives government the ability to enforce the law, and the ability to move quickly. Without that ability, however, the object of the victim's search would be forever lost.

I view this measure as sensitive to our citizens' many concerns about government today. It will not, like so much Federal legislation, inundate the Federal courts with costly, time-consuming litigation, nor will it instill a massive bureaucratic response. It will make conciliation a meaningful process. It will provide an incentive for a respondent to reach agreement with the victim. And it will alert those who have chosen to flout the Civil Rights Act of 1968 that we are serious and will not permit the fragmentation of our society.

Perhaps Stephen Vincent Benet most aptly expressed my hope and concern when in 1943 he wrote:

> Remember that when you say
> "I will have none of this exile and this stranger
> For his face is not like my face and his speech is strange,"
> You have denied America with that word.

I hope the Senate will act promptly on this measure. It is a significant step, a positive step, and a fair step.

By Mr. DOLE (for himself and Mr. TALMADGE):

S. 507. A bill to amend the Social Security Act to provide for improvements in the medicare and medicaid programs; to the Committee on Finance.

MEDICARE-MEDICAID MISCELLANEOUS AND TECHNICAL AMENDMENTS OF 1979

Mr. DOLE. Mr. President, on behalf of Senator TALMADGE and myself, I am introducing today legislation which consists of a series of relatively minor, noncontroversial medicare-medicaid provisions, most of which have been, at one time or another, approved by either the Senate or the House.

Although many of these provisions are also contained in the Talmade-Dole medicare and medicaid administrative and reimbursement reform proposal, we are introducing this legislation as a separate proposal in order to expedite action on these relatively minor medicare-medicaid changes.

Taken together, these changes will have a negligible effect on program expenditures for fiscal year 1979 or fiscal year 1980. Several of the provisions will, in fact, produce significant savings. Others are directed toward improvements in program administration and equity in reimbursement for certain covered services.

Mr. President, I ask unanimous consent that a brief description of these provisions be printed in the RECORD.

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

BRIEF DESCRIPTION OF THE PROVISIONS OF THE MEDICARE-MEDICAID MISCELLANEOUS AND TECHNICAL IMPROVEMENTS AMENDMENTS OF 1979, AS WELL AS ACTION PREVIOUSLY TAKEN BY THE CONGRESS ON THESE PROVISIONS

Hospital providers of long-term care services.—Encourages better use of underutilized beds of small rural hospitals by providing for a simplified cost reimbursement formula under Medicare which avoids the current requirement for separate patient placement within the facility and separate cost finding. This is the so-called "swing bed" amendment. (Status: Passed by House, H.R. 13817; passed by Senate, H.R. 5285.)

Ambulance services.—Permits Medicare payment for ambulance services to a more distant hospital when the nearest hospital does not have staff qualified to undertake the required care. (Status: Passed by House, H.R. 13097; passed by Senate, H.R. 5285.)

Coordinated audits under the Social Security Act.—Provides for Medicare to share its audit findings with the Medicaid and the Maternal and Child Health programs where these programs reimburse the same entity on the basis of its reasonable costs. (Status: Passed by House, H.R. 13817; passed by Senate, H.R. 5285.)

Coverage under Medicare of certain dentists' services.—Extends coverage of dental services under Medicare to include any services which may be performed by a doctor of dental surgery or of dental medicine legally authorized to perform such services if they would be covered when performed by a physician. (Status: Passed by House, H.R. 13097; passed by Senate, H.R. 5285.)

Flexibility in application of standards to rural hospitals.—Authorizes the Secretary of HEW to apply Medicare standards to rural hospitals more flexibly to take into account the availability of qualified technical personnel, the scope of services furnished, and the economic impact of structural standards which if rigidly applied would result in unreasonable financial hardship for a rural hospital; but only to the extent that such differential application of the standards does not jeopardize or adversely affect the health and safety of patients. (Status: Passed by House, H.R. 13817; extends similar provision in current law.)

Payment for certain antigens under Part B of Medicare.—Amends present law to provide for direct payment to allergists for preparation of a reasonable supply of antigens which would be dispensed or administered by or under the supervision of physician. (Status: Passed by House, H.R. 13097; passed by Senate, H.R. 5285.)

Payment under Medicare of certain physicians' fees on account of services furnished to a deceased individual.—Permits payment by Medicare for care directly to the spouse or other legal representative of a deceased Medicare beneficiary on the basis of a nonreceipted bill. Under present law, Medicare can only pay where the physician accepts an assignment or where the family has actually paid the bill. Thus, in some cases where a physician refuses an assignment, families have encountered difficulty in raising sufficient cash to pay the bill in order to be eligible for payment by Medicare. (Status: Passed by House, H.R. 13097; passed by Senate, H.R. 5285.)

Coverage under Medicare of optometrists' services with respect to Aphakia.—Authorizes Medicare Part B reimbursement to optometrists for services related to aphakia which are within the scope of licensed optometric practice, and which are covered under present law when provided by a physician.

(Status: Passed by House, H.R. 13097; passed by Senate, H.R. 5285.)

Removal of three-day hospitalization requirement and one-hundred visit limitation for home health services.—Removes the requirement in existing law that limits Medicare home health benefits to 100 visits under Part A and 100 visits under Part B. In addition, the bill removes the requirement that a beneficiary has to be an inpatient in a hospital for at least three days before he can qualify for Part A home health benefits. (Status: Passed by House, H.R. 13097; passed by Senate H.R. 5285.)

Repeal of section 1867.—Terminates the Health Insurance Benefits Advisory Council. (Status: Passed by Senate, H.R. 5285.)

Deductible not applicable to expenses for certain independent laboratory tests.—Waives the $60 deductible in applying special laboratory billing procedures under Medicare. Corrects drafting error in section 279 of P.L. 92-603. (Status: Passed by Senate, H.R. 5285.)

Resources of Medicaid applicant to include certain assets previously disposed of for substantially less than market value.—Requires States to deny Medicaid eligibility in cases where an otherwise ineligible aged, blind, or disabled person disposes of significant assets by either giving them away or selling them for less than their market value in order to establish Medicaid eligibility. (Status: Passed by Senate, H.R. 5285.)

Extension of period for funding of State Medicaid fraud control units.—Extends for two years (until October 1, 1982) the period when 90 percent Federal matching is available for the funding of State Medicaid fraud control units. No State may receive such matching for longer than three years.

Certification and utilization review by podiatrists.—Provides that podiatrists acting within the scope of their practice would be recognized by Medicare for purposes of physician certification and participation as physicians in utilization review. (Status: Passed by House, H.R. 13097.)

Physician treatment plan for speech pathology.—Repeals the existing Medicare requirement that a physician establish a detailed plan of treatment for speech pathology services. (Status: Passed House, H.R. 13097.)

Presumed coverage provisions.—Repeals existing Medicare provisions authorizing, by type of diagnosis, presumed periods of coverage for skilled nursing facility and home health services. (Status: Passed House, H.R. 13097.)

Surgical procedures performed on an ambulatory basis.—Permits Medicare reimbursement on the basis of an all-inclusive rate to free-standing ambulatory surgical centers and to physicians performing surgery in their offices for a listed group of surgical procedures. Such procedures include those which are often provided on an inpatient hospital basis but can be consistent with sound medical practice, be performed on an ambulatory basis. (Status: Passed by Senate, H.R. 5285.)

Confidentiality of Professional Standards Review Organization data.—Provides for the confidentiality of PSRO information that identifies an individual patient, practitioner, provider, supplier or reviewer. (Status: Passed by Senate, H.R. 5285.)

Payment for laboratory services under Medicaid.—Allows a State to purchase laboratory services for its Medicaid recipients through competitive bidding arrangements for a 3-year experimental period. (Status: Passed by Senate, H.R. 5285.)

Chiropractors' service.—Deletes the requirement for an X-ray to be used to demonstrate the existence of a covered service. (Status: Passed by House, H.R. 10397.)

HMO enrollment of Medicare-Medicaid Recipients.—Provides that HMO's contracting with States to provide health services under Medicaid be required to have no more than 50 percent of their members covered under Medicaid and/or Medicare by no later than 3 years after the date the HMO is formally found qualified by the Department of Health, Education, and Welfare, rather than three years from the date that the HMO contracts with a State as required by existing law.

Demonstration projects for training and employment of AFDC recipients as homemaker and home health aides.—Provides demonstration projects whereby persons now on the welfare rolls can be formally trained as homemaker home health aides to maintain the independent living capacity of persons who would otherwise require Medicaid supported institutional care.

By Mr. DOLE (for himself, Mr. TALMADGE, Mr. HEINZ, Mr. RIBICOFF, Mr. MOYNIHAN, and Mr. COCHRAN):

S. 508. A bill to amend the Social Security Act to provide that the Administrator of the Health Care Financing Administration henceforth shall be appointed by the President by and with the advice and consent of the Senate; to the Committee on Finance.

ADMINISTRATOR OF THE HEALTH CARE FINANCING ADMINISTRATION

Mr. DOLE. Mr. President, today, joined by my colleagues, Senators TALMADGE, HEINZ, RIBICOFF, MOYNIHAN, and COCHRAN, I am introducing a bill which will require Senate confirmation of the Presidential appointee for the job of Administrator of the Health Care Financing Administration. This agency of the Department of Health, Education, and Welfare is responsible for the administration, coordination, and policymaking for medicaid, medicare, and certain quality assurance programs.

BACKGROUND OF HEALTH CARE FINANCING ADMINISTRATION

Reviewing the agency's background underscores the importance of its chief administrative official. The Health Care Financing Administration was originally proposed some 3 years ago as part of S. 3205 and again in the 95th Congress as a section in S. 1470. These provisions provided for Senate review and confirmation of a Presidential appointment but the concept of the agency was embraced by the administration prior to congressional action. The agency was established administratively rather than legislatively. The rationale behind its creation was to provide a means of orderly consolidation and coordination of the medicare and medicaid programs.

The Administrator of the Health Care Financing Administration is actually a successor to a previous position—Administrator of the Social and Rehabilitation Service—a position which required Senate confirmation because of its medicaid responsibilities. Since the creation of this new agency, there have been serious difficulties, both administrative and bureaucratic. However, in recent months, there appears to have been a marked improvement in the functioning and effectiveness of this agency which means so much to so many.

ADMINISTRATOR'S QUALITIES

The principal official of this agency should be an individual experienced and knowledgeable in management, health care, and health care financing. It will be important for the person to have a full awareness of the sensitivity and complexity of the agency's responsibilities. In addition to being able to work effectively with the executive branch, this person must also relate directly with the Congress, facilitating its legislative mandates in the financing of health care.

CONCLUSIONS

Requiring Senate confirmation of the Presidential appointee for the job of Administrator of the Health Care Financing Administration is certainly appropriate, considering the responsibilities of this agency's $50 billion a year programs. The board mandates given to the Health Care Financing Administration which includes coordinating medicaid, medicare, and the professional standards review organizations are on a par with the Social Security Administration, whose Commissioner is confirmed by the Senate.

I believe that it is vital that Senate confirmation be required in the future. The Congress has a direct responsibility to participate in this decision that affects so many millions of poor and older Americans.

By Mr. RIBICOFF (by request):

S. 509. A bill to amend title 5, United States Code, to provide survivor benefits to certain dependent children; to the Committee on Governmental Affairs.

SURVIVOR BENEFITS TO CERTAIN DEPENDENT CHILDREN

● Mr. RIBICOFF. Mr. President, at the request of the administration, I am introducing legislation to amend the Civil Service Retirement Law to extend eligibility for civil service survivor benefits to all dependent illegitimate children of a deceased Federal employee or retiree.

I ask unanimous consent that the text of the bill, and letter from the Director of the Office of Personnel Management and the statement of purpose and need be printed in the RECORD.

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

S. 509

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8341(a)(3) of title 5, United States Code, be amended to read as follows:

"(3) 'child' means—

(A) An unmarried dependent child under 18 years of age, including (i) an adopted child, and (ii) a stepchild or recognized natural child, and (iii) a child who lived with and for whom a petition of adoption was filed by an employee or Member, and who is adopted by the surviving spouse of the employee or Member after his death;

"(B) such unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

"(C) such unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

"For the purpose of this paragraph and subsection (e) of this section, a child shall be

deemed dependent on the employee or Member if, at the time of the employee or Member's death, the employee or Member was either living with or contributing to the support of such child. The Office of Personnel Management shall prescribe regulations to further define dependency for purposes of this section. A child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year and while he is regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between the school years if the interim is not more than 5 months and if he shows to the satisfaction of the Office of Personnel Management that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the semester (or other period into which the school year is divided) immediately after the interim."

SEC. 2 Section 8901(5) of title 5, United States Code, is amended to read as follows:

"(5) 'member of family' means the spouse of an employee or annuitant and an unmarried dependent child under 22 years of age, including—

"(A) an adopted child; and

"(B) a stepchild, foster child, or recognized natural child or such an unmarried child regardless of age who is incapable of self-support because of mental or physical disability which existed before age 22.

"For purposes of this paragraph, a child shall be deemed dependent on the employee or Member is either living with or contributing to the support of such child. The Office of Personnel Management shall prescribe regulations to further define dependency for purposes of this section."

SEC. 3 This Act shall take effect upon enactment except that no benefits under chapter 89 of title 5, United States Code, authorized by this Act shall be payable for any period prior to the date of enactment.

OFFICE OF PERSONNEL MANAGEMENT,
Washington, D.C., February 8, 1979.

HON. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: I submit for the consideration of Congress, and recommend favorable action on, the attached draft bill to amend the Civil Service Retirement law to extend eligibility for civil service survivor benefits to all dependent illegitimate children of a deceased Federal employee or retiree. Also attached is a statement of purpose and justification for the proposed bill.

We believe this proposal is necessary in view of several recent court decisions which have declared the present provision, allowing survivor benefits only to those illegitimates living with the decedent at the time of death, unconstitutional. These decisions have been based on the principle that a statute providing replacement of support lost through the death of a parent may be overinclusive, i.e., it may presumptively award benefits to some children not actually dependent, but it is not constitutionally permissible for the statute to be underinclusive; i.e., to presumptively deny, without opportunity to show actual dependency, benefits to other subclasses of dependent children. The present Civil Service Retirement statute is underinclusive in that it denies survivor benefits to dependent illegitimates who have not resided with the deceased. Since recent court decisions have awarded civil service survivor benefits to dependent illegitimates who did not live with the decedent, immediate consideration of this legislative proposal is imperative.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this proposal to the Congress.

A similar letter is being sent to the Speaker of the House.

Sincerely yours,

ALAN K. CAMPBELL,
Director.

STATEMENT OF PURPOSE AND JUSTIFICATION

The attached proposed legislation would amend the Civil Service Retirement and Health Benefits laws to extend eligibility for civil service survivor and health insurance benefits to all dependent illegitimate children of a deceased Federal employee or retirees.

The Civil Service Retirement law provides monthly survivor annuity benefits to children of those deceased employees who have completed at least eighteen months of Federal civilian service and to children of deceased annuitants. "Child" for survivor annuity purposes includes:

(A) an unmarried child under 18 years of age, including (i) an adopted child, and (ii) a stepchild or recognized natural child who lived with the employee or Member in a regular parent-child relationship, and (iii) a child who lived with and for whom a petition of adoption was filed by any employee or Member, and who is adopted by the surviving spouse of the employee or Member after his death; 5 U.S.C. 8347(a)(3)(A).

(Further subsections of the statute not relevant to this proposal are omitted).

The legislative purpose of the "living with" provision required of the illegitimates is unclear. Prior to July 18, 1966, a recognized illegitimate child was eligible for survivor benefits if he or she received more than one half support from and lived with the employee or annuitant in a regular parent child relationship. Public Law 89-504, approved July 18, 1966, eliminated the half support requirement in order to "permit children of a working mother to receive a survivor annuity in the event of her death." S. Rep. No. 1187, 89th Cong., 2d Sess., 5 (1966). This seems to be the only statement in the legislative history of the reason for eliminating the half support requirement.

This elimination did accomplish its purpose of enabling illegitimates to receive a survivor annuity in the event of their mothers' death. However, one practical effect of this provision, both before and after this amendment is to deny survivor benefits to many illegitimate children whose fathers were the deceased employees or annuitants because many illegitimates live with only their mother. This denial of benefits is so even when the illegitimate is receiving substantial or even full support contributions from the non-resident parent (whether father or mother). This statute, then, designed to pay benefits to dependent children, actually conclusively denies survivor benefits to some dependent illegitimates.

Recent court decisions expanding the rights of illegitimates have cast doubt on the constitutionality of this conclusive denial of survivor benefits to some dependent illegitimates. The Supreme Court, when considering the rights of illegitimate children, has carefully examined the statutes involved in each case and has generally required that any discrimination on the basis of legitimacy (or even between classes of illegitimates) actually further a permissible state purpose. A mere statement by the state or Federal Government of the legislative purposes that the statute in question is designed to further has not been sufficient; the Court has looked behind the proffered objectives to determine if the statute actually does accomplish the purpose for which the law was enacted. The need of administrative agencies to draw arbitrary lines in order to lessen administrative problems of proof is recognized, but the Court has stated several times that this need cannot be made into "an impenetrable barrier that works to shield otherwise invidious discrimination." *Trible* v. *Gordon*, 45 U.S.L.W. 4395 (U.S. Apr. 26, 1977); *Gomez* v. *Perez*, 409 U.S. 535,538 (1973). *Weber* v. *Aetna Casualty and Surety Co.*, 406 U.S. 164 (1972).

Of several recent Supreme Court cases, two decisions considered the constitutionality of two sections of the Social Security Act somewhat analogous to the survivor provisions of the Civil Service Retirement law. In *Jiminez* v. *Weinberger*, 417 U.S. 628 (1974), the Court ruled that denial of disability benefits to certain illegitimates solely on the basis of birth after the onset of disability was violative of the claimant illegitimate childrens' right to equal protection. The statute did not allow these illegitimates the right to prove actual dependency. (The Government's stated legislative purposes were to provide support for dependents of the disabled and to prevent spurious claims.) The Court found that these purposes were not rationally related to the classification here, and the statute was declared unconstitutional.

Another section of the Social Security law withstood the court's scrutiny, however, in *Matthews* v. *Lucas*, 427 U.S. 495 (1976). The dispute in this case was the result of Social Security's denial of benefits to two illegitimate children who could not prove actual dependency on the deceased wage earner at the time of his death.

The Social Security Act provision in question in *Lucas* provides survivor benefits to all dependent children of a deceased wage earner. Dependency is presumed (i.e., no proof is required) for all legitimate and some illegitimate children. If an illegitimate is not in one of the groups deemed dependent, however, eligibility for benefits may be established by proof of actual dependency. The plaintiffs in this case argued that their right to equal protection was violated because all legitimates (and some illegitimates) were automatically entitled to benefits even if they could not actually prove dependency. Social Security contended that the purpose of the benefit statute was to replace support lost by the death of the wage earner, that the classifications were designed to minimize spurious claims and to facilitate administrative determination and that the statute promoted these objectives.

The Supreme Court held the statute constitutional, stating that the classifications, although not perfect, were reasonably drawn to qualify entitlement to benefits upon a child's dependency at the time of the wage earner parent's death. Some leeway is allowed for administrative convenience, especially when the statute errs on the side of overinclusiveness (i.e., awarding benefits to some children actually not dependent). No dependent illegitimate was conclusively denied benefits: any such child had the chance to prove actual dependency. The court ruled that Congress could rationally presume that there is less of an assumption of dependency of illegitimate than of legitimate children; some distinction on this basis is permissible.

In summary, what the Supreme Court appears to find objectionable is the idea of an irrebuttable presumption; i.e., illegitimates (or even certain sub classes of illegitimates) conclusively denied benefits with no opportunity at all to satisfy eligibility requirements. The statutory benefit may be overinclusive, but not underinclusive. If the law for instance, is designed to replace support, it must not exclude any classes of dependent illegitimates, although illegitimates may be required to meet burdens of proof not required of legitimates. The prohibition is not against discrimination *per se* (as in requirements of proof). The prohibition is against

impermissible discrimination (conclusive denial).

The *Jimenez* and *Lucas* cases were precedents discussed by the Court of Claims in *Gentry* v. *United States*, 546 F. 2d. 343 (Ct. Cl. 1976), the first case to consider the constitutionality of 5 U.S.C. 8341(a)(3)(A). Gerald Gentry, the illegitimate son of a deceased civil service annuitant, was denied survivor benefits by the Commission because he did not meet the "live with" requirement of 5 U.S.C. 8341(a)(3)(A). Gentry claimed his father had contributed to his support. He took his case to the Court of Claims, contending that the statute's denial of benefits to all illegitimates except those living with their deceased parent at the time of death, even if the non-resident deceased parent had contributed to the child's support, violated the equal protection guaranteed him by the fifth amendment.

The Government argued that the statute was designed to replace support for dependent natural children, and that a second purpose of the live with requirement was to prevent spurious claims of parentage.

The Court of Claims found that the Government's stated objectives (which were the same objectives of the Social Security Statute claimed by the Government in *Jimenez* v. *Weinberger, supra*) could not be achieved by the statute as written. Applying the principles set out in *Jamenez* v. *Weinberger, supra*, the court found that many dependent illegitimates were excluded by the Civil Service retirement statute simply because they did not live with the parent who contributed to support. Nor could the statute as written achieve its purpose of preventing spurious claims because the potential for such claims was exactly the same for both included and excluded classes of illegitimates. The Court rejected the argument that application of *Matthews* v. *Lucas, supra*, in the *Gentry* case warranted a finding that the statute was constitutional. The Court said *Matthews* mandated no such result—a different statutory scheme was involved in that case, and one in which all dependent children could prove eligibility for survivor benefits. It concluded that since the Civil Service Retirement law conclusively excluded certain dependent illegitimates from being eligible for survivor benefits, it was unconstitutional; administrative convenience was not sufficient to make the discrimination permissible.

The effect of this declaration of unconstitutionality was limited to the individual before the Court—Gerald Gentry. Gentry had in fact asked for a declaratory judgment that the live with requirement of 5 U.S.C. 8341(a)(3)(A) was unconstitutional. With respect to this issue the Court stated:

Our authority to issue a declaratory judgment is limited . . . We are authorized to do so only where 'it is tied and subordinate to a monetary award.' . . . And of course we can do so where it is explicitly authorized, as in certain tax cases . . .That portion of plaintiff's petition asking for a declaratory judgment is dismissed. (p. 20, slip opinion—Citations are omitted.)

The Court expressed reservations about the Government's characterization of the purposes of the annuity statute's survivorship provisions. However, the case has been remanded by the Court of Claims to the Commission for a determination of Gentry's status as the recognized supported natural child. But when considering the Government's motion for rehearing in the *Gentry* case, the Court expressed further doubt that dependency was even a real purpose of the Civil Service Survivor benefit provisions. The Court acknowledged that it had left open the extent of dependency to be required or whether dependency could be required at all. However, this issue was not ripe for determination until the Commission made a decision on plaintiff's eligibility. The Government's motion for rehearing (on the ground that a Supreme Court case decided after the original *Gentry* decision changed the outcome) was denied.

The *Gentry* case was quickly followed by other decisions which uniformly declared the "living with" requirement unconstitutional. On November 30, 1977, a three judge court in *Proctor* v. *United States*, 448 F. Supp. 418 (D.D.C. 1977) enjoined the Commission from applying the living with requirement. And a recent decision in the class action of *Jenkins* v. *United States*, No. 78-0317 (D.D.C., 1978) will, if the Commission does not appeal the decision require payment to any eligible illegitimate whose parent died after February 24, 1972.

The present statute can no longer be administered as it is written. The proposed legislation, therefore, is designed to conform to the above judicial decisions.

We believe that a dependency requirement should be made clear in the definition of child for survivor annuity purposes found in 5 U.S.C. 8341(a)(3) and have drafted the proposed legislation to reflect this. For consistency, a similar change is also proposed in the definition of family member for purposes of coverage under the Federal Employees Health Benefits Program. The legislation we are proposing aims, through use of language along the lines of the Social Security statute upheld in *Matthews* v. *Lucas, supra, to* achieve the purpose of replacing the support lost by the death of a parent. It presumes that all legitimates and certain classes of illegitimates are dependent. Only those illegitimates who neither lived with nor received support from the decedent are not dependent children. This would allow all illegitimates to prove actual dependency if they cannot meet the presumption of dependency raised by the fact that they lived with their deceased parent at the time of death.

Our actuary reports that no estimate of the cost of this bill can be made since the number of possible eligibles is unknown.●

By Mr. RIBICOFF (by request):

S. 510. A bill to establish a Department of Education, and for other purposes; to the Committee on Governmental Affairs.

DEPARTMENT OF EDUCATION ORGANIZATION ACT

● Mr. RIBICOFF. Mr. President, at the request of the administration, I am introducing legislation to establish a Department of Education.

I ask unanimous consent that the text of the bill and the accompanying message from the President of the United States be printed in the RECORD.

There being no objection, the bill and message were ordered to be printed in the RECORD, as follows:

S. 510

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 "Department of Education Organization Act".

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DEFINITIONS

SEC. 2. (a) As used in this Act, unless otherwise provided or indicated by the context, the term "Department" means the Department of Education or any component thereof; the term "Secretary" means the Secretary of Education; and the term "Under Secretary" means the Under Secretary of Education.

(b) As used in this Act, the term "function" includes any duty, obligation, power, authority, responsibility, right, privilege or activity.

(c) As used in this Act, unless otherwise provided or indicated by the context, the term "State" includes the District of Co-

lumbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and the Trust Territory of the Pacific Islands.

(d) As used in this Act, unless otherwise provided or indicated by the context, the words "private" and "private educational" refer to independent, nonpublic and private institutions of elementary, secondary, higher and postsecondary education.

(e) As used in this Act, unless otherwise provided or indicated by the context, the terms "office" and "unit" include any office, institute, council, unit, organizational entity or component thereof.

TITLE I—FINDINGS AND PURPOSES

FINDINGS

SEC. 101. The Congress of the United States finds that:

(a) education is fundamental to the development of individual citizens and the progress of the Nation as a whole;

(b) there is a continuous need to ensure equal access for all Americans to educational opportunities of a high quality;

(c) the primary responsibility for education resides with States, localities and private institutions;

(d) the American people benefit from a diversity of educational settings, including public and private schools, libraries, museums and other institutions, the workplace, the community and the home;

(e) the current structure of the executive branch fails to recognize the importance of education and does not allow sufficient Presidential and public consideration of education issues;

(f) there is a need for improvement in the management of Federal education programs to support more effectively State, local and private institutions in carrying out their educational responsibilites;

(g) there is a need for improved coordination of Federal education and related programs; and

(h) there is no single, full-time, Federal education official directly accountable to the President, the Congress and the people.

PURPOSES

SEC. 102. The Congress therefore declares that the establishment of a Department of Education is in the public interest and will promote the general welfare of the United States. Establishment of this Department will help ensure that education issues receive proper treatment at the Federal level and will enable the Federal Government to coordinate its education activities more effectively. The major purposes of the Department are:

(a) to strengthen the Federal commitment to ensuring access to equal educational opportunity for every American;

(b) to support more effectively States, localities and public and private institutions in carrying out their responsibilities for education;

(c) to promote improvements in the quality and usefulness of education through federally supported research, evaluation and the sharing of information;

(d) to improve the management and efficiency of Federal education activities;

(e) to increase the accountability of Federal education programs to the President, the Congress and the public;

(f) to encourage the involvement of the public, parents and students in Federal education programs; and

(g) to improve the coordination of Federal education programs.

PROHIBITION AGAINST FEDERAL CONTROL OF EDUCATION

SEC. 103. No provision of law relating to a program administered by the Secretary or by any other officer or agency of the executive branch of the Federal Government shall be construed to authorize the Secretary or any such officer or agency to exercise any direction, supervision or control over the curriculum, program of instruction, administration or personnel of any educational institution, school or school system; over any accrediting agency or association; or over the selection of library resources, textbooks or other instructional material by any educational institution or school system, except to the extent authorized by law.

TITLE II—ESTABLISHMENT OF THE DEPARTMENT

ESTABLISHMENT

SEC. 201. (a) There is hereby established an executive department to be known as the Department of Education. There shall be at the head of the Department a Secretary of Education, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level I of the executive schedule under section 5312 of title 5 of the United States Code. The Department shall be administered, in accordance with the provisions of this Act, under the supervision and direction of the Secretary.

(b) There shall be in the Department an Under Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level III of the executive schedule under section 5314 of title 5 of the United States Code. The Under Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Under Secretary or in the event of vacancies in both of those offices. The Under Secretary shall also be responsible for intergovernmental relations in the Department.

PRINCIPAL OFFICERS

SEC. 202. (a) There shall be in the Department six Assistant Secretaries reporting directly to the Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the executive schedule under section 5315 of title 5 of the United States Code. An Assistant Secretary shall head each of the Offices created by sections 203, 204, 205, and 206 of this Act.

(b) In addition, there shall be in the Department six officers reporting directly to the Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level V of the executive schedule under section 5316 of title 5 of the United States Code.

(c) The officers created by this section shall perform, in accordance with applicable law, such of the functions delegated to or vested in the Secretary or in the Department as the Secretary shall from time to time prescribe (in accordance with the provisions of this Act), including, but not limited to, the following functions:

(1) congressional relations functions;

(2) public information functions;

(3) management and budget functions;

(4) planning, evaluation and policy development functions; and

(5) encouraging and monitoring involvement of parents, students and the public in departmental programs.

(d) Except as otherwise provided by this Act,

(1) when the name of a person to serve as an officer created by either subsection (a) or subsection (b) is submitted to the Senate for confirmation, the President shall designate the particular functions that person shall exercise upon taking office; and

(2) notwithstanding the provisions of paragraph (1) of this subsection, the Secretary may from time to time allocate or reallocate functions of the Department among the subordinates of the Secretary and name and rename the titles of the offices they hold.

OFFICE FOR CIVIL RIGHTS

SEC. 203. (a) There shall be established in the Department an Office for Civil Rights headed by an Assistant Secretary for Civil Rights who shall be one of the Assistant Secretaries created by section 202(a) of this Act.

(b) Notwithstanding the provisions of section 422 of this Act, the Secretary shall delegate to such Assistant Secretary all functions, other than administrative and support functions, vested in the Secretary by section 301(a)(3) of this Act.

(c) The Assistant Secretary for Civil Rights shall make annual reports to the Secretary and to the Congress summarizing the compliance and enforcement activities of the Office for Civil Rights and identifying significant civil rights or compliance problems as to which such Office has made a recommendation for corrective action or as to which, in the judgment of the Assistant Secretary, adequate progress is not being made.

(d) Notwithstanding any other provision of law, the reports required by or under this section shall be transmitted to the Secretary and the Congress by the Assistant Secretary for Civil Rights without further clearance or approval. The Assistant Secretary shall provide copies of the reports required under subsection (c) to the Secretary sufficiently in advance of their submission to Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the reports when submitted to Congress.

(e) In addition to the authority otherwise provided by this section, the Assistant Secretary for Civil Rights, in carrying out the provisions of this section, is authorized—

(1) to collect or coordinate collection of data necessary to ensure compliance with civil rights laws within its jurisdiction;

(2) to select, appoint and employ such officers and employees, including staff attorneys; as may be necessary to carry out the functions of the Office, subject to provisions governing appointments in the competitive service and the provisions of chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code, relating to classification and General Schedule pay rates; and

(3) notwithstanding any other provision of this Act, to obtain services as authorized by section 3109 of title 5 of the United States Code at daily rates not to exceed the equivalent rates prescribed for grade GS-18 of the General Schedule by section 5332 of such title.

OFFICE OF POSTSECONDARY EDUCATION

SEC. 204. There shall be in the Department an Office of Postsecondary Education headed by one of the Assistant Secretaries created by section 202(a) of this Act. The Assistant Secretary shall administer such functions affecting postsecondary education, both public and private, as the Secretary shall delegate to the Office and shall serve as the principal advisor to the Secretary on matters affecting public and private postsecondary education.

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

SEC. 205. There shall be in the Department an Office of Elementary and Secondary Education headed by one of the Assistant Secretaries created by secion 202(a) of this Act. The Assistant Secretary shall administer such functions affecting elementary and secondary education, both public and private, as the Secretary shall delegate to the Office.

OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

SEC. 206. There shall be in the Department an Office of Education Research and Improvement headed by one of the Assistant Secretaries created by section 202(a) of this Act. The Assistant Secretary shall administer such functions and programs of the Department concerning research, development, demonstration, dissemination, evaluation and assessment activities as the Secretary shall delegate to the Office.

FUNCTIONS RELATING TO EDUCATION OF OVERSEAS MILITARY DEPENDENTS

SEC. 207. There shall be in the Department an office to administer functions relating to the education of overseas dependents of personnel of the Department of Defense the director of which shall be one of the officers created by section 202 of this Act.

GENERAL COUNSEL

SEC. 208. There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the executive schedule under section 5315 of title 5 of the United States Code.

OFFICE OF INSPECTOR GENERAL

SEC. 209. (a) Section 2(1) of the Inspector General Act of 1978 is amended by adding "the Department of Education," after "the Department of Commerce,".

(b) Sections 11(1) and (2) of such Act are amended by adding "Education," after the word "Commerce,".

EXECUTIVE LEVEL POSITIONS

SEC. 210. The number of executive level positions published pursuant to section 5311 (b)(1) of title 5 of the United States Code is hereby increased by 14.

INTERGOVERNMENTAL ADVISORY COUNCIL ON EDUCATION

SEC. 211. (a) There is hereby established an advisory committee to be known as the Intergovernmental Advisory Council on Education (hereinafter referred to as the "Council").

(b) The Council shall—

(1) provide a forum for representatives of Federal, State and local governments and public and private educational entities to discuss educational issues;

(2) make recommendations for the improvement of Federal education programs;

(3) promote better intergovernmental relations; and

(4) submit a report, biennially or as frequently as the Council deems it necessary, to the President and the Secretary reviewing the impact of Federal education activities upon State and local governments and public and private educational institutions, including an assessment of compliance with section 103 of this Act and of any change in the Federal role in education, and assessing both the extent to which Federal objectives are achieved and any adverse consequences of Federal actions.

(c)(1) The Council shall have twenty members, appointed by the President as follows:

(A) six elected State and local officials with general government responsibilities;

(B) five representatives of public and private elementary and secondary education, including board members, administrators and teachers;

(C) five representatives of public and private postsecondary education, including board members, administrators and professors; and

(D) four members of the public, including parents of students and students.

(2) The Under Secertary shall be an *ex officio* member of the Council.

(3) Each member shall have a term of four years: *Provided*, that no member serving pursuant to subparagraph (1)(A) of this subsection may serve on the Council beyond the period that such member holds an office qualifying such subparagraph: *Provided further*, that the President shall divide the initial appointments to the Council into four groups of five members each for initial terms of one, two, three and four years.

(4) The President shall from time to time designate one member to chair the Council.

(d) The Council shall nominate and the Secretary shall appoint an executive director for the Council.

(e) The Secretary shall furnish such staff, services and support as shall be necessary for the operation of the Council.

INTERDEPARTMENTAL EDUCATION COORDINATING COMMITTEE

SEC. 212. (a) There is hereby established an Interdepartmental Education Coordinating Committee (hereinafter referred to in this Act as the "Committee").

(b) The Committee shall study and make recommendations for assuring effective coordination of Federal programs, policies and administrative practices affecting education, including—

(1) consistent administration and development of policies and practices among Federal agencies in the conduct of related programs;

(2) full and effective communication among Federal agencies to avoid unnecessary duplication of activities and repetitive collection of data;

(3) full and effective cooperation with the Secretary on such studies and analyses as are necessary to carry out the purposes of this Act; and

(4) coordination of related programs to assure that recipients of Federal assistance are efficiently and responsively served.

(c) The Committee shall be composed of the Secretary, who shall be the Chair, and representatives from those Federal agencies, commissions and boards that the President may from time to time deem appropriate with regard to the matters under consideration.

(d) The Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the Director of the Office of Science and Technology Policy and the Executive Director of the Domestic Policy Staff may each designate a staff member to attend meetings of the Committee.

(e) The Secretary may establish subcommittees of the Committee to facilitate coordination in important areas of Federal activity.

(f) The Secretary and each Federal agency represented on the Committee under the provisions of subsection (c) of this section shall furnish necessary assistance to the Committee.

TITLE III—TRANSFERS

TRANSFERS FROM THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SEC. 301. (a) There are hereby transferred to and vested in the Secretary—

(1) all functions, programs and offices vested in the Assistant Secretary for Education (or in the Office of such Assistant Secretary) or in the Education Division of the Department of Health, Education, and Welfare, or in any officer or component thereof;

(2) all functions, programs and offices vested in the Secretary of Health, Education, and Welfare or the Department of Health, Education, and Welfare:

(A) under the General Education Provisions Act;

(B) under the Elementary and Secondary Education Act of 1965;

(C) under the Emergency School Aid Act;

(D) under the Higher Education Act of 1965;

(E) under the Education Amendments of 1978;

(F) under the Act of August 30, 1890 (7 U.S.C. 321–328);

(G) under the Environmental Education Act;

(H) under the National Defense Education Act of 1958;

(I) under the Education of the Handicapped Act;

(J) under part 8 of title V of the Economic Opportunity Act of 1965;

(K) under subparts I and II of part C of title VII and part B of title VIII of the Public Health Service Act;

(L) under the National Commission on Libraries and Information Science Act;

(M) under the Vocational Education Act of 1963;

(N) relating to Gallaudet College, Howard University, the American Printing House for the Blind and the National Technical Institute for the Deaf;

(O) under the Model Secondary School for the Deaf Act;

(P) relating to the telecommunications demonstration program under subpart A of part IV of title III of the Communications Act of 1934;

(Q) under section 2030(k) of the Federal Property and Administrative Services Act of 1949; and

(R) under the Alcohol and Drug Abuse Education Act;

(3) all functions of the Department of Health, Education, and Welfare or the Secretary of Health, Education, and Welfare delegated to or vested in the Office for Civil Rights of such Department relating to functions transferred by this section;

(4) any advisory committee and authority for any advisory committee established by statute in or under the Department of Health, Education, and Welfare or the Secretary of Health, Education, and Welfare, giving advice or making recommendations that primarily concern education: *Provided*, That the Secretary may terminate or combine one or more of such advisory committees;

(5) the Institute of Museum Services in the Department of Health, Education, and Welfare and all functions vested in such Institute;

(6) the Advisory Council on Education Statistics and all functions vested in such Council; and

(7) the Federal Education Data Acquisition Council and all functions vested in such Council.

(b) There are hereby transferred to the Inspector General of the Department that portion of the Office of Inspector General of the Department of Health, Education, and Welfare that relates to functions transferred to the Secretary by this Act.

TRANSFERS FROM THE DEPARTMENT OF LABOR

SEC. 302. (a) There are hereby transferred to and vested in the Secretary all functions of the Secretary of Labor or the Department of Labor under section 303(c)(2) of the Comprehensive Employment and Training Act of 1973.

(b) The Secretary is authorized to conduct the functions transferred by subsection (a).

(c) Section 303(c)(3) of the Comprehensive Employment and Training Act is redesignated as subsection (d) and amended to read as follows:

"(d) For the purposes of carrying out subsections (b) and (c) of this section, the Secretary shall reserve from funds available for this title an amount equal to not less than 4⅝ percent of the amount allocated pursuant to section 202(a).".

TRANSFERS FROM THE DEPARTMENT OF DEFENSE

SEC. 303. (a) Notwithstanding the provisions of section 601 of this Act, there shall be transferred to and vested in the Secretary, at such time and in such manner as the President may designate, but not later than three years after the effective date of

this Act, all functions and offices vested in the Secretary of Defense or the Department of Defense by the Defense Dependents' Education Act of 1978.

(b) Notwithstanding the provisions of section 422 of this Act, the Secretary shall delegate to the director of the office created by section 207 of this Act all functions, other than administrative and support functions, vested in the Secretary by subsection (a) of this section.

(c) Not later than one year after the effective date of this Act, the Secretary, after consultation with the Secretary of Defense, shall transmit to the Congress a plan for effecting the transfer of functions under this section and administering those functions. In designing this plan, the Secretary shall also consult with representatives of sponsors of students enrolled in overseas dependents' schools and of professional employee organizations and administrators of such schools.

TRANSFERS FROM THE NATIONAL SCIENCE FOUNDATION

SEC. 304. (a) There are hereby transferred to and vested in the Secretary all programs relating to science education of the National Science Foundation or its Director established prior to the effective date of this Act pursuant to section 3(a)(1) of the National Science Foundation Act of 1950, except such programs, as determined by the Director of the Office of Management and Budget (after consultation with the Director of the Office of Science and Technology Policy), that relate to (1) fellowships and traineeships integral to the support of scientific research and development, (2) ethical, value and science policy issues, or (3) communicating information to practitioners of science and technology and to nonscientists. Except as provided in section 301(a)(1) of this Act, no mission-oriented research functions or programs of the National Science Foundation nor of any other Federal agency shall be transferred by this Act.

(b) The Secretary is authorized to conduct the programs transferred by subsection (a). In conducting such programs, the Secretary shall consult, as appropriate, with the Director of the National Science Foundation.

(c) Nothing in this section is intended to repeal or limit the authority of the National Science Foundation or the Director of the National Science Foundation under section 3(a)(1) of the National Science Foundation Act of 1950 to initiate and conduct programs not established prior to the effective date of this Act.

TRANSFERS FROM THE DEPARTMENT OF JUSTICE

SEC. 305. There are hereby transferred to and vested in the Secretary all functions vested in the Attorney General, the Department of Justice or the Administrator of the Law Enforcement Assistance Administration (or any successor agency thereto) with regard to the student loan and grant programs known as the law enforcement education program and the law enforcement intern program authorized by subsections (b), (c) and (f) of section 406 of the Omnibus Crime Control and Safe Streets Act of 1968.

TRANSFERS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 306. There are hereby transferred to and vested in the Secretary all functions relating to college housing loans vested in the Secretary of Housing and Urban Development or the Department of Housing and Urban Development by title IV of the Housing Act of 1950.

EFFECT OF TRANSFERS

SEC. 307. The transfer of a function, program or office from an officer or agency to the Secretary or to the Department includes any aspect of such function, program or office vested in a subordinate of such officer or in a component of such agency.

TITLE IV—ADMINISTRATIVE PROVISIONS

PART A—PERSONNEL PROVISIONS

OFFICERS AND EMPLOYEES

SEC. 401. (a) The Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Secretary and the Department. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5 of the United States Code.

(b)(1) Notwithstanding the second sentence of section 5108(a) of title 5 of the United States Code, the Secretary may place at grad levls GS-16, GS-17, and GS-18 a number of positions in such grades equal to the number assigned and employed on the day preceding the effective date of this Act in connection with functions transferred under this Act.

(2) Notwithstanding the second sentence of section 3104 of title 5 of the United States Code, the Secretary may establish within the Office created by section 206 of this Act all scientific, professional and technical positions outside the General Schedule assigned and employed on the day preceding the effective date of this Act in connection with functions, offices and programs transferred under this Act.

(3) Appointments under this subsection may be made without regard to the provisions of sections 3104 and 3324 of title 5 of the United States Code, if the individual appointed in such position is an individual who is transferred in connection with a transfer of functions, offices or programs under this Act and, immediately before the effective date of this Act, holds a position and duties comparable to those of the position to which appointed hereunder.

(4) Except as provided in subsection (c), the authority of the Secretary under this subsection to appoint personnel without regard to sections 3104, 3324 and 5108(a) of title 5 of the United States Code shall cease with respect to any position when the person first appointed to fill such position leaves such position.

(5) For purposes of section 414(a)(3)(A) of the Civil Service Reform Act of 1978, an individual appointed under this subsection shall be deemed to occupy the same position as he or she occupied on the day before the effective date of this Act.

(c) The Secretary may appoint, without regard to the provisions of title 5 of the United States Code governing appointment in the competitive service, up to 112 scientific, technical or professional employees of the Office created by Section 206 of this Act and may compensate employees so appointed without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. The rate of basic compensation for such employees shall not be equal to or in excess of the rate of pay currently paid for GS-16 of the General Schedule of section 5332 of title 5 of the United States Code.

(d) Subject to section 3134 of title 5 of the United States Code, but notwithstanding any other provision of law, the Director of the Office of Personnel Management shall establish positions within the Senior Executive Service for 15 limited term appointees. The Secretary shall appoint individuals to such positions as provided by Section 3394 of title 5 of the United States Code. Such positions shall expire on the latter of three years after the effective date of this Act or three years after the initial appointment to each position;

(e) Notwithstanding the transfer of functions effected by section 303 of this Act (and the consequent transfer of personnel), personnel performing such functions shall have commissary and post exchange privileges in facilities of the Armed Forces.

EXPERTS AND CONSULTANTS

SEC. 402. The Secretary may obtain services as authorized by section 3109 of title 5 of the United States Code at rates not to exceed the daily rate prescribed for grade GS-18 of the General Schedule under section 5332 of such title for persons in Government service employed intermittently.

PART B—GENERAL PROVISIONS

GENERAL AUTHORITY

SEC. 421. In carrying out the functions or conducting offices or programs transferred by this Act, the Secretary, or any officer or employee of the Department, may exercise any authority or part thereof available by law (including appropriation Acts) with respect to such function, office or program to the official or agency from which such function, office or program is transferred.

DELEGATION

SEC. 422. Except as otherwise expressly provided in this Act, the Secretary may delegate any function, office or program vested in the Secretary to such officers and employees of the Department as the Secretary may designate and may authorize such successive redelegations of such function, office or program within the Department as the Secretary may deem to be necessary or appropriate.

REORGANIZATION

SEC. 423. The Secretary is authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department as the Secretary may deem to be necessary or appropriate. Such authority shall not extend to the abolition of organizational units or components established by this Act, or to the transfer of functions, offices or programs vested by this Act in such organizational unit or component.

RULES

SEC. 424. The Secretary is authorized to prescribe such rules and regulations as the Secretary may deem necessary or appropriate to administer and manage the functions, offices and programs vested in the Secretary or the Department in accordance with chapter 5 of title 5 of the United States Code.

CONTRACTS

SEC. 425. Subject to the provisons of the Federal Property and Administrative Services Act of 1949, the Secretary is authorized to make, enter into and perform such contracts, grants, leases, cooperative agreements or other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons, and to make such payments, by way of advance or reimbursement, as the Secretary may deem necessary or appropriate to carry out functions and programs vested in the Secretary or the Department.

REGIONAL AND FIELD OFFICES

SEC. 426. The Secretary is authorized to establish, alter, discontinue or maintain such regional or other field offices as the Secretary may deem to be necessary or appropriate to perform functions and programs vested in the Secretary or the Department.

ACQUISITION AND MAINTENANCE OF PROPERTY

SEC. 427. (a) The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain schools and related facilities (but only to the extent that operation of schools and related facilities by the Department is authorized by this Act), laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, personal property, or any interest therein, as the Secretary deems nec-

essary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor.

(b) The authority available to the Secretary of Health, Education, and Welfare under section 524 of the Education Amendments of 1976 shall also be available to the Secretary.

(c) The authority granted by subsection (a) of this section shall be available only with respect to facilities of a special purpose nature that cannot readily be reassigned from similar Federal activities and are not otherwise available for assignment to the Department by the Administrator of General Services.

FACILITIES AT REMOTE LOCATIONS

SEC. 428. (a) The Secretary is authorized to provide, construct, or maintain, as necessary and when not otherwise available, the following for employees and their dependents stationed at remote locations:

(1) emergency medical services and supplies;

(2) food and other subsistence supplies;

(3) dining facilities;

(4) audio-visual equipment, accessories and supplies for recreation and training;

(5) reimbursement for food, clothing, medicine and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;

(6) living and working quarters and facilities; and

(7) transportation for school-age dependents of employees to the nearest appropriate educational facilities.

(b) The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2), (3) and (4) of subsection (a) shall be at prices reflecting reasonable value as determined by the Secretary.

(c) Proceeds from reimbursements under this section may be credited to the appropriations or funds that bear all or a part of the cost of such work or services or to refund excess sums when necessary.

USE OF FACILITIES

SEC. 429. (a) With their consent, the Secretary may, with or without reimbursement, use the research, equipment, services and facilities of any agency or instrumentality of the United States, of any State, or of any foreign government, in carrying out any function or program vested in the Secretary or in the Department.

(b) In carrying out his duties, the Secretary, under such terms, at such rates and for such periods (not exceeding five years), as the Secretary may deem to be in the public interest, is authorized to permit the use by public and private agencies, corporations, associations or other organizations, or by individuals, of any real property, or any facility, structure or other improvement thereon, acquired pursuant to sections 427 and 428, under the custody and control of the Secretary for Department purposes. The Secretary may require permittees under this section to recondition and maintain to a satisfactory standard, at their own expense, the real property, facilities, structures and improvements involved. This subsection shall not apply to excess property as defined in section 3(e) of the Federal Property and Administrative Services Act of 1949.

(c) Proceeds from reimbursements under this section may be credited to the appropriations or funds that bear all or a part of the cost of such work or services or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise lawfully established, including a fund established pursuant to section 432 of this Act and used under the law governing such fund.

(d) All interests in real property acquired pursuant to this Act shall be acquired in the name of the United States Government.

COPYRIGHTS AND PATENTS

SEC. 430. The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

(a) copyrights, patents and applications for patents, designs, processes and manufacturing data;

(b) licenses under copyrights, patents and applications for patents; and

(c) releases, before suit is brought, for past infringement of patents or copyrights.

GIFTS AND BEQUESTS

SEC. 431. The Secretary is authorized to accept, hold, administer and utilize gifts, bequests and devises of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts, bequests and devises of money and proceeds from sales of other property received as gifts, bequests or devises shall be deposited in the Treasury and shall be available for disbursement upon the order of the Secretary.

WORKING CAPITAL FUND

SEC. 432. (a) The Secretary, with the approval of the Director of the Office of Management and Budget, is authorized to establish for the Department a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as the Secretary shall find to be deductible in the interests of economy and efficiency, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its components; central messenger, mail, telephone and other communications services; office space; central services for document reproduction, and for graphics and visual aids; and a central library service.

(b) The capital of the fund shall consist of any appropriations made for the purpose of providing working capital and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates that will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the Treasury as miscellaneous receipts any surplus of the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain such fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities and unpaid obligations relating to the services which the Secretary determines, with the approval of the Office of Management and Budget, will be performed.

FUNDS TRANSFER

SEC. 433. The Secretary may, when authorized in an appropriation Act in any fiscal year, transfer funds from one appropriation to another within the Department, except that no appropriation for any fiscal year may be thus increased or decreased by more than ten percent.

SEAL OF DEPARTMENT

SEC. 434. The Secretary shall cause a seal of office to be made for the Department of such design as the Secretary shall approve. Judicial notice shall be taken of such seal.

ANNUAL REPORT

SEC. 435. (a) The Secretary shall, as soon as practicable after the close of each fiscal year, make a single comprehensive report to the President for transmission to the Congress on the activities of the Department during such fiscal year. Such report shall include a statement of goals, priorities and plans for the Department together with an assessment of the progress made toward the attainment of those objectives, the more effective and efficient management of the Department and the coordination of its functions.

(b)(1) In preparing and developing the report required by subsection (a), the Secretary shall, to the maximum extent practicable, consult with members of the public, including representatives of parents, students, educators, State and local governments, private institutions, other organizations and individuals. The Secretary shall hold such public hearings in the District of Columbia and in such other locations as the Secretary deems appropriate to maximize public participation.

(2) The Secretary may reimburse any person for expenses reasonably incurred in the course of consultation or hearings under paragraph (1) if such person—

(A) has made or is likely to make a material contribution to the work of the Department; and

(B) could not otherwise participate fully and effectively in such consultation.

(3) For purposes of this section, the term "person" shall have the same meaning as in section 551(2) of title 5 of the United States Code.

AUTHORIZATION OF APPROPRIATIONS

SEC. 436. Subject to any limitation on appropriations applicable with respect to any function or program transferred to the Department or the Secretary, there are authorized to be appropriated such sums as are necessary to carry out the provisions of this Act and to enable the Department and the Secretary to perform any function or conduct any program or office that may be vested in the Department or the Secretary. Funds appropriated in accordance with this section shall remain available until expended.

RELATIONSHIP TO GENERAL EDUCATION PROVISIONS ACT

SEC. 437. Except where inconsistent with the provisions of this Act, the General Education Provisions Act shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act.

TECHNICAL ADVICE

SEC. 438. (a) The Secretary is authorized, upon request, to provide advice, counsel and technical assistance to applicants or potential applicants for grants and contracts and other interested persons with respect to any functions or programs of the Secretary or the Department.

(b) The Secretary may permit the consolidation of applications for grants or contracts with respect to two or more functions or programs administered by the Secretary or the Departemnt: *Provided*, That such packaging or consolidation shall not alter the statutory criteria for approval of applications for funding with respect to such functions or programs.

TITLE V—TRANSITIONAL, SAVINGS AND CONFORMING PROVISIONS

TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL

SEC. 501. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records and unexpended balance of appropriations, authorizations, allocations and other funds employed, held,

used, arising from, available to or to be made available in connection with the functions, programs, offices or portions thereof transferred by this Act, subject to section 202 of the Budget and Accounting Act of 1950, shall be transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) Positions expressly specified by statute or reorganization plan to carry out functions, offices or programs transferred by this Act, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level I, II, III, IV, or V of the executive schedule (5 U.S.C. 5312–5316) on the effective date of this Act, shall be subject to the provisions of section 503 of this Act.

EFFECT ON PERSONNEL

SEC. 502. (a) Except as otherwise provided in this Act, the transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this title shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(b) Any person who, on the day preceding the effective date of this Act, holds a position compensated in accordance with the executive schedule prescribed in chapter 53 of title 5 of the United States Code and who, without a break in service, is appointed in the Department to a position having duties comparable to those performed in such prior position shall continue to be compensated in such new position at not less than the rate provided for the previous position, for the duration of the service of such person in the new position.

AGENCY TERMINATIONS

SEC. 503 (a) The following offices shall terminate upon the transfer of functions or programs pursuant to this Act:

(1) the Education Division of the Department of Health, Education, and Welfare (but not the National Institute of Education);

(2) the Office of the Assistant Secretary for Education of the Department of Health, Education, and Welfare;

(3) the Office of Education and the Office of the Commissioner of Education of the Department of Health, Education, and Welfare; and

(4) the Office for Dependents' Schools of the Department of Defense.

(b) Each position which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rate prescribed for level IV or V of the executive schedule (5 U.S.C. 5315–5316), in an office terminated pursuant to this Act shall also terminate.

(c)(1) The director of any office in the Department the director of which was required prior to the effective date of this Act to report to the Commissioner of Education or the Assistant Secretary for Education of the Department of Health, Education, and Welfare shall report to the Secretary.

(2) The Secretary is authorized to delegate reporting requirements rested in the Secretary by paragraph (1) of this subsection to any officer or employee of the Department.

INCIDENTAL TRANSFERS

SEC. 504. (a) The Director of the Office of Management and Budget, at such time or times as the Director shall provide, is authorized and directed

(1) to make such determinations as may be necessary with regard to the transfer of functions, programs, offices or portions thereof that relate to or are utilized by an officer, agency, commission or other body, or component thereof, transferred by this Act; and

(2) to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records and unexpended balances of appropriations, authorizations, allocations and other funds held, used, arising from, available to or to be made available in connection with such functions, programs, office or portions thereof, as the Director may deem necessary to accomplish the purposes of this Act.

(b) The Director shall provide for terminating the affairs of all offices terminated by this Act and for such further measures and dispositions as the Director deems necessary to effectuate the purposes of this Act.

(c) After consultation with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget is authorized and directed, at such time as the Director of the Office of Management and Budget shall provide, to make such determinations as may be necessary with regard to the transfer of positions within the Senior Executive Service in connection with functions transferred by this Act.

SAVINGS PROVISIONS

SEC. 505. (a) All orders, determinations, rules, regulations, permits, grants, contracts, certificates and privileges that—

(1) have been lawfully issued, made, granted or allowed to become effective in the performance of functions or programs which are transferred under this Act to the Department after the date of enactment of this Act, and

(2) are in effect at the time this Act takes effect,

shall continue in effect according to their terms until lawfully modified, terminated, superseded, set aside or revoked.

(b)(1) The provisions of this Act shall not affect any proceedings (including, but not limited to, notices of proposed rulemaking) or any application for any license, permit, certificate or financial assistance pending at the time this Act takes effect before any department, agency, commission or component thereof, functions, offices or programs of which are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions, offices or programs so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until lawfully modified, terminated, superseded, or revoked. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Secretary is authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect; and

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No suit, action or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions or programs of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions or programs of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act.

(e) If, before the date on which this Act takes effect, any department or agency, or officer thereof, in his official capacity, is a party to a suit, and under this Act any function, office or program of such department, agency or officer is transferred to the Secretary or any other official, then such suit, insofar as it relates to such function, office or program, shall be continued with the Secretary or other official, as the case may be, substituted.

SEPARABILITY

SEC. 506. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby.

REFERENCE

SEC. 507. With respect to any function or program transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any department, commission or agency or any officer or office the functions or programs of which are so transferred shall be deemed to refer to the Secretary, other official or component of the Department in which this Act vests such functions.

AMENDMENTS

SEC. 508. (a) Section 19(d)(1) of title 3 of the United States Code is amended

(1) by striking out "Secretary of Health, Education, and Welfare" and inserting in lieu thereof "Secretary of Health and Human Services"; and

(2) by inserting immediately before the period at the end thereof the following: ", Secretary of Education".

(b) Section 101 of title 5 of the United States Code is amended—

(1) by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services"; and

(2) by adding at the end thereof the following: "The Department of Education.".

(c) Section 5108(a) of title 5 of the United States Code is amended by striking out "10,777" and inserting in lieu thereof "10,838".

(d) Section 5312 of title 5 of the United States Code is amended by adding at the end thereof the following:

"(15) Secretary of Education.".

(e) Section 5314 of title 5 of the United States Code is amended by inserting immediately after paragraph (4) thereof the following:

"(5) Under Secretary of Education.".

(f) Section 5315 of title 5 of the United States Code is amended—

(1) by striking out paragraph (17) and inserting in lieu thereof

"(17) Assistant Secretaries of Health and Human Services (4).''; and

(2) by inserting immediately after paragraph (24) thereof the following:

"(25) Assistant Secretaries of Education (6).

"(26) General Counsel, Department of Education.

"(27) Inspector General, Department of Education.".

(g) Section 5316 of title 5 of the United States Code is amended by striking out paragraph (41) and by inserting in lieu thereof the following:

"(41) Officers, Department of Education, (6).".

(h) Subchapter II of chapter 53 of title 5 of the United States Code is further amended by striking out "Health, Education, and Welfare" each place it appears and inserting in lieu thereof "Health and Human Services".

(i) The Comprehensive Employment and Training Act of 1973 is amended as follows:

(1) Section 111(a) shall read:

"Sec. 111(a). The Secretary of Labor shall consult with the Secretary of Health and Human Services with respect to arrangements for services of a health or welfare character under this Act. The Secretary of Labor shall consult with the Secretary of Education with respect to arrangements for services of an educational nature under this Act, and the Secretary of Education and the Secretary of Health and Human Services shall solicit the advice and comments of appropriate States agencies with regard to, respectively, education and health and welfare services. Such services shall include basic or general education; educational programs conducted for offenders; institutional training; health care, child care, and other supportive services; and new careers and job restructuring in the health, education, and welfare professions."

(2) Section 127(b) is amended by striking out "and the Secretary of Health, Education, and Welfare" in the first line and inserting in lieu thereof ", the Secretary of Education and the Secretary of Health Human Services".

(3) Section 311(g) is amended by striking out "Health, Education, and Welfare," and inserting in lieu thereof "Health and Human Services, Department of Education,";

(4) Section 314 is amended by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Education";

(5) Section 438(a)(2) is amended by striking out the words "Health, Education, and Welfare," and inserting in lieu thereof the words "Education, Secretary of Health and Human Services,";

(6) Section 502(a) is amended by

(A) striking out the number "15" and inserting in lieu thereof "16"; and

(B) striking out the words ", Health, Education, and Welfare," in paragraph (1) and inserting in lieu thereof the words "Education, Secretary of Health and Human Services,".

(j) Section 5 The Alcohol and Drug Abuse Education Act is amended—

(1) by inserting after the word "Secretary" in the first sentence, the words ", the Secretary of Health and Human Services,"; and

(2) by striking out the words "of Health, Education, and Welfare" in the second sentence and inserting in lieu thereof the words ", Department of Health and Human Services,".

(k) Section 1411 of the Defense Dependents' Education Act of 1978 is amended:

(1) by inserting in subsection (a)(1) thereof after the words "Assistant Secretary")" the word "and principal officer of the Department of Education responsible for the office established pursuant to section 207 of the Department of Education Act,".

and by striking out in such subsection the word "Chairman" and inserting in lieu thereof "Co-chairmen";

(2) by adding in subsection (a)(2) thereof after the word "Secretary," the words "and the principal officer of the Department of Education responsible for the office established pursuant to section 207 of the Department of Education Act,";

(3) by striking out all of subparagraphs (A) and (B) of subsection (a)(3) thereof, inserting in lieu thereof the new subparagraph (A) which shall read—

"(A) the Secretary of Educaton,"

and relettering subparagraphs (C), (D), and (E) of paragraph (3) as (B), (C), and (D), respectively; and

(4) by adding to subsection (c) thereof a new paragraph (2) which shall read—

"(2) make recommendations to the Director and to the Secretary of Education on the orderly transfer of the functions of under the Dependents' Education Act of 1978 to the Secretary and Department of Education,"

and renumbering paragraphs (2), (3) and (4) of subsection (c) as paragraphs (3), (4), and (5), respectively.

(1) Section 103(c)(2)(B) of the Elementary and Secondary Education Act of 1965 is amended by adding at the end thereof the following new sentence:

"The Secretary of Health and Human Services shall transmit the information required by this subparagraph to the Secretary of Education not later than February 1 of each year."

REDESIGNATION

SEC. 509. (a) The Department of Health, Education, and Welfare is hereby redesignated the Department of Health and Human Services, and the Secretary of Health, Education, and Welfare or any other official of the Department of Health, Education, and Welfare is hereby redesignated the Secretary or official, as appropriate, of Health and Human Services.

(b) Any reference to the Department of Health, Education, and Welfare, the Secretary of Health, Education, and Welfare or any other official of the Department of Health, Education, and Welfare in any law, rule, regulation, certificate, directive, instruction or other official paper in force on the effective date of this Act shall be deemed to refer and apply to the Department of Health and Human Services, the Secretary of Health and Human Services, respectively, except to the extent such reference is to a function or program transferred to the Secretary under this Act.

TRANSITION

SEC. 510. With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees and other personnel of the departments and agencies from which functions, offices or programs have been transferred to the Secretary, and funds appropriated to such functions, offices or programs, for such period of time as may reasonably be needed to facilitate the orderly implementation of this Act.

TITLE VI—EFFECTIVE DATE AND INTERIM APPOINTMENTS

EFFECTIVE DATE

SEC. 601. The provisions of this Act shall take effect one hundred eighty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after the date of enactment of this Act, (1) any of the officers provided for in title II of this Act may be nominated and appointed, as provided in such title, and (2) the Secretary may promulgate regulations pursuant to section 505(b)(2) of this Act. Funds available to any department or agency (or any official or component thereof), the functions, offices or programs of which are transferred to the Secretary by this Act, may, with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this title and other transitional and planning expenses associated with establishment of the Department or transfer of functions, offices or programs thereto until such time as funds for these purposes are otherwise available.

INTERIM APPOINTMENT

SEC. 602. In the event that one or more officers required by this Act to be appointed by and with the advice and consent of the Senate shall not have taken office on the effective date of this Act, and notwithstanding any other provision of law, the President may designate any officer in the executive branch to act in such office until the office is filled. While so acting, any such officer shall receive compensation at the rate provided under this Act for the office in which he or she acts.

To the Congress of the United States:

I am sending to the Congress today my proposal to establish a Department of Education.

There is a compelling need for the increased national attention a separate Cabinet department will bring to education issues. Our Nation's pluralistic education system, considered the most competent and open in the world, faces many problems and challenges: a decline in public confidence in the quality of education; unacceptably high rates of high school dropouts and of young people who lack basic educational tools and specific skills for productive employment; and increasing demands for retraining and learning opportunities.

The primary responsibility for education in our Nation lies with State and local government. The Federal government has a limited, but critical responsibility to help public and private institutions meet these challenges: to ensure equal educational opportunities; to increase access to postsecondary education by low and middle income students; to generate research and provide information to help our educational systems meet special needs; prepare students for employment; and encourage improvements in the quality of our education. The achevement of each of these goals will be enhanced by a new Department of Education.

Through our legislative and budget initiatives of the past two years, this Administration has given high priority to meeting these educational commitments. My budget for FY 1980 provides for $13.3 billion in education outlays, about a 45 percent increase above the level when I came into office. Last year, we established a legislative framework, the Middle Income Student Assistance program, to help solve one of our major education problems—the growing cost of a college education. The establishment of a Cabinet Department of Education will reflect the continued high priority my Administration places on education.

A Department of Education will bring our Nation's educational challenges and the Federal government's role in meeting them to the forefront of domestic policy discussion. Such discussion is vital to an activity that directly affects 60 million students, teachers and educational employees and constitutes a $120 billion public and private enterprise.

Establishing a separate Department will create, for the first time, a Cabinet-level advocate for education with direct access to the President, the Congress, and the public.

Second, it will give Federal education programs the full-time, high-level leadership and management that they cannot receive in a structure so large and complex as the Department of Health, Education, and Welfare. This will allow the Federal government to fulfill its responsibilities in education more effectively. It will eliminate duplication in the adminitsrative and staff support activities within the Office of the HEW Secretary and the Education Division. It will allow improved financial management and more efficient administration of education programs. Separation of the education functions from HEW will also promote improved management of its closely-related health and welfare responsibilities.

Third, it will provide greater accountability. Submerged beneath HEW's dominant functions of health and welfare, Federal education programs lack full-time accountability at the Cabinet level. With a separate Department of Education, one Cabinet member will report directly to the President and be accountable to the Congress and the American people for the conduct of Federal education policies.

Fourth, it will provide simpler, more reliable, and more responsive support to states, localities, public and private institutions, given them a direct line of Cabinet-level contact with the Federal government.

Fifth, the new Department will allow better coordination of education programs with related Federal activities, such as em-

ployment programs and research. It will also allow high-level consideration of the impact of other Federal policies, such as tax and energy, on education institutions and students.

Under the proposal I am submitting today, the Department of Education will include more than 150 programs and 16,200 employees. With a budget of more than $13 billion, this Department will be larger than five other Departments including Energy, Commerce, Justice, Interior, and State.

In addition to the 140 programs in the Education Division of the Department of Health, Education, and Welfare, the new Department of Education will handle educational activities now carried out by several other departments. These include: the U.S. Department of Agriculture School, certain science education programs of the National Science Foundation, the overseas dependents' schools of the Department of Defense, the college housing loan program of the Department of Housing and Urban Development, the Law Enforcement Education and the Law Enforcement Internship Program of the Department of Justice, and the Migrant Education programs of the Department of Labor.

The proposed legislation establishes within the Department of Education separate Offices for Civil Rights, Elementary and Secondary Education, Postsecondary Education and Educational Research and Improvement, each headed by an Assistant Secretary. It establishes an office to administer functions related to the education of overseas dependents of Department of Defense personnel, an Inspector General, and a 20-member Intergovernmental Advisory Council on Education, appointed by the President, to promote better relations with the various levels of government and private institutions.

I urge the Senate and the House of Representatives to act promptly on this important proposal.●

By Mr. MATSUNAGA:

S. 511. A bill to amend section 457 of the Internal Revenue Code of 1954 to extend to deferred compensation plans maintained by tax exempt organizations the treatment conferred upon such plans maintained by State and local governments by the Revenue Act of 1978; to the Committee on Finance.

EXTENSION OF DEFERRED COMPENSATION PLAN PROVISIONS TO EXEMPT ORGANIZATIONS

Mr. MATSUNAGA. Mr. President, today I am introducing a bill to extend section 457 of the Internal Revenue Code, which authorizes unfunded deferred compensation plans for State and local governments, to tax exempt organizations.

The Congress enacted section 457 of the Internal Revenue Code as part of the Revenue Act of 1978. This provision resolved a heated controversy between State and local governments on the one hand and the Department of the Treasury on the other.

Since 1960, the Treasury has sanctioned deferred compensation plans under its administrative interpretation of the constructive receipt and cash equivalency doctrines. However, the Treasury subsequently viewed the growing use of deferred compensation arrangements as undermining effective tax administration. In a letter to Chairman RUSSELL LONG dated May 4, 1977, Treasury Secretary Michael Blumenthal noted the use of such plans where employees apparently were in constructive receipt of compensation. Secretary Blumenthal also noted that State and local governments and tax exempt organizations could establish such plans for their workers without meeting the nondiscrimination rules and the contribution limitation imposed by the Employee Retirement Income Security Act (ERISA) for qualified pension plans.

The Treasury sought to change its administrative practices by issuing proposed regulations on February 3, 1978. The regulations would have subjected deferred amounts to current taxation.

The proposed regulations alarmed many employers who utilized these deferred compensation arrangements. The new administration's position reversed the Internal Revenue Service practice of sanctioning such plans. Moreover, the proposed regulations, it was believed, contravened the principle of constructive receipt.

In reaching a suitable legislative compromise, the Congress enacted section 457 of the code; this provision permits continued deferral of compensation for State and local government workers subject to a percentage limitation and set dollar limitation.

The Revenue Act of 1978 also retained the unfunded deferred compensation plan for private, taxable entities. These taxable entities forego the tax deduction for compensation deferred by the individual worker. Consequently, the taxable corporation extends deferred compensation arrangements only to a relatively few highly compensated workers. These individuals do not need ERISA protection afforded under qualified plans; also, in many situations, there is an element of negotiated risk, since the worker's claim for deferred compensation is that of an unsecured creditor.

The Senate version of the Revenue Act of 1978 covered tax exempt organizations under that provision for private, taxable entities. This approach found little support in conference with the House Ways and Means Committee. Consequently, the provision for tax exempt organizations was deleted from the final version of the Revenue Act.

Thus, the Revenue Act provided for State and local government deferred compensation plans as well as for private, taxable corporation's deferred compensation arrangements. However, no provision was made for unfunded deferred compensation arrangements utilized by tax exempt organizations.

My bill seeks to provide for tax exempt organizations by covering them under the arrangement for State and local governments. It answers the needs of these organizations who are now faced with great uncertainty in providing for their employees. I therefore urge quick Senate action on this measure.

By Mr. MOYNIHAN:

S. 512. A bill exempting employees serving 60 days or less from the financial reporting requirements of the Ethics in Government Act of 1978; to the Committee on Governmental Affairs.

Mr. MOYNIHAN. Mr. President, I rise to introduce a bill to amend the Ethics in Government Act of 1978. I believe this bill is welcomed by the distinguished chairman of the Governmental Affairs Committee, as it will put into effect what I understand was intended all along of those who worked on the act in the Senate. I refer to the exclusion from the act's public financial disclosure requirements of those who serve in their appointed capacities for 60 days or less. There are in the act as passed ample indications that this was the intent of the Congress, but as happens on occasion in a complex piece of legislation some confusion has arisen over the implementation of the act's detailed provisions in this regard. I hope that this bill will set at least some of these matters straight.

In fact, two concerns about the act have recently surfaced. The first derives from those provisions which in certain respects restrict for a time the employment and activities of those who have served as senior public officials and who then return to private life. I was myself concerned that in passing the act last year, we might, in trying to prevent conflicts of interest, have erred in a direction which would ultimately discourage many of our ablest citizens from active participation in Government.

Of course, I was pleased and reassured when our esteemed colleagues, the senior Senator from Connecticut and the senior Senator from Illinois, moved speedily last week to dispell any doubts about the proper interpretation of the relevant conflict of interest provisions, and to allay the fear that these provisions may have been drafted too loosely.

The memorandum of understanding published in the RECORD on February 21, jointly by the Senate and House leaders of the conference on the 1978 act, is most welcome in specifying the intended focus of the act's conflict of interest provisions. I thank my distinguished colleagues for their ready and helpful guidance toward resolving these uncertainties. It is also my understanding, I should add, that the director of the newly established Office of Government Ethics will soon issue regulations which will further clarify matters. This is all to the good.

The second concern about the act is as I have mentioned: That in providing for the full public disclosure of the financial interests of nominees and appointees to high government posts—and of their immediate family members—we have unintentionally, or at least unnecessarily, included those who serve for limited periods and in limited capacities, notably as members of various part-time advisory bodies; that in so doing we have inadvertently stepped beyond the public's right to be informed and into the citizen's right to privacy; and that the resulting situation is one where many accomplished citizens, whose public service is to be sought after for the country's good, will stand back and deny us the benefit of their learning and experience.

The bill I am introducing would amend the 1978 Ethics in Government Act to exclude from the act's public financial disclosure requirements any who serve in their appointed capacities for 60 days or less during a calendar year. The bill's provisions apply to employees in each of

the three Federal branches, and require those whose service exceeds 60 days to meet the act's disclosure requirements on the 61st day. I hasten to add that this bill in no way limits the ability of the President or a congressional committee to require full disclosure to them of all pertinent facts about a candidate. Should any questions arise about a particular individual, the President or a committee of course remain free to require that individual to make the disclosure public before further considering his or her candidacy. But it would preserve the privacy of many individuals who are named to advisory and consultative positions.

It is plain that we must both preserve the free exchange of ideas between the public and private spheres, and also safeguard that very separation of the public and private arenas which defines a free society. I believe this bill will help the 1978 Ethics in Government Act to maintain this balance, and I ask my colleagues to regard it favorably.

I ask unanimous consent to have printed in the RECORD an article in Newsweek for March 5, 1979.

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

(From Newsweek, Mar. 5, 1979)

A FEDERAL BRAIN DRAIN

Donald Frederickson, director of the National Institutes of Health, is thinking about leaving the government soon. So is Hale Champion, Under Secretary of Health, Education and Welfare. Ernest Boyer, commissioner of education, who planned to resign next year, may quit much sooner. Already, two Securities and Exchange Commission officials have resigned, and Joseph Califano has warned that 100 top staffers in HEW alone might follow. The reason: a tough new conflict-of-interest law set to go into effect July 1 that will restrict what public servants can do after they leave Uncle Sam's employ. "Companies and law firms are saying, 'This is the last train out'," complains one top agency official. "After July 1, we're all pariahs."

For decades, government service has been a "revolving door." Hundreds of talented people are recruited every year from businesses, law firms and universities for stints in Federal agencies, and later return to the private sector in high-paying jobs. All too often, critics charge, they pull their regulatory punches out of fear of offending prospective employers. Once out of government, they may use their public know-how and know-who for private ends. They know where the loopholes are and can pull strings in their old agencies. Watchdog groups have long warned that the revolving door poses possible conflicts of interest, and candidate Jimmy Carter vowed to break up the "sweetheart arrangements" between the regulators and the industries they regulate.

Rebellion.—Last year, at Carter's urging, Congress passed the Ethics in Government Act to prevent former government employees from turning their public service to private advantage. But two provisions in that law seem so strict that they have sparked a rebellion in the Federal ranks. The new law states that for two years after leaving office, former high-ranking bureaucrats may not "aide, assist, counsel, advise or aide in representing" anyone on any governmental matter that they had responsibility for in office. And for one year, those ex-officials can have virtually no contact with their former agencies at all. Penalties range up to a $10,000 fine and two years in prison, and the ex-bureaucrat and his new employer can be blacklisted from further dealings with the government.

Some Federal officials charge that the new law punishes them simply for having served in the government. And nonprofit institutions may be especially hard hit since they are so dependent on government grants. "Because of the 'cooling off' period. I wouldn't be able to go back to my old job and even informally assist someone in a research grant," say Fredrickson, who was president of the National Academy of Science's Institute of Medicine before joining NIH. "I'd have to stay in liquid nitrogen for two years." Some agency heads worry that the restrictions will discourage top people from accepting government posts, leaving the agencies strapped for technical experts. "This probably would have deterred me from joining the SEC," says Albert Sommer, a former commissioner who now practices securities law. "You will see a substantial exodus from the SEC."

Ethics? Califano and Defense Secretary Harold Brown—who have both made round trips through the revolving door—have objected to Carter. "The law with respect to the nonprofit world should be changed or postponed until Congress can think it through," says Califano. "I don't think it was intended to kick off a major brain drain." Even some congressmen are having second thoughts. "I think it had much more in it than we realized," says Sen. Daniel Moynihan of New York. "In the name of ethics in government, we are making service to government impossible for ethical people."

Much depends on the handiwork of one bureaucrat—Bernhardt Wruble, director of the new Office of Government Ethics, who is translating the law into specific regulations. He contends that once the regulations are issued, many fears will prove unfounded. "People will be able to return to top-ranking positions and function," he says. "But the law will prevent them from giving someone the scoop on Joe Jones, head of research grants." Counters one agency official: "Who wants to keep five pages of regulations in his desk drawer for easy reference every time he has to make a decision?" In the end, the regulations may be so finely drawn they will catch few influence-peddling ex-officials, but make life after government frustrating for the rest.

By Mr. MOYNIHAN:

S. 513. A bill to extend for 2 years at its present level the program of general revenue sharing provided under the State and Local Fiscal Assistance Act of 1972; to the Committee on Finance.

Mr. MOYNIHAN. Mr. President, I am today introducing a bill to extend the State and Local Fiscal Assistance Act of 1972 in its present form and at its present levels for 2 years beyond its current expiration date of September 30, 1980. This program, commonly known as general revenue sharing, represents one of the most creative accomplishments of American federalism in the past decade. It is based on a simple but fundamental fact: The progressive nature of Federal taxation is such that as the economy grows the revenues of the Federal Government grow faster than do the revenues of State and local governments. In order to preserve a balanced Federal system, it is of central importance that we preserve the ability of State and local government to respond to their distinctive circumstances in their own ways. In that spirit, the idea began to be developed in the Kennedy and Johnson administrations that the Federal Government ought to direct a portion of its growing revenues to States and localities without the restrictions and specification required in categorical programs. This was a large idea. It was developed and advanced by such distinguished political economists as Walter Heller and Joseph Pechman. In time, it was proposed to Congress by President Nixon and adopted in its present form in 1972.

In recent weeks, we have begun to see in many quarters a willingness to revise some of our most fundamental governmental arrangements and to undo some of our hardest won achievements so as to accommodate the politics and economics of the next 18 to 36 months. It is not necessary here even to speak of those who would amend the Constitution of the United States for that purpose. It is not necessary to speak of those who say we should sharply reduce Federal spending but who are unwilling or unable to say which forms of spending should be reduced. I have the utmost respect for those who are courageous enough to specify a particular program and suggest those who are courageous enough to specify a particular program and suggest that it be reduced or eliminated. That is a responsible act performed by responsible public officials. It is the proper subject for public debate and political decisionmaking.

In the case of general revenue sharing, it is my view that the program is important and should be continued. The conception of federalism which underlies it, and the durable economic trends on which it is based, seemed valid to me. It may be the case that some States and localities are experiencing surpluses in their current budgets and it is indisputably the case that the Federal Government is experiencing a deficit. But these surpluses are mostly cyclical. Some reflect different accounting practices more than they represent true differences in fiscal condition.

We must not overlook the long-term trends. Even with revenue sharing, State and local taxes as a percentage of personal income more than tripled between 1961 and 1977. The Federal income tax has remained almost constant in this respect. Notwithstanding the rapid increases in their taxes, many of which are burdensome and regressive in impact, States and localities have grown more dependent on revenues from Washington. Had the Federal Government kept its aid at the levels experienced before enactment of revenue sharing, State taxes would have risen still further, or services would have diminished or—more likely—the Federal Government would have stepped in with yet more detailed and complicated categorical efforts to replace State effort and thereby inevitably to reduce the ability of the States to manage their affairs.

This ought to not happen. At least it ought not to happen casually. If it is to happen, it must be the result of a sustained and serious an examination of the proper workings of a Federal system as that which produced revenue sharing. In that spirit I suppose that we agree now to continue the present arrangement for

an additional 2 years, and I seek the support of my colleagues for that proposition.

By Mr. BELLMON:

S. 514. A bill to amend the Emergency Petroleum Allocation Act of 1973 to exempt from price controls economically marginal crude oil production; to the Committee on Energy and Natural Resources.

DEPTH QUALIFIED STRIPPER WELLS

● Mr. BELLMON. Mr. President, according to a recent (January 8) nationwide Harris public opinion poll, 65 percent of all Americans interviewed said they favored "deregulation of price of all oil produced in the United States, if this would encourage development of more oil production here at home." That is a very encouraging development. It shows once again Mr. President, that the American people understand basic economics better than politicians think they do. It shows that most Americans are more concerned with "supply" than they are with "price."

Mr. President, there can be no doubt that price deregulation would result in more oil production here at home. Congress has not yet repealed the Laws of supply and demand. The trouble we have had in recent years is that there are people high and influential in this Carter administration who feel that those laws are not "fair." They believe that it is not fair for a producer to get what his product is worth. To them, "high" prices can be "allowed" when costs of production are high and when increased supplies are needed. Today Mr. President, I am introducing a bill that ought to satisfy even those in this administration who feel that prices ought to be dictated by Government, rather than by natural economic law. I propose a realistic definition of a "stripper" oil well.

Mr. President, at present, many old and economically marginal oil fields are being prematurely abandoned. There are things oilmen can do to keep a well producing that is running dry, but those cost money. You cannot expect a producer to keep a well producing if he loses money doing so. And you cannot expect a producer to employe enhanced recovery techniques if it looks like he will wind up losing money in the long run.

In recognition of the facts, the Congress approved an amendment by my former colleague, Dewey Bartlett, excepting stripper well oil from price controls. The problem is, a stripper well was too narrowly defined. Presently, a stripper well is one which has produced crude oil at a maximum feasible rate throughout a 12-month qualifying period of no more than 10 barrels a day, on the average.

Obviously Mr. President, it costs much more to produce oil from a deep well than it does from a shallow well. The present definition of stripper well makes no distinction as to the depth of the well. The bill I am introducing today will bring some reality to the situation by increasing the qualifying production threshold with the depth of the well.

Specifically Mr. President, the bill I am introducing today would define a stripper well to mean 20 barrels from an average production depth of greater than 2,000 feet; 25 barrels from an average depth of greater than 4,000 feet; 30 barrels from an average depth of greater than 6,000 feet; and finally, 35 barrels from an average production depth of greater than 8,000 feet.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 514

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 609. Section 8 of the Emergency Petroleum Allocation Act of 1973, as amended, is amended by adding at the end thereof the following new paragraph:

"(k)(1) The first sale of deep stripper well crude oil shall be exempt from the regulation promulgated under section 4(a) of this Act.

"(2)(A) For purposes of this subsection, 'deep stripper well crude oil' means crude oil produced and sold from a property whose maximum average daily production of crude oil per well during any consecutive twelve-month period beginning after December 31, 1975, exceeds ten barrels but does not exceed—

"(i) twenty barrels from an average producing depth greater than two thousand feet but not greater than four thousand feet;

"(ii) twenty-five barrels from an average producing depth greater than four thousand feet but not greater than six thousand feet;

"(iii) thirty barrels from an average producing depth greater than six thousand feet but not greater than eight thousand feet;

"(iv) thirty-five barrels from an average producing depth greater than eight thousand feet.

"(B) To qualify for the deep stripper well crude oil exemption under this subsection, a property must be producing crude oil at the maximum feasible rate throughout the twelve-month qualifying period and in accordance with recognized conservation practices.

"(3) For purposes of this section, the President shall include in the computation of the actual weighted average first sale price of crude oil produced in the United States in any month subsequent to the month of enactment of this subsection, the actual volume of deep stripper well crude oil and such actual volume shall be deemed to have been sold at a first sale price which equals the average price for which such crude oil would have been sold if the exemption under this subsection had not been in effect.

"(4) The provisions of this subsection shall take effect on the first day of the first full month which begins after the date of enactment of this subsection."●

By Mr. JOHNSTON:

S. 515. A bill to establish interest rates on SBA disaster loans for disasters occurring between October 1, 1978, and October 1, 1982; to the Select Committee on Small Business.

SBA DISASTER LOANS

● Mr. JOHNSTON. Mr. President, today, I am introducing a bill to reduce the interest rates on SBA disaster loans for disasters occurring between October 1, 1978, and October 1, 1982. The disaster loan interest rates in this bill are 5 percent for both homeowners and other victims of disasters. My bill provides homeowners 5-percent disaster loan interest rates on the first $55,000 of damage to personal property and identical interest rates to businesses on the first $250,000 of damage. Loans in excess of these ceilings will be one-fourth of 1 percent plus the average annual interest rate on the public debt outstanding at the end of the previous fiscal year.

The disaster loan interest rates in this bill are substantially similar to the interest rates established last year in the conference report on H.R. 11445, the omnibus amendments to the Small Business Act and the Small Business Investment Act. As you will recall, the President vetoed this legislation last Congress partially because it contained excessively deep interest rate subsidies. My bill eliminates this contentious issue by limiting the interest rate to homeowners to 5 percent.

Mr. President, I hope that Congress maintains its tradition of taking expeditious action to help people and communities suffering physical disasters. I trust that Congress will continue to demonstrate its concern for the plight of disaster victims such as the victims in Bossier City, La., who recently suffered through a catastrophe of exceptional proportions. I consider the interest rate subsidy on disaster loans contained in my bill to be an investment in the people of Bossier City and other communities throughout our Nation that suffer similar catastrophes. I am confident that our Nation is guaranteed a return on this investment and I urge my colleagues to expeditiously pass this legislation.●

By Mr. BELLMON:

S. 516. A bill to count injection wells as wells for stripper purposes; to the Committee on Energy and Natural Resources.

● Mr. BELLMON. Mr. President, there has been a lot of talk, lately, about the emergence of what might be called a fourth independent branch of the Federal Government. If there were such a branch, and if the Constitution provided for such a branch, I suppose it would be called the regulatory branch.

It is true Mr. President, that the Congress has set up a number of independent regulatory agencies, but it has always been the intention of Congress that these agencies reside in the executive branch. The President is supposed to have some control over them. They are supposed to pay some attention to the rulings of the judicial branch.

Mr. President, I am sure that many of my colleagues will have more to say on this issue, both pro and con, as this session continues. But today, I want to give a little background for the introduction of a simple bill aimed at increasing domestic crude oil production and reducing costly oil imports.

Mr. President, if an oilman has a field that is about to play out, there are things that he can do to increase production above what would be that field's natural decline curve. Those things are called "enhanced recovery techniques," and they cost money. One technique is to cease production on several of the wells and force water or chemicals

down those wells into the field. Those introduced fluids will drive more oil out the other wells than they would have otherwise have produced.

Mr. President, whenever conditions merit the employment of these techniques, it is in the national interest that oilmen employ them. All oil produced in excess of what would have been produced anyway saves us from having to import that oil. Enhanced recovery techniques would not ordinarily be employed until average production from the wells on that field had gotten fairly low. Now, Congress has exempted "stripper" properties or wells from price controls. A "stripper" well is presently defined as one having produced an average of 10 barrels a day or less, when producing at a maxmium feasible rate, over a 12-month period. The question arises as to how one treats the wells that have been taken out of production and used as injection wells.

Mr. President, on October 31, 1977, the Senate, by an overwhelming 62 to 24 vote, expressed the view that oil producers should be able to count injection wells as wells for purposes of determining whether a producing property qualified as a stripper property. The Federal Energy Administration (now the Economic Regulatory Administration within the Department of Energy) had not been allowing producers to count those injection wells as production wells.

On January 26, 1978, the U.S. District Court for the District of Kansas ruled that FEA had illegally excluded injection wells from the definition of well in the statutory stripper exemption. On March 9, 1978, I and 23 of my Senate colleagues wrote the Secretary of Energy, which now housed FEA, and urged him not to appeal that district court ruling. I shall include that letter for the RECORD. We pointed out what the view was of the overwhelming majority of the Senate on the question of injection wells.

We received a reply from Mr. Eric Fygi, acting general counsel, on March 29, 1978, and I include a copy of that letter for the RECORD. Mr. Fygi informed us that DOE had already filed an appeal, and that in his opinion, DOE interpretations were consistent with the intent of Congress. Mr. President, I believe Mr. Fygi and the administration need to receive a clear signal from the Congress on this matter.

Recently, Mr. President, I read that Secretary Schlesinger was considering allowing the counting of injection wells as one means of increasing domestic production of oil without allowing complete decontrol of all oil. If Mr. Schlesinger really means that, Congress should help him out. If he cannot get the regulators in his own Department to pay any attention to him, and they will not pay any attention to the courts, maybe they will pay some attention to the Congress.

Therefore, I introduce today a bill which would include in the count of the total number of wells on a properly, all wells producing crude oil and all wells utilizing for the purpose of injecting water and/or other materials into a producing reservoir for the purpose of enhancing crude oil recovery in determining stripper status. Mr. President, I ask unanimous consent that the bill and the letters be printed in the RECORD.

There being no objection, the bill and letters were ordered to be printed in the RECORD, as follows:

S. 516

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 610. Section 8(1)(2) of the Emergency Petroleum Allocation Act of 1973, as amended, is amended by adding the following new sentence at the end thereof:

"Included in the count of the total number of wells on a property shall be all wells producing crude oil and all wells utilizing for the purpose of injecting water and/or other materials into a producing reservoir for the purpose of enhancing crude oil recovery."

WASHINGTON, D.C.,
March 9, 1978.

Hon. JAMES R. SCHLESINGER,
Secretary, the Department of Energy,
Washington, D.C.

DEAR DR. SCHLESINGER: On October 31, 1977, the Senate included in the energy tax bill, by an overwhelming 62–24 vote, an amendment expressly confirming that crude oil producers should be able to count injection wells as wells for purposes of determining whether a producing property qualified as a stripper well property. As you know, crude oil produced from a stripper well property has been exempted by statute from the crude oil price control regulations administered by the Department of Energy. The Senate amendment to include injection wells in the well count of a property recognizes that the costs of operating and maintaining such wells are significant and that these wells are absolutely essential to the production of crude oil in secondary recovery projects.

Recognizing that roughly two thirds of discovered reserves remain in the ground, extending the lives of these projects, which further enhance recovery, is vitally important for this nation.

On January 26, 1978, the United States District Court for the District of Kansas held that the Federal Energy Administration (in FEA Ruling 1974–29) had illegally excluded injection wells from the definition of well in the statutory stripper exemption. The court's decision, therefore, is consistent with the intent of Congress as expressed in the recent Senate-passed amendment.

As you are aware, a large number of stripper well properties are operated by small, independent producers who are able, because of the stripper price exemption, to recover valuable crude oil reserves which would otherwise be forever lost.

The free market price for stripper well crude oil is the financial incentive which motivates those producers to keep these wells on production and to incur all the expenditures necessary to recover the last drop of oil from each property. Without that incentive, domestic barrels are replaced by foreign barrels and our nation's dependence on OPEC for crude oil grows even larger. Allowing injection wells to be counted for purposes of qualifying a property for the stripper well price exemption would, as expressed in the Senate amendment and confirmed by the Court, prolong the lives of many marginal secondary recovery projects, thereby reducing our dependence on foreign energy.

The Department of Energy could take a small but positive step toward the development of a sound energy policy by not seeking to reverse the Kansas Court decision and by rescinding Ruling 1974–29. This would extend the effect of the Senate amendment and the Court's decision to all producers.

In view of the recent actions of the Senate in this regard and the strong substantive comments of the Kansas Court, we urge you to take the necessary steps to allow all producers to include injection wells in the well count for qualifying a property for stripper classification.

Sincerely,

J. Bennett Johnston, Jr., Lloyd Bentsen, Dale Bumpers, Mike Gravel, Dewey Bartlett, Clifford P. Hansen, Malcolm Wallop, Henry Bellmon, John Tower, Dick Stone, Gary Hart, Lawton Chiles, Floyd K. Haskell, James A. McClure, Charles H. Percy, John Melcher, Russell Long, James B. Pearson, Kaneaster Hodges, Jr., Jennings Randolph, Pete Domenici, Bob Dole, Mark O. Hatfield, and Wendell Ford.

DEPARTMENT OF ENERGY,
Washington, D.C., March 29, 1978.

Hon. HENRY BELLMON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BELLMON: This is in response to your letter of March 9, 1978, in which you suggested that the Department of Energy refrain from appealing the January 26, 1978 decision of the United State District Court for the District of Kansas in *Energy Reserves Group, Inc., et al.* v. *FEA*. That decision held FEA Ruling 1974–29 to be null and void. The ruling interprets the stripper well exemption, 15 U.S.C. § 757(i) and the implementing regulation, 10 C.F.R. 212.54, and states that injection wells are to be excluded from the well count when determining whether a property qualifies as a stripper well property and thus whether the oil produced from that property is exempt from price controls. Although the ruling was interpretative, the District Court concluded that the ruling had a substantial impact and declared the ruling void because the Department issued the ruling without following the notice and comment procedures required by the Administrative Procedure Act for promulgation of substantive regulations.

The Department appealed the Kansas decision on March 16, 1978. That decision raises the important question of what procedures, if any, must be followed prior to issuing interpretative rulings. It therefore could have a substantial impact on the validity of numerous interpretative rulings issued in the past by the Federal Energy Administration and on this Department's ability to function as an efficient administrative agency.

In addition, we believe that the ruling is in accord with congressional intent in enacting the stripper well exemption. Since Congress has neither modified nor criticized the manner in which the agency has consistently and publicly implemented the statute, despite repeal and re-enactment of the statute in the Energy Policy and Conservation Act of 1975 and the Energy Conservation and Production Act of 1976, we believe that our view is correct.

I appreciate and share your concern that domestic crude oil production be maintained and that valuable stripper well production in particular, not be lost. However, there has been no indication in these lawsuits that these producers require the exempt crude oil price to maintain production or to keep producing stripper wells from shutting down.

Although the Kansas court's decision applies only to the plaintiffs before that court, several other oil companies have since filed suits seeking the same relief. We think, therefore, that a prompt resolution of the issue by the Temporary Emergency Court of Appeals will be in the public interest.

I hope this information is helpful.

Sincerely,

ERIC J. FYGI,
Acting General Counsel.●

By Mr. RANDOLPH (for himself, Mr. TALMADGE, Mr. STONE, Mr. DURKIN, Mr. THURMOND, and Mr. STAFFORD):

S. 517. A bill to redesignate May 30 of each year as Memorial Day and to make such a day a legal public holiday; to the committee on the Judiciary.

MEMORIAL DAY

● Mr. RANDOLPH. Mr. President, I am introducing today for myself and Senators TALMADGE, STONE, DURKIN, THURMOND and STAFFORD a bill which will restore May 30 as the date for the observance of Memorial Day of each year.

Memorial Day, also known as Decoration Day is supposed to be a special day set apart from other days of the week. It is the day we stop to remember the men and women that have lost their lives in service to their country.

As we know, in 1968 Congress passed the Monday holiday law, Public Law 90-363, which moved the Federal celebration of Memorial Day from May 30 of each year to the last Monday in May. It had been celebrated on May 30 of each year since the year 1868.

Interest in this legislation has resulted from the confusion caused by the change in date. Many States continue to observe May 30. The American people seek to celebrate May 30, and it is fitting that the official day be May 30 and that Congress should enact appropriate legislation.

It was my privilege to sponsor similar legislation, S. 3220 during the 95th Congress.

As drafted this measure would become effective in 1981. It is felt that this delay should provide ample time for the necessary changes that must be made in returning Memorial Day to its original date.

The bill has the full support of the major veterans organizations: The American Legion, Disabled American Veterans and the Veterans of Foreign Wars.

It is my hope that this legislation will receive the same support and favorable action that a similar Veterans Day bill received in the 94th Congress.

Mr. President, I ask unanimous consent that the bill and letters and resolutions of support by the major veterans organizations be printed in the RECORD at this point.

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

S. 517

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, effective January 1, 1981, section 6103(a) of title 5, United States Code, is amended by striking out "Memorial Day, the last Monday in May." and inserting in lieu thereof "Memorial Day, May 30.".

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
Washington, D.C., January 11, 1979.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Environment and Public Works and, Member, Committee on Veterans Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the 1.85 million men and women of the Veterans of Foreign Wars of the United States and the 610,000 members of our Ladies Auxiliary, permit me to commend you upon your reintroduction of legislation to return Memorial Day to May 30, as opposed to the last Monday in May, as established by Public Law 90-363, known as the Monday Holiday Act.

Memorial Day was established to honor those brave men and women who gave their lives in defense of our great Republic and who are no longer with us to share the benefits of their sacrifices. As Dr. Henry Nelson Snyder, President Emeritus of Wofford College, stated, "Whenever a people forgets its worthy past, the day will come when it will not have a past worth remembering."

In view of the foregoing, our 79th National Convention held in Dallas, Texas last August passed Resolution No. 102, to "Return Memorial Day to May 30", a copy of which is enclosed.

Assuring you of the full support of the Veterans of Foreign Wars of the United States, and with best wishes and kindest personal regards, I am

Sincerely,

ERIC SANDSTROM,
National Commander-in-Chief.

Enclosure.

RESOLUTION NO. 102: RETURN MEMORIAL DAY TO MAY 30

Whereas, many States have passed legislation returning Memorial Day to its rightful place of May 30; and

Whereas, the purpose of Memorial Day is to commemorate the memory of our honored dead of all wars; and

Whereas, legislation is now pending before the Congress of the United States to officially declare May 30 as Memorial Day; now, therefore

Be it resolved, by the 89th National Convention of the Veterans of Foreign Wars of the United States, that we go on record as supporting legislation that will officially restore May 30 as Memorial Day throughout the nation.

DISABLED AMERICAN VETERANS,
Washington, D.C., January 12, 1979.

Hon. JENNINGS RANDOLPH,
U.S. Senate, Washington, D.C.

DEAR SENATOR RANDOLPH: The delegates to the most recent National Convention of the Disabled American Veterans held in San Francisco, California in August of last year approved a resolution (copy attached) calling for the enactment of legislation which would restore the date of May 30 of each year as the official Federal observance of Memorial Day.

Changing the date of Memorial Day merely for the creation of a "long weekend holiday" has, we believe, greatly detracted from the significance of the day that was originally set aside to honor the memory of those Americans who sacrificed their lives in the military service of their country.

If you concur in these sentiments, Senator Randolph, the DAV respectfully requests that you introduce and support legislation in the 96th Congress which would return the traditional date of May 30 of each year to Memorial Day.

Thank you very much for your kind attention to this letter and its most important request.

Sincerely,

JOHN F. HEILMAN,
National Legislative Director.

RESTORE MEMORIAL DAY TO MAY 30

Whereas, the Congress of the United States has enacted legislation designating the last Monday in May as Memorial Day; and

Whereas, this has detracted from the significance of the day set aside to honor the memory of those who sacrificed their lives in the military service of their country; NOW

Therefore, be it resolved by the Disabled American Veterans in National Convention assembled in San Francisco, California, August 13-18, 1978 that the Congress of the United States be respectfully requested to rescind its action setting the last Monday in May as Memorial Day and to reestablish May 30 as Memorial Day.

THE AMERICAN LEGION,
Washington, D.C. January 12, 1979.

MR. NED MASSEE,
Dirksen Senate Office Building,
Washington, D.C.

Dear Ned: We are pleased to learn that Senator Randolph plans to re-introduce a bill which would re-establish May 30 as the federally-recognized Memorial Day. Our organization continues to support this effort as we have done throughout the ten years since legislation was enacted to place the observance on the last Monday in May. Our official position on the matter is contained in the enclosed Resolution No. 96.

We have reviewed Senator Randolph's remarks in the Congressional Record on June 22, 1978 when he introduced S. 3220. His comments regarding the issue at that time were quite appropriate and we have nothing to recommend which would modify his presentation when introducing the new bill.

Again, we appreciate your continued interest in restoring the traditional observance of Memorial Day.

Sincerely,

E. PHILIP RIGGIN,
Assistant Director,
National Legislative Commission.

THE 60TH NATIONAL CONVENTION OF THE AMERICAN LEGION, NEW ORLEANS, LOUISIANA, AUGUST 22-24, 1978

Resolution no. 96.
Committee Americanism.
Subject Memorial Day, May 30.

Whereas, Memorial Day was established following the Civil War to be observed on May 30th each year; and,

Whereas, The time-honored tradition of observing Memorial Day on May 30th has been eroded to make a long holiday weekend thus causing Memorial Day to now be observed on the last Monday of May; and

Whereas, The change in holiday observances to the last Monday of some months has caused a diminished observance and defies time-honored traditions; now, therefore, be it

Resolved, by The American Legion in National Convention assembled in New Orleans, Louisiana, August 22, 23, 24, 1978, that The American Legion call upon the Congress of the United States to restore Memorial Day to the proper day of observance on May 30th of each year.●

By Mr. BUMPERS:

S. 518. A bill to amend the Poultry Products Inspection Act so as to restrict the authority of the Secretary of Agriculture to regulate the speed of processing poultry on the basis of State, region, or other area, or on the basis of a lack of inspectors; to the Committee on Agriculture, Nutrition, and Forestry.

● Mr. BUMPERS. Mr. President, the poultry industry is of tremendous importance to the economy of my State. Arkansas continues to lead the Nation in the production of broilers. In 1977, the value of the 569.5 million broilers produced in Arkansas was over $477 million. Only soybeans bring in more income to Arkansas than the broiler industry. But Arkansas poultry processors

have been operating at a significant disadvantage with their competitors in the east.

A few months ago it came to my attention that USDA inspectors at poultry processing plants, primarily east of the Mississippi River were allowing birds to be processed at a much faster per-minute rate than those primarily west of the Mississippi. In many cases processing plants in the east could run 10 birds per minute faster than plants in the west using identical equipment. The Arkansas Poultry Federation has estimated that this discrimination could be costing Arkansas poultry processors as much as $3.5 million per year.

Last summer I contacted the Department of Agriculture and requested an explanation of this situation. The only explanation I received was that the USDA regional meat and poultry inspection offices were given wide discretion in the type of poultry processing line speed rates that they could set. There was also a suggestion that USDA was suffering from a shortage of inspectors. The Agriculture Department initiated a study to discover the cause of this discrimination—but as of yet no answers have been given and the problem still exists.

At this time the State of Arkansas and the Arkansas Poultry Federation have filed suit against the USDA to force an end to this obviously unfair situation. This problem should never have had to be placed before our already overworked court system. The situation should have been corrected by USDA when it was discovered that rank discrimination existed, but now it seems to have become entangled in the bureaucratic web with no end in sight.

That is why I am introducing a bill to forbid the Secretary of Agriculture from proscribing on the basis of state, geographic region, or the availability of inspectors, line speeds that differ in the quantity or volume of poultry that may be processed within any specified period of time by any processing plant.

Mr. President, this is not, repeat not, an Arkansas problem. Poultry producers and processors in most of the States west of the Mississippi River are effected; including Arkansas, Kansas, Louisiana, Missouri, Oklahoma, New Mexico and Texas. They, too are losing millions of dollars while being forced to operate their equipment at below maximum capacity because of some directive that no one in USDA can explain.

I urge my colleagues to join me in expeditiously passing this legislation and ending this discrimination.●

By Mr. HELMS:

S. 519. A bill to preserve the academic freedom and the autonomy of institutions of higher education and to condition the authority of officials of the United States to issue rules, regulations, or orders with respect to institutions of higher education. Read the first time.

(The remarks of Mr. HELMS when he introduced the bill appear elsewhere in today's proceedings.)

By Mr. HELMS:

S. 520. A bill to provide procedures for calling constitutional conventions for proposing amendments to the Constitution of the United States, on application of the legislatures of two-thirds of the States, pursuant to article V of the Constitution. Read the first time.

(The remarks of Mr. HELMS when he introduced the bill appear elsewhere in today's proceedings.)

By Mr. THURMOND (for himself, Mr. KENNEDY, and Mr. HOLLINGS):

S. 521. A bill to provide for the payment of losses incurred as a result of the ban on the use of the chemical Tris in apparel, fabric, yarn, or fiber, and for other purposes; to the Committee on the Judiciary.

LOSSES INCURRED BY THE BAN ON TRIS

Mr. THURMOND. Mr. President, today I am introducing a bill to provide for the payment of losses incurred as a result of the ban on the chemical Tris. I am pleased to have as cosponsors the Senator from Massachusetts (Mr. KENNEDY) and the junior Senator from South Carolina (Mr. HOLLINGS).

The bill introduced today is identical to the legislation that was vetoed by President Carter last year. That bill, S. 1503, had undergone extensive consideration and debate in both the House and Senate. Unfortunately, the measure was vetoed by the President on November 8, 1978, for reasons that ignore the injustice that has been done to the textile industry.

Mr. President, this legislation seeks to correct economic losses sustained by the ban of the chemical flammability retardant Tris by the Consumer Product Safety Commission on April 8, 1977. To more fully understand the predicament caused by this action, a brief account of the history of the Tris ban may be appropriate at this point.

In 1971, the Secretary of Commerce issued mandatory flammability standards for children's sleepwear in sizes 0–6X under the Flammability Fabrics Act. This regulation, FF–3–71, virtually mandated the use of Tris or an acceptable substitute in all polyester, acetate, and triacetate fabrics. Objections of the textile industry that chemical flame retardants had not been sufficiently tested for safety were not given any significant consideration by the relevant Government agencies. Subsequently, Tris was tested for sensitivity and toxicity under generally accepted standards and was found to be safe.

In February 1977, the National Cancer Institute published preliminary, unverified results of tests indicating that when Tris was fed daily in massive doses to cancer-prone rats and mice over extended periods of time, these rats and mice developed cancer. These testing procedures had not been previously applied to nonconsumable articles, such as children's sleepwear. Although there is no direct evidence linking Tris to cancer in humans, based in large part on its very preliminary data, the Consumer Product Safety Commission issued regulations declaring Tris and all fabrics, yarns, and fibers treated with Tris, and all apparel treated with Tris intended for use by children, to be "banned hazardous substances" under the Federal Hazardous Act.

As a result of these discoveries, the CPSC announced on April 7 that it was banning the sale of any children's clothing containing Tris. The ban also included any Tris-treated fabric for sale to consumers for use in children's wearing apparel. Tris-treated children's garments which were purchased by consumers, that were not yet washed, were also banned.

The ban took effect on Friday, April 8, when notice of action was published in the Federal Register. It means that any of the affected products in interstate commerce or introduced into interstate commerce are banned and must be repurchased from retailers and distributors by any manufacturer or others who sold it. Consumers who had purchased, but not washed any Tris-treated children's garments or uncut fabric, would also be entitled to a full refund of the purchase price.

Mr. President, the cost to apparel manufacturers of repurchasing all unsold or unwashed children's garments made from fabric containing Tris and disposing of unsold inventories of childrens' garments made from fabric containing Tris, has been estimated to be over $50 million.

In a statement by the American Apparel Manufacturers Association before the special hearing panel on July 26, 1977, the amount of the loss was stated to be $150 million. The AAMA now believes the actual losses suffered by all children's sleepwear manufacturers to be about $50,100,000. This includes garments, uncut fabric in apparel plants, and the "to-date" indirect costs, such as transportation, administration, and storage. Of course, some smaller additional costs will be incurred as storage costs continue and potential disposal costs appear.

The harm to industry is catastrophic and irreparable. It imposes an immediate obligation upon the apparel manufacturers to repurchase the garments they have sold, and leaves the entire industry without adequate recourse or remedy by which the losses resulting from the ban may be recouped. Some apparel manufacturers face bankruptcy because their losses as a result of the ban could exceed their net worth.

Mr. President, many other firms will suffer severe financial impairment and be forced to lay off employees. This results because the manufacturers involved have acted in good faith to meet the flammability standards mandated by the Federal Government, and it is unfair to require them to bear the brunt of this bureaucratic bungle and to make their employees suffer economic hardship as a result of a possible, and in fact, resulting layoffs. It is this mistake, this arbitrary and inequitable decision, that has prompted me and Senator KENNEDY to introduced this legislation.

This legislation is not intended as a "bailout," but in fact, it is only legislation that would confer jurisdiction on the U.S. Court of Claims to determine the dollar value and render judgment for losses sustained by producers, processors, manufacturers, distributors, deal-

ers, or other persons as a result of actions taken by the Federal Government under the Hazardous Substance Act relating to the ban on apparel, fabric, yarn or fiber containing Tris.

The legislation introduced today is identical to legislation that passed in the House and the Senate last year, and was sent to the President. The bill contains a number of limitations on the claims that may be made by those injured by the Tris ban. For example, the court shall consider the following factors in determining the validity of claims under this legislation:

First. The degree to which reasonable alternatives to Tris (2,3-dibromopropyl) phosphate existed at the time the Federal Government established the applicable mandatory Federal flammability standard referred to in subsection (a).

Second. Whether it would have been feasible, or reasonable, for the claimant to have tested Tris (2,3-dibromopropyl) phosphate for chronic hazards at the time the Federal Government established such flammability standard.

Third. The degree to which the Federal Government, prior to establishing such flammability standard, tested Tris (2,3-dibromopropyl) phosphate for toxicity, or other health hazards, and disseminated the results of these tests.

Fourth. The degree of good faith demonstrated by a claimant in seeking to comply fully with such Federal flammability standard.

Fifth. The extent to which a claimant may have relied in good faith on assurances from suppliers that the products containing Tris (2,3-dibromopropyl) phosphate were safe.

Sixth. The degree to which a claimant acted reasonably in using Tris (2,3-dibromopropyl) phosphate for the time period that such substance was used.

Seventh. The degree to which a claimant, in good faith, complied with actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977.

Mr. President, as I mentioned earlier in my statement, on November 8, 1978, President Carter vetoed the bill S. 1503, which had passed both the House and Senate. In his veto message on this legislation, the President said "S. 1503 would establish an unprecedented and unwise use of taxpayer's funds to indemnify private companies for losses incurred as a result of compliance with a Federal standard." This objection to S. 1503 by the President was based on the advice given to him by the Department of Justice.

Although the Justice Department did, in fact, advise the President in this case that passage of S. 1503 would set an unwise precedent, the Department of Justice has also indicated in the past with respect to similar legislation that such a precedent would not be set. In the 92d Congress, legislation was introduced that would have authorized the Court of Claims to enter judgments against the United States for persons who had suffered losses resulting from the Food and Drug Administration's ban on cyclamates. However, the Department of Justice supported the cyclamate legislation both before the House Judiciary Subcommittee and the Senate Judiciary Subcommittee that had responsibility for that legislation. Representatives from the Department of Justice stated that the cyclamate situation was an extraordinary one, and that relief was appropriate because the Government had assured producers and users that cyclamates were safe for use. Despite the Justice Department's support for cyclamate legislation in 1971 and 1972, it has now taken an opposite position in 1978 with respect to the Tris legislation. Since both claims for relief stem from actions by the Federal Government that were relied on by private industry, it is difficult for me to understand why the Justice Department's position has changed so markedly since then.

The President in his veto message also echoed the Department of Justice's argument that a regulating agency should authorize payments rather than the Court of Claims. The purpose, however, of relying on the Court of Claims is to insure that the party seeking compensation be required to prove his losses before a body that has experience in deciding the legitimacy of claims against the Federal Government. A law which allowed a regulating agency to make payments would probably result in greater, rather than lesser, expense to the Federal Government.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

In summary, Mr. President, the basis for the industry's claim for indemnification rests upon the "double-edged" aspect of Government regulation. That is, the Department of Commerce on the one hand, required the industry to use a chemical like Tris in sleepwear and, when in good faith the industry did so, the Consumer Product Safety Commission banned the Tris-treated sleepwear. This is just one example of layer of regulation being placed upon layer of regulation, and as the long arm of the "over-regulators" continues to grow, the image of Government as a responsible and responsive unit shrinks even smaller.

The passage of Tris legislation in this Congress would not be an irresponsible move at all. It simply recognizes the fact that private industry has been overregulated by the Federal Government, and in so doing, has been put to an economic loss that is not its fault. This legislation has been carefully crafted both in the House and the Senate to eliminate any chance of a windfall, or a cost to the Federal Government that is not justified.

Mr. President, I would not be honest with my colleagues if I did not indicate that this legislation will effect a number of apparel and textile industries in my State of South Carolina. It will also effect industries of this kind in a number of States throughout the country. Senator KENNEDY has joined me in the sponsorship of this legislation because he has recognized the adverse impact of the Tris ban and the resulting economic losses to the apparel and textile industry.

Senator KENNEDY and I, as the chairman and ranking minority member respectively of the Senate Judiciary Committee, intend to call for prompt action on this legislation. I urge my colleagues to support it once it is reported by the Judiciary Committee to the floor of the Senate.

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

S. 521

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Court of Claims shall have jurisdiction to hear, determine, and render judgment upon any claim for losses sustained by any producer, manufacturer, distributor, or retailer of children's sleepwear, or by any producer, converter, manufacturer, distributor, or retailer of fabric, yarn, or fiber contained in or intended for use in children's sleepwear, as a result of the actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977, and therafter relating to apparel, fabric, yard, or fiber containing Tris (2,3-dibromopropyl) phosphate: *Provided, however,* That such children's sleepwear and such fabric, yarn, or fiber contained in or intended for use in children's sleepwear was subject to the requirements of or for use in compliance with the mandatory Federal flammability standard FF3–71, or FF5–74, at the time of its manufacture.

(b) (1) In determining the validity of any claim under this Act and the amount of the losses sustained for which such a claim is brought, the court shall consider the following factors:

(A) The degree to which reasonable alternatives to Tris (2,3-dibromopropyl) phosphate existed at the time the Federal Government established the applicable mandatory Federal flammability standard referred to in subsection (a).

(B) Whether it would have been feasible, or reasonable, for the claimant to have tested Tris (2,3-dibromopropyl) phosphate for chronic hazards at the time the Federal Government established such flammability standard.

(C) The degree to which the Federal Government, prior to establishing such flammability standard, tested Tris (2,3-dibromopropyl) phosphate for toxicity, or other health hazards, and disseminated the results of these tests.

(D) The degree of good faith demonstrated by a claimant in seeking to comply fully with such Federal flammability standard.

(E) The extent to which a claimant may have relied in good faith on assurances from suppliers that the products containing Tris (2,3-dibromopropyl) phosphate were safe.

(F) The degree to which a claimant acted reasonably in using Tris (2,3-dibromopropyl) phosphate for the time period that such substance was used.

(G) The degree to which a claimant, in good faith, complied with actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977.

(2) In determining the amount of the losses for which a claim is brought under this Act, the amount of such losses shall not include lost profits, proceeds from distress sales, attorney's fees, or interest on any such loss resulting to any producer, converter, manufacturer, distributor, or retailer of such children's sleepwear, or to any producer or manufacturer of fabric, yarn, or fiber.

(c) (1) The measure of losses for producers or manufacturers of children's sleepwear shall be the cost of producing goods referred to in paragraphs (1) and (2) of this subsection, held in stock on the date of enactment of this Act, less the fair market value, if any, of such goods and less the amount of any reimbursement received.

(4) In addition to the losses determined

under paragraphs (1), (2), and (3) of this subsection, a claimant may also be compensated for unreimbursed costs of transportation paid for the return of such sleepwear garments, fabric, yarn, or fiber.

(d) No claim under this Act may be brought as a class action nor may any claim under this Act be brought by two or more parties unless damages are claimed to be jointly recoverable or are disputed among the parties claimant.

(e) Upon payment of any claim under this Act, by court judgment or by settlement, the United States shall be subrogated to the claimant's rights to recover losses or assert a claim against any person or organization relating to the subject matter of the claim paid by the United States. The claimant shall execute and deliver instruments and papers and take whatever steps are necessary to secure such rights in the United States in order to be entitled to the entry of a judgment by the Court and payment under this Act, and the failure of the claimant to perform such acts or take such steps shall constitute cause to deny the entry of such judgment and payment. The failure of the claimant to perform such acts or manufacturing the sleepwear garment plus the cost of the fabric, yarn, or fiber used for such production or manufacture, held in stock on the date of enactment of this Act, less the fair market value, if any, of the sleepwear garment or the fabric, yarn, or fiber. If the sleepwear garment or the fabric, yarn, or fiber has been resold after April 8, 1977, but prior to such date of enactment, then the measure of losses shall be the cost of producing or manufacturing the sleepwear garment plus the cost of the fabric, yarn, or fiber less the proceeds from any such sale.

(2) The measure of losses for producers, converters, or manufacturers of fabric, yarn, or fiber shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber plus the cost of the raw materials used for such production, converting, or manufacture, held in stock on the date of enactment of this Act, less the fair market value, if any, of the fabric, yarn, or fiber. If the fabric, yarn, or fiber had been resold after April 8, 1977, but prior to such date of enactment, then the measure of losses shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber plus the cost of the raw materials used for such production, converting, or manufacture less the proceeds from any such sale.

(3) The measure of losses for distributors and retailers shall be the distributor's or the retailer's purchase price for to take such steps shall not limit or adversely affect the right of the United States to act as subrogee or assignee to the full extent of its payments under this Act. Any purported limitation on the right of the United States to act as assignee or to become subrogated to the rights of a claimant shall be without any effect, to the extent that the United States has made payments under the Act.

(f) Any claim under this Act shall be barred unless commenced within two years after the date of enactment of this Act.

By Mr. BAYH (for himself, Mr. MATHIAS, Mr. SCHMITT, and Mr. BUMPERS):

S. 522. A bill to amend title 28 of the United States Code to change the composition of the judicial councils, and to provide procedures within the judicial councils of each circuit for the processing of complaints and for the administration of disciplinary action, if necessary, with respect to the conduct of the Federal judiciary within that circuit; to the Committee on the Judiciary.

JUDICIAL COUNCIL AMENDMENTS AND DISCIPLINE ACT OF 1979

Mr. BAYH. Mr. President, today Senator MATHIAS and I are joined by our colleagues, Senators SCHMITT and BUMPERS, in offering the Judicial Discipline Act of 1979. With the aid of advice by judges, scholars, and judicial administrators around the country, we propose a legislative solution to the problem, on the one hand, of maintaining judicial independence to render decisions without fear, and on the other, of allowing for the discipline of misconduct which interferes with a judge's duties on the bench.

In proposing such legislation at a time when 152 new district and circuit court of appeals judges will be joining the Federal judiciary, we are acutely mindful of the constitutional mandate that the Federal judiciary be independent, secure in their lifetime tenure and removable only by impeachment proceedings in the Congress. The intention of the writers of the Constitution on this score was made abundantly clear by Hamilton in the Federalist No. 79:

> Judges are liable to be impeached for malconduct by the House of Representatives, and tried by the Senate; and, if convicted, may be dismissed from office, and disqualified for holding any other. This is the only provision on the point which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own Constitution in respect to our own judges.

Judges were to be independent because "the courts of justice are to be considered as the bulwark of a limited Constitution against legislative encroachments * * * (N)othing will contribute so much as (permanent tenure of judicial offices) to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty." As the constitutional scholar, Philip Kurland, has reminded us in recent times, "The provisions securing the independence of the judiciary were not created for the benefit of the judges, but for the benefit of the judged." In my own mind, this "independent spirit in the judges" has priority over all other considerations as we approach any legislative proposal dealing with judicial discipline.

Impeachment, the sole constitutional means of removal, must remain the primary means of discipline, and as I emphasized on the floor of the Senate last year, it is the duty of both Houses to see that the impeachment and trial process work. In the first instance, of course, it is clearly the responsibility of the Senate to play its role in the selection process well, a task which I am glad to see is being addressed with unprecedented thoroughness by the Judiciary Committee.

Impeachment may not have been as ineffective a means of discipline as it has been accused of being. Although only 4 judges have been impeached and convicted, 55 have been charged on the floor of the House, 33 have been impeached, and 22 have resigned rather than face Senate trial. Yet, especially in the last decades, Congress has increasingly been asked to consider other means of disciplining judicial misbehavior. The reasons behind the search for further disciplinary procedures are speculative at best and yet surely numbers have something to do with it.

First, there are growing numbers of judges. No longer is the Federal bench the small handful of jurists which existed at the beginning of our life as a nation. With the passage of the omnibus judgeship bill in the 95th Congress the number of Federal district and appeals courts judgeships reaches 647. By simple commonsense and the laws of chance it is plausible that there will be more instances of misconduct, although it is by no means clear that there exists any more than the rarest instances of unfortunate behavior.

Second, it is undisputed that the rapidly growing volume of laws touches a far greater number of citizens' lives in the past 30 or 40 years than in the first century and a half of our country's existence. It is, therefore, understandable that as more Americans are affected by the administration of the courts, they become more conscious of the behavior of the members of the bench.

S. 1423, the Judicial Tenure Act, was an expression of this concern, and was passed by the Senate in the last Congress. Senator MATHIAS and I opposed the measure in Judiciary Committee and on the Senate floor on the grounds that by providing for removal of Federal judges by means other than impeachment the bill was unconstitutional, and further posed a serious threat to judicial independence. At the same time, however, we were not unmindful of the concerns that procedures should exist to deal with serious incidents of judicial misconduct. The bill we offer today would amend 28 U.S.C. 332 to give authority to the judicial councils of the circuits to discipline serious misconduct by a judge in their circuit, by granting such statutory powers to the councils, the Congress would be answering the question raised in *Chandler* v. *Judicial Council of the Tenth Circuit*, 398 U.S. 74 (1970). Chief Justice Burger writing for the majority said:

> Standing alone, §332 is not a model of clarity in terms of the scope of the judicial councils' powers or the procedures to give effect to the final sentence of §332. Legislative clarification of enforcement provisions of this statute and definition of review of Council orders are called for.

In our work on the Judicial Discipline Act we have attempted to address satisfactorily the same questions we felt were raised in S. 1423. The first of these is precisely what sort of conduct should be subject to any form of discipline other than removal by impeachment. Under our bill, the Judicial Councils would have the authority to address complaints about misbehavior by a judge of that circuit which impairs "the efficient, expeditious and fair administration of the business of the courts." This standard is intended to cover misconduct directly affecting the judges' work and his court—not his conduct in his private life unless it had a bearing on his work

as a judge. The merits and procedures of a litigated case, of course, are not proper grounds for a complaint.

Our second concern was that the Congress erect the least intrusive or burdensome mechanism necessary to achieve its purpose, on the theory that the more complex the structure, the more likely it would be to create its own problems. In this bill, we have simply clarified the powers of the existing judicial councils to handle certain kinds of situations. We have tried to simplify procedures as much as possible, and leave sufficient area for the informal resolution of complaints, while at the same time insuring that every complaint be dealt with. Upon reaching its decision and taking disciplinary action, the Council is required to make a complete report of the case including complaint, hearing transcript and findings, to the House of Representatives, thus providing a channel of complaints to the House, the institution constitutionally designated to remove unacceptable federal judges.

Third and most important, we have attempted to finish the impact of any disciplinary proposal on a judge's independence, since his independence is the ultimate protection of those who are judged. We have attempted to provide the fullest protection possible to the individual judge. Therefore, it is required under the bill that any complaint be accompanied by affidavit, thereby encouraging responsible complaints. Frivolous complaints will be dismissed immediately. The judge complained of is afforded full due process protections in this hearing before the Council. Finally, he has the right of review from any of the Council's actions through appeal to the Supreme Court on writ of certiorari.

We cannot pretend that the bill we offer today is perfect. The issues inherent in the area of judicial discipline are complex and difficult ones, most of which have never been answered before. I believe, however, that the bill we introduce today is a reasonable and balanced approach to an area in which sensitive considerations of independence of Federal judges are weighed against the responsibilities demanded of American institutions. We intend to hold broad and thorough hearings in the coming months to explore these issues in depth. Our Federal judiciary deserves the fullest debate in the Senate on this important matter. So in fact does the general public.

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

There being no objection, the bill and analysis were ordered to be printed in the RECORD, as follows:

S. 522

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Council Amendments and Discipline Act of 1979".

SEC. 2. Section 332 of title 28, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

"(a)(1) The chief judge of each court of appeals of a circuit shall call at least twice in each year and at such places as he may designate, a council of the circuit, consisting of the following members:

"(A) the chief judge of the court of appeals for the circuit, who shall preside;

"(B) such number, not to exceed seven, of courts of appeals judges of the circuit in regular active service as is fixed by vote of a majority of all such judges, to be chosen by seniority; and

"(C) the number of district court judges of the circuit in regular active service equal to the number of courts of appeals judges fixed in paragraph (B), to be chosen by seniority, except that no more than one district court judge from any one district shall serve on the council unless such service is necessary to attain the number of district court judges required by this subparagraph.

"(2) Each member shall serve for a term of three years, and shall be succeeded by judges in regular active service next in seniority, unless there are no judges in regular active service who have not yet served on the council. In the event of the death, resignation, retirement, or disability of a member, a replacement shall be chosen by seniority, to hold office for the remainder of the term.

"(3) Each member, unless excused by the chief judge of the circuit, shall attend all sessions of the council.";

(2) by amending subsection (d) to read as follows:

"(d) Each judicial council is authorized to make all necessary and appropriate orders for the effective, expeditious, and fair administration of the business of the courts and the just determination of litigation within its circuit. Matters relating to routine administration and management of any court within the circuit, including the circuit court, are not required to be considered by the council unless such matters involve an impediment of justice. Each council is authorized to hold hearings, to require by subpena the attendance of witnesses and the production of books, papers, documents, records, and other tangible things specified in the subpena, and to administer oaths. Each subpena shall be issued by the clerk of the circuit court under the direction of the chief judge or his designee in accordance with the provisions of Rule 45 of the Federal Rules of Civil Procedure. Each court and judge of the circuit shall promptly carry into effect all orders of the judicial council."; and

(3) by adding at the end thereof the following new subsection:

"(g)(1) Any person claiming that the conduct of a judge of the United States is conduct which interferes with or impairs the effective, expeditious, and fair administration of the business of the courts or the just determination of litigation within the circuit in which that judge serves, may file a complaint with the chief judge of the circuit. In any case in which the chief judge is the subject of the complaint, the next senior circuit judge of that circuit shall perform the duties of the chief judge under this subsection. Each complaint shall be in writing and shall be accompanied by supporting affidavits.

"(2) The chief judge of that circuit shall, within thirty days of receipt of such a complaint, review the complaint and shall dismiss by written order any complaint which is frivolous, which relates to the merits of any decisional or procedural ruling of a judge and would have the effect of a collateral attack upon such ruling, or which alleges conduct which does not interfere with or impair the effective, expeditious, and fair administration of the business of the courts or the just determination of litigation within that circuit.

"(3) In any case in which the chief judge does not initially dismiss a complaint under paragraph (2), the chief judge shall transmit a copy of the complaint to the judge whose conduct is the subject of the complaint and notify that judge of his right to submit, within fourteen days from the time of such notification, affidavits in his own behalf. Upon a request made by the judge who is the subject of the complaint and for good cause shown, the chief judge may grant a reasonable extension of the fourteen-day period. Within fourteen days after receipt of any affidavits filed by the judge, the chief judge shall review the judge's affidavits together with the complaint and the complainant's supporting affidavits and shall—

"(A) dismiss the complaint for any of the reasons set forth in paragraph (2);

"(B) attempt to redress the matter specified in the complaint through any informal means available; or

"(C) upon a finding that the alleged conduct warrants further investigation or after a determination that the matter cannot be redressed through informal means, refer the complaint to the full judicial council for a hearing on the matter.

"(4) In any case in which the chief judge dismisses a complaint under paragraph (3)(A), the chief judge shall notify the complainant of that action and the reasons for the dismissal. The complainant may, within thirty days after notification of the decision to dismiss the complaint, request that the judicial council review such decision. The decision of the judicial council shall be final and shall not be subject to review or appeal. In any case in which the chief judge refers the complaint to the judicial council for a hearing under paragraph (3)(C), the chief judge shall transmit a copy of the complaint with a written explanation of his findings which justify that referral to the council.

"(5) Unless the judge who is the subject of the complaint gives his written consent, all papers, documents, records, deliberations, and investigations under paragraphs (1) through (4) are confidential and may not be disclosed by any person. Upon the referral of a complaint by the chief judge under paragraph (3)(C) to the judicial council for a hearing, the contents of the complaint; the findings of the chief judge, and all proceedings before the council shall be public.

"(6) For the purposes of all proceedings conducted under this paragraph and paragraphs (7) through (10), each judicial council is vested with the judicial powers of a Federal court. The judicial council shall hold a hearing on each complaint that is referred under paragraph (3)(C) by the chief judge, and shall prescribe by rule such procedures as are necessary to conduct such hearings and dispose of such claims. In prescribing those procedures, the council shall guarantee that the judge who is the subject of the complaint be given adequate notice of the hearing and an opportunity, with or without the assistance of counsel, to be present and to present testimony and witnesses on his own behalf.

"(7) Each hearing shall be recorded verbatim by shorthand, by mechanical means, or by electronic and recording by an official court reporter. The court reporter shall transcribe and certify the record of the proceedings.

"(8) After a hearing in accordance with the procedures established under paragraphs (6) and (7), the judicial council may proceed in accordance with any one or more of the following:

"(A) order that the complaint be dismissed;

"(B) request that the judge voluntarily retire;

"(C) order that, on a temporary basis, the judge be relieved of any duties with respect to cases presently assigned or that no further cases be assigned to the judge; or

"(D) order the censure of the judge.

"(9) Any action taken by the judicial council under paragraph (8) of this subsec-

tion shall be made by a majority of the members of the council and shall be supported by clear and convincing evidence on the record. Each order and recommendation shall be in writing and the complainant and any judge affected by such order or recommendation shall receive a copy. Within ten days after notification of an order under paragraph (8), the judge may file a petition for writ of certiorari to the Supreme Court under section 1254 of this title.

"(10) Whenever a judicial council takes any action under paragraph (8), with the exception of dismissal under (8)(A), it shall prepare and submit a written report to the House of Representatives which includes the complaint made against the judge, the action taken by the council, a copy of the transcript of the hearing, and specific findings made by the council. A copy of the report shall be forwarded to the judge under inquiry and to the complainant.

"(11)(A) The judicial council may utilize existing staff employed by the circuit or may request the Director of the Administrative Office of the Unted States Courts to procure personal services of experts and consultants, as authorized by section 3109 of title 5, as may be necessary to carry out the duties of the council in any particular case under this subsection.

"(B) Each judicial council shall prepare an annual report to the Congress showing the number of complaints and the action taken on each complaint.".

SECTION-BY-SECTION ANALYSIS

The bill amends 28 U.S.C. § 332, the Judicial Councils of the Circuits. Subsection (a) is amended to restructure the judicial councils, to a maximum of 15 members, providing equal representation of district court judges. The council shall consist of the chief judge of the court of appeals for the circuit, as many as seven courts of appeals judges to be chosen by seniority, and an equal number of district court judges, also chosen by seniority, only one of which is from a given district. Each member serves for a term of three years. If his term is interrupted for any reason, a replacement is chosen by seniority.

Subsection (d) is amended to give authority to the council to make orders "for the effective, expeditious and fair administration of the business of the courts". On ordinary, day by day business of either district or appeal courts, however, council consideration is not required, unless an impediment to justice is involved. The councils are provided with specific subpoena powers in accordance with Rule 45 of the Federal Rules of Civil Procedure, and the authority to administer oaths.

A new subsection (g) is added to deal with the disciplinary authorities and procedures of the councils.

Under this subsection any person can file a complaint with the circuit chief judge about a judge of that circuit, alleging that his or her conduct "interferes with or impairs the effective, expeditious and fair administration of the business of the courts." If the chief judge is the subject of the complaint, the next senior judge receives the complaint. Each complaint must be accompanied by a supporting affidavit.

In paragraph (2), the chief judge may dismiss the complaint if it is frivolous, if it refers to the merits of a ruling made by the judge, or if it does not go to conduct interfering or impairing "the effective, expeditious and fair administration of the business of the courts." If he does not dismiss the complaint, the chief judge under paragraph (3) notifies the judge about whom the complaint is filed, and gives the judge the opportunity to file his own affidavits. Upon reviewing the complaints and all affidavits the chief judge may take one of the three actions in paragraph (3): he may, again, dismiss the complaint; he may attempt to remedy the matter in an informal matter; or he may refer the complaint to the council for a hearing, accompanied by a written explanation of his findings.

Paragraph (4) specifies that a chief judge dismissing a complaint must notify the complainant and give his reasons for dismissal. The complainant may then ask for review of the decision by the council. The decision of the council is final.

Paragraph (5) explains that until this point in the proceedings all information and investigations are confidential. Upon referral to the council for hearing, complaint findings, and proceedings are public.

Paragraphs (6) through (10) deal with the actions of the council on referral of a complaint about judicial misconduct. Sitting for the purpose of these paragraphs as a federal court, the council conducts a hearing on a referred complaint which provides due process protections to the judge who is the subject of the complaint (paragraph 6 and 7). Following the hearing, the council under paragraph (8) may take one or several actions: order that the complaint be dismissed; ask the judge to voluntarily retire; order that, on a temporary basis, the judge be relieved of present cases, or that no further cases be asisgned; or finally, order censure.

Paragraph (9) provides that any action by the council shall be made by majority vote, and shall be supported by clear and convincing evidence. The complainant and the judge affected by the orders received copies of any order. After notification of an order, the judge may file a petition for writ of certiorari to the Supreme Court under 28 U.S.C. § 1254.

Under Paragraph (10), the council is required to prepare and submit a written report to the House of Representatives on any case on which it has taken disciplinary action. Copies of the report are given to the judge under complaint and the complainant. The report contains the complaint, a transcript of the hearing, and the findings and actions of the council.

Under Paragraph (11), existing staff may be used by the council in carrying out its duties in a particular case, or the council may request additional help of the Director of The Administrative Office of the Courts. An annual report shall be prepared by the Council to the Congress showing the number of complaints filed during the year and the action taken on each.

● Mr. MATHIAS. Mr. President, today I join with Senator BAYH in offering the Judicial Council Amendments and Discipline Act of 1979. The primary purpose of this proposal is to clarify the authority of the several Federal Judicial Councils to deal with questions of alleged judicial misconduct.

Last year, Senator BAYH and I joined with a number of our colleagues in opposing S. 1423, the Judicial Tenure Act, a bill which provided for the removal of Federal judges by means other than impeachment. We opposed S. 1423 for three reasons.

First, we agreed with the overwhelming majority of legal scholars who have concluded that the Founding Fathers intended that Federal judges only be removed by impeachment, and that any legislatively devised removal scheme must, therefore, fail to pass constitutional muster.

Second, we believed that the bill posed a direct and serious threat to the independence of the Federal judiciary.

Third, we were concerned that the bill would work an unwarranted, radical, and violent alteration of our constitutional framework; and we thought that, if changes were needed in existing disciplinary procedures, they could be achieved by means less drastic than those provided under the Judicial Tenure Act. In fact, during the Senate debate last year, Senator BAYH suggested a number of possible alternatives to S. 1423, including strengthening the powers of the Judicial Councils and the Senate's taking greater care in the exercise of its advise and consent powers under article II, section 2 of the Constitution regarding the selection and examination of judicial nominees.

Despite these objections, the Senate, on September 7, 1978, passed the Judicial Tenure Act by a vote of 43 to 31. Fortunately, the House of Representatives did not act on the bill prior to the close of the 95th Congress.

The months since Congress adjournment have given us, and others, notably, the Judicial Conference of the United States and Senator KENNEDY, time to review the entire subject of disciplining judicial misbehavior. Senator BAYH and I have used the time to examine the efficacy of existing judicial disciplinary procedures, with special emphasis upon the feasibility of clarifying the authority of the judicial councils to deal with instances of judicial misconduct.

The bill Senator BAYH and I introduce today is the product of our efforts over the past several months. In developing this proposal, we have found the question of disciplining judicial misconduct to be complex, involving numerous constitutional and public policy issues. We are now convinced that Congress should undertake a broad, thorough and expeditious examination of the myriad issues raised by any legislative effort in this area.

No such examination of this subject has been made since 1970, when the Judiciary Subcommittee on Separation of Powers, under the leadership of Senator Ervin, held 4 days of hearings on judicial independence. Instead, in the intervening years, Congress has focused its examination of the question almost exclusively on the Judicial Tenure Act. Little, if any, attention has since been given to the possibility of alternative approaches. It is now time for Congress to broaden its approach; the bill we introduce today will do just that.

Any broad review of judicial disciplinary procedures must address a number of fundamental questions inherent in any judicial discipline proposal, be it the Judicial Tenure Act or the Judicial Council Amendments and Discipline Act of 1979. Among these questions are:

The nature and extent of the problem of judicial misconduct;

What type of disciplinary mechanism would best remedy such problems as may exist;

The impact of such proposals on the independence of the Federal judiciary; and

Whether or not impeachment is the sole constitutional means of disciplining Federal judges.

Moreover, there are a number of more specific questions that must be consid-

ered regarding any legislative effort to strengthen the powers of the Federal judicial councils, including the bill Senator BAYH and I have introduced today. Among them are:

Under what circumstances should a Federal judge be subjected to the disciplinary powers of the councils? Should the standard be, as provided under our bill, when the judge's conduct interferes with or impairs the effective, expeditious, and fair administration of the business of the courts or the just determination of all litigation within the circuit in which the judge serves? Or, should more specific categories of judicial misconduct be delineated in the proposal?

What remedies should be available to the councils to deal with judicial conduct actionable under the legislation and what enforcement powers should the councils have to insure compliance with their orders?

Should the councils be constituted as Federal courts for purposes of dealing with allegations of judicial misbehavior?

Should appellate review of the orders of the judicial councils lie with the Supreme Court, or should review be placed in another body, such as the Judicial Conference?

Is the language requiring the dismissal of complaints, which amount to a collateral attack on a judicial ruling, sufficient to deal with charges made by disappointed litigants, or is additional or revised language necessary?

None of these questions will be easy to answer. The task of responding to them will require our best efforts, as well as those of Federal jurists, legal scholars, and other interested persons. But, it cannot be ignored.

As Congress proceeds with its comprehensive and long-delayed examination of judicial disciplinary procedures, one point must always be uppermost in our minds: the importance of insuring that the time-honored and constitutionally recognized principle of judicial independence be preserved. It is a principle worth preserving. It is not a new principle. It is an ancient one. Its origins can be traced back long before the Constitution of the United States was written. It is more than 2,000 years old.

Herodotus, the Greek historian, in his history of ancient Persia, wrote:

> The royal judges are men chosen from among Persians, who continue in office until they die or they are convicted of some injustice. They determine causes between the Persians, and are the interpreters of the ancient constitutions and all questions referred to them.

Our Founding Fathers were worldly individuals. They were the scholars. They knew of Herodotus and they were aware that, by grafting judicial independence into the Constitution, they were embodying the wisdom of the ages into the organic law of our Nation.

We must not ignore the lessons to be gleaned from history. We must be faithful to the constitutional government ordained by our Founding Fathers. Above all, we must be certain that if we opt for greater judicial control, we will not sacrifice judicial independence.●

By Mr. HART:

S. 523. A bill to amend chapter 5 of title 37, United States Code, to revise the special pay provisions for certain health professionals in the uniformed services; to the Committee on Armed Services.

UNIFORMED SERVICES HEALTH PROFESSIONALS SPECIAL PAY ACT OF 1979

● Mr. HART. Mr. President, our military health care system is currently faced with a critical shortage of physicians and other health care professionals. Recent Department of Defense statistics indicate that the three military services are in need of approximately 2,034 physicians to meet their requirements.

Last August, I introduced legislation to help provide a means for the Department of Defense to attract and retain qualified military health professionals to meet the medical requirements of Armed Forces. Since then, the military services have fallen behind their authorized military physician strength by over 900 physicians. The Army alone has fallen 20 percent below its 5,273-physician requirement. Furthermore, these figures do not reflect the severe shortages which exist in certain medical specialities such as radiology, anesthesiology, and internal medicine.

Mr. President, this critical shortage of qualified military health professionals raises serious questions about the ability of the military to provide wartime medical support for the men and women of our Armed Forces. In addition, shortage of military medical personnel severely limits the military health care systems' ability to fulfill its secondary mission to provide medical services as a condition of service to active duty, dependents, and retired beneficiaries.

The physician shortage in the military services has been caused by a combination of factors, including the termination of the doctor draft in 1973, the diminishing pool of "Berry plan" physicians, and the increasing difficulties in retaining physicians once their initial obligation is completed.

Because of the shortage, as well as increasing medical costs, military medical facilities have been forced to reduce services for active duty dependents and retired beneficiaries. In turn, there has been a corresponding increase in the use of the civilian health and medical program of the uniformed services (CHAMPUS). CHAMPUS not only costs eligible beneficiaries more, but it also results in additional costs to the taxpayer, since such medical services provided by civilian hospitals and physicians are higher on a fee-for-service basis.

In addition to the reductions in medical services provided at military medical facilities, many military hospital commanders have been forced to hire civilian physicians on a contract basis to meet essential operating requirements of their facilities.

These contract services do not come inexpensively. For example, nearly $8 million was spent for contract radiology services alone in the last fiscal year. As the physician shortage worsens, more money will have to be spent hiring civilian physicians to meet the needs of the military services. This is, at best, a stopgap solution because these civilian physicians cannot be deployed in the event of military mobilization.

The shortage in military medical services has also had a profound effect on the attitudes of service members. According to Department of Defense officials, health care benefits have been consistently cited by service members as one of the most important factors in military career decisions. The deterioration of military health care services will make it even harder to recruit and retain a qualified all-volunteer force in the future.

At present, the military is authorized temporarily to offer variable incentive special pay programs for health professionals. These special pay programs have six different methods of disbursement and confusing eligibility criteria which diminish their effectiveness. For example, variable incentive pay is not available to medical officers serving their initial active duty obligation.

Similarly, medical officers trained under the health professional scholarship program are not eligible for incentive pay under the current program until the Federal assistance they have received is paid back through a specified period of military service. Uneven and inequitable requirements like these seriously undermine the armed services' effort to maintain a staff of qualified physicians.

The legislation I am proposing would correct these inequalities and replace the current temporary special pay program with a stable, long-term health professionals special pay program. It would give the military services the needed tools to enhance recruitment and retention of qualified health care professionals.

Although this bill will not bring the pay of military medical officers up to civilian levels, it will make a career in the military health service substantially more attractive than it is now.

The major provisions of the bill include:

First, primary special pay for physicians, dentists, optometrists, and veterinarians called or ordered to active duty for a period of at least 1 year. This special pay is based on years of creditable service and varies from $1,200 per year to a maximum of $11,000 per year.

Second, special incentive pay would be offered physicians and dentists in selected specialties. To be eligible for this pay, the health professional must sign a written agreement to remain on active duty for a period of at least 1 year. The service Secretaries can authorize up to an additional $8,000 as incentive pay for selected medical specialties where severe shortages exist.

Mr. President, this bill will provide an effective incentive to persuade health professionals to enlist in our Nation's military services without having to suffer extreme financial hardships. It will also give the military the needed tools necessary to improve its health services. We must insure that our military health care system effectively and economically meets its mission requirement to provide the high quality medical care which its eligible beneficiaries deserve.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 523

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 "Uniformed Services Health Professionals Special Pay Act of 1978".

SEC. 2. (a) Chapter 5 of title 37, United States Code, relating to special and incentive pays for members of the uniformed services, is amended by striking out sections 302, 302a, 302b, and 303 and inserting in lieu thereof the following:

"§ 302. Special pay: medical officers

"(a)(1) Except as provided in paragraph (2), a commissioned officer who is an officer of the Medical Corps of the Army or the Navy, an officer of the Air Force designated as a medical officer, or a medical officer of the Public Health Service and who is on active duty under a call or order to active duty for a period of not less than one year is entitled to primary special pay at the following applicable rate:

"(A) $1,200 per year, if the officer has less than five years of creditable service under subsection (c);

"(B) $7,000 per year, if the officer has at least five but less than eight years of creditable service under subsection (c);

"(C) $9,000 per year, if the officer has at least eight but less than fourteen years of creditable service under subsection (c); or

"(D) $11,000 per year, if the officer has fourteen or more years of creditable service under subsection (c).

"(2) A commissioned officer described in paragraph (1) who is serving in the pay grade of 07, 08, or 09 is entitled to primary special pay at the following applicable rate regardless of the number of years of creditable service such officer may have under subsection (c):

"(A) $6,000 per year if the officer is serving in a pay grade of 09;

"(B) $7,000 per year if the officer is serving in a pay grade of 08; or

"(C) $10,000 per year if the officer is serving in a pay grade of 07.

"(3) The annual rate of primary special pay to which an officer is entitled under paragraph (1) or (2) shall be increased by—

"(A) $9,000 for any period during which the officer is not undergoing medical internship or residency training, as determined under regulations prescribed under section 302d(a); and

"(B) $2,000 if the officer is board certified, as determined under regulations prescribed under section 302d(a).

"(b)(1) Subject to paragraph (2) and under regulations to be prescribed under section 302d(a), an officer who is entitled to primary special pay under subsection (a)(1) and who is not undergoing medical internship or residency training may be paid incentive special pay in an annual amount not to exceed $8,000.

"(2) No officer shall be eligible for incentive special pay under this subsection unless the Secretary concerned has determined that the officer is qualified in the medical profession.

"(3) To be eligible for incentive special pay under this subsection for any year, an officer must first execute a written agreement under which the officer agrees to remain on active duty for a period of not less than one year beginning on the date the officer accepts the award of such special pay.

"(4) In developing the Budget for any fiscal year for transmittal to the Congress under section 201(a) of the Budget and Accounting Act, 1921, the President shall limit the amount to be paid during that year for incentive special pay under this subsection to an amount equal to not more than 10 percent of the amount to be paid in that year for primary special pay under subsection (a).

"(C) For purposes of this section, creditable service of an officer of the Medical Corps of the Army or the Navy, an officer of the Air Force designated as a medical officer, or a medical officer of the Public Health Service is computed by adding—

"(1) four years;

"(2) all periods which the officer spent in medical internship or residency training during which the officer was not on active duty; and

"(3) all periods of active service in the Medical Corps of the Army or Navy, as an officer of the Air Force designated as a medical officer, or as a medical officer of the Public Health Service.

"§ 302a. Special pay: dental officers

"(a) (1) Except as provided in paragraph (2), a commissioned officer who is an officer of the Dental Corps of the Army or the Navy, an officer of the Air Force designated as a dental officer, or a dental officer of the Public Health Service and who is on active duty under a call or order to active duty for a period of not less than one year is entitled to primary special pay at the following applicable rate:

"(A) $1,200 per year, if the officer has at least four years of creditable service under subsection (c) and is undergoing dental internship training, as determined under regulations prescribed under section 302d(a);

"(B) $2,000 per year, if the officer has at least four but less than seven years of creditable service under subsection (c), and is not undergoing dental internship training, as determined under regulations prescribed under section 302d(a);

"(C) $7,000 per year, if the officer has at least seven but less than fourteen years of creditable service under subsection (c); or

"(D) $9,000 per year, if the officer has fourteen or more years of creditable service under subsection (c).

"(2) A commissioned officer described in paragraph (1) who is serving in the pay grade of O–7 or O–8 is entitled to primary special pay at the rate of $7,000 per year regardless of the number of years of creditable service such officer may have under subection (c).

"(3) The annual rate of primary special pay to which an officer is entitled under paragraph (1) or (2) shall be increased by—

"(A) $3,000 for any period during which the officer is not undergoing dental internship or residency training, as determined under regulations prescribed under section 302d(a); and

"(B) $2,000 if the officer is board qualified in a dental specialty, as determined under regulations prescribed under section 302d(a).

"(b)(1) Subject to paragraph (2) and under regulations prescribed under section 302d(a), an officer who is entitled to primary special pay under subsection (a)(1) and who is not undergoing dental internship or residency training may be paid incentive special pay in an annual amount not to exceed $8,000.

"(2) No officer shall be eligible for incentive special pay under this subsection unless the Secretary concerned has determined that the officer is qualified in the dental profession.

"(3) To be eligible for incentive special pay under this subsection for any year, an officer must first execute a written agreement under which the officer agrees to remain on active duty for a period of not less than one year beginning on the date the officer accepts the award of such special pay.

"(4) In developing the Budget for any fiscal year for transmittal to the Congress under section 201(a) of the Budget and Accounting Act, 1921, the President shall limit the amount to be paid during that year for incentive special pay under this subsection to an amount equal to not more than 5 percent of the amount to be paid in that year for primary special pay under subsection (a).

"(c) For purposes of this section, creditable service of an officer of the Dental Corps of the Army or the Navy, an officer of the Air Force designated as a dental officer, or a dental officer of the Public Health Service is computed by adding—

"(1) four years;

"(2) all periods which the officer spent in dental internship or residency training during which the officer was not on active duty; and

"(3) all periods of active service in the Dental Corps of the Army or Navy, as an officer of the Air Force designated as a dental officer, or as a dental officer of the Public Health Service.

"§ 302b. Special pay: veterinary officers

"(a) A commissioned officer who is an officer of the Veterinary Corps of the Army, an officer of the Air Force designated as a veterinary officer, or a veterinary officer of the Public Health Service and who is on active duty under a call or order to active duty for a period of not less than one year is entitled to special pay at the following applicable rates:

"(1) $1,800 per year, if the officer has less than three years of creditable service under subsection (b);

"(2) $2,400 per year, if the officer has at least three but less than six years of creditable service under subsection (b);

"(3) $3,000 per year, if the officer has at least six but less than ten years of creditable service under subsection (b); or

"(4) $4,200 per year, if the officer has ten or more years of creditable service under subsection (b).

"(b) For purposes of this section, creditable service of an officer of the Veterinary Corps of the Army, an officer of the Air Force designated as a veterinary officer, or a veterinary officer of the Public Health Service is computed by adding—

"(1) all periods which the officer spent in veterinary residency training during which the officer was not on active duty; and

"(2) all periods of active service in the Veterinary Corps of the Army, as an officer of the Air Force designated as a veterinary officer, or as a veterinary officer of the Public Health Service.

"§ 302c. Special pay: optometry officers

"(a) A commissioned officer who is an officer of the Army, Navy, or Air Force designated as an optometry officer or who is an optometry officer of the Public Health Service and who is on active duty under a call or order to active duty for a period of not less than one year is entitled to special pay at the following applicable rate:

"(1) $1,800 per year, if the officer has less than three years of creditable service under subsection (b);

"(2) $2,400 per year, if the officer has at least three but less than six years of creditable service under subsection (b);

"(3) $3,000 per year, if the officer has at least six but less than ten years of creditable service under subsection (b); or

"(4) $4,200 per year, if the officer has ten or more years of creditable service under subsection (b).

"(b) For purposes of this section, creditable service of an officer of the Army, Navy, or Air Force designated as an optometry officer or of an optometry officer of the Public Health Service is computed by adding—

"(1) all periods which the officer spent in optometry residency training during which the officer was not on active duty; and

"(2) all periods of active service as an optometry officer.

"§ 302d. Special pay: health professionals; general provisions

"(a)(1) The Secretary of Defense, with respect to the Army, Navy, and Air Force, and the Secretary of Health, Education, and Welfare, with respect to the Public Health Service, shall prescribe regulations for the administration of sections 302, 302a, 302b, and 302c.

"(2) For purposes of sections 302, 302a, 302b, and 302c, the terms 'board eligible', 'board qualified', and 'initial residency training' shall have such meanings as shall be prescribed in regulations issued by the Secretary of Defense.

"(b) Special pay authorized under sections 302, 302a, 302b, and 302c is in addition to any other pay or allowances to which a member is entitled, and the amounts set forth in such sections shall not be included in computing the amount of any increase in pay under any other provision of this title or in computing retired pay, severance pay, or readjustment pay.

"(c) Special pay under sections 302(a), 302a(a), 302b, and 302c shall be paid monthly.

"(d) An officer who voluntarily terminates his service on active duty before the end of the period for which a payment was made to such officer under section 302(b) or 302a(b) shall refund to the United States an amount which bears the same ratio to the amount paid to such officer as the unserved part of such period bears to the total period for which the payment was made.

"(e) The special and incentive pays to which an officer of the health professions of the uniformed services is entitled under sections 302 through 302c are to be adjusted each year by the same percentage rate that the monthly basic pay and allowances of members of the uniformed services is adjusted pursuant to section 8 of the Act of December 16, 1967 (Public Law 90-207; 81 Stat. 654).".

(b) Sections 311 and 313 of title 37, United States Code, are repealed.

(c) Section 306(e) of such title, relating to exclusions from special pay for officers holding positions of unusual responsibility, is amended by striking out "302 or 303" and inserting in lieu thereof "302, 302a, 302b, or 302c".

(d) The table of sections at the beginning of chapter 5 of such title is amended—

(1) by striking out the items relating to sections 302, 302a, 302b, and 303 and inserting in lieu thereof the following:

"302. Special pay: medical officers.
"302a. Special pay: dental officers.
"302b. Special pay: veterinary officers.
"302c. Special pay: optometry officers.
"302d. Special pay: health professionals; general provisions.";

and

(2) by striking out the items relating to sections 311 and 313.

SEC. 3. Unearned amounts received by officers under the provisions of sections 311 and 313 of title 37, United States Code, on the day before the effective date of this Act shall be recouped by the United States from the officer concerned on a pro rata basis. An officer receiving pays under the provisions of any of the sections amended or repealed by this Act shall continue, under regulations prescribed by the Secretary of Defense, to be entitled under the amendments made by this Act to an annual amount of special pay equal to not less than the annual amount to which such officer would have been entitled had such sections not been amended or repealed by this Act.

SEC. 4. This Act shall become effective on October 1, 1979.●

By Mr. MORGAN:

S. 524. A bill to establish a Solar Energy Development Bank to provide long-term, low-interest loans for the purchase and installation of solar energy equipment in commercial and residential buildings in the United States; to the Committee on Banking, Housing, and Urban Affairs.

SOLAR ENERGY BANK ACT

● Mr. MORGAN. Mr. President, today I am introducing legislation that will create a Solar Energy Development Bank to offer long-term, low-interest loans to homeowners and businesses for the purchase and installation of solar energy equipment.

The Solar Bank is designed to encourage the widespread use of solar energy, enabling the homeowner to overcome one of solar's great obstacles—the high initial cost. A loan program offers the added advantage of allowing the homeowner to make a monthly cost comparison between solar and the energy it would replace. The Bank would make use of the best in our private enterprise system by helping create a market for which industry would compete and innovate. It could have an enormous impact on the development of solar energy and, what's more, could do so without burdening taxpayers with another cumbersome bureaucracy. Its staff would be minimal. Loans would be made and serviced by private lending agencies using private capital, with the Solar Bank compensating the lender for the low interest rate charged.

The Solar Bank speaks to some of the most serious problems facing us today, including price inflation caused by imported oil, and it could help us move toward our goal of energy independence, thereby enhancing our national security. It is considered a top priority item by solar advocates and has been endorsed by the solar coalition. The Solar Bank concept, in fact, is one of the policy options being advanced in the President's solar energy domestic policy review.

Obviously, at this time of mounting inflation, budgetary restraint takes precedence over new programs. Yet last year's testimony by the Office of Technology Assessment indicated that the Solar Bank could essentially pay for itself. This bill would have the effect of redirecting the funds that pay for imported oil into investments in the U.S. economy. This would not only promote the use of solar energy, and therefore reduce our dependence on foreign oil, but it would also tend to stimulate the industries involved in the research and production of solar energy equipment. This stimulation of solar technology may well turn out to be one of the most beneficial impacts of this bill aside from reducing our energy problems.

I might point out that federal subsidies for nuclear, oil, coal, and hydroelectric energy have totaled over $80 billion since 1950. On the other hand, solar energy has received no such massive subsidization. If we want to utilize solar energy to its potential, a potential that according to President Carter, "could meet as much as one fourth of our energy demands * * * by the end of this century," we must be willing to give it the boost that it deserves, and that it needs to compete against other energy sources.

I urge my colleagues to consider this legislation favorably, and I ask you to cosponsor and support it.●

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

S. 525. A bill to amend the Drug Abuse Office and Treatment Act of 1972, and for other purposes; to the Committee on Human Resources.

DRUG ABUSE PREVENTION, TREATMENT, AND REHABILITATION ACT OF 1979

● Mr. RIEGLE. Mr. President, today I am introducing, along with Mr. WILLIAMS, the Drug Abuse Prevention, Treatment, and Rehabilitation Act of 1979. This bill extends the legislative authority for the National Institute on Drug Abuse for the next 3 fiscal years, and updates the law with respect to Federal coordination of drug abuse policy.

I am particularly pleased to be joined in sponsoring this bill by Mr. WILLIAMS, the chairman of the full Human Resources Committee, who shares my determination to improve the effectiveness of Federal dollars spent for drug abuse prevention and treatment.

The Drug Abuse Prevention, Treatment, and Rehabilitation Act of 1979 brings the law in accordance with actual practice by eliminating references to the Office of Drug Abuse Policy, which was formerly located in the Executive Office of the President. Because we are concerned that Federal drug policy be coordinated at the level of top policymakers, however, the functions formerly performed by ODAP are retained, to be performed by the President acting through the Domestic Council unless an alternative mechanism is established by Executive order.

Because the subcommittee wants the benefit of a hearing record before we set authorization levels for the next 3 fiscal years, this bill authorizes such sums as may be necessary to carry out the functions of the act. Following our subcommittee hearings on March 2, the subcommittee will set specific authorization levels.

I ask unanimous consent that the text of the bill and a section-by-section analysis be printed in the RECORD.

There being no objection, the bill and analysis were ordered to be printed in the RECORD, as follows:

S. 525

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; REFERENCE TO ACT

SECTION 1. (a) This Act may be cited as the "Drug Abuse Prevention, Treatment, and Rehabilitation Act of 1979".

(b) Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Drug Abuse Office and Treatment Act of 1972.

SEC. 2. Section 101 is amended—

(1) by inserting "(in cooperation with employers, employee associations, social service organizations, and associations of concerned individuals)" after "programs" in paragraph (8); and

(2) by inserting at the end thereof the following new paragraphs:

"(11) Shifts in the usage of various drugs and in the Nation's demographic composition require a Federal strategy to adjust programs and techniques in order to meet new needs and priorities on a cost-effective basis.

"(12) Drug and alcohol abuse indicate the need for prevention and information programs designed to reach the general population and members of particularly vulnerable groups such as youth, older Americans, and families of drug abusers.".

SEC. 3. Title II is amended to read as follows:

"TITLE II—DRUG ABUSE POLICY COORDINATION

"Sec.
"201. Concentration of Federal effort.
"202. Designated drug representative.
"203. Officers and employees.
"204. Employment of experts and consultants.
"205. Acceptance of uncompensated services.
"206. Notice relating to the control of dangerous drugs.
"207. Statutory authority unaffected.
"208. Annual report.
"209. Appropriations authorized.

"Sec. 201. Concentration of Federal effort.

"(a) The President, acting through the Domestic Council or through such other mechanism as may be set forth by Executive Order, shalal establish a system for making recommendations with respect to policies for, objectives of, and establishment of priorities for, Federal drug abuse functions and shall coordinate the performance of such functions by Federal departments and agencies. Recommendations under this subsection shall include recommendations for changes in the organization, management, and personnel of Federal departments and agencies performing drug abuse functions in order to implement the policies, priorities, and objectives recommended under this subsection.

"(b) To carry out subsection (a), the President, acting through the Domestic Council or through such other mechanism as may be set forth by Executive Order, shall—

"(1) review the regulations, guidelines, requirements, criteria, and procedures of Federal departments and agencies applicable to the performance of drug abuse functions;

"(2) conduct, or provide for, evaluations of (A) the performance of drug abuse functions by Federal departments and agencies, and (B) the results achieved by such departments and agencies in the performance of such functions; and

"(3) seek to assure that Federal departments and agencies, in the performance of drug abuse functions, construe drug abuse as a health problem requiring treatment and rehabilitation through a broad range of community health and social services.

"(c) Federal departments and agencies engaged in drug abuse functions shall submit to the President, through the Domestic Council or through such other mechanism as may be set forth by Executive Order, such information and reports as may reasonably be required to carry out the purposes of this title.

"Sec. 202. Designated drug representative.

"(a) The President shall designate a single officer or employee of the Domestic Council, or of such other mechanism as may be established by Executive Order to carry out the purposes of this title, to direct the activities required by this title. The officer or employee so designated shall serve as the President's representative on drug abuse functions and the location of such designee in the Executive Office of the President or elsewhere shall not be construed as affecting access by the Congress, or committees of either House, (1) to information, documents, and studies in the possession of, or conducted by or at the direction of, such designee, or (2) to personnel involved in carrying out the purposes of this title.

"(b) The President may direct the officer or employee designated under subsection (a) of this section to represent the Government of the United States in discussions and negotiations relating to drug abuse functions.

"Sec. 203. Officers and employees.

"In carrying out the purposes of this title, the President, acting through the Domestic Council or through such other mechanism as may be set forth by Executive Order, may employ and prescribe the functions of such officers and employees, including attorneys, as are necessary to perform the functions vested in him by this title. At the discretion of the President, any officer or employee engaged in carrying out the purposes of this title may be allowed and paid travel expenses, including per diem in lieu of subsistence, in the same manner as is authorized by section 5703 of title 5, United States Code, for individuals employed intermittently.

"Sec. 204. Employment of experts and consultants.

"In carrying out the purposes of this title, the President, acting through the Domestic Council or through such other mechanism as may be set forth by Executive Order, may procure services as authorized by section 3109 of title 5, United States Code, and may pay a rate for such services not in excess of the rate in effect for grade GS-18 of the General Schedule. The President, acting through the Domestic Council or through such other mechanism as may be set forth by Executive Order, may employ individuals under this section without regard to any limitation, applicable to services procured under such section 3109, on the number of days or the period of such services, except that, at any one time, not more than six individuals may be employed under this section without regard to such limitation.

"Sec. 205. Acceptance of uncompensated services.

"In carrying out the purposes of this title, the President, acting through the Domestic Council or through such other mechanism as may be set forth by Executive Order, is authorized to accept and employ in furtherance of the purpose of this Act voluntary and uncompensated services notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

"Sec. 206. Notice relating to the control of dangerous drugs.

"Whenever the Attorney General determines that there is evidence that—

"(1) a drug or other substance, which is not a controlled substance (as defined in section 102(6) of the Controlled Substances Act), has a potential for abuse, or

"(2) a controlled substance should be transferred or removed from a schedule under section 202 of such Act, he shall, prior to initiating any proceeding under section 201(a) of such Act, give the President, through the Domestic Council or through such other mechanism as may be set forth by Executive Order, timely notice of such determination. Information forwarded to the Attorney General pursuant to section 201(f) of such Act shall also be forwarded by the Secretary of Health, Education, and Welfare to the President through the Domestic Council or through such other mechanism as may be set forth by Executive Order.

"Sec. 207. Statutory authority unaffected.

"Nothing in this title shall be construed to limit the authority of the Secretary of Defense with respect to the operation of the Armed Forces or the authority of the Administrator of Veterans' Affairs with respect to the furnishing of health care and related services to veterans.

"Sec. 208. Annual report.

"The President, acting through the Domestic Council or through such other mechanism ash may be set forth by Executive Order, shall submit to the Congress, prior to March 1 of each year, a written report on the activities conducted to carry out the purposes of this title. The report shall specify the objectives, nature, and results of such activities, and shall contain an accounting of funds expended under this title.

"Sec. 209. Appropriations authorized.

"For purposes of carrying out this title, there is authorized to be appropriated such sums as may be necessary for each fiscal year ending prior to October 1, 1982.".

SEC. 4. This title shall become effective on October 1, 1979, or upon enactment, whichever is later.

SEC. 5. (a) Section 302 is amended by striking out "Director of the Office of Drug Abuse Policy" and inserting in lieu thereof "representative designated under section 202 of this Act".

(b) Section 304 is amended by striking out "Director of the Office of Drug Abuse Policy" and inserting in lieu thereof "President, through the Domestic Council or through such other mechanism as may be set forth by Executive Order".

(c) The first sentence of section 409 (a) of the Drug Abuse Office and Treatment Act of 1972 is amended—

(1) by striking out "and" after "1978"; and

(2) by inserting "and such sums as may be necessary for each succeeding fiscal year ending prior to October 1, 1982," after "1979,".

Sec. 6. Section 409(e) is amended—

(1) by inserting "with attention to assuring representation of minority and poverty groups, women, youth, and the aged," after "affected by drug abuse" in paragraph (3);

(2) by inserting the following before the semicolon in paragraph (4): ", and set forth in detail the changes in emphasis among such functions resulting from shifts in demographic and drug abuse patterns within the State";

(3) by striking out "and" at the end of subparagraph (5)(A);

(4) by striking out "by" after "drug dependence by women and" in subparagraph (5)(B);

(5) by inserting the following after "drug dependence by women": ", youth, older individuals, residents of urban and rural areas"; areas";

(6) by inserting the following at the end of subparagraph (5)(B): "(C) provide assurances satisfactory to the Secretary that, insofar as practicable, the survey conducted pursuant to subparagraph (A) is coordinated with and not duplicative of the alcohol abuse and alcoholism survey conducted pursuant to section 303 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970;";

(7) by inserting "(A)" after "in the State" in paragraph (7);

(8) by inserting the following before the semicolon in paragraph (7): ", (B) to review and comment on the plan prior to its submission to the Secretary, and (C) to submit to the Secretary as an appendix to the plan such comments as such political subdivisions believe are relevant to approval of the plan under paragraph (f)";

(9) by inserting "(A)" after "(9)";

(10) by inserting after subparagraph (9)(A) the following new subparagraph:

"(B) provide that the Comptroller General of the United States or his duly authorized representatives shall have access for the purpose of audit and examination to the records specified in subparagraph (A);";

(11) by inserting "and of the extent to

which other State programs and political subdivisions throughout the State are concerned and dealing effectively with the problems related to drug abuse and drug dependence" after "under the plan" in paragraph (10);

(12) by striking out "and" at the end of paragraph (12);

(13) by redesignating paragraph (13) as paragraph (17); and

(14) by inserting after paragraph (12) the following new paragraphs:

"(13) contain, to the extent feasible, a complete inventory of all public and private resources available in the State for the purpose of drug abuse and drug dependence treatment, prevention, and rehabilitation, including but not limited to programs funded under State and local laws, occupational programs, voluntary organizations, education programs, military and Veterans' Administration resources, and available public and private third-party payment plans;

"(14) provide assurance that the State agency will coordinate its planning with local drug abuse planning agencies, with State and local alcoholism and alcohol abuse planning agencies, and with other State and local health planning agencies;

"(15) provide assurance that State certification, accreditation, or licensure requirements, if any, applicable to drug abuse and drug dependence treatment facilities and personnel take into account the special nature of such programs and personnel, including the need to include nonmedical aspects of treatment and the need to acknowledge previous experience when assessing the adequacy of treatment personnel;

"(16) provide assurance that the State agency—

"(A) will foster and encourage the development of drug abuse and drug dependence prevention, treatment, and rehabilitation programs and services in State and local governments and in private businesses and industry;

"(B) will make available to all business concerns and governmental entities within such State information and materials concerning such model programs suitable for replication on a cost-effective basis as are developed pursuant to section of this Act; and

"(C) will furnish technical assistance as requested to such business concerns and governmental entities; and".

SEC. 7. Section 410(a) is amended—

(1) by inserting the following after "development" in paragraph (1): ", demonstration, and evaluation";

(2) by inserting "and detoxification" before "techniques" in paragraph (5);

(3) by inserting the following before the semicolon in paragraph (5): ", including supportive services to prevent relapse into drug abuse or drug dependence"; and

(4) by inserting the following before the period in paragraph (6): ", with particular emphasis on replicating effective prevention and treatment programs in areas of the greatest need for such programs".

SEC. 8. Section 410(b) is amended by adding at the end thereof the following new sentence: "For each succeeding fiscal year ending prior to October 1, 1982, there are authorized to be appropriated (1) such sums as may be necessary for grants and contracts under paragraphs (3) and (6) of subsection (a) for drug abuse treatment programs, and (2) such sums as may be necessary for grants and contracts under such subsection for other programs and activities."

SEC. 9. Section 413(a) is amended—

(1) by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management";

(2) by striking out "Director" and inserting in lieu thereof "President (acting through the Domestic Council or through such other mechanism as may be set forth by Executive Order), with the Secretary (acting through the National Institute on Drug Abuse),";

(3) by inserting "and in accordance with the provisions of subpart F of part III of title 5, United States Code, as amended by the Civil Service Reform Act of 1978" after "other Federal agencies and departments" and

(4) by inserting "and their families" after "Federal civilian employees".

SEC. 10. Section 413(b) is amended to read as follows:

"(b) (1) The Secretary, acting through the National Institute on Drug Abuse, shall be responsible for fostering and encouraging similar drug abuse prevention, treatment, and rehabilitation programs and services in State and local governments and in private industry.

"(2) Consistent with such responsibility, the Secretary acting through the National Institute on Drug Abuse, shall develop a variety of model programs suitable for replication on a cost-effective basis in different types of business concerns and State and local governmental entities, taking into account the number of employees, geographical location, proximity to other concerns and entities, and availability of existing services from public agencies and private organizations. With respect to small business concerns, the Secretary, acting through the National Institute on Drug Abuse, shall consult with the Small Business Administrator in the development of model programs affecting such concerns.

"(3) With respect to busines concerns and governmental entities which employ individuals represented by labor organizations, such model programs shall be designed to operate through the collective bargaining process.

"(4) The Secretary, acting through the National Institute on Drug Abuse, shall disseminate information and materials to single State agencies designated pursuant to section 409 of this Act, and shall provide technical assistance to such agencies as requested.

"(5) To the extent feasible, model programs developed pursuant to this section shall be capable of coordination with model programs developed pursuant to section 201 (b) of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1978.".

SEC. 11. (a) Title IV is amended by adding at the end thereof the following new section:

"SEC. 414. (a) Drug abusers who are suffering from personal, emotional, or social conditions shall not be discriminated against in admission or care, solely because of their drug abuse or drug dependence, by any private or public social service, mental health, intermediate care, rehabilitation, or other service-related facility which receives support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency.

"(b) The Secretary shall issue regulations not later than 12 months after the enactment of this section for the enforcement of the policy of subsection (a) with respect to the admission and care of drug abusers in facilities covered by this section. Such regulations shall include procedures for determining (after opportunity for a hearing if requested) if a violation of subsection (a) has occurred, notification of failure to comply with such subsection, and opportunity for a violator to comply with such subsection. If the Secretary determines that a facility which receives support of any kind from any program administered by the Secretary and subject to such regulations has violated subsection (a) and such violation continues after an opportunity has been afforded for compliance, the Secretary may suspend or revoke, after opportunity for a hearing, all or part of any support of any kind received by such facility from any program administered by the Secretary. The Secretary may consult with the officials responsible for the administration of any other Federal program from which a facility covered by subsection (a) receives support of any kind, with respect to the suspension or revocation of Federal support for any facility found to violate such subsection.".

(b) The table of sections at the beginning of title IV is amended by adding at the end thereof the following new item: "414. Admission of drug abusers to social services.".

SEC. 12. Section 502 is amended by inserting at the end thereof the following new subsection:

"(d) On the request of any State, the Secretary shall make available technical assistance for the purposes of developing and improving systems for data collection; program management, accountability, and evaluation; certification, accreditation, or licensure of treatment facilities and personnel; monitoring compliance to Federal requirements of hospitals and other facilities; and developing demonstration projects or implementing through such State's insurance regulatory process a requirement that will constitute significant progress toward coverage of drug abuse and drug dependence by health insurance plans equivalently with other chronic health conditions. Insofar as practicable, such technical assistance shall be provided in such a manner as to improve coordination between activities funded under this Act and under the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970."

SEC. 13. Section 503 (a) is amended—

(1) by striking out "to create, develop, and test" and insert in lieu thereof the following: ", investigations, experiments, demonstrations, and studies, into"

(2) by inserting "the creation, development, and testing of" after "(1)", "(2)", and "(3)", respectively;

(3) by striking out "and" at the end of paragraph (2);

(4) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(5) by inserting after paragraph (3) the following new paragraph:

"(4) the social, behavioral, and biomedical etiology, treatment, mental and physical health consequences, and social and economic consequences of drug abuse and drug dependence."

SEC. 14. Section 503 (b) is amended—

(1) by striking out "and" after "1978,"; and

(2) by inserting before the period a comma and the following: "and such sums as may be necessary for each succeeding fiscal year ending prior to October 1, 1982,"

SEC. 15. Section 503 is further amended by adding at the end thereof the following new subsection:

"(c) In carrying out the program described in subsection (a) of this section, the Secretary, acting through the Institute, is authorized to—

"(1) collect and make available through publications and other appropriate means, information as to, and practical application of, the research and other activities under the program;

"(2) make available research facilities of the Public Health Service to appropriate public authorities, and to health officials and scientists engaged in special study;

"(3) make grants to universities, hospitals, laboratories, and other public or nonprofit institutions, and to individuals for such research projects as are recommended by the National Advisory Council on Drug Abuse, with particular emphasis on investigating polydrug abuse (including the relationship between abuse of alcohol and other drugs);

"(4) secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

"(5) promote the coordination of research programs conducted by the Institute, and similar programs conducted by other agencies, organizations, and individuals, including all National Institutes of Health research activities which are or may be related to the problems of individuals suffering from drug abuse or drug dependence or the drug abuse or dependence of members of their families;

"(6) for purposes of study, admit and treat at institutions, hospitals, and stations of the Public Health Service, persons not otherwise eligible for such treatment;

"(7) provide to health officials, scientists, and appropriate public and other nonprofit institutions and organizations, technical advice and assistance on the application of statistical methods to experiments, studies, and surveys in health and medical fields; and

"(8) adopt, upon recommendation of the National Advisory Council on Drug Abuse, such additional means as he deems necessary or appropriate to carry out the purposes of this section."

SEC. 16. Section 217(e)(1) of the Public Health Service Act is amended—

(1) by inserting the following before the period in the third sentence: ", including officers or employees of State and local drug abuse agencies"; and

(2) by inserting at the end thereof the following new sentence: "Appointed members may serve after the expiration of their terms until their successors have taken office."

SEC. 17. (a) The Drug Abuse and Treatment Act of 1972 is amended by striking out the title of the Act each place it appears and inserting in lieu thereof the following new title of the Act:

"Drug Abuse Prevention, Treatment, and Rehabilitation Act of 1972".

(b) Whenever reference is made in any other Federal law, regulation, ruling, or order to the Drug Abuse Office and Treatment Act of 1972, the reference shall be considered to be made to the Drug Abuse Prevention, Treatment, and Rehabilitation Act of 1972.

SECTION BY-SECTION ANALYSIS

Sec. 1. Short Title.

Sec. 2. Congressional Findings.

Amends findings to emphasize need of cooperation with employers, employee associations, social service organizations, and associations of concerned individuals as well as law enforcement and health programs; notes need to adjust programs to changing demographic and drug use patterns; emphasizes prevention programs for general population and vulnerable groups including youth, older Americans, and families of drug abusers.

Sec. 3. Drug Abuse Policy Coordination.

Amends Title II to eliminate references to former Office of Drug Abuse Policy and substitute references to President, acting through the Domestic Council or through such other mechanism as may be established by Executive Order; emphasizes need for wide range of community health and social services; requires Presidential designation of single representative to direct activities under Title II; authorizes (pending hearings) such sums as may be necessary to carry out functions under Title II.

Sec. 4. Effective Date.

Sec. 5. Formula Grants Authorization.

Substitutes reference to representative designated under section 3 for reference to Director of Office of Drug Abuse Policy; authorizes (pending hearings) such sums as may be necessary for State formula grants for next three fiscal years.

Sec. 6. State Plans.

Amends requirements for State plans to assure representation of minority and poverty groups, women, youth, and the aged; requires description of plan changes necessitated by shifts in demographic and treatment needs for youth, older individuals, and residents of urban and rural areas; requires assurances that drug abuse and drug dependence survey is coordinated with alcohol abuse and alcoholism survey required by Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970; provides municipalities opportunity to review and comment on State plan and to forward comments to Secretary; authorizes Comptroller General to obtain access to records; requires evaluation of effectiveness of other State and local programs addressing problems related to drug abuse; calls for inventory of public and private resources related to drug abuse prevention, treatment, and rehabilitation; requires coordination with other drug, alcohol, and health planning agencies; requires certification, accreditation, and licensure requirements to take into account medical as well as nonmedical aspects of treatment and previous experience of personnel; requires State encouragement of occupational programs.

Sec. 7. Project Grants and Contracts.

Includes demonstration and evaluation along with development of occupational programs; includes detoxification along with drug maintenance; emphasizes replication of effective prevention and treatment programs in areas of greatest need.

Sec. 8. Project Authorization.

Authorizes (pending hearings) such sums as may be necessary for project grants and contracts for next three fiscal years.

Sec. 9. Federal Civilian Employees.

Reconciles Act with Civil Service Reform Act by recognizing Office of Personnel Management and requiring compliance with statutory collective bargaining procedures; makes families of Federal employees eligible for services.

Sec. 10. Occupational Programs.

Instructs Secretary to develop model occupational programs, which shall be consistent with those developed in alcoholism field.

Sec. 11. Service-Related Facilities.

Prohibits discrimination, solely because of drug abuse or drug dependence, by social service, mental health, intermediate care, rehabilitation, or other service-related facilities supported wholly or in part by Federal funds.

Sec. 12 Technical Assistance.

Authorizes provision of technical assistance to States in areas of data collection; program management and evaluation; certification, accreditation, or licensure; compliance with Federal requirements by hospitals and other facilities; developing demonstration projects or implementing through insurance regulatory processes mechanisms for covering drug abuse under health insurance plans equivalently with other chronic health conditions; and related areas where NIDA and NIAAA activities may be parallel.

Sec. 13. Research Encouragement.

Expands encouragement of research to include investigations, experiments, demonstrations, and studies into social, behavioral, and biomedical aspects of drug abuse, and consequences thereof.

Sec. 14. Research Authorization.

Authorizes (pending hearings) such sums as may be necessary for research for next three fiscal years.

Sec. 15. Methods of Encouraging Research.

Itemizes activities that may be utilized to encourage research, including dissemination of information, use of Public Health Service facilities, grants approved by National Advisory Council on Drug Abuse (emphasizing investigation of polydrug abuse, including alcohol), use of experts and consultants, promotion of coordination with research conducted by other agencies, and provision of technical assistance.

Sec. 16. National Advisory Council on Drug Abuse.

Calls for inclusion of officers or employees of State and local drug abuse agencies; authorizes appointed members to serve until their replacements take office.

Sec. 17. Title of 1972 Act.

Changes title of Drug Abuse Office and Treatment Act of 1972 to Drug Abuse Prevention, Treatment, and Rehabilitation Act of 1972.●

By Mr. SCHWEIKER:

S. 526. A bill to amend title XI of the Social Security Act to provide that a Professional Standards Review Organization shall not be considered to be an agency of the Federal Government; to the Committee on Finance.

PROFESSIONAL STANDARDS REVIEW ORGANIZATION

● Mr. SCHWEIKER. Mr. President, I am today reintroducing a bill to clarify that Professional Standards Review Organizations (PSRO's) are not subject to the full range of information disclosure requirements of the Freedom of Information Act.

Similar legislation I introduced last session gained broad support and was, with minor modifications, reported favorably by the Senate Finance Committee as part of H.R. 5285, the Medicare-Medicaid Reimbursement Reform Act. In the parliamentary activity of the closing hours of the last session, Senate action on the provision was postponed.

Mr. President, my bill is made necessary by a decision of the U.S. District Court for the District of Columbia on April 25, 1978, holding that a PSRO is an "agency" of the Federal Government for purposes of FOIA and is thus subject to its disclosure requirements. Section 1166 of the Social Security Act sets forth principles on the basis of which HEW is to promulgate regulations governing both disclosure and confidentiality of information acquired by PSRO's in the exercise of their duties. Since the court decision may have the effect of subordinating the delicately balanced requirements of the PSRO law to the more sweeping provisions of the Freedom of Information Act, (FOIA) I believe it is necessary that Congress affirm its original intent on this important matter.

As my colleagues are aware, PSRO's are independent peer review organizations authorized by the Social Security Act amendments of 1972 to determine

whether services reimbursable under medicare, medicaid, and the Maternal and Child Health programs conform to appropriate professional standards, are medically necessary and, in the case of hospital or other institutional services, are rendered in an appropriate setting.

PSROs may also extend their activities to a broader range of health care services. The PSRO program is administered by the Secretary of HEW, who is charged with designating PSRO areas across the country and entering into contractual agreements with qualified organizations to perform PSRO functions. Where the PSRO determines that health care services do not conform to applicable standards, reimbursement under Federal programs may be denied. The law provides for hearings and secretarial review of PSRO determinations, as well as sanctions for cases that voluntary and educational efforts fail to resolve.

Mr. President, one of the primary purposes of the 1972 PSRO legislation was to allow private, professional organizations to review the quality and appropriateness of medical care. The legislative history of the PSRO statute notes that "it is preferable and appropriate that organizations of professionals undertake review of members of the profession rather than for Government to assume that role." The D.C. District Court's conclusion that PSROs are agencies of the Federal Government and thus subject to FOIA is clearly inconsistent with Congress' belief in passing the original legislation that private, nongovernmental agencies should perform quality and utilization review functions.

The decision would also effectively supplant the Social Security Act's directive to HEW to develop specific regulations governing the disclosure of information acquired by PSROs. Proposed regulations under this authority were published in the Federal Register on January 15, 1979 after an extensive ecort to solicit the views and concerns of all interested parties.

It would be hard to exaggerate the detrimental impact on the developing PSRO movement of subjecting these non-governmental organizations to the broad requirements of FOIA. PSROs rely on voluntary service by local physicians. Should all data acquired by PSROs be disseminated without safeguards, recruitment of physicians to perform PSRO functions would become increasingly difficult. Moreover, the intent of peer review, as opposed to Government regulation, is to allow the profession to attempt to regulate itself with some degree of privacy.

Confidential discussions separating appropriate concerns from unfounded allegations are essential ingredients of this process. In addition, subjecting PSROs to FOIA would result in increased administrative burdens, large additional expenses for the defense of lawsuits, and great uncertainty and delay in the performance of PSRO functions. Indeed, the District acknowledged its potentially detrimental impact: "* * * The court is well aware * * * that the peer review mechanism which Congress wisely established in enacting the PSRO program, will experence a severe setback, if not a fatal blow, should PSRO records become generally available through FOIA. But, the remedy for alleviating these justifiable concerns lies with Congress, not the courts."

Mr. President, I am well aware that the decision of the D.C. District Court is being appealed and also that further litigation may determine that PSROs fall into one or more of the various exceptions to the Freedom of Information Act's requirements. However, I think it important that Congress respond to the court's invitation to clarify its intent on this matter. Specific regulations under section 1166 of the Social Security Act are a more sensitive approach to the difficult disclosure issues surrounding PSROs than wholesale application of the Freedom of Information Act than through the courts, particularly since Congress never intended PSROs to be Government agencies. I hope that through passage of this legislation, Congress can affirm its original intent and avoid prolonging the disruption and uncertainty which the court decision has caused in the PSRO community.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 526

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title XI of the Social Security Act is amended by adding at the end thereof the following new section:

"STATUS OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

"SEC. 1174. A Professional Standards Review Organization shall not be considered to be an agency of the Federal Government by reason of the functions performed by such organization under this Act.".●

By Mr. KENNEDY (by request):

S. 527. A bill to authorize appropriations for activities for the National Science Foundation for fiscal years 1980 and 1981, and for other purposes; to the Committee on Human Resources.

NATIONAL SCIENCE FOUNDATION AUTHORIZATIONS, 1980 AND 1981

● Mr. KENNEDY. Mr. President, I am introducing today by request the administration's bill authorizing funds for the National Science Foundation. The budget request for fiscal year 1980 totals $1.006 billion, of which $828.3 million is allocated for the support of basic research. The budget proposed by the administration would provide an increase of 8.4 percent over the fiscal year 1979 program level, with real growth in the Foundation's programs expected to be just under 1 percent. For fiscal year 1981 the administration has requested an open ended authorization. The following table summarizes the budget allocations proposed by the administration:

NATIONAL SCIENCE FOUNDATION—BUDGET SUMMARY

[Obligations in millions of dollars; fiscal years]

Budget activity	1978 actual	1979			1980 new obligational authority	Differences, 1980/79	
		1979 program funded by Congress	Prior year funds carried over	Current plan		New obligational authority	Total program
(1)	(2)	(3)	(4)	(5)	(6)	(6—3)	(6—5)
Research and related activities appropriation:							
Mathematical and physical sciences and engineering	$248.5	$263.2	$4.5	$267.7	$295.7	$32.5	$28.0
Astronomical, atmospheric, Earth, and ocean sciences	211.6	223.0	.5	223.5	243.3	20.3	19.8
U.S. Antarctic program	48.4	[1] 51.1	0	51.1	55.0	3.9	3.9
Biological, behavioral, and social sciences	141.8	155.7	.5	156.2	173.5	17.8	17.3
Applied science and research applications	55.1	55.5	[2] 7.3	[2] 62.8	62.4	6.9	—.4
Scientific, technological, and international affairs	23.8	24.3	.9	25.2	25.8	1.5	.6
Program development and management	48.7	54.8	3.1	57.9	59.6	4.8	1.7
Subtotal	777.9	827.6	16.8	844.4	915.3	87.7	70.9
Science education activities appropriation:							
Scientific personnel improvement	31.7	32.8	0	32.8	32.9	.1	.1
Science education resources improvement	27.9	29.1	0	29.1	29.1	0	0
Science education development and research	8.9	11.7	0	11.7	15.3	3.6	3.6
Science and society	5.4	6.4	0	6.4	7.4	1.0	1.0
Subtotal	73.9	80.0	0	80.0	84.7	4.7	4.7
Special foreign currency appropriation	5.4	4.0	0	4.0	6.0	2.0	2.0
Total, NSF	857.2	911.6	16.8	928.4	1,006.0	94.4	77.6

[1] Includes $625,000 proposed supplemental for increased paycosts of Antarctic logistics support. [2] Includes $6,900,000 fiscal year 1978 deferral.

Hearings on this legislation will be held on Friday, March 2 at 9:30 a.m. in room 6226 of the Dirksen Senate Office Building.●

By Mr. BAKER:

S.J. Res. 42. A joint resolution providing for the designation and adoption of the American marigold as the national floral emblem of the United States; to the Committee on the Judiciary.

THE AMERICAN MARIGOLD

Mr. BAKER. Mr. President, I rise today, as I have at the beginning of each Congress since 1971 to offer a resolution to designate the marigold as our national flower. Each time I do so, I am aware that my efforts to extoll the virtues of this lovely flower may seem feeble in comparison to the lush verbiage with which Senator Dirksen was able to instill in thousands of other Americans his love for ths hardy, cheerful, and truly American blossom.

As those of my colleagues who served with Senator Dirksen in the Senate will recall, passage of a joint resolution establishing the American marigold as our national floral emblem was, for many years, one of Senator Dirksen's fondest dreams.

Since his death in 1969, I have proposed the resolution in each new Congress, exactly as he originally introduced it, both to honor his memory and to express my own support for the marigold, which I feel is unique in its rich history and its embodiment of many of the basic virtues of the American spirit—humility, strength of character, endurance, and hope.

As the text of the resolution points out, we have adopted the American eagle and the American flag as national symbols. Moreover, each of the 50 States and every other major country in the "free" world has chosen a floral emblem. I feel that the American marigold could most appropriately be our floral symbol. It is not the national flower of any other country nor is it the State flower of any of our States. Yet it grows today in profusion in each State, having originally been introduced into this country by European colonists during the 18th century and nourished since that time by seed growers to attain a greater hardiness, a wider variety of colors, and larger flowers.

I am pleased that the marigold has a growing number of admirers throughout the Nation. The legislatures of three States, Georgia, Indiana, and Illinois, have approved resolutions recommending its adoption as our national flower. Moreover, the Marigold Society of America, which was founded last year, boasts members from 26 States and Canada. Mrs. Charlotte Bass, president of the society, succeeded in obtaining over 10,000 signatures on a petition urging Congress to consider the marigold resolution, and she continues to travel tirelessly throughout the United States sharing with thousands her enthusiasm for the "friendship flower."

In 1975 I had the pleasure of participating in the Annual Marigold Festival at Winterville, Ga. This small community located near Athens, adopted the marigold as its official flower in 1971. Since that time, the Annual Marigold Festival has been made the focus of a remarkably successful effort at restoration, renovation, and community development. I am constantly surprised and pleased at the way in which the "friendship flower" has succeeded in strengthening the American spirit of cooperation and volunteerism in Winterville and other communities around the country.

One of the most eloquent supporters of the marigold is my good friend Mr. David Burpee of the W. Atlee Burpee Co. in Doylestown, Pa. I would like to share with my colleagues Mr. Burpee's summary of reasons why the marigold, more than any other flower, deserves to be honored as our national floral emblem.

Mr. President, I ask unanimous consent that the text of my resolution and Mr. Burpee's comments be printed in the RECORD.

There being no objection, the joint resolution and comments were ordered to be printed in the RECORD, as follows:

S.J. RES. 42

Whereas the peoples of the world have from time immemorial adopted emblems—flags, birds, flowers—for their countries, representatives of their national virtues; and

Whereas the people of the United States have similarly adopted emblems—the American flag and the American eagle—to represent the virtues of this country; and

Whereas each of the fifty sovereign States of the United States, in addition to its State flag, has a floral emblem which it cherishes as its own; and

Whereas the United States is the only major "free" country in the world without a floral emblem; and

Whereas the American marigold represents the character of the United States more appropriately as an emblem than does any other flower in that it is an American native and native of nowhere else in the world; grown in abundance in the home gardens of every State in the Union yet not the floral emblem of any State in the Union; grown easily and quickly from seed; already acknowledged as a symbol of religious faith; a flower in its very appearance representing not just beauty but a rugged humility of character; and, like the American eagle and the American flag, an exclusively American emblem, unclaimed by any foreign nation: Therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the flower commonly known as the American marigold is hereby designated and adopted as the national floral emblem of the United States, and the President is requested to declare such fact by proclamation.

REASONS WHY THE AMERICAN MARIGOLD SHOULD BE THE FLORAL EMBLEM OF THE UNITED STATES OF AMERICA

There are many reasons why the American Marigold (Tagetes erecta), the Friendship Flower, should be the Floral Emblem of the United States.

Let me tell you some of them: The Marigold is native to Southwestern United States and to Mexico. It grows well and is popular in every state of our Union from Florida to Maine and from Hawaii to Alaska and also in every civilized country of the world. And it is known as the Friendship Flower.

The Marigold is not the state flower of any one of our states and is not the national flower of any foreign nation and as it is American, it can truly represent the United States of America.

The Rose is the national flower of England and is considered a symbol of warfare,—The War of the Roses. The Rose is also the national flower of six other nations, two of which are behind the Iron Curtain. The Rose would not be appropriate as our national flower.

When Cortez conquered ancient Mexico, he found Marigolds growing there. The gorgeous golden Marigolds were so beautiful Cortez took seed with him back to Spain. In Spain the beautiful golden Marigolds became the favorite flower of the devout to place at the altar of the Virgin Mary and because of that they were called Mary's Gold and then became known as Marigolds.

Then seed of Marigolds was taken to every civilized country of the world. They were so easy to grow everywhere and so beautiful, they became popular everywhere.

In India Marigolds became, and still are, the favorite flower to put in leis to place around a person's neck to indicate friendship and because of that they have become known as friendship flowers.

It is my thought that since we are the only great nation in the world that does not have a floral emblem, that especially when world affairs are so troubled, it would be very desirable to name as our National Floral Emblem the American Marigold, the Friendship Flower. It would indicate that we desire to be friends with all the peoples of the world and through friendship, it would perhaps help to deter future wars.

I urge you to support the American Marigold for the National Floral Emblem of the United States of America.

By Mr. DURKIN:

S.J. Res. 43. A joint resolution to proclaim March 21, 1980 "National Energy Education Day"; to the Committee on the Judiciary.

NATIONAL ENERGY EDUCATION DAY

● Mr. DURKIN. Mr. President, I am today introducing a joint resolution to declare March 21, 1980 "National Energy Education Day" (NEED). That day will kick off a substantial effort to expand energy education with schools across our country, and I urge my colleagues' support.

We are all generally familiar with the gravity of the energy crisis: Our increasing dependence on uncertain supplies of cartel priced foreign oil threatens our national security, undermines the dollar abroad, and contributes to inflation. We are daily bombarded with new evidence of it, especially in New Hampshire and New England where oil and gas prices are skyrocketing. But few of us are well informed about the most elementary facts about energy.

In an effort to encourage a greater public knowledge about energy, I am introducing this resolution to establish the National Energy Education Day in March of 1980. A recent study by HEW's National Center for Education Statistics underscores the need for greater public knowledge about energy. HEW discovered that between two-thirds and nine-tenths of those surveyed wanted more information about energy. The survey also found that Americans are woefully ignorant about the most basic energy facts.

I was particularly shocked to learn that half of those questioned did not know that between 30 and 60 percent of the oil we use is imported. I have a list which details some of the gaps in the American people's knowledge about energy, and I ask unanimous consent that it be printed in the RECORD.

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

ENERGY—KNOWLEDGE AND ATTITUDES, A STUDY BY THE NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS, DECEMBER, 1978

51% Americans surveyed age 16–35 don't know coal is largest fossil fuel reserve in U.S.

86% of same group don't know that coal is primary energy source in producing largest portion of electrical energy in U.S.

68% same group optimistically believe that improved technology will make it possible to convert all energy released by burning fuel into useful work.

47% plus did not know that energy produced by solar, tides, geothermal, Alaskan oil, or wind means will account for less than one-third of our energy needs by 1985.

54% did not know that crude oil accounts for the largest percentage of energy consumed in U.S.

70% Americans surveyed did not know approximate number of years of oil supply (domestic).

(a) 65% did not know relationship between population and energy consumption in U.S. (6% world population—30% world energy consumption).

(b) 35% plus did not know that energy consumption increasing more quickly than population. (88% did not know same for coal consumption).

76% did not know waste heat emitted by nuclear as well as fossil fuel plants.

50% don't know/understand definition of O.P.E.C. or G.N.P.

77% didn't know that heating water consumes more energy in a year than refrigerating/cooling food, drying clothes, lighting home.

71% didn't know percentage of total energy consumption, accounted for by heating home.

Mr. DURKIN. Mr. President, in the years ahead the American people will be called upon to make many difficult choices about our energy future. Unless we are better informed about the nature of our energy situation, we will not be able to cope with the complex problems that lie ahead.

It is especially important that our young people learn about energy problems and some ways to cope with them, because they will have as many if not more energy problems to cope with as we approach the 21st century. My own three children must and will understand the energy world they will deal with, and I am pleased to see that students all over New Hampshire will also learn more about energy. The State education officials in New Hampshire have already decided to participate in National Energy Education Day, and to strengthen the energy curriculum throughout the State. I commend the education officers and teachers in New Hampshire for their concern about energy and for their farsightedness in emphasizing it in the schools.

National Energy Education Day is only a small step toward educating the American people about the extent of the problem we face. But if we fail to educate ourselves and especially our young people, about the problems we face, we will only have ourselves to blame if we make the wrong choices.

Congressman GERALD SOLOMON is introducing a companion resolution in the House of Representatives and I hope both Houses will move quickly on this resolution so that schools can begin their planning.

I invite the support of my colleagues for this joint resolution, and ask unanimous consent that the joint resolution be printed in the RECORD at this point.

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

S.J. RES. 43

Whereas, inexpensive and abundant energy permitted our great nation to rise to a position of preeminence in the world community of nations; and

Whereas, events of recent years have shown that traditional energy resources are in potentially short supply and these massive changes in the world energy production and distribution system have made this subject a focal point of domestic and foreign policy.

Whereas, the development of new energy technologies, including solar energy and other renewable resources, promise to reduce our dependence on insecure and hostile foreign cartels; and

Whereas, these fundamental changes require the update of our educational system at all grade levels to prepare our youth to meet the new demands which are being created; and

Whereas, a National Energy Education Day (NEED) will bring together teachers, school officials, parent groups, to help Nation's children understand the international energy crisis; and

Whereas, NEED must be a total educational effort, the start of an ongoing process which can demonstrate that to ignore the plight of an energy shortfall and to fail to seek sound remedies would be an error; now, therefore, be it

Resolved, by the Senate and House of Representatives of the United States of America in Congress asembled, that March 21, 1980, is proclaimed "National Energy Education Day" to commence an ongoing program of energy education in schools, both public and private, at all grade levels, and the President is authorized and requested to issue (A) a proclamation calling upon the general public and education institutions of the United States to observe this day with appropriate activities and ceremonies, and (B) to direct all appropriate Federal agencies to cooperate with and participate in, the celebration of "National Energy Education Day".●

ADDITIONAL COSPONSORS

S. 50

At the request of Mr. HATFIELD, the Senator from Oregon (Mr. PACKWOOD), the Senator from California (Mr. CRANSTON), the Senator from Hawaii (Mr. INOUYE), the Senator from Vermont (Mr. LEAHY), and the Senator from Vermont (Mr. STAFFORD) were added as cosponsors of S. 50, the Beverage Container Reuse and Recycling Act of 1979.

S. 75

At the request of Mr. DOLE, the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 75, a bill to allow deductions for pension funds.

S. 102

At the request of Mr. TOWER, the Senator from North Carolina (Mr. MORGAN) and the Senator from Nevada (Mr. LAXALT) were added as cosponsors of S. 102, to postpone the increase in minimum wage and the adjustment to the tip credit under the Fair Labor Standards Act of 1938.

S. 192

At the request of Mr. BUMPERS, the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Oklahoma (Mr. BOREN), the Senator from Vermont (Mr. LEAHY), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 192, to amend the Internal Revenue Code of 1954 to equalize the tax treatment of domestic and foreign investors.

S. 195

At the request of Mr. BUMPERS, the Senator from Missouri (Mr. EAGLETON) was added as a cosponsor of S. 195, to extend provisions relating to payment under the Social Security Act for the services of physicians rendered in teaching hospitals.

S. 200

At the request of Mr. DANFORTH, the Senator from Michigan (Mr. RIEGLE) was added as a cosponsor of S. 200, the Intergovernmental Antirecession and Supplementary Fiscal Assistance Amendments of 1979.

S. 208

At the request of Mr. WALLOP, the Senator from Oklahoma (Mr. BOREN) was added as a cosponsor of S. 208, to amend the Internal Revenue Code of 1954 to subject foreign investors to the capital gains tax on the sale of real property situated in the United States.

S. 230

At the request of Mr. JAVITS, the Senator from Maryland (Mr. SARBANES), the Senator from Nebraska (Mr. ZORINSKY), the Senator from Iowa (Mr. JEPSEN), the Senator from Montana (Mr. BAUCUS), the Senator from Rhode Island (Mr. PELL), the Senator from New Mexico (Mr. SCHMITT), the Senator from Pennsylvania (Mr. HEINZ), the Senator from South Carolina (Mr. THURMOND), and the Senator from Connecticut (Mr. RIBICOFF) were added as cosponsors of S. 230, the Nurse Training Amendments of 1979.

S. 233

At the request of Mr. CANNON, the Senator from South Dakota (Mr. PRESSLER) was added as a cosponsor of S. 233, to amend the International Travel Act of 1961 to authorize additional appropriations, and for other purposes.

S. 240

At the request of Mr. RIBICOFF, the Senator from Wyoming (Mr. WALLOP) and the Senator for Montana (Mr. BAUCUS) were added as cosponsors on S. 240, the Federal Computer Systems Protection Act.

S. 260

At the request of Mr. BAYH, the Senator from West Virginia (Mr. RANDOLPH) was added as a cosponsor of S. 260, to create a National Institute of Justice.

S. 262

At the request of Mr. RIBICOFF, the Senator from Vermont (Mr. STAFFORD)

and the Senator from North Carolina (Mr. MORGAN) were added as cosponsors of S. 262, the Reform of Federal Regulation Act of 1979.

S. 267

At the request of Mr. MOYNIHAN, the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 267, to amend title 18, United States Code, to prohibit the counterfeiting and forgery of social security cards, and the sale of such cards.

S. 268

At the request of Mr. DURKIN, the Senator from South Dakota (Mr. PRESSLER) was added as a cosponsor of S. 268, the Soft Drink Bottlers' Protection Act of 1979.

S. 326

At the request of Mr. BUMPERS, the Senator from Alabama (Mr. STEWART) was withdrawn as a cosponsor of S. 326, the Taxpayers' Bill of Rights Act.

S. 333

At the request of Mr. RIBICOFF, the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 333, the Omnibus Antiterrorism Act of 1979.

S. 356

At the request of Mr. BELLMON, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 356, a bill to encourage the establishment of an International Grain Exporting Stabilization Commission.

S. 378

At the request of Mr. BELLMON, the Senator from Alaska (Mr. STEVENS) and the Senator from Rhode Island (Mr. CHAFEE) were added as cosponsors of S. 378, a bill to authorize the Robert A. Taft Institute of Government Trust Fund.

S. 414

At the request of Mr. BAYH, the Senator from Kentucky (Mr. HUDDLESTON) was added as a cosponsor of S. 414, the University and Small Business Patent Procedures Act.

S. 418

At the request of Mrs. KASSEBAUM, the Senator from North Dakota (Mr. YOUNG) and the Senator from South Dakota (Mr. PRESSLER) were added as cosponsors of S. 418, the Agricultural Parity Equity Act of 1979.

S. 427

At the request of Mr. THURMOND, the Senator from West Virginia (Mr. RANDOLPH) was added as a cosponsor of S. 427, to amend the Federal Alcohol Administration Act to require health warning labels on bottles containing certain alcoholic beverages.

S. 451

At the request of Mr. SCHWEIKER, the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 451, the Diabetes Research and Training Amendments and National Diabetes Advisory Board Extension Act of 1979.

S. 475

At the request of Mr. WALLOP, the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 475, to authorize the Secretary of the Interior to construct hydroelectric powerplants at various existing water projects.

SENATE RESOLUTION 83—SUBMISSION OF A RESOLUTION RELATING TO NATIONAL WATER RESOURCES POLICIES

Mr. WALLOP (for himself, Mr. MCGOVERN, Mr. BAUCUS, Mr. BURDICK, Mr. CANNON, Mr. CHURCH, Mr. CRANSTON, Mr. DECONCINI, Mr. DOLE, Mr. GARN, Mr. GRAVEL, Mr. HART, Mr. HATCH, Mr. HAYAKAWA, Mr. HUDDLESTON, Mr. LAXALT, Mr. MCCLURE, Mr. MELCHER, Mr. PRESSLER, Mr. SIMPSON, Mr. STENNIS, Mr. STEVENS, Mr. YOUNG, and Mr. ZORINSKY) submitted the following resolution, which was referred to the Committee on Environment and Public Works:

S. RES. 83

Whereas, there is need for development and implementation of a comprehensive national water resources policy which fully assesses the needs of the States, regions, and the Nation, and which provides for differences in topography, geology, hydrology, and other criteria concerning water resources; and,

Whereas, the management expertise in water resources now exists in most of the States, the authority and domain over most water resources in the United States has historically been, and is now vested in the individual States, and the States have expressed concern with implementation of Federal water resources policies; and,

Whereas, any national water resources policy should recognize the States' primary role in water management; and,

Whereas, the 1965 Water Resources Planning Act authorizes and delegates to the executive branch the establishment of certain Federal water resources policies; and,

Whereas, on June 6, 1978, the executive directed the unilateral implementation of certain water policies, some of which may alter the burdens, benefits, and responsibilities of recipients of, or applicants for, Federal assistance, licenses, permits, and water supply, or result in the assumption by the Federal Government of water resources related functions now exercised by the States; and,

Whereas, the executive has stated a willingness to work with Congress, State, and local government, and the public to assure proper implementation of national water resources policies; and

Whereas, the responsibility for, and the authority over Federal policy is clearly vested under the Constitution with the legislative branch: Now, therefore, be it

Resolved, That it is the sense of the Senate that our water resource, and the policies which guide the important but limited Federal role with regard to it, are of serious concern to the Nation. To the greatest extent possible, national water resource policies developed by the executive branch should only be implemented through Congressional action, after public and State review. Those executive policies which would alter requirements of Federal assistance, permit, license, or water supply programs, or usurp or diminish water resources related functions now exercised by the States, shall not be implemented through unilateral executive action, but shall be subject to Congressional concurrence.

Mr. WALLOP. Mr. President, today I am joined by the distinguished Senator from South Dakota (Mr. MCGOVERN) and 23 other of my colleagues in submitting a resolution reaffirming the Senate interest in our national water resources policies and insisting that Congress be a part of the continued development and implementation of those policies.

When option papers for the National Water Resources Policy Study were published in July 1977, and last year when President Carter announced several proposals to significantly change our Nation's water resources development policies, the impact of possible changes were of concern to all of us.

Those water policies are of no less concern in the 96th Congress. At this time, task forces have been assembled in the Executive to identify the steps necessary for implementation of the President's proposals. Some elements are already recognized to require legislative initiatives, and draft bills are being prepared which relate to those portions of the policy which can only be implemented through statutory changes. Elements of that policy are reflected in the administration's budget, and they will appear in appropriations requests. However, certain elements may be implemented through administrative avenues. Significant policy changes may still be unilaterally implemented within the executive through regulation and Executive order.

This resolution seeks to reaffirm the Senate's desire that water policies developed by the executive, receive, to the greatest extent possible, congressional review, thereby affording public and State review and the opportunity to comment. We firmly believe that such an opportunity for review is fundamental to the ultimate success of any new water resources policy.

It should be clear that this resolution does not seek to condemn the administration for attempting to develop a new, comprehensive water policy. The resolution is intended neither to criticize nor support particular portions of the President's policy. Each Senator will no doubt find fault, with or support, various of the proposed policies.

It should not be concluded from this resolution that we have failed to recognize the increased efforts of the administration to open water policy to broader scrutiny and solicit public, State, and congressional comment. Those in the administration charged with developing and implementing those policies, particularly Assistant Secretary of Interior Guy Martin, and his staff, should be complimented for their increasingly successful efforts to have all sides heard and be aware of the progress of water policy development.

However, it is certain that this openness is due in no small way to the interest of the Senate and its resolve that national water policies not be developed and implemented wholly within the confines of the executive. This resolution is a reaffirmation of that interest, nothing more.

Every Senator and Member of Congress, and in fact every citizen, should be concerned with the water resources policies of the Federal Government. Each region and State is dependent to one de-

gree or another on the water resources programs of Federal agencies. National water policy is not solely a "western" issue. It is not a partisan issue.

A computer search of the United States Code reveals that the term "water supply" appears in 114 separate sections, reflecting precisely the pervasive influence of the Federal Government.

We have Federal programs to assist us with almost everything we do with water. The Federal Government will help us locate groundwater and drill for it, or make it fall from the clouds. We can obtain assistance in impounding it, making it safe to drink, and delivering it to our homes and offices. They will help us divert it, apply it to crops, and return it efficiently without erosion to the streams. After we have used it, there is a Federal program which will help us collect it from our homes and businesses, transport it to plants for treatment, and discharge it. Federal programs will keep us from being washed away by it, help us make it more beneficial for transportation, fish and wildlife, recreation, aquaculture, hydropower production, domestic use, and industry. Many Federal agencies will investigate, research, study and categorize water, and others will regulate how we mine with it. There are Federal standards for keeping it clean, and for when, where, and under what conditions we may place Earth into it. In short, Mr. President, the Federal role with regard to water resources, though constitutionally and properly limited, is pervasive, indeed.

Many of the President's water policy recommendations will impose significant new requirements upon those who rely upon Federal assistance for water supply treatment, or flood control protection.

I support the principle of State cost-sharing for water resources development. Increasingly the States must provide for their own economic development and environmental protection. Cost-sharing should be based upon the premise that State and Federal Government have a share in the heavy burden of water resources development. Burdens will certainly be shared, but the recovery of costs through direct payments and the regional economic benefits which water resources development will also be shared. The prime rationale for State cost-sharing is the fostering of increased State participation and the establishment of sound and workable priorities by all concerned parties.

Much support will also be found for certain water conservation measures. Increasingly, we must realize that we live in a limited world, and can no longer waste any natural resource, including water. However, the administration's working definition of water conservation notably excludes storage of water in times of surplus for use in times of need.

The absence of storage from the administration's working definition or conservation is a prime example of why national water resources policies must be subjected to congressional review. National water resources policies must be comprehensive, flexible, and above all equitable. They cannot seek to apply uniform definitions to the diverse, climatic, and hydrologic situations which exist in this country.

Seventy percent of the annual runoff in Wyoming's streams occurs during the months of April, May, June, and July, and is the result of snow-melt runoff. Our average rainfall is less than 13 inches per year. Will identical policies be useful to both Wyoming and Louisiana? None but the foolish would think so.

National policies must be equitable, certainly. They must be comprehensive, of course. But they must also take into account the diversity which exists in this Nation. Only to the extent that any national water resources policy is considered by Congress will that be taken into consideration. Water resources policies implemented through unilateral Executive action can never be termed truly national policies. If criticism and opposition are confronted rather than avoided, new policies will endure and will themselves be applied rather than circumvented.

Mr. President, I yield to my colleague, the distinguished Senator from South Dakota.

Mr. McGOVERN. Mr. President, I thank my distinguished colleague from Wyoming (Mr. WALLOP) for his remarks upon our submission of this Senate resolution in behalf of 23 of our colleagues here in the Senate.

This resolution addresses itself to the President's national water policy initiative. The fact Senator WALLOP and I worked to put it together should be evidence that it is not a partisan resolution. A review of its cosponsors should be further evidence that it is bipartisan in nature.

Still closer analysis will also prove that this is not simply a "Western States" water policy resolution. It has initial cosponsors and tentative pledges of support from Members representing States on both sides of the Mississippi River. This is as it should be as what is at issue here is not Western water policy, or any other water policy cutting along regional lines. What is at issue is the future course of this Nation's water policy.

Mr. WALLOP made it clear in his introductory remarks that this resolution should not be construed as an effort to condemn the administration for their efforts to date in revising the national water policy. I want to reinforce that notion.

This resolution is not an effort on our parts to retrumpet the "War on the West" battle cries which reverberated at different times during the 95th Congress. We recognize that President Carter and his administration were sensitized to that perception many times in the last 2 years. This is ample evidence that they are now providing opportunities for comment by public, State, regional, and congressional representatives. In fact, they are taking their Water Policy Task Force groups to several regional meetings to get closer to the grassroots in setting out what it is they have accomplished to date and to receive comment as to how their future course can now be fine tuned.

The sponsors of this resolution are in a sense commending the administration for following that course, but even more importantly it urges them to stay on track in working toward that end.

We are not introducing this resolution to pick a fight. We are introducing it to reaffirm how best they can keep from getting into one. We are asking that to the greatest extent possible, the administration take pains to allow congressional review of their work before they finalize their policy and begin to unilaterally implement it.

We do not take issue with the fact that much of the President's initiatives can be implemented by him through executive action. We note that the administration is cognizant that portions of their proposed policy will require legislative action.

It is important for the administration to remember that the public "perception" of the course they use to implement their water policy initiatives will be all important. The President's recommendations impose significant new burdens and requirements upon the several States and water users. To one degree or another they alter the role States play in exercising their own water policy prerogatives.

In view of the administration's "public participation" record, they can to a degree claim that State and public opinion has shaped the recommendations which will result from their Water Policy Task Force effort. But, if this is really the case, then there should be no administration hesitancy in providing Congress, States, and public one last look at the elements of the policy before they are "locked in." What this resolution does is express the Senate's desire that such a final forum be provided on those portions of the water policy recommendations which eventually become apparent as being "controversial" to one degree or another, or perhaps more properly those areas where the Senate is expressing a desire to take a final close look at the administration's proposals.

I do not think this is an unreasonable request. We are not asking to review all elements of the water policy initiative, nor do we want to. But Senator WALLOP, this resolution's cosponsors, and I feel in order for the resulting policy to be properly deemed "the national water policy," in order for it to be effective and to endure, it must have broad-based support. Anything short of this will result in the policy being referred to as "the President's national water policy"—making it sound as though it is subject to the whim of each passing administration.

What President Carter has done is initiate a new look at the way the business of water development is conducted. If the result of this effort is perceived as being biased, shortsighted, or implemented without consultation by the peoples' elected representatives in Congress, I believe it will be receiving unwarranted

criticism. This would be a disservice to those who have labored so mightily to shape the new policy.

This then is the thrust of this resolution—to urge the administration to consult with the Congress to the greatest extent possible and to be wary of any radical change in altering the States' rights in the water development field.

Mr. President, this resolution says the Senate wishes to play a significant role in helping formulate and implement the new national water policy. If the administration will take it in the spirit it is offered, I believe the result will be a truly representative national water policy.

SENATE RESOLUTION 84—SUBMISSION OF A RESOLUTION AUTHORIZING ADDITIONAL PRINTING

Mr. MUSKIE submitted the following resolution, which was referred to the Committee on Rules and Administration:

S. RES. 84

Resolved, That there shall be printed for the use of the Committee on the Budget 1,000 copies of its report on the First Concurrent Resolution on the Budget for Fiscal Year 1979.

SENATE RESOLUTION 85—SUBMISSION OF A RESOLUTION PROVIDING FOR A BUST OF CARL HAYDEN

Mr. GOLDWATER (for himself and Mr. DECONCINI) submitted the following resolution, which was referred to the Committee on Rules and Administration:

S. RES. 85

Resolved, That in honor of Carl Hayden, who served in the United States Congress longer than any other man in history, the Commission on Arts and Antiquities of the United States Senate (hereinafter referred to as the "Commission") is authorized and directed to provide for the design and sculpture of a marble bust of Carl Hayden. The Commission is further authorized and directed, subject to the provisions of S. Res. 382, Ninetieth Congress, agreed to October 1, 1968, to accept such bust on behalf of the Senate and to cause such bust to be placed in an appropriate location within the Senate wing of the Capitol or any of the Senate Office Buildings, or any room, space, or corridor thereof.

SEC. 2. Expenses incurred by the Commission in carrying out this resolution, which shall not exceed $3,000, shall be paid out of the contingent fund of the Senate on vouchers approved by the Chairman of the Commission.

Mr. GOLDWATER. Mr. President, it is again my deep honor to submit a resolution providing that a bust of Carl Hayden shall be placed in the Capitol or Senate Buildings. I am joined in the resolution by my colleague from Arizona, Senator DECONCINI.

Mr. President, I should point out that the Senate approved this resolution as an amendment to House Concurrent Resolution 96 on October 1, 1976, the last day of the 94th Congress. Unfortunately, the papers arrived too late in the House Chamber for final approval before adjournment. I urge that we finally complete that action this year.

Mr. President, I am certain all of my colleagues, including newly elected Senators, are aware that Carl Hayden served in the Senate and Congress longer than any other person.

Carl Hayden served in Congress 57 consecutive years, with 42 in the Senate. This is an unparalleled record that will probably never be matched.

Mr. President, Carl Hayden was born in Haydens Ferry, now Tempe, Ariz., on October 2, 1877. After serving as a member of the Tempe town council and as sheriff of Maricopa County, he was elected Arizona's first Congressman upon statehood in 1912. He served in the House for eight successive terms from February 1912 to March 1927, and then was elected to seven succeeding terms in the Senate, from March 1927 to January 1969.

Now, I might say that Carl Hayden's great accomplishments are not as well known as they shall become in time, largely because of his modest character.

Carl Hayden was not a show horse; he was a work horse.

But his accomplishments were of national stature and included joint authorship of the constitutional amendment giving the vote to women and the original law setting up the Interstate Highway System.

It is fitting that we take this action to honor his memory, and I urge approval of the resolution.

SENATE RESOLUTION 86—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY

Mr. PELL, from the Committee on Rules and Administration, reported the following original resolution:

S. RES. 86

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Mary Lucy Kuhl Haworth and Frances T. Kuhl, sisters of Arthur M. Kuhl; and Pius A. Kuhl, James H. Kuhl, and Richard A. Kuhl, brothers of Arthur M. Kuhl, an employee of the Senate at the time of his death, a sum to each equal to one-fifth of one year's compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 87—SUBMISSION OF A RESOLUTION RELATING TO THE ALLOCATION OF ENERGY SOURCES FOR TRAVEL AND TOURISM

Mr. WARNER (for himself and Mr. INOUYE) submitted the following resolution, which was referred to the Committee on Energy and Natural Resources:

S. RES. 87

Whereas in the 93rd Congress the Senate unanimously agreed to a Resolution (S. Res. 281) expressing the sense of the Senate that in any allocation of energy supplies or other actions by Federal departments and agencies to alleviate the energy shortage, proper consideration should be given to the provision of adequate supplies of energy to all segments of the travel and tourism industry in view of the industry's importance to the nation's economy and social well-being;

Whereas S. Res. 281 was necessitated by proposed and actual energy conservation measures of the Federal government in 1974, which failed to consider the interests of the travel and tourism industry, and were imprudently discriminatory and caused substantial unnecessary injury to the national economy as a consequence;

Whereas once again there are conflicting reports issuing from different agencies within the Federal government as to whether there is an imminent threat of an energy crisis;

Whereas once again despite the lack of a clear understanding of the national energy supply the Federal government is proposing mandatory conservation measures (including week-end closing of gasoline service stations and gasoline rationing) without considering the sense of the Senate as expressed in S. Res. 281, or that the gasoline requirements of individual states and regions are often distinct and different;

Whereas once again therefore it is necessary to state that travel and tourism expenditures in the United States in 1978 totaled approximately $149,000,000,000;

Whereas once again therefore it is necessary to state that travel and tourism expenditures directly and indirectly provide employment for approximately five million Americans;

Whereas once again therefore it is necessary to state travel and tourism is one of the top three industries in 46 of our 50 states;

Whereas once again therefore it is necessary to state that the leasure activity provided for Americans by the travel and tourism industry is essential for a sound and healthy society;

Whereas once again therefore it is necessary to state that the travel and tourism industry is a major economic and social force in the United States;

Whereas once again therefore it is necessary to state that the continued viability of the travel and tourism industry depends upon the ability of international transport and of domestic public and private transport systems including automobiles, recreation vehicles, airlines, motor coach operators, sightseeing companies, cruise lines, hotels, motels and travel agencies to provide in a safe, economic and efficient manner those goods, facilities, and services which support the travel and tourism industry;

Whereas once again therefore it is necessary to state that the possibility of an energy shortage poses a serious threat to the travel and tourism industry, and consequently to the national economy and that of many states, areas and cities: Now, therefore, once again be it

Resolved, That in any allocation of energy supplies or other actions by Federal departments and agencies to alleviate the energy shortage, proper consideration should be given to the provision of adequate supplies of energy to all segments of the travel and tourism industry in view of the industry's importance to the Nation's economy and social well-being; and that such allocation or other action allow each state flexibility to design its own program with specific curtailment measures to meet the national energy conservation objectives.

Mr. WARNER. Mr. President, I submit a Senate resolution from myself and the distinguished senior Senator from Hawaii (Mr. INOUYE), once again to express the sense of the Senate with respect to the allocation of necessary energy sources to the travel and tourism industry.

Mr. President, in view of the submission from the President of the United States to the Congress of his standby conservation plans and, in particular, the possibility of restricting weekend sales of gasoline, I am today sending a letter to the chairman of the Senate Commerce Committee, of which I am a

member, asking for immediate hearings on this subject.

I ask unanimous consent to have that letter printed in the RECORD.

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

Mr. WARNER. I thank the Chair.

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

U.S. SENATE,
Washington, D.C., March 1, 1979.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science and Transportation, United States Senate, Washington, D.C.

DEAR MISTER CHAIRMAN: On Tuesday, the Nation learned of the President's Standby Conservations Plans, which include emergency weekend gasoline sales restrictions, severe limitations on outdoor advertising, and a program for gasoline rationing. Because the force and effect of these plans will fall heavily—and in some instances almost totally—on the Nation's travel and tourism industry, I respectfully request that hearings on those portions of the President's overall energy conservation program be held as soon as possible by the Senate Commerce Subcommittee on Merchant Marine and Tourism.

Past experience mandates this Congressional oversight. During the 1973–74 Arab oil embargo, the closing of gasoline filling stations on Sundays as a conservation measure brought disproportionate hardship on the travel and tourism industry—hardship far greater than on any other segment of the United States economy. Because of that policy, at least 90,000 people—in travel-oriented jobs—were thrown out of work, 179,000 others were placed in employment jeopardy, and industry revenues totaling $717 million were lost. Sunday—a family day—is the lifeline of the small travel operator.

While it would be difficult, on the basis of the 1973–74 experience, to precisely project the harm that would be caused to the travel and tourism industry by limiting closings to weekends, one projection is certain: the harm will be much greater if the President exercises his authority to extend the closing of service stations beyond Sundays to full weekends—from noon on Fridays to midnight Sundays.

There is sound evidence that many firms engaged in tourism in my own state of Virginia suffered a drop-off of as much as 50 per cent of their business because of the 1973–74 Sunday-closing policy.

As you know, Mister Chairman, travel and tourism rank first, second or third in importance to the economies of 46 of the 50 states. It is second in Virginia, trailing only manufacturing. The Nation's travel and tourism industry is an important part of the United States economy, with earnings of $149 billion annually and supporting 5 million jobs.

If there is, indeed, an energy crisis—and that is a question much under debate on Capitol Hill and even within the Administration—it is my firm belief that conservation measures must be applied as evenly as possible across all segments of the economy.

A single industry, such as travel, must not be subjected to the major brunt of such conservation. While travel must bear a fair share of any burden caused by an energy conservation plan, so must all other segments of the economy. If closings are essential, they should be done on a rotational basis, which would spread the burden to all segments of the economy. Moreover, any plan calling for station closings should allow the states to select the closing times for the stations within their jurisdictions.

Further, such weekend restrictions tends to impact most severely upon one economic segment—the middle- to low-income families who have only the weekend and the family car for their limited pleasure.

The Congress must note that, of the four energy conservation plans presented by the President, three of them will impact disastrously on the travel and tourism industry. Weekend closing of service stations, severe limitations on outdoor advertising, and stringent gasoline rationing, when coupled together, place an unfair burden on one industry.

It is for these reasons, Mister Chairman, that I respectfully request the earliest possible hearing on these matters before the Subcommittee on Tourism, so that the Congress as a whole and the public can be fully informed.

Respectfully,

JOHN W. WARNER.

Mr. WARNER. Mr. President, I express my appreciation to the chairman of the Committee on Commerce, Science, and Transportation, Senator CANNON, and the chariman of the Commerce Subcommittee on Merchant Marine and Tourism, Senator INOUYE, for their expressed support of the travel and tourism industry and their willingness to schedule hearings at an early date on this resolution by the Commerce Committee, as was done in the 93d Congress on a very similar issue.

This will enable the U.S. Senate to review, among other matters, the factual history of the 1974 restriction on gasoline sales on one segment of our economy, namely, the tourism and travel industry.

In my judgment, and in the judgment of others, that segment of our economy unduly bore the brunt of the closing of gasoline stations in 1974. If it is necessary that this Nation once again go to such measures, I would hope that this industry, while it must bear its fair share of the burden, should not be unduly penalized as it was the last time.

Therefore, I hope that the Senate, in its wisdom, will seek an alternative means by which this burden can be borne more evenly by the economy as a whole.

SENATE CONCURRENT RESOLUTION 8—SUBMISSION OF A CONCURRENT RESOLUTION PROVIDING FOR IMPARTIAL OBSERVERS OF THE FORTHCOMING ELECTION IN RHODESIA

Mr. McGOVERN (for himself and Mr. HAYAKAWA) submitted the following concurrent resolution, which was referred to the Committee on Foreign Relations:

S. CON. RES. 8

Whereas the conflict in Rhodesia has reached a critical stage; and

Whereas the Rhodesian Government has announced its intention to hold an election on April 20, 1979, to install a new government; and

Whereas Congress has specified in the International Security Assistance Act of 1978 that the holding of such an election is one of two conditions to be fulfilled to the satisfaction of the President before economic sanctions against Rhodesia may be lifted; and

Whereas it is the intention of Congress to provide assistance in determining whether such election is free and fair; and

Whereas Congress intends that this assistance should in no way be regarded as implicit or explicit support by the United States Government of the provisions of the so-called internal settlement or of the Rhodesian Government; and

Whereas Congress supports ongoing diplomatic efforts to achieve a peaceful negotiated settlement in Rhodesia: Now therefore be it Resolved by the Senate (the House of Representatives concurring),

SEC. 1. That the President pro tempore of the Senate and the Speaker of the House of Representatives, acting jointly and after consulting with the Majority Leaders and Minority Leaders of the Senate and the House of Representatives, shall appoint two individuals to serve as cochairpersons of a team of observers of the election in Rhodesia to be held on April 20, 1979. The cochairpersons shall select not less than 25 and not more than 50 other individuals to serve on the team of observers. All individuals appointed or selected to the team of observers shall be from private life or members of national private organizations or associations, and no individual who is serving as an officer or employee of the United States Government may be appointed or selected.

SEC. 2. (a) It shall be the duty and function of the team of observers to observe the election in Rhodesia to be held on April 20, 1979, and to report thereon to the Congress. Such report shall be submitted by the cochairpersons as soon as possible after such election has been held.

(b) The report submitted under subsection (2) shall include the views of the team of observers, or individual members thereof—

(1) as to whether all of the people of Rhodesia and all organized political groups were given a fair opportunity to participate fully in the election without regard to ethnic identity or political affiliation; and

(2) on the extent of public participation in the election, including the extent to which disruptions in the election process due to guerrilla activities may have affected public participation in the election and the extent to which eligible voters expressed opposition by voluntarily refraining from voting in the election.

SEC. 3. The cochairpersons and members of the team of observers shall serve without compensation but shall be reimbursed for transportation expenses and travel expenses when away from their homes in performance of their duties. The amount of travel expenses for which reimbursement may be made shall be the same as may be paid to an employee of the Senate serving on the staff of a committee, except that reimbursement may be made for actual and necessary travel expenses incurred while in Rhodesia and in traveling to and from Rhodesia.

SEC. 4. The expenses of the team of observers in carrying out this concurrent resolution, which shall not exceed $175,000, shall be paid from the contingent fund of the Senate upon vouchers signed by the cochairpersons and approved by the Committee on Rules and Administration of the Senate.

Mr. McGOVERN. Mr. President, at this point I send to the desk on behalf of myself and the distinguished Senator from California (Mr. HAYAKAWA) a resolution relating to the forthcoming election in Rhodesia.

Mr. President, in the next few months, the United States will face a crucial foreign policy decision with regard to its policy toward Africa. That decision will be whether or not to lift economic sanctions against Rhodesia following the holding of an election in that country on April 20, 1979.

The Rhodesian sanctions issue has caused a great deal of controversy in the past. It is likely to cause considerable

debate in the near future. In anticipation of this debate, I am today introducing a concurrent resolution with the cosponsorship of Senator HAYAKAWA which I hope will contribute a measure of reason as well as a substantial amount of information, to a dispute that has been clouded in the past by partisan politics and emotional rhetoric that have not been conducive to the formulation of a sound foreign policy in southern Africa.

This resolution provides for Congress to send a team of impartial, professionally qualified international observers recruited from private life to monitor the Rhodesian election in April and report back to Congress on their findings. Their function, quite simply, will be to provide an objective, comprehensive, and thorough evaluation of whether or not the Rhodesian election is free and fair. It will not be the function of the observers to determine whether economic sanctions should be lifted against Rhodesia that is properly a foreign policy decision to be made by the President.

This resolution will give force one way or another to making a judgment that I think can be relied upon as to whether, in fact, a valid election has taken place in Rhodesia.

However, under legislation enacted last year, the President is obliged to make a determination on this issue based on his evaluation of two conditions. The so-called Case-Javits amendment to the International Security Assistance Act of 1978 stipulates that the United States shall not enforce sanctions against Rhodesia after December 31, 1978, provided that the President determines that—

First, the Government of Rhodesia has demonstrated its willingness to negotiate in good faith at an all-parties conference, held under international auspices, on all relevant issues; and

Second, a government has been installed, chosen by free elections in which all political and population groups have been allowed to participate freely, with observation by impartial, internationally-recognized observers.

In order for the President to make a determination regarding the second condition, he must have access to information from reliable and credible observers. This type of information may possibly be provided by ad hoc groups who may send their own teams of observers to Rhodesia. Press reports will undoubtedly also be useful. But there is no guarantee that these observers will be impartial. Their presence may only fuel the debate further, heightening dissention and confusing the issue for both the executive and legislative branches of Government.

It is my hope, and that of Senator HAYAKAWA who is cosponsoring this resolution, that the team of observers sent to Rhodesia under the terms of this resolution will scrutinize the electoral laws and survey the electoral process with as high a degree of professionalism and objectivity as possible. Upon receipt of the observers' report, Congress will forward it on to the President for his consideration in making his determination with respect to the lifting of sanctions.

There are a number of points to clarify with regard to the idea of sending an observer team to Rhodesia. First, the sending of election observers is in no way to be interpreted as a gesture of support for the Rhodesian Government or for the provisions of the internal settlement. It is offered here as a means of assessing public opinion, much as the British Commission led by Lord Pearce in 1972 was a means of testing African public opinion on a previous plan for majority rule. The Pearce Commission Report was a decisive and authoritative judgment of a previous proposal for political change in Rhodesia. It is our hope that the observer team launched by Congress will fulfill a similar role in the context of current proposals for majority rule.

Second, it should be clarified that Senator HAYAKAWA and I continue to hold very different views of the present Rhodesia situation, and of the role of an election under current circumstances. Senator HAYAKAWA believes that the election offers a realistic opportunity to measure public opinion and could pave the way to end the Rhodesian conflict. My view is that it is unlikely that a legitimate election can be held in Rhodesia given the hostilities taking place and the fact that the election will not be supervised by a neutral administration. In addition, the election does not appear to me to be an adequate means of ending the war.

Nevertheless, Senator HAYAKAWA and I share some common ground in agreeing that the President and Congress should have available for their deliberations an accurate and unbiased report on the Rhodesian election, should it take place. It is in this respect that the distinguished Senator from California and I are working together to provide the machinery that may contribute to the formulation of a sound and reasonable foreign policy position by the United States toward the Rhodesian dispute.

Third, I want to clarify that this is exclusively a congressional initiative that does not have the endorsement of the administration. The findings of the observer team will not be binding on the President. Obviously, he will have available reports from several sources that he may wish to take into account in making his determination within the terms of the Case-Javits amendment. Congress should not restrict the range of information that the President may utilize in making his decision. However, the observer team appointed under this resolution will carry a measure of prestige and stature that will make its findings of unquestionable significance.

Fourth, it is my belief that the selection of the individual observers is absolutely critical to the success of this effort. The members of the observer team should be professionally qualified persons drawn from private life whose reputations for integrity are unassailable. They should not be political appointees or party representatives. They should be nonpartisan and apolitical in their judgments.

Under the terms of this resolution, Congress will appoint two cochairpersons. These persons will then recruit a qualified team containing not less than 25 and not more than 50 other Members whose expenses will be paid from the contingent fund of the Senate.

Once the cochairpersons are appointed, Congress shall have no further involvement in the operations or deliberations of the observer team, other than to provide financial support. This is necessary to preserve the objectivity and independence of the team.

The Government of Rhodesia has agreed to provide transport services and security arrangements for the observers at its own expense. Our estimate is that the cost of a full team for a 2-week period should not exceed $175,000, a small price to pay for a step that may go a long way toward resolving a major foreign policy problem for the United States.

Mr. President, there have been suggestions by some that this approach of sending an observer team to Rhodesia does not go far enough. Others maintain that it goes too far. Senator HAYAKAWA and I share the view that the best role for Congress to play at this time is to provide the means to obtain accurate and fair information on the Rhodesian issue, without prejudging its outcome. Our proposal does not pick winners or endorse particular solutions to the conflict. To the contrary, it is conceived as a neutral act, the object of which is to make an impartial evaluation of the upcoming election so that we may cut through the confusion and controversy which this issue has thus far generated in Congress.

Mr. President, I would like to announce in this connection that the Senate Foreign Relations Committee will be conducting hearings on Rhodesia on March 5 and 7. At that time, we will be exploring fully the state of the Rhodesian conflict, U.S. policy, and the desirability of sending an observer team to Rhodesia.

Finally, Mr. President, I ask unanimous consent to insert in the RECORD an article on this issue of Rhodesia written by the previous chairman of the Africa Subcommittee of the Senate Foreign Relations Committee, Senator Dick Clark. His work on Africa earned the respect and admiration of all who had the privilege of working with him. In this essay in the New York Times he describes the significance of Congress' role in the Rhodesian dispute and the importance it will have on U.S. policy toward Africa as a whole.

I also ask unanimous consent that an estimate of expenses for observers in the Rhodesian election under this resolution be printed in the RECORD.

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

AFRICAN POLICY'S BIG TEST

(By Dick Clark)

WASHINGTON.—Few foreign-policy initiatives have represented as sharp departures from the past, contained as many innovative ideas or demand as much diplomatic skill and patience as the Carter Administration's policy toward Africa.

Whereas over the last two decades, United States policy waivered between the poles of benign neglect and erratic anti-Communism, a fresh start was made in 1977. Midway through President Carter's first term, that policy is now being sorely tested.

High priority was attached to the new Carter policy, which stressed the importance of African-nationalist aspiration and which took a tough stance against racism in Southern Africa.

To give teeth to this policy, concrete plans were formulated with our Western allies to bring majority rule to Rhodesia and Namibia through peaceful negotiations and free elections. After months of patient diplomacy, a United Nations formula acceptable to all the participants in the Namibian conflict seems close to implementation. Similar results, however, have not been forthcoming in the Rhodesian dispute.

It is on this issue that the acid test of Carter's Africa policy is likely to come this year, a product of mounting public criticism over the United States role in the deteriorating Rhodesian situation. While there are some in this country who feel that the Administration has not gone far enough in pressing for a Rhodesian settlement that includes all parties, others—whose views are well represented in Congress—believe that President Carter has gone too far by insisting on the participation of the guerrilla forces.

Rhodesia, it has been reported in the press, was to tap this sentiment by launching a high-powered lobbying campaign on Capitol Hill to lift economic sanctions. Domestically, the expected Rhodesian sanctions vote will provide a way to measure public confidence in Carter's Africa policy as a whole. It will go to the roots of domestic criticism and to the heart of the debate over the limits of American influence. Internationally, its consequences would reach far beyond the borders of Rhodesia.

Of all the African issues, Rhodesia has the longest history of Congressional concern. In 1977, after many unsuccessful efforts, Congress repealed the Byrd Amendment, which allowed trade with Rhodesia in violation of United Nations sanctions. In 1978, Congress barely resisted an attempt to rescind that repeal by enacting the compromise Case-Javits Amendment, which tied the lifting of sanctions to two conditions: a willingness of the Rhodesian Government to attend an all-parties conference and the installation of a new government chosen through free elections. This year, Congress will decide whether to uphold the balanced formula carefully laid down by the 95th Congress or to lift sanctions unilaterally, bringing the United States full circle to a period when our power and prestige in Africa were minimal.

On the surface, the debate will revolve around the question of which side to support in the tragic conflict. But few members of Congress are familiar with the complexities of the Rhodesian war or have clearer perceptions of American interests in the dispute. In reality, the debate will be more of a trial of the Administration's performance, an assessment of the ability of the team that conceived the African policy to defend it against the anti-Administration, anti-terrorist and anti-Soviet impulses that are shaping public attitudes on American foreign policy today. In my view, this is the fundamental issue at stake, not the elements of the conflict itself.

But therein lies the irony of the entire episode. For in the event that sanctions are lifted, it will have little or no impact on the outcome of the Rhodesian controversy. It would come at the 11th hour, when the prospects of peace in Rhodesia and the influence of the United States Government there will be at their lowest point ever. But the damage to American foreign policy will have been done. A sanctions-lifting vote could seriously cripple if not fatally discredit the entirety of Carter's Africa policy, shattering African expectations of America's commitment to racial justice.

The political credibility generated by the Carter Administration in Africa over the last two years stands at the crossroads. It could go up in a puff of smoke by one Congressional vote on the single issue that has traditionally been the bellwether of United States-African relations.

Estimate of expenses for observers in Rhodesian election

Airfare:	
New York-Johannesburg-New York	$1,626
Johannesburg-Salisbury-Johannesburg	202
Multiplied by 52 (assuming full observer team allowed under the terms of the resolution)	95,056
Expenses:	
Room and board (estimate provided by Rhodesian Government is $30 per day. At the full rate of $75 per day normally allotted for congressional travel) ($75 x 52)	3,900
For 2 weeks	54,600
Total: Airfare and expenses for 52 observers for 2 weeks	149,656

Mr. HAYAKAWA. Mr. President, the resolution which my distinguished colleague, the Senator from South Dakota, and I are submitting today addresses an issue of historical significance. The elections which are scheduled to take place in Rhodesia not only will be a decisive event for that country's future, but they will also have a lasting impact on the development of the African continent and indeed on the foreign policies of the major powers.

I am certain that the proposed resolution will be carefully considered by our colleagues in both houses. Presumably, it will also attract broad public attention. I would not be surprised at all kinds of speculation about this unusual and certainly unexpected alliance between the senior Senator from South Dakota and the junior Senator from California, who are often at odds on political issues. Actually there is nothing strange in this alliance. What brought us together? The answer is simple. We have both made a conscientious effort to ascertain the facts about Rhodesia, and the facts stare us in the face. We have ideological differences, to be sure, but on this issue, commonsense unites us.

Last year, we both visited Rhodesia and some of its neighboring countries. We both spoke to the leaders of the opposing factions. We both scrutinized the general conditions surrounding the Rhodesian problem. It became clear to us that the so-called internal settlement is by no means an ideal or perfect solution. There are some features in it which both of us do not particularly like. But we also found that the British-American plan is at a hopeless impasse. The plan stands and falls on an all-parties conference, by which is meant the full participation in the conference of Joshua Nkomo of ZAPU and Robert Mugabe of ZANU. The former refuses to attend a conference because he believes that he and his guerrilla army can prevail by force of arms; the latter refuses because he says he is a Marxist-Leninist who does not believe in participatory democracy. There is not the slightest hope at the present time, therefore, that the feuding groups would be willing even to set down together and to engage in any meaningful negotiations, although the Executive Council of the Rhodesian Government has repeatedly expressed its willingness to attend an all-parties conference with no preconditions.

Finally, I have no confidence whatsoever that Joshua Nkomo and Robert Mugabe are men under whose leadership Rhodesia could become a democratic and well-governed country. I may add that the term "Patriotic Front" is one of these misnomers deliberately chosen because of its propaganda value. Neither Nkomo nor Mugabe are freedom fighters. What unifies these men temporarily is the lust for power. Everybody who knows them agrees that, should they ever win the upper hand, they will promptly be at each other's throats in a civil war that could go on for decades.

To summarize, looking at the unfortunate Rhodesian situation, there is a possibility that the internal settlement, in spite of its shortcomings, might work, and that the forthcoming elections could be a step in the right direction. Moreover, since there is no better solution in sight, we believe that the planned election of April 20 deserves serious consideration. Our resolution therefore proposes a dispatch of a team of observers to the Rhodesian elections.

In this connection I would like to state an important caveat. The proposed dispatch of observers must not be construed to be an implicit or explicit support of the internal settlement. No individual who is serving as an officer or employee of the U.S. Government may be appointed as an observer. All individuals selected will come from private life or national private organizations. Upon their return, they will report to Congress, which not only has the right but actually an obligation to know what kind of elections we shall be talking about. Everybody in this Chamber is aware of the risks and dangers inherent in conflicting reports. Suppose the only reports we got were propagandistic, the executive council claiming that the election was a great success, and the guerrilla leaders claiming that it was a huge failure and a fraud. Senator McGOVERN and I are in agreement that we need a clear, objective and unbiased report of how the election was conducted and what were the results. This is the aim of the present resolution.

AMENDMENTS SUBMITTED FOR PRINTING

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION—S. 241

AMENDMENT NO. 70

(Ordered to be printed and referred to the Committee on the Judiciary.)

Mr. LAXALT submitted an amendment intended to be proposed by him to S. 241, a bill to restructure the Federal Law Enforcement Assistance Administration, to assist State and local governments in improving the quality of their justice systems, and for other purposes.

COMMUNITY VICTIM ASSISTANCE PROGRAMS

● Mr. LAXALT. Mr. President, today I am submitting legislation to create within the Law Enforcement Assistance Administration an Office of Community Victim Assistance Programs. My intent in

introducing this bill is to improve LEAA programs which assist victims of crime, and institutionalize such programs as an ongoing mandate of LEAA.

LEAA has, during its 10 years of existence been of significant aid to victim witness programs across the United States, and has helped to establish many of those offices. However, the LEAA's support of such programs has dwindled in recent years, resulting in the cancellation of many programs which had been extremely successful. It is my hope that with passage of this bill LEAA will have a continuous and ongoing program of aiding victim witness assistance programs, both within the criminal justice system and those which are community related, that it will assist to expand victims compensation and restitution programs, and provide information relating to a number of other programs aiding the victims of crime.

The victims of crime are the forgotten link within the American criminal justice system. Where every conceivable kind of aid and assistance is given to criminal defendants, including free legal representation, counseling, rehabilitation, and a host of other services, the persons victimized by criminals are, for the most part, left to try to function on their own. As many of the victims are elderly or poor people, in many cases they are unable to function, and the victimization which itself may have only taken a few minutes continues on for months and years. I do not criticize the fact that the perpetrators are given substantial services at the taxpayers' expense—such an attitude is, it is said, the mark of an enlightened society. However, I do believe that those persons victimized should receive at least some assistance at the taxpayers' expense to help them through what is often the most traumatic experience of their lives.

The Law Enforcement Assistance Administration is the primary agency of the Federal Government responsible for aiding State and local governments in their fight against crime and in attempting to preserve order in American society. Thus, if the State and local governments, and community victims' programs as well, are to make any headway in assistance to victims on an orderly basis, with a corresponding increase in successful prosecution, the LEAA is the logical place from which such programs should be administered, and in fact should be actively engaged in such programs itself.

In addition to the actual assistance to governmental and community victim assistance programs, my bill requires LEAA to provide information relating to programs designed to prevent crimes involving victims, and requires it to place emphasis upon the impact which both preconviction and post-conviction release programs may have on the victims of crimes.

Additionally, LEAA will be required to aid in the development of legislation involving crime victims, particularly on a State level, and to render assistance and information regarding civil actions brought by victims of crimes against the perpetrators and third parties whose negligence may have resulted in injuries to crime victims, to aid in programs and activities designed to reduce intimidation of victims and witnesses of crimes.

Finally, and perhaps most importantly, the bill requires that the Law Enforcement Assistance Administration make recommendations to the Director of the Office of Justice Assistance Research and Statistics for the designation of funding for such programs.

Mr. President, I can think of virtually no other area where the Federal Government has such a binding obligation to assist its citizens than in helping them to recover from the trauma caused by crimes against their persons and their property. The cost to the taxpayers of such assistance is comparatively slight, but the impact on the lives of those concerned can be as significant as anything else that the Federal Government might do in their lifetimes. Additionally, of course, such programs have a very significant impact on prosecution, which is the reason that the criminal justice system exists in the first place.

Accordingly, I am proud to introduce this bill, and hope that many of my colleagues will join as cosponsors and in helping me to see that it becomes part of the Law Enforcement Assistance Administration program.●

DIRECT ELECTION OF THE PRESIDENT AND VICE PRESIDENT—SENATE JOINT RESOLUTION 28

AMENDMENT NO. 71

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

Mr. DECONCINI submitted an amendment intended to be proposed by him to Senate Joint Resolution 28, a joint resolution proposing an amendment to the Constitution to provide for the direct popular election of the President and Vice President of the United States.

NOTICES OF HEARINGS

COMMITTEE ON VETERANS' AFFAIRS

● Mr. CRANSTON. Mr. President, I would like to announce, for the information of the Senate and the public, the hearing schedule of the Committee on Veterans' Affairs for the month of March.

On March 6 at 11:30 a.m. in room 318 of the Russell Building, the committee will conduct a hearing to receive the Veterans of Foreign Wars legislative recommendations for the 1st session of the 96th Congress from Eric Sandstrom, commander-in-chief.

On March 12 at 9:30 a.m. in room 4232 of the Dirksen Building, the committee will hold a joint hearing with the Human Resources Committee on the nomination of Dr. Dennis Wyant to be the Deputy Assistant Secretary of Labor for Veterans' Employment.

On March 22 at 9:30 a.m. in room 6226 of the Dirksen Building, the committee will continue hearings on S. 330, the proposed Veterans' Administration Adjudication Procedure and Judicial Review Act. Testimony will be heard from representatives of the Veterans' Administration and various organizations that have an interest in the issue of judicial reveiw of VA decisions.

On March 29 at 9:30 a.m. in room 6226 of the Dirksen Building, the committee will receive the legislative recommendations for the 1st session of the 96th Congress from the American Veterans of World War II, Korea, and Vietnam (AMVETS), Paralyzed Veterans of America, Veterans of World War I, Blinded Veterans Association, and the Military Order of the Purple Heart.●

SUBCOMMITTEE ON PARKS, RECREATION, AND RENEWABLE RESOURCES

● Mr. BUMPERS. Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of a public hearing before the Parks, Recreation, and Renewable Resources Subcommittee.

The hearing is scheduled for Monday, March 5, beginning at 2 p.m. in room 3110 of the Dirksen Senate Office Building. The purpose of the hearing is to receive testimony from the National Park Service on its proposal to increase entrance and visitor fees by some $12.6 million in fiscal year 1980.

I have scheduled this hearing to aid the subcommittee in the preparation of the March 15 report to the Senate Budget Committee.

For further information regarding the hearing, you may wish to contact Mr. Thomas Williams of the subcommittee staff at 4–7145.●

SUBCOMMITTEE ON ANTITRUST AND MONOPOLY

● Mr. BAUCUS. Mr. President, on behalf of the Senator from Ohio (Mr. METZENBAUM), I wish to announce that the Judiciary Subcommittee on Antitrust and Monopoly will hold a markup on S. 390, the Antitrust Procedural Improvement Act of 1979, on Friday, March 9, 1979. The markup will begin at 9 a.m., in room 5110, Dirksen Senate Office Building.●

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Tennessee (Mr. SASSER), I wish to announce that the Subcommittee on Intergovernmental Relations of the Senate Committee on Governmental Affairs will hold a hearing on March 7, 1979, in Washington, and on March 10 in Memphis, Tenn., to examine the impact of the Natural Gas Policy Act of 1978 on American consumers.

The subcommittee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the record. Statements for inclusion in the record should be mailed to Lucinda Dennis, Subcommittee on Intergovernmental Relations, 508 Carroll Arms, 301 First Street, N.E., Washington, D.C. 20510.

ADDITIONAL STATEMENTS

FEDERAL LAND WITHDRAWALS IN ALASKA

● Mr. GRAVEL. Mr. President, there is increasing pressure on the Congress to set aside huge parcels of Federal land into very restrictive categories in order to preserve their wilderness nature.

The Alaska withdrawals made last year by President Carter and Interior Secretary Andrus are the most dramatic—and, I would add, outrageous—to date. The Secretary withdrew in excess of 100 million acres in Alaska—about the size of California. And the President designated 56 million acres of that land as national monuments.

Other Federal land withdrawals are also on the horizon: Wilderness designations in national forests throughout the country under the RARE II recommendations; and wilderness review for all roadless Federal lands of more than 5,000 acres.

I think it has been assumed in Congress that there was broad support across the country for withdrawals of these kinds, which restrict or prohibit all kinds of development. But in fact, a recent poll by Cambridge Reports shows that this is not the case.

The poll demonstrates that a majority of Americans want to see energy exploration on Federal lands. A full two-thirds say exploration must be done before most land is committed to wilderness status. And a plurality—45 to 35 percent—even think that the United States already has set aside enough land for wilderness.

Mr. President, these findings come from a very highly respected public opinion firm, and they are radically different from what many in Congress have assumed the national opinion to be.

I ask that the summary of the findings be printed in the RECORD.

The findings are as follows:

CAMBRIDGE REPORTS, INC.,
Cambridge, Mass., February 8, 1979.

MEMORANDUM

Recently the question of what to do with Federally-owned wilderness lands has become increasingly controversial. The debate over Alaskan lands embroiled the last Congress and further controversy over both Alaskan lands and land in the lower 48 states can be expected in the coming session.

On the one side stand the conservationists, some of whom at the most extreme end argue for virtually no entry at all by anyone into wilderness lands. On the other end of the spectrum stand energy and other industries that argue for development of resources on those lands with varying degrees of safeguards.

The Fourth Quarter 1978 Cambridge Report 17 survey—conducted between November 26 and December 20, 1978—included a series of questions examining public perceptions of wilderness lands and attitudes toward development of resources in wilderness areas. This memorandum represents a preliminary draft of our analysis of these survey results. An edited version of the text presented here will appear in our final report on the Fourth Quarter survey.

We looked briefly at this question in the last *Report* and saw that a majority of respondents favored some exploration, at least, of energy resources on Federal lands in Alaska. Repeating the question, we see essentially no change from last quarter.

Recently there has been a debate over what to do with Federally owned wilderness lands—particularly in Alaska. Some people say these lands may contain vast amounts of oil, gas and uranium needed for energy development and that they should be explored. Other people say these are protected wilderness areas and should not be explored. Would you favor or oppose exploring the Federal wilderness lands for energy resources?

(In Percent)

	R17 1978 IV	*R16 1978 III*
Favor	58	60
Don't know	14	18
Oppose	28	22

Demographic breakdowns, which are included in an appendix to this memorandum, show that higher-income and better-educated respondents are more in favor of exploring than other people. Older respondents are also much more favorable to the idea than younger people.

This quarter we also expanded the questioning to ask respondents what they felt about the general issue of exploring and surveying Federal lands in general. As the table shows, whatever they may feel about ultimate use, most respondents are in favor of exploring such lands.

Recently there has also been a debate over wilderness lands throughout the country in general. Some people say that wilderness lands should be surveyed before they are restricted in order to determine whether or not energy or mineral resources exist on them. Other people say we have to preserve wilderness lands regardless of potential use and that the surveys themselves would damage the wilderness. Do you think we should survey wilderness areas or not before deciding what to do with them?

	Percent
Yes	67
Not sure	14
Yes	67

Again, the demographic breakdowns show wealthier respondents are more likely to favor exploration though essentially majorities in every group do. Men are somewhat more likely than women to favor exploration.

We then asked respondents whether they favored or opposed a number of specific uses of wilderness lands. As the table shows, people supported all the possible uses we proposed except for surface mining of coal. Dam building for flood control won the greatest support of those approved activities, but most other "developmental" ideas also won support.

I'm going to read you some activities that might be carried out on Federally-owned wilderness lands and I'd like you to tell me whether you would favor or oppose allowing each of them.

[In percent]

	Favor	Don't know	Oppose
Constructing roads to permit people to have access to the lands	54	13	33
Cutting down timber, as long as land was reforested under government guidelines	62	11	27
Building dams to control floods and generate electricity	71	9	20
Constructing underground mines to develop coal	55	14	31
Surface mining to develop coal	39	13	48
Drilling for oil and natural gas	64	11	25
Building recreation areas, such as parks, to permit more use of the land	66	10	23
Mining for mineral resources	53	15	32

While we present the demographic breakdowns in the appendix for all the possible developments, since some readers may be particularly interested in the details of a particular one, there is little point in examining each in detail since they tend to show the same patterns. In each case, higher-income and better-educated people tend to be more development oriented than poorer and less-educated respondents. Younger people tend to be more skeptical of development than older and middle-aged respondents. Finally, political conservatives tend to be slightly more favorable to development than moderates and liberals, though in many cases the differences might be considered smaller than expected.

Retreating from the specific to the general, we asked respondents the broader question of whether or not the United States has protected enough wilderness land or whether it needs to protect more. As the table shows, a plurality of Americans do feel that we have protected enough, though over one-third of the public wants to do more.

Just in general, do you think the United States has preserved enough wilderness land or should the U.S. attempt to protect additional areas of wilderness from development?

	Percent
Preserved enough wilderness land	45
Don't know	19
Protect additional areas of wilderness	35

Not surprisingly, the demographic breakdowns show virtually identical patterns to those we have seen on previous questions.

Given the general desire to develop new energy sources rather than pay higher prices for existing supplies, even when we repeated the question about oil and gas exploration in the context of a Congressional proposal we again found majority support for going ahead with exploration.

Recently there have been proposals before Congress to close additional areas of Federally-owned wilderness land to any kind of development, including searches for new oil and gas. Do you favor or oppose allowing exploration for oil and gas on Federally-owned wilderness land?

	Percent
Favor	56
Don't know	16
Oppose	29

Again, demographic breakdowns show that higher-income and better-educated respondents are more likely to back exploration. Older respondents are more likely to back exploration than younger ones. Men are more in favor of looking for oil and gas than are women.

Furthermore, as the next question shows, nearly two-thirds of the opponents of such exploration either change to supporters or become undecided if they feel that wilderness areas might be the only place to look for new energy resources. Thus, only 10% of the whole population—35% of the original 29%—are firmly in opposition to exploration under these circumstances.

(If oppose exploration for oil and gas). If it were shown that virtually all of the hope for new gas and oil discoveries in the United States were in these Federal lands that would be closed to exploration development, would you still oppose exploring these lands for resources or not?

	Percent
Yes	35
Not sure	23
No	42

When the question was expressed in another way, in terms of national choice, we again found a large majority opting for energy development.

If it came down to a simple choice between developing new energy resources and preserving wilderness areas, which do you think the nation would choose?

	Percent
Developing new energy sources	67
Don't know	14
Preserving wilderness areas	19

Finally, we asked respondents specifically again about drilling for oil and gas in the Western United States. As the table shows, a majority support such activities.

Would you favor or oppose limited drilling for oil and natural gas in the wilderness areas of the western United States?

	Percent
Favor	60
Don't know	14
Oppose	26

Demographic breakdowns show that higher-income and better-educated Americans are as usual more inclined to back drilling than other people. Men are more likely to back drilling than women; whites are more likely to back it than blacks. Interestingly, while majorities in both the Central and Pacific regions (i.e., the western United States) back drilling, opposition is greater in these two areas than other places.

APPENDIX A: DEMOGRAPHIC DATA

Recently there has been a debate over what to do with Federally-owned wilderness lands—particularly Alaska. Some people say that these lands may contain vast amounts of oil, gas and uranium needed for energy development and that they should be explored. Other people say that these are protected wilderness areas and should not be explored. Would you favor or oppose exploring the Federal wilderness lands for energy resources?

[In percent]

	Favor	Don't know	Oppose
Overall	58	14	28
Total household income:			
0 to $3,999	49	19	32
$4,000 to $6,999	49	19	32
$7,000 to $9999	58	11	31
$10,000 to $12,999	58	15	28
$13,000 to $14,999	62	11	27
$15,000 to $19,999	61	14	25
$20,000 to $24,999	58	16	27
Over $25,000	68	6	26
Age:			
18 to 25	45	15	41
26 to 35	28	14	28
36 to 45	63	16	22
46 to 55	68	10	22
56 to 65	62	11	28
Over 65	58	17	25
Sex:			
Female	56	17	27
Male	60	11	29
Race:			
White	59	13	28
Black	53	23	25
Head of household:			
Yes	61	13	27
No	56	15	30

Favor or oppose exploring Federal wilderness lands for energy resources

Overall	58	14	28
Education:			
Some grade school	54	22	24
Some high school	52	20	29
High school graduate	58	13	29
Technical/vocational	71	7	23
Some college	61	10	30
College graduate	63	12	25
Graduate school	65	13	22
Religion:			
Protestant	60	13	27
Catholic	59	15	25
Jewish	45	27	28
Other	45	11	45
None	59	3	38
Political ideology:			
Liberal	57	9	34
Moderate	59	16	26
Conservative	62	11	27
Urban/rural:			
Urban	60	13	27
Suburban	59	14	27
Rural	53	15	31
Areas:			
Northeast	55	23	21
Industrial	64	12	24
Midlands	58	13	29
South	58	17	26
Central	56	8	36
Pacific	54	10	36

Recently there has also been a debate over wilderness lands throughout the country in general. Some people say that wilderness lands should be surveyed before they are restricted in order to determine whether or not energy or mineral resources exist on them. Other people say we have to preserve wilderness lands regardless of potential use and that the surveys themselves would damage the wilderness. Do you think we should survey wilderness areas or not before deciding what to do with them?

[In percent]

	Yes	Not sure	No
Overall	67	14	19
Total household income:			
0 to $3,999	58	21	21
$4,000 to $6,999	66	15	20
$7,000 to $9,999	67	13	21
$10,000 to $12,999	67	14	20
$13,000 to $14,999	82	7	12
$15,000 to $19,999	66	11	23
$20,000 to $24,999	69	13	18
Over $25,000	73	9	19
Age:			
18 to 25	61	14	26
26 to 35	67	15	18
36 to 45	69	16	14
46 to 55	75	11	14
56 to 65	67	10	23
Over 65	66	15	18
Sex:			
Female	64	17	19
Male	71	11	19
Race:			
White	68	13	19
Black	60	23	17
Head of household:			
Yes	71	11	18
No	63	17	20

Should we survey wilderness areas or not before deciding what to do with them

Overall	67	14	19
Education:			
Some grade school	58	21	22
Some high school	64	16	21
High school graduate	69	14	17
Technical/vocational	78	8	14
Some college	68	12	21
College graduate	78	10	11
Graduate school	68	14	18
Religion:			
Protestant	70	13	17
Catholic	67	13	20
Jewish	58	26	17
Other	56	21	23
None	66	10	24
Political ideology:			
Liberal	65	10	24
Moderate	70	13	17
Conservative	71	12	18
Urban/rural:			
Urban	68	14	18
Suburban	68	14	18
Rural	64	15	21
Areas:			
Northeast	66	21	13
Industrial	70	14	16
Midlands	67	11	21
South	69	15	16
Central	67	8	24
Pacific	61	12	27

Would you favor or oppose constructing roads to permit people to have access to Federally-owned wilderness lands?

[In percent]

	Favor	Don't know	Oppose
Overall	54	13	33
Total household income:			
0 to $3,999	52	15	33
$4,000 to $6,999	54	13	33
$7,000 to $9,999	56	13	31
$10,000 to $12,999	54	14	33
$13,000 to $14,999	59	9	32
$15,000 to $19,999	55	12	33
$20,000 to $24,999	53	10	37
Over $25,000	63	8	29
Age:			
18 to 25	48	13	40
26 to 35	57	13	31
36 to 45	51	15	34
46 to 55	59	11	31
56 to 65	57	11	33
Over 65	56	16	27
Sex:			
Female	52	16	32
Male	56	10	34

[In percent]

	Favor	Don't know	Oppose
Race:			
White	54	12	34
Black	60	17	23
Head of household:			
Yes	57	12	32
No	52	15	34
Education:			
Some grade school	54	20	26
Some high school	50	14	36
High school graduate	56	12	31
Technical/vocational	64	12	24
Some college	50	13	38
College graduate	56	14	30
Graduate school	61	6	33

Favor or oppose construction of roads giving people access to federally owned wilderness lands

Overall	54	13	33
Religion:			
Protestant	56	12	32
Catholic	53	14	33
Jewish	57	21	22
Other	36	8	56
None	55	11	34
Political ideology:			
Liberal	57	9	34
Moderate	53	15	32
Conservative	56	11	34
Urban/rural:			
Urban	59	12	29
Suburban	52	15	33
Rural	47	13	40
Areas:			
Northeast	59	18	22
Industrial	58	11	31
Midlands	49	11	41
South	58	15	27
Central	49	8	42
Pacific	46	17	38

Would you favor or oppose cutting down timber on Federally-owned wilderness lands, as long as this land was reforested under government guidelines?

[In percent]

	Favor	Don't know	Oppose
Overall	62	11	27
Total household income:			
0 to $3,999	49	14	38
$4,000 to $6,999	66	9	25
$7,000 to $9,999	57	9	34
$10,000 to $12,999	59	11	30
$13,000 to $14,999	70	8	23
$15,000 to $19,999	61	11	29
$20,000 to $24,999	66	9	25
Over $25,000	64	10	27
Age:			
18 to 25	54	12	34
26 to 35	64	9	27
36 to 45	61	11	28
46 to 55	68	11	20
56 to 65	63	11	27
Over 65	62	11	27
Sex:			
Female	59	13	28
Male	65	8	26
Race:			
White	63	10	28
Black	55	21	24
Head of household:			
Yes	64	10	25
No	58	12	29
Education:			
Some grade school	56	19	26
Some high school	62	12	26
High school graduate	64	9	27
Technical/vocational	70	9	21
Some college	57	9	34
College graduate	65	12	24
Graduate school	66	9	25

Favor or oppose cutting down timber on federally owned wilderness lands, as long as land was reforested

Overall	62	11	27
Religion:			
Protestant	63	10	27
Catholic	64	9	27
Jewish	60	21	20
Other	53	12	35
None	50	12	39
Political ideology:			
Liberal	64	9	27
Moderate	62	11	27
Conservative	63	9	28

[In percent]

	Favor	Don't know	Oppose
Urban/rural:			
Urban	60	11	30
Suburban	62	11	27
Rural	67	10	23
Areas:			
Northeast	70	12	17
Industrial	67	7	26
Midlands	54	14	32
South	65	13	22
Central	62	4	34
Pacific	45	17	38

Would you favor or oppose building dams to control floods and generate electricity on Federally-owned wilderness lands?

[In percent]

	Favor	Don't know	Oppose
Overall	71	9	20
Total household income:			
0 to $3,999	65	12	23
$4,000 to $6,999	75	13	12
$7,000 to $9,999	77	5	17
$10,000 to $12,999	72	9	19
$13,000 to $14,999	81	6	13
$15,000 to $19,999	66	6	28
$20,000 to $24,999	68	5	27
Over $25,000	72	7	21
Age:			
18 to 25	69	7	24
26 to 35	67	12	20
36 to 45	74	8	18
46 to 55	72	7	21
56 to 65	70	6	24
Over 65	74	12	15
Sex:			
Female	69	10	21
Male	72	8	20
Race:			
White	71	8	21
Black	69	19	12
Head of household:			
Yes	73	9	19
No	69	9	22
Education:			
Some grade school	70	12	18
Some high school	74	10	16
High school graduate	72	8	19
Technical/vocational	79	5	16
Same college	68	7	26
College graduate	66	12	21
Graduate school	66	6	28

Favor or oppose building dams to control floods and generate electricity on Federally-owned wilderness lands

	Favor	Don't know	Oppose
Overall	71	9	20
Religion:			
Protestant	72	9	20
Catholic	72	9	20
Jewish	66	20	15
Other	60	10	30
None	70	6	23
Political ideology:			
Liberal	74	9	18
Moderate	69	10	21
Conservative	71	7	22
Urban/rural:			
Urban	70	9	21
Suburban	71	9	21
Rural	73	9	18
Areas:			
Northeast	73	12	15
Industrial	72	10	19
Midlands	69	8	23
South	74	9	18
Central	75	6	20
Pacific	58	10	33

Would you favor or oppose constructing underground mines on Federally-owned wilderness lands to develop coal?

[In percent]

	Favor	Don't know	Oppose
Overall	55	14	31
Total household income:			
0 to $3,999	48	22	30
$4,000 to $6,999	60	11	29
$7,000 to $9,999	57	13	30
$10,000 to $12,999	54	11	35
$13,000 to $14,999	54	17	29
$15,000 to $19,999	49	13	39
$20,000 to $24,999	57	9	34
Over $25,000	61	11	28
Age group:			
18 to 25	46	18	37
26 to 35	54	12	34
36 to 45	55	15	30
46 to 55	58	14	29
56 to 65	56	12	32
Over 65	61	14	25
Sex:			
Female	51	17	32
Male	59	11	31
Race:			
White	55	13	32
Black	51	25	24
Head of household:			
Yes	58	12	29
No	51	16	34
Education:			
Some grade school	55	21	24
Some high school	54	16	31
High school graduate	58	12	31
Technical/vocational	55	9	37
Some college	50	13	37
College graduate	56	17	28
Graduate school	60	8	32

Favor/oppose constructing underground mines

	Favor	Don't know	Oppose
Overall	55	14	31
Religion:			
Protestant	55	14	31
Catholic	55	15	30
Jewish	57	20	22
Other	49	8	42
None	43	8	49
Political ideology:			
Liberal	51	9	40
Moderate	53	19	28
Conservative	60	10	31
Urban/rural:			
Urban	56	13	32
Suburban	55	15	30
Rural	53	15	32
Area:			
Northeast	60	14	27
Industrial	59	13	28
Midlands	58	12	30
South	53	19	28
Central	54	9	37
Pacific	41	17	43

Would you favor or oppose surface mining of Federally-owned wilderness lands to develop coal?

	Favor	Don't know	Oppose
Overall	39	13	48
Total household income:			
0 to $3,999	43	14	43
$4,000 to $6,999	44	19	37
$7,000 to $9,999	43	11	45
$10,000 to $12,999	38	13	50
$13,000 to $14,999	42	11	48
$15,000 to $19,999	37	11	53
$20,000 to $24,999	40	7	54
Over $25,000	41	7	52
Age:			
18 to 25	25	14	61
26 to 35	38	12	50
36 to 45	37	14	49
46 to 55	45	12	42
56 to 65	43	9	48
Over 65	49	14	37
Sex:			
Female	37	15	48
Male	41	11	48
Race:			
White	38	12	51
Black	49	21	31
Head of household:			
Yes	42	13	46
No	34	14	52
Education:			
Some grade school	40	19	41
Some high school	46	14	40
High school graduate	41	11	48
Technical/vocational	42	10	48
Some college	32	13	56
College graduate	38	12	50
Graduate school	35	9	57

Favor or oppose surface mining on Federally owned wilderness lands to develop coal.

	Favor	Don't know	Oppose
Overall	39	13	48
Religion:			
Protestant	41	13	46
Catholic	36	15	49
Jewish	52	5	44
Other	32	10	56
None	28	5	85
Political ideology:			
Liberal	38	9	59
Moderate	42	13	46
Conservative	39	12	43
Urban/rural:			
Urban	44	12	44
Suburban	34	12	54
Rural	38	17	46
Areas:			
Northeast	49	14	37
Industrial	39	9	53
Midlands	36	13	52
South	45	18	37
Central	35	9	56
Pacific	29	15	57

Would you favor or oppose drilling for oil and natural gas on Federally-owned wilderness lands?

	Favor	Don't know	Oppose
Overall	64	11	25
Total household income:			
0 to $3,999	62	13	25
$4,000 to $6,999	67	11	22
$7,000 to $9,999	70	8	22
$10,000 to $12,999	66	10	24
$13,000 to $14,999	69	11	21
$15,000 to $19,999	65	11	24
$20,000 to $24,999	63	8	30
Over $25,000	64	10	26
Age:			
18 to 25	51	14	35
26 to 35	63	11	26
36 to 45	64	14	22
46 to 55	73	9	18
56 to 65	65	10	25
Over 65	71	10	19
Sex:			
Female	60	14	25
Male	68	8	24
Race:			
White	64	10	26
Black	64	20	16
Head of household:			
Yes	68	10	23
No	60	13	27
Education:			
Some grade school	65	13	22
Some high school	63	13	24
High school graduate	70	10	21
Technical/vocational	75	7	18
Some college	57	9	34
College graduate	61	17	22
Graduate school	62	7	31

Favor or oppose drilling for oil and natural gas on federally owned wilderness lands

	Favor	Don't know	Oppose
Overall	64	11	25
Religion:			
Protestant	68	10	22
Catholic	62	13	25
Jewish	61	15	24
Other	45	13	42
None	52	8	39
Political ideology:			
Liberal	63	7	30
Moderate	65	14	21
Conservative	68	9	24
Urban/rural:			
Urban	65	11	24
Suburban	63	11	26
Rural	64	12	24
Areas:			
Northeast	69	9	23
Industrial	68	11	21
Midlands	60	15	25
South	65	13	22
Central	66	7	27
Pacific	53	13	34

Would you favor or oppose building recreation areas, such as parks, to permit more use of the Federally-owned wilderness lands?

[In percent]

	Favor	Don't know	Oppose
Overall	66	10	23
Total household income:			
0 to $3,999	57	13	31
$4,000 to $6,999	71	11	19
$7,000 to $9,999	76	9	15
$10,000 to $12,999	69	8	24
$13,000 to $14,999	69	16	15
$15,000 to $19,999	66	11	23
$20,000 to $24,999	64	4	33
Over $25,000	68	5	27

[In percent]

	Favor	Don't know	Oppose
Age:			
18 to 25	63	11	26
26 to 35	67	10	23
36 to 45	66	11	23
46 to 55	69	10	21
56 to 65	67	5	28
Over 65	68	12	20
Sex:			
Female	66	11	22
Male	66	10	25
Race:			
White	66	9	25
Black	68	18	14
Head of household:			
Yes	67	10	23
No	65	10	24
Education:			
Some grade school	61	16	22
Some high school	66	10	24
High school graduate	68	9	23
Technical/vocational	66	11	23
Some college	62	10	27
College graduate	75	8	16
Graduate school	63	12	25

Favor/oppose building recreation areas

Overall	66	10	23
Religion:			
Protestant	67	9	23
Catholic	68	17	21
Jewish	65	16	19
Other	52	11	37
None	61	9	29
Political ideology:			
Liberal	72	8	20
Moderate	65	12	24
Conservative	66	8	26
Urban/rural:			
Urban	68	10	22
Suburban	67	10	24
Rural	62	13	26
Area:			
Northeast	75	8	17
Industrial	70	8	22
Midlands	63	8	29
South	59	16	26
Central	70	8	22
Pacific	60	14	26

Would you favor or oppose the mining of Federally-owned wilderness lands for mineral resources?

[In percent]

	Favor	Don't know	Oppose
Overall	53	15	32
Total household income:			
0 to $3,999	50	20	30
$4,000 to $6,999	59	14	27
$7,000 to $9,999	58	15	26
$10,000 to $12,999	48	18	34
$13,000 to $14,999	53	14	33
$15,000 to $19,999	52	11	37
$20,000 to $24,999	56	7	38
Over $25,000	56	12	33
Age:			
18 to 25	45	14	41
26 to 35	48	16	37
36 to 45	56	17	26
46 to 55	57	12	31
56 to 65	57	11	33
Over 65	62	17	22
Sex:			
Female	51	17	32
Male	55	13	32
Race:			
White	52	14	34
Black	63	23	14
Head of household:			
Yes	56	14	29
No	50	14	36
Education:			
Some grade school	49	24	27
Some high school	53	13	35
High school graduate	57	14	29
Technical/vocational	50	18	32
Some college	49	12	39
College graduate	59	16	25
Graduate school	50	10	40

Would you favor or oppose the mining of Federally-owned wilderness lands

Overall	53	15	32
Religion:			
Protestant	55	14	31
Catholic	54	16	30
Jewish	51	18	30
Other	37	17	47
None	37	14	49

	Favor	Don't know	Oppose
Political ideology:			
Liberal	50	12	38
Moderate	56	15	29
Conservative	56	12	32
Urban/rural:			
Urban	57	13	30
Suburban	49	16	35
Rural	52	16	32
Area:			
Northeast	62	16	23
Industrial	55	13	32
Midlands	49	13	38
South	56	17	27
Central	51	11	38
Pacific	42	19	39

Just in general, do you think the United States has preserved enough wilderness land or should the U.S. attempt to protect additional areas of wilderness from development?

	Preserved enough wilderness land	Don't know	Protect additional areas of wilderness
Overall	45	19	35
Total household income:			
0 to $3,999	43	19	38
$4,000 to $6,999	46	17	37
$7,000 to $9,999	44	17	39
$10,000 to $12,999	44	21	35
$13,000 to $14,999	45	19	36
$15,000 to $19,999	36	21	44
$20,000 to $24,999	49	17	34
Over $25,000	53	15	32
Age group:			
18 to 25	28	20	52
26 to 35	46	16	38
36 to 45	48	26	27
46 to 55	53	18	29
56 to 65	46	18	36
Over 65	54	17	28
Sex:			
Female	42	24	34
Male	49	14	37
Race:			
White	46	17	36
Black	37	33	30
Head of household:			
Yes	49	16	35
No	40	23	37
Education:			
Some grade school	45	26	28
Some high school	40	23	37
High school graduate	49	18	33
Technical/vocational	41	16	42
Some college	41	15	44
College graduate	50	21	29
Graduate school	50	14	36

Do you think the United States has preserved enough wilderness lands

Overall	45	19	35
Religion:			
Protestant	46	19	35
Catholic	47	19	34
Jewish	48	25	27
Other	33	22	45
None	32	16	52
Political ideology:			
Liberal	41	15	45
Moderate	44	22	34
Conservative	51	16	34
Urban/rural:			
Urban	46	19	35
Suburban	42	21	37
Rural	49	17	33
Area:			
Northeast	50	27	24
Industrial	49	19	33
Midlands	44	15	42
South	48	21	31
Central	31	15	54
Pacific	47	16	37

Recently there have been proposals before Congress to close additional areas of Federally-owned wilderness land to any kind of development, including searches for new oil and gas. Do you favor or oppose allowing exploration for oil and gas on Federally-owned wilderness land?

[In percent]

	Favor	Don't know	Oppose
Overall	56	16	92
Total household income:			
0 to $3,999	48	17	34
$4,000 to $6,999	52	21	26
$7,000 to $9,999	53	13	34
$10,000 to $12,999	58	14	28
$13,000 to $14,999	55	17	28
$15,000 to $19,999	57	15	28
$20,000 to $24,999	59	10	32
Over $25,000	63	11	26

	Favor	Don't know	Oppose
Age:			
18 to 25	46	16	38
26 to 35	54	18	28
36 to 45	58	16	27
46 to 55	64	12	24
56 to 65	60	13	27
Over 65	55	17	28
Sex:			
Female	52	19	30
Male	60	13	27
Race:			
White	57	14	30
Black	50	30	20
Head of household:			
Yes	59	14	28
No	51	19	30
Education:			
Some grade school	55	25	20
Some high school	47	15	38
High school graduate	58	19	24
Technical/vocational	69	8	24
Some college	54	9	37
College graduate	63	12	25
Graduate school	60	13	28

Allowing exploration for oil and gas on wilderness land

Overall	56	16	29
Religion:			
Protestant	58	14	28
Catholic	53	19	27
Jewish	58	18	24
Other	40	13	47
None	50	12	38
Political ideology:			
Liberal	55	13	32
Moderate	55	18	38
Conservative	59	12	29
Urban/rural:			
Urban	54	17	29
Suburban	57	15	29
Rural	58	13	29
Areas:			
Northeast	52	27	22
Industrial	62	13	25
Midlands	56	13	32
South	56	16	28
Central	50	11	39
Pacific	53	16	32

[If oppose.] If it were shown that virtually all of the hope for new gas and oil discoveries in the United States were in these Federal lands that would be closed to exploration development, would you still oppose exploring these lands for resources or not?

[In percent]

	Yes	Not sure	No
Overall	35	23	42
Total household income:			
0 to $3,999	40	22	38
$4,000 to $6,999	39	25	35
$7,000 to $9,999	24	33	43
$10,000 to $12,999	35	33	32
$13,000 to $14,999	23	36	41
$15,000 to $19,999	35	9	57
$20,000 to $24,999	31	23	46
Over $25,000	39	15	46
Age group:			
18 to 25	28	28	44
26 to 35	45	15	40
36 to 45	36	21	43
46 to 55	27	22	51
56 to 65	38	25	37
Over 65	35	30	35
Sex:			
Female	35	25	39
Male	36	20	44
Race:			
White	35	22	43
Black	37	27	36
Head of household:			
Yes	35	23	43
No	35	24	41
Education:			
Some grade school	39	23	37
Some high school	26	31	42
High school graduate	35	28	37
Technical/vocational	40	13	47
Some college	39	17	44
College graduate	33	14	53
Graduate school	43	8	49

Still oppose explanation of Federal lands

Overall	35	23	42
Religion:			
Protestant	35	22	44
Catholic	32	26	43
Jewish	28	31	42
Other	45	35	21
None	55	5	40

[In percent]

	Yes	Not sure	No
Political ideology:			
Liberal	36	18	46
Moderate	42	23	35
Conservative	31	26	44
Urban/rural:			
Urban	30	20	40
Suburban	28	30	42
Rural	39	17	44
Area:			
Northeast	22	24	54
Industrial	27	22	50
Midlands	42	28	30
South	31	18	51
Central	50	20	30
Pacific	38	31	31

If it came down to a simple choice between developing new energy resources and preserving wilderness areas, which do you think the nation should choose?

[In percent]

	Developing new energy sources	Don't know	Preserving wilderness areas
Overall	67	14	19
Total household income:			
0 to $3,999	48	27	26
$4,000 to $6,999	65	13	22
$7,000 to $9,999	65	14	20
$10,000 to $12,999	72	10	18
$13,000 to $14,999	75	14	11
$15,000 to $19,999	67	12	21
$20,000 to $24,999	69	14	17
Over $25,000	72	9	19
Age group:			
18 to 25	60	14	26
26 to 35	67	15	19
36 to 45	64	18	18
46 to 55	77	11	12
56 to 65	65	12	24
Over 65	69	14	17
Sex:			
Female	63	17	20
Male	70	12	18
Race:			
White	68	13	19
Black	58	22	20
Head of household:			
Yes	69	13	18
No	64	15	21
Education:			
Some grade school	63	19	18
Some high school	64	15	21
High school graduate	66	15	19
Technical/vocational	73	17	10
Some college	69	12	19
College graduate	71	12	18
Graduate school	69	10	21

[In percent]

Choice between developing new energy sources and preserving wilderness areas			
Overall	67	14	19
Religion:			
Protestant	69	14	17
Catholic	64	14	22
Jewish	64	15	22
Other	64	11	25
None	61	19	20
Political ideology:			
Liberal	65	14	21
Moderate	68	14	19
Conservative	68	13	19
Urban/rural:			
Urban	68	13	18
Suburban	65	14	21
Rural	66	17	17
Areas:			
Northeast	63	18	19
Industrial	71	10	19
Midlands	71	13	16
South	69	14	17
Central	66	14	20
Pacific	56	19	25

Would you favor or oppose limited drilling for oil and natural gas in the wilderness areas of the western United States?

[In percent]

	Favor	Don't know	Oppose
Overall	60	13	26
Total household income:			
0 to $3,999	48	13	39
$4,000 to $6,999	48	20	32
$7,000 to $9,999	57	14	30
$10,000 to $12,999	64	13	23
$13,000 to $14,999	64	16	19
$15,000 to $19,999	60	10	30
$20,000 to $24,999	66	11	23
Over $25,000	65	8	27
Age:			
18 to 25	51	15	35
26 to 35	59	16	25
36 to 45	64	13	23
46 to 55	70	9	21
56 to 65	58	12	30
Over 65	59	16	25
Sex:			
Female	55	17	28
Male	65	11	24
Race:			
White	61	13	26
Black	51	22	28
Head of household:			
Yes	63	12	25
No	55	16	29
Education:			
Some grade school	59	20	21
Some high school	53	14	32
High school graduate	61	14	25
Technical/vocational	66	9	25
Some college	58	11	32
College graduate	70	16	14
Graduate school	69	7	25

Favor or oppose limited drilling for oil and natural gas

Overall	60	14	26
Religion:			
Protestant	62	12	25
Catholic	59	17	24
Jewish	66	16	19
Other	46	10	44
None	51	9	40
Political ideology:			
Liberal	50	13	28
Moderate	60	16	24
Conservative	63	10	27
Urban/rural:			
Urban	59	14	27
Suburban	63	13	24
Rural	58	14	28
Areas:			
Northeast	57	22	21
Industrial	66	13	21
Midlands	64	12	24
South	62	12	26
Central	55	7	38
Pacific	52	16	32

●

MR. REX SHURTZ RECOGNIZED FOR ACT OF HEROISM

● Mr. DECONCINI. Mr. President, I am always greatly pleased whenever I am able to recognize someone from my home State of Arizona in front of my honored colleagues in the Senate. In this particular case, I should like to recognize Mr. Rex Shurtz of Safford for an act of heroism which undoubtedly saved in excess of 2,000 lives. During the great flood of 1979, which inundated and destroyed a great deal of property in eastern Arizona, Mr. Shurtz was informed upon coming home from work that the water level behind the Graveyard Wash Dam was unusually high. He ventured out, at considerable personal risk, to check the situation. He heard a gurgling noise, traced it down, and found a flaw in the dam. He immediately informed the proper officials of Graham County who rushed to the scene. Over 2,000 persons were safely evacuated from the area, the county repaired the leak, and those people were returned to their homes without further incident. Mr. Shurtz' actions unquestionably saved the lives of these people, and he deserved recognition for his act of heroism. Mr. President, I wish it to be printed in the RECORD, in order that this unselfish action may be recorded in the annals of our Congress.●

ALL-VOLUNTEER FORCES

● Mr. JEPSEN. Mr. President, there is a growing feeling in Congress and in this country that the All-Volunteer Force is not working as well as it should. The costs of maintaining an All-Volunteer Force are substantial and with the general trend of inflation they could be staggering in the near future.

Moreover, current population trends suggest that as we enter the 1980's, it will become increasingly difficult to man the All-Volunteer Force at an adequate level, even assuming a bigger increase in the number of women who enter the service. Finally, it seems fairly evident to all that the All-Volunteer Force was never designed to and indeed it could never provide the people needed in case of a major conflict.

With this in mind, I wish to print in the RECORD an article written by Curtis W. Tarr. Mr. Tarr was former director of the U.S. Selective Service System. He is a resident of Moline and a personal friend of mine. His writing is insightful; his assessment of the future of the All-Volunteer Force is sobering. I commend it to the attention of my colleagues.

The article follows:

BRIDGE GAPS IN MILITARY MIGHT

(By Curtis W. Tarr)

Recently, critics of the All-Volunteer Force have sharpened their knives for attack upon the ability of the armed services to supply the people for an adequate defense by voluntary means.

We hear rumblings of complaint in Congress, in military organizations (particularly those people responsible for recruitment), and among disparate voices across the land. Thus it is appropriate to assess the attempts of the military forces to carry out the program that President Nixon considered one of his most important contributions to the American society.

At the end of 1978, the United States had 2,049,000 people in active units, down 12,000 from the previous year because of programmed reductions. The services recruited 357,000 in the same year to maintain all units essentially at full strength.

The turnover of 18.7 percent was the lowest since 1966, generally a good sign indicating a more seasoned force with less concentration upon basic training. Enlistments in 1978 were 18 percent less than 1977 reflecting the higher reenlistment of people already in the forces.

Finally, except in the Air Force, a high percentage of young people entered service with a high school diploma or its equivalent than in any other year since the All-Volunteer Force began in 1973. Thus the raw statistics for 1978 look encouraging.

Women who make up 7 percent of the armed forces today were 12 percent of the enlisted accessions for 1978, an attempt by the services to open more opportunities to them. Blacks, who are 17 percent of total strength, accounted for 23 percent of the enlistments, nearly double the cross section of that age black youth in the American population. The Army now is 27 percent

black and drew 34 percent of its enlistments from black youth. These numbers certainly attest to the limited economic opportunities for blacks elsewhere in America.

Some argue that only a representative force is adequate to carry out the nation's policies. My own view is that proper leadership of qualified people will achieve national goals regardless of the racial characteristics of the force.

The situation in the nation's reserve forces offers less encouragement. Reserve strength at 788,000 people in 1978 was down 2 percent from the previous year because of recruiting difficulties. Since the shortages are not spread evenly among units, some are considerably below strength.

Reserve units in 1978 recruited 201,000 young people, 70,000 of whom had no prior military service. In this latter group, those with a high school diploma or equivalent dropped from 45 percent to 39 percent (compared with 85.3 percent of recruits in the active Army). Among the 70,000, 16 percent were women, and 28 percent were blacks.

Experience in 1979 tempers earlier optimism. During the first quarter, each of the services fell short of its goals, the Air Force for the first time. The services together recruited only about 90 percent of the people needed to meet their requirements.

It still is too early to determine a trend and what will develop in the future. But it is clear that continuing shortages in recruitment soon will have an impact upon force structure.

Through 1978, volunteerism served the nation well, particularly in the active forces. We cannot be certain if it will do so in 1979. But those who wish to restore the draft need to remember that the draft never operated ideally. For now, the nation and the armed services must do everything possible to make volunteerism successful. It is not likely that Congress soon would grant to President Carter the authority to induct. The reserve forces have a special problem. Increased incentives and leadership appear to be the only practical resources to attract the people in the near future that the reserve units require.

Should any action now be taken?

Yes, I recommend that the president reactivate the registration and classification of young men for possible service during a national mobilization. No qualified observer ever has suggested that volunteers could provide the people the armed services would require for a major war.

Waiting to establish a draft system with registration and classification could invite intolerate delays in a time of national disaster. With such a system operating, inductions could begin shortly after the declaration of a national emergency.●

THE GREAT SNOW OF 1979

● Mr. KENNEDY. Mr. President, I would like to bring to the attention of my colleagues James J. Kilpatrick's inspirational reflections on the great snow of 1979—an historic event which brought our all too busy lives to a temporary halt and united us as families, neighbors, and communities as we "weathered the storm" and renewed our respect for nature's awesome power.

As the snow fell, it was eloquent in its silence, and Mr. Kilpatrick's own eloquence reminds us, in the words of Alexander Pope, that—

We are but parts of one stupendous whole, whose body Nature is, and God the soul.

I ask that the complete text of James J. Kilpatrick's article, "Important Things in a Great Snow," which appeared on Saturday, February 24 in the Washington Star, be printed in the RECORD.

The article follows:

IMPORTANT THINGS IN A GREAT SNOW

(James J. Kilpatrick)

SCRABBLE, Va.—A week has passed since the Great Snow of '79 fell upon us. The event thus has slipped into the classification of stale news, but the snow is worth writing about nonetheless. There were lessons here, and they are worth remembering.

Ordinarily, those of us in the Washington area have to apologize for our snows. Compared to the blizzards of Nebraska, the travails of Buffalo and the disasters of Chicago, our worst winter ills are the merest sniffles. In the usual course of events, we endure a few hours of snarled traffic; then the slush turns to worse slush and that's it.

The snow that began falling on Sunday afternoon was something else entirely. This was a snow to make a man quietly proud, a snow to mark births and deaths by.

It started as a powdery mist. By mid-afternoon two or three inches had accumulated on top of the six inches February already had delivered.

In early evening the storm picked up speed and muscle. At some point past midnight, this snow decided to go for a record.

Peering outside, one saw great waterfalls of snow, high curtains of snow; the heavens were one vast flour sifter turning at top speed. By late morning on Monday, it had stopped.

In Washington, the snow was reckoned officially at 18.7 inches. Here in the Blue Ridge Mountains, our yardstick said 21 inches. Before dawn Monday morning the wind began gusting at 20 to 25 miles an hour. We awoke to feast upon massive scallops of whipped cream, towering dunes of crisp meringue, rolls of hay iced like angel food cakes. A five-foot drift 50 feet long, made the driveway impassable. For the first time in 12 years we were literally snowed in.

In Washington, city dwellers saw the best and the worst of human nature. Ordinarily Washingtonians communicate as stiffly as so many strangers in an elevator. Now the anonymity receded. In the common exhilaration, human beings reached out—however briefly—to touch other human beings.

Members of the American Agricultural Movement, who had been making the city's life miserable with their tractorcades of protest, suddenly became heroes. They put their great waddling machines to work. It was a good day. After night fell, reports of looting began to sift in, soot staining the purity of the snow, but there were not so many of these in Washington.

Here in the mountains we learned old lessons all over again—which, come to think of it, is what one usually does with old lessons. We absorbed the beauty and the power of nature; we wondered at the awesome energy of a storm. In our isolation we learned the meaning of good conversation, loving companionship.

Mainly, the Great Snow of '79 taught us the unimportance of so much that surrounds us. A yard stick that measures snowfall measures values also. To be effectively prevented from doing many things is to discover how many things do not need to be done. At the very least it is to discover how many things do not need to be done right now. A vast deal of the busywork that engages us can be put off.

What is important? It is important to thrust through banks of snow to fill the bird feeders. It is important to keep firewood dry lest the electric power go out. Sooner or later it will be important to dig ourselves out to Rudisill's Mill Road and thence to the highways beyond. But not right now.

For now, it suffices to talk a while, to be silent for a while, to see images in licking flames and darkening embers. We learn from the squabbling sparrows, the grosbeaks, cardinals, bluejays, juncoes, doves, quail, finches, starlings. They flutter about the feeding stations like flung confetti at a winter party, scraps of colored paper on a white and brown collage.

We are as dependent as the birds and as independent as they also. We depend, of course, upon all the unknown hands that somewhere are performing the hard, essential work of clearing roads and restoring power. But to turn inward to one's own resources is to discover a kind of curious freedom.

For a little while no outside commitments, no distance compulsions, can break through the drifted snow. By ourselves, in and of ourselves, we survive. It is not a bad reflection for a snowbound afternoon.●

OPPOSITION TO PROPOSED STANDBY ENERGY CONSERVATION AND GASOLINE RATIONING PLANS

● Mr. TOWER. Mr. President, President Carter Tuesday proposed several standby energy conservation measures designed to enable us to cope with severe petroleum shortages resulting from foreign supply interruptions or U.S. compliance with international energy obligations. Each of these measures requires the affirmative approval of Congress within 60 days of submittal.

I intend to vote against approval of these proposed standby energy conservation and gasoline rationing plans. My opposition is based in part on the fact that these mandatory measures tend to discriminate most against those States and regions which have done the most to supply this Nation with the energy it needs. The primary basis for my opposition, however, is that these are measures for crisis management only, and can in no way contribute to an improved domestic energy supply situation.

I believe it is clear that Federal intervention designed to solve our energy supply problems has, in fact, only aggravated those problems and made their solution more difficult. It has been 5 years since the 1973–74 Arab oil embargo and yet we are today experiencing shortages of gasoline and other refined products and continue to be dangerously vulnerable to foreign supply cutoffs.

That 1973 embargo precipitated the enactment of hastily considered emergency oil price and allocation controls designed to regulate the shortage, and in each year since the Congress and the Federal agencies have conspired to add layer after layer of additional regulation. Controls imposed to regulate the shortage have only served to make it worse.

I believe the time has come to break the chain of regulatory-induced energy shortages which simply serve to bring on more regulation and more severe shortages. I believe the time is now to remove the costly and counterproductive price and allocation controls on gasoline and to quickly phase out controls on domestic crude oil.

Decontrol would not be painless, but neither are mandatory gasoline ration-

ing and other mandatory energy-saving measures of the kind recommended by the President. Decontrol has costs, but so do perpetual shortages and overregulation, and the direct and indirect costs of continued regulation are substantial.

Decontrol of crude oil and gasoline would, however, have real and substantial benefits. The relaxation of these controls would not only stimulate energy development to reduce U.S. foreign dependence and help assure adequate fuel supplies, but would also improve our balance of trade and tend to lessen unemployment by creating real jobs.

In short, the continuation of these costly and economically destructive oil price controls is a luxury this country cannot afford. I thus again urge the President to move forward now to decontrol gasoline and set the stage for a gradual, but rapid, phaseout of all price and allocation controls on domestic crude oil.

Until the Carter administration begins to attack the root causes of our energy supply problem in this manner—by substantially reducing the burden of Federal regulation—I cannot acquiesce in the approval of any additional mandatory conservation measures of the type being proposed. I urge my colleagues to join me in opposition to these ineffective short-term measure until real progress is made toward a solution to the problem.●

ALLEGATIONS OF DELIBERATE MANIPULATION OF PRODUCTION ARE GROUNDLESS

● Mr. JOHNSTON. Mr. President, on December 11, 1978 the Committee on Energy and Natural Resources held a hearing to secure information why certain major refiners were requesting from the Department of Energy the authority to allocate their available supplies of gasoline to wholesalers and marketeers.

An important witness was a representative from the Oil, Chemical, and Atomic International Union. OCAW is the union whose membership keeps our domestic refineries running. Mr. President, the substance of the gentleman's testimony turned out to be an allegation that there was no shortage but instead whatever situation did exist was:

> Purposely created for one reason—to manipulate oil price increases and to frighten the American people so that price controls would be lifted.

This allegation was indeed a serious one. The committee asked the Department of Energy to investigate. Subsequently, the Department contacted and sent agents into the named refineries to check production records and other sources. Mr. President, the Department in its report back to the Energy Committee reported that there were no grounds to substantiate these allegations of deliberate manipulation of production. I shall submit this report for printing in the RECORD at the conclusion of my remarks.

Mr. President, also testifying at the hearing was Mr. Jack O'Leary from the Department of Energy who stressed the fact that the rate of growth of demand for unleaded gasoline was outstripping the domestic refiners' ability to produce the needed supply. Although unleaded supplies would be tight this summer, the real shortage loomed in the early 1980's if our existing capacity was not expanded and retrofitted to produce more unleaded gasoline. Also present were witnesses from the Environmental Protection Agency and a representative from a major refiner. There was a healthy exchange among these witnesses as to the institutional problems impeding the needed expansion of our domestic refining capacity. I encourage this public debate more often. I also intend to introduce soon this session a bill to encourage the expansion of our domestic refining industry to meet our domestic needs. I hope to work very closely with my Senate colleagues and all persons interested in defining and putting into statutory form a unified national refining policy.

The testimony follows:

COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C., December 14, 1978.

Hon. JAMES R. SCHLESINGER,
Secretary,
Department of Energy,
Washington, D.C.

DEAR MR. SECRETARY: On Monday, December 11, 1978, the Committee on Energy and Natural Resources held a hearing on motor gasoline supply at which allegations were made which I believe should be promptly investigated by the Department of Energy. Specifically, the prepared statement of an official of the Oil, Chemical and Atomic Workers claimed that certain domestic refiners were operating at less than full capacity at a time when the companies owning these refineries were expressing concerns to DOE about possible gasoline shortages. As you know, the testimony of DOE, presented by Deputy Secretary O'Leary, was that domestic refineries are, and have been, running at near capacity.

Subsequent to the hearing the OCAW wrote to me with additional details about their allegations. A copy of their letter is attached. Because of the intense interest in this matter by the public and its relevance to the subject of the Committee's hearing I think it important that the factual situation with respect to these allegations be fully clarified as promptly as possible. I am, therefore, asking that DOE provide the Committee with a full report on the recent operation of the refineries named in the OCAW letter on or before the close of business, Friday, December 22, 1978.

Questions about this request should be directed to Benjamin S. Cooper or James T. Bruce at 224-9894.

Sincerely yours,
HENRY M. JACKSON,
Chairman.

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION,
Washington, D.C., December 14, 1978.

Hon. HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JACKSON: The following is the additional material that you asked for in connection with the statement of H. J. McClain, which was read into the record of the Energy Committee hearing of December 11th.

1. The refinery unit referred to on Page 3 of the McClain statement is turning out 22,000 barrels per day of unleaded product, where the unit capacity is 42,000, is at Mobil, located in Beaumont, Texas.

2. The four refineries that Director McClain made spot checks on were: Texaco (Port Arthur); Union Oil (Port Neches); Mobil (Beaumont); and Shell (Deerfield and Norco).

3. Shell (Deerfield). The production of unleaded gasoline is controlled by the throughput of the catalytic reformer units (CR). There are two reformer units at this refinery.

CR No. 1 has input capacity of 20,000 barrels/day (B/D) and output capacity of 18,000 B/D. During the period November 28, 1978 to December 8, 1978, this unit ran from a low of 9,200 B/D input and 7,955 B/D output to a high of 11,000 B/D input and 9,600 B/D output.

On December 9, 1978, the unit was shut down because of gasoline leaks. It was placed back in service December 13, 1978.

The capacity of CR No. 2 is not known exactly but it is in excess of 30,000 B/D input and more than 25,000 B/D output. On November 1, 1978, this unit was operating at 28,000 B/D input and 23,200 output with octane number of 99.5. On November 9, 1978, the throughput of the unit was cut back from the above figure to 16,600 B/D input, and 13,100 B/D output with octane number of 101.0. This rate was maintained for two weeks and then was raised to 20,000 B/D input.

On November 28, 1978, the throughput of the unit was cut back because there was no room in storage for the finished product. The levels in the storage tanks were the same as in mid-June, which is normal high point for the year in preparation for the summer driving season.

4. Mobil (Beaumont). There are two hydroformers at this refinery. Their capacity is 42,000 B/D each and for several weeks they have been running at between 21,000 and 22,000 B/D each. The unit which blends unleaded gasoline is running one 8-hour shift instead of the normal two 8-hour shifts.

5. Texaco (Port Arthur). This refinery has three hydroforming units, each of 28,800 B/D capacity. As of the present No. 2 and No. 3 are running at 27,000 B/D and 28,800 B/D. No. 1 is running at 14,400 B/D. The product has an octane number running between 80 and 91. This situation has not changed in the past six months. If demand were not being met, the throughput of No. 1 could be raised. Workers usually hear about demand problems but have heard of no problems with unleaded.

6. Union Oil (Port Neches). The unleaded gasoline production of this refinery is well below capacity. Detailed data is not available at this time.

Yours sincerely,
L. CALVIN MOORE,
Director of Citizenship-Legislative Department.

DEPARTMENT OF ENERGY,
Washington, D.C., February 1, 1979.

Hon. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, Washington, D.C.

DEAR MR. CHAIRMAN: On January 10, 1979, the Economic Regulatory Administration (ERA) forwarded to your office written responses from four oil companies (Texaco, Union, Mobil, and Shell) concerning the claim by the Oil, Chemical and Atomic Workers International Union (OCAW) that these refiners operated at less than full capacity at a time when unleaded gasoline supplies were tight. As a follow up, ERA representatives visited Texaco's Port Arthur refinery, Union's Beaumont refinery, Mobil's Beaumont refinery, and Shell's Deer Park refinery to verify their responses and to review their gasoline production situation. A copy of the report summarizing ERA's findings is enclosed.

ERA is satisfied with the findings concerning the operations of the above refiners.

Their description of the refinery operations as well as actual operating records, inspected by the ERA representatives, support the statements made by these four refiners that they did make every effort to maintain maximum gasoline production and meet their customers' demands. In no case was there evidence that the refiners were holding back gasoline production or supplies.

If you have any further questions on this matter, please let us know.

Sincerely,

HAZEL R. ROLLINS
(For David J. Bardin, Administrator, Economic Regulatory Administration.)

Enclosure.

DEPARTMENT OF ENERGY,
Washington, D.C., January 31, 1979.

From Terrence S. Higgins.

Subject Report on refinery visits conducted to investigate OCAW statements to the Senate Committee on Energy and Natural Resources concerning motor gasoline supplies.

During the December 11, 1978, Motor Gasoline hearings before the U.S. Senate Committee on Energy and Natural Resources the Oil, Chemical and Atomic Workers International Union (OCAW) presented a statement claiming that refiners were operating at less than full capacity at a time when unleaded gasoline supplies were tight. Subsequent to the hearing, the OCAW, in their December 14, 1978 letter, supplied the Committee with additional details about its allegations. On December 14, 1978, Senator Henry M. Jackson, Chairman of the Committee, forwarded a copy of the OCAW letter to the Department of Energy (DOE) and requested that DOE investigate these allegations.

In response to Senator Jackson's request the Economic Regulatory Administration (ERA) wrote to the four oil companies cited (Texaco, Union, Shell, and Mobil) asking them to comment on the statements of OCAW. ERA forwarded copies of the refiners' responses to the Committee on January 10, 1979 (copies attached).

As a follow up, Terrence Higgins and Glen Andrea of ERA, visited Texaco's Port Arthur refinery, Union's Beaumont refinery, Mobil's Beaumont refinery and Shell's Deer Park refinery to verify their responses and to review their gasoline production situation. The ERA representatives gave each of the refiners the opportunity to discuss their operating philosophy and their specific operations during the past months. The ERA representatives then reviewed operating records, internal correspondence, etc. which supported the refiners' position. The specific findings for the four refiners are summarized below:

TEXACO

Texaco operated its Port Arthur refinery for maximum gasoline production up until the beginning of October when maximum furnace oil operations were established to meet anticipated demands. However, in response to unseasonal gasoline demand, maximum gasoline operations were reestablished in mid-October and continued through the remainder of 1978. Throughout the summer and fall Texaco operated at maximum reforming severity and used maximum allowable lead in leaded gasoline in order to optimize the use of available octane to increase unleaded gasoline production.

In its December 14, 1978, letter, the OCAW stated that the Port Arthur refinery had three 28,000 B/D hydroforming units operating at 14,400 B/D, 28,800 B/D, and 28,000 B/D. OCAW stated further that increases in gasoline demand could be met by a corresponding throughput increase in the first of these units.

According to Texaco, Port Arthur has three reformers with a capacity of approximately 20,000 B/D each. These units were successively down for planned maintenance from August through November. When running, each of the units operated at maximum capacity.

UNION OIL

Since the summer, Union Oil's Beaumont refinery ran at maximum crude capacity and produced maximum gasoline.

Union Oil confirmed the statement made by the OCAW that unleaded gasoline production from the Beaumont refinery was below capacity. The refinery is equipped to make 100 percent unleaded gasoline. The actual amount of unleaded gasoline production is continually adjusted to meet sales demand. During 1977, Union Oil marketed only leaded premium and unleaded regular grades of gasoline but because of low sales they resumed leaded regular production in 1978. Union Oil was able to meet all of its unleaded demand in 1978.

MOBIL

The Mobil Beaumont refinery has been producing maximum gasoline since this past summer. All downstream gasoline-producing units were operated at capacity. In August 1978, Mobil expanded its unleaded production capability by reactivating an idle isomerization unit which had been shut down since 1974.

In its letter, the OCAW stated that Mobil had two 42,000 B/D hydroformers which had been running between 21,000 and 22,000 B/D each. There are actually three reformers at the Beaumont plant with a total capacity of approximately 90,000 B/D. According to operating records the combined throughput for these reformers was 91,700 B/D in November and 85,900 in December.

The OCAW letter stated further that the unit which blends unleaded gasoline was run one 8-hour shift instead of the normal two 8-hour shifts. Mobil has two blender units in the Beaumont refinery, one for leaded and one for unleaded gasoline. These units are capable of blending up to 400,000 B/D while the refinery gasoline production capacity is only 180,000 B/D. The blenders operate only as required to meet product shipping schedules. These schedules are staggered and thus the units are manned 24 hours per day. During the months of November and December each of the blenders averaged over 16 hours per day of operation.

SHELL

Shell has maintained maximum production of unleaded gasoline through the summer and fall. Its overall gasoline volume was reduced slightly by the shutdown of a hydrocracker in late October. This shutdown was part of the refiner's Olefin plant expansion and octane improvement plan. The shutdown reduced leaded regular gasoline production; however, following the startup of the Olefin plant facilities, high octane by-product will be produced, which will increase unleaded gasoline production capability.

The statement by the OCAW claimed that Shell's unleaded gasoline production was controlled by the throughput of the Deer Park reformers which were running below capacity. According to Shell less than one-third of the Deer Park reformate can be used in their unleaded gasoline because volatility specifications limit the blending volume of this high-boiling-range component. All the available high-octane, low-volatility components produced in the refinery are blended to produce Shell's unleaded gasoline along with the maximum permissible volume of reformate. Any excess reformate produced is then used for leaded gasoline.●

MEDICARE HOME HEALTH AMENDMENTS OF 1979

● Mrs. KASSEBAUM. Mr. President, the "Medicare Home Health Amendments of 1979" meets an extremely important need for the growing number of elderly individuals in our society. I am therefore pleased to join my colleagues, Senators DOMENICI and PACKWOOD, in cosponsoring this measure.

At a time when the cost of health care has put an increasing strain on the financial resources of all Americans, our elderly are experiencing particularly severe difficulties. Not only are they in greater need of medical attention than other segments of the population, but they are also faced with the dilemma of meeting health care expenses with fixed, and generally limited, incomes. The medicare program has, of course, eliminated many of the financial barriers to care for the elderly. At the same time, the program's reimbursement structure has heavily favored institutional over in-home services. In far too many cases, medicare reimbursement policies have resulted in the unnecessary and costly institutionalization of our elderly.

Failure to reduce this institutional bias in the medicare program bears a high price tag for both the Federal Government and for the elderly. The Federal costs, borne by increasingly frustrated taxpayers, are well known to all of us. It takes only a brief glance at the growth in the Federal health budget over the past decade to understand why health cost containment has become a priority for Government, providers, and private citizens alike. The nonmonetary cost to the elderly cannot be easily quantified, surely many lose a sense of security and well-being associated with staying in their own homes when they are required to enter a medical facility merely to assure compliance with reimbursement regulations.

Given this situation, lawmakers have a particular obligation to examine cost-effective alternatives to current health delivery patterns. Home health care should certainly be included among those alternatives, in that it can prevent unnecessary reliance on expensive hospital and nursing home care. Unfortunately, it is not possible to place precise dollar figures on the amount of money we might save if home health services were more readily available to our elderly. The experience of home health providers across the country, however, suggests the cost-saving potential of this type of care. For example, a diabetic self-care program in Los Angeles reduced the number of patients experiencing diabetic coma and led to a 50-percent drop in emergency room visits. It is estimated that this program reduced patient costs by $1.7 million in just 2 years.

The legislation I am cosponsoring takes a reasonable and balanced approach toward expanding home health services under medicare. It would eliminate the perverse incentive to admit individuals to hospitals or prolong their stays to qualify them for medicare-reimbursed home health care, and would make appropriate service available to individuals who could benefit from such care but do not require hospitalization. It prevents the need to remove patients from their homes in cases where they require more than the limit of 100 visits per

year currently reimbursed under medicare. A number of other provisions serve to improve the quality of care, limit abuse of the program, and control costs. I am confident that enactment of this legislation would have a positive impact on the delivery of home health services and on the lives of many older Americans.●

ARTHUR KUHL

● Mr. MELCHER. Mr. President, last Friday family and friends attended burial services in Helena, Mont., for Arthur Kuhl who, until his death Monday, February 19, was our Assistant Secretary of the Senate. Among his friends who were not able to attend the services, I count the present Members of the U.S. Senate and many former Senators. Art Kuhl will be greatly missed by all of us who have known him and benefited from his dedication to the work of the Senate. He was highly competent and unfailingly ready to assist Members in any way he could.

Arthur Kuhl was born 53 years ago and was brought up in Baker, Deer Lodge, and Helena, Mont., graduating from Helena High School. His military career included service with the U.S. Army in the Philippines during World War II, and in Japan with the occupation forces.

Following the war, he worked here in the U.S. Capitol as an elevator operator and Capitol policeman in order to put himself through college at Georgetown University. Having successfully completed his studies there, he went on to earn a law degree from George Washington University.

He began his career with the U.S. Senate in 1953, and served for years in positions of high responsibility. The mere recitation of his record of service cannot do justice to his dedication and accomplishments as a Senate employee and officer for he was one of those very competent, always obliging persons who took on every assignment and service that was taken to him.

From 1953 to 1954 he was an aide to Senator James E. Murray, one of the most respected Senators Montana has ever elected to this body.

In 1954 Arthur became the chief clerk for the Committee on Labor and Public Welfare; he served as an investigator for that committee in 1955 and 1956.

In the spring of 1956, he served briefly on the staff of the Committee on Interior and Insular Affairs, then took a 2-year assignment as chief clerk for a Special Senate Committee on Foreign Aid Programs. His excellent work in that position led to a staff position with the full Foreign Relations Committee from 1958 to 1965, and appointment as the chief clerk of that committee from 1966 to 1977.

He then moved up to the office of Assistant Secretary of the Senate. Typical of his dedication to that job were the circumstances of his death: while terrible weather conditions kept most Senators and Senate employees at home Monday, Art felt it his duty to get to work. He was stricken by a heart attack while making his way on foot through the snow to the Senate.

I know all Senators join me in extending condolences to his sisters, Frances Kuhl and Mrs. Vern Hayworth, and to his brothers, James, Pius, and Richard. The Senate has lost a dedicated officer, and though we are poorer for his loss, we are richer for having had the benefit of his distinguished service.●

SUNSET LEGISLATION

● Mr. MATHIAS. Mr. President, one of the most important pieces of legislation passed by the Senate in the last Congress was the Sunset Act. Unfortunately, our action came so late in the session that the House of Representatives could not complete action before adjournment. The result is that we do not yet have this important law.

I cosponsored the legislation when it was introduced and I am proud to cosponsor it once again in this 96th Congress. I consider it vital. The concept of this legislation is irresistible; the need for it irrefutable.

The mood of the country is, at the very least, troubled: some would say rebellious. Rising inflation and the perception that Government is bloated and inefficient have raised demands for reform. Cries are heard throughout the country for an end to waste and for severe cuts in Government spending.

Sunset is a logical, responsible, and orderly response to this public concern. We in Congress should commit ourselves to reexamining every cent we now spend. We should make sure every Federal dollar is being used as effectively and efficiently as possible.

Mr. President, this type of legislation is long overdue. It provides for automatic termination of Federal programs unless Congress determines, through a review process, that they should be reauthorized or reenacted. The bill simply requires Congress to do its job better and more thoroughly. It requires Congress to reconsider past policies and programs in a way that will allow us to shift resources away from programs we no longer need or from those that are not working well. We need to free up those resources and to put them to work in new, more effective ways.

The Senate Budget Commmittee recently calculated the cost of 31 new program initiatives likely to be before Congress over the next 5 years. It found that between 1980 and 1983 the cost of these new programs could run as high as $416 billion in new spending. When we factor in our rate of growth, as the Budget Committee found, we can fairly project that $120 billion in additional revenues would be needed to pay for these new programs.

We cannot raise taxes to pay for new programs. The American people are already groaning under the tax load. Equally out of the question is increasing the budget deficit. But neither can we ignore the legitimate demands of the future, except at our peril.

What we can do, and what we must do, is to reconsider what we spend now and to realine our spending with our changing national priorities. That is what Sunset is all about. It is a process to help us put sense in our spending and bring inflation under control. The Sunset approach is vastly preferable to arbitrary, mindless, across-the-board budget cuts that inevitably fall most heavily on the weak shoulders. It offers us an orderly approach to legislation that will benefit all Americans equally.

Mr. President, the Senate should take the opportunity to reaffirm once again its strong support for the Sunset Act.●

RULES OF PROCEDURE OF COMMITTEE ON RULES AND ADMINISTRATION

● Mr. PELL. Mr. President, pursuant to section 133B of the Legislative Reorganization Act of 1946, as amended, I submit the Committee on Rules and Administration Rules of Procedure, as adopted by the committee on January 31, 1979, to be printed in the RECORD.

RULES OF PROCEDURE OF THE SENATE COMMITTEE ON RULES AND ADMINISTRATION

(Readopted with amendments January 31, 1979)

TITLE I—MEETINGS OF THE COMMITTEE

1. The regular meeting dates of the committee shall be the second and fourth Wednesdays of each month, at 10 a.m., in room 301, Russell Office Building. Additional meetings may be called by the chairman as he may deem necessary or pursuant to the provisions of sec. 133(a) of the Legislative Reorganization Act of 1946, as amended.

2. Meetings of the committee, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by the committee on the same subject for a period of no more than 14 calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in subparagraphs (A) through (F) would require the meeting to be closed followed immediately by a record vote in open session by a majority of the members of the committee when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(A) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) will relate solely to matters of committee staff personnel or internal staff management or procedure;

(C) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(D) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(E) will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—

(1) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(2) the information has been obtained by the Government on a confidential basis,

other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(F) may divulge matters required to be kept confidential under other provisions of law or Government regulations. (Paragraph 7(b) of rule XXV of the Standing Rules of the Senate, as amended by S. Res. 9, 94th Cong., Nov. 5, 1975.)

3. Written notices of committee meetings will normally be sent by the committee's staff director to all members of the committee at least 3 days in advance. In addition, the committee staff will telephone reminders of committee meetings to all members of the committee or to the appropriate staff assistants in their offices.

4. A copy of the committee's intended agenda enumerating separate items of legislative business and committee business will normally be sent to all members of the committee by the staff director at least 1 day in advance of all meetings. This does not preclude any member of the committee from raising appropriate non-agenda topics.

TITLE II—QUORUMS

1. Pursuant to sec. 133(d) 6 members of the committee shall constitute a quorum for the reporting of legislative measures.

2. Pursuant to sec. 5(a) of rule XXV and sec. 133(d) of the Legislative Reorganization Act of 1946, 4 members shall constitute a quorum for the transaction of business, including action on amendments to measures prior to voting to report the measure to the Senate.

3. Pursuant to rule XXV, sec. 5(b) 4 members of the committee shall constitute a quorum for the purpose of taking testimony under oath; provided, however, that once a quorum is established, any one member can continue to take such testimony.

4. Under no circumstances, may proxies be considered for the establishment of a quorum.

TITLE III—VOTING

1. Voting in the committee on any issue will normally be by voice vote.

2. If a third of the members present so demand, a record vote will be taken on any question by rollcall.

3. The results of rollcall votes taken in any meeting upon any measure, or any amendment thereto, shall be stated in the committee report on that measure unless previously announced by the committee, and such report or announcement shall include a tabulation of the votes cast in favor of and the votes cast in opposition to each such measure and amendment by each member of the committee. (Secs. 133(b) and (d) of the Legislative Reorganization Act of 1946, as amended.)

4. Proxy voting shall be allowed on all measures and matters before the committee. However, the vote of the committee to report a measure or matter shall require the concurrence of a majority of the members of the committee who are physically present at the time of the vote. Proxies will be allowed in such cases solely for the purpose of recording a member's position on the question and then only in those instances when the absentee committee member has been informed of the question and has affirmatively requested that he be recorded. (Sec. 133(d) of the Legislative Reorganization Act of 1946, as amended.)

TITLE IV—DELEGATION OF AUTHORITY TO COMMITTEE CHAIRMAN

1. The chairman is authorized to sign himself or by delegation all necessary vouchers and routine papers for which the committee's approval is required and to decide in the committee's behalf all routine business.

2. The chairman is authorized to engage commercial reporters for the preparation of transcripts of committee meetings and hearings.

3. The chairman is authorized to issue, in behalf of the committee, regulations normally promulgated by the committee at the beginning of each session, including the senatorial long-distance telephone regulations and the senatorial telegram regulations.●

SORRY, NO CREDIT

● Mr. JAVITS. Mr. President, I would like to share with the Members of the Senate, an article which appeared in the New York Times on Wednesday, February 21, 1979. The article, "Sorry, No Credit" by Prof. Noel Capon highlights some of the discriminatory biases inherent in many statistical systems designed to determine credit worthiness of applicants.

Pursuant to the passage in 1974 of the Equal Credit Opportunity Act, and to its subsequent amendments, large credit-giving companies turned to "point scoring" as a fair means to grant or deny credit to individuals. Assignment of points for age, place of residence, length of time in present employment, occupation—to name a few criteria—was viewed as a way to avoid discrimination and bias so often associated with individual credit reviews.

Yet, merely because a machine assigns points to the data supplied and tabulates the final result or score, does not mean that a system is fair. Use of zip codes, for example, can mask potential discrimination based on race. Assigning lower points to minority neighborhoods reduces the possibility for those with good credit histories who live within that zip code area to gain credit approval. Further, occupational categories are broadly conceived and inclusion in one group might unjustly lower one's total score.

I encourage my colleagues to read Professor Capon's article on this subject as it relates directly to problems which we in the Congress can correct. I have cosponsored a bill with Senator LEVIN, S. 15, which would prohibit the use of zip codes as a determinant of credit worthiness. Hearings will be held in the near future, I understand, and I would hope my colleagues will taken an interest in the efforts to see that the Equal Credit Opportunity Act is, indeed, implemented to give all credit applicants an equal chance to obtain credit. I ask that Professor Capon's article be printed in the RECORD.

The text of the article is as follows:

[From the New York Times, Feb. 21, 1979]

SORRY, NO CREDIT

(By Noel Capon)

BOSTON.—Appearing before the Federal Trade Commission in Washington, Bloomingdale's department-store chain agrees to pay $50,000 in civil penalties for alleged sex discrimination against women in its evaluation of credit applications; in San Francisco, a Federal judge denies Standard Oil of California's request for dismissal of a suit brought up by a woman who alleges denial of credit on the basis of sex and marital-status discrimination; Montgomery Ward faces credit lawsuits in Delaware and North Carolina. Despite passage of the Equal Credit Opportunity Act in 1974 and its amendments in 1976, the National Consumer Finance Association was told recently that new investigative hearings on consumer credit might be in the offing. What's up?

What's up in consumer credit is point scoring, a computer-based method used by most major retailers, banks, and oil, travel and entertainment credit-card companies to assess consumers' credit-worthiness. Point-scoring systems attempt to discriminate statistically between good and poor credit risks by assigning points to personal situations.

For example, a home phone may be worth 10 points, no phone 2 points; living in one part of town 25 points, in another, 8; owning (or purchasing) a home 20 points, renting 8. Other frequently rated variables are age of automobile, time at employment, time at address, occupation, and maintenance of checking and savings accounts.

An applicant supplies the required personal data on a credit application form. A total point score above the target either earns credit automatically or the applicant's credit history is factored into the decision. A score less than the target results in automatic denial of credit, regardless of credit performance, which is never checked.

Creditors' rush to introduce point scoring resulted from cost-reduction benefits and from passage of the Equal Credit Opportunity Act, which proscribed discrimination on certain illegal bases and prescribed use of supposedly demonstrably and statistically sound, empirically derived point-scoring systems.

The Congress liked these systems because they were objective; they replaced credit managers' judgment with sets of statistical relationships. However, the benefits accorded by objectivity may well be overshadowed by costs not foreseen when the law was enacted.

First, certain uses of point scoring may be illegal. The personal data used, though apparently neutral, may be intimately and highly related to personal characteristics that are illegal to look into under the law. Zip code and owning or renting information may involve racial discrimination; owning and renting information may involve marital-status discrimination; time at employment may discriminate against women. The systems are also biased, since, contrary to the law, creditors use neither random samples of applicants, nor acceptable alternatives, to develop systems.

In addition, the systems do not meet the law's criterion of objectivity.

The occupation groups are crude, judgmentally formed aggregates of individual occupations: For instance "production worker" may include lathe operator, dressmaker and TV repairman. Some creditors "doctor" objectively developed systems to make the point assignments more palatable to credit managers. They also override their systems by awarding credit to rejected applicants who complain, thus discriminating against those who meekly accept credit denial.

For systems that do meet objectivity requirements, problems are equally severe. For instance, the point assignments for time at address and time at employment are often illogical. In a "typical" system, the points awarded for time at address are, less than one year, 5 points; one to two years, 0 points; two to three years, 5 points; three to five years, 0 points; five to nine years, 5 points; 10 years or over, 20 points!

Creditors argue that point scoring can be valid only if all criteria that relate statistically to payment performance are used. One major retailer has already demonstrated that persons whose last name begin with "B" and "K" are good risks. On that basis, hair color and left- and right-handedness could be used.

Most of the personal characteristics used

make no sense, but advocates of point scoring are unconcerned about such niceties. Statistical prediction, they believe, is the sole criterion for choice of a system. Although within their own organizations they allocate jobs and budgets on the basis of work performance, they see no contradiction in removing knowledge of an applicant's credit performance from the credit decision. They are thus prepared to reject applicants who may have excellent payment records.

Point-scoring systems may destroy themselves when credit applicants, learning that information on forms is often never checked, decide to supply data that will earn credit, even if untrue. Before that happens, perhaps Congress will hold hearings to learn the real impact of point scoring.●

FIFTEEN ELDERLY BLACKS RECEIVE LIVING LEGACY AWARDS

● Mr. CHILES. Mr. President, all older Americans are members of a minority group in one real sense—they represent 11 percent of our total population.

Many elderly persons today share mutual problems and concerns, including inflation, inadequate income, transportation inadequacies, and barriers to participate fully in our society.

But for aged members of minority groups, these difficulties are oftentimes intensified.

Yet, we have numerous examples of the outstanding contributions by older minority members to improve our society in all walks of life, despite great adversity and challenges.

Last Friday, President Carter, in conjunction with the National Caucus on the Black Aged, honored 15 older blacks, ranging in age from 64 to 93 years old, for their achievements in science and health, religion, the performing arts, education, sports, business, government, civil rights and other endeavors.

The recipients of these living legacy awards shared several common qualities, despite their diverse backgrounds. They all demonstrated courage and perseverance throughout their lives. In addition, they provide an inspiration for today's black youth, as well as all Americans.

The National Caucus on the Black Aged initiated its Living Legacy Awards program on February 1 as a part of Black History Month. The purpose is to make our Nation aware of the substantial contributions of older black persons.

Mr. President, I ask that a press release describing the Living Legacy Award ceremonies and a biographical summary of the recipients be printed in the RECORD.

The material follows:

LIVING LEGACY AWARD RECIPIENTS BIOGRAPHICAL DATA

Margaret Walker Alexander, 64, native of Birmingham, Alabama, for Literature. Honored for her contributions, her works include: For My People, Prophets for a New Day, October Journey and Jubilee (a novel).

Septima Clark, 91, of Charleston, South Carolina, being honored for Human Services. Ms. Clark is a former school teacher whose integrationist philosophy caused her to be fired from the public school system and to lose her retirement pay.

Dr. W. Montague Cobb, 75, of Washington, D.C., for Science and Health. A learned physician and professor of anatomy, Dr. Cobb was on the medical faculty at Howard University for 48 years and headed Howard's Anatomy Department for 22 years. He has authored 650 publications. Dr. Cobb is President of the National Board of Directors of the NAACP, a position he has held since 1976.

The Rev. Dr. Gloster B. Current, 65, of Long Island, New York, for Continued Service in Retirement. Prior to his retirement in May, 1978, he served for 30 years as Director of Branches and Field Administration for NAACP and organized 1,000 chapters. Following retirement, he was elected by branches of the NAACP to its National Board, received a grant from the Ford Foundation to write the history of NAACP from his unique historical vantage point and most recently appointed Bishop of New York Conference of the United Methodist Church as Interim Pastor of the Westchester United Methodist Church.

Malvin R. Goode, 71, of New York City, for Communications. First Black TV newsman for a network—ABC-TV. Native of White Plains, Va., worked 14 years for the "Pittsburgh Courier" and 13 years as news broadcaster for various Pittsburgh broadcast outlets.

The Hon. Augustus F. Hawkins, 72, of Los Angeles, California, for Politics. Congressman Hawkins represents the 29th District (Los Angeles). He and the late Senator Hubert H. Humphrey co-authored the Humphrey-Hawkins full employment bill which was passed in the final days of the first session of the 95th Congress.

The Rev. Martin Luther King, Sr., 80, of Atlanta, Georgia for Religion. He comes from a long line of Baptist ministers. His father, Rev. Alfred D. Williams founded Ebenezer Baptist church where "Daddy" King and his famous son, Martin, Jr., pastored. He has had courage in the face of great personal adversity, namely the assassinations of both his wife, Alberta, and his son, Dr. Martin Luther King, Jr.

Dorothy Maynor, 69, of New York City, for the Performing Arts. The native of Norfolk, Virginia is a concert contralto. She debuted at Town Hall in 1939 and won the Town Hall Endowment Series Award. She is an RCA recording artist. After retiring from the stage 15 years ago, founded the Harlem School of the Arts, where she's still active.

Dr. Benjamin E. Mays, 84 of Atlanta, Georgia, for Education. The President Emeritus of Morehouse College in Atlanta, Georgia. Mays' philosophy of education had a profound influence on the success of countless distinguished men of Morehouse. His students included the Rev. Dr. Martin Luther King Jr. Since his retirement from Morehouse, he has been serving as President of the Atlanta (Ga.) Board of Education.

Jesse Owens, 65, of Chicago, Illinois, for Sports. Set records in track and field that stood for a quarter century. First athlete to win four Gold medals at the Olympics. That outstanding feat occurred at the Berlin Olympics in 1936.

Rosa L. Parks, 66, of Detroit, Michigan, for Social Action. Her determination not to budge from the seat she rightly occupied in the "colored" section of the bus, sparked the Montgomery Bus Boycott on December 1, 1955. The Boycott thrust young Baptist Minister, the Rev. Martin Luther King, Jr., into the forefront of the civil rights—passive resistance movement.

A. Phillip Randolph, 90, of New York City, for labor. Organized Blacks who worked as sleeping car porters on the nation's railways into a union known as the Brotherhood of Sleeping Car Porters. Became its President and retained that position until his retirement in 1968. In 1957 became a Vice President of the AFL-CIO and still serves on its Executive Council. Organized and directed the March on Washington in 1941 which led President Franklin D. Roosevelt to appoint the First Fair Employment Practices Committee.

Asa T. Spaulding, Sr., 75, Durham, North Carolina; for Business. Former President of North Carolina Mutual Life Insurance Company. Became a member of the Board of Directors of Howard University in 1961 and served until 1976. Was Board Chairman when he retired three years ago. Still serves as consultant to Howard U. President Dr. James Cheek. Active in local politics in Durham County. Serves as Chairman of his precinct.

James Van Derzee, 93, of New York City, for Fine Arts. The Dean Emeritus of Black Photographers in America. Self-taught photographer whose works represent a comprehensive survey of Afro-American life during the Harlem Renaissance. Largest single contributor to "Harlem on My Mind" exhibition at the Metropolitan Museum of Art in 1969. Won the American Society of Magazine Photographers Award in 1969. Became a "Fellow for Life" of the Metropolitan Museum of Art in 1970.

Robert C. Weaver, 72, of New York City, for Government. Has the distinction of being the first Black man to hold a cabinet position in the U. S. Government. The former secretary of the U. S. Dept. of Housing and Urban Development entered government in 1933 and held many advisory and administrative positions. He is the author of four books and holds 30 honorary degrees from institutions throughout the nation.

Charles H. Wesley, 82, of Wilberforce, Ohio, for Social Sciences. Distinguished educator and the author of numerous books on Negro history and the histories of fraternal societies. Retired President of Central State University in Wilberforce. He is the recipient of numerous honors and awards.

Roy Wilkins, 78, of New York City, for Civil Rights. Executive Director of the NAACP from 1964 until his retirement in August, 1977. He has been affiliated with the NAACP in various leadership positions for nearly a half century, representing the organization during the Philadelphia Transit Strike negotiation in 1943. He began his illustrious career as a journalist, serving as editor and newspaper columnist for Crisis Magazine and wrote articles for many other journals.

LIVING LEGACY AWARD RECIPIENTS HONORED AT WHITE HOUSE

WASHINGTON, D.C.—Fifteen of the nation's most distinguished Black elders are being honored at the White House today (February 23) for their outstanding contributions to American society. These older Black Americans, who range in age from 64 to 93, are recipients of Living Legacy Awards given by the National Caucus on the Black Aged, Inc.

NCBA's Living Legacy Program is a celebration of life in Black America, its resources, leaders and the contributions older Black citizens have made to the advancement of our country in all areas of civic and social life, according to Dr. Dolores Davis, Executive Director of the National Center on Black Aged, and creator of the program.

President Carter will confer the awards during a special luncheon and ceremony in the State Dining Room. Those being honored are Septima Clark for Human Services; Dr. W. Montague Cobb for Science and Health; the Rev. Dr. Gloster Current for Continued Service in Retirement; Malvin R. Goode for Communications; Cong. Augustus Hawkins for Politics; the Rev. Martin Luther King, Sr. for Religion; Dorothy Maynor for the Performing Arts; Dr. Benjamin Mays for Education; Jesse Owens for Sports; Rosa L. Parks for Social Action; Dr. Asa T. Spaulding for Business; James Van DerZee for the Fine Arts; Dr. Robert C. Weaver for Government; Dr. Charles H. Wesley for Social Sciences and Roy Wilkins for Civil Rights. Two other re-

cipients who will be unable to attend the ceremony are: A. Phillip Randolph for Labor and Margaret Walker Alexander for Literature.

"We feel these older Black persons represent the highest virtues of humanity," explained Dr. Aaron Henry, Chairman of the National Caucus. "They exemplify the Black man's determination to survive against unique and oft-times oppressive odds, and are sterling examples to the Black youth of America that these odds can be overcome with dignity and preservation of self-worth," he added.

Davis pointed out that this is the first time in the nation's history that older Black Americans as a group have been invited to the White House to receive acclaim for their lifelong talents and contributions. More than 100 representatives of civic, social and aging organizations will be guests at the historic ceremony which begins at 12 noon.

NCBA launched its Living Legacy Awards program on February 1 in conjunction with the first day of Black history month. The purpose of the program is to promote a positive view of Black aging in America; to sensitize the nation's citizens to the significant contributions of older Black persons, and to record for Black progeny the experiences of these outstanding citizens.

"Like our African ancestors before us, we believe in honoring our elders while they live. They are at the one end of our cultural continuum, our youth at the other . . . and we continue to revere and honor them," said Davis.

The experiences and wisdom of these Black elders, who will serve as "Living Legacies" will be recorded and provided to the Black youth of America as oral histories. NCBA is planning to compile a volume of oral histories stemming from dialogue between each award recipient and a younger person for whom the elder has served as mentor.

The recipients will serve as prototypes for more than 100 elderly Black persons who will be honored at a Gala during NCBA's national conference in May. All major national Black organizations will be asked to participate by identifying and nominating resourceful elderly Blacks from their communities to be honored.

The National Caucus on the Black Aged, Inc. (NCBA) was founded in September, 1970 by the late Hobart C. Jackson to ensure that the 1971 White House Conference on Aging would include information on the critical and special needs of aging and aged Blacks. The Caucus, incorporated in Pennsylvania in 1972 as an advocacy organization, established the National Center on Black Aged in 1973 to conduct research and training and to direct national demonstration projects in the field of aging. Working together, the NCBA's are the only two national organizations devoted exclusively to solving the problems of the Black elderly.●

STUDY MISSION TO LATIN AMERICA

● Mr. MATHIAS. Mr. President, President Carter's recent trip to Mexico highlights for us, once again, the vital importance of our relations with our neighbors to the South. All too often we have operated on the assumption that Latin America does not require consistent, sensitive, and high level attention. During my recent trip to both Mexico and Brazil, I realized how badly this assumption needs to be reevaluated. The report prepared on this trip may be useful to my colleagues. I, therefore, ask that it be printed in the RECORD.

The report follows:

STUDY MISSION TO LATIN AMERICA

In November 1978, I went to Brazil and Mexico as a member of the Committee on the Judiciary to investigate several matters of interest to the Committee. In Brazil, I attended a conference which brought together both government and private sector representatives from all over Latin America. In Mexico, I devoted much of my attention to the subject of oil. I was accompanied on this trip by Mr. Casimir Yost, a member of my staff.

Both of these trips helped to underscore for me the great importance of our future national interests of developments taking place south of our border. This report is intended to highlight some of these developments. It focuses on Brazil and Mexico, two countries which will be of particular importance to the United States in the years ahead.

(It is important that in focusing increased attention on our southern neighbors we not neglect the continuing critical importance of our relations with Canada, our northern neighbor.)

Every new Administration arriving in Washington must grapple with the special problems and opportunities that Latin America poses for U.S. policymakers.

Unfortunately, too often our policies toward our neighbors to the south have flowed from skewed impressions which we have found it convenient to hold regarding Latin American countries and their relative significance for U.S. national interests. We have, in recent years, operated on the assumption that Latin America does not require sustained high level U.S. attention. Rarely have Latin American concerns found their way to the top of a U.S. administration's priority list. (The Panama Canal Treaties have been an obvious exception in recent years.) When guilt occasionally intrudes on our policy of neglect, it is easily relieved by a combination of slogans, money and state visits.

To the degree that we do think of South and Central America, it has generally been as an undifferentiated mass which can be dealt with in a paternalistic manner. We delight in telling Latin Americans what concerns us about them. But key individual relationships with southern neighbors have suffered and continue to suffer either from being ignored or from being lumped as part of a general Latin American problem or issue, or worse as part of a so-called "global issue".

Ever since the enunciation of the Monroe Doctrine, we have, to one degree or another, separated our Latin American relationships from our relations with other countries. More recently, however, a number of Latin concerns have been lumped under "global" headings. We have tried to deal with trade issues and other questions of interest to Latin Americans in multilateral forums where South and Central Americans vie with Africans and Asians for our attention. The special U.S. concern for Latin America, which was at the foundation of the Monroe Doctrine, has been eroded.

Of course, Latin American perceptions of us are also important in understanding how our relations have evolved over the years. The checkered history of past U.S. interventions in that part of the world has not been forgotten. The continued fact of our preponderant economic and military power is not ignored. Our southern neighbors are ever conscious of being in bed with an elephant which may, unthinkingly, roll over and crush them. The motives behind our every move receive a scrutiny in Latin America that most people in this country would find amazing.

There is much that we can do to bring our perceptions into focus with reality and perhaps in the process dampen some Latin American fears of our intentions.

We can begin by understanding the enormous variety that exists in Latin America today. There are sharp variations in language, heritage, and economic development between the countries of Latin America. Brazil and Mexico, for example, speak different languages, have different roots in Europe, yet both are "middle income" powers with the potential to play major roles on the world scene in the decades ahead. Other South and Central American countries are in varying stages of economic development. Our recognition of these differences in our attitudes and policies can be important.

Economic clout is coming to the Americas. Venezuela was a founder of OPEC. Brazil has the eighth largest market economy in the world. Mexico sits on potentially huge petroleum reserves. Brazil and Mexico alone account for one-quarter of our trade with the non-OPEC Third World. These countries are destined to play important roles on the world scene in the decades ahead.

Yet, even understanding these factors will not help us if we do not address the issues which concern Latin Americans. State visits, while flattering, are ultimately no substitute for substance. The issues on which friends in the Americas want our action are tough but ultimately important to both sides. Specifically, they want concrete action on debt question and commodity issues. They want improved access to capital markets to spur their development. They want improvement in the terms of trade. Above all, they want to be able to sell their produce to us. Until we confront these issues, we will be seen as largely unresponsive to their concerns.

These issues relate to the improved status of many Latin American countries as middle-income countries. At a time when our foreign assistance is increasingly being channeled to the poorest countries of the world, many nations in South and Central America are ineligible. What they do need is action on issues such as those listed above which will permit them to become more fully functioning members of the world economic community.

Our responses on these issues will come partially through multinational forums and multinational agreements. Trade issues, for example, are an integral part of the general North/South dialogue. South and Central American concerns are part of these more generalized discussions. In concentrating on these global concerns, however, we run the risk of compromising increasingly important bilateral relationships. Two nations of particular importance are Brazil and Mexico.

BRAZIL

I was last in Brazil in March 1977 when, it is safe to say, Brazilian/U.S. relations were at their lowest point in many years. The two most visible irritants were our public criticisms of alleged Brazilian human rights violations and our overt attempt to stop the consummation of Brazil's nuclear reactor contract with West Germany.

Lurking somewhat further in the background other issues troubled the U.S./Brazil relationship. The new Administration in Washington seemed intent on sacrificing bilateral relationships on the altar of "globalism". Moreover, voices in Washington continue to criticize what they claimed was the repressive nature of Brazil's political system.

When I returned to Brazil in November 1978, I found our relations to be on a sounder footing. The irritants which had been troublesome in early 1977 remained to some

degree, but were being discussed in a more constructive and private manner. I was particularly pleased to find that the domestic political scene in Brazil was evolving in a progressive direction. I arrived the day after their congressional elections had been held. This is just one example of a gradual Brazilian effort to open the political process to opposition elements. While the pace of this effort remains uncertain, the direction is positive.

Brazil has traditionally had close relations with the United States. We have valued Brazil's support of Western positions in world forums. In the economic field, 21 percent of Brazil's exports go to the United States, we supply 18 percent of Brazil's imports, and our banks supply close to a third of Brazil's debt. In each of these categories, we are Brazil's largest partner.

However, Brazil is determined to chart an independent course from that of the United States. It is determined to play a role on the world scene commensurate with its size (fifth largest country in the world), population (sixth most populous with 115 million inhabitants), and economic clout (eighth largest Western economy with a 1977 GNP of $167 billion).

Seen in this light, Brazil's reaction to our interference in their nuclear reactor deal with West Germany was predictable. They viewed this deal not only as a means to alleviate Brazilian dependency on imported energy but as a clear illustration of Brazil's enhanced role in the world. Brazil wants to control the full nuclear fuel cycle and thereby enter the select nuclear club. Our interference was taken as an affront to her dignity and sovereignty.

This is not to say that Brazil does not have problems—some of which might benefit from our help. It has been unable or unwilling to grapple with terrific income distribution disparities. The annual inflation rate approaches 40 percent and indexing of wages only partially alleviates the resulting problems. A huge foreign debt ($40 billion) incurred to fuel rapid economic development in the late 60's and 70's hangs over Brazil. Debt servicing alone runs $8 billion a year. Brazil relys on its export earnings to generate the foreign exchange necessary to service her debt and pay for her imports. These earnings, of course, depend upon the health of the international economy. Moreover, since 1973, Brazil's energy import costs have risen dramatically.

Brazil finds herself perched percariously somewhere between the underdeveloped Third World and the developed West. She cannot, for example, join the Third World chorus for debt relief because she will rely on new debt herself in the future. She is eager to take a leadership role in the Third World arena but not at the expense of her own interests.

For the United States to deal with Brazil constructively, we must be willing to address ourselves to the issues—largely economic—which concern her. Brazilians recognize that their fate is, in part, tied to ours. An economic recession in our country would inevitably have negative repercussions in Brazil. What Brazilians want and need, however, is U.S. movement on commodity, trade, and technology transfer issues. If Brazil's economy is to maintain its impressive growth rate, her commodities must be traded in a more predictable pricing environment. She must have access to our markets and to our technology.

There is a general feeling in Brazil that our response on these issues has been inadequate. There is some feeling among Brazilians that, on the issues they consider important, they don't like being merely part of a larger U.S. "global" foreign policy. Brazil's Foreign Minister, Azerdo Da Silveira put the case very delicately in a recent speech. "Under the pressing demands of its global interests and responsibilities," he said, "the United States sometimes transplants to its Latin American policies values not necessarily applicable to the region."

We stand to gain from a more positive relationship with Brazil. Brazil is indeed, to use Dr. Brzezinski's words, "a new influential." Movement on economic issues can provide benefits for both countries. There are no easy answers to the problems which trouble our relationship. We are concerned, with good reason, about nuclear proliferation. Yet, this and other problems on our agenda with Brazil can be worked out constructively if we treat Brazil as a partner in the solutions.

MEXICO

When I visited Mexico in 1977, I met with President Jose Lopez Portillo. The President was determined at that time to establish more positive ties with the United States and to put his country on a sound economic footing. On my return to Mexico in November 1978, I found that President Lopez Portillo had achieved a measure of success on both of his goals, but that problems remain and new problems have arisen.

U.S./Mexican relations continue to be plagued by difficult but not insoluble differences. Neither country seems able to articulate what in fact the nature of the ties between our two peoples should be. Mexicans bridle at talk in our country of a "special relationship" which carries paternalistic overtones. On the other hand, neither do they want to be treated as just another Third World country. History, quite clearly, has had its impact on Mexican thinking. Past U.S. interventions in Mexican affairs are far from forgotten. There is an underlying Mexican suspicion of U.S. intentions.

The United States faces a similar dilemma. We have been unable to decide on a clear, consistent policy toward Mexico. Instead, a number of departments of the U.S. Government have formulated their own Mexican foreign policies. Actions have been taken by agencies of the U.S. Government on issues of vital concern to Mexico with relatively little analysis being given to the possible negative consequences of these actions to the general relationship. The impression given is that the general relationship doesn't matter, that only individual issues are of concern. I am certain that this is not the impression we want to create, but it is the one that exists. Two examples will suffice as illustration.

In 1977 the Mexican Government petroleum agency, PEMEX, conducted protracted negotiations with six U.S. gas companies regarding a major deal whereby Mexico would provide gas for the U.S. market. So confident were the Mexicans that the deal would go through that they commenced work on a gas pipeline to the U.S. border. Then in late 1977 the U.S. Department of Energy abruptly refused to approve the deal on pricing grounds and it fell through. President Lopez Portillo, who had overcome considerable internal opposition to negotiate with the U.S. in the first place was left, in his own words, "hanging by his paintbrush." The ladder had been pulled from under him. The harm done to our Mexican relations both by the substance and by the manner of implementation of DOE's decision was most unfortunate.

In October 1978, the U.S. Immigration and Naturalization Service announced without forewarning even to our Ambassador in Mexico City, that the fences located at key entry points for illegal aliens on the U.S./Mexican border would be rebuilt and strengthened. What was a minor news event in the United States was an issue of major proportions in Mexico. The so-called Tortilla Curtain had banner headlines south of the border.

In recognition that U.S./Mexican relations could use some high level attention, the Administration initiated a long overdue review of our policies toward our southern neighbor last fall. It remains to be seen what the practical results of this review will be. Suffice it to say that if our relations with Mexico are not "special", they are nonetheless different from virtually every other country in the world. There is increasing understanding that in some way these differences must receive their proper weight.

These differences include the fact that we have a 2,000 mile undefended border with Mexico. Moreover, there are over 7 million Mexican/Americans living in the States close to Mexico. Hispanic culture is an increasingly important component of our national culture. We do a massive $9 billion trade with Mexico—our fifth largest trading partner. Over 60 percent of Mexico's imports come from the United States. Practically speaking our ties with Mexico are close and are growing closer. It is often only in the actions of our governments that the closeness of our relations has not been reflected.

There is a tendency in this country to take our relations with Mexico for granted. We do so at our risk. There are developments, positive and negative, on the Mexican scene which could have important consequences for the United States.

Looking at the negative first—Mexico has one of the most unequal income distribution systems in the world. As much as 50 percent of the Mexican work force may be unemployed or underemployed. From 600,000 to 800,000 new workers enter the job market every year, but only some 150,000 new jobs per annum are being created. These problems arise out of one of the highest birth rates in the world—2.9 percent annual increase. Mexico's fertility rate is put at 6.1 children per woman in 1973–75 versus 1.8 in the U.S. Mexico's population of 65 million is projected to double by the year 2000. Half of this population is 16 years or younger. Mexico City is adding 750,000 people per year to its population of 13 million and may shortly become the biggest city in the world.

Population growth and massive unemployment contribute to a dangerous social time bomb. Illegal entry into the U.S. job market has acted as a safety valve. Even with the continued availability of this safety valve—far from certain—any Mexican government must grapple with very difficult human problems in the decades ahead. The ambitious Mexican family planning program will only have a long term impact. Dangerous social unrest cannot be ruled out. The implications of such unrest for U.S. interests cannot be ignored.

The news is not all bad, however, thanks to the discovery of sizable petroleum deposits in Mexico. I spent two days in November 1978 touring Mexico's southern fields and meeting with Pemex officials, including the Director Jorge Diaz Serrano. These officials are well-qualified and highly responsible. They were prudently conservative in their estimates of Mexico's hydrocarbon resources but found it difficult to contain their enthusiasm.

Petroleum reserves are labeled in descending order of certainty as proven, probable, and potential. Mexico has just officially increased its proven figure from 20 to 40 billion barrels putting it, according to Pemex, as Number 6 in the world behind the Soviet Union, Saudi Arabia, Iran, the United States and Kuwait. Probable reserves are estimated by Pemex at 44.6 billion barrels. Potential reserves are estimated to be from 200 to 300 billion barrels. At present, Mexico produces about 1.1 (mbd) billion barrels per day and exports a bit less than half of this. This production figure is expected to double by 1980 with about 1.1 mbd available for export. It is estimated that Mexico could have from 3 to 4.5 mbd production by 1985 depending on its production decisions.

Quite clearly this largely unexpected windfall will provide Mexico with a substantial foreign currency cash flow in the 1980's and beyond. How these funds are utilized will be of critical importance to Mexico's future. Whether Mexico will be able to use its wealth to generate the jobs necessary to alleviate the country's unemployment situation remains to be seen. Mexican government officials are aware of the pitfalls associated with their sudden oil wealth and appear determined not to repeat the mistakes of Venezuela and Iran.

Mexico could, by 1985, provide from 15 to 30 percent of U.S. petroleum import needs. However, important caveats must be attached to this projection. Many factors will go into Mexico's final decisions on petroleum production, beyond the convenient availability of the U.S. market.

In making their production decisions, Mexican government officials will have to weigh carefully the financial absorptive capacity of the Mexican economy. Aggravated inflation would be dangerous. Furthermore, in producing crude oil, Mexico is left with the problem of what to do with the resulting associated gas. The absorptive capacity for natural gas in the domestic Mexican market is limited. By turning down a Mexican gas deal, we may be persuading Mexican officials to put a relatively low ceiling on crude oil production. There are, after all, powerful voices in Mexico which say that the country's petroleum resources should be conserved underground for future generations. There are other voices which maintain that Mexico should move away from its close ties (i.e. dependence) on the U.S. market.

These are ultimately decisions that only the Mexicans themselves can make. These decisions are more apt to be taken with some thought to U.S. interests if the general U.S./Mexican relationship is a positive one. Those interests, as events in Iran only underscore, include having a geographically secure source of petroleum given our continued reliance on imported energy.

RECOMMENDATIONS

Energy is only one facet of a much larger relationship. Both the Mexicans and the United States must give careful thought to what this relationship means to both countries. We are, after all, connected by ties that are closer and growing closer. Many of our problems are shared. The solutions to these problems must be shared as well.

There are, however, specific actions which can be taken by the United States which would be constructive.

First, we can bring some improved sense of coordination and compatibility to the actions of our various departments of government toward Mexico. This goes beyond merely having a Mexico "coordinator." It means examining trade-offs and making uncomfortable choices. There has to be better understanding at the senior levels of our government of the linkages between decisions taken in such diverse areas as energy, immigration, and trade and the type of cooperation we can expect from Mexico in the future on issues we consider important. In short, the tone of our relationship must change and ultimately only the President can insure that occurs.

Second, we must not hold unrealistically high hopes regarding the Mexican petroleum bonanza. As I suggested above, Mexico will make its own production and marketing decisions on the criteria it considers important. We can, however, create a better atmosphere for those decisions if our dialogue with Mexican officials on energy matters is full and frank. There is no excuse for the President of Mexico ever to feel that the ladder has been pulled from under him at the last minute.

Third, on the subject of illegal immigration, I want to reiterate what I said following my trip to Mexico in 1977. Rather than applying unilateral regulations designed only to stem and reverse the tide of illegal immigrants, the U.S. should consider ways to encourage the Government of Mexico to initiate large-scale labor-intensive development programs in Mexico's rural areas, where most of the migrants originate. It seems clear that the Government of Mexico will need significant outside help if it is to address the task of absorption and resettlement without incurring a massive problem of social and political unrest. Relief measures that could also be considered include the exemption of the products of a Mexican rural development/resettlement plan from U.S. tariffs or other trade restrictions for a given period. While this idea could become unwieldy in practice (how to discriminate between "new development" products and others, for example), efforts should be made to find and establish concrete economic incentives for Mexicans to remain within their own development areas.

On this increasingly difficult issue, Mexican/U.S. relations are at a threshold. There are no easy solutions, indeed there may be only partial solutions. But, one thing is certain, the problem cannot be satisfactorily resolved by unilateral measures. Legislation, not reinforced by strong and effective programs to provide relief for persons who may be returned across the border, will create a grave threat to the stability of Mexico, a stability which is of vital concern to our own country.●

DELAWARE'S CHIEF JUSTICE LAUDS PUBLIC SERVICE

● Mr. BIDEN. Mr. President, the Delaware State Bar Association recently honored four distinguished Delawareans—former Gov. Elbert N. Carvel, and former U.S. Senators J. Caleb Boggs, J. Allen Frear, and John J. Williams—for their long and productive terms of service to the people of Delaware and the Nation.

The Honorable Daniel L. Herrmann, chief justice of the Delaware Supreme Court, was the principal speaker for the occasion. His remarks addressed the personal and public values of public service, as exemplified by the careers of the guests of honor.

Mr. President, I submit Chief Justice Herrmann's remarks for the RECORD as follows:

REMARKS OF CHIEF JUSTICE DANIEL L. HERRMANN

It is a privilege for me to participate today in this salute to four very distinguished Delawareans—all of whom I have counted as personal and greatly valued friends for many years—and all of whom I have held in highest esteem as public servants par excellence of our beloved State.

For their unquestionable integrity, for their reverence of the law, for the courage of their convictions, for their constant and unswerving devotion and dedication to the public welfare—not in terms of months or years—but in terms of decades and lifetimes—we pay tribute today to those four Delawareans the likes of whom, I daresay, we could not match today by any other four of equal stature and public regard.

As an aside, let me point out that two of our honorees, during their combined 16 years of governorships, appointed more good State judges than any other two governors I can think of. Indeed, one of our honorees had the good judgment to appoint me twice; and another of our honorees had the good judgment to accept my resignation from the Bench once.

And two of our honorees had much to do with the appointment of fine Federal judges of our U.S. District and Circuit; and one of those two as the nationally acclaimed "conscience of the Senate"—had much to do with putting a lot of Federal Judges to work on the various prosecutions his sensational one-man Senate investigations initiated over the years.

And we tender our acclamations to those distinguished sons of Delaware not only for what they contributed to the public weal in the 1940's, the 50's and 60's, but also for their continuing efforts and accomplishments in various civic and governmental capacities, even unto this year 1978.

Many lines of comparison could be drawn among the four whom we honor here today. But there is one common theme that stands above all others in their careers—the theme of sacrifice pro bono publico.

The careers of the men we honor today teach us all several important lessons. They exemplify the proposition that we must not believe that the statements of national purpose, as set forth in our basic national documents, are self-executing; that we must not believe that proclaiming ourselves "one nation under God", or that our verbal devotion to "equal justice under law", without more, is enough.

Their lives, dedicated as they have been to great public service, should make us realize that participation in turning those words into deeds is an exciting experience; should make us realize that each of us, no matter what our position in life may be, should participate in that process if the pledges of our great national documents are to be fulfilled and if our freedom is to be maintained.

Today, we face a crisis of confidence in our instruments of self-government, as the result of events which have occurred, in our times, in government at all levels.

We have seen trusted public officials lacking in commitment to the ethics and the high ideals of public office. We have seen moral corrosion, lack of concern for principle, a contempt for the fundamentals of our form of government and its sensitive institutions.

We are experiencing a disenchantment with government, a disillusionment with public officials that is critical to the point of becoming a national psychosis.

The careers of the men whom we delight to honor today should remind us that we must have a restoration and regeneration. We must knit ourselves together, to relearn the essential lessons of our past, to remember who we are.

We need to create a basis for the restoration of faith and confidence; to redevelop the capacity to hope and to trust. Most of all, we need once again to be able to trust our leaders and one another.

The single greatest error of our citizenry today, I believe, has been an unwillingness to participate in man's most difficult and most important activity—the business of self-government.

This reproach is not only to those who should have taken public office but declined. It is lodged also against those who have abandoned to others the vital business of choosing, of guiding, and of influencing those who do run our governmental affairs for us.

To refuse participation in public affairs is inexcusable; it is a rejection of the first law of nature: self-preservation.

Yet, too many have run out on the job—and out of a guilty conscience, have contrived a defense structure of simulated scorn of those in government and public office.

Many centuries ago, the Athenian philosoper Plato made a statement that has lived through the ages. He said: "The punishment that wise men suffer for indifference to public affairs is to be ruled by unwise men."

And from Rome's Cato we inherit this:

"To say that private men have nothing to do with government is to say that private men have nothing to do with their own happiness or misery; that people ought not to concern themselves whether they be naked or clothed, fed or starved, deceived or instructed, protected or destroyed."

Public life is, in many respects, a hard and demanding undertaking. But public life enables one to write one's own entry on the record of the affairs of men; and this, in the final analysis, is one of the most exhilarating and most exciting experiences of all.

I profoundly believe—and I am confident that our honorees today will agree—that in public service, honorably and faithfully rendered, there is a personal satisfaction and a personal reward unsurpassed in any other endeavors.

In public service lies a sure way for each of us to make a personal contribution to the preservation of our liberties, to the strengthening of our free institutions, and to the brightening of the prospects of Americans everywhere. Our goal should be to influence history, not merely to observe it. And the men. to whom we pay tribute here today, exemplify that proposition very well, indeed, by their lifetimes of public service. They chose, as Goethe put it, to be a hammer in life—not merely an anvil.

The careers of our honorees teach that it is not enough to lend our talents merely to discussing the issues and deploring their solutions and playing the armchair general and Monday morning quarterback; that it is not enough to retreat to suburbia where we can control our television sets and quickly tune out any serious documentary or discussion; that it is not enough to win our wars against crabgrass.

In a democracy, no government is better than the men and women who compose it; no government is stronger, or wiser, or more just than its people.

This event today, and the presence of these three eminent Delawareans, should remind us that we have an obligation to apply our education and talents to the solution of the public problems of our time:

The problems of civil rights and race regulations;

The problems of the courts and the administration of justice;

The problems of the aging and of equal opportunity for all;

The problems of pockets of chronic unemployment and unfair wages amidst the wonders of automation;

The problems of equal educational standards;

Of housing and urban renewal;

Of monopoly; mental illness; and taxation.

My friends, as Adlai Stevenson once said, "it is not the years in your life, but the life in your years that count."

Life is measured by more than the amount of money we make over the years, or the size of our houses, or even the number of children we may succeed in raising and educating.

It is measured by the contribution we've made over the years to the society of which we are a part and to which we owe so much, and by the reputation we leave behind for service to others.

Yale University's Kingman Brewster said not long ago that "Power and wealth can both be achieved by sheer acquisitive manipulation. But success (he said) even to the powerful and to the wealthy, is measured by the extent to which they feel that by what they have done, they have added something to the fulfillment of others."

And so—Senator Williams, Governor Carvel, and Senator Boggs: If you were concluding these remarks, I believe each of you might say something like the following to this assemblage:

At some stage of your lives, ladies and gentleman, come out of the comforts of private life into the turmoil, and the satisfactions, and the disappointment of public life.

We advise you to take life standing up boldly, not sitting down complaining, yawning, and waiting for a pension. You have a better chance than most to give a lot and, therefore, to take a lot out of life.

You must not stand aside from the great decisions of the times. For those tasks and those exciting opportunities, use the equipment that God and society have given you, and that your own industry each day improves.

Revert back to the memorable challenge of John F. Kennedy: "Ask not what your Country can do for you; ask what you can do for your Country!"

And Senator Williams, Governor Carvel and Senator Boggs—I believe you might close by saying something like this:

And what will your compensation be, you may ask, when it's all said and done?

Perhaps it will be a full life in the light of reality—instead of a half-life in the false glare of illusion. Perhaps it will be an awareness of personal worth which comes with purposeful living—wealth not easily entered in a bankbook.

Perhaps it will be the reward of a parent or a grandparent in the next Century when a child asks "Why are Americans still free when so many others in the World are not?"

For many it will be enough to know that they have been men and women of their time, and not fugitives from it.

For all, it may be enough to know that individual action is possible, that one has been capable of it, and that the individual is still, just as has always been the case, this State's and this Country's greatest source of strength.●

YOUTH ART MONTH

● Mr. WALLOP. Mr. President, on this first day of March I would like to recognize and express my support of the past observances of March as "Youth Art Month."

Senate Joint Resolution 19 is a resolution designating March 1979 as a time when new emphasis and understanding of the value in art education for children is recognized. This resolution was introduced in the Senate on January 23 and referred to the Judiciary Committee. Unfortunately the committee was not able to act on this resolution in time to allow the President to issue a proclamation proclaiming March as Youth Art Month. I feel it is necessary and appropriate to call attention to its importance just the same.

The Judiciary Committee is planning to amend Senate Joint Resolution 19, substituting the year 1980 for the present wording of 1979. By establishing a year's leadtime it is my hope that both Houses of Congress will have completed action on this measure and have it sent to the President for his signature well in advance of March of 1980.

Since 1961, Youth Art Month has been recognized by many States and associations. A national observance would enhance its importance and provide a means for coordinating the commemorative efforts, however, with or without the passage of legislation Youth Art Month continues to speak out on the need for educational emphasis on the arts for our children.●

AMENDMENT NO. 66 TO SENATE JOINT RESOLUTION 1—A BALANCED FEDERAL BUDGET

● Mr. DECONCINI. Mr. President, on February 26, I submitted an amendment to Senate Joint Resolution 1, printed amendment No. 66. I would like to clarify what that amendment is since it was not printed in the RECORD at that time.

Printed amendment No. 66 is identical to Senate Joint Resolution 2, a constitutional amendment submitted by myself and Senators GOLDWATER and STONE requiring a balanced Federal budget except in times of national emergency. It is my belief, Mr. President, that there is substantial sentiment in this Chamber and throughout the Nation for such a limitation. The American people, acting through their State legislatures, should be given an opportunity to address this issue and to make the vital decisions that it will entail. Frankly, I believe that unless Congress moves quickly in this matter we will be faced with the realistic prospect of a Constitutional Convention.

At this point, Mr. President, the prospect that a balanced budget constitutional amendment will be reported from the full Judiciary Committee or even its Subcommittee on the Constitution seems rather dim. It is for that reason that I have taken the unusual step of proposing to add a measure of such importance as a floor amendment. Let me reiterate that if we do not act, the American people will.

I ask that the text of the amendment be printed in the RECORD.

The text of the amendment follows:

S.J. RES. 2

SEC. 2. The following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

"ARTICLE —

"SECTION 1. In exercising its powers under article I of the Constitution, and in particular its powers to lay and collect taxes, duties, imports, and excises and to enact laws making appropriations, the Congress shall seek to assure that the total outlays of the Government during any fiscal year do not exceed the total receipts of the Government during such fiscal year.

"SEC. 2. No later than the twentieth day after the close of each fiscal year, the President shall—

"(1) ascertain the total receipts of the Government during such fiscal year, not including any receipts derived from the issuance of bonds, notes, or other obligations of the United States, and not including any receipts from any income tax surtax imposed under this article;

"(2) ascertain the total outlays of the Government during such fiscal year, not including any outlays for the redemption of bonds, notes, or other obligations of the United States; and

"(3) if the total receipts described in paragraph (1) are less than the total outlays described in paragraph (2), determine the percentage rate of income tax surtax, to be imposed as provided in section 3, which is necessary to provide an additional amount of revenue equal to the amount by which such total receipts are less than such total

outlays, and transmit to the Congress, by special message, the rate of income tax surtax so determined.

"SEC. 3. Subject to the provisions of section 4, an income tax surtax, at the rate determined and transmitted by the President under section 2—

"(1) shall be effective for the calendar year following the close of the fiscal year with respect to which the determination was made, or for so much of such calendar year for which such surtax is not suspended under section 4, and

"(2) shall apply, as an additional income tax for the period for which it is in effect, with respect to the income tax liability of each taxpayer which is attributable to the portion or portions of such taxpayer's taxable year or years which fall within such period.

The income tax liability attributable to a portion of a taxable year falling within a period shall be based upon the ratio of the number of days in the taxable year within such period to the total number of days in the taxable year.

"SEC. 4. In the case of a grave national emergency declared by Congress (including a state of war formally declared by Congress), the income tax surtax which would otherwise be in effect for a calendar year under section 3 may be suspended for such year, or a portion thereof, by a concurrent resolution agreed to by a rollcall vote of two-thirds of the Members present and voting of each House of Congress, with such resolution providing the period of time, if less than the whole calendar year, during which such surtax is to be suspended.

"SEC. 5. This article shall apply with respect to the first fiscal year beginning after the ratification of this article and each succeeding fiscal year.

"SEC. 6. The Congress shall have power to enforce this article by appropriate legislation."●

RULES OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

● Mr. RIBICOFF. Mr. President, pursuant to section 133B of the Legislative Reorganization Act of 1946, as amended, I submit herewith the rules of the Committee on Governmental Affairs.

RULES OF PROCEDURE ADOPTED BY THE COMMITTEE ON GOVERNMENTAL AFFAIRS, PURSUANT TO SECTION 133B OF THE LEGISLATIVE REORGANIZATION ACT OF 1946, AS AMENDED [1]

RULE 1. MEETINGS AND MEETING PROCEDURES OTHER THAN HEARINGS

A. *Meeting dates.* The committee shall hold its regular meetings on the first Thursday of each month, when the Congress is in session, or at such other times as the chairman shall determine. Additional meetings may be called by the chairman as he deems necessary to expedite committee business. (Sec. 133(a), Legislative Reorganization Act of 1946, as amended.)

B. *Calling special committee meetings.* If at least three members of the committee desire the chairman to call a special meeting, they may file in the offices of the committee a written request therefor, addressed to the chairman. Immediately thereafter, the clerk of the committee shall notify the chairman of such request. If, within three calendar days after the filing of such request, the chairman fails to call the requested special meeting, which is to be held within seven calendar days after the filing of such request, a majority of the committee members may file in the offices of the committee their written notice that a special committee meeting will be held, specifying the date and hour thereof, and the committee shall meet on that date and hour. Immediately upon the filing of such notice, the committee clerk shall notify all committee members that such special meeting will be held and inform them of its date and hour. If the chairman is not present at any regular, additional or special meeting, the ranking majority member present shall preside (Sec. 133(a), Legislative Reorganization Act of 1946, as amended.)

C. *Meeting notices and agenda.* Written notices of committee meetings, accompanied by an agenda enumerating the items of business to be considered, shall be sent to all committee members at least three days in advance of such meetings. In the event that unforeseen requirements of committee business prevent a three-day notice, the committee staff shall communicate such notice by telephone to members or appropriate staff assistants in their offices, and an agenda will be furnished prior to the meeting.

D. *Open business meetings.* Meetings for the transaction of committee or subcommittee business shall be conducted in open session, except that a meeting or portions of a meeting may be held in executive session when the committee members present, by majority vote, so determine. The motion to close a meeting, either in whole or in part, may be considered and determined at a meeting next preceding such meeting. Whenever a meeting for the transaction of committee or subcommittee business is closed to the public, the chairman of the committee or the subcommittee shall offer a public explanation of the reasons the meeting is closed to the public. This paragraph shall not apply to the Permanent Subcommittee on Investigations.

E. *Prior notice of first degree amendments.* It shall not be in order for the committee, or a subcommittee thereof, to consider any amendment in the first degree proposed to any measure under consideration by the committee or subcommittee unless a written copy of such amendment has been delivered to each member of the committee or subcommittee, as the case may be, and to the office of the committee or subcommittee, at least 24 hours before the meeting of the committee or subcommittee at which the amendment is to be proposed. This subsection may be waived by a majority of the members present. This subsection shall apply only when at least 72 hours' written notice of a session to mark-up a measure is provided to the committee.[2]

F. *Agency comments.* When the committee has scheduled and publicly announced a mark-up meeting on pending legislation, if executive branch agencies, whose comments thereon have been requested, have not responded by the time of the announcement of such meeting, the announcement shall include the final date upon which the comments of such agencies, or any other agencies, will be accepted by the committee.[3]

RULE 2. QUORUMS

A. *Reporting legislation.* Nine members of the committee shall constitute a quorum for reporting legislative measures or recommendations. (Sec. 133(d), Legislative Reorganization Act of 1946, as amended.) [4]

B. *Transaction of routine business.* Five members of the committee shall constitute a quorum for the transaction of routine business, provided that one member of the minority is present.[4]

For the purpose of this paragraph, the term "routine business" includes the convening of a committee meeting and the consideration of legislation pending before the committee and any amendments thereto, and voting on such amendments.[5] (Rule XXV, Sec. 5(a), Standing Rules of the Senate.)

C. *Taking sworn testimony.* Two members of the committee shall constitute a quorum for taking sworn testimony: *Provided, however,* That one member of the committee shall constitute a quorum for such purposes, with the approval of the chairman and the ranking minority member of the committee, or their designees. (Rule XXV, Sec. 5(b), Standing Rules of the Senate.)

D. *Taking unsworn testimony.* One member of the committee shall constitute a quorum for taking unsworn testimony. (Sec. 133(d)(2), Legislative Reorganization Act of 1946, as amended.)

E. *Subcommittee quorums.* Subject to the provisions of section 5(a) and 5(b) of Rule XXV of the Standing Rules of the Senate, and section 133(d) of the Legislative Reorganization Act as amended, the subcommittees of this committee are authorized to establish their own quorums for the transaction of business and the taking of sworn testimony.

F. *Proxies prohibited in establishment of a quorum.* Proxies shall not be considered for the establishment of a quorum.

RULE 3. VOTING

A. *Quorum required.* No vote may be taken by the committee, or any subcommittee thereof, on any measure or matter unless a quorum, as prescribed in the preceding section, is actually present.

B. *Reporting legislation.* No measure or recommendation shall be reported from the committee unless a majority of the committee members are actually present, and the vote of the committee to report a measure or matter shall require the concurrence of a majority of these members who are actually present at the time the vote is taken. (Sec. 133(d), Legislative Reorganization Act of 1946, as amended.)

C. *Proxy voting.* Proxy voting shall be allowed on all measures and matters before the committee, or any subcommittees thereof, except that, when the committee, or any subcommittee thereof, is voting to report a measure or recommendation, proxy votes shall be allowed solely for the purposes of recording a member's position on the pending question and then, only if the absent committee member has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded. All proxies shall be addressed to the chairman of the committee and filed with the chief clerk thereof, or to the chairman of the subcommittee and filed with the clerk thereof, as the case may be. All proxies shall be in writing and shall contain sufficient reference to the pending matter as is necessary to identify it and to inform the committee as to how the member wishes his vote to be recorded thereon. (Sec. 133(d), Legislative Reorganization Act of 1946, as amended.)

D. *Announcement of vote.* (1) Whenever the committee by rollcall vote reports any measure or matter, the report of the committee upon such measure or matter shall include a tabulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each member of the committee. (Sec. 133(d), Legislative Reorganization Act of 1946, as amended.)

(2) Whenever the committee by rollcall vote acts upon any measure or amendment thereto, other than reporting a measure or recommendation, the results thereof shall be announced in the committee report on that measure unless previously announced by the

[1] These rules of procedure govern the full committee and its subcommittees. Additional rules governing the procedure of the Permanent Subcommittee on Investigations begin on p. 17.

[2] Amended Oct. 1, 1975.

[3] Amended Oct. 1, 1975.

[4] Amended Feb. 4, 1977.

[5] Amended Nov. 7, 1973.

committee, and such announcement shall include a tabulation of the votes cast in favor of and the votes cast in opposition to each such measure and amendment thereto by each member of the committee who was present at that meeting. (Sec. 133(b), Legislative Reorganization Act of 1946, as amended.)

(3) In any case in which a rollcall vote is announced, the tabulation of votes shall state separately the proxy vote recorded in favor of and in opposition to that measure, amendment thereto, or recommendation. (Sec. 133 (b) and (d) Legislative Reorganization Act of 1946, as amended.)

RULE 4. CHAIRMANSHIP OF MEETINGS AND HEARINGS

The chairman shall preside at all committee meetings and hearings except that he shall designate a temporary chairman to act in his place if he is unable to be present at a scheduled meeting or hearing. If the chairman (or his designee) is absent ten minutes after the scheduled time set for a meeting or hearing, the senior Senator present of the chairman's party shall act in his stead until the chairman's arrival. If there is no member of the chairman's party present, the senior Senator of the committee minority present shall open and conduct the meeting or hearing until such time as a member of the majority enters.[6]

RULE 5. HEARINGS AND HEARING PROCEDURES

A. *Announcement of hearings.* The committee, or any subcommittee thereof, shall make public anouncement of the date, place, time and subject matter of any hearing to be conducted on any measure or matter at least one week in advance of such hearing, unless the committee, or subcommittee, determines that there is good cause to begin such hearing at an earlier date. (Sec. 133A(a), Legislative Reorganization Act of 1946, as amended.)

B. *Open hearings.* Each hearing conducted by the committee, or any subcommittee thereof, shall be open to the public unless the committee, or subcommittee, determines that the testimony to be taken at that hearing may (1) relate to a matter of national security, (2) tend to reflect adversely on the character or reputation of the witness of any other individual, or (3) divulge matters deemed confidential under other provisions of law or Government regulations. (Rule XXV, Sec. 7 (b), Standing Rules of the Senate.)

C. *Radio, television, and photography.* The committee, or any subcommittee thereof, may permit the proceedings of hearings which are open to the public to be photographed and broadcast by radio, television or both, subject to such conditions as the committee, or subcommittee, may impose. (Rule XXV, Sec. 7 (c), Standing Rules of the Senate.)

D. *Advance statements of witnesses.* A witness appearing before the committee, or any subcommittee thereof, shall file a written statement of his proposed testimony at least one day prior to his appearance, unless this requirement is waived by the chairman and the ranking minority member, following their determination that there is good cause for failure of compliance. (Sec. 133A(c), Legislative Reorganization Act of 1946, as amended.)

E. *Minority witnesses.* In any hearings conducted by the committee, or any subcommittee thereof, the minority members of the committee shall be entitled, upon request to the chairman by a majority of the minority to call witnesses of their selection during at least one day of such hearings. (Sec. 133A (e), Legislative Reorganization Act of 1946, as amended.)

RULE 6. COMMITTEE REPORTS

A. *Timely filing.* When the committee has ordered a measure or recommendation reported, following final action, the report thereon shall be filed in the Senate at the earliest practicable time. (Sec. 133(c), Legislative Reorganization Act of 1946, as amended.)

B. *Supplemental, minority, and additional views.* A member of the committee who gives notice of his intention to file supplemental, minority, or additional views at the time of final committee approval of a measure or matter, shall be entitled to not less than three calendar days in which to file such views, in writing, with the chief clerk of the committee. Such views shall then be included in the committee report and printed in the same volume, as a part thereof, and their inclusion shall be noted on the cover of the report. In the absence of timely notice, the committee report may be filed and printed immediately without such views. (Sec. 133(e), Legislative Reorganization Act of 1946, as amended.)

C. *Draft reports of subcommittees.* All draft reports prepared by subcommittees of this committee on any measure or matter referred to it by the chairman, shall be in the form, style, and arrangement required to conform to the applicable provisions of the Standing Rules of the Senate, and shall be in accordance with the established practices followed by the committee. Upon completion of such draft reports, copies thereof shall be filed with the chief clerk of the committee at the earliest practicable time.

D. *Cost estimates in reports.* All committee reports, accompanying a bill or joint resolution of a public character reported by the committee, shall contain (1) an estimate, made by the committee, of the costs which would be incurred in carrying out the legislation for the then current fiscal year and for each of the next five fiscal years thereafter (or for the authoried duration of the proposed legislation, if less than five years); (2) a comparison of such cost estimates with any made by a Federal agency; or (3) a statement of the reasons for failure by the committee to comply with these requirements as impracticable, in the event of inability to comply therewith. (Sec. 252(a), Legislative Reorganization Act of 1970.)

RULE 7. SUBCOMMITTEES AND SUBCOMMITTEE PROCEDURES

A. *Regularly established subcommittees.* The committee shall have six regularly established subcommittees, as follows:

Permanent Subcommittee on Investigations.

Intergovernmental Relations.

Government Efficiency and the District of Columbia.

Federal Spending Practices and Open Government.

Energy, Nuclear Proliferation and Federal Services.

Civil Service and General Services.

B. *Ad hoc subcommittees.* Following consultation with the ranking minority member, the chairman shall, from time to time, establish such ad hoc subcommittees as he deems necessary to expedite committee business.

C. *Subcommittee membership.* Following consultation with the majority members, and the ranking minority member, of the committee, the chairman shall announce selections for membership on the subcommittees referred to in paragraphs A and B, above.

D. *Subcommittee meetings and hearings.* Each subcommittee of this committee is auauthorized to establish meeting dates and adopt rules not inconsistent with the rules of the committee.

E. *Subcommittee budgets.* Each subcommittee of this committee, which requires authorization for the expenditure of funds for the conduct of inquiries and investigations, shall file with the chief clerk of the committee, not later than January 10 of that year, its request for funds for the 12-month period beginning on March 1 and extending through and including the last day in February of the following year. Each such request shall be submitted on the budget form prescribed by the Committee on Rules and Administration, and shall be accompanied by a written justification, addressed to the chairman of the committee, which shall include (1) a statement of the subcommittee's area of activities; (2) its accomplishments during the preceding year; and (3) a table showing a comparison between (*a*) the funds authorized for expenditure during the preceding year, (*b*) the funds actually expended during that year, (*c*) the amount requested for the current year, and (*d*) the number of professional and clerical staff members and consultants employed by the subcommittee during the preceding year and the number of such personnel requested for the current year. (Sec. 133(g), Legislative Reorganization Act of 1946, as amended.)

RULE 8. CONFIRMATION STANDARDS AND PROCEDURES

A. *Standards.* In considering a nomination, the Committee shall inquire into the nominee's experience, qualifications, suitability, and integrity to serve in the position to which he or she has been nominated. The Committee shall recommend confirmation, upon finding that the nominee has the necessary integrity and is affirmatively qualified by reason of training, education, or experience to carry out the functions of the office to which he or she was nominated.

B. *Information concerning the nominee.* As a requirement on confirmation, each nominee shall submit on forms, prepared by the Committee, the following information:

(1) A detailed biographical resume which contains information relating to education, employment and achievements;

(2) A financial statement which lists assets and liabilities of the nominee; and

(3) Copies of other relevant documents requested by the Committee, such as a proposed blind trust agreement.

At the request of either the Chairman or the Ranking Minority Member, a nominee shall be required to submit a certified financial statement compiled by an independent auditor.

Information received pursuant to this subsection shall be made available for public inspection; provided, however, that tax returns shall, after review by persons designated in subsection (C) of this rule, be placed under seal to ensure confidentiality.

C. *Procedures for Committee inquiry.* The Committee shall conduct an inquiry into the experience, qualifications, suitability and integrity of nominees, and shall give particular attention to the following matters:

(1) A review of the biographical information provided by the nominee, including any professional activities related directly to the duties of the office to which he or she is nominated;

(2) A review of the financial information provided by the nominee, including tax returns for the three years preceding the time of his or her nomination;

(3) A review of any actions, taken or proposed by the nominee, to remedy conflicts of interest; and

(4) A review of any personal or legal matter which may bear upon the nominee's qualifications for the office to which he or she is nominated.

For the purpose of assisting the Committee in the conduct of this inquiry, a Chief Investigator shall be designated by the Chairman and a Minority Investigator shall be designated by the Ranking Minority Member. The Chairman, Ranking Minority Member, and the designated Investigators shall have access to all investigative reports on nominees prepared by any Federal agency, including the Federal Bureau of Investigation. The Committee may request the assistance of the General Accounting Office in conducting an audit of financial information provided by nominees.

[6] Adopted December 9, 1974.

D. *Report on the nominee.* After a review of all information pertinent to the nomination, a confidential report on the nominee shall be submitted to the Chairman and the Ranking Minority Member. The report shall detail any unresolved or questionable matters that have been raised during the course of the inquiry. Copies of all relevant documents and forms, except any tax returns, submitted pursuant to subsection (B) shall be attached to the report. The report shall be kept in the Committee office for inspection by Members of the Committee.

E. *Hearings.* The Committee shall conduct a public hearing during which the nominee shall be called to testify under oath on all matters relating to his or her suitability for office, including the policies and programs which he or she will pursue while in that position. No hearing shall be scheduled until at least 72 hours after the following events have occurred: the nominee has responded to prehearing questions submitted by the Committee; and the report required by subsection (D) has been submitted to the Chairman and Ranking Minority Member, and is made available for inspection by Members of the Committee.

F. *Action on confirmation.* A mark-up on a nomination shall not occur on the same day that the hearing on the nominee is held. In order to assist the Committee in reaching a recommendation on confirmation, the staff shall make an oral presentation to the Committee at the mark-up, factually summarizing the nominee's background and the steps taken during the pre-hearing inquiry.

G. *Application.* The procedures contained in subsections (C), (D), (E), and (F) of this rule shall apply to persons nominated by the President to positions requiring their full-time service. At the discretion of the Chairman and Ranking Minority Member, those procedures may apply to persons nominated by the President to serve on a part-time advisory basis.[7]

RULES OF PROCEDURE FOR THE SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS ADOPTED BY THE SUBCOMMITTEE ON INVESTIGATIONS

APRIL 17, 1977

1. No public hearing connected with an investigation shall be held without approval of either a majority of the subcommittee or a majority of the full Committee on Governmental Affairs. The ranking minority Member shall be kept fully appraised of preliminary inquiries, investigations and hearings. Preliminary inquiries may be initiated by the subcommittee staff upon the approval of the Chairman of the subcommittee and notice of such approval to the ranking minority Member or the minority counsel.

2. Subpenas for attendance of witnesses and the production of memoranda, documents and records shall be issued by the Subcommittee Chairman or by any other Member of the subcommittee designated by him.

3. The Chairman shall have the authority to call meetings of the subcommittee. This authority may be delegated by the Chairman to any other Member of the subcommittee when necessary. The Chairman shall not schedule any hearings or series of hearings outside the District of Columbia without giving at least 48 hours' notice thereof to the Members of the subcommittee.

No public hearing shall be held if the minority Members unanimously object, unless the full Committee on Governmental Affairs by a majority vote approve of such public hearing.

4. If at least three Members of the subcommittee desire the Chairman to call a special meeting, they may file in the office of the subcommittee a written request therefor, addressed to the Chairman. Immediately thereafter, the clerk of the subcommittee shall notify the Chairman of such request. If, within 3 calendar days after the filing of such request, the Chairman fails to call the requested special meeting, which is to be held within 7 calendar days after the filing of such request, a majority of the subcommittee Members may file in the office of the subcommittee their written notice that a special subcommittee meeting will be held, specifying the date and hour thereof, and the subcommittee shall meet on that date and hour. Immediately upon the filing of such notice, the subcommittee clerk shall notify all subcommittee Members that such special meeting will be held and inform them of its date and hour. If the Chairman is not present at any regular, additional or special meeting, the ranking majority Member present shall preside.

5. For public or executive sessions, any two Members of the subcommittee shall constitute a quorum for the administering of oaths and the taking of testimony in any given case or subject matter. With the permission of the Chairman and the ranking minority Member, one Member of the subcommittee shall constitute a quorum for the administering of oaths and the taking of testimony in any given case or subject matter, in public or executive sessions, effective until such time as the subcommittee by majority vote determines otherwise.

Five (5) Members of the subcommittee shall constitute a quorum for the transaction of subcommittee business other than the administering of oaths and the taking of testimony.

6. All witnesses at public or executive hearings who testify to matters of fact shall be sworn.

7. If, during public or executive sessions, a witness, his counsel, or any spectator conducts himself in such a manner as to prevent, impede, disrupt, obstruct, or interfere with subcommittee present during such hearing the Chairman or presiding Member of the subcommittee present during such hearing may request the Sergeant at Arms of the Senate, his representative or any law enforcement official to eject said person from the hearing room.

8. Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing, and to advise such witness while he is testifying, of his legal rights. *Provided, however,* That any Government officer or employee being interrogated by the staff or testifying before the committee and electing to have his personal counsel present shall not be permitted to select such counsel from the employees or officers of any governmental agency. This rule shall not be construed to excuse a witness from testifying in the event his counsel is ejected for conducting himself in such a manner so as to prevent, impede, disrupt, obstruct, or interfere with the orderly administration of the hearings; nor shall this rule be construed as authorizing counsel to coach the witness, answer for the witness or put words in the witness' mouth. The failure of any witness to secure counsel shall not excuse such witness from attendance in response to subpena.

9. Any witness desiring to read a prepared or written statement in executive or public hearings shall file a copy of such statement with the counsel or Chairman of the subcommittee 24 hours in advance of the hearings at which the statement is to be presented unless the Chairman and the ranking minority Member waive this requirement. The subcommittee shall determine whether such statement may be read or placed in the record of the hearing.

10. A witness may request, on grounds of distraction, harassment, or physical discomfort, that during his testimony, television, motion picture, and other cameras and lights shall not be directed at him, such requests to be ruled on by the subcommittee Members present at the hearing.

11. An accurate stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. The record of his own testimony whether in public or executive session shall be made available for inspection by witness or his counsel under committee supervision; a copy of any testimony given in public session or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be made available to any witness at his expense if he so requests.

12. Interrogation of witnesses at subcommittee hearings shall be conduced on behalf of the subcommittee by Members and authorized subcommittee staff personel only.

13. Any person who is the subject of an investigation in public hearings may submit to the Chairman of the subcommittee questions in writing for the cross-examination of other witnesses called by the subcommittee. With the consent of a majority of the Members of the subcommittee present and voting, these questions shall be put to the witness by the Chairman, by a Member of the subcommittee, or by counsel of the subcommittee.

14. Any person whose name is mentioned or who is specifically identified, and who believes that testimony or other evidence presented at a public hearing, or comment made by a subcommittee Member or counsel, tends to defame him or otherwise adversely affect his reputation, may (a) request to appear personally before the subcommittee to testify in his own behalf, or, in the alternative, (b) file a sworn statement of facts relevant to the testimony or other evidence or comment complained of. Such request and such statement shall be submitted to the subcommittee for its consideration and action.

If a person requests to appear personally before the subcommittee pursuant to alternative (a) referred to herein, said request shall be considered untimely if it is not received by the Chairman of the subcommittee or its counsel in writing on or before thirty (30) days subsequent to the day on which said person's name was mentioned or otherwise specifically identified during a public hearing held before the subcommittee, unless the Chairman and the ranking minority Member waive this requirement.

If a person requests the filing of his sworn statement pursuant to alternative (b) referred to herein, the subcommittee may condition the filing of said sworn statement upon said person agreeing to appear personally before the subcommittee and to testify concerning the matters contained in his sworn statement, as well as any other matters related to the subject of the investigation before the subcommittee.

15. All testimony taken in executive session shall be kept secret and will not be released for public information without the approval of a majority of the subcommittee.

16. No subcommittee report shall be released to the public unless approved by a majority of the subcommittee and after no less than 7 days' notice and opportunity for comment by the minority Members of the subcommittee unless the need for such notice and opportunity to comment has been waived in writing by a majority of the minority Members.

17. All staff members shall be confirmed by a majority of the subcommittee. After confirmation, the Chairman shall certify staff appointments to the Financial Clerk of the Senate, in writing.

18. The minority shall select for appointment to the subcommittee staff a Chief

[7] Adopted March 20, 1978.

Counsel for the minority who shall, upon being confirmed, work under their supervision and direction; who shall be kept fully informed as to investigations and hearings, have access to all material in the files of the subcommittee, and, when not otherwise engaged, shall do other subcommittee work.

[S. Res. 370, as amended by S. Res. 425. 95th Congress, 2d Sess.]

A resolution authorizing additional expenditures by the Committee on Governmental Affairs for inquiries and investigations.

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Governmental Affairs, or any subcommittee thereof, is authorized from March 1, 1978, through February 28, 1979, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $4,242,900, of which amount not to exceed $77,055 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee, or any duly authorized subcommittee thereof, is authorized to study or investigate—

(1) the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices, waste, extravagance, conflicts of interest, and the improper expenditure of Government funds in transactions, contracts, and activities of the Government or of Government officials and employees and any and all such improper practices between Government personnel and corporations, individuals, companies, or persons affiliated therewith, doing business with the Government; and the compliance or noncompliance of such corporations, companies, or individuals or other entities with the rules, regulations, and laws governing the various governmental agencies and its relationships with the public: *Provided*, That, in carrying out the duties herein set forth, the inquiries of this committee or any subcommittee thereof shall not be deemed limited to the records, functions, and operations of the particular branch of the Government under inquiry, and may extend to the records and activities of persons, corporations, or other entities dealing with or affecting their particular branch of the Government;

(2) the extent to which criminal or other improper practices of activities are, or have been, engaged in the field of labor-management relations or in groups or organizations of employees or employers, to the detriment of interests of the public, employers, or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interest against the occurrence of such practices or activities;

(3) syndicated or organized crime which may operate in or otherwise utilize the facilities of interstate or international commerce in furtherance of any transactions which are in violation of the law of the United States or of the State in which the transactions occur, and, if so, the manner and extent to which, and the identity of the persons, firms, or corporations, or other entities by whom such utilization is being made, what facilities, devices, methods, techniques, and technicalities are being used or employed, and whether or not organized crime utilizes such interstate facilities or otherwise operates in interstate commerce for the development of corrupting influences in violation of the law of the United States or the laws of any State, and further, to study and investigate the manner in which and the extent to which persons engaged in organized criminal activities have infiltrated into lawful business enterprise; and to study the adequacy of Federal laws to prevent the operations of organized crime in interstate or international commerce; and to determine whether any changes are required in the laws of the United States in order to protect the public against the occurrences of such practices or activities;

(4) all other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety;

(5) riots, violent disturbances of the peace, vandalism, civil and criminal disorder, insurrection, the commission of crimes in connection therewith, the immediate and long-standing causes, the extent and effects of such occurrences and crimes, and measures necessary for their immediate and long-range prevention and for the preservation of law and order and to insure domestic tranquility within the United States;

(6) the efficiency and economy of operations of all branches and functions of the Government with particular reference to—

(A) the effectiveness of present national security methods, staffing, and processes as tested against the requirements imposed by the rapidly mounting complexity of national security problems;

(B) the capacity of present national security staffing, methods, and processes to make full use of the Nation's resources of knowledge, talents; and

(C) the adequacy of present intergovernmental relationships between the United States and international organizations principally concerned with national security of which the United States is a member; and

(D) legislative and other proposals to improve these methods, processes, and relationships;

(7) the efficiency, economy, and effectiveness of all agencies and departments of the Government involved in the control and management of energy shortages including, but not limited to, their performance with respect to—

(A) the collection and dissemination of accurate statistics on fuel demand and supply;

(B) the implementation of effective energy conservation measures;

(C) the pricing of energy in all forms;

(D) coordination of energy programs with State and local government;

(E) control of exports of scarce fuels;

(F) the management of tax, import, pricing, and other policies affecting energy supplies;

(G) maintenance of the independent sector of the petroleum industry as a strong competitive force;

(H) the allocation of fuels in short supply by public and private entities;

(I) the management of energy supplies owned or controlled by the Government;

(J) relations with other oil producing and consuming countries;

(K) the monitoring of compliance by governments, corporations, or individuals with the laws and regulations governing the allocation, conservation, or pricing of energy supplies; and

(L) research into the discovery and development of of alternative energy supplies;

Provided, That, in carrying out the duties herein set forth, the inquiries of this committee or any subcommittee thereof shall not be deemed limited to the records, functions, and operations of the particular branch of the Government under inquiry, and may extend to the records and activities of persons, corporations, or other entities dealing with or affecting that particular branch of the Government.

(b) Nothing contained in this section shall affect or impair the exercise of any other standing committee of the Senate of any power, or the discharge by such committee of any duty, conferred or imposed upon it by the Standing Rules of the Senate or by the Legislative Reorganization Act of 1946, as amended.

(c) For the purpose of this section the committee, or any duly authorized subcommittee thereof, or its chairman, or any other member of the committee or subcommittee designated by the chairman, from March 1, 1978, through February 28, 1979, is authorized, in its, his, or their discretion (1) to require by subpena or otherwise the attendance of witnesses and production of correspondence, books, papers, and documents, (2) to holding hearings, (3) to sit and act at any time or place during the sessions, recess, and adjournment periods of the Senate, (4) to administer oaths, and (5) to take testimony, either orally or by sworn statement.

SEC. 4. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1979.

SEC. 5. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.●

THE DESIRABILITY OF MATCHING WORK FORCE AND WORK PLACE

● Mr. STEVENSON. Mr. President, our urban policies should encourage changes in residential patterns to facilitate the natural flow of workers to workplace. We should encourage a large portion of the disadvantaged to migrate from central cities to suburbs and nonmetropolitan areas where there is a growing number of jobs in industry and business. At the same time, we should encourage many of the affluent to move into urban centers where white-collar jobs are concentrated.

Unfortunately, current policies ignore both the importance of societal dynamics and the lessons of history. Though migration spurred by opportunity is evident throughout our history, current policies often serve to impede the natural growth of society, locking the poor into deteriorating pockets of central cities and sentencing the affluent to long and wasteful trips between suburbs and downtown offices.

Two recent articles provide clear evidence of the desirability of matching work force and workplace. The first article, in the Chicago Defender, points out that the most important factor in ending housing discrimination in the suburbs is the movement of industry and business to those areas and away from central cities. This has provided employment for large numbers of disadvantaged urban dwellers, some of whom are beginning to settle in suburbs near their jobs.

The second article, in the Chicago Tribune, summarizes a northeastern Illinois Planning Commission report which shows that daily trips of Chicago area commuters are approximately 20 percent longer today than in 1970.

Mr. President, I ask that these articles be printed in the RECORD.

The articles are as follows:

[From the Chicago Defender, Jan. 22, 1979]

FAIR HOUSING FOR BLACKS IN SUBURBIA BECOMING A REALITY—JOB OPPORTUNITIES IN OUTLYING AREAS ATTRACT BLACKS

The wall of discrimination against black families in the suburbs is still in place but not for long. It's being assailed in several powerful ways, for it no longer suits the times.

Fair housing laws, on the books since the sixties, are at last having their inevitable effect. According to the Northern Illinois Planning Commission, no Chicago suburb will now admit to any racial discrimination. The Gatreaux decision mandating public housing in the suburbs has moved housing authorities to experiment—successfully—with rent supplements outside the city.

And HOPE, Inc., a powerful fair housing group in DuPage County, is fighting an expensive and time consuming lawsuit in federal court against the county's board of commissioners, charging unlawful use of county ordinances concerning lot sizes, room sizes and cost of housing, to discriminate against low income people. U.S. Federal Judge Hubert Will is expected to rule on the case by the first of the year. If the ruling is favorable, as HOPE thinks it will be, it will be a tool for striking down housing discrimination, and the effect will be nation wide since the suit is in the federal court.

But by far the strongest factor in breaking down housing discrimination in the suburbs is the move of industry and business into outlying areas, and its need for workers. Suburbanites who wooed business into their towns find their fine taxpaying industries can't exist without a good labor pool. And if they want labor, there must be affordable homes for the workers to live in.

Black workers are already commuting in large numbers to the suburbs for jobs. From 1960 to 1970 "Reverse commuting" by city residents to the suburbs spread from small areas on the edge of the city to the entire city. (See accompanying map).

With that sort of mass movement in and out of the suburbs every day, it's only a matter of time before the workers find ways to live closer to their jobs.

One of the most practical and immediate aids to help suburbs accept black residents is a ring of fair housing groups that has been established throughout the suburban area. These groups perform many key services that promote fair housing and increased diversity of the housing stock.

They try, and often succeed, to turn around the climate of discrimination in their area. They exert pressure on local officials to eliminate discriminatory practices and ordinances. They put pressure on local housing authorities and developers to provide more low income housing. And they work with black people who want to move into the suburbs to find homes they can afford within the existing market.

Ted Brzyski, director of NIPC's housing study, maintains, "The whole housing ball game is in the Chicago suburbs now." He said in compiling the NIPC housing plan for the region he found that housing in the suburbs "isn't all that much more expensive. By the time you subtract the $50 a month for commuting and allow for the fact that you get more for your housing dollar in the suburbs than in the city, not to mention good schools, picturesque countryside and places where children can play, suburban housing is a better buy than city housing."

Brzyski emphasizes that "It takes a lot of ingenuity and help for blacks to find homes out there, but it can be done."

He mentioned Bellwood, Maywood, Hazelcrest and Evanston as areas with large black communities. Park Forest, Park Forest South and Oak Park are integrated communities with active fair housing programs and a commitment to staying racially diverse.

But Brzyski said the real frontier for integrating communities in the suburbs lies in the areas farthest from the city line where, so far, there is no threat of immediate inundation by minority people. Unfortunately, all black suburbs, such as Robbins and Phoenix, face most of the problems that plague inner-city black neighborhoods, he said.

Bernard Kleina, director of HOPE. INC. and the West Suburban Fair Housing Center says, "You can still expect a 50 percent chance of discrimination when blacks seek to buy or rent in Du Page County. So we provide an escort service to make sure that there is no discrimination."

Kleina says, "The cost of rental housing in the suburbs, while it is very high, is not that much greater than the cost of rental housing in the city. It's often newer and better maintained. And the density of the suburbs is less than in the city."

He added that black families no longer have to feel like pioneers when they move to the suburbs because almost every suburb has some minority families now.

NIPC's housing plan calls for 294,600 very low income homes for 587,597 families in the region right now. By 1985 NIPC says the region should have 440,260 units of lower income housing. The distribution would be as follows:

Subregion—Total estimated lower income housing needs through 1985, suburban Cook

North	33,992
Northwest	29,936
West	27,235
South	18,262
Southwest	25,051
Suburban Cook Total	134,476
DuPage	26,656
Kane	14,255
Lake	28,061
McHenry	5,934
Will	11,065
Chicago	219,813
N.E. Ill. Total	440,260

A good example of how a suburb can be comfortably integrated is Park Forest, at the far south end of Cook County. The town of 30,000 was one of the first of the planned communities built just after World War II

When black families moved into the formerly all white village, there was some stir, said Peter Garretson, a Park Forest realtor active in the local fair housing center. "But after the first five or six families settled, race ceased to be an issue." All areas of the village are integrated * * *.

Park Forest and its sister community, Park Forest South, offer good quality homes at affordable prices, excellent schools and a well maintained community for all races.

Oak Park on the West Side of the county is just now attempting to integrate by design. Rather than attempt to close blacks out, or than flee to further-out white suburbs, Oak Park people committed themselves to creating a stable integrated community.

NIPC says, "There is little doubt that stability has been maintained. Property values have increased and there has been no 'flight of the whites'. Oak Park offers large older homes and apartments in a stable, well-established urban setting just outside Chicago's city limits."

Homes for very large families are at a premium everywhere in suburbia. The housing stock for very low income families is especially scant, but efforts are being made to increase it.

Betty Nicholson, acting director of the South Suburban Housing Service, says, "There are just no apartments available for very large families in our area.

"And any really low-cost housing out here must be subsidized in one way or another because of high building costs."

[From the Chicago Tribune, Jan. 25, 1979]

ENERGY BATTLE BEING HURT IN LONGER RIDE TO WORK

One symptom of the spreading out of jobs from city to suburbs has alarming implications for the nation's energy situation.

Motorists in the Chicago area are driving longer distances nowadays, about 20 per cent longer, than they did in 1970.

The 1978 Regional Data Report by the Northeastern Illinois Planning Commission shows that 13.14 car miles were driven in 1976 for every man, woman, and child in the area.

Back in 1970 the figure was 11 miles.

Max Dieber, NIPC demographer, cautions that housing sprawl may be as much to blame as job sprawl. And, he notes, area residents are more affluent than they were in 1970.

Nevertheless, the steady increase in per capita miles occurred despite whopping increases in the price of gasoline, automobiles, and auto insurance.

One study by the University of Illinois at Chicago Circle found that Cook County residents consume far less energy each year (about 282 million BTU's) than residents of less densely populated areas like Lake County (485 million BTUs).

Another study found that the average Chicago driver burns only 7.5 gallons of gas each week, compared to 15 gallons a week used by drivers in thinly populated McHenry County.●

INTERGOVERNMENTAL COMMITTEE FOR EUROPEAN MIGRATION

● Mr. KENNEDY. Mr. President, after many years of distinguished service, John F. Thomas steps down today as director of the 33-nation Intergovernmental Committee for European Migration. For 10 years he has led ICEM through some of the more difficult as well as some of the most productive years of ICEM's history.

Named to succeed him is James L. Carlin, recently Deputy Assistant Secretary of State for Refugee and Migration Affairs.

As chairman of the former Subcommittee on Refugees, and from my work in the refugee and migration field, I have come to know both these men. And I know that even as we honor the long service of John Thomas, and his important contributions to ICEM, we can also be confident today that his record of leadership and service will be continued under Jim Carlin.

In the days ahead, ICEM will face many challenges as an organization, both budgetary as well as structurally. I pledge my continued support for current efforts to make ICEM more responsive to today's migration and refugee needs, and for streamlining its staff and revitalizing its role in the international migration and refugee field.

Mr. President, I ask that the announcement today from ICEM on the new director, and a statement on the distinguished service of John Thomas to ICEM, be printed in the RECORD.

The material follows:

NEW ICEM DIRECTOR TAKES OFFICE

James L. Carlin, a top-ranking administrator of U.S. Government refugee-migrant assistance programs oversees, took office at Geneva today (March 1) as Director of the 33-nation Intergovernmental Committee for European Migration (ICEM).

He succeeds John F. Thomas, who is retiring after serving as ICEM's Director since 1969. Both men are from Minneapolis.

Mr. Carlin, 57, former Deputy Assistant Secretary of State for Refugee and Migration Affairs, has worked more than 30 years in his field; he is regarded as one of the foremost international experts in the resettlement of refugees and migrants. The Council of ICEM elected him to a five-year term last November on nomination of the U.S. Administration supported by members of Congress concerned with refugee maters.

ICEM, with headquarters in Geneva, was established in 1951 to cope with then-dominant European problems. Expanding its operations over the years to meet new refugee situations, the organization has relocated more than 2.36 million persons in new homes and currently has programs in 31 countries around the world. Largest at present involve refugees in East Asia from Viet Nam, Cambodia and Laos, and the continuing flow of refugees from Eastern Europe to the West. ICEM expects to organize the movement and resettlement—in the United States and many other countries—of more than 120,000 persons in 1979.

A special ICEM program, involving smaller numbers of people, recruits and places highly-qualified personnel to aid in the economic and social development of less-industrialized nations, particularly in Latin America.

Although outside the United Nations system, ICEM works in close cooperation with the specialized U.N. agencies, especially the U.N. High Commissioner for Refugees (UNHCR) and with other international, regional and national humanitarian organizations including voluntary agencies.

Mr. Carlin has represented the United States at many sessions of international organizations including the governing bodies of UNHCR and ICEM. He is married to the former Annemarie Aeberhard of Geneva.

DIRECTOR OF ICEM HONORED BY THE UNIVERSITY OF MINNESOTA (USA)

John F. Thomas, Director General, Intergovernmental Committee for European Migration (ICEM) was honored by the University of Minnesota with the 1978 Outstanding Alumni Achievement Award. The award will be presented to Mr. Thomas on 20 May 1978 in Minneapolis. Dr. C. Peter Magrath, President of the University noted that Mr. Thomas was being singled out by his Alma Mater in recognition of his 33 years of service in the field of refugees and migration. As the University has granted over 288,000 degrees since its founding in 1873, the honor is a coveted one.

Mr. Thomas began his career in the refugee field on leaving the United States Army where he held the rank of Captain to join the United Nations Relief and Rehabilitation Agency (UNRRA) in 1945. His first post as Welfare Officer was in Displaced Persons' camps in Germany. He has actively participated in most of the major refugee situations occurring since 1945 including the Hungarian crisis in 1956, the out-movement of Asians from Uganda, the United States Cuban Refugee Program, the United States Refugee Program in South Vietnam and the Indochina Refugee Migration Program. Mr. Thomas became Director of ICEM which has its Headquarters in Geneva, Switzerland in 1969.

ICEM is an international organization which undertakes migration programmes on behalf of its 33 Member Governments in four continents. Over its 26-year history ICEM has assisted some 2,285,000 people to find new homelands abroad. 1,300,000 were refugees from different parts of the world and 985,000 were European Nationals who emigrated to overseas countries.

ICEM presently carries out migration movements of a large number of Indochinese refugees in cooperation with the United Nations High Commissioner for Refugees and the International Voluntary Agencies; movements of Jews and other migrants from the USSR; movements of persons authorized to leave Chile and other Latin American countries, as well as refugees from the Middle East and North Africa. Other migration programmes include recruitment in Europe and placement in Latin America of highly qualified European professionals and technicians to ensure a practical transfer of technology to these countries. The reunification of separated refugee and migrant families also represents an important task undertaken by the organization. In 1978, over 70,000 migrants and refugees will benefit from ICEM services.●

RULES OF PROCEDURE OF THE COMMITTEE ON VETERANS' AFFAIRS

● Mr. CRANSTON. Mr. President, section 133B of the Legislative Reorganization Act of 1970, as amended, requires each standing, select, or special committee of the Senate at the beginning of each session to publish in the CONGRESSIONAL RECORD the rules that the committee has adopted to govern procedures within the committee.

Thus, pursuant to that requirement, I ask that the current rules of the Committee on Veterans' Affairs be printed in the RECORD.

The material is as follows:

RULES OF PROCEDURE OF THE COMMITTEE ON VETERANS' AFFAIRS

I. MEETINGS

(a) Unless otherwise ordered, the committee shall meet on the first Wednesday of each month. The chairman may, upon proper notice, call such additional meetings as he deems necessary.

(b) Meetings of the committee or a subcommittee shall be open to the public except that, subject to the provisions of paragraphs (b) and (d) of rule 25.7 of the Standing Rules of the Senate, a portion or portions of any such meeting may be closed to the public if the committee so elects by a record vote of a majority of the members of the committee present.

(c) The chairman of the committee or of a subcommittee, or the vice chairman in the absence of the chairman, or the ranking majority member present in the absence of the vice chairman, shall preside at all meetings.

(d) No meeting of the committee or any subcommittee shall be scheduled except by majority vote of the committee or by authorization of the chairman of the committee.

(e) The committee shall notify the office designated by the Committee on Rules and Administration of the time, place, and purpose of each meeting. In the event such meeting is canceled, the committee shall immediately notify such designated office.

II. QUORUMS

(a) Subject to the provisions of paragraph (b), five members of the committee and four members of a subcommittee shall constitute a quorum for the reporting of legislative matters. Three members of the committee or a subcommittee shall constitute a quorum for purposes of transacting any other business.

(b) In order to transact any business at a committee or subcommittee meeting, at least one member of the minortiy shall be present. If, at any meeting, business cannot be transacted because of the absence of such a member, the matter shall lay over for a calendar day. If the presence of a minority member is not then obtained, business may be transacted by the appropriate quorum.

(c) One member shall constitute a quorum for the purpose of receiving testimony.

III. VOTING

(a) Votes may be cast by proxy. A proxy may be written or oral, and may be conditioned by personal instructions. A proxy shall be valid only for the day given except that a written proxy may be valid for the period specified therein.

(b) There shall be a complete record kept of all committee action. Such record shall contain the vote cast by each member of the committee on any question on which a "yea" and "nay" vote is requested.

IV. SUBCOMMITTEES

(a) No member of the committee may serve on more than two subcommittees. No member of the committee shall receive assignment to a second subcommittee until all members of the committee, in order of seniority, have chosen assignments to one subcommittee.

(b) The committee chairman and the ranking minority member shall be ex officio nonvoting members of each subcommittee of the committee.

(c) Subcommittees shall be considered *de novo* whenever there is a change in committee chairmanship and, in such event, subcommittee seniority shall not necessarily apply.

(d) Should a subcommittee fail to report back to the committee on any measure within a reasonable time, the chairman may withdraw the measure from such subcommittee and so notify the committee for its disposition.

V. HEARINGS AND HEARING PROCEDURES

(a) Except as specifically otherwise provided, the rules governing meetings shall govern hearings.

(b) At least 1 week in advance of the date of any hearing, the committee or a subcommittee shall undertake, consistent with the provisions of section 133A of the Legislative Reorganization Act of 1946, as amended, to make public announcement of the date, place, time, and subject matter of such hearing.

(c) The committee or a subcommittee shall require each witness who is scheduled to testify at any hearing to file such witness' testimony with the committee not later than 24 hours prior to the witness' scheduled appearance unless the chairman and ranking minority member determine there is good cause for failure to do so.

(d) The presiding officer at any hearing is authorized to limit the time allotted to each witness appearing before the committee or subcommittee.

VI. GENERAL

All applicable requirements of the Standing Rules of the Senate and of the Legislative Reorganization Act of 1946, as amended, shall govern the committee and its subcommittees.

VII. AMENDMENTS TO THE RULES

The rules of the committee may be changed, modified, amended, or suspended at any time, provided, however, that not less than a majority of the entire membership so determine at a regular meeting with due

notice, or at a meeting specifically called for that purpose. The rules governing quorums for reporting legislative matters shall govern rules changes, modifications, amendments, or suspension.●

THE OVERABUNDANCE OF FEDERAL REGULATION

● Mr. BOREN. Mr. President, one of the major causes of inflation and one of the major concerns of small business persons and individual citizens in this country is an overabundance of Federal regulation in virtually all aspects of American life.

For this reason, I am joining as a cosponsor of S. 265, by Mr. DOMENICI. The measure, entitled "Equal Access to Justice Act," provides compensation for attorney fees and costs to small businesses or individuals who prevail in either administrative or judicial litigation against the Federal Government when the Government cannot substantiate its position.

As I travel around my own State of Oklahoma I find that the most pressing issue on the minds of my constituents is the whole problem of dealing with the Federal bureaucracy, which citizens feel is growing and is dominating their lives. Surveys show that the American people in general feel the unresponsiveness of the Federal bureaucracy to be a major domestic problem.

Likewise, the overabundance of Federal regulations is a contributing cause of inflation.

Wasteful, unnecessary Government regulations add to business costs and are forcing prices up.

In a hearing in April 1978, a witness before the Joint Economic Committee estimated that the cost to business of meeting Federal regulations in 1979 would amount to more than $100 billion.

To put this figure into an even more staggering perspective, compare this $100 billion with the total amount of Federal income and corporate taxes received by our Government last year—some $350 billion. Thus, compliance with Federal regulations this year will total almost one-third of what it cost all citizens and all businesses to pay their Federal taxes last year.

This $100 billion figure amounts to almost $500 for every person in our country, and almost $2,000 for the typical family of four.

S. 265 is a first step toward discouraging the promulgation of needless and costly Federal regulations.

It will, I believe, encourage citizens and small business persons to challenge unfair regulations in court. Presently, prohibitive costs often cause many to fail to vindicate their rights by engaging in court proceedings.

With these costs being made the responsibility of the agency whose regulations are challenged, more citizens will have the incentive to go to court.

The problem of overregulation must be tackled. I support S. 265 and urge my colleagues to vote for its passage. We must reform our Federal bureaucracy to help cope with inflation. Above all, we must tackle this problem in order to bring our Government back into the hands of the people.●

RULES OF PROCEDURE FOR THE COMMITTEE ON THE BUDGET

● Mr. MUSKIE. Mr. President, I submit for the RECORD the rules of procedure for the Committee on the Budget.

The rules of procedure are as follows:

RULES OF PROCEDURE FOR THE COMMITTEE ON THE BUDGET

I. MEETINGS OF THE COMMITTEE

1. The Committee shall hold its regular meeting on the first Thursday of each month. Additional meetings may be called by the Chairman as he deems necessary to expedite Committee business.

2. Each meeting of the Committee on the Budget of the Senate, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the Committee or subcommittee, as the case may be, determined by record vote of a majority of the members of the Committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

(a) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(b) will relate solely to matters of the Committee staff personnel or internal staff management or procedure;

(c) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(d) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement; or

(e) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

(1) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(2) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.

II. QUORUMS

1. Except as provided in paragraphs 2 and 3 of this section, a quorum for the transaction of Committee business shall consist of not less than one-third of the membership of the entire Committee; provided, that proxies shall not be counter in making a quorum.

2. A majority of the Committee shall constitute a quorum for reporting legislative measures or recommendations; provided that proxies shall not be counted in making a quorum.

3. For the purpose of taking sworn or unsworn testimony a quorum of the Committee and each subcommittee thereof, now or hereafter appointed, shall consist of one Senator.

III. PROXIES

When a record vote is taken in the Committee on any bill, resolution, amendment, or any other question, a quorum being present, a member who is unable to attend the meeting may submit his vote by proxy if the absent member has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded.

IV. HEARINGS AND HEARING PROCEDURES

1. The Committee, or any subcommittee thereof, shall make public announcement of the date, place, time and subject matter of any hearing to be conducted on any measure or matter at least one week in advance of such hearing, unless the Committee, or subcommittee, determines that there is good cause to begin such hearing at an earlier date.

2. A witness appearing before the Committee, or any subcommittee thereof, shall file a written statement of his proposed testimony at least one day prior to his appearance, unless this requirement is waived by the Chairman and the ranking minority member, following their determination that there is good cause for failure of compliance.

V. COMMITTEE REPORTS

1. When the Committee has ordered a measure or recommendation reported, following final action the report thereon shall be filed in the Senate at the earliest practicable time.

2. A member of the Committee who gives notice of his intention to file supplemental, minority or additional views at the time of final Committee approval of a measure or matter, shall be entitled to not less than three calendar days in which to file such views, in writing, with the chief clerk of the Committee. Such views shall then be included in the Committee report and printed in the same volume, as a part thereof, and their inclusion shall be noted on the cover of the report. In the absence of timely notice, the Committee report may be filed and printed immediately without such views.

(NOTE. On February 8, 1979, the Committee voted to adopt an experimental procedure for the first round votes of the markup of the First Concurrent Resolution for FY 1980. Under this procedure, no Senator will be permitted to vote by proxy for such first round votes.)

PUBLIC SUPPORT FOR SALT GROWS TO 81 PERCENT

● Mr. CRANSTON. Mr. President, last June, an ABC News-Harris poll found that public support for SALT had risen steadily from 59 percent in 1976 and 66 percent in 1977 to an impressive 75 percent in 1978. A recent NBC-AP poll shows that public support for a new SALT agreement has continued to grow to the high point of 81 percent. And opposition to an "agreement which would limit nuclear weapons" dropped to a low of 14 percent. Just as encouraging were the responses to the more detailed questions asked by NBC and AP. They demonstrate widespread public understanding of the danger of nuclear war and SALT's relationship to U.S. national security. The poll found 80 percent of the respondents favored a SALT II agreement, because it would reduce the chances of war and/or slow down the arms race. And 57 percent felt that SALT II would strengthen our national security and only 27 percent thought we would be weaker with SALT.

As a Senator who believes the SALT II Treaty—when it is completed—should be weighed by its contribution to our national security, I am encouraged by these poll results. They show that Americans understand the grave dangers of the strategic weapons buildup, and accept the principle that the world will be more secure with limitation and reduction of those weapons than with unrestrained competition.

The President can continue his efforts to reach a good, verifiable, SALT II

agreement knowing that he is supported strongly by the American people.

Mr. President, I ask that the NBC-AP poll results on SALT be printed in the RECORD.

The poll is as follows:

FEBRUARY NATIONAL POLL

Following are highlights of the latest national telephone survey conducted jointly by NBC News and The Associated Press. This poll was taken on February 5–6, 1979. It included questions on President Carter's performance, relations with China, the proposed SALT II agreements with the Soviet Union, the U.S. economy, the federal budget and other matters. A total of 1,600 adult Americans were interviewed in this survey.

SALT II AGREEMENT

Public support for a new SALT agreement has reached a high point of 81%. Only 14% say they oppose a new pact and 5% are not sure of their views. The public clearly has fewer doubts about signing a new agreement than does the U.S. Senate, which must ratify any proposed document by a two-thirds vote. Many Washington observers believe the new pact will face strong and determined opposition in the Senate later this year.

Most Americans who favor the SALT agreements do so because they think it will reduce the chances of nuclear war. 60% of all SALT supporters cite this reason for backing the new agreement with the Soviets. The fear of such a war remains at relatively high levels, with nearly one-third of the public believing nuclear conflict involving the U.S. is likely in the next three years.

In addition to reducing the chances of war, some SALT supporters—20% of the total—say SALT will slow down the arms race. Another 10% of the pro-SALT respondents think the treaty will lead to lower defense spending and 5% think a new agreement will add to U.S. stature in the eyes of the world. Five percent say they are not sure why they support an agreement.

By a decisive 57% to 27% margin, Americans think the ratification of a new SALT document will strengthen, rather than weaken, U.S. security.

THE SOVIETS

On a related topic, fully two-thirds of the public—66%—think the Soviet Union poses the greatest threat to world peace today. 17% say China is the largest threat and 10% think the United States is the greatest threat to peace.

Finally, 44% of the public say President Carter has not been tough enough with the Soviets in his dealings with them, while 42% think the President has set the right tone in negotiating with the Russians. Only 2% say the President has been too tough and 12% are not sure of their views.

FOREIGN AFFAIRS

Limit nuclear weapons

Do you favor or oppose a new agreement between the United States and Russia which would limit nuclear weapons?

	Percent
Favor	81
Oppose	14
Not sure	5

Reasons for limiting nuclear weapons

Why do you favor such a treaty? Is it because the treaty would reduce the chances of war, or because it would slow down the arms race, or because it would cut defense spending, or because it would increase the status of the United States in the world?

	Percent
Reduce chances of war	60
Slow down arms race	20
Cut defense spending	10
Increase U.S. status	5
Not sure	5

Effect on national security

Do you think any such agreement limiting both sides' weapons would strengthen our national security or weaken it?

	Percent
Strengthen our security	57
Weaken our security	27
Not sure	16

Carter and Soviets

Do you think that President Carter has been too tough on the Soviets, not tough enough, or do you think he has set the right tone in his dealings with the Soviets?

	Percent
Too tough	2
Not tough enough	44
Right tone	42
Not sure	12

LOU BACHMAN RETIRES AS MANAGING EDITOR OF BRISTOL PRESS

● Mr. RIBICOFF. Mr. President, Lou BACHMAN, one of the best newspapermen I have ever known, has retired as managing editor of the Bristol Press. In a 40-year career in journalism, Lou Bachman earned the respect and admiration of his fellow reporters and his readers. He very much deserves his reputation for responsible, accurate, perceptive, and enterprising reporting and editing.

A friend of Lou Bachman expressed my own feelings about this fine journalist when he said of Lou:

For his qualities as a courageous craftsman in his chosen field of journalism, as a sensitive citizen of his beloved Bristol, and for his dedication to the highest standards of the profession, we salute Lou Bachman for his years of service with profound appreciation.

Lou has been a friend of mine for many years. The Bristol Press will continue to publish according to its own high standards and the standards set by Lou Bachman. Lou is an original, one of those persons who, once met, is never forgotten. And his impact and personality at the Bristol Press will be missed.

I wish Lou Bachman a happy and productive retirement.

Mr. President, I ask that an editorial from the February 5, 1979, Bristol Press and a February 3, 1979, news article on Lou Bachman's retirement be printed in the RECORD.

The material follows:

EDITOR LOU BACHMAN BOWS OUT

It was a little over two months ago, on December 1st, when the Lou Bachman retirement story broke. "A Feisty Lou Bachman Bows Out" was the head to the announcement of upcoming notable changes on the news and editorial side at The Press.

The February 1st retirement date seemed like some time off, back in early December. We still had that comfortable feeling. For so many years a goodly number of us at The Press felt reassured to have Lou Bachman on deck, in his strategic role at the helm in the news department. We knew he would steer the right course no matter what rough seas might develop. Now we face the reality. The nine weeks since December 1st have passed all too quickly.

During his almost 40 years at The Press, Lou Bachman did a great deal more than acquit himself on the job as a topflight journalist. Friends and admirers from near and far have sent in comments and tributes during these past few weeks. Lou's good deeds have been acknowledged and recognized on numerous occasions.

We could fill the equivalent space of many a "Downtown" column if we were to try to chronicle just a modest measure of "Mr. Downtown's" achievements and community services. While Lou was a strong party man in the political field, he was at the same time a friend and counselor to politicos on both sides of the aisle.

This special quality of Lou's that endeared him to many an individual was highlighted this past week in a resolution approved by the General Assembly. Governor Ella Grasso read the resolution during her surprise visit to The Press management team retirement luncheon for Lou last Friday.

State Senator Steve Casey (D.) and State Representative Ed Krawiecki (R.) collaborated in the preparation of the resolution honoring Lou Bachman's retirement and were responsible for having it introduced and approved by both houses of the General Assembly. Both of these youthful legislators had found it advantageous on more than one occasion this past year during their political campaigns to stop in and talk at some length with Press Editor Lou. He was as interested in talking with them as he had been in past years in talking with their dads, the later Mayor Jim Casey and former State Representative Ed Krawiecki, Sr. Thus here was an example of Lou's ability to bridge the generation gap as well as party labels, as the resolution pointed out.

Governor Grasso had some mighty nice things to say about Lou Bachman as she and her husband Tom came over to Chippanee last Friday noon to help honor her good friend of many years standing. While she chided him for his move out of the state, she gave a touching and dramatic tribute to Lou when she said, "I come here as Ella Grasso, who never would have been governor if it had not been for Lou Bachman." She was referring to the fact that Bachman was the first newsman to propose Mrs. Grasso for governor (as he did in his Downtown column) when she was Sixth District Congresswoman.

On the day Lou Bachman officially signed off his almost four decades with The Press, January 31, there was a Letter to the Editor in the Readers' Corner column on the Op-Ed page from which we want to quote. The letter was from a good friend of Lou's, Albert E. Jabs, former Bristol resident, now a professor at Vorhees College, Denmark, S.C. Jabs is the son of former Republican party stalwart Al Jabs, from the old First District.

Here is the quote from that mighty fine letter. We join with Professor Al Jabs when he writes about Lou Bachman in this manner:

"For his qualities as a courageous craftsman in his chosen field of journalism, as a sensitive citizen of his beloved Bristol, and for his dedication to the highest standards of the profession, we salute Lou Bachman for his years of service with profound appreciation."

In our 107 years as Bristol's newspaper (we will reach our 108th birthday on March 9, 1979), The Press and the community have benefited from some strong talent in the news department.

Those of us who have been fortunate enough to be fellow travelers with Lou Bachman would not hesitate to add his name to the select list of outstanding Press editors.

GRASSO ATTENDS DINNER SALUTING RETIRING EDITOR

Gov. Ella Grasso joined members of the Press management team Friday in honoring Lou Bachman, who retired earlier this week as the paper's managing editor.

Mrs. Grasso and her husband Tom were surprise guests at the Chippanee Country Club luncheon which was attended by Press management personnel and their spouses. Bachman and the governor have been close friends for years. The veteran journalist, who is ending a 40-year career, was the first state

newsman to propose Mrs. Grasso as a gubernatorial candidate while she was serving as Sixth District congresswoman.

"I come here today as Ella Grasso who never would have been the governor if it had not been for Lou Bachman," she said.

The governor had high praise for Bachman, saying, "They say that people are not irreplaceable, but I don't believe that anymore. Lou is one of those people who can't be replaced."

Mrs. Grasso chided Bachman concerning his plans to retire to a neighboring state. She vowed, "I will take the Governor's Horse Guard and the Foot Guard and attack at dawn and take you home where you belong."

The governor also read a joint resolution introduced before the Connecticut General Assembly commending Bachman for his service to city and state. The resolution was the combined effort of State Senator Steven Casey and Representative Edward Krawiecki, Jr.

It read in part: "Whereas, you have bridged the different generations of this city and state on both sides of the political aisle, with sound advice and genuine concern for the city and state you loved so dearly . . ."

Other presentations were made to Bachman by Don Gordon, managing editor; Joseph Zerbey, operations manager, and Publisher E. Bartlett Barnes, who also served as master of ceremonies for the informal affair.

Bachman's son John extended greetings from the family and Clarkson Barnes, former co-publisher of the Press, reminisced on his 35-year association with Bachman in the Press newsroom.●

MEDICARE HOME HEALTH AMENDMENTS OF 1979

● Mr. CHILES. Mr. President, I introduced recently with Senator DOMENICI, ranking minority member of the Committee on Aging, and other Senators, S. 489, a bill to make important changes in medicare's home health program.

During 1976, approximately 644,000 aged and disabled persons received medicare home health benefits. To qualify, an individual must be covered by medicare and must be in need of skilled nursing care or physical or speech therapy. Care must be prescribed by a physician and the patient must be confined to his or her home. Services must be provided by an agency which is certified to participate in medicare. To be eligible for home health services under part A hospital insurance, a beneficiary must also have been hospitalized for a period of not less than 3 days prior to receiving home health service must be for treatment of the same condition for which hospitalized.

The Medicare Home Health Amendments of 1979 would take important and realistic next steps to make home health care more available to older Americans, provide additional assurances of quality of care, and strengthen safeguards against provider fraud and abuse.

First, the bill would remove the requirement under part A that a patient be hospitalized for at least 3 days before becoming eligible for home health services.

Most medicare beneficiaries are covered by both part A and part B and therefore would be eligible for home health services under part B without prior hospitalization if all other eligibility criteria were met. For the approximately 900,000 beneficiaries who do not have part B insurance, however, this restriction has either meant: one, a complete denial of home health, no matter what the need, or two, an inappropriate and costly period of hospitalization for the sole purpose of establishing eligibility for home health services.

Removal of this restriction would make home health services available to many without part B coverage; prevent additional, unnecessary hospital charges to medicare; and change the prevalent image of home health care as simply a continuation of acute, inpatient hospital care to the community service it is intended to be.

Second, the bill would eliminate restrictions on the number of home health visits allowed under both part A and part B.

Current law limits visits to 100 per benefit period under part A, and 100 per calendar year under part B. Most home health beneficiaries do not exhaust the total allowed visits now, and do not need additional visits. Consequently, this change would not increase program costs significantly. But removing this restriction will ease a hardship for those who need additional visits and are denied service, because other resources are not available. It will also help prevent the situation I have observed in Florida and elsewhere in which public and voluntary home health agencies, such as visiting nurse associations, have been forced out of business entirely because they continue to provide services to patients who cannot pay and have exhausted medicare benefits.

Since the number of visit limitations were originally meant to be a control on unneeded visits, however, the bill would also require the Secretary of Health, Education, and Welfare to monitor changes in utilization patterns and institute other cost and utilization control mechanisms in the program.

Third, the bill would add occupational therapy services as a qualifying service for home health eligibility.

Occupational therapy is now an allowable home health benefit, but a patient must also be in need of skilled nursing or physical or speech therapy to be eligible. With this change, a need for occupational therapy alone could be met. This would mean that stroke patients, or persons with vision problems, for instance, who do not need skilled nursing care could remain in their homes with some help in adjusting to their new physical limitations. It would also mean that a recovering stroke victim, for instance, who is receiving both skilled nursing visits and occupational therapy would be able to continue with needed therapy services after the skilled nursing care is no longer required.

Fourth, the Secretary of Health, Education, and Welfare would be required to develop additional standards to insure service quality and appropriateness of care. Specifically addressed are requirements for training and supervision of home health aides, who spend the most time with homebound patients.

Additional areas I would like to see considered are guidelines for patient evaluation of service, patients' rights, patient assessment, and service availability.

Many home health agencies have already developed excellent standards of care, well beyond what is required by medicare. This proposal, therefore, would probably not necessitate changes for the majority of home health agencies.

Additional guidelines within medicare however, would insure the same quality of service from all participating agencies.

I have been concerned by reports describing great potential for patient abuse, because of inadequate training and supervision of some home care personnel. In most cases abuses have occurred under title XX and medicaid, rather than medicare. Quite clearly, additional actions must be taken by the Department, or by Congress, to insure quality of care within these programs. An important first step, however, can be taken within medicare, and the areas addressed will put us in a better position to evaluate options for other home care services.

The demand for home health care is growing, and we can expect it to continue with an expanding aging population. The needs are real, and we must be ready to meet them. We still do not have, however, the necessary controls in place to make sure that the same abuses we have seen in nursing homes and elsewhere do not occur in Federal home health programs.

Hearings I have chaired for the Federal Spending Practices Subcommittee, as well as hearings before the Committee on Aging and the House Ways and Means Committee, provide compelling evidence that some home health agencies have found it all too easy to profiteer under medicare.

We have found:

Excessive costs for salaries and fringe benefits, sometimes disguised as other costs;

Questionable, profitable contracts for supportive services;

Improper cost allocations;

Billings for services never received; and

Alterations of bills and receipts to increase medicare reimbursement.

This bill mandates a number of actions to help detect and deter such practices, building upon previous authority given to the HEW Secretary in the 1972 amendments to the Social Security Act and the Medicare-Medicaid Antifraud and Abuse Amendments, Public Law 95–142.

First, home health agencies would be required to provide a statement to the patient, listing services provided, personnel, and charges.

One common abuse is provider billings to medicare for services not rendered. This simple change would put the patient in a position to notify medicare if services being charged to the program were not received.

Second, the HEW Secretary would be required to develop and publish specific guidelines for allowable line-item ad-

ministrative and service costs for home health agencies.

Section 223 of the 1972 social security amendments established authority for the Secretary to set specific cost guidelines, within the meaning of "reasonable" costs, for all medicare-reimbursed services, including home health. A commitment has been made by the Department to establish guidelines for average costs per visit, based on total agency costs and total agency visits.

We need to look very carefully at specific administrative costs, however, and this bill would carry this process one step further.

Cost guidelines for items such as medical director salaries and contracts for supportive services, such as fiscal management, coupled with the uniform reporting requirements already authorized under Public Law 95-142, will enhance audit capability and improve detection of patterns of high costs, overutilization, and abuses of program funds. Specific administrative cost guidelines, with uniform reporting requirements, would also enable valid comparisons of costs from agency to agency for the first time.

As we have reportedly seen, however, efforts to maintain effective cost controls are sometimes beyond what was originally anticipated. We do not yet have good estimates of the costs which might be involved, both to providers and to medicare, with extensive additional reporting and audit requirements. For this reason, this bill does not require major changes to the reporting systems now being developed by the Secretary. We must carefully weigh the costs involved against the benefits we expect to derive from a better capability to detect abuse.

Third, designation of regional home health intermediaries, to serve home health agencies only, would be required.

Medicare intermediaries and carriers now process claims, determine allowable charges and reasonable costs, and perform the major audit function for all medicare reimbursements, including hospitalization, skilled nursing home care, medical services, and home health.

Claims for home health services represent a very small proportion of medicare reimbursements, about 2.5 percent during 1979. The result has been relative inattention given to home health by intermediaries.

Establishing home health intermediaries would recognize that home care is uniquely different from medicare's institutional benefits and make it possible to develop special home health expertise and knowledge within the intermediary system. With the improved guidelines for evaluating service quality and cost efficiency mandated in this bill, the creation of home health intermediaries would improve our ability to detect patterns of program abuse. It would also mean improved service to home health agencies and reduce the difference in interpretation of allowable services and costs which have occurred regularly from agency to agency and from one part of the country to another.

The Medicare Home Health Amendments of 1979 do not provide a complete solution to the many challenges we face in shaping an adequate home care policy for this Nation, but these are important steps which can and should help considerably in improving the existing situation.●

RULES OF THE COMMITTEE ON FOREIGN RELATIONS

● Mr. CHURCH. Mr. President, in accordance with the provisions of section 133B of the Legislative Reorganization Act of 1946, as amended, I am submitting the rules of the Committee on Foreign Relations for publication in the RECORD:

RULES OF THE COMMITTEE ON FOREIGN RELATIONS

(Adopted February 28, 1979)

RULE 1—COMMITTEE AND SUBCOMMITTEE MEETINGS

(a) Regular meeting day.—The regular meeting day of the Committee on Foreign Relations for the transaction of Committee business shall be on Tuesday of each week, unless otherwise directed by the Chairman.

(b) Each meeting of the Committee on Foreign Relations, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by the committee or a subcommittee on the same subject for a period of no more than fourteen calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in paragraphs (1) through (6) would require the meeting to be closed followed immediately by a record vote in open session by a majority of the members of the committee or subcommittee when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(2) will relate solely to matters of committees staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct; to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations.

A closed meeting may be opened by a majority vote of the Committee.

(c) Quorum requirements.—(1) A majority of the membership of the Committee shall constitute a quorum for reporting any measure or recommendation to the Senate. No measure or recommendation shall be ordered reported from the Committee unless a majority of the Committee members are actually present. The vote of the Committee to report a measure or matter shall require the concurrence of a majority of those members who are actually present at the time the vote is taken.

(2) A quorum for the transaction of Committee or subcommittee business, other than for reporting a measure or recommendation to the Senate or the taking of testimony, shall consist of one-third of the members of the Committee or subcommittee, including at least one member from each party.

(3) For the purpose of taking sworn or unsworn testimony at any duly scheduled meeting a quorum of the Committee and each subcommittee thereof shall consist of one member.

(d) Proxy voting.—Proxy voting shall be allowed on all measures and matters before the Committee. However, proxies shall not be voted for the purpose of reporting a measure or matter except when the absent member has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded. All proxies shall be in writing.

(e) Subcommittees.—Unless otherwise authorized by law or Senate resolution, subcommittees shall be created by majority vote of the Committee and shall deal with such legislation and oversight of programs and policies as the Committee directs. Legislative measures or other matters may be referred to a subcommittee for consideration in the discretion of the Chairman or by vote of a majority of the Committee. If the principal subject matter of a measure or matter to be referred falls within the jurisdiction of more than one subcommittee, the Chairman or the Committee may refer the matter to two or more subcommittees for joint consideration.

The Chairman of the Committee shall be an ex officio member, without vote, of each subcommittee.

(f) Subcommittee meetings.—Except when funds have been specifically made available by the Senate for a subcommittee purpose, no subcommittee of the Committee on Foreign Relations shall hold hearings involving reporting expenses without prior approval of the Chairman of the full Committee or by decision of the full Committee. Meetings of subcommittees shall be scheduled after consultation with the Chairman of the Committee with a view toward avoiding conflicts with meetings of other subcommittees insofar as possible. Meetings of subcommittees shall not be scheduled to conflict with meetings of the full Committee.

(g) Announcement of meetings.—The Committee, or any subcommittee thereof, shall make public announcement of the date, place, time and subject matter of any hearing to be conducted on any measure or matter at least one week in advance of such hearings, unless the Chairman of the Committee, or subcommittee, determines that there is good cause to begin such hearing at an earlier date.

(h) Assignments to subcommittees.—Assignments of members to subcommittees shall be made in an equitable fashion. No member of the Committee may receive assignment to a second subcommittee until, in order of seniority, all members of the Committee have chosen assignments to one subcommittee, and no member shall receive assignments to a third subcommittee until, in order of seniority, all members have chosen assignments to two subcommittees.

(i) Staff attendance at meetings.—A Member may have one member of his personal staff, for whom that Member assumes personal responsibility, accompany and be seated near him at committee meetings. Attendance of Committee staff at meetings shall be limited to those designated by the Staff Director or the Minority Staff Director.

Each member of the Committee may designate members of his personal staff, who hold a Top Secret security clearance, for the purpose of their eligibility to attend executive sessions of the Committee. The Committee, by majority vote, or the Chairman may limit staff attendance at specified meetings.

(j) Reporting requirements.—

(1) When the Committee has ordered a measure or recommendation reported, the report thereon shall be filed in the Senate at the earliest practicable time.

(2) A member of the Committee who gives notice of his intentions to file supplemental, minority, or additional views at the time of final Committee approval of a measure or matter, shall be entitled to not less than 3 calendar days in which to file such views, in writing, with the chief clerk of the Committee. Such views shall then be included in the Committee report and printed in the same volume, as a part thereof, and their inclusion shall be noted on the cover of the report. In the absence of timely notice, the Committee report may be filed and printed immediately without such views.

(3) The results of all rollcall votes taken in any meeting of the Committee on any measure, or amendment thereto, shall be announced in the Committee report. The announcement shall include a tabulation of the votes cast in favor and votes cast in opposition to each such measure and amendment by each member of the Committee.

RULE 2—NOMINATIONS

(a) Waiting requirement.—Unless otherwise directed by the Chairman and the ranking minority member, the Committee on Foreign Relations shall not consider any nomination until six days after it has been formally submitted to the Senate.

(b) Public consideration.—Nominees for any post who are invited to appear before the Committee shall be heard in public session, unless a majority of the Committee decrees otherwise.

(c) Required data.—No nomination shall be reported to the Senate unless (1) the nominee has been accorded a security clearance on the basis of a thorough investigation by executive branch agencies; (2) in appropriate cases, the nominee has filed a confidential financial statement with the Committee; (3) the Committee has been assured that the nominee does not have any interests which could conflict with the interests of the government in the exercise of the nominee's proposed responsibilities; and (4), for persons nominated to be ambassador or minister, the Committee has received a complete list of any contributions made by the nominee or members of his immediate family to any Federal election campaign during the year of his or her nomination and for the four preceding years.

RULE 3—WITNESSES

(a) General.—The Committee on Foreign Relations will consider requests to testify on any matter or measure pending before the Committee.

(b) Presentation by witnesses.—If the Chairman so determines, the oral presentation of witnesses shall be limited to ten minutes. However, written statements of reasonable length may be submitted by witnesses and other interested persons who are unable to testify in person.

(c) Filing of statements.—A witness appearing before the Committee, or any subcommittee thereof, shall file a written statement of his proposed testimony at least 48 hours prior to his appearance, unless this requirement is waived by the Chairman and the ranking minority member following their determination that there is good cause for failure to file such a statement.

RULE 4—COMMITTEE TRAVEL

(a) Approval procedure.—No member of the Committee on Foreign Relations or its staff shall travel abroad on Committee business unless specifically authorized by the Chairman, who is required by law to approve vouchers and report expenditures of foreign currencies, and the ranking minority member. Requests for authorization of such travel shall state the purpose and, when completed, a full substantive and financial report shall be filed with the Committee. Any proposed travel by committee staff for a subcommittee purpose must be approved by the subcommittee chairman and ranking minority member prior to submission of the request to the Chairman and ranking minority member of the full Committee.

(b) Travel by personal staff.—A member of the personal staff of a member of the Committee may travel with that member with the approval of the Chairman and the ranking minority member of the Committee. During such travel, the personal staff member shall be considered to be an employee of the Committee.

(c) Foreign travel by Committee staff.—When the Chairman and the ranking minority member approve the foreign travel of a member of the staff of the Committee not accompanying a member of the Committee, all members of the Committee shall be advised, prior to the commencement of such travel, of its extent, nature, and purpose. The report referred to in the first paragraph of this section shall be furnished to all members of the Committee and shall not be otherwise disseminated without the express authorization of the Committee.

(d) Staff travel in U.S.—All official travel in the United States by the Committee staff shall be approved in advance by the Staff Director, or in the case of minority staff, by the Minority Staff Director.

RULE 5—TRANSCRIPTS

(a) General.—The Committee on Foreign Relations shall keep verbatim transcripts of all Committee and subcommittee meetings and such transcripts shall remain in the custody of the Committee, unless a majority of the Committee decides otherwise. Transcripts of public hearings by the Committee shall be published unless the Chairman determines otherwise.

(b) Maintenance and security of classified transcripts:

(1) The Chief Clerk of the Committee shall have responsibility for the maintenance and security of the classified transcripts.

(2) A record shall be maintained of each use of the classified transcripts.

(3) Classified transcripts shall be kept in locked combination safes in the Committee offices except when in active use by authorized persons. They must never be left unattended and shall be returned to the Chief Clerk promptly when no longer needed.

(4) Transcripts classified secret or higher may not leave the Committee offices except for the purpose of declassification.

(5) Classified transcripts other than those classified secret or higher may leave the Committee offices in the possession of authorized persons with the approval of the Chairman. Delivery and return shall be made only by authorized persons. Such transcripts may not leave Washington, D.C. unless adequate assurances for their security are made to the Chairman.

(6) Extreme care shall be exercised to avoid taking notes or quotes from classified transcripts. Their contents may not be divulged to any unauthorized person.

(c) Use of classified transcripts. The following persons are authorized to use classified transcripts:

(1) Members and staff of the Committee in the Committee rooms.

(2) Senators not members of the Committee, by permission of the Chairman, and designated personal representatives of members of the Committee with appropriate security offices, or, in the Committee's Capitol office, with the permission of the Chairman.

(3) Members of the executive departments involved in the meeting, in the department's offices, or, in the Committee's Capital office, by permission of the Chairman.

(d) Declassification of executive transcripts and other executive records:

(1) Any executive transcript or classified Committee report, or portion thereof, may be declassified by the Committee less than 12 years after the date on which such transcript or record was made if—

(A) the Committee by majority vote approves; and

(B) each member of the Committee who participated in any meeting at which such transcript was made, approves of such declassification, except that the Committee may by majority vote declassify such transcript in the absence of such approval.

(2) Any such transcript, classified Committee report, or portion thereof, shall be declassified on a date 12 years thereafter unless the Committee by majority vote disapproves.

RULE 5—REGULATION FOR THE USE OF CLASSIFIED MATERIAL (OTHER THAN TRANSCRIPTS)

Receipt and distribution of classified material.—

(a) All classified material received or originated by the Committee shall be logged in at the Committee's offices in the Dirksen Senate Office Building, and except for material classified as "Top Secret" shall be filed in the Dirksen Senate Building offices for Committee use and safekeeping.

(b) Each such piece of classified material received or originated shall be card indexed and serially numbered, and where requiring onward distribution shall be distributed by means of an attached indexed form approved by the Chairman. If such material is to be distributed outside the Committee offices, it shall, in addition to the attached form, be accompanied also by an approved signature sheet to show onward receipt.

(c) Distribution of classified material among offices shall be by Committee members or authorized staff only. All classified material sent to members' offices, and that distributed within the working offices of the Committee, shall be returned to Room 4229, Dirksen Senate Office Building. No classified material is to be removed from the offices of the members or of the Committee without permission of the Chairman. Such classified material will be afforded safe handling and safe storage at all times.

(d) Material classified "Top Secret," after being indexed and numbered, shall be sent to the Committee's Capitol office for use by the members and authorized staff in that office only or in such other secure Committee offices as may be authorized by the Chairman or Staff Director.

(e) The Staff Director is authorized to make such administrative regulations as may be necessary to carry out the provisions of these regulations.

RULE 6—STAFF REGULATIONS

The following provisions shall apply concerning the staff:

(a) The staff works for the Committee as a whole, under the general supervision of the Chairman of the Committee, and the immediate direction of the Staff Director; provided, however, that such part of the staff as is designated Minority Staff, shall be

under the general supervision of the Ranking Minority Member and under the immediate direction of the Minority Staff Director.

(b) Any member of the Committee should feel free to call upon the staff at any time for assistance in connection with Committee business. Members of the Senate not members of the Committee who call upon the staff for assistance from time to time should be given assistance subject to the overriding responsibility of the staff to the Committee.

(c) The staff's primary responsibility is with respect to bills, resolutions, treaties, and nominations.

(d) The staff and the committee also have a responsibility under section 136 of the Legislative Reorganization Act which provides that ". . . each standing Committee . . . shall review and study, on a continuing basis, the application, administration, and execution of those laws or parts of laws, the subject matter of which is within the jurisdiction of the committee." The staff also has a responsibility to the Committee for carrying out the mandate of Senate Rule XXV which provides that, in addition to specific areas of jurisdiction, the Committee ". . . shall also study and review, on a comprehensive basis, matters relating to the national security policy, foreign policy, and international economic policy as it relates to foreign policy of the United States, and matters relating to food, hunger, and nutrition in foreign countries, and report thereon from time to time."

In the case of foreign relations, there is an additional responsibility deriving from the advice and consent clause of the Constitution. By the same token there are limitations deriving from the President's special constitutional position in regard to foreign relations.

(e)(1) In addition to carrying out assignments from the Committee and its individual members, the staff has a responsibility to originate suggestions for Committee or subcommittee consideration. The staff also has a responsibility to make suggestions to individual members regarding matters of special interest to such members.

(2) It is part of the staff's duty to keep itself as well informed as possible in regard to developments affecting foreign relations and in regard to the administration of foreign programs of the United States. Significant trends or developments which might otherwise escape notice should be called to the attention of the Committee, or of individual Senators with particular interests.

(f) In carrying out the responsibilities in subsection (f), the staff shall bear in mind the workload of Senators and not deal in trivia but limit itself to broad questions of basic policy or specific matters which point up a question of basic policy.

(g) The staff shall pay due regard to the constitutional separation of powers between the Senate and the executive branch. It therefore has a responsibility to help the Committee bring to bear an independent, objective judgment of proposals by the executive branch and when appropriate to originate sound proposals of its own. At the same time, the staff shall avoid impinging upon the day-to-day conduct of foreign affairs.

(h) In those instances when Committee action requires the expression of minority views, the staff shall assist the minority as fully as the majority to the end that all points of view may be fully considered by members of the Committee and of the Senate. The staff shall bear in mind that under our constitutional system it is the responsibility of the elected Members of the Senate to determine legislative issues in the light of as full and fair a presentation of the facts as the staff may be able to obtain.

(i) The staff shall regard its relationship to the Committee as a privileged one, in the nature of the relationship of a lawyer to a client. In order to protect this relationship and the mutual confidence which must prevail if the Committee-staff relationship is to be a satisfactory and fruitful one, the following criteria shall apply:

(1) Members of the staff shall not be identified with any special interest group in the field of foreign relations or allow their names to be used by any such group.

(2) Members of the staff shall not accept public speaking engagements or write for publication in the field of foreign relations without specific advance permission from the Staff Director, or, in the case of minority staff, from the Minority Staff Director. In the case of the Staff Director and the Minority Staff Director, such advance permission shall be obtained from the Chairman or the ranking minority member, as appropriate. In any event, such public statements should avoid the expression of personal views and should not contain predictions of future, or interpretations of past, Committee action.

(3) The staff shall under no circumstances discuss with anyone the proceedings of the Committee in executive session or conversations with individual Senators without specific advance permission from the Committee or the Senator concerned.

RULE 7—PROVISIONS OF LEGISLATIVE REORGANIZATION ACT AND SENATE RULES

In addition to the foregoing, the Committee on Foreign Relations is governed by the standing rules of the Senate and the rules and procedures set forth in the Legislative Reorganization Act of 1946, as amended.

RULE 8—AMENDMENTS

These Rules may be modified, amended, or repealed by a majority of the Committee, provided that a notice in writing of the proposed change has been given to each Member at least 48 hours prior to the meeting at which action thereon is to be taken.●

ONSITE ENERGY PRODUCTION

● Mr. DURKIN. Mr. President, so preoccupied have we become with managing the day-to-day crises of the energy problem that we often miss the slower, less glamorous energy events that mean much more as solutions to the energy crisis. The emergence—or reemergence I should say—of onsite energy production and industrial cogeneration promises to reduce our demand for foreign oil. The more than 700 percent increase in the price of oil in the last 10 years has led large users of power—factories, hospitals, schools, apartment complexes—to turn to onsite generation of electric power combined with the use of waste heat for space heating. Congress has taken some interest in this area, and I hope this interest will spread and deepen.

This trend toward onsite generation and cogeneration represents a return to the pattern of energy generation which predominated in America before World War II. As utilities abandon the declining block rates which no longer reflect the higher cost of new energy, large users will find it increasingly economical to turn to onsite energy production: In my own State of New Hampshire the return to onsite energy production has taken the form of renovating the hundreds of small dams which formerly provided many communities with power.

The revival of onsite energy production has made possible, and in turn been made more possible by the use of cogeneration. Cogeneration simply means the use of formely wasted energy for secondary tasks. Cogeneration occurs when waste industrial process steam is used to generate electricity or when waste steam is used for space heating.

Cogeneration has been opposed by many utilities which are accustomed to being the sole producer of electricity in an area. Their opposition is ill-founded, and I hope it will cease.

There are recent developments in New York City which point to the promise and problem of onsite power production. Consolidated Edison now faces competition from a new generation of onsite diesel power generators which provide both electricity and space heat for large building complexes at competitive rates.

Fortune magazine on December 31, 1978, carried an article which describes these recent developments which will soon spread to much of the rest of the country. I ask that this article be printed in the RECORD, and I commend it to my colleagues.

The complete article follows:

THE LITTLE ENGINE THAT SCARES CON ED

(By Tom Alexander)

Like telephone companies and railroads, electric utilities have traditionally been viewed as natural monopolies—institutions that serve society most efficiently if they are the sole regulated source of the services they provide. But railroads have long since encountered competition from trucks, airlines, and pipelines; telephones now compete against microwave and satellite systems. Recently, one of the nation's biggest manufacturers of diesel engines, Cummins Engine Co., set out to provide some back-door competition for the second-oldest electric utility in the U.S., New York's Consolidated Edison Co.

For over a year now, Cummins Cogeneration Co., a small division of the Columbus, Indiana, manufacturer, has been concentrating on selling co-generation plants in New York City and its environs. These diesel-powered electric generators designed so that the waste heat from both their exhausts and cooling system can be recaptured and used. Equipped with such plants, energy users can cut themselves loose from Con Ed and not only make all their own electricity for less money than the utility charges, but heat and cool their buildings in the bargain. So far, Cummins, has managed to sell the system to only four large customers, but some fifty others are interested and ten have signed contracts for engineering studies.

Cummins might reasonably have expected its enterprise to nettle Con Ed, but it apparently never anticipated that the elephantine utility would react as though its very survival was threatened. Nor did Cummins foresee the confusion and disarray that its marketing effort would stir up in New York City officialdom, which is torn between its desire to reduce the city's outsized energy costs and its fear of seeing Con Ed hurt.

There is nothing new about co-generation. Many different technical methods have been devised, all of them capitalizing on the fact that generating electricity wastes about twice as much energy in the form of heat as can be turned into electricity. This inefficiency has been recognized since the earliest days of electrical generation, and in the early decades of the century scores of local power companies sold steam produced in conjunction with electricity for space heating or for industrial use.

One of the oldest and still one of the world's biggest co-generation companies, in fact, is Con Edison itself, which pipes steam

to some 2,324 customers—mostly office buildings and large apartment houses—in central and lower Manhattan. But Con Edison's steam prices have been rising steadily, among other reasons because of increasing taxes, driving away customers at an accelerating rate. So the utility sees a double threat in the little Cummins division's invasion of its market.

NO JOB FOR THE JANITOR

Co-generation acquired additional cachet as an energy-conservation measure when President Carter mentioned it prominently in a 1977 speech promoting his energy plans. Stimulated by government research grants and prospects of double the normal 10 percent investment tax credit, at least a dozen companies besides Cummins, including General Motors, Caterpillar Tractor, and International Harvester, are currently marketing co-generation sets or trying to develop them. Unlike Cummins, most of the other companies have been content merely to make equipment, leaving it to others to install, run, and maintain the whole system.

Cummins tried that arrangement for a while in the Sixties, but after some bad experiences stopped taking orders because so many of its co-generation plants were breaking down while in use. The company concluded that few architects, engineers, and contractors had sufficient experience to design and install a co-generation system, and once put in place, the complex apparatus was often inexpertly operated and maintained. "A company will spend $5,000 on an office copier and routinely sign a maintenance contract with Xerox," says Thomas R. Casten, general manager of Cummins Co-generation. "But they'll spend $250,000 on a total energy plant and let the janitor maintain it."

As Casten tells it, one inexperienced contractor installed a Cummins system in the Virgin Islands, planning to use the by-product heat to desalt seawater. But the contractor laid plastic seawater pipes in a trench alongside hot-water pipes. The plastic melted and split, seawater leaked into the boiler, and the boiler exploded.

CONTRADICTING THE EXPERTS

Casten's interest in co-generation was roused after he was appointed director of corporate strategy for Cummins Engine in 1974. His main job was to figure out what a diesel-engine maker would do twenty-five years in the future when, as many experts were then predicting, the oil that fuels the engines would be running out. After nine months on the job, Casten decided that this underlying assumption was wrong. Oil won't run out in twenty-five years, he concluded, but will merely be harder to get and therefore more expensive; much of it will probably have to come from such unconventional sources as tar sands, shale, or coal, but oil will remain an important source of energy.

Casten proposed that Cummins turn the long-term threat to its livelihood into a new opportunity by becoming the I.B.M. of co-generation. The company, he argued, should not only build equipment that would make optimal use of high-priced oil, but also design, install, and maintain entire co-generation systems.

One of diesel co-generation's big advantages, says Casten, is the steadily improving technology of small, mass-produced, high-speed diesel-power plants that have been developed in recent decades, mainly for such equipment as trucks, cranes, and power shovels. In earlier times, he says, diesel generators for large installations usually employed huge, slow-turning engines originally developed for ships. While longer lived and slightly more efficient than smaller units (the small, fast-running engines must be rebuilt after about 25,000 hours, or three to four years, of use) the large engines cost far more per horsepower of output, and they occupy a lot more space in a building.

But what gives the little diesels their greatest appeal is a striking reversal in the economics of electric-power generation. Until the late Sixties, big central plants provided more kilowatts per dollar invested. Not anymore. Today, co-generation units cost between $300 and $600 per kilowatt of output—a half or even a third what it costs to build new central electric-power stations and their associated transmission and distribution networks. A variety of factors have made the big plants much more expensive—mandatory safety and environmental requirements, regulatory delays, low production volumes, costly onsite fabrication, and high interest rates during construction. And largely because of the OPEC inflation of oil prices, operating costs of the big plants are higher than those of plants that also utilize wasted heat.

AN OBVIOUS BATTLEGROUND

"It took me three years to convince our management that it was not really a paradox to burn oil to save oil," says Casten. Having sold his idea, Casten picked New York City as the obvious first battleground in his campaign. Con Ed's customers pay about twice as much for their electricity as the average consumer elsewhere, and half again as much as those in the next highest-priced large city, Boston. Part of that high price may be a result of Con Ed's notorious managerial shortcomings, which New Yorkers love to belabor. To be fair, however, Con Ed does have some singular problems. Because of air-pollution restrictions, Con Ed's power plants must burn costly low-sulfur boiler fuel. Threaded through Manhattan's obdurate granite, Con Ed also has the world's most extensive—and expensive—tangle of underground cables and steam pipes, many of them timeworn. And the differential between the daytime peak and the nighttime slack in demand for power is greater than the average utility has to cope with. New York has comparatively few two and three-shift industries, and it has a large commuter population that leaves at night while the apartment dwellers who remain consume less electricity than the national average.

Worst of all, Con Ed has long been regarded by the city's fathers as the local equivalent of cartoonist Al Capp's lovable, kickable Shmoo: an almost inexhaustible source of goodies. The company is forced to collect some 7.5 percent of the city's tax revenues in the guise of utility bills. More than 27 percent of the average Con Ed customer's bill consists of federal, state, and local taxes. Per kilowatt-hour sold, those taxes run from two to twelve times the burden borne by utility customers in other major cities.

A SIX-YEAR PAYOFF

By now, the city has come to recognize that towering utility bills play a significant role in driving manufacturing and other businesses out of New York City; the exodus has cost the city 610,000 jobs since 1969, a loss that now deprives the city of some $200 million a year in tax revenues. Right across the Hudson River, New Jersey has been wooing companies with promises of utility bills half as high as Con Ed's. In response, the city's Office of Economic Development has been actively promoting co-generation as one answer to New York's forbidding energy costs.

Toward that end, the development office has secured a $3-million federal Housing and Urban Development grant, which it in turn plans to lend at low interest to help energy-intensive electroplating and plastics companies to install co-generation. The city is arranging loans covering 45 percent of the cost of five installations. Cummins Cogeneration and H.O. Penn Machinery Co., a co-generation equipment distributor, have lined up loans for another 45 percent of the cost; the buyers will put up the final 10 percent.

Cummins has also sold plants to Saw Mill River Tennis Courts in Westchester County, a Cummins Engine distributor in the Bronx, and Seal-Kap Packaging Co. in Queens. But it was a deal that Cummins made in the heart of Manhattan that stirred Con Ed into action.

In late June, the Tishman Speyer Silverstein Partnership, renovating a thirty-story office building at 11 West Forty-second Street, made plans to stop using Con Ed's power lines and steam and supply all the building's needs with a 5,600-kilowatt Cummins system at a cost estimated at about $2.5 million. Such an installation should save enough money to pay for itself (before taxes) in less than six years.

Con Ed officials were aghast. If a substantial number of its other customers followed the Tishman example, the utility envisaged the possibility of losing an eighth or more of its power market and as much as a third of its steam market.

The utility immediately asked for a hearing before the mayor's Energy Policy Advisory Group, a blue-ribbon citizens' panel New York's Mayor Edward Koch had set up to help reconcile the energy, environmental, and economic needs of the city. Appearing before the group in early October, Bertram Schwartz, a Con Ed senior vice president, urged the city to impose a moratorium on all new co-generation facilities, at least until the city had assessed all the implications.

THE BACKLASH OF A SALES DECLINE

Among other things, Schwartz argued that Cummins's machines would deepen the nation's dependence upon imported oil and increase air pollution in Manhattan, where it is already the worst in the region. Schwartz contended that instead of stemming the job exodus from the city, co-generation might increase it. For any decline in electric sales would force Con Ed to redistribute the burden of its fixed costs—roughly two-thirds of its total costs—among the rest of its customers.

Schwartz also warned that private co-generation would deprive the city of some of those hefty tax revenues from Con Ed. In fact, he asserted, if it weren't for avoiding the taxes included in Con Ed's rates, co-generation would have little appeal for most of its customers.

All this is disputed by Casten of Cummins, who contends: "Con Ed's rates are so high that co-generation would still benefit many users even if Con Ed paid *no* taxes or got all its fuel for nothing." That may sound like braggadocio, but the savings that Cummins predicts for several co-generation projects (see table, facing page) do exceed the fraction of the utility bill that consists of taxes.

As for the effects on New York City's tax revenues, Casten argues that the savings from co-generation would mean higher profits to be taxed, greater willingness of industries to stay in the city, and therefore more taxes over the long run. And as for oil consumption, Casten points out that Con Ed itself generates more than two-thirds of its electricity from oil, while diesel co-generation provides a less wasteful way of using oil. Schwart acknowledges that this may be true in the short run, but he notes that the utility hopes eventually to replace its oil-burning plants with coal or nuclear facilities.

AN ENVIRONMENTAL PUZZLE

It seems clear that the most critical unknown affecting co-generation's future in New York City is its environmental impact. At the moment, New York's air complies with

federally mandated air-quality standards for all regulated pollutants except particulates. While conceding that diesels would emit less sulfur dioxide per kilowatt-hour of electricity than its own oil-fired plants, Con Ed cites figures from the federal Environmental Protection Agency showing that diesels emit ten times more oxides of nitrogen, six times more particulates, and twenty times more carbon monoxide.

In addition, Con Ed points out, the tall smokestacks on its plants project hot plumes of pollutants high into the atmosphere, where they are diluted and carried out of the city before falling to earth. In contrast, private co-generators would emit cooler, heavy plumes of pollution just above building-top levels. The downdrafts that swirl among Manhattan's massed skyscrapers would probably carry the fumes down into the city's canyons.

Casten disputes Con Ed's use of the EPA data, which appear to have been derived from tests on diesel engines that undergo repeated acceleration and varying loads. He says that Cummins's own measurements show that the constant-running engines used in co-generation produce less emissions than Con Ed's oil-fired plants for all pollutants except oxides of nitrogen. He also argues that regulators ought to (but don't) take account of the fact that co-generation uses a good deal less fuel to provide the same amount of useful energy.

In truth, nobody really seems to know *what* co-generation on a large scale would do to air quality, least of all the city itself. Last July, when Tishman and Seal-Kap applied to New York's Department of Environmental Protection for permits, the pollution bureaucracy did what bureaucracies generally do in controversial circumstances—they delayed taking action. All parties concerned had their eyes on November 1, when new state environmental-quality regulations were to take effect, requiring discouragingly elaborate environmental-impact analyses for all large projects. Some presumed that these regulations could delay the permit process for months or years until the air-pollution issue was finally resolved.

FIVE MINUTES BEFORE THE DEADLINE

After four months of waiting for their permits, Tishman and Seal-Kap threatened to go to court and get a writ of mandamus ordering the city to issue the permits. The permits were finally issued five minutes before the close of business on the day before the new rules took effect.

Both Judith Friedlaender, an assistant to the mayor who handles environmental affairs, and Peter J. Solomon, deputy mayor for economic policy and development, acknowledge that the delay in issuing the permits reflected the city's quandry over co-generation: the worry over environmental effects and fear of losing taxes and damaging Con Ed on one hand, versus their pet notion of exploiting co-generation to help businesses cope with higher energy costs on the other. They call the city's decision to issue the two permits an experiment in environmental and social policymaking.

A NUDGE FOR EFFICIENCY

The cautious go-ahead for co-generation also amounts to an experiment to determine what effect a whiff of competition might have on both regulated monopolies and the government agencies that regulate them. Because decisions by public rate-setting bodies have so much impact on a utility's profits, the average utility manager's job depends more upon whether he allows the lights to go out than whether he allows costs to go up. The rate-setting commissions, in turn, normally give a lot of weight to the concept of allowing utilities a reasonable return on their capital investment. The result is a system that promotes increasing capital outlays.

The presence of private co-generation in a utility's marketing area ought to serve both as a yardstick and as a lever to induce utilities to strive for maximum operating efficiency. The prospect of competition already has affected Con Ed's behavior. Shortly after the co-generation loans to electroplaters and plastics molders were proposed, the utility offered to reduce the rates that it charges small manufacturers facing economic difficulties—without raising rates for other customers.

Even though they compete, co-generation and central-station utilities actually play complementary roles. It should be possible to exploit this situation not only to the benefit of both but to the benefit of society as a whole. The greatest economic burden that utilities—and their customers—face is expanding capacity to meet rising demand, while maintaining an adequate standby reserve. In the topsy-turvy utility economics of the Seventies, every new customer and every increase in peak demand adds to the costs every other customer must pay.

A DOUBLE DOSE OF IDLE CAPACITY

At the same time, every co-generation installation in the New York area has large amounts of excess generating capacity that stand idle most of the time because each plant must have backup equipment for use in case of a breakdown. Logically, Con Ed would provide power in such emergencies, but it charges such high rates that most cogenerators in the New York area find it cheaper to cut themselves off entirely from the utilitiy's lines.

The compliant New York State Public Service Commission lets Con Ed charge a backup rate that amounts to about 85 percent of what a customer would pay if he had no co-generating plant, and he must pay it even if he uses no electricity or steam at all in a given month. The rate is based on the full cost to Con Ed of maintaining the generating and transmitting capacity that would be required to serve all the customer's needs.

The rate arguably bears little relationship to Con Ed's actual costs. For one thing, most co-generation systems have several generating units, not all of which are likely to fail simultaneously. More important, in an area with many co-generators, no more than a small fraction of the total capacity is likely to be out of action at any one time. Rather than pay Con Ed's lofty backup rates, most co-generators in the New York area install their own standby generators, even though in some cases they may have to invest more than twice as much as they would if they had a utility backup.

There is no good reason why the two systems—public utilities and private co-generators—cannot share capacity to their mutual benefit. An electric wire can carry power as readily in one direction as in another. So in principle co-generators and utilities should be able to function interchangeably as buyers and sellers of power. In midwinter and midsummer, for example, a co-generation system that heats or cools a building will produce more electricity than the building can use. That surplus power could be sold to electric utilities straining to meet seasonal peak loads. If utilities bought power from co-generators, they could defer investment in some expensive new plants.

To be sure, these arrangements face a number of technical and economic obstacles. For one thing, any power entering a utility grid has to be precisely in phase with the 60-cycle alternating current that all systems use. But comparatively inexpensive technology can surmount this problem, as witness the fact that practically all U.S. and Canadian utility power plants are now interconnected in a grid in which power flows back and forth as demand fluctuates from one region to another.

TIME TO RESHAPE RATES

The main economic barrier is that a utility's daily demand peaks tend to coincide with those of most co-generators. To overcome that problem, the rates utilities charge for power could be reshaped to induce all consumers to flatten or shift their peak demands. Rates that utilities pay co-generators for power could be designed to induce them to operate their standby equipment at times when it is needed.

Many sections of the country already have some form of peak-load pricing, in which rates rise more or less in step with demand. California has ordered utilities to offer co-generators "equitable" standby rates, reflecting the fact that not all co-generation systems are likely to require backup power at the same time. Some utilities in Georgia and Texas are even promoting co-generation by their customers as a way to share their peak-load burden.

The spread of co-generation seems likely to be reinforced by economics as well. It is doubtful that the arrangement will make much sense in the foreseeable future for most one-family houses. The capital cost of the equipment is too large for small consumers to reap much, if any, saving. But the cost-benefit scale tips the other way for large users of power. For one thing, the bigger the co-generation installation, the less backup gear per kilowatt is needed as insurance against breakdowns. Moreover, as electrical demand grows, utility companies will increasingly meet it with power generated at high-cost new plants. Cummins expects electric utility rates to rise by about 9 to 11 percent annually throughout the U.S. for some years to come. With that in mind, Cummins' Casten cheerfully predicts: "In time, we'll be competitive across the country."

SHARING THE BENEFITS

In the interest of both economic efficiency and fairness, taxes, subsidies, and environmental regulations surely should favor neither one mode nor the other. But everyone should be able to benefit from co-operation between public and private generators. Private systems could be built smaller and cheaper, yet enjoy greater reliability; public utilities could defer costly outlays necessary to meet peak loads for the whole nation, that should mean cheaper power, reduced fuel consumption, less pollution, lower oil imports, less capital invested in idle equipment.

Co-generation has opened up an opportunity for the kind of creative experimentation that is facilitated by our federal system, with its three tiers of government. Right now, when a great many electric utilities still have the luxury of some surplus generating capacity, is a good time for the experimentation to begin.

RULES OF THE SPECIAL COMMITTEE ON AGING

● Mr. CHILES. Mr. President, in accordance with the requirement to publish the rules of each Senate Committee in the CONGRESSIONAL RECORD not later than March 1 of each year, I submit for the RECORD the rules of the Special Committee on Aging.

RULES OF THE U.S. SENATE SPECIAL COMMITTEE ON AGING

(As originally adopted June 12, 1963, as amended February 28, 1973, and as amended further February 28 and March 11, 1977)

Rule 1. Convening of meetings. The Committee shall meet at the call of the Chairman,

to the extent practicable, at least four times a year to (1) plan future activities, (2) evaluate progress on projects already under way, and (3) discuss use of Committee funds. Special meetings may be called by a majority of Committee (or any subcommittee designated by the Committee)[1] members upon written notice to the Clerk of the Committee. The Clerk shall, to the extent practicable, give at least 24 hours notice to every member of the meeting, time, and place.

Rule 2. Presiding officer. The Chairman of the Committee (or any subcommittee designated by the Committee)[1] or, if the Chairman is not present, the ranking Majority member present shall preside at all meetings.

Rule 3. Quorum. A majority of the Committee (or any subcommittee designated by the Committee)[1] shall constitute a quorum sufficient for the conduct of business at executive sessions. One member shall constitute a quorum for the receipt of evidence, the swearing of witnesses, and the taking of testimony at hearings.

Rule 4. Subcommittees. Subcommittees may be established and their size determined by vote of a majority of all members of the Committee. The Chairman of the full Committee and the Ranking Minority Member shall be ex officio members of all subcommittees. Party membership of each subcommittee shall be proportionate to Party memship on the full Committee. Each subcommittee is subject to these rules and any limitations imposed by the full Committee and is authorized a) to hold and report hearings; b) to conduct business within its jurisdiction; and c) to require by subpoena or otherwise the attendance of witnesses and the production of documentary evidence.

Rule 5. Agenda and voting at meetings. The business to be considered at any meeting of the Committee (or any subcommittee designated by the Committee)[1] shall be determined by its Chairman and any other measure, motion, or matter substantive or procedural within the jurisdiction of the Committee (or by any subcommittee designated by the Committee)[1] shall be considered at such meeting and in such order as a majority of the members of such Committee indicate by their votes or by presentation of written notice filed with the Clerk. Voting by proxy shall be permitted in the full Committee (or any subcommittees designated by the Committee).[1]

Rule 6. Right to counsel. Any witness subpoenaed to a public or executive hearing may be accompanied by counsel of his own choosing who shall be permitted, while the witness is testifying, to advise him of his legal rights.

Rule 7. Amendment of rules. The rules of the Committee may be changed, modified, amended, or suspended at any time, provided, however, that not less than a majority of the entire membership so determine at a regular meeting with due notice, or at a meeting specifically called for that purpose.

Rule 8. Reports. Committee (or any subcommittee designated by the Committee)[1] reports offering Committee (or any subcommittee designated by the Committee)[1] findings and recommendations shall be printed only with the prior approval of a majority of the full Committee (or any subcommittee designated by the Committee).[1] The printing, as Committee (or any subcommittee designated by the Committee[1] documents, of materials prepared by staff for informational purposes of the printing of materials not originating with the Committee (or any subcommittee designated by the Committee)[1] or staff shall require consultation with Minority staff; these publications shall have the following language on the cover of the document: "Note: This document has been printed for information purposes. It does not offer findings or recommendations by this Committee" (or any subcommittee designated by the Committee).[1]

Wherever feasible, staff reports shall be coordinated and produced in cooperation with other appropriate Congressional units.●

[1] Committee members on March 11, 1977, decided to conduct business and hearings as a Committee as a whole, without subcommittees. However, the option to establish temporary subcommittees at any time for special purposes remains.

RULES OF PROCEDURE OF COMMITTEE ON ARMED SERVICES

● Mr. STENNIS. Mr. President, in compliance with section 133(B) of the Legislative Reorganization Act of 1946, as amended, I submit herewith the Rules of Procedure of the Committee on Armed Services, to be printed in today's RECORD.

ARMED SERVICES COMMITTEE RULES OF PROCEDURE

1. *Regular Meeting Day and Time.* The regular meeting day of the committee shall be each Thursday at 10:00 a.m., unless the committee or the chairman directs otherwise.

2. *Additional Meetings.* The chairman may call such additional meetings as he deems necessary.

3. *Special Meetings.* Special meetings of the committee may be called by a majority of the members of the committee in accordance with section 133(a) of the Legislative Reorganization Act of 1946, as amended by section 102(a) of the Legislative Reorganization Act of 1970.

4. *Open Meetings.* All meetings of the committee shall be open to the public except executive sessions for marking up bills or for voting or unless the committee by majority vote provides otherwise.

5. *Presiding Officer.* The chairman shall preside at all meetings and hearings of the committee except that in his absence the ranking majority member present at the meeting or hearing shall preside unless by majority vote the committee provides otherwise.

6. *Quorum.* (a) A majority of the members of the committee are required to be actually present to report a matter or measure from the committee.

(b) Except as provided in subsections (a) and (c), and other than for the conduct of hearings, six members of the committee shall constitute a quorum for the transaction of such business as may be considered by the committee.

(c) Three members of the committee, one of whom shall be a member of the minority party, shall constitute a quorum for the purpose of taking sworn testimony, unless otherwise ordered by a majority of the full committee.

(d) Proxy votes may not be considered for the purpose of establishing a quorum.

7. *Proxy voting.* Proxy voting shall be allowed on all measures and matters before the committee. The vote by proxy of any member of the committee may be counted for the purpose of reporting any measure or matter to the Senate if the absent member casting such vote has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded.

8. *Announcement of votes.* The results of all rollcall votes taken in any meeting of the committee on any measure, or amendment thereto, shall be announced in the committee report, unless previously announced by the committee. The announcement shall include a tabulation of the votes cast in favor and votes cast in opposition to each such measure and amendment by each member of the committee who was present at such meeting.

9. *Hearings.* (a) Public notice shall be given of the date, place, and subject matter of any hearing to be held by the committee, or any subcommittee thereof, at least 1 week in advance of such hearing, unless the committee or subcommittee determines that good cause exists for beginning such hearing at an earlier time.

(b) Hearings may be initiated only by the specific authorization of the committee or subcommittee.

(c) Hearings shall be held only in the District of Columbia unless specifically authorized to be held elsewhere by a majority vote of the committee or subcommittee conducting such hearings.

(d) Each hearing held by the committee shall be open to the public except when the committee determines that the testimony to be taken at such hearing may relate to a matter of national security, may tend to reflect adversely on the character or reputation of the witness or any other individual, or may divulge matters deemed confidential under other provisions of law or regulations.

(e) Witnesses appearing before the committee shall file with the clerk of the committee a written statement of his proposed testimony at least one day prior to a hearing at which he is to appear unless the chairman and the ranking minority member determines that there is good cause for the failure of the witness to file such a statement.

(f) Confidential testimony taken or confidential material presented in a closed hearing of the committee or subcommittee or any report of the proceedings of such hearing shall not be made public in whole or in part or by way of summary unless authorized by a majority vote of the committee or subcommittee.

(g) Any witness summoned to give testimony or evidence at a public or closed hearing of the committee or subcommittee may be accompanied by counsel of his own choosing who shall be permitted at all times during such hearing to advise such witness of his legal rights.

(h) Each subcommittee of the committee shall (1) fix the number of members that shall constitute a quorum of such subcommittee for the purpose of taking sworn testimony, (2) determine the circumstances under which subpoenas may be issued, and (3) the member or members over whose signature subpoenas may be issued.

10. *Nominations.* Unless otherwise ordered by the committee, nominations referred to the committee shall be held for at least 7 days before being voted on by the committee. Each member of the committee shall be furnished a copy of all nominations referred to the committee.

11. *Real Property Transactions.* Each member of the committee shall be furnished with a copy of the proposals of the Secretaries of the Army, Navy, and Air Force, submitted pursuant to section 2662 of title 10, United States Code, and with a copy of the proposals of the Director of the Office of Emergency Preparedness, submitted pursuant to section 43 of the act of August 10, 1956 (50 U.S.C. app. 2285), regarding the proposed acquisition or disposition of property of an estimated price or rental of more than $50,000. Any member of the committee objecting to or requesting information on a proposed acquisition or disposal shall communicate his objection or request to the chairman of the committee within 30 days from the date of submission.

12. *Legislative Calendar.* (a) The clerk of the committee shall keep a printed calendar for the information of each committee member showing the bills introduced and referred to the committee and the status of such bills. Such calendar shall be revised from time to time to show pertinent changes in such bills, the current status thereof, and new bills introduced and referred to the committee. A copy of each such revision shall be furnished to each member of the committee.

(b) Unless otherwise ordered, measures referred to the committee shall be referred by the clerk of the committee to the appropriate

department or agency of the Government for reports thereon.●

RULES OF THE COMMITTEE ON APPROPRIATIONS

● Mr. MAGNUSON. Mr. President, on behalf of the Committee on Appropriations and in compliance with the requirements of title 2 U.S.C. 190-a(2), I ask that a copy of the rules of our committee for the 96th Congress be printed in the RECORD.

RULES OF THE COMMITTEE ON APPROPRIATIONS

I. MEETINGS

The Committee will meet at the call of the Chairman.

II. QUORUMS

1. Reporting a bill. A majority of the members must be present for the reporting of a bill.

2. Other business. For the purpose of transacting business other than reporting a bill or taking testimony, one-third of the members of the Committee shall constitute a quorum.

3. Taking testimony. For the purpose of taking testimony, other than sworn testimony, by the Committee or any subcommittee, one member of the Committee or subcommittee shall constitute a quorum. For the purpose of taking sworn testimony by the Committee, three members shall constitute a quorum, and for the taking of sworn testimony by any subcommittee, one member shall constitute a quorum.

III. PROXIES

Except for the reporting of a bill, votes may be cast by proxy when any member so requests.

IV. ATTENDANCE OF STAFF MEMBERS AT CLOSED SESSIONS

Attendance of Staff Members at closed sessions of the Committee shall be limited to those members of the Committee Staff that have a responsibility associated with the matter being considered at such meeting. This rule may be waived by unanimous consent.

V. BROADCASTING AND PHOTOGRAPHING OF COMMITTEE HEARING

The Committee or any of its subcommittees may permit the photographing and broadcast of open hearings by television and/or radio. However, if any member of a subcommittee objects to the photographing or broadcasting of an open hearing, the question shall be referred to the Full Committee for its decision.

VI. AVAILABILITY OF SUBCOMMITTEE REPORTS

When the bill and report of any subcommittee is available, they shall be furnished to each member of the Committee twenty-four hours prior to the Committee's consideration of said bill and report.

VII. POINTS OF ORDER

Any member of the Committee who has in charge an appropriation bill, is hereby authorized and directed to make points of order against any amendment offered in violation of the Senate rules on the floor of the Senate to such appropriation bill.●

LONG-TERM SOURCES FOR U.S. OIL

● Mr. KENNEDY. Mr. President, the shutdown of oil production in Iran awakens attention to both short- and long-term solutions to a tight oil market. Dr. Lawrence Goldmuntz of Carnegie Mellon University and a former Deputy Assistant Secretary of Interior has brought back into focus ideas which have been the subject of Joint Economic Committee hearings and which I have advocated during the past 3 years which deserve reexamination.

In a paper prepared for presentation at a February 25 conference sponsored by the American Professors for Peace in the Middle East and four Washington area universities, Dr. Goldmuntz suggests that a long-term oil crisis can be avoided by:

First. Significantly increasing United States and world development in oil exploration and development in non-OPEC countries;

Second. Increasing development of heavy oils and oil in tar sands such as is found in Utah, California, Canada and—in huge quantities—in Venezuela;

Third. Increasing U.S. purchases of oil from Western Hemisphere sources through the use of long-term Federal Government purchase agreements, and

Fourth. Creation of Federal authority to purchase oil from OPEC and reselling it in the U.S. market through traditional channels;

Dr. Goldmuntz lays particular stress in the value that a long-term contract would have to a country struggling to produce oil for the first time. Such a contract would, itself, serve as a basis for financing new or upgrading old facilities within the private market, without cost to the U.S. taxpayers.

In addition Dr. Goldmuntz also discusses the need to greatly increase investment guarantees for drilling and development companies operating in areas where political stability and security of contract cannot be guaranteed, doing so through the Overseas Private Investment Corporation. The objective is an important one and OPIC is now making modest steps in this direction. Substantial increases in the use of this authority should be considered.

Mr. President, I ask that Dr. Goldmuntz's remarks be printed in the RECORD.

The remarks follow:

ENERGY: IMPLICATIONS FOR PUBLIC POLICY

(By Dr. Lawrence Goldmuntz)

U.S. energy policy for a considerable period has been based in part on false premises that have contributed to unfortunate consequences. One false notion is that the world is running out of oil and that most of the world's oil is in the Middle East.

An unfortunate consequence of this premise is that the free world is now more dependent on oil production in Mideast countries than necessary. These countries have such a high per capita income that they quite reasonably do not wish to increase production. Because of this concentration of developed resources, these countries can obtain their needed revenues simply by increasing prices without increasing production. Furthermore increasing production would make them more delectable morsels for their hungry neighbors. And finally, wealthy Mideast countries have difficulties containing OPEC price increases, even assuming this is their objective, since they are militarily weak as compared to their more populous and less wealthy neighbors who want higher prices. Yet if it is possible to discern a U.S. international oil policy, it is to urge increased production from the very countries that have no incentive to do so. Furthermore, poorer countries that have oil resources—such as Mexico, Venezuela, Argentina, Nigeria Sudan, Vietnam, China, for example—have not developed their resources to the absorption capability of their economies. All of their resources can be produced profitably at present prices, which may not have been the case only ten years ago.

The usual analysis of world oil resources deals only with the proven and probable reserves of conventional oil. A proven reserve is a field that has been defined and drilled with the needed development wells and is producing and has a predictable lifetime. A probable reserve is a field that is adjacent to a proven field and has had sufficient geophysical surveys accomplished and exploratory wells drilled so that its eventual production capability is predictable. Proven or probable reserves are a conservative but not the only meaningful statistic in support of long-range energy policy.

A more thoughtful analysis includes identified potential reserves of conventional oil as well as identified heavy oil resources that can be produced economically at present prices. A potential reserve is a field where geophysical work has indicated structures that have been productive in the past. Heavy oil, not generally counted in recoverable oil reserves, is a viscous tar-like hydrocarbon frequently loaded with sulphur, vanadium and nickel. There are huge deposits (3 trillion barrels in-place) along the Orinoco River in Venezuela, 165 billion barrels in-place near Cold Lake in Alberta and at least 200 billion barrels in-situ near Lake Athabasca. Only 15–20% of this in-place resource can be recovered by using the lowest cost process. This is steam injection to lower the viscosity of the heavy oil so it can flow to the surface. Furthermore, the heavy oil must be processed to remove the impurities and lower the viscosity.

These huge heavy oil resources can now be produced economically at the world price for petroleum. For example, Imperial Oil—a subsidiary of EXXON—has proposed to Alberta, a five billion dollar heavy oil extraction and upgrading facility that would produce 1.3 billion barrels of a high-grade low-sulphur crude over the 25 year lifetime of this project at an internal rate of return of more than 15%. Only a small portion of the total heavy oil resource near Cold Lake would be exploited in this project. Similar techniques are applicable to the enormous Venezuelan resources of heavy oil along the Orinoco.

EXXON has designed a process to upgrade that heavy crude at a cost of approximately five dollars per barrel. The steam injection and gathering costs in the Orinoco are approximately three to five dollars per barrel. This leads to a production cost of eight-to-ten dollars per barrel for a product that sells for $13–14 on the world market. One might ask if the production costs of a high quality crude are only $8–10 per barrel and the market price is $13–14 per barrel, why isn't it being produced? Oil companies are afraid to make the $500 million investment necessary for the 100,000 barrel per day upgrading facility in a nation which may expropriate their installations. Furthermore Venezuela has decided that rather than invest the $500 million in a heavy crude upgrading facility, they would prefer to invest in exploration for higher quality, lighter crudes along the northeast shore of Venezuela and in the Orinoco delta.

Whether an oil reserve is proven or potential is as much a result of politics as it is of geology. Consider Mexico—if the oil companies and Mexico had managed to get along and the expropriation of 1938 and subsequent stagnation until 1972 had not occurred—a large portion of Mexico's potential reserves of 200 billion barrels would be proven and producing today, perhaps at the level of Saudi Arabia—and Mexico's per capita income would now be much greater than its current level of $1,300 which can be compared to Kuwait's per capita income of $13,000.

The geographic locations of identified po-

tential reserves are also determined not only by nature's endowment but by the economic and political relationship that private oil companies have been able to develop with host countries. Unless someone is willing to pay for exploration, no matter how great the potential, it does not become an identified reserve nor can it be developed to a proven and probable status. Therefore the published proven and probable reserves of a geographic area represent both geology and the oil industries' estimate of the security of its investment and the potential profitability of exploring, developing and exporting the producing countries' resource. For the last four decades it has not been profitable, even possible, for oil companies to operate in Mexico. Furthermore, it has taken a long time before the national oil company, Petroleos Mexicanos (PEMEX), had the finances, skill and political independence to develop the Mexican resource. Therefore it should not be a surprise that these resources remained undiscovered and unexploited for the greater part of the last four decades.

If one omits potential resources and heavy oil and considers only proven and probable reserves, then the world has enough oil to last thirty years and the U.S., Canada and Latin America have somewhat less than one half of the resources of the Middle East. However, if one adds the identified potential resources of conventional oil and the identified resources of heavy oil recoverable at current prices to the proven and probable reserves, then one finds that the world has enough oil to last one century at current consumption levels and that the U.S., Canada and Latin America have double the resource of the Middle East. A century's worth of oil—that is not exactly a resource crisis. The future lies with heavy oil and with potential, as well as proven and probable reserves of conventional oil. U.S. policy can impact this future.

Furthermore, while one cannot be certain of potential reserves, they are more likely to be underestimated than overestimated because of uneven exploration around the globe. For example, in the U.S. there are 1.2 wells per square mile of potentially oil bearing basin, while in Latin America, Africa and Asia there are only 0.01 wells per square mile of basin. Using these and other statistics, Dr. Bernardo Grossling of the U.S. Geological Survey suggests that we may be blessed with as much as six trillion barrels of conventional oil as compared to the usual estimate of only two trillion barrels.

Thus oil availability is not yet a resource problem, it is, however, a political problem. Would further U.S. involvement in the international oil market exacerbate or ameliorate the poor distribution and anticompetitive aspects of the present international oil market? Can international and bilateral policies be devised that address the mutual concerns of the oil-rich and the oil importing nations? What should the U.S. do? While oil companies might like to have a more competitive international oil market and a greater diversity of resources they do not have that responsibility or perhaps the ability to develop oil reserves in those countries that serve the strategic or social interests of the U.S. They are certainly not insensitive to this requirement, but it may be impossible for them—as in the case of Mexico—or imprudent for them—as in the case of Argentina or Namibia.

One suggestion is that an instrumentality of the United States Government, perhaps the Secretary of the Department of Energy, should be authorized to negotiate long-term petroleum supply contracts with certain oil-rich or potentially oil-rich countries so as to:

1. Improve the security of U.S. supply, especially during military crises.

2. Improve the North-South economic dialogue by trading with the poorer nations among oil-rich or potentially oil-rich exporting countries.

3. Moderate international oil pricing.

The military cannot assure delivery to U.S. ports during even limited conflict scenarios of eight million barrels per day from the Persian Gulf, Africa or Indonesia. Oil pipelines to Mexico, as well as less exposed tanker routes to Latin America and Venezuela, should be major U.S. security objectives.

Moreover, recent events in Iran demonstrate that it is essential to diversify our sources of supply even if it were possible to assure oil deliveries during emergencies from current sources. The major oil companies have contract obligations to sell minimum quantities of oil—lifting agreements—with the countries that have granted them concessions. They might have difficulty unilaterally diversifying their resource base substantially without a Federal requirement toward this objective. Also the major oil companies do have substantial sunk costs in their current sources of supply. While these must be respected to minimize unfair economic burdens, they are impediments to attempts to diversify sources of U.S. imports. Therefore, Federal import preferences or allocations are probably necessary to further diversify our sources of supply as rapidly as possible.

Obviously a policy of purchasing oil from those countries that need income would be socially desirable. It would even satisfy those countries that are the core of OPEC—Saudi Arabia, Kuwait, the Arab Emirates—who insist they do no wish to increase production. The North-South economic dialogue could be improved by appropriate allocations of the U.S. market to poorer countries.

While it is not possible to predict international oil prices with precision, it is certainly to the economic benefit of the free world to accelerate the development of additional resources. The greater the potential production of oil, the more chance there is to moderate international oil pricing. U.S. purchase orders should be used to accelerate the development of potential resources.

The Secretary of the Department of Energy should be entitled to allocate U.S. imports of petroleum in the national interest. His authority should extend up to some limit of total present and projected U.S. imports—perhaps 25%—and up to some limit in time—perhaps 20 years and at prices that reflect, hopefully, some concession with respect to world prices at U.S. ports based on the length of the contract, the proximity of the country to the U.S., and the relative economic status of the nation involved.

The Secretary of the Department of Energy should have the authority not only to enter into these long-term contracts with appropriate suppliers, he should have the authority to "lay-off" his purchases on those companies that import oil. His leverage in this regard could derive from an authority that enables him to require oil importers to accept a pro-rata portion of his long-term purchases for their own imports before they could be allowed to import from other sources.

An advantage of such long-term Federal purchase agreements with an exporting country is that they are fungible instruments. A nation can finance oil field developments, upgrading facilities and pipelines with the commercial international banking community using the long-term purchase order of the U.S. government as the basis for loans. Thus it is not necessary for the U.S. government to advance funds to underdeveloped countries for them to exploit their resources, the existence of long-term U.S. purchase orders should facilitate international loans to those countries with potential oil resources. This arrangement has the advantage of broadening the credit or investment in an underdeveloped country from a single company or country to the international banking community. A violation of the agreement becomes a more serious matter to the offender.

Another U.S. policy option to diversify sources of oil imports would be to clearly divorce oil development in a country from political recognition of that country. American companies have not been permitted by the U.S. to return to their off-shore locations in Vietnam. The French, German and Italian governments have permitted their companies to operate. Oil is where nature put it—and it is sometimes controlled by unpleasant fellows. The U.S. has not recognized Angola, yet U.S. companies are producing their oil. A perfectly reasonable objective of an integrated coherent U.S. international oil policy is to have U.S. firms operating in Vietnamese waters, no matter whether we have formal diplomatic relations with them.

One further policy option which would encourage exploration and development in politically risky areas is the provision of risk insurance for the oil industry. The Overseas Private Investment Corporation (OPIC) has instituted such a program, only within the last two years. Under this program they will not insure investments in OPEC countries. Also on an overall basis, they are restricted from operating in countries that are judged to violate human rights. Therefore they would not underwrite any risk in Argentina. Unfortunately Argentina is estimated to have substantial potential resources, particularly offshore. In the framework of a rational U.S. international oil policy, are the human rights records of China, Libya or Iraq, for example, so different from that of Argentina, that we can rationally refuse to underwrite risks in Argentina while accepting all the Chinese, Libyan and Iraqi oil we can obtain?

So far OPIC has underwritten one project in Ghana and one in Jordan. The risk insurance in Jordan is evidently based on the fact that Jordan is not a member of OPEC. Is it conceivable that Jordan would not be influenced by OPEC's pricing policies? Is this the area of the world where additional oil production serves U.S. strategic interests?

Neither the human rights nor the OPEC restriction on OPIC operations seems to make much sense. Argentina is excluded evidently by the human rights restriction. Venezuela would be excluded by the OPEC restriction. But bringing on the production of Venezuelan heavy oil should be a prime objective of a coherent U.S. international oil policy, and this may require the kind of insurance that OPIC can provide.

These policy options are not inconsistent with the program of the World Bank to aid underdeveloped countries to explore for oil resources. In each of these options, it is important that Federal roles and expenditures not be used to displace roles and risks that the private sector will assume. It is also important that the Federal role be exercised to promote a better geographical distribution of U.S. imports, an improved North-South dialogue and a more complete exploitation of the world's prospective oil horizons.

A U.S. international oil policy that provides some Federal stimulus and exerts some Federal control over the source of imports to the U.S. could in time correct some unfortunate consequences of present U.S. energy policy. The responsibility for such a policy should be focused and managed and evaluated by objective. That objective should be to receive at least 50 percent of our oil imports in five years from those countries that serve uniquely our strategic, economic and social interests.●

PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I submit for the RECORD the notifications I have received.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., February 1, 1979.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 79-4 concerning the Department of the Army's proposed Letter of Offer to Greece for defense articles and services estimated to cost $145.5 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620c(d) of the Foreign Assistance Act of 1961, that this action is consistent with Section 620c(b) of that statute.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA.

[Transmittal No. 79-4]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Greece.

(ii) Total estimated value: Major Defense Equipment* $139.9 million; other, $5.6 million; total, $145.5 million.

(iii) Description of Articles or Services Offered: Six hundred (600) conversion kits to convert the M48 tank to the M48A3 model plus concurrent spare parts and search lights.

(iv) Military Department: Army.

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: February 1, 1979.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., January 30, 1979.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 79-6 concerning the Department of the Navy's proposed Letter of Offer to the Netherlands for defense articles and services estimated to cost $16.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA.

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

[Transmittal No. 79-6]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: The Netherlands.

(ii) Total Estimated Value: Major Defense Equipment* $8.9 million other, $7.1 million; total, $16.0 million.

(iii) Description of Articles or Services Offered: Twelve (12) MK-48 Torpedoes and spare parts.

(iv) Military Department: Navy.

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: January 30, 1979.

UNDER SECRETARY OF STATE FOR SECURITY ASSISTANCE, SCIENCE, AND TECHNOLOGY,
Washington, D.C., January 11, 1979.

Pursuant to Section 620C(d) of the Foreign Assistance Act of 1961, as amended, and the authority vested in me by section 6(b)(1) of Department of State Delegation of Authority No. 104, as amended, I hereby certify that the provision of 600 kits to convert the M48 tank to the M48A3 model, plus concurrent spare parts and search lights, to the Government of Greece is consistent with the principles contained in Section 620C(b) of the Foreign Assistance Act of 1961, as amended.

This certification will be made part of the certification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and is based on the justification accompanying said certification, and of which such justification constitutes a full explanation.

LUCY WILSON BENSON.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., February 14, 1979.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 79-8 concerning the Department of the Army's proposed Letter of Offer to the Federal Republic of Germany for defense articles and services estimated to cost $28.6 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

WALTER B. LIGON,
Acting Director.

[Transmittal No. 79-8]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: The Federal Republic of Germany.

(ii) Total Estimated Value: Major Defense Equipment* $25.4 million; other $3.2 million; total, $28.6 million.

(iii) Description of Articles or Services Offered:

One hundred thousand (100,000) rounds of 90mm tank gun ammunition.

(iv) Military Department: Army.

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: February 15, 1979.

PRELIMINARY NOTIFICATION PROPOSED ARMS SALES

Mr. President, Section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that Act in excess of $25 million, or in the case of major defense equipment as defined in the Act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the Chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the Committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the record in accordance with previous practice.

I wish to inform Members of the Senate that four such notifications were received on February 5 and 13, 1979.

Interested Senators may inquire as to the details of these preliminary notifications at the offices of the Committee on Foreign Relations, Room S-116 in the Capitol.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., February 5, 1979.

Dr. HANS BINNENDIJK,
Professional Staff Member, Subcommittee on Foreign Assistance, Committee on Foreign Relations, United States Senate, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to an African country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., February 5, 1979.

Dr. HANS BINNENDIJK,
Professional Staff Member, Subcommittee on Foreign Assistance, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to an East Asian country estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., February 13, 1979.

Dr. HANS BINNENDIJK,
Professional Staff Member, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country estimated to cost in excess of $25 million.

Sincerely,

WALTER B. LIGON,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., February 13, 1979.

Dr. HANS BINNENDIJK,
Professional Staff Member, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a European country tentatively estimated to cost in excess of $25 million.

Sincerely,

WALTER B. LIGON,
Acting Director.●

PRELIMINARY NOTIFICATION PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD in accordance with previous practice.

I wish to inform Members of the Senate that such a notification was received on February 26, 1979.

Interested Senators may inquire as to the details of this preliminary notification at the offices of the Committee on Foreign Relations, room S-116 in the Capitol.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., February 26, 1979.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERNEST GRAVES.●

LITHUANIAN INDEPENDENCE DAY

Mr. BAYH. Mr. President, on February 16, the Lithuanian community in this country and around the world paused to commemorate the 61st anniversary of the Declaration of Independence of Lithuania. It is most appropriate that we in the United States take note of this anniversary, and reflect for a moment on the importance of the continuing efforts to achieve self-determination among the people of Lithuania.

I am sure that each Member of the Senate who has reviewed, as I have, the report issued by the Lithuanian-American community on "The Violations of Human Rights in Soviet Occupied Lithuania, A Report for 1977" is extremely conscious of the need to continue to call to public attention the attitude of the Soviet Government. With the signing of the Helsinki accords in 1975, new hope was born that the demonstrated disregard for fundamental human rights by the Soviet Government would not be repeated. Regrettably, the promise of the Helsinki accords has not been fulfilled, and the continuing pattern of human rights violations by the Soviet Union is a matter of deep concern to all freedom-loving men and women. The lessons of the past have taught us that we can never afford to take human rights for granted; the efforts of the Lithuanian people reemphasize that where the hope for freedom lives, the struggle, even in the face of overwhelming opposition, will go on. As we recall the plight of modern Lithuanian prisoners of conscience Viktoras Petkus, Balys Gajauskas, Algirdas Zypre and others, and salute those people of the Baltic States who have given so much over the years to maintain their national identities and cultures, we again affirm the commitment of the United States to support the cause of international human rights.

At this time, I would like to call the Senate's attention to the text of a resolution adopted by members of the Lithuanian American Council of Lake County, Ind., in observation of Lithuanian Independence Day.

I ask unanimous consent that a copy of the resolution be printed in the RECORD at this point.

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

RESOLUTION

That February 16, 1979, marks the 61st anniversary of the restoration of independence to the more than 700-year-old Lithuanian State;

That the Soviets are intensifying their action in Iran and the Middle East. They are aiming, with the aid of Cuban troops and unlimited supply of modern weapons, to subjugate the new nations in Africa. Moscow is expanding its colonial empire. What happens when a country becomes a Soviet colony could be judged from the oppression of Lithuania, which became one of the first colonies of Soviet imperialism. Disregarding the Soviet obligation in the peace treaty of 1920 to respect Lithuanian independence and breaking the non-aggression pact of 1926, the Soviet Union occupied Lithuania on June 15, 1940. Moscow began its rule of terror, russification, oppression, and exploitation.

That the Congress of the United States of America after a thorough investigation declared that the occupation of Lithuania was carried out by force and fraud and the United States does not recognize the incorporation of Lithuania into the Soviet empire.

That the Lithuanian American citizens are grateful to the United States for this support and consolidating their efforts to regain independence for the land of their forefathers, under the guidance of the Lithuanian American Council, Inc., and other patriotic organizations, this month will be commemorating the declaration of Independence of Lithuania which took place on February 16, 1918. Lithuanian Americans are striving to arouse public opinion against Soviet tryranny and oppression in the land of their fathers.

Now, therefore, be it resolved

That we are grateful to President Carter for his struggle for human rights, which should also include the rights of nations to live free and independent lives;

That at the Madrid Conference of 1980 the signatories of the Helsinki agreements would condemn the colonial regime in the Baltic States, supporting the aims of these nations for freedom and independence;

That in expressing our gratitude to the United States administration and the Congress for their firm position of the non-recognition of the Soviet occupation and annexation of Lithuania, we request them to use every opportunity in international forums and in direct negotiations with the Soviet Union to strongly support the Lithuanian aims for independence.

RULES OF THE SELECT COMMITTEE ON INTELLIGENCE

Mr. BAYH. Mr. President, section 133B of the Legislative Reorganization Act requires each standing, select, or special committee of the Senate to publish its rules in the CONGRESSIONAL RECORD not later than March 1 of each year. I ask unanimous consent that the Rules of the Select Committee on Intelligence be printed in the RECORD.

There being no objection, the rules were ordered to be printed in the RECORD, as follows:

SELECT COMMITTEE ON INTELLIGENCE, U.S. SENATE

RULES OF PROCEDURE

Rule 1. Convening of meetings

1.1 The regular meeting day of the Select Committee on Intelligence for the transaction of committee business shall be on the first Wednesday of each month, unless otherwise directed by the chairman.

1.2 The chairman shall have authority, upon proper notice, to call such additional meetings of the committee as he may deem necessary and may delegate such authority to any other member of the committee.

1.3 A special meeting of the committee may be called at any time upon the written request of five or more members of the committee filed with the clerk of the committee.

1.4 In the case of any meeting of the committee, other than a regularly scheduled meeting, the clerk of the committee shall notify every member of the committee of the time and place of the meeting and shall give reasonable notice which, except in extraordinary circumstances, shall be at least 24 hours in advance of any meeting held in Washington, D.C., and at least 48 hours in the case of any meeting held outside Washington, D.C.

1.5 If five members of the committee have made a request in writing to the chairman to call a meeting of the committee, and the chairman fails to call such a meeting within seven calendar days thereafter, including the day on which the written notice is submitted, these members may call a meeting by filing a written notice with the clerk of the committee who shall promptly notify each member of the committee in writing of the date and time of the meeting.

Rule 2. Meeting procedures

2.1 Meetings of the committee shall be open to the public except as provided in Senate Resolution 9, 94th Congress, 1st session.

2.2 It shall be the duty of the staff director to keep or cause to be kept a record of all committee proceedings.

2.3 The chairman of the committee, or if the chairman is not present the vice chairman, shall preside over all meetings of the committee. In the absence of the chairman and the vice chairman at any meeting the ranking majority member, or if no majority member is present the ranking minority member present shall preside.

2.4 Except as otherwise provided in these rules, decisions of the committee shall be by majority vote of the members present and voting. A quorum for the transaction of committee business, including the conduct of executive sessions, shall consist of six committee members until that date of the sine die adjournment of the 1st session of the 95th Congress, and thereafter, shall consist of five committee members, except that for the purpose of hearing witnesses, taking sworn testimony, and receiving evidence under oath, a quorum may consist of one Senator.

2.5 A vote by any member of the committee with respect to any measure or matter being considered by the committee may be cast by proxy if the proxy authorization (1) is in writing; (2) designates the member of the committee who is to exercise the proxy; and (3) is limited to a specific measure or matter and any amendments pertaining thereto. Proxies shall not be considered for the establishment of a quorum.

2.6 Whenever the committee by roll call vote reports any measure or matter, the report of the committee upon such measure or matter shall include a tabulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each member of the committee.

Rule 3. Subcommittees

Creation of subcommittees shall be by majority vote of the committee. Subcommittees shall deal with such legislation and oversight of programs and policies as the committee may direct. The subcommittees shall be governed by the rules of the committee and by such other rules they may adopt which are consistent with the rules of the committee.

Rule 4. Reporting of measures or recommendations

4.1 No measures or recommendations shall be reported, favorably or unfavorably, from the committee unless a majority of the committee is actually present and a majority concur.

4.2 In any case in which the committee is unable to reach a unanimous decision, separate views or reports may be presented by any member or members of the committee.

4.3 A member of the committee who gives notice of his intention to file supplemental, minority, or additional views at the time of final committee approval of a measure or matter, shall be entitled to not less than three working days in which to file such views, in writing with the clerk of the committee. Such views shall then be included in the committee report and printed in the same volume, as a part thereof, and their inclusion shall be noted on the cover of the report.

Rule 5. Nominations

5.1 Unless otherwise ordered by the committee, nominations referred to the committee shall be held for at least 14 days before being voted on by the committee.

5.2 Each member of the committee shall be promptly furnished a copy of all nominations referred to the committee.

5.3 Nominees who are invited to appear before the committee shall be heard in public session, except as provided in rule 2.1.

5.4 No confirmation hearing shall be held sooner than seven days after receipt of the background and financial disclosure statement unless the time limit is waived by a majority vote of the committee.

5.5 The committee vote on the confirmation shall not be sooner than 48 hours after the committee has received transcripts of the confirmation hearing unless the time limit is waived by unanimous consent of the committee.

5.6 No nomination shall be reported to the Senate unless the nominee has filed a background and financial disclosure statement with the committee.

Rule 6. Investigations

No investigation shall be initiated by the committee unless at least five members of the committee have specifically requested the chairman or the vice chairman to authorize such an investigation. Authorized investigations may be conducted by members of the committee and/or designated committee staff members.

Rule 7. Subpenas

Subpenas authorized by the committee for the attendance of witnesses or the production of memoranda, documents, records or any other material may be issued by the chairman, the vice chairman, or any member of the committee designated by the chairman, and may be served by any person designated by the chairman, vice chairman or member issuing the subpenas. Each subpena shall have attached thereto a copy of Senate Resolution 400, 94th Congress, 2d session, and a copy of these rules.

Rule 8. Procedures related to the taking of testimony

8.1 *Notice.*—Witnesses required to appear before the committee shall be given reasonable notice and all witnesses shall be furnished a copy of these Rules.

8.2 *Oath or a affirmation.*—Testimony of nesses shall be given under oath or affirmation which may be administered by any member of the committee.

8.3 *Interrogation.*—Committee interrogation shall be conducted by members of the committee and such committee staff as are authorized by the chairman, vice chairman, or the presiding member.

8.4 *Counsel for the witness.*—(a) Any witness may be accompanied by counsel. A witness who is unable to obtain counsel may inform the committee of such fact. If the witness informs the committee of this fact at least 24 hours prior to his appearance before the committee the committee shall then endeavor to obtain voluntary counsel for the witness. Failure to obtain such counsel will not excuse the witness from appearing and testifying.

(b) Counsel shall conduct themselves in an ethical and professional manner. Failure to do so shall, upon a finding to that effect by a majority of the members present, subject such counsel to disciplinary action which may include warning, censure, removal, or a recommendation of contempt proceedings.

(c) There shall be no direct or cross-examination by counsel. However, counsel may submit in writing any question he wishes propounded to his client or to any other witness and may, at the conclusion of his client's testimony, suggest the presentation of other evidence or the calling of other witnesses. The committee use such questions and dispose of such suggestions at it deems appropriate.

8.5 *Standards by Witnesses.*—A witness may make a statement, which shall be brief and relevant, at the beginning and conclusion of his testimony. Such statements shall not exceed a reasonable period of time as determined by the chairman, or other presiding member. Any witness desiring to make a prepared or written statement for the record of the proceedings shall file a copy with the clerk of the committee, and insofar as practicable and consistent with the notice given, shall do so at least 72 hours in advance of his appearance before the committee.

8.6 *Objections and Rulings.*—Any objection raised by a witness or counsel shall be ruled upon by the chairman or other presiding member, and such ruling shall be the ruling of the committee unless a majority of the committee present overrules the ruling of the chair.

8.7 *Inspection and Correction.*—All witnesses testifying before the committee shall be given a reasonable opportunity to inspect, in the office of the committee, the transcript of their testimony to determine whether such testimony was correctly transcribed. The witness may be accompanied by counsel. Any corrections the witness desires to make in the transcript shall be submitted in writing to the committee within 5 days from the date when the transcript was made available to the witness. Corrections shall be limited to grammar and minor editing, and may not be made to change the substance of the testimony. Any questions arising with respect to such corrections shall be decided by the chairman. Upon request, those parts of testimony given by a witness in executive session which are subsequently quoted or made part of a public record shall be made available to that witness at his expense.

8.8 *Requests to Testify.*—The committee will consider requests to testify on any matter or measure pending before the committee. A person who believes that testimony or other evidence presented at a public hearing, or any comment made by a committee member or a member of the committee staff may tend to affect adversely his reputation, may request to appear personally before the committee to testify on his own behalf, or may file a sworn statement of facts relevant to the testimony, evidence, or comment, or may submit to the chairman proposed questions in writing for the cross-examination of other witnesses. The committee shall take such action as it deems appropriate.

8.9 *Contempt Procedures.*—No recommendation that a person be cited for contempt of Congress shall be forwarded to the Senate unless and until the committee has, upon notice to all its members, met and considered the alleged contempt, afforded the person an opportunity to state in writing or in person why he should not be held in contempt, and agreed, by majority vote of the committee to forward such recommendation to the Senate.

8.10 *Release of Name of Witness.*—Unless authorized by the chairman, the name of any witness scheduled to be heard by the committee shall not be released prior to, or after, his appearance before the committee.

Rule 9. Procedures for handling classified or sensitive material

9.1 Committee staff offices shall operate under strict security precautions. At least one security guard shall be on duty at all times by the entrance to control entry. Before entering the office all persons shall identify themselves.

9.2 Sensitive or classified documents and material shall be segregated in a secure storage area. They may be examined only at secure reading facilities. Copying, duplicating, or removal from the committee offices of such documents and other materials is prohibited except as is necessary for use in, or preparation for, interviews or committee meetings, including the taking of testimony, and in conformity with Section 10.3 hereof.

9.3 Each member of the committee shall at all times have access to all papers and other material received from any source. The staff director shall be responsible for the maintenance, under appropriate security procedures, of a registry which will number and identify all classified papers and other

classified materials in the possession of the committee, and such registry shall be available to any member of the committee.

9.4 Whenever the Select Committee on Intelligence makes classified material available to any other committee of the Senate or to any member of the Senate not a member of the committee, the clerk of the committee shall be notified. The clerk of the committee shall maintain a written record identifying the particular information transmitted and the committee or members of the Senate receiving such information.

9.5 Access to classified information supplied to the committee shall be limited to those committee staff members with appropriate security clearances and a need-to-know, as determined by the committee, and under the committee's direction, the staff director and minority staff director.

9.6 No member of the committee or of the committee staff shall disclose in whole or in part or by way of summary, to any person not a member of the committee or the committee staff for any purpose or in connection with any proceeding, judicial or otherwise, any testimony given before the committee in executive session including the name of any witness who appeared or was called to appear before the committee in executive session, or the contents of any papers or other materials or other information received by the committee except as authorized by the committee in accordance with section 8 of Senate Resolution 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the committee, in such a manner as may be determined by the Senate.

9.7 Before the committee makes any decision regarding the disposition of any testimony, papers, or other materials presented to it, the committee members shall have a reasonable opportunity to examine all pertinent testimony, papers, and other materials that have been obtained by the members of the committee or the committee staff.

Rule 10. Staff

10.1 For the purpose of these rules, committee staff means employees of the committee, employees of the members of the committee assigned to the committee, consultants to the committee, employees of other government agencies detailed to the committee, or any other person engaged by contract or otherwise to perform services for or at the request of the committee.

10.2 The appointment of committee staff shall be confirmed by a majority vote of the committee. After confirmation, the chairman shall certify committee staff appointments to the financial clerk of the Senate in writing.

10.3 The committee staff works for the committee as a whole, under the general supervision of the chairman and the vice chairman of the committee. Except as otherwise provided by the committee, the duties of committee staff shall be performed, and committee staff personnel affairs and day-to-day operations, including security and control of classified documents and material, shall be administered under the direct supervision and control of the staff director. The minority staff director and the minority counsel shall be kept fully informed regarding all matters and shall have access to all material in the files of the committee.

10.4 The committee staff shall assist the minority as fully as the majority in the expression of minority views, including assistance in the preparation and filing of additional, separate and minority views, to the end that all points of view may be fully considered by the committee and the Senate.

10.5 The members of the committee staff shall not discuss either the substance or procedure of the work of the committee with any person not a member of the committee or the committee staff for any purpose or in connection with any proceeding, judicial, or otherwise, either during his tenure as a member of the committee staff or at any time thereafter except as directed by the committee in accordance with section 8 of Senate Resolution 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the committee, in such a manner as may be determined by the Senate.

10.6 No member of the committee staff shall be employed by the committee unless and until such a member of the committee staff agrees in writing, as a condition of employment to abide by the conditions of the nondisclosure agreement promulgated by the Senate Select Committee on Intelligence pursuant to section 6 of Senate Resolution 400 of the 94th Congress, 2d Session.

10.7 No member of the committee staff shall be employed by the committee unless and until such a member of the committee staff agrees in writing, as a condition of employment, to notify the committee or in the event of the committee's termination the Senate of any request for his testimony, either during his tenure as a member of the committee staff or at any time thereafter with respect to information which came into his possession by virtue of his position as a member of the committee staff. Such information shall not be disclosed in response to such requests except as directed by the committee in accordance with section 8 of Senate Resolution 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the committee, in such manner as may be determined by the Senate.

10.8 The committee shall immediately consider action to be taken in the case of any member of the committee staff who fails to conform to any of these rules. Such disciplinary action may include, but shall not be limited to, immediate dismissal from the committee staff.

Rule 11. Preparation for committee meetings

11.1 Under direction of the chairman and the vice chairman, designated committee staff members shall brief members of the committee at a time sufficiently prior to any committee meeting to assist the committee members in preparation for such meeting and to determine any matter which the committee member might wish considered during the meeting. Such briefing shall, at the request of a member, include a list of all pertinent papers and other materials that have been obtained by the committee that bear on matters to be considered at the meeting.

11.2 The staff director shall recommend to the chairman and the vice chairman the testimony, papers, and other materials to be presented to the committee at any meeting. The determination whether such testimony, papers, and other materials shall be presented in open or executive session shall be made pursuant to the rules of the Senate and rules of the committee.

Rule 12. Legislative calendar

12.1 The clerk of the committee shall maintain a printed calendar for the information of each committee member showing the measures introduced and referred to the committee and the status of such measures; nominations referred to the committee and their stataus; and such other matters as the committee determines shall be included. The calendar shall be revised from time to time to show pertinent changes. A copy of each such revision shall be furnished to each member of the committee.

12.2 Unless otherwise ordered, measures referred to the committee shall be referred by the clerk of the committee to the appropriate department or agency of the Government for reports thereon.

Rule 13. Committee travel

13.1 No member of the committee or committee staff shall travel abroad on committee business unless specifically authorized by the chairman and vice chairman. Requests for authorization of such travel shall state the purpose and extent of the trip. A full report shall be filed with the committee when travel is completed.

13.2 When the chairman and the vice chairman approve the foreign travel of a member of the Committee staff not accompanying a member of the committee, all members of the committee are to be advised, prior to the commencement of such travel, of its extent, nature and purpose. The report referred to in rule 13.1 shall be furnished to all members of the committee and shall not be otherwise disseminated without the express authorization of the committee pursuant to the rules of the committee.

13.3 No member of the committee staff shall travel within this country on committee business unless specifically authorized by the staff director as directed by the committee.

Rule 14. Changes in rules

These rules may be modified, amended, or repealed by the committee, provided that a notice in writing of the proposed change has been given to each member at least 48 hours prior to the meeting at which action thereon is to be taken.

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

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

Mr. ROBERT C. BYRD. Mr. President, are there any orders for the recognition of Senators on Monday?

The PRESIDING OFFICER. No, there are not.

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

SUPPORT OF RETENTION OF FORT JACKSON AND PARRIS ISLAND AS MILITARY TRAINING FACILITIES IN SOUTH CAROLINA

Mr. THURMOND. Mr. President, I rise in behalf of myself and the junior Senator from South Carolina (Mr. HOLLINGS) to call to the attention of the Senate a resolution unanimously approved by the South Carolina Senate and House of Representatives urging retention of the Army and Marine training bases in our State.

Fort Jackson, the Army's main infantry facility, is located at Columbia, S.C., and Parris Island, one of the largest Marine Corps recruit training bases is situated near Beaufort in South Carolina.

Mr. President, the South Carolina congressional delegation was shocked last spring to learn that these outstanding facilities were included in a training realinement study. Since that time our investigations give us great confidence that both will be retained, as these installations are among the most cost effective and efficient in the country.

It is with pleasure that I call to the attention of the Senate a concurrent resolution approved by both Houses of the South Carolina legislature which supports the efforts of the congressional del-

egation, and I ask unanimous consent that this resolution be printed in the RECORD.

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

CONCURRENT RESOLUTION

Whereas, the United States Government has recently undertaken a review of the facilities and operations at Fort Jackson and Parris Island; and

Whereas, recent studies have shown that these installations are two of the most efficiently operated facilities in the nation, accomplishing their training missions in a cost-effective and cost-efficient manner; and

Whereas, in this time of increased emphasis on fiscal responsibility together with a strong national defense, the continued operation of Fort Jackson and Parris Island is one of the most attractive alternatives available when taking into account all divergent considerations; and

Whereas, the members of the General Assembly believe that the maintenance of these two facilities at their present or expanded level of utilization would be good business in terms of meeting both the economic and military goals of our nation.

Now, therefore, Be it resolved by the House of Representatives, the Senate, concurring:

That the members of the General Assembly do hereby voice their grave concern and opposition to any action by the United States Government, or any department or agency thereof, which results in any curtailment in the size or mission of the Fort Jackson and Parris Island military training installations, because any such curtailment would damage our nation's fiscal and defense goals.

Be it further resolved that copies of this resolution be forwarded to the President of the United States, the Secretary of Defense and each member of the South Carolina Congressional Delegation in Washington, D.C.

REQUEST FOR THE POSTMASTER GENERAL TO INVESTIGATE CERTAIN POST OFFICES IN SOUTH CAROLINA

Mr. THURMOND. Mr. President, I rise in behalf of myself and the junior Senator from South Carolina (Mr. HOLLINGS) to call to the attention of the Senate a resolution unanimously approved by the South Carolina Senate and House of Representatives. The resolution requests the Postmaster General to investigate several post offices in South Carolina to determine if they are complying with federally mandated standards regarding access by the handicapped.

Under current law, the U.S. Post Office is required to establish standards to insure that physically handicapped persons have access to post office buildings. It has come to the attention of South Carolina officials that a number of post offices still have inadequate provision for handicapped individuals. They are, therefore, requesting this investigation.

Mr. President, I ask unanimous consent that this resolution be printed in the RECORD.

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

CONCURRENT RESOLUTION

Whereas, it has come to the attention of the General Assembly that many post office buildings in South Carolina do not have facilities to allow physically handicapped persons to have ready access and use to such buildings; and

Whereas, the United States Code provides that the United States Postal Service shall establish such standards to insure that physically handicapped persons have access to post office buildings.

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

That the Postmaster General be requested to investigate the possible non-compliance of certain post office buildings in Williamsburg County with the federally mandated standards by which all physically handicapped persons shall have easy access to such buildings.

Be it further resolved that a copy of this resolution be sent to the Postmaster General and to members of the United States Senate and House from South Carolina.

POLICY ON NUCLEAR FUEL REPROCESSING

Mr. THURMOND. Mr. President, we are all aware that President Jimmy Carter indefinitely deferred commercial reprocessing on April 7, 1977.

Although there has been ample evidence based on foreign commitments to reprocessing that the President's policy is a failure, the administration has continued to hold fast.

Recently, however, I have noticed instances where administration spokesmen have begun to qualify what was once a hard-line position. One example of this was a February 5, 1979, letter to me from Dr. John Deutch, Acting Assistant Secretary for Energy Technology in the Department of Energy.

Dr. Deutch's letter to me was in response to a November 30 letter I had written to President Carter regarding possible use of the Barnwell nuclear fuel plant in South Carolina for spent fuel storage. In his reply, Dr. Deutch stated:

The Barnwell facility has spent fuel storage capability as an essential feature of a reprocessing plant. The use of that capability or its expansion would not interfere with the operation of the facility to reprocess fuel. Moreover, if future reprocessing were to be undertaken, then storage of spent fuel at or near a reprocessing facility would have logistics advantages. As you know, the Administration's policy at present is to indefinitely defer reprocessing because of nonproliferation concerns. However, no final determination has been made on the reprocessing option.

This statement represents to me a very open minded, flexible position on reprocessing and even holds out the hope that Barnwell might some day be used for that purpose. However, the President's budget for fiscal year 1980 contains no funds to continue the ongoing R. & D. program at Barnwell and, indeed, there are no funds for any reprocessing work at all in the budget. The reprocessing column has a zero in it.

Mr. President, I hope that Senator HENRY JACKSON, chairman of the Senate Energy and Natural Resources Committee, and his colleagues, will have an opportunity to explore further this open-minded approach with Dr. Deutch when he appears before that committee in the near future.

Mr. President, I ask unanimous consent that my letter to President Carter and the reply from Dr. Deutch be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

DEPARTMENT OF ENERGY,
Washington, D.C., February 2, 1979.

Hon. STROM THURMOND,
U.S. Senate,
Committee on Armed Services,
Washington, D.C.

DEAR SENATOR THURMOND: Because your November 30, 1978, letter to the President pertains to work sponsored by the Department of Energy (DOE), we have been asked to answer it on the President's behalf. We appreciate your views on away-from-reactor storage of spent nuclear fuel and the Barnwell Nuclear Fuels Plant (BNFP).

The Administration favors two approaches to spent fuel storage. First, substantial spent fuel storage capacity can be provided in existing reactor storage basins. The capacity of these basins can be, and in many cases has been, increased by reracking the present storage pools to provide higher density storage. With existing reracking technology, storage basin capacities can be safely and economically increased to 2.5 to 4 times present levels. The Administration encourages utilities to make the maximum practical use of reactor site storage and is conducting research and development on methods of providing even higher density storage in an economical, safe manner. Even with high density storage, however, the capacity at reactors will not be sufficient to meet growing storage needs.

The second part of the storage solution is the establishment of away-from-reactor (AFR) storage facilities. Certainly, AFR storage is only an interim measure until such time as repositories are available for permanent disposal of spent fuel or until reprocessing is considered a viable option. Presently, DOE is considering a number of options for providing necessary AFR storage capacity. For meeting near term needs, several existing facilities, including Barnwell, are under consideration. For longer term needs, new facilities or expansions to existing facilities are possible.

The Barnwell facility has spent fuel storage capability as an essential feature of a reprocessing plant. The use of that capability or its expansion would not interfere with the operation of the facility to reprocess fuel. Moreover, if future reprocessing were to be undertaken, then storage of spent fuel at or near a reprocessing facility would have logistics advantages. As you know, the Administration's policy at present is to indefinitely defer reprocessing because of nonproliferation concerns. However, no final determination has been made on the reprocessing option.

The uses of BNFP for processing fuel from the N Reactor at Richland and other uses of BNFP, such as safeguards training, were previously addressed in DOE/ET-0040 "Barnwell Nuclear Fuels Plant Applicability Study." A copy of Volume II of this study entitled: "BNFP-Utilization Alternatives, Evaluations and Conclusions," is enclosed for your information. DOE is presently performing a more in-depth analysis of Barnwell's possible defense program applications with the assistance of the Barnwell plant operator, Allied General Nuclear Services (AGNS). The AGNS analysis will be used by DOE to help provide a basis for the decision yet to be made in this matter.

The Department recognizes the importance of a cooperative effort between the Administration, the Congress, and the state in all matters related to nuclear waste management. The meeting that you initiated on December 5, among Representative Spencer, Representative Campbell, Mr. Schlesinger and me, was a positive step toward better mutual understanding of each other's views

and objectives. We look forward to similar consultations in the future.

Sincerely,

JOHN M. DEUTCH,
Acting Assistant Secretary for Energy Technology.

WASHINGTON, D.C.,
November 30, 1978.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: In view of recurring reports that the Department of Energy may recommend the Barnwell Nuclear Fuel Plant in South Carolina as a site for the storage of spent nuclear fuel rods, I want to express my opposition to any such plan for permanent storage at this facility. I believe, first, that each state, insofar as possible, should provide its own temporary storage sites for commercial spent fuel until a permanent site can be determined. Second, such a permanent site should be on sparsely populated, government-owned land well away from inhabited or well-traveled areas.

In my opinion, the Barnwell plant operated by Allied General Nuclear Services, is too useful for conserving and developing energy to be used as a storage site. Instead, the nuclear fuel reprocessing which was originally planned for the Barnwell plant should go forward, particularly in the light of recent safeguards against possible conversion of the fuel into explosives, and since reprocessing eliminates much of the nuclear waste.

Further, I would urge in the study of Barnwell's possible defense applications, now underway, that consideration be given to the plant's use as a reprocessing site for military production of reactor fuels. The Barnwell plant is contiguous to the Savannah River Plant now performing similar defense work. This could be done along with the important work on fuel cycle research and development currently underway at Barnwell. Consideration should also be given to utilizing this facility for safeguards training.

Finally, I would request that prior to any decision on use of the Barnwell facility by your Administration that consultations be held with the Governor, South Carolina Congressional Delegation and the appropriate State legislators.

I believe these significant considerations should be paramount in my future decisions about this important facility.

With kindest regards,

Respectfully,

STROM THURMOND.

FUTURE OF THE FREE ENTERPRISE SYSTEM

Mr. THURMOND. Mr. President, during the first few weeks of this 96th Congress, we have heard many excellent statements in this Senate Chamber about the state of our national economy. Some statements dealt with the critical and complex problems related to inflation. Others dealt with the opportunities and the challenges for us to provide the legislative leadership that the American public expects from us to deal effectively with these economic matters. Certainly these discourses are entirely appropriate and laudable; they have provided a much needed forum for our careful and deliberate consideration of basic and fundamental economic issues that confront our Nation today.

Mr. President, I have been privileged to join into these discussions on several occasions and, I trust, have made some meaningful contributions to our total body of thought concerning these issues. My purpose in rising here today, however, Mr. President, is not to speak further on these issues myself but to direct the attention of my colleagues to a truly outstanding address, titled, "The Future of the Free Enterprise System," by the Honorable Arthur F. Burns.

Dr. Burns, former Chairman of the Board of Governors of the Federal Reserve System, is currently a distinguished scholar in residence at the American Enterprise Institute for Public Policy Research. This particular address by Dr. Burns, recently published in the January/February 1979 issue of Professional Corporation magazine, was the basis of his lecture upon receipt of the Frank E. Seidman Distinguished Award in Political Economy, presented last fall at Southwestern at Memphis.

In this address, Dr. Burns presents a thorough and thought-provoking analysis of the background, development, and characteristics of the free enterprise system. He gives particular emphasis to the sharply changing economic conditions that we have experienced in recent years and, most importantly for our consideration here, he provides economic policymakers with some of his thinking about the future of the free enterprise system in America.

Toward the end of his address Dr. Burns comments specifically on our current problem of inflation and he suggests a prescription for a balanced attack to bring inflation under control. He includes suggestions for action with respect to the Federal Reserve, the Federal deficit and balancing the budget, restraints on Federal salary increases and compensation to top corporate executives, the need for productivity councils and centers, the blunting of cost-raising measures that we have allowed to flourish in our economy, and the postponement of some target dates that have been set for environmental and safety regulation.

Dr. Burns states his conviction:

> That inflation is a disease that can be brought under control; but that will happen only when the will to do so becomes strong enough.

He concludes with the warning that—

> . . . if the present worldwide inflation continues, a command economy may eventually be the bitter fruit of this generation's complacency and neglect. It is the duty of each of us to do what we can to prevent this from happening.

Mr. President, this is, indeed, an outstanding contribution by Dr. Burns and in order to share this interesting and informative address with my colleagues, I ask unanimous consent that it be printed in the RECORD.

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

THE FUTURE OF THE FREE ENTERPRISE SYSTEM

Prediction of the economic future has always been a hazardous task. Noting this fact, a distinguished economic historian, Werner Sombart, once remarked that "it is precisely the most gifted men who have made the most fundamental mistakes" in predicting the economic future. While I am by no means sure that "gifted men" are more prone to misjudge the future than are ordinary mortals, there is ample evidence that judgments of the future even by the ablest economists have often been mistaken.

Karl Marx, who revolutionized economic and political thinking over much of the world, provides an outstanding example.

Marx believed that certain tendencies inherent in capitalism would ultimately lead to its destruction. In his vision, small business firms would gradually disappear as capitalism evolved. The concentration of production in a diminishing number of large enterprises would be accompanied by concentration of wealth in fewer and fewer hands. The middle class would thus be destroyed and the masses proletarized. Inadequate consumption would lead to recurring epidemics of overproduction and depression of increasing severity would follow. As the misery of the proletarial deepened, resistance to capitalist exploitation would intensify and become more militant. With such powerful tendencies at work, the capitalist order was bound to collapse; it was only a matter of time when the capitalists would be expropriated and all instruments of production socialized.

Thus according to Marx's theory, the failure of capitalism in its later stages to meet even elementary economic needs of the working masses would inevitably lead, although not without intense struggle, to the replacement of free enterprise by a socialistically planned regime.

In our own century, another great economist, Joseph Schumpeter, brilliantly challenged Marx's analysis. Schumpeter saw in capitalism a highly efficient engine of mass production and mass consumption. In his view the capitalist spirit expresses itself characteristically through innovation—that is, developing new commodities, devising new technology, harnessing new sources of supply, devising new market strategies, and forming new types of organization. The competition of new products and new ways of doing business against old products and customary procedures—that is the essence of the capitalist process. This competition of the new against the old is what really matters in the business world; it has been continuing at a rapid pace, and it accounts for the vast improvement in living standards wherever capitalism has flourished. Indeed, not only economic improvements, but the major achievements of modern times in the sciences and arts are, directly or indirectly, the products of capitalism.

Being a student of business cycles, Schumpeter was well aware of recurring business slumps and their spells of unemployment. But he regarded recessions as temporary phenonmena that paved the way, so to speak, to more effective utilization of resources and therefore to still higher standards of living. He went on to argue, nevertheless, that the great economic and cultural achievements of modern capitalism did not assure its future; on the contrary, the very success of capitalism would eventually cause its replacement by a socialist civilization. He thus accepted Marx's conclusion but not the analysis on which it was based.

According to Schumpeter, capitalism would be destroyed by factors growing out of its own inner processes. As business corporations became larger, they would become bureaucratic and impersonal. The entrepreneurial function of innovating would be largely assumed by trained specialists. Increasing affluence would provide both the means and the will to expand social programs and thus lead to a growing role for government. The intellectual class created and nourished by capitalism would become increasingly hostile to its institutions. Animosity toward free enterprise would be exploited by government officials seeking additional power for themselves. The general public would fail to support free enterprise because the issues

debated in the public arena are much too complex and often involve long-range considerations that go beyond popular concern. Even businessmen would become increasingly willing to accept the teachings of their detractors. In this social and political environment, capitalist enterprise would in time be undermined and finally replaced by socialism.

Thus, Schumpeter arrived at precisely the same conclusion as Karl Marx. But whereas Marx attributed the eventual coming of socialism to the failure of capitalism, Schumpeter attributed it to the outstanding success of capitalism.

When we turn from the theories of Marx and Schumpeter to recorded experience, several facts immediately stand out. First, we find that the nations practicing socialism in Marx's and Schumpeter's sense had either banished free enterprise under external military pressure, as in the case of Eastern Europe, or had undergone an internal revolution without ever developing a significant degree of free enterprise as in the case of the Soviet Union and mainland China.

Second, we find that greater economic success has been generally achieved in nations that extensively practice free enterprise than in nations where it is prohibited or severely limited. The economic performance of the United States, West Grmany, and France has been more impressive than that of the Soviet Union or East Germany or Poland. Likewise, the economic performance of Japan, Taiwan, or Brazil has clearly surpassed that of India, Sri Lanka, or Egypt.

Third, although Marx's analysis continues to appeal to many intellectuals, his elaborate theoretical structure has been discredited by experience. Instead of bringing economic misery to the masses, capitalism has produced vast improvements in their economic condition. True, socialism has triumphed in some countries, but the triumph was achieved in a far different way than Marx had envisaged. On the other hand, Schumpeter's theory that capitalism would eventually be destroyed by its very success in improving the lot of people cannot be dismissed so readily. His prognosis may or may not turn out to be valid. But there is no denying that much of what has happened in recent decades in countries that boast of practicing free enterprise fits rather closely his theoretical model.

Let me speak more specifically about one prominent feature of Schumpeter's analysis—namely, the expanding role of government in economic life. The broad trend of American economic development has been toward increasing emphasis on the service industries, and the government has become the channel through which much of the public's demand for services is satisfied. As our economy has undergone industrialization and urbanization, there has been a steady increase in the interdependence of people—that is, in their reliance on the wisdom and enterprise, and also in their exposure to the folly and indolence of their neighbors. In such an environment, social and economic problems often arise that cannot be adequately handled by private enterprise and governmental activities therefore tend to expand.

The spread of political democracy has accentuated the trend toward seeking governmental solutions of economic and social problems. With more people in the lower-income groups taking advantage of the right to vote and with advocates of all sorts active in legislative halls, demands on the government have been mounting—to eliminate or regulate private monopoly, to conserve natural resources, to strengthen trade unions, to raise minimum wages, to protect the environment, to improve housing conditions, to protect unwary consumers, to subsidize agriculture or other industries and so on and on.

The range of governmental activities has thus been steadily expanding and so, too, has the cost. In 1929, governmental expenditure—that is, the combined total of federal, state, and local spending—amounted to 11 percent of the dollar value of our nation's entire production of goods and services. The corresponding figure rose to 20 percent in 1940, 23 percent in 1950, 30 percent in 1960, 35 percent in 1970, and 37 percent in 1977.

The sharply rising trend of governmental spending has, of course, involved a steady increase in that part of the nation's labor force that works directly or indirectly for the government. Our government affects the economy not only by employing people but also by purchasing supplies and equipment from private industry. In addition, vast sums of money are transferred by the government to individuals not involved in current production—that is, beneficiaries of public retirement funds, unemployment insurance, medicare, aid to veterans, food stamps, etc. And our government also affects the economy by guaranteeing a variety of private loans and by regulating numerous industrial, commercial, and financial practices.

All these activities, particularly transfer payments and governmental regulation, have grown by leaps and bounds in recent years. Transfer payments, which were merely 3 percent as large as the nation's total wage and salary bill in 1930, rose to 11 percent by 1965 and reached 21 percent in 1977. The *Federal Register*, which records governmental regulations, ran to 3,400 pages in 1937, but swelled to about 10,000 pages in 1953 and to 65,000 pages in 1977. At least 90 federal agencies are now involved in issuing governmental regulations. Funds allocated for regulation in this year's federal budget amount to $4.5 billion—more than twice the expenditure in 1974. This figure, of course, omits the expenditures on regulation by our state and local governments. And it also omits the enormous costs of compliance imposed on private industry. According to a recent investigation by the Center for the Study of American Business at Washington University, these compliance costs amounted to $63 billion in 1976.

The proliferation and increasing cost of governmental activities in our country have resulted in a growing burden of taxation—higher income taxes, higher sales taxes, higher property taxes, and higher social security taxes. Even so, the willingness of our government to raise revenue by taxation has fallen distinctly short of its propensity to spend.

Since 1950, the federal budget has been in balance in only five years. Since 1970, a deficit has occurred in every year. Budget deficits have thus become a chronic condition of federal finance; they have been incurred in years when business conditions were poor and also when business was booming. Not only that, but the deficits have been mounting in size. In the fiscal year now ending, the deficit is likely to exceed $60 billion when "off-budget" outlays are included in the total—as they indeed should be. Instead of vanishing or diminishing as the economy improves, which was once accepted practice, the deficit has been increasing in the course of the current economic expansion.

The persistence of substantial deficits in our federal finances is mainly responsible for the serious inflation that got under way in our country in the mid-sixties. Let us never forget the simple fact that when the government runs a budget deficit it pumps more money into the pocketbooks of people than it takes out of their pocketbooks. That is the way a serious inflation is typically started and later nourished. And when the deficit increases at a time of economic expansion, as it has been doing lately, we should not be surprised to find the rate of inflation quickening. Of course, other factors—particularly money creation by our central bank and the power wielded by trade unions—have played their part in the inflationary process.

The growing intervention of government in economic affairs that has taken place in the United States has been matched or exceeded by similar developments in other countries that we think of as continuing to practice free enterprise. The causes of this increasing penetration of government into the economic life of individual countries have been broadly similar—namely, industrialization and urbanization, increasing interdependence of people, faster communication through radio and television, rising expectations of people, wider participation of citizens in the political arena, and increasing reliance on government for the solution of economic and social problems.

The degree of government participation in economic life has thus been increasing in every industrial country outside the Socialist sphere. To cite some examples; government expenditure in the United Kingdom amounted to 34 percent of the gross domestic product in 1962 and to 44 percent in 1975. Corresponding figures in the case of West Germany are 34 and 42 percent; in the case of France, 36 and 40 percent; in the case of Canada, 29 and 41 percent; in the case of Australia, 24 and 32 percent. A similar trend appears also in Japan; but it is worth noting that governmental spending amounted to only 23 percent of the gross domestic product of Japan in 1975—a substantially lower figure than in any other major industrial country.

Like the United States, other industrial countries have experienced the persistent budget deficits which accompany the rapid expansion of government activities. Indeed, loose governmental finance and rapid inflation have often been practiced more intensively outside the United States, and they have recently become characteristic features of major economies that still boast of free enterprise.

The worldwide inflation that has been under way since the late 1960s has become a serious threat to the free-enterprise system. The fact that inflation masks underlying economic realities makes it all the more insidious. For example, the trend of retail trade and housing starts began to weaken in the United States early in 1973, but many members of the business community paid little attention to that ominous development. Nor did they recognize that standard accounting practices, which rely on historical costs in reckoning inventories and capital consumption, were resulting in enormous overstatements of their profits. Caught up in the euphoria of inflation, they built up inventories out of all proportion to actual or prospective sales, and thus set the stage for the subsequent sharp decline of production and employment. What happened in the United States was paralled in greater or lesser degree in European industrial countries and in Japan.

The corrosive effects of inflation go far beyond the distortion of businessmen's perspective. Inflation erodes the purchasing power of everyone's money income. Inflation weakens the willingness of many people to save for the future. Inflation drives up the level of interest rates. And once businessmen become aware of the illusory element in profits, inflation adds to uncertainty about the future. In an inflation-ridden environment, businessmen have no good way of judging what their costs of production may turn out to be, or what prices they may be able to charge, or what profits, if any, will accrue when they undertake new investments. The risk premium that attaches to calculations of prospective profits from new investments therefore goes up. This discourages business capital investment and hampers the improvement of productivity.

Nor is that all. As the effects of inflation spread across the economy, they in time weaken the capital market. The classical view that inflation tends to favor business profits and therefore higher stock prices no longer fits today's world of powerful trade unions, high interest rates, and a governmental bias toward consumption. Recent experience in the United States and in other countries has demonstrated that persistent inflation adversely affects stock prices as well as bond prices. Even now, despite the recent upsurge in stock prices, the Dow-Jones industrial average is below the level reached in 1965; and in view of the huge rise in the general price level since then, the stock market has obviously suffered a severe depression.

As a result of the disappointing performance of the stock exchanges, the interest of investors in equity securities has greatly diminished during recent years. Some wealthy individuals, seeking a refuge from inflation, have turned to investing in works of art or in real estate or in foreign currencies, gold or other commodities. Many members of the middle class, being similarly disillusioned with equities, have sought an inflation hedge by purchasing a home or an extra house when they already owned one. But the many millions who lack financial sophistication, and even some who possess it, have found no better way to protect themselves against the ravages of inflation than to let cash pile up in the form of bank deposits or other liquid assets—with the result that the purchasing power of their monetary savings has generally kept eroding.

Many professional money managers, likewise discouraged by the behavior of common stock prices, have found solace in the high yields that have become available on corporate and government bonds. And they have also displayed some tendency to shorten the maturity of their investments, so that they could shift to higher-yield securities if faster inflation served to raise interest rates another notch or two in the future. With institutional as well as individual investors switching from common stocks to other investments, brokerage firms and investment-advisory services have suffered reverses. Numerous firms of this type have closed down their operations or sold out to more enterprising members of their industry. These in turn have reacted to the declining interest in equities by becoming department stores of finance—that is, by offering to their troubled customers stock options, commodity futures, municipal-bond funds, money-market funds, tax shelters and so on, in addition to the more traditional services. Adjustments of this type have enabled some brokerage and advisory firms to survive and even to prosper.

But what matters most for the future of our economy is the erosion of investor interest in equity issues. In 1965, corporate shares constituted over 43 percent of all financial assets of American households; by 1977, they were down to 25 percent. Between 1970 and 1975 the number of individual shareowners in our country fell from about 31 million to 25 million. More significant still, this decline was concentrated among young and middle-aged people. Net purchases of equity issues by private pension funds have also slumped in recent years. So-called "equity kickers," once a prominent feature of loans placed by insurance firms, have practically vanished. As a result of this declining interest in equities, the supply of venture capital has drastically diminished in our country. Public issues by small firms have dwindled and we rarely hear nowadays of the formation of new high-technology companies.

If the scepticism about equities that has marked recent years continues in the future, it will become difficult even for some well-established corporations to finance their long-term investment projects. This difficulty will be accentuated if internally generated funds continue to provide a reduced share of total financing needs—as has been the case during the past decade of high inflation. Furthermore, if business firms are forced to rely more heavily on short-term funds, the corporate economy will become more vulnerable to financial strains in the future. In such an environment, a business recession could be even more disruptive than the recession we recently experienced.

In short, the changes wrought by inflation have already weakened the framework of our economic system. They threaten to do so to a greater degree if the inflationary bias of the economy is extended. I judge from the sluggishness of stock exchanges in other major industrial countries during the past decade that, with the exception of Japan, their experience has been similar to that of the United States. If inflationary trends should persist, the economies of these countries will also face a very uncertain future.

Serious as these longer-range economic consequences of inflation appear to be, there is even greater reason for concern about its impact on social and political institutions. Inflation has capricious effects on the distribution of income and wealth among a nation's families and businesses. Inflation eventually leads to recession and extensive unemployment, and such adversities are generally followed by new measures of governmental intervention. Inflation robs people who in their desire to be self-reliant have set aside funds for the education of their children or their own retirement. Inflation hits many of the poor and elderly especially hard. More ominous still, by causing disillusionment and breeding discontent, inflation excites doubts among people about themselves, about their government, and about the free- enterprise system itself.

Such anxieties tend to spread from one country to another. In particular, when the value of our own dollar depreciates in foreign exchange markets, as has happened again during the past two years, confidence in the international economy, as well as in our own, tends to weaken. The ultimate consequence of persistent inflation may therefore be a decline in both the scope and the efficiency of free enterprise on a worldwide scale.

I have already observed that inflation ultimately leads to recession. In turn, extensive unemployment creates an environment that is favorable to new or larger welfare programs and other increases in governmental spending—increases that often outlast the recession. Again, it is at least partly because of inflation that workers, particularly when they are well organized, can achieve increases in wages that far exceed improvements in productivity. It is at least partly because of inflation that the statutory minimum wage keeps rising—thereby causing unemployment among young people and breeding crime. It is at least partly because of inflation that many of our cities have suffered physical and cultural deterioration. And, needless to add, the poverty that persists in the midst of our plenty is in no small degree attributable to inflation.

The burden of taxes has also risen because of inflation. Although deficits at the federal level of government have become our way of life, taxes have increased along with expenditures. Indeed, federal revenues fell below 90 percent of federal expenditures in only seven years since 1946. Since our individual income tax is highly progressive, the tax burden on workers goes up, just as if Congress had legislated higher taxes, even when real wages remain constant—that is, when wages in dollars simply keep pace with increases in the consumer-price level. The corporate income tax, to be sure, is essentially proportional; but under conventional accounting techniques, inflation creates phantom profits on which corporations have been paying many billions of dollars in taxes. And the consequences of inflation for the capital-gains tax have been still more drastic. A recent study by Professor Martin Feldstein of Harvard indicates that in 1973 individuals paid taxes on more than $4.5 billion of capital gains from corporate shares; but when the costs of the shares are adjusted for increases in the general price level, it turns out that these individuals actually experienced a real capital loss of nearly $1 billion.

At the beginning of this article, I reviewed the theories of capitalist evolution by Marx and Schumpeter. It is interesting to observe that while Marx visualized numerous developments that would weaken capitalism, persistent inflation was not among them. Nor was this threat to our free-enterprise system foreseen by Schumpeter. Nor, for that matter, was it foreseen by Keynes; both he and his early followers were concerned about vanishing investment opportunities and unemployment, not about inflation. These failures of economic vision counsel humility in any judgments about the future; and yet, I keep wondering whether the inflationary development that Schumpeter had failed to foresee may not be reinforcing the very processes on which he dwelt so provocatively.

Ours is still a dynamic and prosperous economy, but the prosperity around us has become uneasy and even joyless to many thoughtful citizens. Inflation is certainly our nation's main economic problem, but it is by no means the only economic problem. Unlike earlier times when we were troubled either by inflation or by unemployment, we have experienced in recent times a disconcerting rise of the general price level even when unemployment was extensive. And our social economy has been beset by other problems—among them a growing burden of taxes, excessive governmental regulation, excessive power of labor, restrictive business practices, depressed busines profits, deteriorating central-city areas, decline of the work ethic, and widespread crime. Not all of these ills can be ascribed to inflation. And yet, this factor has had a more ramifying influence on our economy than may appear at first glance.

Human nature inevitably takes its toll. If intense effort or large financial risks are no longer compensated by the possibility of earning large rewards, the effort and the risks will be less readily undertaken. That is the condition toward which we have been generally moving. And it is precisely because a grim future may eventually become our lot and that of other nations still enjoying freedom that big government and the disease of inflation that comes in its train must be resisted by an alert citizenry. This need is now more widely appreciated than at any time since World War II, but it is not yet understood widely enough.

There are some faint flickerings, however, that the American people are becoming less passive about the dangers facing our nation. The recent tax revolt of California citizens may be a symptom of a general awakening of the middle class. Of late many politicians have been vying with one another in proclaiming inflation as our *number one* problem. Trade unions have been unable to persuade Congress this year that their market power needs strengthening. Much is heard these days in congressional halls about the importance of reducing business taxes. A move to cut back rather than increase the tax on capital gains has won widespread support. And of late we have even witnessed some minor reductions within the still swelling total of federal expenditures.

These are interesting and promising events. As yet, they are much too tenuous and uncertain to justify extrapolation. They, never-

theless, suggest that the time may be right for a serious attack on the inflation that has been plaguing our country. That will not be an easy task, but it will be even harder if we hesitate or delay. Once an economy has become engulfed by expectations of inflation, economic policy makers no longer have very good choices. Still, much can, in time, be accomplished with determined leadership.

Restrictive monetary and fiscal policies, if pushed far enough, are always capable of bringing inflation under control; they might, however, also unsettle the economy by bringing on extensive unemployment. To minimize that risk, it would be wise to supplement monetary and fiscal policies with carefully selected structural policies. A prescription for a balanced attack on the inflation problem might therefore run as follows in today's environment: first, that the Federal Reserve, continue its present moderately restrictive monetary policy without interference by the Congress or the White House; second, that the budget for next year permit a substantial cut in the federal deficit and that the move toward budgetary balance be completed within the following two years; third, that this and next year's increase in the salaries of federal employees be scaled down to one-half the figure suggested by wage-comparability studies; fourth, that the President cut his own salary by, say, 10 percent and call on all presidential appointees and members of the Congress to do likewise; fifth, that the President reinforce these examples for the nation by calling on top corporate executives to refrain from any increase in their compensation over the next two years; sixth, that a national center be promptly established for encouraging the organization of productivity councils across the nation, factory by factory and shop by shop, with a view to cooperation by management and labor in raising output per manhour; seventh, that we make a start towards blunting the cost-raising measures that we have allowed to flourish—such as tariffs, import quotas, farm-price supports, and minimum-wage laws, and that we also postpone the target dates that have been set for environmental and safety regulations.

In the course of my remarks this evening I have dwelt on the corrosive influence of inflation because I consider this the greatest danger to our free-enterprise system. I am convinced that inflation is a disease that can be brought under control; but that will happen only when the will to do so becomes strong enough. In our country there is a powerful political constituency behind each of the government's spending programs, behind every tariff and import quota, behind every regulation that protects a particular group from the pressures of competition. We have powerful political constituencies in favor of perennially easy credit. We have powerful political constituencies in favor of other public or private arrangements that benefit some groups but raise prices to everyone. Our urgent need now is for a nationwide constituency that will fight for the paramount interest that we, as a people, have in a dollar of stable purchasing power.

Other nations—notably, Germany, Switzerland, and Japan—have demonstrated that inflation can be unwound. Even Great Britain has recently succeeded in reducing its inflation rate sharply. If we and other inflation-ridden nations succeed in curbing inflation within the framework of our basic institutions, we may yet experience a true economic renaissance in the Western world. On the other hand, if the present worldwide inflation continues, a command economy may eventually be the bitter fruit of this generation's complacency and neglect. It is the duty of each of us to do what we can to prevent this from happening.

RECORD OPEN UNTIL 5 P.M. TODAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senators may have until 5 p.m. today to insert statements in the RECORD.

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

AUTHORITY FOR CERTAIN ACTION DURING RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the recess over until Monday at 12 noon, the President of the United States, the President of the Senate pro tempore, and the Acting President pro tempore be authorized to sign all duly enrolled bills and joint resolutions.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during that same period of recess the Secretary of the Senate be authorized to receive messages from the President of the United States and the House of Representatives and they may be appropriately referred.

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

ORDER FOR COMMITTEES TO HAVE UNTIL 3 P.M. TOMORROW TO FILE REPORTS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that committees may have until 3 p.m. tomorrow to file reports.

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

SPECIAL ORDERS AND ORDER FOR ROUTINE MORNING BUSINESS ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday, after the two leaders or their designees have been recognized under the standing order, Mr. BENTSEN be recognized for not to exceed 15 minutes and that I may have then 15 minutes, following which there be a period for the transaction of routine morning business for not to exceed 1 hour with Senators permitted to speak up to 5 minutes each therein, and that they may have good weather if at all possible Monday.

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

RECESS UNTIL MONDAY, MARCH 5, 1979

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 12 o'clock meridian on Monday.

The motion was agreed to, and at 3:35 p.m., the Senate recessed until Monday, March 5, 1979, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate February 27, 1979, under authority of the order of the Senate of February 26, 1979:

THE JUDICIARY

Gabriele Anne Kirk McDonald, of Texas, to be U.S. district judge for the southern district of Texas, vice a new position created by Public Law 95-486, approved October 20, 1978.

DEPARTMENT OF LABOR

Dennis R. Wyant, of Maryland, to be Deputy Assistant Secretary of Labor for Veterans' Employment, vice Roland Ray Mora, resigned.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Benjamin W. Heineman, Jr., of Illinois, to be an Assistant Secretary of Health, Education, and Welfare, vice Henry Jacob Aaron, resigned.

NATIONAL ADVISORY COUNCIL ON WOMEN'S EDUCATIONAL PROGRAMS

The following-named persons to be members of the National Advisory Council on Women's Educational Programs for terms expiring May 8, 1981:

Sister M. Isolina Ferre, of Puerto Rico, vice Agnes M. Dill, term expired.

Anna Doyle Levesque, of Rhode Island, vice Katherine K. Burgum, term expired.

Susan Margaret Vance, of Illinois, vice Theresa Aragon de Shepro, term expired.

IN THE AIR FORCE

Lt. Gen. Howard M. Fish, U.S. Air Force, (age 55), for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 8962.

Lt. Gen. John R. Kelly, U.S. Air Force, (age 54), for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 8962.

Executive nominations received by the Senate February 28, 1979, under authority of the order of the Senate of February 26, 1979.

DEPARTMENT OF STATE

Dick Clark, of Iowa, to be an Ambassador at Large and U.S. Coordinator for Refugee Affairs.

DEPARTMENT OF THE INTERIOR

June Gibbs Brown, of Colorado, to be Inspector General, Department of the Interior (new position).

DEPARTMENT OF AGRICULTURE

Thomas F. McBride, of the District of Columbia, to be Inspector General, Department of Agriculture (new position).

DEPARTMENT OF LABOR

Marjorie Fine Knowles, of Alabama, to be Inspector General, Department of Labor (new position).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Charles L. Dempsey, of Virginia, to be Inspector General, Department of Housing and Urban Development (new position).

VETERANS ADMINISTRATION

Allan L. Reynolds, of Virginia, to be Inspector General, Veterans' Administration (new position).

Executive nomination received by the Senate March 1, 1979:

GENERAL SERVICES ADMINISTRATION

Kurt W. Muellenberg, of Maryland, to be Inspector General, General Services Administration (new position).

CONFIRMATION

Executive nomination confirmed by the Senate March 1, 1979:

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

George M. Seignious II, of South Carolina, to be Director of the U.S. Arms Control and Disarmament Agency.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

HOUSE OF REPRESENTATIVES—*Thursday, March 1, 1979*

The House met at 11 a.m.

The Chaplain, Rev. James David Ford, B.D., offered the following prayer:

Father, Lord of Heaven and Earth, help us to appreciate the majesty of your creation. Though we are occupied with the necessary details of daily tasks, remind us of the fullness and the beauty of life around us. While we see evil and selfishness, yet we see joy and love, while we see pain and hurt, we see, too, your healing and strength.

Encourage us always to strive for the highest and the best, not with pride of self-importance, but with the clear knowledge that personal fulfillment comes from service and caring for those about us. In the name of the Lord, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Chirdon. one of his secretaries.

BARREL FOR BUSHEL

(Mr. WEAVER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEAVER. Mr. Speaker, the United States can be the OPEC of grain. We export over half the grain in world markets. Yet we continue to allow our grain to be sold for less than the cost to our farmers while we pay sharply higher prices for oil and other goods. Our dollar, our balance of payments, our farmers, our taxpayers, and Treasury all suffer.

It is possible to raise our grain prices to foreign customers, indeed, to barter for oil and other goods, but only if we institute a national grain board to approve such sales and arrange such barter.

Such a board could also time sales after determining what the Russian or Chinese crops were like—instead of allowing the secretive Soviets to swoop in and steal our grain as they have twice done—and we could barter with China for oil.

I am reintroducing my national grain board bill—it had over 100 cosponsors several years ago. It will not cost the taxpayers a cent; in fact, it will make money for the Treasury and for farmers by setting the highest reasonable prices the market will bear.

In 1970, oil and wheat sold for the same price, $1.50 a barrel, $1.50 a bushel. Now oil is $15, wheat is $3.50.

It is time we started looking out for our own interests, time we got a barrel for a bushel.

THE DIFFERENCES ARE PROFOUND, NOT "INSIGNIFICANT," BETWEEN ISRAEL AND EGYPT

(Mr. BINGHAM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BINGHAM. Mr. Speaker it is nothing less than tragic that, as Prime Minister Begin arrives in this country once again, he and President Carter seem to be operating on completely different wavelengths. President Carter has characterized the differences that remain between Egypt and Israel as "insignificant"; Prime Minister Begin says the issues are "grave, relating first of all to our future security."

I can understand President Carter's obvious frustration at the deterioration of the situation since the Camp David accords. His achievement at Camp David was great, and it must seem almost unbearable that it now seems to be slipping away. But that is the fact of the matter, and it does not help for the President to characterize the current differences between the parties as "insignificant."

What the Israelis—and everybody else—thought they had achieved at Camp David was assurance that, in return for substantial and irrevocable sacrifices of territory, they would have total peace with Egypt, and that this was not dependent on the success of contemplated negotiations with respect to the West Bank and Gaza. Even Sadat at that time seemed to confirm that understanding. Today, presumably because of intolerable pressures from other Arab States, it is clear that that is no longer Sadat's position.

The grim fact—which cannot be glossed over—is that today the Israelis are prepared to go ahead with the Camp David agreements, the Egyptians are not. That premise should underlie the current Carter-Begin talks; if it does not, I do not see how they can be useful.

PERMISSION FOR COMMITTEE ON APPROPRIATIONS TO FILE PRIVILEGED REPORT ON H.R. 2439

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tonight to file a privileged report on the bill (H.R. 2439) rescinding certain budget authority recommended in the message of the President dated January 31, 1979, and transmitted pursuant to the Impoundment Control Act.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

GASOHOL TECHNOLOGY

(Mr. GLICKMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GLICKMAN. Mr. Speaker, with all the publicity of closed service stations, ration coupons, and other severe conservation measures being proposed by the administration, I wish to alert my colleagues to the fact there is a technology available to us to at least partially prevent the more serious of these measures, and at the same time build upon our own bountiful renewal resources—and that technology is alcohol fuels, or gasohol.

While gasohol is no panacea or salvation to our energy problem, it is the only substitute for gasoline that could be used in existing automobiles on a blended basis. Time and time again, Department of Energy personnel have testified to congressional committees that if we were subjected to another embargo, or other shortage, there is only one liquid fuel substitute that could be used in automobiles and other vehicles—only one—and that is alcohol.

It is time to shift our mentality from more and more regulation, to a policy of encouraging alternatives which are technologically feasible, environmentally safe, and provide a positive boost to our balance of payments.

The mixture of alcohol and driving generally is considered a "no-no." But alcohol fuels in the gas tank could be one of fruitful solutions to our liquid fuels crisis.