TRIBUTE TO HON. L. MENDEL RIVERS: A GREAT AMERICAN

HON. JOE L. EVINS

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 3, 1971

Mr. EVINS of Tennessee. Mr. Speaker, during the recent recess of the Congress our beloved friend and colleague, the gentleman from South Carolina, Mendel Rivers, passed away and I wanted to take this means of paying a brief but sincere tribute to the memory of this great American statesman.

Mendel Rivers was a man of courage and honor—he stood firm and unyielding for a strong defense for our Nation, believing that it is better to err on the side of strength than on the side of weakness in crucial matters involving national defense.

As chairman of the House Committee on Armed Services and as Representative from the First District of South Carolina, he served his district, State, and Nation faithfully and well. He represented his district with great ability and success and yet in a much broader sense he represented the best interests of the Nation.

We can thank his leadership in large part for our Nation's excellent state of preparedness. He knew and understood our responsibilities and our heritage.

Mendel Rivers was a great personality—many who saw him often remarked that he looked like a Congressman. He had the stature, the bearing, the dignity—the charisma, if you will—of a great Congressman—a great American statesman.

Mendel Rivers will be greatly missed in these sacred precincts and I want to take this opportunity to extend to Mrs. Rivers and others members of the family this expression of my deepest and most sincere sympathy. My wife, Mrs. Evins, joins me in these expressions and sentiments.

SENATE—*Thursday, February 4, 1971*

(Legislative day of Tuesday, January 26, 1971)

The Senate met at 12 o'clock meridian, on the expiration of the recess, and was called to order by the President pro tempore (Mr. ELLENDER).

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

Our God, our help in ages past, our hope for years to come, help us to work amid the things which are seen and temporal with eyes of faith firmly fixed upon that which is unseen and eternal. Make us to be good workmen in striving for that kingdom, higher than all present earthly kingdoms, toward which all history moves, whose builder and maker is God. Uphold us this day that we may run and not be weary, walk and not faint. Make us to know that underneath are the everlasting arms which reach down to rescue, to hold, to sustain, and that the everlasting arms are Thy very own.

In the name of the Great Burden Bearer. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Wednesday, February 3, 1971, be approved.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had agreed to the concurrent resolution (H. Con. Res. 97) authorizing the printing of a revised edition of the publication entitled "History of the United States House of Representatives," and for other purposes, in which it requested the concurrence of the Senate.

HOUSE CONCURRENT RESOLUTION REFERRED

The concurrent resolution (H. Con. Res. 97) authorizing the printing of a revised edition of the publication entitled "History of the United States House of Representatives," and for other purposes, was referred to the Committee on Rules and Administration.

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

PRESIDENT NIXON'S PROPOSALS

Mr. MANSFIELD. Mr. President, the distinguished minority leader and I have been discussing the 40 "leftover" proposals contained in a message sent to Congress by the President of the United States some days ago.

We intend to get together with the committee chairmen and the ranking Republican Members and ask them to expedite consideration of these Presidential requests as soon as possible.

Some of the measures were passed in the previous Congress. Some of them will take a little time to dispose of. Others may be readily disposed of. We are confident that the Senate, acting responsibly, will give due regard to the President's proposals termed "the unfinished business" which, I have indicated, number approximately 40. On the basis of a communication I received on January 26, they number 67 and, on the basis of a new compilation which will become available very shortly, I think number about 127.

Thus, we will have plenty to do.

Now is the time to do it.

The minority leader and I both hope that our colleagues will begin to undertake this endeavor.

Mr. SCOTT. Mr. President, I shall convey to the ranking members of the respective committees the suggestion of the distinguished majority leader and the information which he has conveyed just now, and additional information as received regarding measures undisposed of in the previous Congress.

Of course, I join the distinguished majority leader in urging expeditious action on these measures. I believe that we can expedite the proceedings if we can find a way out of the present difficulty regarding rule XXII. I would hope that it will not go on at such length as to prevent our moving into the Nations business. At the same time, I think it was Abraham Lincoln who said, "No question is settled until it is settled right."

I have my own viewpoint as to the right way to settle, to amend the rule, but I will not go into that any further at this time.

Mr. MANSFIELD. I am in full accord with what the distinguished minority leader has just said.

ORDER OF BUSINESS

Mr. SCOTT. Mr. President, I yield back the remainder of the time allocated to me.

MESSAGES FROM THE PRESIDENT

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

GENERAL REVENUE SHARING—MESSAGE FROM THE PRESIDENT (H. DOC. NO. 92–44)

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which was referred to the Committee on Finance:

To the Congress of the United States:

One of the best things about the American Constitution, George Washington suggested shortly after it was written, was that it left so much room for change. For this meant that future generations would have a chance to continue the work which began in Philadelphia.

Future generations took full advantage of that opportunity. For nearly two turbulent centuries, they continually reshaped their government to meet changing public needs. As a result, our political institutions have grown and developed with a changing, growing nation.

Today, the winds of change are blowing more vigorously than ever across our country and the responsiveness of

government is being tested once again. Whether our institutions will rise again to this challenge now depends on the readiness of *our* generation to "think anew and act anew," on *our* ability to find better ways of governing.

BETTER WAYS OF GOVERNING

Across America today, growing numbers of men and women are fed up with government as usual. For government as usual too often means government which has failed to keep pace with the times.

Government talks more and taxes more, but too often it fails to deliver. It grows bigger and costlier, but our problems only seem to get worse. A gap has opened in this country between the worlds of promise and performance—and the gap is becoming a gulf that separates hope from accomplishment. The result has been a rising frustration in America, and a mounting fear that our institutions will never again be equal to our needs.

We must fight that fear by attacking its causes. We must restore the confidence of the people in the capacities of their government. I believe the way to begin this work is by taking bold measures to strengthen State and local governments—by providing them with new sources of revenue and a new sense of responsibility.

THE POTENTIAL OF STATE AND LOCAL GOVERNMENT

Part of the genius of our American system is that we have not just one unit of government but many, not just one Chief Executive and Congress in Washington, but many chief executives and legislators in statehouses and courthouses and city halls across our land. I know these men and women well. I know that they enter office with high hopes and with sweeping aspirations. I know they have the potential to be full and effective partners in our quest for public progress.

But once they have taken office, leaders at the State and local level often encounter bitter disappointment. For then they discover that while the need for leadership is pressing, and their potential for leadership is great, the power to provide *effective* leadership is often inadequate to their responsibilities. Their dollars are not sufficient to fulfill either their dreams or their most immediate and pressing needs.

And the situation is getting worse.

A GROWING FISCAL CRISIS

Consider how State and local expenditures have been growing. In the last quarter century, State and local expenses have increased twelvefold, from a mere $11 billion in 1946 to an estimated $132 billion in 1970. In that same time, our Gross National Product, our personal spending, and even spending by the Federal government have not climbed at even one-third that rate.

How have the States and localities met these growing demands? They have not met them. State and local revenues have not kept pace with rising expenditures, and today they are falling even further behind. Some authorities estimate that normal revenue growth will fall $10 billion short of outlays in the next year alone.

THE HEAVY BURDEN OF STATE AND LOCAL TAXES

The failure of State and local revenues to keep pace with demands is the inherent result of the way in which our tax system has developed. Ever since the 16th Amendment in 1913 made it possible for the Federal government to tax personal income, this source of revenue has been largely pre-empted and monopolized by Washington. Nine out of every ten personal income tax dollars are collected at the Federal level.

Income tax revenues are quick to reflect economic growth. Often, in fact, they grow much faster than the economy. As a result, budget increases at the Federal level can more readily be financed out of the "natural growth" in revenues, without raising tax rates and without levying new taxes.

State and local governments are not so fortunate. Nearly three-fourths of their tax revenues come from property and sales taxes, which are slow to reflect economic expansion. It is estimated, in fact, that the natural growth in revenues from these sources lags some 40 to 50 percent behind the growth rate for State and local expenditures. This means that budget expansion at these levels must be financed primarily through new taxes and through frequent increases in existing tax rates.

As a result, the weight of State and local taxes has constantly been getting heavier. On a per capita basis, they have climbed almost 50 percent in the last fourteen years. Property tax receipts are six times as great as they were a quarter century ago. In the past dozen years alone, States have been forced to institute new taxes or raise old ones on 450 separate occasions. Consumer and service taxes have sprung up in bewildering variety in many cities.

These rising State and local levies are becoming an almost intolerable burden to many of our taxpayers. Moreover, they often fall hardest on those least able to pay. Poor and middle income consumers, for example, must pay the same sales taxes as the wealthy. The elderly—who often own their own homes—must pay the same property taxes as younger people who are earning a regular income. As further pressures are placed on State and local taxes, the impact is felt in every part of our society. The hard-pressed taxpayer—quite understandably—is calling for relief.

The result is a bitter dilemma for State and local leaders. On the one hand, they must cut services or raise taxes to avoid bankruptcy. On the other hand, the problems they face and the public they serve demand expanded programs and lower costs. Competition between taxing jurisdictions for industry and for residents adds further pressure to keep services up and taxes down.

While political pressures push State and local leaders in one direction, financial pressures drive them in another. The result has been a rapid and demoralizing turnover in State and local officeholders. The voters keep searching for men and women who will make more effective leaders. What the State and localities really need are the resources to make leaders more effective.

THE BEST OF BOTH WORLDS

The growing fiscal crisis in our States and communities is the result in large measure of a fiscal mismatch; needs grow fastest at one level while revenues grow fastest at another. This fiscal mismatch is accompanied, in turn, by an "efficiency mismatch"; taxes are collected most efficiently by the highly centralized Federal tax system while public funds are often spent most efficiently when decisions are made by State and local authorities.

What is needed, then, is a program under which we can enjoy the best of both worlds, a program which will apply fast growing Federal revenues to fast growing State and local requirements, a program that will combine the efficiencies of a centralized tax system with the efficiencies of decentralized expenditure. What is needed, in short, is a program for sharing Federal tax revenues with State and local governments.

A WORD ABOUT PRESENT GRANTS-IN-AID

There is a sense in which the Federal Government already shares its revenues with governments at the lower levels. In fact, Federal aid to the States and localities has grown from less than one billion dollars in 1946 to over 30 billion dollars this year. Unfortunately, most of this assistance comes in the form of highly restricted programs of categorical grants-in-aid. These programs have not provided an effective answer to State and local problems; to the contrary, they provide strong additional evidence that a new program of unrestricted aid is badly needed.

The major difficulty is that States and localities are not free to spend these funds on their own needs as they see them. The money is spent instead for the things Washington wants and in the way Washington orders. Because the categories for which the money is given are often extremely narrow, it is difficult to adjust spending to local requirements. And because these categories are extremely resistant to change, large sums are often spent on outdated projects. Pressing needs often go unmet, therefore, while countless dollars are wasted on low priority expenditures.

This system of categorical grants has grown up over the years in a piecemeal fashion, with little concern for how each new program would fit in with existing old ones. The result has been a great deal of overlap and very little coordination. A dozen or more manpower programs, for example, may exist side by side in the same urban neighborhood—each one separately funded and separately managed.

All of these problems are compounded by the frequent requirement that Federal dollars must be matched by State and local money. This requirement often has a major distorting effect on State and local budgets. It guarantees that many Federal errors will be reproduced at the State and local level. And it leaves hard-pressed governments at the lower levels with even less money to finance their *own* priorities.

The administrative burdens associated

with Federal grants can also be prohibitive. The application process alone can involve volumes of paperwork and delays of many months. There are so many of these programs that they have to be listed in large catalogs and there are so many catalogs that a special catalog of catalogs had to be published. The guidelines which are attached to these grants are so complicated that the government has had to issue special guidelines on how the guidelines should be interpreted. The result of all this has been described by the Advisory Commission on Intergovernmental Relations as "managerial apoplexy" on the State and local level.

Meanwhile, the individual human being, that single person who ultimately is what government is all about, has gotten lost in the shuffle.

State and local governments need Federal help, but what they need most is not more help of the sort they have often been receiving. They need more money to spend, but they also need greater freedom in spending it.

A NEW APPROACH

In the dark days just after the Battle of Britain, Winston Churchill said to the American people: "Give us the tools and we will finish the job."

I now propose that we give our States and our cities, our towns and our counties the tools—so that they can get on with the job.

I propose that the Federal Government make a $16 billion investment in State and local government through two far-reaching revenue sharing programs: a $5 billion program of General Revenue Sharing which I am describing in detail in this message to the Congress, and an $11 billion program of Special Revenue Sharing grants which will be spelled out in a series of subsequent messages.

GENERAL REVENUE SHARING: HOW IT WORKS

The General Revenue Sharing program I offer is similar in many respects to the program I sent to the Congress almost eighteen months ago. But there are also some major differences.

For one thing, this year's program is much bigger. Expenditures during the first full year of operation would be ten times larger than under the old plan. Secondly, a greater proportion—roughly half—of the shared funds would go to local governments under the new proposal. In addition, the 1971 legislation contains a new feature designed to encourage States and localities to work out their own tailor-made formulas for distributing revenues at the State and local level.

The specific details of this program have been worked out in close consultation with city, county and State officials from all parts of the country and in discussions with members of the Congress. Its major provisions are as follows:

1. Determining the Size of the Overall Program.

The Congress would provide a permanent appropriation for General Revenue Sharing. The size of this appropriation each year would be a designated percentage of the nation's taxable personal income—the base on which individual Federal income taxes are levied. This arrangement would relieve the States and localities of the uncertainty which comes when a new level of support must be debated every year.

Since the fund would grow in a steady and predictable manner with our growing tax base, this arrangement would make it easier for State and local governments to plan intelligently for the future.

The specific appropriation level I am recommending is 1.3 percent of taxable personal income; this would mean a General Revenue Sharing program of approximately $5 billion during the first full year of operation, a sum which would rise automatically to almost $10 billion by 1980. All of this would be "new" money—taken from the increases in our revenues which result from a growing economy. It would not require new taxes nor would it be transferred from existing programs.

2. Dividing Total Revenues Among the States.

Two factors would be used in determining how much money should go to each State: the size of its population and the degree to which it has already mobilized its own tax resources. By using a distribution formula which takes their tax effort into account, this program would encourage the States to bear a fair share of responsibility. A State which makes a stronger effort to meet its own needs would receive more help from the Federal Government.

One other incentive has also been built into the new legislation: those States which negotiate with their local governments a mutually acceptable formula for passing money on to the local level, would receive more money than those States that rely on the Federal formula. This provision would encourage a State and its localities to work out a distribution plan which fits their particular requirements. States which develop such plans would receive a full 100 percent of the money allocated to them under the formula described above. Other States would receive only 90 percent of their allocation, with the remaining ten percent being carried over and added to the following year's overall allocation.

3. Distributing Revenues Within the States.

Those States which do *not* adopt their own plan for subdividing shared revenues would follow a formula prescribed in the Federal legislation. This formula would assign to the State government and to all units of local government combined a share of the new money equal to that portion of State and local revenues currently raised at each level. On the average, this "pass through" requirement would mean that about one-half of the revenue sharing funds would go to the States and half would go to the localities. Governmental units of all sizes would be eligible for aid—but only if they were set up for general purposes. This would exclude *special* purpose units such as sewer districts, school districts, and transit authorities. Each general purpose unit would then receive its proportionate share of revenues based on how much money it raises locally.

4. Other Procedures and Requirements.

General Revenue Sharing monies would come without program or project restrictions. The funds would be paid out at least quarterly through the Treasury Department; no massive new Federal agencies would be established. Each State would be required to pass on to local units their proper share of the Federal funds and to observe appropriate reporting and accounting procedures.

In my State of the Union message I emphasized that these revenue-sharing proposals would "include the safeguards against discrimination that accompany all other Federal funds allocated to the States." The legislation I am recommending provides these safeguards. It stipulates that: "No person in the United States shall on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with general revenue sharing funds."

The Secretary of the Treasury would be empowered to enforce this provision. If he found a violation and was unable to gain voluntary compliance, he could then call on the Attorney General to seek appropriate relief in the Federal Courts, *or* he could institute administrative proceedings under Title VI of the Civil Rights Act of 1964—leading to a cutoff of Federal funds. The Federal Government has a well defined moral and constitutional obligation to ensure fairness for every citizen whenever Federal tax dollars are spent. Under this legislation, the Federal Government would continue to meet that responsibility.

ENHANCING ACCOUNTABILITY

Ironically, the central advantage of revenue sharing—the fact that it combines the advantages of Federal taxation with the advantages of State and local decision-making—is the very point at which the plan is frequently criticized. When one level of government spends money that is raised at another level, it has been argued, it will spend that money less responsibly; when those who appropriate tax revenues are no longer the same people who levy the taxes, they will no longer be as sensitive to taxpayer pressures. The best way to hold government accountable to the people, some suggest, is to be certain that taxing authority and spending authority coincide.

If we look at the practice of government in modern America, however, we find that this is simply not the case. In fact, giving States and localities the power to spend certain Federal tax monies will *increase* the influence of each citizen on how those monies are used. It will make government *more* responsive to taxpayer pressures. It will *enhance* accountability.

In the first place, there is no reason to think that the local taxpayer will be less *motivated* to exert pressure concerning the way shared revenues are spent. For one thing, the local taxpayer is usually a

Federal taxpayer as well; he would know that it was his tax money that was being spent.

Even if local taxpayers were only concerned about local taxes, however, they would still have a direct stake in the spending of Federal revenues. For the way Federal money is used determines how much local money is needed. Each wise expenditure of Federal dollars would mean an equivalent release of local money for other purposes—including relief from the need to raise high local taxes even higher. And every wasted Federal dollar would represent a wasted opportunity for easing the pressure on local revenues.

Most voters seldom trace precisely which programs are supported by which levies. What they do ask is that each level of government use *all* its money—wherever it comes from—as wisely as possible.

The average taxpayer, then, will be no less *disposed* to hold public officials to account under revenue sharing. What is more, he will be *able* to hold them to account far more effectively.

The reason for this is that "accountability" really depends, in the end, on accessibility—on *how easily* a given official can be held responsible for his spending decisions. The crucial question is not where the money comes from but whether the official who spends it can be made to answer to those who are affected by the choices he makes. Can they get their views through to him? Is the prospect of their future support a significant incentive for him? Can they remove him from office if they are unhappy with his performance?

These questions are far more likely to receive an affirmative answer in a smaller jurisdiction than in a larger one.

For one thing, as the number of issues is limited, each issue becomes more important. Transportation policy, for example, is a crucial matter for millions of Americans—yet a national election is unlikely to turn on that issue when the great questions of war and peace are at stake.

In addition, each constituent has a greater influence on policy as the number of constituents declines. An angry group of commuters, for example, will have far less impact in a Senatorial or Congressional election than in an election for alderman or county executive. And it is also true that the alderman or county executive will often be able to change the local policy in question far more easily than a single Congressman or Senator can change policy at the Federal level.

Consider what happens with most Federal programs today. The Congress levies taxes and authorizes expenditures, but the crucial operating decisions are often made by anonymous bureaucrats who are directly accountable neither to elected officials nor to the public at large. When programs prove unresponsive to public needs, the fact that the same level of government both raises and spends the revenues is little comfort.

At the local level, however, the situation is often reversed. City councils, school boards and other local authorities are constantly spending revenues which are raised by State governments—in this sense, revenue sharing has been with us for some time. But the separation of taxing and spending authority does not diminish the ability of local voters to hold local officials responsible for their stewardship of *all* public funds.

In short, revenue sharing will not shield State and local officials from taxpayer pressures. It will work in just the opposite direction. Under revenue sharing, it will be harder for State and local officials to excuse their errors by pointing to empty treasuries or to pass the buck by blaming Federal bureaucrats for misdirected spending. Only leaders who have the responsibility to decide and the means to implement their decisions can *really* be held accountable when they fail.

OTHER ADVANTAGES

The nation will realize a number of additional advantages if revenue sharing is put into effect. The need for heavier property and sales taxes will be reduced. New job opportunities will be created at the State and local level. Competition between domestic programs and defense needs will be reduced as the State and local share of domestic spending increases. As the States and localities are renewed and revitalized, we can expect that even more energy and talent will be attracted into government at this level. The best way to develop greater responsibility at the State and local level is to give greater responsibility to State and local government.

In the final analysis, the purpose of General Revenue Sharing is to set our States and localities free—free to set new priorities, free to meet unmet needs, free to make their own mistakes, yes, but also free to score splendid successes which otherwise would never be realized.

For State and local officials bring many unique strengths to the challenges of public leadership. Because they live day in and day out with the results of their decisions, they can often measure costs and benefits with greater sensitivity and weigh them against one another with greater precision. Because they are closer to the people they serve, State and local officials will often have a fuller sense of appreciation of local perspectives and values. Moreover, officials at these lower levels are often more likely to remember what Washington too often forgets: that the purpose of government is not budgets and programs and guidelines, but people.

This reform will also help produce better government at the Federal level.

There is too much to be done in America today for the Federal Government to try to do it all. When we divide up decision-making, then each decision can be made at the place where it has the best chance of being decided in the best way. When we give more people the power to decide, then each decision will receive greater time and attention. This also means that Federal officials will have a greater opportunity to focus on those matters which ought to be handled at the Federal level.

LABORATORIES FOR MODERN GOVERNMENT

Strengthening the States and localities will make our system more diversified and more flexible. Once again these units will be able to serve—as they so often did in the 19th century and during the Progressive Era—as laboratories for modern government. Here ideas can be tested more easily than they can on a national scale. Here the results can be assessed, the failures repaired, the successes proven and publicized. Revitalized State and local governments will be able to tap a variety of energies and express a variety of values. Learning from one another and even competing with one another, they will help us develop better ways of governing.

The ability of every individual to feel a sense of participation in government will also increase as State and local power increases. As more decisions are made at the scene of the action, more of our citizens can have a piece of the action. As we multiply the centers of effective power in this country, we will also multiply the opportunity for every individual to make his own mark on the events of his time.

Finally, let us remember this central point: the purpose of revenue sharing is not to *prevent* action but rather to *promote* action. It is not a means of *fighting* power but a means of *focusing* power. Our ultimate goal must always be to locate power at that place—public or private—Federal or local—where it can be used most responsibly and most responsively, with the greatest efficiency and with the greatest effectiveness.

"THE CARDINAL QUESTION"

Throughout our history, at one critical turning point after another, the question on which the nation's future turned was the relationship between the States and the central government. Woodrow Wilson properly described it as "the cardinal question of our constitutional system."

In most cases—in the 1780's and in the 1860's and in the 1930's, for example—that question was resolved in favor of a stronger government at the Federal level. But as President Wilson went on to say, this question is one which "cannot . . . be settled by the opinion of any one generation, because it is a question of growth, and every successive stage of our political and economic development gives it a new aspect, makes it a new question."

Because America has now reached another new stage of development, we are asking that "cardinal question" again in the 1970's. As in the past, this is a matter beyond party and beyond faction. It is a matter that summons all of us to join together in a common quest, considering not our separate interests but our shared concerns and values.

To a remarkable degree, Americans are answering Wilson's cardinal question in our time by calling on the Federal Government to invest a portion of its tax revenues in stronger State and local governments. A true national consensus is emerging in support of revenue sharing. Most other nations with Federal systems already have it. Most Mayors and Governors have endorsed it. So have the campaign platforms of both major political parties. This is a truly bi-partisan effort.

Revenue sharing is an idea whose time has clearly come. It provides this Congress with an opportunity to be recorded as one that met its moment, and answered the call of history. So let us join

together, and, by putting this idea into action, help revitalize our Federal system and renew our nation.

RICHARD NIXON.

THE WHITE HOUSE, *February 4, 1971.*

EXECUTIVE MESSAGES REFERRED

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

(For nominations received today, see the end of Senate proceedings.)

S. 595 AND SENATE RESOLUTION 44—INTRODUCTION OF A BILL AND SUBMISSION OF A RESOLUTION RELATING TO SPRINKLER REGULATIONS

Mr. MANSFIELD. Mr. President, as perhaps my colleagues will recall, on December 4 of the last Congress, I addressed this body with respect to a matter of grave concern to my State of Montana, as well as to a number of other States across the country.

Several months ago, the Department of Health, Education, and Welfare suddenly announced that major new requirements would be imposed on all hospitals and extended-care facilities now participating in the medicare program as providers of health service to the aged. Under the regulations, all providers will be required to comply with the provisions contained in what is called the Life Safety Code, a code developed by a nongovernmental organization known as the National Fire Protection Association.

Previously, I had expressed to my colleagues my concern with the apparent willingness of the Congress to delegate indirectly authority to nongovernmental bodies to establish standards in connection with Federal programs. The problem to which I speak today is a prime example of the morass which can result when the Federal Government and its agencies relinquishes vital authorities.

As part of the new requirements included in the Life Safety Code, many facilities would be ordered to tear down their walls and ceilings in order to install fire sprinkler systems meeting the specifications provided by the code. Each institution would be required to make such an installation, even though a facility already had a fire protection system that satisfies State and local requirements in the area of building safety.

The contracts for the installation of sprinkler systems required by the Department have thrown a number of small facilities supported by local tax dollars in my State into a confusing legal morass. As a demonstration of that fact, I ask unanimous consent to have printed in the RECORD at this time a letter I have received recently from the Attorney General of my State which indicates that in a number of instances it is impossible for facilities legally to comply with the demands of the Department.

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

STATE OF MONTANA,
OFFICE OF THE ATTORNEY GENERAL,
Helena, January 27, 1971.

Re requirement of HEW for the installation of sprinkler systems in certain hospital facilities.

Hon. MIKE MANSFIELD,
U.S. Senate,
Office of the Majority Leader,
Washington, D.C.

DEAR SENATOR MANSFIELD: This is in reply to your letter of January 21, 1971, concerning the above subject.

The officials of any political subdivision in the state of Montana cannot commit such political subdivision for the payment of money unless such money is available as provided by statute. If the only method to raise the necessary funds for a sprinkler system is by means of a bond issue, such officials cannot commit such political subdivision until the voters have approved such bond issue. In my opinion, any commitment by such officers would have to be contingent on voter approval of a bond issue. If such commitment were not made so contingent, it would be void or voidable.

Another factor to take into consideration is that if such political subdivision has fully utilized its bonding limit as provided by statute, it would be impossible for such political subdivision to secure funds for a sprinkler system by means of a bond issue.

If I can be of any further assistance in this matter, please advise.

Very truly yours,

ROBERT L. WOODAHL,
Attorney General.

Mr. MANSFIELD. Mr. President, for many months now, I have been receiving an enormous amount of correspondence all the way from patients to the Governor of my State, asking that I examine the Department's proposed changes in the ground rules in the medicare program. Those affected have asked me for an example where the money would come from in order to meet such new requirements. They point out that HEW has not proposed an effective method of financing such large capital renovation outlays. Others have objected, as I have said previously, to the demand that contracts be immediately entered into. Why, they want to know, should they be forced pellmell into making these substantial changes? The fire safety experts and agencies in my State and in other States would like to know why the Department insists upon enforcing nongovernmental standards upon institutions already satisfying the requirements developed and deemed appropriate by State regulatory bodies. Fire sprinkler systems, in their sound judgment, are not quite the panaceas in the fire safety area that some believe them to be.

Mr. President, on Friday, January 29, Senator METCALF and I had an opportunity to meet with Dr. John Anderson and several of his associates representing the Department of Public Health for the State of Montana, as well as with Mr. Robert Ball, Commissioner of Social Security and members of his staff. Senator METCALF and I requested this meeting in order to impress upon the Commissioner and the Department of Health, Education, and Welfare our genuine and personal concerns with the impact created by those provisions of the Life Safety Code which I have just mentioned. As a result of that meeting, I ask unanimous consent to have printed in the RECORD at this point a letter I received from Commissioner Ball.

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

SOCIAL SECURITY ADMINISTRATION,
Washington, D.C., January 29, 1971.

Hon. MIKE MANSFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MANSFIELD: This letter will confirm the understandings you and I reached at our meeting concerning the proposed Medicare fire protection regulations.

As you know, these regulations which are called for by provisions of law in titles XVIII and XIX of the Social Security Act were issued for comment, and there will be a number of appropriate modifications before they are put in final form. When the final regulations are issued making the provisions of the Life Safety Code applicable to extended care facilities and hospitals, we will make clear that there will be appropriate discretion in the application of the Code. There may be some instances where the circumstances of the institution, its construction and all surrounding safeguards would provide equivalent patient safety to that provided by the installation of sprinklers as well as meeting other requirements of the Code. The Code itself provides for such discretion. We will not move to terminate institutions who claim to provide an equivalent level of patient protection until such claims have been examined on an individual basis.

We and other concerned parts of the Department will work with the states and other interested parties in the development of an inspection and determination process to adjudicate these individual situations. We plan to consult with a variety of interested groups including state health officers in designing the criteria for determining equivalency and procedures for their application to individual situations. As I emphasized this morning, we do not, however, expect that there will be a high incidence of such equivalency findings, but assure you of objective assessments.

As we also indicated to you in our previous conversations and correspondence, Secretary Richardson and I are concerned about the financial difficulties the new regulations might impose on some health institutions that, after individual determinations, will be found to require installation of sprinklers or to make other changes to conform to safety requirements. In this regard, we continue to support the principle reflected in section 610 of H.R. 1550 which was included in the Senate bill at your suggestion. Hence, in any situation where it is conclusively determined that the installation of sprinklers is ultimately necessary but where there is an immediate problem of inability to secure financing, we will, as the Secretary wrote you in his letter of December 9, grant a reasonable extension.

At the Secretary's direction we will also take further steps to ascertain what changes in law, if any, and in regulations are required in order to come as close as we can to a situation in which compatible requirements of health and safety in each of the Department's programs will be applied to facilities serving patients under the financing of the several programs.

In summary, in enforcing the regulations that apply the Life Safety Code to Medicare, we will look at existing Montana hospitals and extended care facilities, (as well as those in other States), on a case by case basis. The purpose of this examination will be to make individual determinations on claims of equivalent level of patient protection and requests

for an extension of time based upon financial hardship.

Sincerely yours,

ROBERT M. BALL,
Commissioner of Social Security.

Mr. MANSFIELD. Mr. President, I am, of course, most appreciative to the Commissioner and his associates for coming to the Hill to discuss with Dr. Anderson, Senator METCALF, and me these problems and further appreciate the Commissioner's decision to hold the deadlines in question in abeyance. However, I think it important that the Department understand that, although immediate relief has been provided, the crux of our problem has not been touched upon.

The proposed regulations make it clear that the Secretary is prepared to amend in the future the conditions of participation for medicare providers each time the National Fire Protection Association decides that it and it alone possesses the wisdom needed to change fire and safety regulations. This is, in my opinion, in doubtful delegation of responsibility by the Secretary to an organization over which no specific supervision is provided by any body answerable to the American people. Congress did not, in my opinion, intend in the medicare program to grant such authority to private associations.

State legislators create State agencies responsible for setting and enforcing health and safety standards. Congress can set conditions under which providers of services will function in federally financed health care programs. But in both cases, the people have a voice in assuring that these standards and these conditions be reasonable and that the wherewithal be available to assure compliance with them. Before medicare benefits are cut off to our senior citizens because of the pronouncements of a nonregulated voluntary association, I want to know the reason why.

I have asked the Department to postpone implementation of its new regulations until a full report and study has been made not only of the merits of these regulations, but also until the Congress has an opportunity to learn why it is necessary to act so quickly to deny health care to older Americans.

I do not consider the Department's response to my request as demonstrated by the Commissioner's letter of January 29 and included in my remarks to be sufficiently firm or clear. Further, the Department has failed to speak effectively to the dire consequences of this precipitous action upon the public. The people I represent want to know what is going on, and I intend to do my best to see to it that the matter be resolved fully and in the open.

Mr. President, it seems to me that the Department of Health, Education, and Welfare is now beginning to realize how confused the matter of health and safety standards has become. Even within HEW itself, different facility standards are applied in different health programs. In numerous instances, several of these programs provided assistance to the same health institution. As a demonstration of this fact, I have in my files a letter signed by Harald M. Graning, Assistant Surgeon General of the Public Health Service under the Department of Health, Education, and Welfare. Dr. Graning's letter was in response to one of my constituent's expressed concerns with certain provisos of the Life Safety Code. I think it essential that my colleagues be appraised of the manner in which this ruling is viewed by other officials in the Department who have, I might add, considerable expertise in the area of health facilities.

I ask unanimous consent that the letter referred to be printed in the RECORD at this point.

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

PUBLIC HEALTH SERVICE,
Rockville, Md., December 10, 1970.

Rev. HOWARD J. HOGUE,
Missionary Pastor,
Choteau, Mont.

DEAR MR. HOGUE: Thank you for your letter of November 28, 1970, to President Nixon about the problems facing Montana hospitals because of the requirement for sprinkling of hospitals.

As you may know, this office has taken the position that patient safety can best be served by insisting upon proper fire safe construction throughout rather than a blanket application of devices such as sprinklers. It would seem that the correctness of this position has been proven by the record that no lives have been lost from a building fire in any facility constructed under the Hill-Burton program since its inception 25 years ago.

It is most likely that you are referring to the requirement by the Social Security Administration that certain facilities be sprinkled in order to be eligible for Medicare-Medicaid; therefore, we are forwarding your letter to that office for further reply.

Sincerely yours,

HAROLD M. GRANING, MD.,
Assistant Surgeon General, Director.

Mr. MANSFIELD. Mr. President, I think it unimaginable that this body, of all bodies, will allow the implementation of a ruling of dubious quality costing millions of dollars nationally, escalating medical costs and, in some areas, most likely depriving thousands of senior citizens of essential medical attention.

I am, therefore, submitting today a resolution indicating that it is the sense of the U.S. Senate that, first, a study, full and complete, be made of the various standards now applied to health care institutions receiving Federal funds under various programs; second, that a report and recommendations be made to Congress by the Secretary of Health, Education, and Welfare, delineating an effective way in which one set of uniform Federal standards can be developed for all programs; and third, that the proposed changes in medicare standards not be implemented until Congress has received and reviewed the Secretary's study and recommendations.

The PRESIDENT pro tempore. The resolution will be received and appropriately referred.

The resolution (S. Res. 44), submitted by Mr. MANSFIELD (for himself and Mr. METCALF), which reads as follows, was referred to the Committee on Finance:

S. RES. 44

Whereas the Federal Government through various programs provides assistance for the construction and modernization of hospitals and other health care facilities, and through the Medicare, Medicaid, and other programs, assists individuals in obtaining health care services from hospitals and other health care facilities;

Whereas presently there are no uniform standards of health and safety applicable with respect to hospitals and other health care facilities receiving Federal funds under various programs;

Whereas the Secretary of Health, Education, and Welfare is preparing to issue regulations requiring that hospitals participating in the insurance program established by title XVIII of the Social Security Act be required to meet the standards of health and safety established by the Life Safety Code of the National Fire Protection Association for the protection of hospital patients;

Whereas enforcement of such regulations would compel the closing of many hospitals and work a grave financial hardship on others even though such hospitals do meet the standards of health and safety for patients which are imposed as a condition for the receipt of Federal funds under other programs: Now, therefore, be it

Resolved, That it is the sense of the Senate that the Secretary of Health, Education, and Welfare—

(1) conduct a full and complete study and investigation of the matter of the standards of health and safety for patients which should be uniformly applicable to hospitals and other health care facilities receiving Federal funds under various programs;

(2) on the basis of such study and investigation, develop and recommend to the Congress uniform standards of health and safety for patients which should be applicable to hospitals and other health care facilities receiving Federal funds under various programs; and

(3) not put into effect any regulation which would have the effect of making the standards of health and safety established by the Life Safety Code of the National Fire Protection Association applicable with respect to hospitals participating in the insurance program established by title XVIII of the Social Security Act until such time as the study and investigation referred to in clause (1) shall have been completed and the Congress shall have had a reasonable time to consider the standards of health and safety recommended pursuant to clause (2).

Mr. MANSFIELD. Mr. President, in addition, I am also introducing a bill to amend certain sections of the Social Security Act to permit State health agencies, in connection with medicare and medicaid, to waive certain conditions for participation as a provider of health services in these programs. In the case of certain health and safety standards, the States could waive certain requirements imposed by the Secretary if the imposition of such requirements would result in an unreasonable hardship for health facilities and for the people so vitally dependent upon them. The States would, however, have to assure that any standards substituted in lieu of the Secretary's requirement adequately guarantee the health and safety of patients in hospitals and extended care facilities. This, in my judgment, places the responsibility for guaranteeing the health and safety of patients in hospitals where it now is and where it belongs at the present time—at the State and local level.

If a thoroughly considered uniform set of Federal standards relating to patient health and safety are adopted by the

Congress, perhaps then it would be worthwhile to consider the desirability of transferring the responsibilities for standard setting in the health areas from the State to Federal Government.

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

The PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 595) to amend title XVIII of the Social Security Act to permit, in certain instances, the State health agency of a State to waive certain requirements relating to health and safety which must be met by hospitals in such State in order for them to participate in the insurance program established by such title, and to amend title XIX of such act to eliminate the Life Safety Code of the National Fire Protection Association as the official standard for determining whether nursing homes meet health and safety standards introduced by Mr. MANSFIELD (for himself and Mr. METCALF), was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

S. 595

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1861(e)(8) of the Social Security Act is amended by inserting "subject to section 1863A," imediately after "(8)".

(b) Title XVIII of the Social Security Act is amended by inserting immediately after section 1863 the following new section:

"WAIVER BY STATE HEALTH AGENCIES OF CERTAIN REQUIREMENTS WITH RESPECT TO HOSPITALS

"SEC. 1863A. The State health agency for any State may waive in accordance with regulations of the Secretary, for such periods as it deems appropriate, with respect to any particular hospital or class or type of hospitals located in such State, any requirement imposed by the Secretary pursuant to section 1861(e)(8) if such agency makes a determination (and keeps a written record setting forth the basis of such determination) that (1) the application of such requirement to such hospital (or to such class or type of hospitals) would result in an unreasonable hardship on such hospital or hospitals and (2) the waiver of such requirement with respect to such hospital or hospitals will not adversely affect the health and safety of the patients of such hospital or hospitals."

SEC. 2. Section 1902(a)(28)(F)(i) of the Social Security Act is amended to read as follows: "(i) meet such standards relating to the health and safety of individuals receiving care in such nursing home as the Secretary shall by regulations establish; except that the State agency may waive in accordance with regulations of the Secretary, for such periods as it deems appropriate, with respect to any particular nursing home or class or type of nursing homes, any such standard if such agency makes a determination (and keeps a written record setting forth the basis of such determination) that (I) the application of such standard to such nursing home (or to such class or type of nursing homes) would result in an unreasonable hardship on such nursing home or homes, and (II) the waiver of such standard with respect to such nursing home or homes will not adversely affect the health and safety of the patients of such nursing home or homes; and except that such standards shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in nursing homes; and".

SEC. 3. The amendment made by this Act shall take effect on the date of enactment of this Act.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, 30 minutes is now allotted for the conduct of routine morning business, with statements therein limited to 3 minutes.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

THE INTER-AMERICAN DEVELOPMENT BANK

Mr. SYMINGTON. Mr. President, on January 11 an article in the Washington Post noted a report by the staff of the Inter-American Development Bank showing that the Bank had lent some $273 million for irrigation projects in Mexico, so many of which have shown disappointing results.

According to the article, and indicating the wise warnings of our former colleague from Tennessee, Senator Gore, the Bank has often been criticized for its poor loan-making procedures; and these Mexican projects are but one more example of the need for that financial institution to operate on a more businesslike basis.

The new budget just submitted to the Congress last week includes a request for $487 million in supplemental 1971 appropriations for the Inter-American Development Bank; also an additional $500 million for fiscal year 1972.

Especially considering the heavy and growing financial problems now facing this Government, let us hope that these two requests for nearly $1 billion, along with requests for funds for other financial institutions—especially those with soft-loan operations—will be more carefully scrutinized by the appropriate legislative committees and the Congress as a whole.

On any basis, and particularly at a time when the need for funds is so pressing here at home, it is hard to understand why the United States should contribute to such uneconomic development projects as those outlined in the staff report with respect to Mexico.

I ask unanimous consent that the article in question, "Bank Criticizes Loan for Mexican Project," be printed at this point in the RECORD.

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

BANK CRITICIZES LOAN FOR MEXICAN PROJECT

(By Charles E. Flinner)

The Inter-American Development Bank has discovered it has been lending money to irrigate land where most crops can't grow anyway—water or no water.

A staff report circulated among bank officials reports disappointing results from heavy bank lending for many Mexican irrigation projects. A draft of the summary was obtained by United Press International.

The loans for the projects number 23 and involve $273.3 million, equal to 7 per cent of all the bank's lending and more than half of its loans to Mexico.

The staff report says that one of the projects undertaken with the development loan might be successfully converted to fish farming with some more investment but "gale force winds blow daily during nearly half of the year, restricting the adaptability of hybrid grains and other crops which are top-heavy and thus susceptible to blow-downs."

In another case, the bank staff found that irrigation was not very successful because the land involved was too hilly for the type of irrigation undertaken.

The bank has been criticized frequently for its weaknesses in loan-making procedures which should avert such uneconomic development projects.

The bank, mostly run by the borrowers—the Latin American members—has been urged to get on a more businesslike basis before.

It is now in a stage of transition. Its original and only president, Felipe Herrera, a Chilean, has resigned to return to Chile.

The president-elect, Antonio Ortiz Mena, a former Mexican finance minister, is due to take office March 1.

HONEST ELECTIONS REFORM ACT

Mr. SYMINGTON. Mr. President, last week Senators PEARSON and GRAVEL introduced the Honest Elections Reform Act of 1971—in my opinion, a significant and comprehensive elections campaign reform bill.

As one who has just been through an extraordinary campaign for reelection to the U.S. Senate, I am only too well aware of the deficiencies in our present campaign spending laws; therefore, I joined my colleagues in cosponsoring legislation designed to correct many of the inequities in the current system; and also to achieve more confidence among the American people with respect to our elective process.

A recent article in the Kansas City Times effectively spells out the major features of this bill; and I ask unanimous consent that it be printed at this point in the RECORD.

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

PEARSON TO COSPONSOR BILL SEEKING CAMPAIGN REFORMS

(By Joe Lastelic)

WASHINGTON.—The federal law governing expenditure and reporting of campaign funds is a mockery and encourages deception, Sen. James B. Pearson (R-Kas.) said yesterday in announcing that he and Sen. Mike Gravel (D-Alaska) would introduce an honest elections reform bill.

"There is no more important business before the Congress and the American public than the wholesale cleansing of our democratic political system," Pearson said. "We feel this bill will go a long way toward meeting many of the evils that exist in our political system and thus should do much to restore faith in our electoral process."

The reform bill includes requirements for full disclosure of all campaign expenditures

of more than $100; a reporting procedure for fund raising committees and a 10-cent limit for each registered voter on campaign spending in all the media—television, radio, newspapers, magazines and billboards.

To encourage more public participation the bill suggests a tax credit of 50 per cent for all contributions up to $50 a year, or a tax deduction for those up to $100 a year.

President Nixon vetoed a campaign spending limit bill last year because it applied only to television and radio. The Pearson-Gravel bill seeks to remedy that criticism.

Pearson said he believed his and Gravel's bill would largely meet Nixon's objections although Pearson said he had not discussed it with the White House staff.

John W. Gardner, chairman of Common Cause, the citizens lobby, issued a statement commending Pearson and Gravel for offering their bill, saying it covers questions that need immediate attention.

The bill would establish an independent, bipartisan federal elections commission to receive and audit reports of committees supporting candidates for federal offices.

Pearson said 90 per cent of campaign funds now were given by one per cent of the people and a broadening of support was necessary to reduce dependence on personal wealth or special interests.

A novel feature of the measures also would put a $25,000 ceiling on the amount a candidate or member of his family could spend of his own money in seeking the presidency or other federal office.

Gravel said he would introduce on his own a separate bill providing for subsidies out of federal tax funds to help finance the campaigns of candidates for all federal offices.

ORDER OF BUSINESS

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER FOR RECESS UNTIL TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 12 o'clock meridian tomorrow.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

ORDER FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on tomorrow, following the prayer and the approval of the Journal, if there is no objection, and the laying before the Senate of the pending business, there be a period for the transaction of routine morning business of not to exceed 30 minutes, with statements therein limited to 3 minutes, with the order included, entered into under date of January 29, that the able majority and minority leaders shall be the first to be recognized during the period for morning business.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER FOR RECESS FROM FRIDAY UNTIL MONDAY, FEBRUARY 8, 1971

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business on tomorrow, Friday, it stand in recess until 12 o'clock meridian on Monday next.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

RULE XXII, INSTITUTIONAL RENEWAL DEMANDS INTERNAL REFORM

Mr. MONTOYA. Mr. President, a nation is only as strong as its institutions allow it to be. The faith of people is the only element allowing any institution to remain viable. No institution in a representative democracy is any more basic than its parliamentary bodies. These axioms have never been more true than when applied to this very body, the U.S. Senate.

It is an unavoidable, unpleasant fact that significant public dissatisfaction exists over lack of adequate response by some of our institutions to evolving national needs. Such an attitude can lead to measurable erosion of the very foundations of our national life. We must heed these voices of reform and act accordingly and constructively. Any institution either carries within it the seeds and possibility of its own renewal or those of its own decline. This has been proven true too many times in recorded history to admit of any argument.

Therefore, we must ask ourselves if the U.S. Senate, which we all revere and love, is being properly responsive to a growing national chorus asking it to move with greater dispatch on so many issues of the day. In the end, we are the ones our people elected to meet such difficulties head on. I for one feel such a responsibility keenly. Knowing the Senate as a body, and Senators as individual citizens, I wish to meet such challenges courageously and successfully. The well being and survival of our Nation depends upon it.

If the rules of a body become like barnacles on a ship, then that organization moves more slowly. It responds more sluggishly just as a ship loses speed because of such an encrustation. No body is any more effective than its internal rules allow it to be. The filibuster has been one of the methods used to present alternative points of view held by a minority of Members of this body on given issues. I see the reasoning behind such events.

Yet it is also true that a filibuster can, in fact, halt our entire legislative process on burning issues of the day. No matter how just a given legislative position is in the minds of some, it must not be allowed to defeat the will of an overwhelming majority of the American people. We have witnessed, however, just such a series of happenings, not only in recent months, but over the course of many years. America cannot afford to overindulge in such oral legislative luxury.

The rights of any minority are sacred, particularly in the confines of such a legislative Chamber as this one. We must hold the rights of any minority as sacred and inviolable. Yet as they must be allowed to make pertinent points in debate, so there must be an end to talk and a decision must be made.

If preservation of the rights of a minority in effect creates a tyranny over the majority, the essence of democracy is denied that vast body of citizens whose well being depends on adequate functioning of the legislative body to which they have delegated authority.

We dare not fail in our charge. We cannot allow parliamentary procedure to frustrate the will of our Nation. Yet that in fact is what has been transpiring in the name of unlimited debate. This is why rule 22 must be altered to reduce the number of Senators' votes required in order to enforce cloture in this Chamber.

Only eight cloture petitions have succeeded over the past 54 years. Even a threat of unlimited debate can and does alter the entire cast of thinking, much less behavior, of this body. A proposal is being offered to adjust the number of votes required on cloture from two-thirds to three-fifth. I agree with this proposal. It is necessary, and would make this body more responsive to the changing mood and demands of the mass of our people.

Members of this body possesses two fundamental rights, which they can and must exercise on behalf of those they represent. One is a right to debate. The other is the right to vote. These can and must be balanced. Reducing the number of Senators present and voting required to shut off debate will correct the imbalance between these two rights which does at times exist. Commonsense and an awareness of what we confront in terms of national requirements alone should be enough to convince Senators of the correctness of this proposed change in our rules.

We face a monumental workload. The President has offered a number of major programs for our consideration. From a proposal to change the very structure of government itself to such staggering tasks as welfare reform and national health insurance, we are faced with one momentous decision after another. Each must be discussed, debated, and decided, one way or another. To talk them to

death by abuse of parliamentary procedure is to evade senatorial responsibility.

Further, like the remains left after any massive coming together, we are confronted by huge piles of work left over after the last Congress expired. Several appropriations bills remain to be passed. It is inexcusable to delay such decisions in any selfish interest.

I fully understand why many Members of this body, of various political and ideological persuasions, feel a strong attachment to and need for unlimited debate. They defend rule XXII as it stands now. With all due respect to both their wishes and those of their States and constituents, I ask them to take a broader view and see what our overall situation really is.

Already, I feel there has been abuse of the filibuster privilege and maneuver. If too many more Members of this body seize upon it as a weapon, we shall have a total breakdown of orderly procedure and legislative headway.

ORDER OF BUSINESS

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

The PRESIDING OFFICER (Mr. BENTSEN). The clerk will call the roll.

The 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.

RESIGNATION OF SENATOR CURTIS AS A MEMBER OF THE JOINT COMMITTEE ON ATOMIC ENERGY

The PRESIDENT pro tempore laid before the Senate the following letter from the Senator from Nebraska (Mr. CURTIS):

U.S. SENATE,
Washington, D.C., February 1, 1971.

Hon. SPIRO T. AGNEW,
Vice President of the United States, Washington, D.C.

DEAR MR. VICE PRESIDENT: I herewith submit my resignation as a member of the Joint Committee on Atomic Energy.

Very respectfully yours,
CARL T. CURTIS,
U.S. Senator.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT ON REAPPORTIONMENT OF AN APPROPRIATION

A letter from the Deputy Director, Office of Management and Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation to the Department of Agriculture for "Consumer protective, marketing, and regulatory programs," Consumer and Marketing Service, for the fiscal year 1971, has been apportioned on a basis which indicates the necessity for a supplemental estimate of appropriation; to the Committee on Appropriations.

REPORT ON TRANSFER OF THE ALASKA COMMUNICATION SYSTEM

A letter from the Deputy Secretary of Defense, reporting, pursuant to law, on the sales or other transfer of Government-owned communications facilities in Alaska, dated February 3, 1971; to the Committee on Armed Services.

INDEX OF LAWS PASSED BY THE GOVERNMENT OF THE RYUKYU ISLANDS DURING 1970

A letter from the Deputy Under Secretary of the Army (International Affairs) transmitting, pursuant to law, an index of the legislation enacted by the Government of the Ryukyu Islands during 1970 (with an accompanying paper); to the Committee on Armed Services.

PROPOSED LEGISLATION BY THE DISTRICT OF COLUMBIA GOVERNMENT

Three letters from the Assistant to the Commissioner, District of Columbia, transmitting drafts of proposed legislation (with accompanying papers), which were referred to the District of Columbia Committee, as follows:

A bill to authorize the Commissioner of the District of Columbia to enter into contracts for the payment of the District's equitable portion of the costs of reservoirs on the Potomac River and its tributaries, and for other purposes;

A bill to revise and modernize the licensing by the District of Columbia of persons engaged in certain occupations, professions, businesses, trades, and callings, and for other purposes; and

A bill to amend the District of Columbia Minimum Wage Act to extend minimum wage and overtime compensation protection to additional employees, to arise the minimum wage, to improve standards of overtime compensation protection, to provide improved means of enforcement, and for other purposes.

PROPOSED SMALL BUSINESS TAXATION ACT OF 1971

A letter from the Secretary of the Treasury transmitting a draft of proposed legislation entitled the "Small Business Taxation Act of 1971" (with an accompanying paper); to the Committee on Finance.

REPORT OF THE EAST-WEST CENTER

A letter from the Secretary of State, transmitting, pursuant to law, a report on the activities of the Center for Cultural and Technical Interchange Between East and West in Honolulu, covering the year ended June 30, 1970 (with an accompanying report); to the Committee on Foreign Relations.

PROPOSED LEGISLATION EXTENDING THE PERIOD FOR SUBMISSION OF REORGANIZATION PLANS

A letter from the Director, Office of Management and Budget, Executive Office of the President, transmitting a draft of proposed legislation to extend the period within which the President may transmit to the Congress plans for reorganization of agencies of the Executive Branch of the Government; to the Committee on Government Operations.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on control needed over excessive use of physicians services provided under the medicaid program in Kentucky, Social and Rehabilitation Service, Department of Health, Education, and Welfare, dated February 3, 1971 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the activities of the General Accounting Office during the fiscal year ended June 30, 1970 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on program for redistribution of Defense materiel in Europe—opportunities for improvement—Department of Defense, dated February 3, 1971 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on economic advantages of using American-made trucks abroad to transport military cargo, Department of Defense, dated February 4, 1971 (with an accompanying report); to the Committee on Government Operations.

TEMPORARY ADMISSION INTO THE UNITED STATES OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders entered granting temporary admission into the United States of certain aliens (with accompanying papers); to the Committee on the Judiciary.

THIRD PREFERENCE AND SIXTH PREFERENCE CLASSIFICATIONS FOR CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports relating to third preference and sixth preference classifications for certain aliens (with accompanying papers); to the Committee on the Judiciary.

SUSPENSION OF DEPORTATION OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders suspending deportation of certain aliens, together with a statement of the facts and pertinent provisions of law pertaining to each alien, and the reasons for ordering such suspension (with accompanying papers); to the Committee on the Judiciary.

PROPOSED EMERGENCY PUBLIC INTEREST PROTECTION ACT OF 1971

A letter from the Secretary of Labor, transmitting a draft of proposed legislation to provide more effective means for protecting the public interest in national emergency disputes involving the transportation of industry and for other purposes; to the Committee on Labor and Public Welfare.

REPORT OF POSTMASTER GENERAL

A letter from the Postmaster General of the United States transmitting, pursuant to law, a report on revenue and cost analysis, fiscal year 1970, Finance and Administration Department (with an accompanying report); to the Committee on Post Office and Civil Service.

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. SPARKMAN, from the Committee on Foreign Relations, with amendments:

S. Res. 26. Resolution to provide for a study of matters pertaining to foreign policy of the United States by the Committee on Foreign Relations; referred to the Committee on Rules and Administration.

EXECUTIVE REPORTS OF A COMMITTEE

As in executive session, the following favorable reports of nominations were submitted:

By Mr. RANDOLPH, from the Committee on Public Works:

Thomas Edmund Carroll, of Maryland, to be an Assistant Administrator of the Environmental Protection Agency;

John R. Quarles, Jr., of Virginia, to be an Assistant Administrator of the Environmental Protection Agency; and

Stanley M. Greenfeld, of California, and Donald Mac Murphy Mosiman, of Indiana, to be Assistant Administrators of the Environmental Protection Agency.

BILLS AND JOINT RESOLUTIONS INTRODUCED

Bills and joint resolutions were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. TOWER:

S. 577. A bill to amend the Internal Revenue Code of 1954, as amended; to the Committee on Finance.

(The remarks of Mr. TOWER when he introduced the bill appear below under the appropriate heading.)

By Mr. TALMADGE (by request):

S. 578. A bill to amend the Consolidated Farmers Home Administration Act of 1961 to provide for insured operating loans, and for other purposes; to the Committee on Agriculture and Forestry.

By Mr. CHURCH (for himself and Mr. JORDAN of Idaho):

S. 579. A bill relating to the public lands of the United States; to the Committee on Interior and Insular Affairs, by unanimous consent.

(The remarks of Mr. CHURCH when he introduced the bill appear below under the appropriate heading.)

By Mr. SPARKMAN:

S. 580. A bill to establish a National Development Bank to provide loans to finance urgently needed public facilities for state and local governments, to help achieve a full employment economy both in urban and rural America by providing loans for the establishment of new businesses and industries and the expansion and improvement of existing businesses and industries, for the construction of low and moderate income housing projects, and to provide job training for unskilled and semi-skilled unemployed and underemployed workers; to the Committee on Banking, Housing and Urban Affairs.

By Mr. SPARKMAN (for himself, Mr. TOWER and Mr. BENNETT):

S. 581. A bill to amend the Export-Import Bank Act of 1945, as amended, to allow for greater expansion of the export trade of the United States, to exclude Bank receipts and disbursements from the budget of the United States Government, to extend for three years the period within which the Bank is authorized to exercise its functions, to increase the Bank's lending authority and its authority to issue, against fractional reserves and against full reserves, insurance and guarantees, to authorize the bank to issue for purchase by any purchaser its obligations maturing subsequent to June 30, 1976, and for other purposes; to the Committee on Banking, Housing and Urban Affairs.

(The remarks of Mr. SPARKMAN when he introduced the bill appear below under the appropriate heading.)

By Mr. HOLLINGS (for himself, Mr. BOGGS, Mr. CHILES, Mr. CRANSTON, Mr. ERVIN, Mr. GRAVEL, Mr. HART, Mr. HARTKE, Mr. HUMPHREY, Mr. INOUYE, Mr. JAVITS, Mr. JORDAN of North Carolina, Mr. KENNEDY, Mr. MAGNUSON, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. PACKWOOD, Mr. PASTORE, Mr. PELL, Mr. RANDOLPH, Mr. RIBICOFF, Mr. SPONG, Mr. STEVENS, Mr. THURMOND, and Mr. WILLIAMS):

S. 582. A bill to establish a national policy and develop a national program for the management, beneficial use, protection, and development of the land and water resources of the Nation's coastal and estuarine zones; to the Committee on Commerce.

(The remarks of Mr. HOLLINGS when he introduced the bill appear below under the appropriate heading.)

By Mr. BURDICK:

S. 583. A bill to amend title 10 of the United States Code to provide that nationals of the United States and citizens of the Trust Territory of the Pacific Islands may be enlisted in the armed forces; to the Committee on Armed Services.

S. 584. A bill to amend the Revised Organic Act of the Virgin Islands; to the Committee on Interior and Insular Affairs.

S. 585. A bill to amend the Immigration and Nationality Act, as amended, to permit the free entry of citizens of the Trust Territory of the Pacific Islands into the United States; to the Committee on the Judiciary.

By Mr. BURDICK (for himself, Mr. METCALF, and Mr. MOSS):

S. 586. A bill to amend the Tariff Schedules of the United States to accord to the Trust Territory of the Pacific Islands the same tariff treatment as is provided for insular possessions of the United States; to the Committee on Finance.

S. 587. A bill to promote the economic development of the Trust Territory of the Pacific Islands; to the Committee on Interior and Insular Affairs.

By Mr. BURDICK (for himself and Mr. YOUNG):

S. 588. A bill to increase the authorization for the appropriation of funds to complete the International Peace Garden, N. Dak.; to the Committee on Interior and Insular Affairs.

S. 589. A bill for the relief of Faith M. Lewis Kochendorfer; Dick A. Lewis; Nancy J. Lewis Keithley; Knuts K. Lewis; Peggy A. Lewis Townsend; Kim C. Lewis; Cindy L. Lewis Kochendorfer and Frederick L. Baston; to the Committee on the Judiciary.

By Mr. YOUNG (for Mr. MUNDT):

S. 590. A bill for the relief of Miss Fructuosa Gonzales; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 591. A bill for the relief of Antone R. Perreira; to the Committee on the Judiciary.

By Mr. INOUYE (for himself, Mr. BAYH, Mr. BENNETT, Mr. BURDICK, Mr. CRANSTON, Mr. FONG, Mr. GRAVEL, Mr. GRIFFIN, Mr. HUGHES, Mr. HUMPHREY, Mr. JAVITS, Mr. JORDAN of Idaho, Mr. JORDAN of North Carolina, Mr. MANSFIELD, Mr. MCGEE, Mr. MCGOVERN, Mr. MOSS, Mr. MUSKIE, Mr. PELL, Mr. PROXMIRE, Mr. RANDOLPH, Mr. STEVENS, Mr. STEVENSON, Mr. TUNNEY, and Mr. WILLIAMS):

S. 592. A bill to repeal the Emergency Detention Act of 1950 (title II of the Internal Security Act of 1950); to the Committee on the Judiciary.

(The remarks of Mr. INOUYE when he introduced the bill appear below under the appropriate heading.)

By Mr. CANNON (for himself, Mr. MAGNUSON, and Mr. PEARSON):

S. 593. A bill to amend the Internal Revenue Code of 1954 to reduce the tax on fuel used in noncommercial aviation; to the Committee on Finance.

(The remarks of Mr. CANNON when he introduced the bill appear below under the appropriate heading.)

By Mr. JAVITS:

S. 594. A bill to amend the Labor-Management Relations Act, 1947, and the Railway Labor Act to provide for the settlement of certain emergency labor disputes; to the Committee on Labor and Public Welfare.

(The remarks of Mr. Javits when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. MANSFIELD (for himself and Mr. METCALF):

S. 595. A bill to amend title XVIII of the Social Security Act to permit, in certain instances, the State health agency of a State to waive certain requirements relating to health and safety which must be met by hospitals in such State in order for them to participate in the insurance program established by such title, and to amend title XIX of such Act to eliminate the Life Safety Code of the National Fire Protection Association as the official standard for determining whether nursing homes meet health and safety standards; to the Committee on Finance.

(The remarks of Mr. MANSFIELD when he introduced the bill appear earlier in the RECORD under the appropriate heading.)

By Mr. CASE:

S. 596. A bill to require that international agreements other than treaties, hereafter entered into by the United States, be transmitted to the Congress within sixty days after the execution thereof; to the Committee on Foreign Relations.

(The remarks of Mr. CASE when he introduced the bill appear below under the appropriate heading.)

By Mr. KENNEDY (for himself and Mr. MATHIAS):

S. 597. A bill to amend title 5 of the United States Code to establish the Federal Administrative Justice Center to enhance the quality of administrative law operations in the United States; to the Committee on the Judiciary.

(The remarks of Mr. KENNEDY when he introduced the bill appear below under the appropriate heading.)

By Mr. KENNEDY (for himself, Mr. BAYH, and Mr. MATHIAS):

S. 598. A bill to amend chapter 7, title 5, United States Code, with respect to procedure for judicial review of certain administrative agency action, and for other purposes; to the Committee on the Judiciary.

(The remarks of Mr. KENNEDY when he introduced the bill appear below under the appropriate heading.)

By Mr. METCALF (for himself, Mr. MANSFIELD, Mr. BURDICK, and Mr. MCGOVERN):

S. 599. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 in order to make assistance available to Indian tribes on the same basis as to other local governments; to the Committee on the Judiciary.

(The remarks of Mr. METCALF when he introduced the bill appear below under the appropriate heading.)

By Mr. METCALF:

S. 600. A bill to establish certain rights of professional employees in public schools operating under the laws of any of the several States or any territory or possession of the United States, to prohibit practices which are inimical to the welfare of such public schools, and to provide for the orderly and peaceful resolution of disputes concerning terms and conditions of professional service and other matters of mutual concern; to the Committee on Labor and Public Welfare.

By Mr. SAXBE (for himself and Mr. TAFT):

S. 601. A bill to amend the Federal Water Pollution Control Act, as amended, to provide financial assistance for river basin programs; to the Committee on Public Works.

(The remarks of Mr. SAXBE when he introduced the bill appear below under the appropriate heading.)

By Mr. TOWER:

S.J. Res. 27. Joint resolution to establish a commission on labor law reform; to the Committee on Labor and Public Welfare.

(The remarks of Mr. TOWER when he introduced the joint resolution appear below under the appropriate heading.)

By Mr. SAXBE:

S.J. Res. 28. Joint resolution to establish the Cedar Swamp National Monument; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. SAXBE when he introduced the joint resolution appear below under the appropriate heading.)

S. 577—INTRODUCTION OF A BILL RELATING TO THE CORPORATE SURTAX EXEMPTION

Mr. TOWER. Mr. President, I am today reintroducing a bill which I submitted in the last Congress, designed to provide some recognition of the problems faced by smaller businessmen over the past several decades as the dollar has decreased in value.

The long-standing Federal income tax provision states that a corporation is entitled to an exemption of the first $25,000 of its taxable income from the 26-percent corporate income surtax. However, the value of the dollar has diminished so greatly that a large increase in this exemption is desirable now in order to give small businesses a decent chance at financial survival and success. My bill would raise the exemption to $100,000 to reflect these changed circumstances.

I will make additional remarks on this bill later in the session with appropriate supporting data. At this time, however, I ask unanimous consent that the text of my bill be printed at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. BENTSEN). The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 577) to amend the Internal Revenue Code of 1954, as amended; introduced by Mr. TOWER, was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

S. 577

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at the proper place insert the following new paragraph:

"Subsection (d) of section 11 (relating to the corporate surtax exemption) of the Internal Revenue Code is amended by substituting the amount of $100,000 in lieu of the amount of $25,000 shown therein."

S. 579—INTRODUCTION OF A BILL TO PROVIDE THAT THE EQUITABLE DOCTRINE OF "ADVERSE POSSESSION" SHALL RUN AGAINST THE GOVERNMENT

Mr. CHURCH. Mr. President, on behalf of myself and my distinguished colleague from Idaho (Mr. JORDAN), I introduce for appropriate reference a bill relating to the public lands of the United States.

This bill would provide that the equitable doctrine of "adverse possession" shall run against the Government, as it does in land litigation involving private ownerships.

This proposed legislation is in line with the recommendations of the Public Land Law Review Commission that the doctrine should be made applicable against the United States with respect to public lands where the land has been occupied in good faith.

The PLLRC report to the President and the Congress, says in part, and I quote:

> The principle that the United States cannot lose title to its lands by adverse possession by a private party is treated as axiomatic by the courts. This not only originated with the common law protection of the property of the sovereign, but flows from the exclusive powers of Congress under the property clause of the Constitution.
>
> In very limited circumstances Congress has consented to recognize good faith adverse possession against the Government, e.g., the Mining Claim Occupancy Act, the Color of Title Act, and the Public Land Sale Act of 1968. Furthermore, there has been a trend in principle for the sovereign to consent to suit in more situations. (pg. 261–262, PLLRC report)

The report goes on to point out that in some instances private citizens do occupy public lands in technical trespass, but in good faith believe that the land is theirs; that valuable improvements often are placed upon such lands in ignorance of the Federal claim.

Mr. President, this bill would prohibit the United States from making any entry on, or bringing an action to recover, lands which have been held in adverse possession under claim of title for a continuous period of not less than 20 years. The prohibition would not apply where such lands were held by more than one person unless there existed privity of estate between the persons holding such lands.

Stated in another way, this means that the doctrine of "tacking" could apply—allowing the adverse possessor to add his period of possession to that of a prior adverse possessor if there was privity between them so as to establish a continuous possession for the statutory period under certain circumstances.

The Public Land Law Review Commission recommended that the doctrine of tacking be applicable to adverse possession of public lands "where some form of privity between successive claimants can be shown and occupancy of good faith is established for the prescribed period."

Mr. President, numerous individual bills come before the Congress each session for the purpose of providing relief for people who find themselves threatened with the loss of property they may have occupied for years and had sound reason for believing to be theirs, as a result of new land surveys or other form of newly discovered basis for the Government to claim ownership. I believe this bill would, in many instances, provide needed security for a number of our citizens, and avoid the considerable cost and time entailed in petitioning Congress, on a case-by-case basis, for special legislative relief.

Inasmuch as this is a measure dealing with the public lands, Mr. President, I ask unanimous consent that it be referred to the Committee on Interior and Insular Affairs and printed in the RECORD.

The PRESIDING OFFICER (Mr. BENTSEN). The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 579) relating to the public lands of the United States, introduced by Mr. CHURCH (for himself and Mr. JORDAN of Idaho), was received, read twice by its title, referred to the Committee on Interior and Insular Affairs, by unanimous consent, and ordered to be printed in the RECORD, as follows:

S. 579

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) whenever any public lands of the United States have been held by adverse possession under claim of title for a continuous period of not less than twenty years, the United States shall be prohibited from making any entry on, or bringing any action to recover, such lands. This prohibition shall not apply in any case where such lands were so held by more than one person unless there existed privity of estate between the persons holding such lands.

(b) As used in this Act, the term "adverse possession" means, with respect to lands referred to in subsection (a) of this Act, a possession which was obtained and held by a person reasonably believing that he held title to such lands, and which possession was actual, exclusive, open, and notorious.

Mr. JORDAN of Idaho. Mr. President, I am pleased to join my distinguished colleague (Mr. CHURCH) as a sponsor of this remedial public land legislation.

Legislation dealing with title disputes and technical trespass on the public lands is of tremendous importance to the State of Idaho and the other public land States of the West. Nearly two-thirds of the State of Idaho is federally owned, and many parts of the State have a complex intermingling of Federal, State and private lands. In the Nation as a whole, the public lands constitute more than 755 million acres, or roughly one-third of the Nation's land surface.

The subject of trespass and disputed title constitutes a separate chapter in the June 30, 1970, report of the Public Land Law Review Commission, of which I was a member. Three major recommendations were made in this area after the 5-year study was completed, one of which—recommendation 113—is the basis for this legislation we are introducing today.

Senator CHURCH has discussed the legal problem and the thrust of this legislation. I refer to the PLLRC report itself for some sound and pertinent observations:

> Public land trespasses frequently occur because of an honest but mistaken belief that the lands are privately owned. On the other hand, there are cases in which trespass is alleged on lands which, in fact, are erroneously claimed as Federal.
>
> The fact is, then, that honest disputes between the Government and private citizens as to land titles can and do occur. Most often such disputes are occasioned by disagreement over boundary locations or by an assertion by a private claimant, disputed by the Government, that title passed to the claimant or a predecessor in interest under a public land disposal statute. Although they are infrequent, disputes have also arisen over the title to land acquired by the Government by purchase or donation.
>
> Under existing law, once the fact of trespass is clearly established, even the good faith of the unauthorized occupant cannot protect him from the penalty of ejectment. On occasion, Congress has enacted legisla-

tion to give some measure of relief to those who occupy Federal lands in good faith. These acts, however, have not always fully accomplished their objective and have generally been very narrowly construed by the administrators. Without some type of remedial legislation, however, the land management agencies have no authority to grant relief from the consequences of trespass. Their efforts to work out informal administrative accommodations have not been uniform and have resulted in inequality of treatment in various public land areas.

The PRESIDING OFFICER. The 3 minutes of the Senator have expired.

Mr. JORDAN of Idaho. Mr. President, I ask unanimous consent that I may proceed for 2 additional minutes.

Mr. ALLEN. Mr. President, I ask unanimous consent that the period for the consideration of routine morning business be extended for an additional 12 minutes and that the Senator from Idaho may have permission to proceed for an additional 3 minutes.

The PRESIDING OFFICER Without objection, it is so ordered.

Mr. JORDAN of Idaho. Continuing with a reading of the report:

With an expanding population and over 755 million acres of Federally owned lands, trespass probably can never be eliminated completely. However, it is possible to reduce its impact by increasing the efficiency of control methods, accelerating boundary determinations, and providing for the final determination of title disputes under methods and procedures that are equitable to both the Government and private claimants.

As a result of the problem sketched so succinctly by the PLLRC report, there are worried and often frustrated citizens in Idaho and elsewhere in the country who have nothing but squatter's rights to property they have acquired and occupied in good faith, some of them living there for over a half a century. Yet, because of the land title dispute problem just outlined, many of these people are facing eviction or the unjust requirement of paying twice for property acquired in good faith. In this situation, they find themselves in the unequal position of a person of limited financial means having to cope with the imposing legal powers of the Federal Government.

We hope that this legislation will help equalize this unfair contest and give equity to property owners caught up in the legal quagmire of faulty surveys, uncertain boundary lines, vague public land regulations, stream channel shifts, and other land title complications.

I also hope that the Congress and the executive branch will initiate other necessary administrative and legislative actions to effect the administrative measures necessary to reduce or eliminate problems of this nature.

S. 581—INTRODUCTION OF A BILL TO AMEND THE EXPORT-IMPORT BANK ACT OF 1945, AS AMENDED

Mr. SPARKMAN. Mr. President, I send to the desk for myself, Senator TOWER and Senator BENNETT, a bill dealing with certain aspects of the operation of the Export-Import Bank.

In general, the bill would: First, exclude the Export-Import Bank from the budget of the U.S. Government and provide an exemption for the Bank from annual expenditures and net lending limitations; second, would increase the Bank's overall guarantee and insurance authority; third, increase the Bank's lending authority; fourth, provide for an extension of the Bank's life and issuance of debt obligations to private purchasers; and fifth, require certain reports to be made on the Bank's operation by the President of the United States.

The Banking, Housing, and Urban Affairs Committee—then the Banking and Currency Committee—considered a bill during the last session of the Congress to exempt the Bank from the unified budget. The bill was favorably reported by our committee, received favorable consideration by the Senate, but was turned down in the dying days of the session by the House of Representatives.

I and others on the committee thought that last year's bill was a good one and this is why I am introducing the bill again today for myself, Senator TOWER, and Senator BENNETT.

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

The PRESIDING OFFICER (Mr. BENTSEN). The bill will be received and appropriately referred; and, without objection, the bill and the section-by-section analysis will be printed in the RECORD.

The bill (S. 581) to amend the Export-Import Bank Act of 1945, as amended, to allow for greater expansion of the export trade of the United States, to exclude Bank receipts and disbursements from the budget of the U.S. Government, to extend for 3 years the period within which the Bank is authorized to exercise its functions, to increase the Bank's lending authority and its authority to issue, against fractional reserves and against full reserves, insurance and guarantees, to authorize the Bank to issue for purchase by any purchaser its obligations maturing subsequent to June 30, 1976, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs, introduced by Mr. SPARKMAN (for himself and other Senators), was received, read twice by its title, referred to the Committee on Banking, Housing, and Urban Affairs, and ordered to be printed in the RECORD, as follows:

S. 581

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635), is amended—

(a) By inserting "(1)" immediately after "SEC. 2(a)" of such Act, and by adding at the end thereof the following new paragraph:

"(2) The receipts and disbursements of the Bank in the discharge of its functions shall not be included in the totals of the budget of the United States Government and shall be exempt from any annual expenditure and net lending (budget outlays) limitations imposed on the budget of the United States Government. In accordance with the provisions of the Government Corporation Control Act, the President shall transmit annually to the Congress a budget for program activities and for administrative expenses of the Bank. The President shall report annually to the Congress the amount of net lending of the Bank which would be included in the totals of the budget of the United States Government if the Bank's activities were not excluded from those totals as a result of this section."

(b) Section 2(c)(1) of such Act is amended by striking out "$3,500,000,000" and inserting in lieu thereof "$10,000,000,000".

(c) Section 7 of such Act is amended by striking out "$13,500,000,000" and inserting in lieu thereof "$20,000,000,000".

(d) Section 8 of such Act is amended by striking out "June 30, 1973" and inserting in lieu thereof "June 30, 1976", and by inserting immediately following the words "Secretary of the Treasury" "or any other purchasers".

SEC. 2. The President shall within 30 days after enactment of this Act report to the Congress the amount by which the annual expenditure and net lending limitation imposed on the budget of the United States Government by title V of the Second Supplemental Appropriations Act, 1970, will be reduced as a result of the amendment made by section 1(a) of this Act.

The analysis presented by Mr. SPARKMAN is as follows:

SECTION-BY-SECTION SUMMARY

(A)—EXCLUSION FROM BUDGET OF U.S. GOVERNMENT AND EXEMPTION FROM ANNUAL EXPENDITURE AND NET LENDING LIMITATIONS

This section excludes the receipts and disbursements of the Export-Import Bank of the United States in the discharge of its functions from the totals of the budget of the U.S. Government and exempts the Bank's operations from any annual expenditure and net lending (budget outlays) limitations imposed on the budget of the U.S. Government; requires, in accordance with the provisions of the Government Corporation Control, as amended, that the President submit annually to the Congress a budget for program activities and for administrative expenses of the Bank; and requires that the President submit annually to the Congress a report setting forth the amount of net lending of the Bank which would be included in the budget if this section had not been enacted.

(B)—GUARANTEES AND INSURANCE PROGRAMS

This section amends Section 2(c)(1) of the Export-Import Bank Act of 1945, as amended (Act), by increasing within the Bank's overall authority its authority to issue guarantees and insurance on a fractional reserve basis from the present $3,500,000,000 limitation to $10,000,000,000.

(C)—INCREASE IN THE BANK'S LENDING AUTHORITY

This section amends Section 7 of the Act to increase the aggregate amount of loans, guarantees and insurance which the Bank can have outstanding from the present limitation of $13,500,000,000 to $20,000,000,000.

(D)—EXTENSION OF THE BANK'S LIFE AND ISSUANCE OF DEBT OBLIGATIONS TO PRIVATE PURCHASERS

This section amends Section 8 of the Act to extend the life of the Bank from its present expiry date of June 30, 1973 to June 30, 1976. This proposed extension of time during which the Bank may continue to exercise its functions is in accord with the request for additional authority contained in Sections (b) and (c) of this bill. The insertion of the words "or any other purchasers" immediately after the words "Secretary of the Treasury" in Section 8 of the Act would allow the Bank to issue its notes, debentures, and other obligations with maturities extending beyond its statutory life to purchasers in addition to the Secretary of the Treasury.

SECTION 2.—REPORT ON EFFECT ON FISCAL YEAR 1971 EXPENDITURE AND NET LENDING LIMITATIONS

This section requires the President to report to the Congress within 30 days after enactment of this Act the amount by which the annual expenditure and net lending limitations imposed on the budget of the U.S. Government by title V of the Second Supplemental Appropriations Act, 1970, will be reduced as a result of the amendment to the Export-Import Bank Act of 1945, as amended, contained in Section 1(a).

S. 582—INTRODUCTION OF THE NATIONAL COASTAL AND ESTUARINE ZONE MANAGEMENT ACT OF 1971

Mr. HOLLINGS. Mr. President, I introduce today for myself, Senator MAGNUSON, and 25 other Senators a bill to assist the States in establishing coastal and estuarine zone management programs.

Similar legislation was introduced last year, and extensive hearings were held by the Subcommittee on Oceanography of the Committee on Commerce. The bill reflects many excellent contributions made during those hearings. The legislation has strong support from the National Governors' Conference, the National Legislative Conference, the Coastal States Organization of the Council of State Governments, and the National Oceanography Association, among others.

Basically, the legislation provides grant-in-aid assistance to the States for:

First, development of management plans and programs for the coastal and estuarine zones of the United States;

Second, implementation of those plans and programs; and

Third, purchase of estuarine sanctuaries for ecological research that will be essential for making proper management decisions in the coastal and estuarine zones of the United States.

Mr. President, the coastal and estuarine zones of the United States are among the most productive natural areas found anywhere, and are under great pressure from our increasing population and development. It is essential to concentrate environmental and resource management in those areas, management geared to their special needs, management that differs markedly from terrestrial areas farther inland. The coastal and estuarine zones are the places where deep ocean regimes, inshore regimes, and land regimes meet in highly dynamic and variable systems.

In these dynamic areas are wetlands and shoreline borders of the upland; submerged lands and surface minerals; subsurface minerals and sedimentary deposits; fresh, brackish, and salt waters; and animal organisms and communities that are closely integrated and dependent upon the waters and submerged lands. These elements are interdependent and a unit. Their management can and must be approached as a unit. As Dr. William Hargis of the Virginia Institute of Marine Science stated recently:

> The coastal zone is the "key" or gate to the oceans! Effective management in the coastal zone almost automatically assures control over quality of ocean environments and quantity of resources.

The coastal and estuarine zones are socially the regions where there are the greatest impacts from man's activities. There is an increased permanent and short-term population in the coastal and estuarine zones of the United States. Over 53 percent of the Nation's population now lives in the cities and counties within 50 miles of our coasts and Great Lakes, more than 106,000,000 people. Eighty-three percent, or 170,000,000 people, live in our coastal and Great Lakes States.

There is heavy public interest in both the environment and the resources of the coastal and estuarine zones. Thirty million people turn to the coasts annually for swimming; 11 million to fish; 8 million to sail. And the greatest contests between public and private interests for the scarce resources in these areas take place there. These include demands for development, transportation, urban growth, recreation, preservation of natural environments, and the entire range of human activity.

The greatest commercial and industrial development is taking place there. A preponderance of heavy industrial investment is located there: offshore oil, fisheries, shipping, ports, manufacturing, refining, and power generation. Global transport patterns and location of our population dictate that there be concentrations of activity in these areas.

No more politically complex areas exist in the United States than in our coastal and estuarine zones. The political authority extends from the local, to State, Federal, and international. But there is no overall management by the States nor any national guidance in this critical area. Yet strategically, the coastal and estuarine zones are the key to preservation and use of the ocean's environment and resources. These are the areas where management action is most critical and must be taken immediately. Now is the time to adopt a sound strategy focusing special attention on these areas and their special problems.

Dr. Edward Wenk, of the University of Washington, recently stated that the primary issue is "how to provide for many diverse and often conflicting coastline demands, public and private, and still obtain the greatest long-term social and economic benefits." He proposed seven basic principles for reaching our goals in the coastal and estuarine zones:

1. We need a national policy to balance protection and development of coastal resources for this and succeeding generations.

2. Every foot of coastline should eventually be subject to a comprehensive management plan for land and water use, reflecting needs of public and private concerns such as industry, transportation, recreation, fisheries, wildlife and nature conservancy, and residential development.

3. The plan should be prepared at the state level of government and subject to review and approval by the governor.

4. The state should provide and exercise necessary regulatory authority, land acquisition and public facility development to implement its management plan.

5. Provisions should be made for public notice and public hearing in development or modifications of such plans.

6. Provisions should be made for conducting, fostering and utilizing relevant ecological and policy research so as to provide a factual basis for estimating the impact of man's intervention on the natural environment, including provision of estuarine sanctuaries to study natural and artificial ecological processes.

Mr. President, the legislation I introduce today is entirely consistent with the principles enunciated by Dr. Wenk. It states congressional policy to preserve, protect, develop, and restore the resources of the U.S. coastal and estuarine zones. It declares that it is necessary to encourage and assist the States in the preparation and implementation of management plans and programs for the coastal and estuarine zones of this country. And it provides for the public, the Federal, State, and local government to participate in the development of the plans and programs under the leadership of the States.

Mr. President, I ask unanimous consent that a section-by-section analysis of the bill be printed in the RECORD, as well as several telegrams and a statement I have received on this subject.

The PRESIDING OFFICER (Mr. BENTSEN). The bill will be received and appropriately referred; and, without objection, the material will be printed in the RECORD.

The bill (S. 582) to establish a national policy and develop a national program for the management, beneficial use, protection, and development of the land and water resources of the Nation's coastal and estuarine zones, introduced by Mr. HOLLINGS (for himself and other Senators), was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 582

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to provide for a comprehensive, long-range, and coordinated national program in marine science, to establish a National Council on Marine Resources and Engineering Development, and a Commission on Marine Science, Engineering and Resources, and for other purposes", approved October 15, 1966, as amended (16 U.S.C. 1121 et seq.), is amended by adding at the end thereof the following new titles:

"TITLE III—PLANNING AND MANAGEMENT OF THE COASTAL AND ESTUARINE ZONE

"SHORT TITLE

"SEC. 301. This title may be cited as the 'National Coastal and Estuarine Zone Management Act of 1971'.

"CONGRESSIONAL FINDINGS

"SEC. 302. The Congress finds—

"(a) That the well-being of American society now demands that manmade laws be extended to regulate the impact of man on the biophysical environment.

"(b) That there is a national interest in the effective management, beneficial use, protection, and development of the Nation's coastal and estuarine zone.

"(c) That the coastal and estuarine zone is rich in a variety of natural, commercial, recreational, industrial, and esthetic resources of immediate and potential value to the present and future well-being of our Nation.

"(d) That the increasing and competing demands upon the lands and waters of our coastal and estuarine zone occasioned by population growth and economic development; including requirements for industry, com-

merce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shore line erosion.

"(e) That the coastal and estuarine zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations.

"(f) That present land and water uses in the more poplated coastal areas do not adequately accommodate the diverse requirements of the coastal and estuarine zone.

"(g) That in light of competing demands and the urgent need to protect our coastal and estuarine zone, the institutional framework responsible is currently diffuse in focus, neglected in importance, and inadequate in regulatory authority.

"(h) That the key to more effective use of the coastal and estuarine zone is the introduction of a management system permitting conscious and informed choices among alternative uses.

"(i) That the absence of a national policy and an integrated management and planning mechanism for the coastal and estuarine zone resource has contributed to the impairment of the Nation's environmental quality.

"DECLARATION OF POLICY

"SEC. 303. Congress finds and declares that it is the policy of Congress to preserve, protect, develop, and where possible to restore, the resources of the Nation's coastal and estuarine zone for this and succeeding generations. The Congress declares that it is necessary to encourage and assist the coastal States to exercise effectively their responsibilities over the Nation's coastal and estuarine zone through the preparation and implementation of management plans and programs to achieve wise use of the coastal and estuarine zone through a balance between development and protection of the natural environment. Congress declares that it is the duty and responsibility of all Federal agencies engaged in programs affecting the coastal and estuarine zone to cooperate and participate in the purposes of this Act. Further, it is the policy of Congress to encourage the participation of the public and Federal, State, and local governments in the development of coastal and estuarine zone management plans and programs.

"DEFINITIONS

"SEC. 304. For the purposes of this title—

"(a) 'Estuary' means that part of a river or stream or other body of water having unimpaired natural connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage, or with the Great Lakes.

"(b) 'Coastal and estuarine zone' means the land, waters, and lands beneath the waters near the coastline (including the Great Lakes) and estuarines. For purposes of identifying the objects of planning, management, and regulatory programs the coastal and estuarine zone extends seaward to the outer limit of the United States territorial sea, and to the international boundary between the United States and Canada in the Great Lakes. Within the coastal and estuarine zone as defined herein are included areas and lands influenced or affected by water such as, but not limited to, beaches, salt marshes, coastal and intertidal areas, sounds, embayments, harbors, lagoons, in-shore waters, rivers, and channels.

"(c) 'Coastal State' means any State of the United States in or bordering on the Atlantic, Pacific, and Arctic Oceans, gulf coast, Long Island Sound, or the Great Lakes, and includes Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

"(d) 'Secretary' means the Secretary of Commerce.

"(e) 'Estuarine sanctuary' is a research area, which may include waters, lands beneath such waters, and adjacent uplands, within the coastal and estuarine zone, and constituting to the extent feasible a natural unit, set aside to provide scientists the opportunity to examine over a period of time the ecological relationships within estuaries.

"MANAGEMENT PLAN AND PROGRAM DEVELOPMENT GRANTS

"SEC. 305. (a) The Secretary is authorized to make annual grants to any coastal State for the purpose of assisting in the development of a management plan and program for the land and water resources of the coastal and estuarine zone. Such grants shall not exceed 66⅔ per centum of the costs of such program development in any one year. Other Federal funds received from other sources shall not be used to match such grants. In order to qualify for grants under this subsection, the coastal State must demonstrate to the satisfaction of the Secretary that such grants will be used to develop a management plan and program consistent with the requirements set forth in section 306(c) of this title. Successive grants may be made annually for a period not to exceed two years: *Provided*, That no such grant shall be made under this subsection until the Secretary finds that the coastal State is adequately and expeditiously developing such management plan and program.

"(b) Upon completion of the development of the coastal State's management plan and program, the coastal State shall submit such plan and program to the Secretary for review, approval pursuant to the provisions of section 306 of this title, or such other action as he deems necessary. On final approval of such plan and program by the Secretary, the coastal State's eligibility for further grants under this section shall terminate, and the coastal State shall be eligible for grants under section 306 of this title.

"(c) No annual grant to a single coastal State shall be made under this section in excess of $600,000.

"(d) With the approval of the Secretary, the coastal State may allocate to an interstate agency a portion of the grant under this section for the purpose of carrying out the provisions of this section.

"ADMINISTRATIVE GRANTS

"SEC. 306. (a) The Secretary is authorized to make annual grants to any coastal State for not more than 66⅔ per centum of the costs of administering the coastal State's management plan and program, if he approves such plan and program in accordance with subsection (c) hereof. Federal funds received from other sources shall not be used to pay the coastal State's share of costs.

"(b) Such grants shall be allotted to the States with approved plans and programs based on regulations of the Secretary.

"(c) Prior to granting approval of a comprehensive management plan and program submitted by a coastal State, the Secretary shall find that:

"(1) the coastal State has developed and adopted a management plan and program for its coastal and estuarine zone adequate to carry out the purposes of this title, in accordance with regulations published by the Secretary, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, and other interested parties, public and private.

"(2) The coastal State has made provision for public notice and held public hearings in the development of the management plan and program. All required public hearings under this title must be announced at least thirty days before they take place, and all relevant materials, documents, and studies must be made readily available to the public for study at least thirty days in advance of the actual hearing or hearings.

"(3) The management plan and program and changes thereto have been reviewed and approved by the Governor.

"(4) The Governor of the coastal State has designated a single agency to receive and administer the grants for implementing the management plan and program set forth in paragraph (1) of this subsection.

"(5) The coastal State is organized to implement the management plan set forth in pargaraph (1) of this subsection.

"(6) The coastal State has the regulatory authorities necessary to implement the plan and program, including the authority set forth in subsection (g) of this section.

"(d) With the approval of the Secretary, a coastal State may allocate to an interstate agency a portion of the grant under this section for the purpose of carrying out the provisions of this section, provided such interstate agency has the authority otherwise required of the coastal State under subsection (c) of this section, if delegated by the coastal State for purposes of carrying out specific projects under this section.

"(e) The coastal State shall be authorized to amend the management plan and program at any time that it determines the conditions which existed or were foreseen at the time of the formulation of the management plan and program have changed so as to justify modification of the plan and program. Such modification shall be in accordance with the procedures required under subsection (c) of this section. Any amendment or modification of the coastal State's management plan and program must be approved by the Secretary before additional administrative grants are made to the coastal State under the plan and program as amended.

"(f) At the discretion of the coastal State and with the approval of the Secretary, a management plan and program may be developed and adopted in segments so that immediate attention may be devoted to those areas of the coastal zone which most urgently need comprehensive management plans and programs: *Provided*, That the coastal State adequately allows for the ultimate coordination of the various segments of the management plan into a single unified plan and program and that such unified plan and program will be completed as soon as is reasonably practicable, and in no event more than three years from inception.

"(g) Prior to granting approval of the management plan and program, the Secretary shall find that the coastal State, acting through its chosen agency or agencies (including local governments), has authority for the management of the coastal and estuarine zone in accordance with the management plan and program and such authority shall include power—

"(1) to administer land and water use regulations, control public and private development of the coastal and estuarine zone in order to assure compliance with the management plan and program, and to resolve conflicts among competing uses;

"(2) to acquire fee simple and less than fee simple interests in lands, waters, and other property within the coastal and estuarine zone through condemnation or other means when necessary to achieve conformance with the management plan and program;

"(3) to develop land and facilities and to operate such public facilities as beaches, marinas, and other waterfront developments, as may be required to carry out the management plan and program;

"(4) to borrow money and issue bonds for the purpose of land acquisition or land and

water development and restoration projects; and

"(5) to exercise such other functions as the Secretary determines are necessary to enable the orderly development of the coastal and estuarine zone in accordance with the management plan and program.

"(h) Prior to granting approval, the Secretary shall find that the coastal State, acting through its chosen agency or agencies (including local governments), has authority to review all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any State or local authority or private developer to determine whether such plans, projects, or regulations are consistent with the principles and standards set forth in the management plan and program and to reject a development plan, project, or regulation which fails to comply with such principles and standards: *Provided*, That such determination shall be made only after there has been a full opportunity for hearings.

"(i) No annual administrative grant to a coastal State shall be made under this section in excess of 15 per centum of the total amount appropriated to carry out the purposes of this section.

"BOND AND LOAN GUARANTIES

"SEC. 307. In addition to grants-in-aid, the Secretary is authorized under such terms and conditions as he may prescribe, to enter into agreements with coastal States to underwrite by guaranty thereof bond issues or loans for the purposes of land acquisition, or land and water development and restoration projects: *Provided*, That the aggregate principal amount of guaranteed bonds and loans outstanding at any time may not exceed $140,000,000.

"REGULATIONS

"SEC. 308. The Secretary shall develop and promulgate, pursuant to section 553 of title 5, United States Code, after appropriate consultation with other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this title.

"REVIEW OF PERFORMANCE

"SEC. 309. (a) The Secretary shall conduct a continuing review of the comprehensive management plans and programs of the coastal States and of the performance of each coastal State.

"(b) The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the coastal State is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the coastal State has been given notice of proposed termination and withdrawal and an opportunity to present evidence of adherence or justification for altering its program.

"RECORDS

"SEC. 310. (a) Each recipient of a grant under this title shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant, and the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of the grant that are pertinent to the determination that funds granted are used in accordance with this title.

"ADVISORY COMMITTEE

"SEC. 311. (a) The Secretary is authorized and directed to establish a coastal and estuarine zone management advisory committee to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal and estuarine zones of the coastal States of the United States. Such committee shall be composed of not more than fifteen persons designated by the Secretary and shall perform such functions and operate in such manner as the Secretary may direct.

"(b) Members of said advisory committee who are not regular full-time employees of the United States, while serving on the business of the committee, including traveltime, may receive compensation at rates not exceeding the daily rate for GS-18; and while so serving away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government service employed intermittently.

"ESTUARINE SANCTUARIES

"SEC. 312. The Secretary, in accordance with his regulations, is authorized to make available to a coastal State grants up to 50 per centum of the costs of acquisition, development, and operation of estuarine sanctuaries for the purpose of creating natural field laboratories to gather data and make long-term studies of the natural and human processes occurring within the estuaries of the coastal and estuarine zone. The number of estuarine sanctuaries provided for under this section shall not exceed fifteen, and the Federal share of the cost for each such sanctuary shall not exceed $2,000,0000. No Federal funds received pursuant to section 306 shall be used for the purpose of this section.

"INTERAGENCY COORDINATION AND COOPERATION

"SEC. 313. (a) The Secretary shall not approve the management plan and program submitted by the State pursuant to section 306 unless the views of Federal agencies principally affected by such plan and program have been adequately considered. In case of serious disagreement between any Federal agency and the State in the development of the plan the Secretary, in cooperation with the Executive Office of the President, shall seek to mediate the differences.

"(b)(1) All Federal agencies conducting or supporting activities in the coastal and estuarine zone shall seek to make such activities consistent with the approved State management plan and program for the area.

"(2) Federal agencies shall not undertake any development project in a coastal and estuarine zone which, in the opinion of the coastal State, is inconsistent with the management plan of such coastal State unless the Secretary, after receiving detailed comments from both the Federal agency and the coastal State, finds that such project is consistent with the objectives of this title, or is informed by the Secretary of Defense and finds that the project is necessary in the interest of national security.

"(3) Any applicant for a Federal license or permit to conduct any activity in the coastal and estuarine zone subject to such license or permit, shall provide in the application to the licensing or permitting agency a certification from the appropriate State agency that the proposed activity complies with the State coastal and estuarine zone management plan and program, and that there is reasonable assurance, as determined by the State, that such activity will be conducted in a manner consistent with the State's coastal and estuarine zone management plan and program. The State shall establish procedures for public notice in the case of all applications for certification by it, and to the extent it deems appropriate, procedures for public hearings in connection with specific applications. If the State agency fails or refuses to act on a request for certification within six months after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence, unless, after receipt of detailed comments from the relevant Federal and State agencies, and the provision of an opportunity for a public hearing, the activity is found by the Secretary to be consistent with the objectives of this title or necessary in the interest of national security. Upon receipt of such application and certification, the licensing or permitting agency shall immediately notify the Secretary of such application and certification.

"(c) State and local governments submitting applications for Federal assistance in coastal and estuarine areas shall indicate the views of the appropriate State or local agency as to the relationship of such activities to the approved management plan and program for the coastal and estuarine zone. Such applications shall be submitted in accordance with the provisions of title IV of the Intergovernmental Coordination Act of 1968. Federal agencies shall not approve proposed projects that are inconsistent with the coastal State's management plan and program, except upon a finding by the Secretary that such project is consistent with the purposes of his title or necessary in the interest of national security.

"(d) Nothing in this section shall be construed—

"(1) to diminish either Federal or State jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources and navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States, or of two or more States and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

"(2) to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties of his office except as required to carry out the provisions of this title;

"(3) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies, except as required to carry out the provisions of this title; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States Operating Entity or Entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

"ANNUAL REPORT

"SEC. 313. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress not later than January 1 of each year a report on the administration of this title for the preceding Federal fiscal year. Such report shall include but not be restricted to (1) an identification of the State programs approved pursuant to this title during the preceding Federal fiscal year and a description of those programs; (2) a listing of the States participating in the provisions of this title and a description of the status of each State's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allotment of funds to the various coastal States and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any State programs which have been reviewed and disapproved or with respect to which grants have been terminated under this title, and a statement of the reasons for such action; (5) a listing of the Federal development projects which

the Secretary has reviewed under section 313 of this title and a summary of the final action taken by the Secretary with respect to each such project; (6) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (7) a summary of a coordinated national strategy and program for the Nation's coastal and estuarine zones including identification and discussion of Federal, regional, State, and local responsibilities and functions thereof; (8) a summary of outstanding problems arising in the administration of this title in order of priority; and (9) such other information as may be required under the National Environmental Policy Act of 1969.

"(b) The report required by subsection (a) shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this title and enhance its effective operation.

"APPROPRIATIONS

"SEC. 314. (a) There are authorized to be appropriated—

"(1) the sum of $12,000,000 for fiscal year 1972 and such sums as may be necessary for the fiscal years thereafter prior to June 30, 1976, for grants under section 305;

"(2) such sums, not to exceed $50,000,000, as may be necessary for the fiscal year ending June 30, 1973, and such sums as may be necessary for each succeeding fiscal year thereafter for grants under section 306;

"(3) such sums, not to exceed $6,000,000 for fiscal year 1972; $6,000,000 for fiscal year 1973; $6,000,000 for fiscal year 1974; $6,000,000 for fiscal year 1975; and $6,000,000 for fiscal year 1976 as may be necessary for grants under section 312; and

"(b) There are also authorized to be appropriated to the Secretary such sums not to exceed $3,000,000 annually, as may be necessary for administration expenses incident to the administration of this title."

The material submitted by Mr. HOLLINGS is as follows:

NATIONAL COASTAL AND ESTUARINE ZONE MANAGEMENT ACT OF 1971

SECTION-BY-SECTION ANALYSIS

Amends the Marine Resources and Engineering Development Act of 1966 by adding a new Title III.

SEC. 302. Congressional Findings. Series of statements and findings of values and changes taking place in the coastal and estuarine zone.

SEC. 303. Declaration of Policy. States Congressional policy to preserve, protect, develop, and restore the resources of the U.S. coastal and estuarine zone. Declares that it is necessary to encourage and assist the States in the preparation and implementation of management plans and programs for the coastal and estuarine zone. Declares that it is the duty and responsibility of Federal agencies to cooperate and participate in the purposes of the Act. Encourages public, Federal, State, and local governments to participate in the development of the plans and programs.

SEC. 304. Definitions. Defines the following terms:

(a) "Estuary."
(b) "Coastal and estuarine zone."
(c) "Coastal State."
(d) "Secretary" (Secretary of Commerce).
(e) "Estuarine sanctuary."

SEC. 305. Management Plan and Program Development Grants. Provides for planning grants to the coastal States, not to exceed 66⅔% of the costs for "program development." Permits such grants annually for a period not to exceed three years, provided Secretary finds that State adequately and expeditiously developing a coastal and estuarine zone management plan and program. Upon completion, plan to be submitted for review, approval, or other action to the Secretary. Annual grants not to exceed $600,000 for any one State.

SEC. 306. Administrative Grants. (a) Authorizes the Secretary to make annual grants not to exceed 66⅔% of cost of administering a coastal State's management plan and program. (b) Funds to be allotted to States based on regulations of the Secretary. (c) To grant approval of the coastal State's management plan and program the Secretary must find that:

(1) The coastal State has developed and adopted a management plan and program in accordance with the regulations published by the Secretary and with the opportunity of full participation by relevant Federal and State agencies, local governments, regional organizations, and other interested public and private parties;

(2) The coastal State has held public hearings in development of the plan and program. Requires 30 days notice of public hearings;

(3) The management plan and program has been reviewed and approved by the Governor;

(4) A single agency has been designated by the Governor to receive and administer the operating grants;

(5) The coastal State is organized to implement the plan;

(6) The agency or agencies to implement the plan have the regulatory authorities necessary to implement it.

(d) Permits allocation by Governor of portions of operating grants to interstate agencies having authority to meet the requirements of this Act. (e) Permits State modifications of management plan and program, and provides for adoption of amendments only after full opportunity for comment, including public hearings at the affected areas. (f) Permits adoption of management plan and program in segments, to devote immediate attention to those areas of the coastal and estuarine zone requiring urgent attention. (g) Requires that the coastal State shall have authority for management of the coastal and estuarine zone, including power.

(1) to administer land and water use regulations, control public and private development, and resolve conflicts among competing uses;

(2) to acquire fee simple and less-than-fee simple interests in lands, waters, and other property within the zone through condemnation or other means;

(3) to develop land and facilities and to operate them as beaches, marinas, and other waterfront developments;

(4) to borrow money and issue bonds for land acquisition or land and water development and restoration projects.

(5) to exercise such other functions as the Secretary determines are necessary.

(h) Requires coastal State to have authority to review all development plans, projects, or regulations proposed by any State or local authority or private developer for conformance to the State management plan and program, provided there is an opportunity for full hearings.

SEC. 307. Bond and Loan Guaranties. Authorizes Secretary to underwrite coastal State bond issues or loans for the purposes of land acquisition, or land and water development and restoration projects.

SEC. 308. Regulations. Requires Secretary to develop regulations to carry out provisions of the Act.

SEC. 309. Review of Performance. Requires Secretary to conduct continuing review of coastal State management plans and programs. Authorizes Secretary to terminate financial assistance if the coastal State is failing to adhere to a program approved by the Secretary and the coastal State has been given an opportunity to be heard.

SEC. 310. Records. Calls for coastal State to keep records; Secretary and Comptroller General to have access to records of the grants.

SEC. 311. Advisory Committee. Authorizes and directs the Secretary to establish a coastal and estuarine zone management advisory committee to advise, consult with, and make recommendations on policy matters concerning the coastal and estuarine zone. Nongovernment members to be reimbursed for expenses at rates for GS–18.

SEC. 312. Estuarine Sanctuaries. Authorizes Secretary to make grants up to 50% of costs, not to exceed $2,000,000, of acquisition, development, and operation of estuarine sanctuaries for field laboratories to gather data and make long-term studies of natural and human processes occurring within the estuaries of the coastal and estuarine zone.

SEC. 313. Interagency Coordination and Cooperation. Requires the Secretary to solicit the views of Federal agencies affected by coastal State management plans before granting approval of those plans.

Requires Federal agencies conducting or supporting activities in the coastal and estuarine zone to seek to make their activities consistent with the approved State management plan and program. Applicants for Federal licenses or permits are to provide a State certification that the proposed activity complies with the State coastal plan. State and local governments submitting applications for Federal assistance shall indicate views of the appropriate agency as to consistency with the State coastal plan. Such applications to be submitted in accordance with the Intergovernmental Coordination Act of 1968. Federal agencies are not to approve projects that are inconsistent with the State coastal plan "without making investigation and finding that the proposal is, on balance, sound."

SEC. 314. Annual Report. Requires Secretary to prepare and submit annual report.

SEC. 315. Appropriations. Authorizes $12,000,000 for fiscal year 1972 for planning grants, and such sums as may be necessary thereafter. Authorizes sums not to exceed $50,000,000 for fiscal year 1973, and such sums as necessary for years thereafter for grants under Section 306. Authorizes sums not to exceed $6,000,000 each in 1972, 1973, 1974, 1975, and 1976 for grants under Section 312.

TALLAHASSEE, FLA., *February 3, 1971.*

Hon. ERNEST F. HOLLINGS,
Chairman, Senate Subcommittee on Oceanography, Washington, D.C.:

The State of Florida urges you to introduce legislation calling for national assistance to coastal States for deveolping a coastal zone management program. This affirms a similar policy statement adopted by the national governor's conference in August, 1970, and will aid Florida in protecting its vital and irreplaceable marine and coastal resources.

REUBEN O'D ASKEW,
Governor, State of Florida.

TALLAHASSEE, FLA., *February 3, 1971.*

Senator HOLLINGS,
Senate Office Building,
Washington, D.C.:

As a member of the Florida House of Representatives, I want to encourage your strong support of legislation providing Federal assistance to State in developing coastal zone management. Florida is making a serious effort at State level and would benefit greatly from such legislation.

LOUIS S. EARLE,
State Representative.

SAVANNAH, GA., *February 2, 1971.*

Senator ERNEST HOLLINGS,
Chairman, Senate Subcommittee on Oceanography, Washington, D.C.:

The purpose of this telegram is to affirm the need in the State of Georgia for coastal zone management. Accordingly, a policy

statement was adopted at the National Governors Conference meeting in August of 1970 and a need for national assistance was asserted. Therefore, we urge that you introduce legislation establishing such programs in order that the vital and irreplaceable resources in the coastal zone Georgia be properly managed for the benefit of children in our future generations.

Sincerely yours,

THOMAS H. SUDDATH,
The Governor of Georgia's Delegate to the Coastal Zone Management Commission and Secretary-Treasurer of Coastal State Organization.

UNIVERSITY OF RHODE ISLAND,
KINGSTON, R.I., *February 4, 1971.*

Hon. ERNEST F. HOLLINGS,
Old Senate Office Building,
Washington, D.C.:

Governor Licht of Rhode Island strongly supports the concept of effective coastal zone management and has had a technical committee working for more than a year and a half on a program to provide proper safeguards for the estuaries and coastal resources of our State.

As a member of that committee and as the delegate from Rhode Island to the Organization of Coastal States, may I offer the fullest support in your efforts to obtain passage of your National Coastal and Estuarine Zone Management Act of 1971. It is vital legislation which will benefit all of our citizens who use our coastal resources.

Dr. NELSON MARHALL,
Acting Provost for Marine Affairs.

New Orleans, La., February 3, 1971.

Senator ERNEST F. HOLLINGS.
Senate Office Building,
Washington, D.C.:

The purpose of this telegram is to affirm the need in the State of Louisiana for coastal zone management. In a policy statement adopted by the National Governors Conference meeting in August of 1970, a need for national assistance to the States for developing coastal zone management programs was asserted. Therefore, we urge that you introduce legislation establishing such a program in order that the vital irreplaceable resources in the coastal zone of Louisiana be properly managed for the benefit of children in our future generations.

LYLE S. ST. AMANT,
Louisiana Governor's Representative Coastal State Organization.

STATEMENT OF THE MICHIGAN STATE LEGISLATURE DELEGATION TO THE MICHIGAN CONGRESSIONAL DELEGATION, FEBRUARY 4, 1971

Pending Federal legislation regarding coastal zone protection and management (including the Great Lakes) would be of great benefit to the states involved. Grant monies for program development and operation, as specified under this legislation, would greatly assist the coastal and Great Lake states in formulating and administering a comprehensive coastal zone and shoreline management program which would effectively resolve existing conflicts and problems within these unique and valuable natural resource areas.

Mr. BOGGS. Mr. President, I wish to express my support and cosponsorship of this bill, the National Coastal Zone and Estuarine Zone Management Act of 1971.

The distinguished Senator from South Carolina (Mr. HOLLINGS) is to be commended for his work on this legislation to encourage the establishment of plans and programs for managing our Nation's vital coastal and estuarine zones.

It was my honor in the 91st Congress to submit a bill, S. 3183, that was an administration proposal concerning this same subject. It was cosponsored by Senators COOPER, RANDOLPH, BAKER, HATFIELD, JAVITS, MURPHY, and PACKWOOD. That bill would have amended the Federal Water Pollution Control Act to establish a national policy and comprehensive national program for the management, beneficial use, protection, and development of land and water resources of the Nation's estuarine and coastal zones. The bill was developed as a result of a study of estuarine zone pollution authorized in the Clean Water Restoration Act of 1966.

Originally referred to the Committee on Public Works, S. 3183 was subsequently re-referred to the Committee on Commerce. This was done to enable that committee to evaluate the administration's proposal at the time it was studying other important proposals calling for coastal zone management.

The thrust and purpose of the bill I introduced last year and the bill I am honored to cosponsor today are identical. Both declare a national interest in the effective management and protection of coastal and estuarine areas. Both seek to encourage the wisest and best use of our coastal zones.

The differences that exist between the two bills largely involve the sums authorized in grants to assist the States in establishing and implementing coastal zone management programs. The bill that I introduced on behalf of the administration last year called for 50-percent Federal grants to the States. The new bill calls for 66⅔-percent grants. S. 3183 authorized a maximum of $200,000 a year to each State or territory, or a theoretical maximum of $6,400,000 a year for 30 States and two territories. This new bill raises the possible annual grant per State to $600,000 for planning, up to a maximum for $12 million for the Nation. Another $50 million would be authorized for grants to assist the States in carrying forward their coastal-zone-management programs, with a maximum of $7,500,000 authorized for any one State.

A significant difference between S. 3183 and the new bill, involves authorization for the acquisition of coastal land. S. 3183 did not contain such acquisition authority. This new bill authorizes $6 million a year for 5 years for creation of estuarine sanctuaries, plus a Federal authorization to underwrite other State coastal zone programs by guaranteeing bonds or loans up to a national total of $140,000,000.

While these differences appear to be considerable, I do not believe that they detract from the basic similarities existing between the two bills. Each bill seeks to stimulate State action to bring to all citizens the highest and best use of the coastal and estuarine zones. Each bill would encourage the States to halt the indiscriminate destruction of wetlands and unplanned development of that precious strip of land we call the coastal zone.

Possibly the best description of both bills comes from the declaration of congressional findings appearing in the bill introduced today.

Section 302(d) declares:

(d) That the increasing and competing demands upon the lands and waters of our coastal and estuarine zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion.

Mr. President, it is a distinct honor for me to join Senator HOLLINGS in sponsoring this bill. It is my understanding that the bill, when eventually reported by the Committee on Commerce, will be re-referred to the Committee on Public Works for a brief period of time for further study and evaluation. I believe this is a useful procedure, as the Committee on Public Works, through its jurisdiction over such matters as pollution control, rivers and harbors, and other aspects of land-use, can provide a meaningful contribution to the coastal zone bill.

S. 592—INTRODUCTION OF A BILL TO REPEAL THE EMERGENCY DETENTION ACT OF 1950

Mr. INOUYE. Mr. President, I rise today to introduce a bill which most of you are familiar with and all of you supported in the last Congress. The bill will repeal title II—the Emergency Detention Act—of the Internal Security Act of 1950.

Title II of the Internal Security Act gives the President the power to proclaim an internal security emergency in the event of any of the following: First, invasion of the territory of the United States or its possessions; second, declaration of war by Congress; and third, insurrection within the United States in aid of a foreign enemy. Following the declaration of an internal security emergency, title II gives the President or his agent the power to detain persons "if there is reasonable ground to believe that such a person will engage in acts of espionage or sabotage." Following the arrest, title II details the procedures for the continued detention of a person. Generally, this course of action is at odds with normal procedure.

As you may remember, this measure passed the Senate unanimously on December 22, 1969. I was joined in cosponsorship by 26 of my colleagues. Unfortunately, the House of Representatives failed to act on this legislation during the last session. I was most disappointed that the House of Representatives did not take the same action on this bill as did the Senate and I am hopeful that enactment of this legislation will occur early in the 92d Congress.

It has been 2 years since I originally introduced this measure. Often, a proposal will lose both its significance and relevancy during such a lapse of time. However, in the case of the repeal of title II of the Internal Security Act, the time lapse has strengthened rather than weakened both the relevance and the urgency of this proposal. I introduced this measure when I became aware of the widespread rumors which were being circulated throughout our Nation that

the Federal Government was readying concentration camps to be filled with those who hold unpopular views and beliefs. These rumors were being widely circulated and were believed in many urban ghettos as well as by those dissidents who are at odds with many of the policies of the United States. This situation has been intensified during the past 2 years and will continue to do so as long as it remains within the power of the President to detain persons in these camps. Many would respond to these rumors of concentration camps with the refrain "This couldn't happen in America." However, in times of stress and crisis American justice has not always withstood these pressures. I am naturally reminded that during World War II, 109,650 Americans of Japanese ancestry were arrested, their property confiscated and were detained in various "relocation camps" for most of World War II. Rumors of this nature only serve to further polarize our society when, indeed, what our Nation desperately needs at this point is a movement away from polarization toward unity.

This measure is supported by a wide spectrum of citizens throughout the United States. Since introducing the bill, I have received endorsements from numerous and varied government, labor, religious, civic, and community organizations.

In view of these facts, I submit this proposal for your favorable consideration. I am hopeful that both Houses of Congress will act favorably upon the bill early in this session. It is of vital importance that we clear our records of this statute. Repeal of title II would be a major step toward the elimination of fears and suspicions of many of our citizens who cannot agree with the policies of our Government, and toward a reestablishment of the trust between Government and people which is essential to the effective operation of a democratic nation.

The PRESIDING OFFICER (Mr. CHILES). The bill will be received and appropriately referred.

The bill (S. 592) to repeal the Emergency Detention Act of 1950 (title II of the Internal Security Act of 1950), introduced by Mr. INOUYE (for himself, Mr. BAYH, Mr. BENNETT, Mr. BURDICK, Mr. CRANSTON, Mr. FONG, Mr. GRAVEL, Mr. GRIFFIN, Mr. HUGHES, Mr. HUMPHREY, Mr. JAVITS, Mr. JORDAN of Idaho, Mr. JORDAN of North Carolina, Mr. MANSFIELD, Mr. MCGEE, Mr. MCGOVERN, Mr. MOSS, Mr. MUSKIE, Mr. PELL, Mr. PROXMIRE, Mr. RANDOLPH, Mr. STEVENS, Mr. STEVENSON, Mr. TUNNEY, and Mr. WILLIAMS), was received, read twice by its title, and referred to the Committee on the Judiciary.

S. 593—INTRODUCTION OF A BILL TO REDUCE THE TAX ON FUEL USED IN NONCOMMERCIAL AVIATION

Mr. CANNON. Mr. President, I introduce for myself and for Senators MAGNUSON and PEARSON a bill amending the Airport and Airway Revenue Act of 1970 to reduce the tax on aviation fuel used in noncomercial aviation from the present level of 7 cents per gallon to 6 cents per gallon.

Last year the Congress enacted the historic Airport and Airways Development Act, a long-term capital development program to upgrade, modernize, and expend the Nation's aviation facilities—both on the ground and in the air. The revenues required to fund that program are raised by a series of new and increased charges on the users of the U.S. aviation system; the airlines, private aircraft owners and operators, airline passengers and shippers.

One of the most difficult tasks confronting the Congress during consideration of that program was arriving at a fair and equitable allocation of the user charges among the various users. The Committee on Commerce held long and extensive hearings on this question in 1969 and, based on that analysis, made a series of recommendations to the taxing committees of Congress on the nature and level of user charges which we thought fairly apportioned the tax burden.

While there was general agreement among most aviation interests regarding the rate and type of taxation on airline passengers and shippers, there were widespread differences regarding the rate of taxation on general aviation.

The administration recommended that general aviation fuel be taxed at the rate of 9 cents per gallon. That, in almost everyone's judgment, seemed excessive. The committee after long deliberation recommended a general aviation fuel tax of 6 cents per gallon. In making its recommendation, the committee said:

> Testimony indicates that many of the facilities and much of the equipment which will be provided under this bill is not required or needed by general aviation. In addition, the Committee believes that an excessive rate of taxation on general aviation could serve to dampen its growth and economic health at a time when it is making significant contributions to the U.S. air transport system. The Committee believes that until such time as the Secretary shall report the results of his cost allocation study to the Congress, it is unwise to tax general aviation fuel at a rate higher than 6 cents per gallon. However, should the results of the cost allocation study indicate that general aviations' use of and requirements for the system demand a greater contribution in the form of user charges to support this use, the Committee believes that the Congress should review the then-current user taxes and make the appropriate revisions to assure that each segment of civil aviation is paying its fair share.

Mr. President, the cost allocation study referred to in that report has yet to be made but a greatly expanded tax burden is already being shouldered by general aviation. Congress ultimately provided that general aviation fuel be taxed at a rate of 7 cents per gallon and in addition enacted an aircraft registration tax at the rate of $25 per plane with a 2-cents-per-pound charge for aircraft weighing more than 2,500 pounds. Jet aircraft were taxed at 3½ cents per pound.

The total amount of revenue from this tax package on general aviation is expected to be $59.1 million in fiscal year 1971. The Commerce Committee recommended general aviation taxes totaling $39 million per year.

Mr. President, in my judgment and in the judgment of the Committee on Commerce the present level of taxation on general aviation is excessive. Late last year I was successful in amending the tax provisions by exempting the first 2,500 pounds of gross weight of any conventionally powered aircraft from the 2-cents-per-pound weight levy. Beginning July 1, aircraft weighing more than 2,500 pounds will be assessed the poundage fee only on that weight which exceeds 2,500 pounds. This amendment will provide a small measure of relief—$50 per year—to the small airplane owner.

The bill I offer today will provide some small additional relief by lowering the tax on aviation fuel from 7 cents per gallon to 6 cents per gallon. The fuel tax is now expected to produce revenues of $44.8 million in the current fiscal year. By lowering the tax 1 cent per gallon, total tax revenue will only decrease by $6.4 million per year—an insignificant sum considering the total airport/airways revenues involved of nearly $600 million per year. However the 1-cent-per-gallon saving to the individual operator, in many cases, will be significant.

Because the small airplane operators do not in most cases, require or use many of the sophisticated aviation system components—including many airport and airway facilities, this small tax reduction is entirely appropriate and fair. The small airplane operator is being continually burdened by new requirements for more sophisticated radio and navigational gear required by the Federal Aviation Administration for many types of operations. As a result of legislation enacted late last year, all private aircraft operators will in the future be required to equip their planes with emergency locator transmitting beacons—another expensive device required by law which will add to the expense of the private pilot.

Therefore the tax relief sought in this bill should be speedily considered and enacted by Congress in an effort to promote and encourage the growth and development of general aviation which is one of the cornerstones of the transportation system of the United States.

The PRESIDING OFFICER (Mr. CHILES). The bill will be received and appropriately referred.

The bill (S. 593) to amend the Internal Revenue Code of 1954 to reduce the tax on fuel used in noncommercial aviation, introduced by Mr. CANNON (for himself, Mr. MAGNUSON, and Mr. PEARSON), was received, read twice by its title, and referred to the Committee on Finance.

S. 596—INTRODUCTION OF A BILL RELATING TO EXECUTIVE AGREEMENTS

Mr. CASE. Mr. President, I introduce for appropriate reference a bill requiring the transmittal of all executive agreements to the Congress within 60 days of their execution.

In the closing days of the 91st Congress when I originally introduced this

bill, it had become abundantly clear to me and, I believe, to many of my colleagues that one of the major deficiencies in our relationship with the executive branch which must be remedied is that of congressional access to the terms and conditions of this Nation's nontreaty agreements with foreign nations. Only with such full knowledge, which my bill is intended to provide, can the Congress carry forward the systematic and continuing review of U.S. commitments which was pioneered by the Symington Subcommittee on U.S. Security Agreements and Commitments Abroad during the session just past.

I hope that the executive branch soon will provide its formal response to my bill and I trust that the Committee on Foreign Relations shortly thereafter will begin consideration of this potentially far-reaching measure.

Fourteen years ago the Senate approved a similar measure introduced by former Senator William F. Knowland, but it was not subsequently voted upon by the House. It is now time for the Congress to complete this action previously begun.

The PRESIDING OFFICER (Mr. FANNIN). The bill will be received and appropriately referred.

The bill (S. 596) to require that international agreements other than treaties, hereafter entered into by the United States, be transmitted to the Congress within 60 days after the execution thereof, introduced by Mr. CASE, was received, read twice by its title, and referred to the Committee on Foreign Relations.

S. 597—INTRODUCTION OF A BILL TO ESTABLISH A FEDERAL ADMINISTRATIVE JUSTICE CENTER

Mr. KENNEDY. Mr. President, last April I introduced a bill to establish a Federal Administrative Justice Center. The center would be responsible for encouraging and supporting the continuing education of lawyers employed by the Federal Government. The bill grew out of recommendations of the American Bar Association and the Administrative Conference of the United States and would provide a vehicle for fulfilling the long-recognized need for continuing legal education which so far has not been adequately fulfilled by existing facilities.

The proposed center is to be set up as a new agency with a board of visitors as the governing body. A majority of this board would consist of persons employed by the Government, including representatives of all three branches. The center would be supervised by a small staff; students would be designated by the agencies; fees covering the course costs would be paid by the agencies out of training funds.

Two premises seem to be recognized by all the parties interested in the administrative process. First, there is a definite need for continuing legal education. Each year new laws are passed, new court decisions are handed down, new problems in administration arise, new policy emphases shift. Lawyers in Government and outside must keep abreast of developments in law and in society, so they may be prepared not only to perform the duties presently assigned more competently, but also to undertake effectively future challenges which might be provided through promotion or transfer.

Surely in these days where the importance of governmental responsiveness to the public needs and wishes cannot be overemphasized, the Government lawyer becomes more than a narrow advocate or technician. Thus, continuing legal education becomes as much sensitivity training to the problems of the citizenry and to the moods of society as sharpening of the lawyer's tools.

The second premise we begin with is the surprising absence—in the midst of continuing expressed need—of any meaningful continuing legal education programing by agencies of the Government today. The Civil Service Commission, for example, organized a series of evening sessions for lawyers and ran a management institute for them. But its programs have reached less than 1 percent of the Government lawyers. Other agencies have instituted orientation programs for new attorneys, but these often take the form of a tour through the library and an introduction to the physical facilities of the agency.

Last June the Subcommittee on Administrative Practice and Procedure held hearings on the Administrative Justice Center bill. Testimony was heard from representatives of the Administrative Conference of the United States, the American Bar Association, the ALI–ABA joint Committee on Continuing Legal Education, the Federal Trial Examiners Conference, the Federal Bar Association, and the Civil Service Commission.

While there was a general feeling expressed that the Civil Service Commission and other organizations had not provided adequate programs for continuing legal education for Government attorneys and trial examiners, there was some division of opinion over the desirability or necessity of establishing a new Federal agency to fulfill this gap. Further study was suggested by some witnesses, and the Civil Service Commission indicated a willingness to step up its activities in this field.

I believe that the bill and the Administrative Justice Center concept is still timely and important. I likewise believe that we must give the Civil Service Commission time to show if it can make good on its commitment to the subcommittee and the lawyers in the Federal service to assume its proper role by stepping up its activities in the area of continuing legal education. Last December the Commission held a 1-day session in Williamsburg for agency general counsels, with such items as implementation of the Freedom of Information Act on its agenda. This is just a start.

We will continue to consider this legislation and the issues involved throughout this Congress. If the present Federal agencies, especially the Civil Service Commission, cannot or will not perform responsibly and adequately their obligations to provide Government lawyers and trial examiners with continuing legal education, then Congress will have to provide another vehicle to achieve this end.

I introduce the bill, and ask that it be appropriately referred.

The PRESIDING OFFICER (Mr. FANNIN). The bill will be received and appropriately referred.

The bill (S. 597) to amend title 5 of the United States Code to establish the Federal Administrative Justice Center to enhance the quality of administrative law operations in the United States, introduced by Mr. KENNEDY (for himself and Mr. MATHIAS), was received, read twice by its title, and referred to the Committee on the Judiciary.

S. 598—INTRODUCTION OF A BILL RELATING TO JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS

Mr. KENNEDY. Mr. President, the doctrine that "the King can do no wrong" may have gone unquestioned in medieval England. I believe that we would all agree, however, that it has no place in 20th century America. Yet this seems to be precisely the basis of the judicial doctrine of "sovereign immunity," developed during the past two centuries in this country. To the extent that this immunity doctrine prevents the orderly, rational review of actions of Federal officers, it is inconsistent with the principles of accountable and responsible government.

Under the law as it presently stands—and I emphasize that this is judge-made law, since Congress has never spoken directly on this issue—an officer of the U.S. Government can act arbitrarily, capriciously, discriminatorily, illegally, and yet the aggrieved or threatened citizen may have no recourse to the courts. For if he should bring suit against the officer, Justice Department lawyers will surely cry "sovereign immunity" and judges across the land may, with no further analysis or investigation, respond "Case dismissed."

Let me illustrate with one case. Just 2 years ago a civil servant of Italian descent charged that his superiors in the Army Corps of Engineers refused to provide him chances for promotion because of his ethnic origin.

The Civil Service Commission rebuffed his charge, and the employee sued the Government, the Engineers, and the Commission. The Federal court dismissed his suit on the following grounds:

First. The United States could not be sued without its consent.

Second. The Civil Service Commission could not be sued in its own name.

Third. Sovereign immunity prevented judicial consideration of the plaintiff's claim.

Today I am introducing a bill that would eliminate the sovereign immunity defense in such actions. This bill would not require promotion of the civil servant involved in this case. It would allow the Federal court to decide whether subtantial evidence existed to support the Civil Service conclusion that there was no discrimination in the case. In other words, elimination of sovereign immunity would allow courts to decide legal questions involving governmental action according to rational principles. The doctrine of sovereign immunity is not, and does not represent, a rational principle.

The immunity doctrine, as presently applied, is illogical, artificial, erratic, and confusing. In some cases where there may have been strong arguments against judicial intervention, astute lawyers and judges have had little difficulty sidestepping the sovereign immunity doctrine. In other cases, where the Government may have had no substantive interest at stake, summary application of the doctrine has been a source of frustration, uncertainty, and injustice.

Basically, this bill would do three things:

First. Eliminate the defense of sovereign immunity in suits for specific relief against the Federal Government.

Second. Eliminate the present requirement of a minimum jurisdictional amount in U.S. district courts where a Federal question is involved.

Third. Simplify and clarify the law relating to naming the United States, its agencies, or officers as parties defendant.

The latter two objectives appear somewhat technical, but they provide needed reforms in two important areas of the law. Citizens who are thrown out of Federal court because they cannot place a monetary value on their claims to remain free of punitive selective service reclassification, to travel abroad, or to be free from invasions of privacy, do not view the legal doctrines applied to them as trivial technicalities. A citizen whose case is dismissed because he sued the Social Security Administrator instead of the Social Security Administration, or the Civil Service Commission instead of the members of the Commission individually, is not impressed by the classification of the Government's defense as technical. And so I believe that these objectives of the bill are important and are not to be slighted.

But most important is the first section of the bill, and a most revealing aspect of this section is what it does not do.

The bill does not apply to monetary damages and will not open the United States to any further liability for such damages.

The scope of judicial review is in no way expanded. It remains limited by section 706 of title 5, United States Code, to questions involving constitutionality or legality of administrative action, propriety of procedures used, abuse of agency discretion, and whether agency findings are supported by substantial evidence.

This bill will not open to judicial review in Federal district courts agency actions expressly or impliedly precluded from judicial review by other statutes. For example, if the Government breaches a contract, the aggrieved party cannot under this bill bring an injunction for specific performance against the United States; he is limited by law to monetary damages under the Tucker Act.

The bill will not affect any other defense of the Government. For example, Congress, in the Administrative Procedure Act, and the judiciary in numerous cases have set down requirements prerequisite to judicial review like standing, exhaustion of administrative remedies, ripeness, and nondiscretionary nature of agency action. Other equitable considerations involved in judicial intervention into the administrative realm remain applicable.

Sovereign immunity has never been an absolute bar to judicial intervention in cases of nonstatutory review of administrative action. Courts have in case after case prohibited enforcement of Federal laws or regulations, halted official action, and required official action. But a review of the cases—as confused as they are—reveals one certain conclusion: Where sovereign immunity has been held to be a bar to suit, and where no other defenses retained by the bill would have been applicable, unjust or irrational decisions have resulted.

Last year I introduced this same bill, which was referred to the Subcommittee on Administrative Practice and Procedure. A full hearing was held, at which we heard testimony from six witnesses. All but one supported the bill—the representative of the Department of Justice, which often throws up the sovereign immunity defense in court as an obstacle of judicial determination of issues that should be resolved by the courts. Witnesses supporting the bill included the chairman of the Administrative Conference of the United States and two other representatives of the Conference, the chairman of the administrative law section of the American Bar Association, and Prof. Kenneth Culp Davis, one of the leading administrative law experts in the country, also speaking for the ABA.

At our hearings the basic point made was that application of the sovereign immunity doctrine was unjust, irrational, and confusing and thus should be modified. Numerous cases were explained to illustrate this point. The Department of Justice, however, raised two objections to the sovereign immunity section of the bill: First, that it would upset the allocation of functions between courts and agencies by determining that most, if not all, governmental decisions and judicially reviewable, and, second, that the resulting litigation would overburden the courts.

As to the first objection, Professor Davis, I believe, provided the subcommittee with a complete answer:

> One of the strongest areas of American administrative law, in my opinion, is the huge body of case law that has worked out the relationship between the courts and the executive branch of the government. The fundamental basis for the division of functions between courts and administrators is comparative qualifications: Judges are especially qualified for some tasks, and administrators are especially qualified for others: what administrators do in the areas where they are especially qualified is subjected to only a limited check by courts. Huge areas of governmental action courts stay out of almost completely, such as foreign policy and military action. Even when the subject matter is within an area where judges are specialists, the scope of review is limited, as provided in 5 U.S.C. Sec. 706, to those aspects of whole problems which judges are peculiarly qualified to deal with.
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> A true fundamental is that courts deem themselves limited by Article III of the Constitution to "issues appropriate for judicial determination." The Supreme Court has often used that language, as it did, for instance, in Aetna Gardner, 387 U.S. 136, 153 (1967), the Court found the issue "fit for judicial resolution."
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> Ninety-nine percent of the time the determining factor as to whether a court will review (assuming no explicit statutory guidance) is the judicial judgment as to whether the issue is "appropriate for judicial determination" or "fit for judicial resolution." Less than one percent of the time the determining factor is something related to sovereign immunity.
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> But within that one percent where the sovereign immunity doctrine has an effect on the allocation of functions as between courts and agencies, the influence of the doctrine is to upset the usual sound basis for allocating functions. The partial abolition of sovereign immunity will remove the upsetting factor. For instance, when a controversy concerns application of commercial law or land law or other common law, no one in our entire society is better qualified than judges to resolve the controversy. But sovereign immunity often means that judges are barred from resolving it.
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> Not only will this bill *not* result in making "most, if not all, governmental decisions" judicially reviewable, but it will correct most of the misallocation of functions that is caused by the doctrine of sovereign immunity.

As to the argument that partial elimination of sovereign immunity would overburden the courts, no one has come up with more than guesses. The Justice Department surmised that a substantial number of new cases would go to trial; Professor Davis placed his estimated increase, based upon his reading of the Federal reporters, at between one-third of 1 percent and 1 percent; Prof. Roger Cramton, now Chairman of the Administrative Conference, indicated his belief that abrogation of the doctrine would in fact eliminate confusion and complexity and would yield a net result of lessening judicial burdens. Of course, to the extent that the doctrine causes injustice, it should be eliminated even if a slight increase in the workload of the courts results. Finally, the Judicial Conference, reporting on the bill last fall, indicated support of the bill and did not express any fear of its overburdening the Federal courts.

Sovereign immunity has been around for centuries. But it cannot withstand the test of time. It has taxed the resources of the courts, rather than relieved them of burdens. It has often proved a barrier to justice, rather than a vehicle for insuring reasonable and just results. It obfuscates, it confuses, it confounds. It directs court attention away from, not toward, the merits of the case. We have been doing a lot of talking about government responsiveness to the citizenry lately. This bill will help do something about it.

The PRESIDING OFFICER (Mr. FANNIN). The bill will be received and appropriately referred.

The bill (S. 598) to amend chapter 7, title 5, United States Code, with respect to procedure for judicial review of certain administrative agency action, and for other purposes; introduced by Mr. KENNEDY (for himself, Mr. BAYH, and Mr. MATHIAS), was received, read twice by its title, and referred to the Committee on the Judiciary.

S. 599—INTRODUCTION OF A BILL TO AMEND THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

Mr. METCALF. Mr. President, it would appear that the provisions in the Omnibus Crime Control Act of 1970 permitting 100-percent waiver of matching requirements for grants to Indian tribes is sufficient to provide that we are going to have Federal help for crime control on the Indian reservations. However, there is some doubt about this, and, in order to get an administrative declaration, Senators MANSFIELD, BURDICK, and McGOVERN and I are introducing the same bill we have offered heretofore, and, if the administration in its report advises that existing law is sufficient, that is enough for us, but if they say our bill is needed, then we shall press for further action.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The bill will be received and appropriately referred.

The bill (S. 599) to amend the Omnibus Crime Control and Safe Streets Act of 1968 in order to make assistance available to Indian tribes on the same basis as to other local governments, introduced by Mr. METCALF (for himself and other Senators), was received, read twice by its title, and referred to the Committee on the Judiciary.

S. 601—INTRODUCTION OF A BILL TO PROVIDE FINANCIAL ASSISTANCE FOR RIVER BASIN PROGRAMS

Mr. SAXBE. Mr. President, in the last Congress I introduced a bill amending section 7 of the Federal Water Pollution Control Act to enable intrastate agencies with jurisdiction over interstate streams to continue detailed pollution control planning while implementing regional projects.

Today, with the welcome support and cosponsorship of my distinguished colleague from Ohio (Mr. TAFT), I again introduce this legislation to provide financial support of basin water quality management plans. This includes the planning, construction, operation, and maintenance of waste treatment facilities and other basin water quality management activities.

In short, this bill would allow regional watershed conservation organizations usually conservancy districts, to apply for funds from the Federal Water Quality Administration. These funds would be channeled through State departments of natural resources, and will enable the Federal Water Quality Administration to participate in the development of plans for eventual implementation to improve the water quality of the Nation's streams on a watershed or regional basis. It is important that this bill be incorporated into Federal law this year. To date the Federal funds channeled to one conservancy district in Ohio, the Miami Conservancy District, have amounted to about one-third of the funds for management and planning purposes. This Federal involvement, initiated in January 1969, will end December 1971, as the grants through section 3(c) of the Federal Water Pollution Control Act are not considered nor may they be extended. The legislation which I introduce today would provide for extension of these grants, which would benefit conservancy and basin water programs all over the Nation.

The Miami Conservancy District was created by the Ohio Legislature sitting in special session in the year 1914 following a disastrous flood of the Great Miami River, and was dedicated to the single purpose of flood control. Subsequently, several regional conservancy districts were established in my State.

The basic Ohio Conservancy Act has been amended on numerous occasions to broaden the scope of conservancy districts, with the approval of property owners and public agencies within the regional watershed.

For example, the Miami Conservancy District serving the Great Miami River Watershed has planned and intends to implement many pollution abatement and water quality programs. Among these are a regional waste treatment facility, installation of floating aerators, a stream appearance program, low-flow augmentation, a water quality data network, and an incinerator for the disposal of nonaqueous liquid residual-gas, oil and paints.

Since introducing the bill in the last Congress some recommendations have been made by the Interstate Conference on Water Problems of the Council of State Governments concerning the legislation. At this time I would like to briefly discuss and heartily endorse these modifications in my prior bill.

The bill I introduce today as modified provides for authorization for the Secretary of Interior to make grants to intrastate streams. These grants would not exceed 50 percent of certain costs of carrying-out a river basin quality management plan. Further, such pian must not only be approved by the responsible State agency, but the Secretary must determine that the intrastate agency meets all criteria set forth by the Federal act, providing for a comprehensive and effective basin water quality management. The bill provides for review of applicable State statutes by the Secretary to insure intrastate agency capability for implementation of the plan. In other words, the recipient agency must be capable of not only planning, but financing, constructing, operating, and maintaining the proposed improvements recommended within the plan.

Further, and most important, the Secretary has latitude for renewing or extending the planning grants should he determine that during or at the conclusion of the initial 3-year period the recipient agency is, in fact, accomplishing those functions contemplated by this subsection.

I would also like to thank Mr. L. Bennett Coy, general manager of the Miami Conservancy District, for his tireless assistance in the researching and drafting of this legislation.

Mr. President, I introduce for proper reference a bill to provide financial assistance for river basin programs.

The PRESIDING OFFICER (Mr. BENTSEN). The bill will be received and appropriately referred.

The bill (S. 601) to amend the Federal Water Pollution Control Act, as amended, to provide financial assistance for river basin programs, introduced by Mr. SAXBE (for himself and Mr. TAFT), was received, read twice by its title, and referred to the Committee on Public Works.

SENATE JOINT RESOLUTION 27—INTRODUCTION OF A JOINT RESOLUTION TO ESTABLISH A COMMISSION ON LABOR LAW REFORM

Mr. TOWER. Mr. President, I am today reintroducing a joint resolution to establish a Commission on Labor Law Reform.

Since I introduced this resolution last July 15, the need for such a commission has grown. On three different occasions last year in the rail industry, Congress was forced to dictate a particular strike settlement to representatives of labor and management. I feel that the prevalent feeling of this body is that such arbitrary rulings on the part of the Federal Government are not consistent with the traditions of this Nation. Yet, under the current legislative mechanisms, Congress is confronted with the choice of imposing a settlement or facing the disastrous effects of a strike which potentially endangers the safety of the Nation.

Mr. President, I trust that the 92d Congress as a whole is becoming more aware of the need for reform of our current labor laws. President Nixon has reacted responsively to this problem. The President has sent to the Congress a bill entitled "The Emergency Public Interest Protection Act." This legislation, in my opinion, would go a long way toward providing more balance and equity in our labor laws as they affect the various transportation industries. It is up to the 92d Congress to insure that this bill receives careful review by the appropriate congressional committees. Although this legislation was first introduced in the 91st Congress, the President has now resubmitted the proposal, and I hope that it will receive the attention it deserves early in the 92d Congress.

Labor law in the transportation industries is perhaps the most glaring area where reform is needed. However, there are many areas of labor law where expert review has become a critical need. The commission established in this legislation would scrutinize all of the country's existing labor laws and submit recommendations for change.

When this legislation was introduced last year, I stated that my objective was not to set the direction of the commission. Instead, I made the point quite clear that it is the obligation of a legislator to endorse the commission concept when the need arises.

I believe that we have already reached the crisis stage in this field of public policy. Unless public officials face up to the fact that the circumstances which necessitated the passage of a great portion of labor law have changed, the country will be faced with a situation of distressing consequences. There exists an ever-growing public demand for a fresh approach in this field. I ask unanimous consent that the text of my resolu-

tion be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. BENTSEN). The joint resolution will be received and appropriately referred; and, without objection, the joint resolution will be printed in the RECORD.

The joint resolution (S.J. Res. 27) to establish a commission on labor law reform introduced by Mr. TOWER, was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the RECORD, as follows:

S.J. RES. 27

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established a Commission on Labor Law Reform (hereinafter referred to as the "Commission").

SEC. 2. (a) The Commission shall be composed of nine members appointed by the President as follows:

(1) two from among persons who represent management;

(2) two from among persons who represent labor organizations;

(3) two from among persons who represent the public generally;

(4) one representative of the Federal Government who is knowledgeable in labor matters;

(5) one from among persons who represent arbitration and mediation associations; and

(6) one labor law professor.

(b) Five members of the Commission shall constitute a quorum for the transaction of business. A vacancy in the Commission shall not affect its powers. The Commission shall elect a Chairman and a Vice Chairman from among it members.

(c) Each member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation. Each member of the Commission who is not otherwise employed by the United States Government shall receive $150 per day (including travel-time) during such time as he is actually engaged in the performance of his duties as a member of the Commission. Each member of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of his duties as a member of the Commission.

SEC. 3. (a) It shall be the duty of the Commission to make a thorough and complete study and investigation of the Federal laws dealing with labor-management relations, including recommendations with respect to the need for the enactment of new legislation or the revision of existing legislation, with particular emphasis upon emergencies caused by disputes in the transportation industry.

(b) The Commission shall submit its report within one year after the enactment of this joint resolution, and shall cease to exist thirty days after submitting its report.

SEC. 4. (a) In order to carry out the provisions of this joint resolution, the Commission is authorized to—

(1) make expenditures;

(2) hold hearings;

(3) take testimony orally or by deposition;

(4) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this joint resolution without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classifications and General Schedule pay rates; and

(5) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

(b) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and urged to furnish to the Commission, upon the request of the Chairman or Vice Chairman, such information, services, personnel, and facilities as the Commission deems necessary to carry out the provisions of this joint resolution.

SEC. 5. There are hereby authorized to be appropriated such sums, not to exceed $1,000,000, as may be necessary to carry out the provisions of this joint resolution.

SENATE JOINT RESOLUTION 28—INTRODUCTION OF A JOINT RESOLUTION TO DESIGNATE CEDAR SWAMP, CHAMPAIGN COUNTY, OHIO, AS A NATIONAL MONUMENT

Mr. SAXBE. Mr. President, I am deeply concerned about the future of one of the finest boreal swamp forests remaining in the Midwest. This 100-acre refuge is presently threatened by the relocation of a four-lane U.S. highway, U.S. 68, between Springfield and Urbana, Ohio.

The natural sanctuary of Cedar Swamp, presently under the care of the Ohio Historical Society, is all that is left of a 7,000-acre postglacial swamp forest. Its southern location is unique. The rich northern flora and fauna existing there can be found only in extreme northern Michigan or Canada. The effect of drainage and highway development near the swamp may cause irreparable damage or death to the plants and animals in the bog.

Mr. President, I believe we have destroyed too much of the scenic beauty and natural ecology of our country, we must begin preservation programs now, and continue them so we may always have peaceful woodlands and wildlife santuaries. For this reason, I introduce today a joint resolution to establish a Cedar Swamp National Monument, and request that it be referred to the appropriate committee.

The PRESIDING OFFICER (Mr. FANNIN). The joint resolution will be received and appropriately referred.

The joint resolution (S.J. Res. 28) to establish the Cedar Swamp National Monument, introduced by Mr. SAXBE, was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

ADDITIONAL COSPONSORS OF A BILL

S. 560

At the request of the Senator from Michigan (Mr. GRIFFIN) the names of the Senator from Idaho (Mr. JORDAN), the Senator from Texas (Mr. TOWER), and the Senator from Ohio (Mr. TAFT) were added as cosponsors of S. 560 to provide more effective means for protecting the public interest in national emergency disputes involving the transportation industry and for other purposes.

SENATE RESOLUTION 44—SUBMISSION OF A RESOLUTION RELATING TO THE ESTABLISHMENT OF UNIFORM STANDARDS OF HEALTH AND SAFETY TO BE APPLIED TO HOSPITALS AND OTHER HEALTH CARE FACILITIES RECEIVING FEDERAL FUNDS

Mr. MANSFIELD (for himself and Mr. METCALF) submitted a resolution (S. Res. 44) relating to the establishment of uniform standards of health and safety which should be applicable to hospitals and other health care facilities receiving Federal funds under various programs, which was referred to the Committee on Finance.

(The remarks of Mr. MANSFIELD when he submitted the resolution appear earlier in the RECORD under the appropriate heading.)

SENATE RESOLUTION 45—SUBMISSION OF A RESOLUTION TO AUTHORIZE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS TO MAKE A STUDY OF NATIONAL FUELS AND ENERGY POLICY

Mr. RANDOLPH. Mr. President, the attitude of the administration with respect to the Nation's critical fuels and energy position is not encouraging. It was disappointing to this Senator that in the President's state of the Union address no mention was made of the problem. There was no recognition that the problem exists.

Only a few days before the President's address electric power in the New York metropolitan area and other parts of the eastern seaboard had to be cut back approximately 5 percent below demand, this time during the heating season, whereas prior power shortage problems have occurred during the air conditioning season. And serious problems persist in that area and threaten others. This power deficiency, coming as it does after many other crises in the energy field, makes it clear that the Nation must assign our fuels and energy problems the high priority consideration they require.

Mr. President, to bring the picture into sharper focus and to make it more compatible with current events, we need only to refer to four news articles in yesterday's and today's February 3 and 4, 1971, issues of the Washington Post and two news items in the New York Daily News issue of yesterday, under these headlines: "Pepco Cuts Power 5 Percent to Area Users, Blames Plant Shutdowns, Cold Spells—Oil Price Talks Halt: Threat to Supply Seen—Continuing Power Crisis Dims New York—Con Ed Winter Menu: Cold Cuts, Candlelight—Con Ed Heated Up on Criticism—Oil Nations Consider Price Boosts."

They give clear and unmistakable evidence that a critical element of the state of the Union was sadly neglected by the President in his recent report to Congress and the people of America.

WE MUST PRESERVE ENERGY BASE

As a highly industrialized continental society of more than 200 million people flanked on either side by the two largest

bodies of water on the globe, we have few higher national priorities than preserving the energy base on which our complex economy rests.

The United States is unique among the nations of the world in its consumption of energy, and most of our total energy comes from oil and gas, which together account for approximately three-fourths of the Nation's total energy supply. Being from the country's leading coal-producing State, I do not deprecate the role of coal, nor do I minimize its abundance. Neither do I minimize the eventual role of atomic power.

By 1959, oil imports became so large that they were declared to threaten or impair the national security and mandatory controls were instituted. Some persons will disagree, but it is my view that a number of actions by the executive branch since 1959 have not been in the best interest of this Nation's energy security sought to be achieved by the mandatory oil import program.

A case in point is the decontrol in 1966 of residual fuel imports into the eastern seaboard, an action vigorously opposed by many knowledgeable people, including members of the coal industry. Today, over 90 percent of the residual fuel needs of that area are supplied by imports. It does not make for a secure energy position for this Nation.

Another case in point is the Cabinet task force created by President Nixon in March 1969 to conduct a comprehensive review of the mandatory oil program. The review was undertaken by a team of academicians having little, if any, experience in the workings of the petroleum industry.

No public hearings were held, no witnesses were called and the committee sat as an appellate court, reading briefs, statements, claims, answers to written hypothetical questions, and so forth. I am certain that our Interior Committee would not proceed in any such arbitrary way. Knowledgeable persons having an interest in the subject matter must be given an opportunity to be heard and to answer questions in public hearings. The recommendations of the task force were largely contrary to the advice offered by people with experience in petroleum matters—both from the industry itself and from the Government.

Fortunately, the President rejected the major proposals of the task force. If he had not, this country's dependency on insecure sources of foreign oil would have grown to alarming proportions within this decade.

In rejecting the principal recommendations of the task force, the President created an Oil Policy Committee consisting of representatives from a number of executive departments and agencies and lodged in the Committee authority for program policy and management. It is well established that a committee of that nature seldom is an effective tool for management purposes. This principle has been demonstrated by the Oil Policy Committee. It has made numerous vacillating interim arrangements and it has been indecisive on many aspects of the oil import program.

Some public policy must be established which will permit the managers of the fuel industries to plan rationally for the critical years ahead.

After the Cabinet task force created a report and set of recommendations that the President rejected for what I consider to have been sound reasons, on August 6, 1970, the White House press secretary announced that the President had asked the Domestic Council to study the national energy situation and to develop for his consideration new or revised energy policies. It seems to have been given a relatively short-range mission, looking no further ahead than 5 years.

Little that we could consider to be reassuring has come from the Domestic Council since the August 6 mission was assigned to it. Our country's fuels and energy status certainly does not reflect the complacency of the administration on the subject—a complacency indicated, as I have said, by a complete skirting of the subject in the state of the Union address to the Congress and the people of America.

Perhaps the President considers the fuels and energy crisis to be concerned mainly with foreign policy and foreign trade negotiations. Much of the problem does hinge on difficulties with foreign countries in which a large portion of the free world's reserves of oil are located. The eastern seaboard of the United States depends entirely too much on heating oil and other petroleum products imported from those foreign countries.

HIGHER DEGREE OF SELF-SUFFICIENCY NEEDED

We cannot, however, rely on foreign policy and foreign trade negotiations alone to solve our fuels and energy supply and demand problems. I emphasize that our country may find itself and, indeed, the whole free world may be on the verge of being in a suffocating squeeze. Some South American and Arabic oil-rich nations are creating extremely difficult problems. We are far from being a self-sufficient fuels and energy producing country under existing policies, and we must set about finding ways to become more self-sufficient.

Present public policies toward energy are so fragmented and inconsistent and administered by so many different agencies of Government that it might truthfully be said this country has no energy policy at all.

In the 91st Congress last year, this Senator was joined by 62 others in the sponsorship of a bill—S. 4092—which would have created a Fuels and Energy Commission. It would have been empowered to recommend programs and policies intended to insure that U.S. energy requirements will be met, and to seek to blend environmental quality requirements with future energy needs.

Our proposed measure would have established a Commission of 21 members—six Members of the Congress; nine high-ranking officers of the executive branch, including representatives of appropriate independent agencies; and six persons to have been appointed by the President from among members of the public who have particular knowledge and expertise with respect to fuels and energy, as well as concern for protection of the environment.

We intended that it be the principal mission of the Commission to make a full and complete investigation and study of the energy demands and of the fuels and energy sources, including fossil fuels, synthetic fuels derived from natural fossil fuels, nuclear, and any other practical source.

Then, based on such studies, our measure would have directed that the Commission recommend those programs and policies most likely to insure, through maximum use of indigenous resources, that the Nation's rapidly expanding requirements for fuels and energy will be met in a manner consistent with the need to safeguard and improve the quality of the environment and consistent with national security.

EXECUTIVE REJECTED PARTNERSHIP

I do not believe it has been a sufficiently publicized fact that the Office of Management and Budget of the Executive Office of the President recommended to the chairman of the Senate Committee on Interior and Insular Affairs, Senator HENRY M. JACKSON of Washington, that our legislative proposal—S. 4092 of the 91st Congress—not be enacted. OMB Associate Director Arnold R. Weber centered the administration's opposition in the following four paragraphs of his letter of November 5, 1970, to the Interior Committee chairman:

> The President, on August 6, 1970, appointed a Committee of the Domestic Council, headed by Chairman McCracken of the Council of Economic Advisers, to recommend Federal actions which may be taken to alleviate shortages of clean fuels this coming winter and to assure an adequate fuel supply over the next five years. In his letter of September 8, 1970, to Senator Randolph, copy enclosed, the President pointed to this action and stated his belief that the efforts of this Committee "will result not only in a thorough appraisal of the problems ahead but also in specific recommendations for administrative and, to the extent necessary, legislative action."
>
> On September 29, Chairman McCracken and General Lincoln, Director of the Office of Emergency Preparedness, issued a joint statement announcing actions under way or to be taken dealing with immediate problems of energy and fuel supplies this coming winter. Specific actions have been taken to deal with potential shortages of residual fuel oil and to improve the supply of bituminous coal. In addition, a joint board is being established, chaired by the Director of the Office of Emergency Preparedness, to identify emergency problems in fuel supply and fuel transport and coordinate appropriate remedial actions by the responsible Federal agencies. The Domestic Council Committee will continue to keep the situation under review and will maintain close contact with the industries affecting the supply of energy to assist in averting shortages this coming winter.
>
> Actions aimed at improving the flow of fuel and energy supplies to meet increasing demands for energy over the long term are also under study by the Domestic Council Committee. The studies requested by the President are expected to involve a thorough appraisal of the problems ahead and consideration of specific recommendations for administrative and legislative actions, if these are deemed necessary, to insure an

adequate supply of energy in the coming years.

We believe that the energy study proposed under S. 4092 would unnecessarily overlap the studies which the President has already directed. The actions taken by the President, we think will provide a more effective means for reaching solutions to the Nation's energy problems, than creation of the unwieldy 21-man commission proposed by S. 4092. (It should be noted that 9 of the 21 commission members would represent Executive branch or independent agencies, most of which are members of the Domestic Council's energy Committee.) In contrast to the actions already taken by the President and the studies now underway at his direction, if this legislation were enacted it would be necessary to appropriate funds to support the Commission, appoint its members, recruit and select its staff, and attend to other organizational requirements. The time involved in this process, in addition to the one-year period provided for the Commission's studies to be completed and its report submitted, could have the effect of actually delaying measures to deal with important energy-related problems.

For these reasons, we recommend that S. 4092 not be enacted.

I do not deprecate the actions taken by the President of the United States in: First, appointing a committee of the Domestic Council headed by Dr. Paul McCracken of the Council of Economic Advisers; second, in establishing a "joint board" chaired by Gen. George Lincoln of the Office of Emergency Preparedness, and third, in activating the National Petroleum Council to make input to problem solutions in the critical fuels and energy crisis through the Secretary of the Interior.

In spite of this considerable proliferation, I am optimistic that some of those efforts can be fruitful—short range, at least. But we will have to await history's assessment of their effectiveness over the longer range, and it is here that I have doubts and take exception to the evaluations of S. 4092 by the OMB spokesman for the executive branch.

COMMISSION PLAN MISINTERPRETED

I take exception to his implications that our proposed partnership Fuels and Energy Commission would have adversely affected the executive branch instrumentalities created by the President. The commission we proposed in our measure was not intended to be a substitute for any of those board or council creations of the President and the Secretary of the Interior. The fruits of their day-to-day efforts would not have been either prematurely harvested or stunted by our proposed commission. Executive actions consistent with executive responsibility would not have been foreclosed by the Commission.

What we perceived—and that which we believed the country deserved and needed—was a broad partnership approach, with input to a Commission bringing together high level authorities of the executive and the legislative branches with representative non-Government experts. Output by the commission would have been in the form of recommendations by a partnership commission to the public, the President, and the Congress simultaneously. Certainly this would have involved some overlapping duties and activities by the nine executive branch members; certainly it would have involved some expense, but expense is not always waste.

Frankly, I believe the Commission would have afforded the people of the country and the industries involved in the fuels and energy crisis a full measure of confidence that an improved end result would be achieved—much more end result improvement that can be accomplished by a proliferation of activities within the executive establishment alone.

Yes, Mr. President, I believe the executive establishment made an ill-advised decision in turning down participation in a partnership commission and in opposing enactment of the measure that would have established a Fuels and Energy Commission. And making that decision as late as it did—during the 1970 election period recess of the 91st Congress in November 1970—likewise was a mistake.

The administration, nevertheless, has made its decision not to be a partner in a Fuels and Energy Commission with congressional and nongovernmental members. That is its prerogative. The exercise of that prerogative kills the commission concept. But killing the commission concept and placing reliance entirely on the proliferated activities in the executive branch does not necessarily solve the fuels and energy problems which many knowledgeable persons consider to be of crisis proportions over the long range, even though some short-range solutions may have emanated from the several instrumentalities created by the President.

Realism forces us to write off the Fuels and Energy Commission approach. And there is little that would be served usefully to talk or plan at this time on a joint committee of Congress approach. That was proved in the closing days of the 91st Congress when the two Houses of the Congress could not agree in conference on common ground for reaching agreement on a measure to create a Joint Committee on the Environment.

ATTENTION TO CRISIS NEEDED NOW

Nevertheless, there is too much need for prompt and careful attention to the fuels and energy crisis within the legislative branch for that attention to be excessively delayed. Hence, with the cosponsorship of the junior Senator from Washington (Mr. JACKSON), chairman of the Committee on Interior and Insular Affairs, and other Senators, I am introducing today a Senate resolution to authorize a study of national fuels and energy policy by the Interior Committee, with the cooperation and assistance of the bipartisan leadership of the Committees on Commerce, Public Works, and Atomic Energy. Its need, its purpose, and its resolve are carefully set forth in the resolution.

So, Mr. President, I submit a resolution, and ask unanimous consent that it be appropriately referred, and printed in the RECORD at this point, to complete my remarks.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The resolution will be received and appropriately referred; and, without objection, the resolution will be printed in the RECORD.

The resolution (S. Res. 45), which reads as follows, was referred to the Committee on Interior and Insular Affairs:

S. RES. 45

Whereas adequate supplies of fuel and energy resources in all forms are essential to the continued welfare of the Nation, which includes national security, balanced growth, and safeguarding and enhancing the quality of the environment; and

Whereas authoritative estimates forecast that by the year 2000 the population of the United States will increase to approximately three hundred million persons and that the consumption of fuel and energy resources may increase over 200 per centum; and

Whereas the maintenance of adequate energy and fuel supplies at reasonable price levels, the continued fiscal stability of the basic energy and fuel industries, the proper development of adequate facilities for the production, distribution, transportation and/or transmission of fuel and energy resources consistent with environmental quality legal requirements and national goals, together with the manpower and equipment to meet these objectives, are essential to the well-being of our Nation; and

Whereas there now exist various and sometimes conflicting laws and regulations setting forth national goals which affect fuels and energy policy and which are vital to the development of fuel and energy resources; and

Whereas the Congress last reviewed national fuels and energy policy in 1962; and

Whereas in view of these and other considerations, it appears that a Senate Committee study of the fuels and energy industries is indicated to determine what, if any, changes in the implementation of existing and prospective government policies and laws may be desirable in order to coordinate and provide an effective national policy to assure a continuation of reasonable and efficient sources of fuels and energy consistent with environmental quality laws and policies and with national security: Now, therefore, be it

Resolved, That the Committee on Interior and Insular Affairs, or any duly authorized subcommittee thereof, is authorized under sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdiction specified in rule XXV of the Standing Rules of the Senate—

(a) make a full and complete investigation and study (including the holding of public hearings in appropriate parts of the Nation) of the current and prospective fuel and energy resources and requirements of the United States and the present and probably future alternative procedures and methods for meeting anticipated requirements, consistent with achieving other national goals, including the high priorities—national security and environmental protection; and

(b) make a full and complete investigation and study of the existing and prospective governmental policies and laws affecting the fuels and energy industries with the view of determining what, if any, changes and implementation of these policies and laws may be advisable in order to simplify, coordinate and provide effective and reasonable national policy to assure reliable and efficient sources of fuel and energy adequate for a balanced economy and for the security of the United States, taking into account: the Nation's environmental concerns, the investments by public and private enterprise for the maintenance of reliable, efficient, and adequate sources of energy and fuel and necessary related industries, and the need for maintenance of an adequate force of skilled workers.

SEC. 2. In carrying out the provisions of section 1 the committee shall, in addition to

such other matters as it may deem necessary, give consideration to—

(1) the proved and predicted availabilities of our national fuel and energy resources in all forms and factors pertinent thereto, as well as to worldwide trends in consumption and supply;

(2) projected national requirements for the utilization of these resources for energy production and other purposes, both to meet short range needs and to provide for future demand for the years 2000 to 2020;

(3) the interests of the consuming public, including the availability in all regions of the country of an adequate supply of energy and fuel at reasonable prices and including the maintenance of a sound competitive structure in the supply and distribution of energy and fuel to both industry and the public;

(4) technological developments affecting energy and fuel production, distribution, transportation and/or transmission, in progress and in prospect, including desirable areas for further exploration and technological research, development, and demonstration;

(5) the effect that energy production, transportation, upgrading, and utilization has upon conservation, environmental, and ecological factors, and vice versa;

(6) the effect upon the public and private sectors of the economy of any recommendations made under this study, and of existing governmental programs and policies now in effect;

(7) the effect of any recommendations made pursuant to this study on economic concentrations in industry, particularly as business enterprises engaged in the production, processing, and distribution of energy and fuel;

(8) governmental programs and policies now in operation, including not only their effect upon segments of the fuel and energy industries, but also their impact upon related and competing sources of energy and fuel and their interaction with other governmental goals, objectives, and programs; and

(9) the need, if any, for legislation designed to effectuate recommendations in accordance with the above and other relevant considerations, including such proposed amendments to existing laws as necessary to integrate existing laws into an effective long-term fuels and energy program.

SEC. 3. The Chairmen and ranking minority members of the Committees on Commerce and Public Works or their designees and the ranking majority and minority Senate members of the Joint Committee on Atomic Energy or their designees shall participate in the study authorized herein and the Senators so appointed shall serve with the committee in an ex officio capacity.

SEC. 4. The chairman of the Committee on Interior and Insular Affairs is authorized to appoint an advisory panel or panels of non-government experts in the fields of fuels and energy and the environment. Such advisors shall serve without compensation.

SEC. 5. For the purposes of this resolution the committee is authorized through January 31, 1972 (1) to make such expenditures as it deems advisable; (2) to employ upon a temporary basis, technical, clerical, and other assistants and consultants; (3) with the prior consent of the heads of the departments or agencies concerned, and the Committee on Rules and Administration to utilize the reimbursable services, information, facilities, and personnel of any of the departments or agencies of the Government; (4) and with the prior consent of the Chairmen of other committees of the Senate to utilize the services, information, facilities, and personnel of such committees as needed to assist in carrying out the purpose of this resolution.

SEC. 6. The committee shall report its findings, together with its recommendations for legislation as it deems advisable, to the Senate by September 1, 1972.

SEC. 7. The expenses of the committee under this resolution, from the date of its agreement through January 31, 1972, shall not exceed $——— and shall be paid from the contingent fund of the Senate on vouchers approved by the chairman of the committee.

Mr. RANDOLPH. Mr. President, I referred earlier to the news accounts in Washington and New York newspapers of February 3 and 4, 1971 relating to the foreign oil crisis and the domestic power shortage. I ask unanimous consent to have printed in the RECORD at this point four articles from the Washington Post, one a Reuter international dispatch, an Associated Press story from Teheran, and two by Post Staff Writers William L. Claiborne and Karl E. Meyer; and two New York Daily News items by Robert Carroll.

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

[From the Washington Post, Feb. 3, 1971]

OIL TALKS BREAK OFF IN TEHRAN

TEHRAN.—Negotiations between international oil companies and the Persian Gulf producing states collapsed tonight, raising the possibility of reprisals against Western oil supplies.

The form of retaliation will be decided by a meeting here Wednesday of the 10-nation Organization of Petroleum Exporting Countries, which produce 85 per cent of the oil consumed by Western Europe.

Negotiators for 22 companies, which have been seeking a settlement of the demands of the six oil-producing countries in the gulf for higher revenues, issued a statement tonight admitting failure.

"It has not been possible to reach agreement on the financial items or to obtain adequate assurances that a sufficient volume of oil will be available for the needs of the consuming countries," they said.

The oil companies made an offer which would have meant more than $700 million in extra revenue to the producers this year, rising to $1.6 billion in 1975.

Although progress was made on many issues, there were significant differences on the financial aspects, the statement said.

"But the critical point of assuring an uninterrupted flow of oil in the face of threats to restrict oil availability remains," the statement added.

The oil companies said they "greatly regretted" that the gulf states had set a deadline for agreement which expires Wednesday. They said they hoped there would be further negotiations and were ready to continue discussions at any time and place.

But the producer countries have shown themselves in no mood to continue negotiations beyond Wednesday's deadline.

The ministerial meeting of the Organization of Petroleum Exporting Countries, which groups of six gulf states—Iran, Iraq, Kuwait, Saudi Arabia, Abu Dhabi and Qatar—with Libya, Algeria, Venezuela and Indonesia, will start Wednesday with a mandate to retaliate in the absence of agreement.

Iran, the biggest oil producer in the gulf, will declare its reaction to the collapse of the talks when the Shah addresses an organization session Wednesday.

Nine days ago he said that if there were no agreement on oil prices before the session, the gulf states might follow the example of Venezuela, which unilaterally increased its tax on oil company incomes and increased the price of oil on which the tax is based.

But some organization members are believed to favor cutting off oil to demonstrate the groups power.

[From the Washington Post, Feb. 4, 1971]

OIL NATIONS CONSIDER PRICE BOOST

TEHRAN.—Ten oil-producing nations today threw their support to a proposal by the Shah of Iran that their legislatures take individual action to boost the price of oil.

Addressing a meeting of the Organization of Petroleum Exporting Countries (OPEC), the Iranian ruler suggested that in view of the breakdown in their talks with the world's major oil companies, they adopt a system that has "precedents in other areas."

Presumably the Shah was referring to a unilateral boost in the price of oil, as Venezuela has done through higher taxes on the income of oil companies.

The shah noted that the six Persian Gulf states have been seeking a price that would hike their income on a barrel of oil to $1.25. The gulf nations now earn about $1 a barrel on a posted price of $1.79.

RATIONAL, REASONABLE

"In the light of these events I now suggest that the countries of this region should adopt a system which would be rational and reasonable," said the shah.

He told OPEC delegates that price legislations would be in accord with U.N. resolutions safeguarding the sovereign rights and independence of countries.

It also would ensure the stability and confidence which is the objective of consuming countries," said the Iranian monarch.

He proposed that the countries involved should legislate simultaneously.

After the shah's speech, OPEC delegates followed him to the dais to support his proposals.

"Legislation is the best action we can take in the right direction toward achieving our goals," said Libyan Oil Minister Ezzedin Mabruk.

"We have nothing to do but to execute our rights and in this very reasonable way of legislation," said Kuwait's Abdul Rahman Salem al Atiki.

SHUTDOWN THREATENED

The shah told a news conference later that if the world's oil companies failed to comply with the proposed new laws, the oil-producing countries should "take appropriate action, including the shutdown of oil exports."

The 10 OPEC countries—Algeria, Libya, Iraq, Iran, Saudi Arabia, Kuwait, Abu Dahabi, Qatar, Indonesia and Venezuela—account for 85 per cent of the non-Communist world's oil exports.

While the shah's proposals would increase the price of oil considerably, they averted the threat of an immediate embargo on oil supplies to the West.

The shah offered the oil companies an opportunity to reopen negotiations provided they met the demands of the producer countries and made an approach to them before the passing of the new unilateral price law.

He said a deadline would be set by Thursday.

The shah cooled extremist elements within OPEC by assuring them that there had been no big-power interference in the current negotiations.

The Iranian ruler claimed that the real income from oil, eroded by inflation, had declined by 20 per cent in 10 years.

[From the Washington Post, Feb. 3, 1971]

PEPCO CUTS POWER 5 PERCENT TO AREA USERS

(By William L. Claiborne)

Electrical power to the 340,000 Washington area customers of the Potomac Electric Power Co. was reduced by 5 percent yesterday, even though peak usage was only two-thirds of that recorded during last summer's power shortages.

Pepco blamed the reduction on a combination of planned and unplanned shutdowns of generating plants, coupled with the winter's

coldest weather and increased use of electric heaters.

Eleven other utilities in the Pennsylvania-New Jersey-Maryland (PJM) power cooperative also cut back voltage.

New York City, which is not part of the PJM grid, recorded a voltage cutback of 5 per cent, the second consecutive day that Consolidated Edison ordered a reduction. Heat was shut off in subway cars and offices and commercial customers were asked to turn off lights to conserve electricity.

By way of explaining the power "brownouts" occurring in a season when usage is lowest, N. Eugene Otto, a Pepco spokesman, said the generator shutdowns for maintenance "has to be done in the winter so we'll be in good shape in the summer."

"The same conditions exist up and down the coast in the Northeast. This is nothing new," he said, noting that last year 5 per cent voltage reductions occurred three times in January, once in February and twice in March.

Officials of Pepco and the Federal Power Commission said the effects on household appliances would be negligible, although heating thermostats may react to the lower voltage by making furnaces run longer than usual.

Also, some broadcasting engineers said that lower voltage in the home could result in smaller and fuzzier television images, particularly with older receivers.

Pepco began its voltage cutback at 9:10 a.m. Monday and restored power to full peak at 10 p.m., after the industrial load went off the line, a company official said. Yesterday, the utility reduced power at 7 a.m.

The Virginia Electric Power Co., which is not part of the PJM pool, did not reduce voltage.

Otto attributed yesterday's power drain to a series of scheduled shutdowns of generating plants undergoing routine maintenance. Additionally, he said, three generating stations have been shut down this winter because of equipment failure.

Pepco's Morgantown, Md. plant was closed in November because of equipment failure and will not reopen until June.

On Jan. 13, a transformer at the Dickerson, Md., plant broke down and it was returned to the factory for repairs, requiring a shutdown of that station until July.

The latest crisis occurred Monday at Pepco's Benning Road NE generating plant, where a boiler leak required that facility to be shut until at least today, Otto said.

All of these developments, and similar situations in other utilities of the PJM power pool, necessitated the 5 per cent voltage reduction, Otto said.

The PJM pool of 12 utilities allows individual companies to buy extra power when unusual needs arise or when generating capacity is reduced. However, when all the cooperating utilities are taxed, or when generating capacity of all is below normal, a power reduction throughout the pool is the only solution, Otto said.

At 4 p.m. yesterday, Washington area customers were using 1,774,000 kilowatts of electricity, 91,000 kilowatts of which were purchased from as far away as Cleveland.

Last summer's peak use, which required voltage reductions of 5 per cent and led to several days of temporary blackouts in selected areas, was 2,908,000 kilowatts.

Otto said that on Monday, before the boiler leak, the Benning Road plant was generating 275,000 kilowatts, which he said would make up the deficiency. Repairmen were working throughout the night on the equipment in hopes of making it functional this morning, he said.

Arthur Proffit, head of the Federal Power Commission's supply requirements section, said that the entire PJM pool was short the equivalent of 2½ million kilowatts because of scheduled maintenance, and an additional 4½ million kilowatts because of unexpected outages of generating plants.

Both Proffit and Otto said effects on consumers as a result of the voltage reduction would barely be noticeable.

"Basically, when you lower your voltage for heaters, lights, toasters and other appliances, you don't get the same output, but it should be insignificant," Proffit said.

He said most new appliances are designed to accommodate 10 percent less than normal voltage.

Al Harmon, chief engineer for WTTG–TV, said that television transmitting equipment could easily be adjusted to accommodate the power reduction, but when home voltage is reduced, smaller pictures may result. Ralph Mlaska, chief engineer of WTOP–TV, said that viewers living in fringe areas some distance from a transmitter would likely notice a smaller and fuzzier image on their sets.

While local gas usage was high, service was not affected, according to Jack Raymond, of Washington Gas Light Co. He said that during the current cold spell, usage has approached, but not exceeded, the record set on Jan. 9, 1970.

[From the Washington Post, Feb. 3, 1971]

CONTINUING POWER CRISIS DIMS NEW YORK

(By Karl Meyer)

NEW YORK.—Subway cars were ice cold, office lights blinked off to conserve electricity and voltage was cut by 5 per cent as New York City coped stoically with a new headache—its first sustained mid-winter power crisis.

For the second consecutive day, Consolidated Edison was forced to reduce voltage, and to import outside electricity in order to get by without the extreme step of selective blackouts. This was the city's sixth voltage cutback in the last 16 days.

Similar cutbacks were ordered throughout New York State and by members of the Pennsylvania-New Jersey-Maryland power pool.

Normally, peak power demands come in the hot summer months and last July New York endured its worst crisis aside from the great blackout of 1965. Only once before in winter months—on Jan. 9, 1970—has Con Ed been impelled to reduced voltage to protect its reserve capacity.

The reason for the present crisis, according to the utility's spokesman, is a combination of a prolonged cold wave and the breakdown of major generators.

Yesterday the utility found itself without a single kilowatt of reserve capacity during the peak hour of 5 to 6 p.m., when its supply exactly equalled the power demands for 5,686,000 kilowatts.

The peak demand today was just below yesterday's figure—5,681,000 kilowatts between 5 and 6 p.m., leaving a reserve margin of 167,000 kilowatts.

With even colder weather forecast for today, Con Ed had appealed to all its customers to use as little power as possible. At 8 a.m. a 5 per cent voltage reduction was imposed. At 11:40 a.m., the heat was turned off in the city's 7,000 subway cars, saving 8,000 to 100,000 kilowatts. It was turned on again at 6 p.m.

The temperature fell to 6 degrees, the second coldest day of the winter. And by mid-afternoon many office buildings had darkened the lights in their lobbies.

Businesses were urged to turn out electric window displays and outside advertising signs. With steps like this, plus the purchase of about 900,000 kilowatts of outside power, Con Ed was able to survive without going to the third and highest voltage cut of 8 per cent.

According to Con Ed, most appliances and machinery can tolerate a voltage cut of at least 10 per cent. The only perceptible sign of cuts lower than that is shrinkage of TV pictures.

The major problem for Con Ed has been the continued breakdown of the million-kilowatt "Big Allis" generator in Ravenswood, Queens, disabled since last July 21. In addition, the 265,000-kilowatt nuclear unit at Indian Point has been out of service since last May.

Two more units developed trouble, one at the Hell Gate plant and another at the Arthur Kill plant on Staten Island, but both were expected to be operating again shortly.

The message of today's power crisis was clear and grim for most New Yorkers—if the utility was unable to meet the winter peaks without emergency steps it will certainly be in even more serious trouble next summer when air conditioners drain millions of kilowatts. A city official concerned with the power problem discounted Con Ed's assurances that it hoped to have a wider margin for power this summer than last.

The official said "the practical situation is in fact much more pessimistic than the projected figure would indicate." He noted that Con Ed's estimate included use of units of doubtful reliability.

[From the New York Daily News, Feb. 3, 1971]

CON ED WINTER MENU: COLD CUTS, CANDLELIGHT

(By Robert Carroll)

Crippled Consolidated Edison limped through its worst crisis since last summer as bitter cold weather and the demand for electricity caused lights to go dim in Manhattan office buildings yesterday, cut off heat to some subway cars and brought an appeal to the public to curb its use of power.

Con Ed went into a 5% voltage cut at 8 a.m., the earliest daily cutback in the utility's history. As the day wore on, the utility's reserve of power dipped to within 1% of both its generating capacity and available purchases of power.

Temperatures that sank to a low of 6 degrees caused numerous problems for motorists also. The Automobile Club of New York reported 6,000 stalled cars in the metropolitan area during the morning rush.

CUTBACK NORTHEAST-WIDE

At midday, the New York Telephone Co. assisted Con Ed in the power crisis by cutting loose from the power grid and placing its 70 or so buildings in the metropolitan area on emergency generators.

The crunch extended through most of the Northeast, with all but one member of the New York power pool—Rochester Gas & Electric—joining in the 5% voltage cutback. All four New Jersey utility companies went to 5%, together with other companies in the Pennsylvania-Maryland-New Jersey pool.

The cold weather added to the woes of 100,000 residents of the 1,000 buildings managed by the City Urban Renewal Management Corp. They were left without heat and other services Monday by a strike of 1,000 maintenance workers.

SUBWAY CARS UNHEATED

Heat was turned off in those subway cars operating below ground. The action was taken by the Transit Authority at the request of Mayor Lindsay's emergency Control Board.

Business firms turned off electrical window displays and advertising signs and major office buildings, in addition to switching off or dimming some lights, turned off some elevators and cut down on use of steam heat.

In response to the Con Ed appeal, THE NEWS Building cut back on elevator useage by 20%, reduced lighting in public areas by 50%, and curtailed power to its air handling equipment by 25%.

Con Ed's voltage reduction yesterday was its sixth in 16 days. Last summer the utility

had to trim voltages on 15 days and on one day shut off power completely to parts of Staten Island and Westchester County.

CON ED HEATED UP ON CRITICISM

Although short on power, Consolidated Edison is long on reasons why New Yorkers find themselves scrambling for kilowatts only six months after last summer's critical electricity famine—and at a time when electric power is normally a surplus commodity.

The crisis, says Con Ed, developed from plant construction delays, delays in winning approval from regulatory agencies, labor disputes and opposition to plant and transmission line siting by conservation and environmental groups.

Con Ed insists that the utility itself is guiltless. "Our forecasts 10 years ago of what our demands would be have been remarkably accurate," said a spokesman. "Also, the power facilities necessary to meet those demands have been planned. But, for reasons beyond our control, we couldn't complete our programs."

Some of these programs have never even got off the ground. The Storm King pumped storage facility on the Hudson, planned for operation in 1962, is still tied up in litigation. Indian Point nuclear plant No. 2, expected to be operating in 1969, won't be ready to produce until late this year, at best. Indian Point No. 3 is due in 1972, two years late, while No. 4 has been pushed back to 1978—four years beyond its initial ready date.

With its nuclear programs stymied, Con Ed said it accelerated its fossil fuel plant program in Astoria, Queens, and at Bowline and Roseton on the Hudson. The Astoria proposal, Con Ed points out, was cut back 50% by city order—a perfect example, says the utility, of an outside force at work over which it had no control.

"How many contingencies can any utility reasonably be expected to plan for?" asked a harassed Con Ed official.

Critics of the utility argue that Con Ed should plan for every contingency, that it hasn't done this and that the regulatory agencies—especially the State Public Service Commission—have been equally remiss in making and keeping Con Ed responsible.

What's needed, say these critics, above the interests of stockholders is research, experimentation and realistic planning that puts public need above profit.

ADDITIONAL STATEMENTS OF SENATORS

NEW INFORMATION ON CRIME

Mr. BYRD of West Virginia. Mr. President, the rapidly increasing crime rate of recent years has been a source of great concern to the American people. In many of our urban areas people dwell in considerable fear for their personal safety and for the safety of their property and possessions.

I am glad to note that additional information about the incidence and seriousness of crime is soon to become available. The Census Bureau, in much the same way that it measures unemployment, is to undertake an in-depth survey of individuals and business establishments on a twice-a-year basis to determine more fully the actual damage done by crime, the anxiety it causes, and to provide the greatest accuracy possible with respect to the measurement of the crime rate.

The Justice Department, which is setting up the new system within its Law Enforcement Assistance Administration, indicates that the study will be the largest ongoing statistical survey in the world. It should be a valuable addition to what I hope is an intensifying war on crime throughout our country.

Today's New York Times, Mr. President, contains a news article setting forth the plans for this crime survey, for which pilot studies are now being conducted in Dayton, Ohio, and San Jose, Calif.

Believing that this article will be of interest to Senators, I ask unanimous consent that it be printed in the RECORD.

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

U.S. ESTABLISHING NEW CRIME INDEX—SYSTEM INVOLVES SURVEYS OF HOMES AND BUSINESSES

(By Fred P. Graham)

WASHINGTON, February 3.—The Federal Government is establishing a new system of crime statistics designed to gauge the level of damage and anxiety caused by crime, as well as to provide a more accurate measure of the crime rate.

Employing a technique similar to the household survey used to measure the unemployment rate, the Census Bureau will call on a carefully selected panel of homes and business establishments across the country twice a year to interview persons who have been victims of crimes.

Between 125,000 to 150,000 homes and businesses will be in the sample, making it by far the largest ongoing statistical survey in the world.

Officials at the Justice Department, which is setting up the new system within its Law Enforcement Assistance Administration, insist that it is not intended to replace the crime index published by the Federal Bureau of Investigation.

MORE ACCURATE

But the survey is expected to be far more accurate in calculating the incidence of crime than the F.B.I.'s uniform crime reports, which rely solely on reports from local police departments of crime reported to them.

The F.B.I.'s figures have been widely questioned because the reporting of crimes is known to be erratic. Household surveys made in 1966 by the President's Commission on Law Enforcement and Administration of Justice indicated that two or three times more serious crimes occurred than those reported to the F.B.I.

The unemployment survey, which checks 50,000 households each month and is now the largest in the world, is thought to be accurate within 0.2 per cent. Thus, the new crime survey of 150,000 homes and businesses is expected to tell with great accuracy what percentage of the people have been victims of various crimes within each six-month period.

STATISTICALLY SOUND

The large sample is necessary because only about 4 per cent of the public became crime victims each year. This means that the sample should produce about 6,000 victims each year, which is a statistically sound sample for Census Bureau personnel to interview.

George E. Hall, director of the Law Enforcement Assistance Administration's National Criminal Justice Statistics Center, which is in charge of the survey, said in an interview that its major importance would not be the more accurate crime count. "For the first time we will have an accurate qualitative gauge of crime and its impact on people" he said, "which will greatly benefit the police and the public."

Using a system of detailed interviewing developed by two criminologists at the University of Pennsylvania, Marvin E. Wolfgang and Thorsten Sellin, the Government will learn whether the level of viciousness in such crimes as robbery, rape and assault is rising or declining. Also, the amount of money being taken in robberies, larcenies and burglaries will be known.

DEGREE OF SERIOUSNESS

A major shortcoming of the F.B.I. crime index is that it lumps crimes of varying seriousness together. A child's taking of his schoolmate's lunch money and a vicious mugging are both classed as robberies. The new survey will improve on this by telling how serious crime is, as well as how prevalent.

Mr. Hall said that the social and economic costs of crime will be measured by asking to what extent people are staying away from downtown areas or changing other habits because of a fear of crime.

Pilot studies are now being conducted in Dayton, Ohio, and San Jose, Calif., to refine methods to be used in the survey. During the rest of the year, Census Bureau personnel will conduct interviews across the country to develop the 150,000-unit sample.

Mr. Hall expects the first survey to be completed next year, but the Government may keep these figures in 1973. This would increase its accuracy by comparing the two years' results.

THE ALASKA PIPELINE

Mr. STEVENS. Mr. President, the National Parks and Conservation magazine, in a special issue, contained an excellent article concerning my State, Alaska.

In the same issue, the editorial staff of this magazine produced an editorial dealing with the pipeline in Alaska.

The editorial was entitled, "Oil, Alaska, and the National Interest."

Keith Hay, the wildlife director of the American Petroleum Institute, has written to the editor of the National Parks and Conservation magazine to discuss some of the points raised in that editorial.

Because of the focus that has centered upon my State, and the proposal to build a pipeline, I think it important that all sides of this issue be brought out for public review. Accordingly, I ask unanimous consent that the editorial and Mr. Hay's letter to the editor be printed in full immediately following my remarks.

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

[From the National Parks & Conservation magazine, November 1970]

OIL, ALASKA, AND THE NATIONAL INTEREST

The countdown toward possible disaster in Alaska is rapidly running its course.

For the moment, construction of the proposed Trans Alaska Pipeline System from Prudhoe Bay to Valdez has been blocked by injunction.

But the existing freeze on the selection of Federal land by the State of Alaska will expire at midnight, December 31, 1970. Under the Statehood Act, Alaska then re-acquires the right to select lands along the pipeline right-of-way, removing them from Federal control and depriving the Court of jurisdiction.

No further warnings are necessary in regard to the manifest dangers involved in this project: the possible melting of the permafrost, the resulting destruction of the tundra, the probable consequent oil spills, the blockage of caribou migrations, and the general wreckage of the environment.

Perhaps even more serious is the danger pointed out by Transportation Secretary

Volpe, that oil spills in the Arctic, darkening the snow, might result in the absorption of enough additional heat from the sun to cause the melting of the polar ice cap. If this were to occur, coastal cities all over the world would be submerged under some 200 feet of water. Such risks cannot be taken lightly by responsible public or corporation officials.

Leaders of 22 major conservation and economic organizations addressed a letter to President Nixon several months ago, under the auspices of the Environmental Coalition for North America, urging that full-scale public hearings be held by the Council on Environmental Quality on all the risks and precautions involved before any permit for construction is granted. The President has never replied, nor has the Council assumed any responsibilities in the matter.

The Alaska natives have been pressing their very just and reasonable claims for compensation for the seizure of their land a century and more ago by Russia and the United States. Large land claims are involved, and the natives should have a prior right to selection. The land freeze should not be lifted until the natives are granted their proper first choice.

The national interest of the American people as a whole in the preservation of the resources and environment of Alaska is also involved. No permit should be granted for the construction of the pipeline until it has been shown beyond a shadow of a doubt that this national interest has been completely protected. The land freeze should be continued in effect for that purpose, but other Federal controls should be made ready in addition.

Secretary Volpe's warning is relevant in this connection. No Federal funds should be expended on highways in Alaska—on any highways at all—until the responsible officials of the Federal Government have satisfied themselves, and until the American public has had a chance to satisfy itself, that no serious consequences will follow from construction of the pipeline, or from tanker transportation, for that matter.

This is not to say merely that all possible precautions must be taken against spills; such precautions may not be adequate; the test is whether ecological disaster can result, regardless of precautions. The Federal Government contributes 90% of interstate highway funds; 50% of primary highway funds.

The State of Alaska and the pipeline companies have severally shown considerable reluctance to foot the bill for completing the access and construction roads for the pipeline. The Nation should not bail them out of the impasse without full assurance of protection of the national interest. If the companies or the State show any inclination to go ahead with construction along the pipeline at their own expense, road funds for the entire State should be frozen—impounded if necessary—until the national security has been protected.

There are serious problems of national defense in this business. The oil of Alaska will be useless in any serious military emergency. One conventional bomb on a pipeline or tanker would end the matter. Reliance on such sources could entrap the Nation in a major military defeat.

If the price of oil were to fall to world market levels, the oil of Alaska would not be developed in the foreseeable future because of high extraction and transportation costs. Not that Near East oil appears to be dependable at the moment, but Venezuelan oil, just for example, is available. The supplies in the contiguous states and the continental shelves ought to be conserved for a serious military emergency. The abandonment of oil import quotas would have that effect. A thorough-going inquiry into the oil business may be in order before any Alaskan pipeline venture or tanker enterprise is allowed to proceed.

As though by footnote, we might add that the internal combustion engine is on its way out. The day of gasoline as a motor fuel may be ending. If electric cars take over, energy for batteries will be transported by wire and produced at mammoth plants, probably nuclear. The Department of Transportation has an interest in this aspect of the problem in terms of the development of a rational transportation policy for the country.

We come back to the notion that full-scale public hearings under Council of Environmental Quality auspices are in order. The problem is not within the jurisdiction of the Department of the Interior alone; the Departments of Transportation and Defense are at least as deeply involved. Full-scale public hearings would allow an opportunity for environmental scientists, responsible private organizations, and public officials to lay all the available facts before the American people.

Because no further steps can be taken toward construction during the oncoming winter, there is ample time for such hearings. The President has the power and a magnificent opportunity at this juncture to expedite a solution to the Alaskan oil problem by an appeal to reason in the light of all the facts available. The Council on Environmental Quality should be asked and assisted by the President to hold open, ample, and formal public hearings at the earliest opportunity. All American citizens have the right to communicate with the President and urge this course upon him.

AMERICAN PETROLEUM INSTITUTE,

Washington, D.C., January 12, 1971.

To the EDITOR,

National Parks and Conservation Magazine, Washington, D.C.

DEAR EDITOR: I have just read your special November issue on Alaska. It contains some excellent articles by some responsible contributors who obviously have firsthand knowledge of their subject and an impressive background in Arctic affairs.

Unfortunately, your editorial in the same issue commencing with, "The countdown toward possible disaster in Alaska," failed to measure up.

In discussing oil and the pipeline in Alaska it is easy and perhaps gratifying to some to repeat the ecological hyperbole that permeates so much writing on this subject today, e.g., melting of the permafrost, destruction of the tundra, threat of oil spills, blockage of caribou migrations, and general wreckage of the environment. Exaggerations on environmental matters of such monumental import by either conservation or industry leaders do a national disservice. Only by reasonable and impartial appraisal of all available facts can we achieve a balanced, rational management of Alaska's environment, including the constructive use of its natural resources for the welfare of mankind. It is in this spirit that I take issue with some of the statements in your editorial.

To be specific, here are a few of the points that were disturbing:

1. You ascribe to Secretary of Transportation Volpe a statement that oil spills in the Arctic could darken the snow and result in the absorption of enough heat from the sun to cause the melting of the polar ice cap, resulting in the inundation of coastal cities all over the world under two hundred feet of water. Inasmuch as I was curious about the scientific basis for such an assertion, I called the Secretary's office and was advised that no one could recall or substantiate the Secretary's having made such a statement. I would be most interested in being referred to documentation of this remark attributed to Secretary Volpe. The Secretary did announce on July 22, 1970, that the U.S. Coast Guard would conduct a series of experiments in August to determine the environmental effect of experiments in August to determine the environmental effect of oil spills in the Arctic. Some heat-balance studies were subsequently conducted, and I discussed the nature of these studies along with the statement attributed to the Secretary with the Scientific Director of that mission. He stated that he knew of no scientific justification for such a statement.

2. Your editorial states that "The pipeline companies have . . . shown considerable reluctance to foot the bill for completing the access and construction roads for the pipeline." The companies have indeed been reluctant to "foot the bill" for any pipeline road until they have assurance that they will be permitted to build a pipeline to go with it. I hope you will agree that in the absence of this assurance, such reluctance is understandable. Incidentally, many conservationists feel that one of the most important long-range environmental concerns of the pipeline road is the need for immediate land-use zoning to insure that the road and the activities it is sure to stimulate will be an asset rather than a liability to Alaska's future.

3. Your editorial assessment of the military value of oil in Alaska is frankly puzzling to me. You question the military security of Alaskan oil while urging reliance on Venezuelan oil. Apart from that, however, it would seem that interruptions in supply of oil under U.S. control (such as that in Alaska) are far less likely than would be the case for oil in countries in South America or in the Middle East.

4. The editorial is out of date in its comments on the price of Middle East oil—which, under current rates for chartering tankers, is now higher delivered to U.S. East Coast ports than domestically produced oil delivered to the same ports. Moreover, the editorial implies that vast additional supplies of crude can be imported from Venezuela. This is simply not the case. In fact, production in Venezuela is presently at or near capacity.

5. The editorial urges that U.S. produced oil be "conserved for a serious military emergency." This implies that oil production can be turned off and on like a water faucet. But, with unlimited foreign oil imports, large, portions of the domestic industry would gradually have to close down. Then if an emergency arose, and imported oil supplies were cut off, it would take years and billions of dollars to rebuild a new domestic producing industry. It takes between three to ten years to develop an oil field even after a commercial discovery has been made.

One of the paramount concerns of the oil industry in Alaska is to show the world that oil can be produced and transported in a manner consonant with sound environmental standards. Along with a group of other conservationists (who are receiving copies of this letter), oilmen and environmental writers, I saw such efforts everywhere I went last fall. I spent nearly two weeks personally observing oil operations and pipeline research projects in that state. It was evident that environmental decisions on the routing, construction and operation of the TAPS (now Alyeska) Line will be based on finding from the most comprehensive programs of scientific research and analysis in the history of the Arctic. This includes projects either underway or nearing completion involving extensive soil investigations; a thermal-effects computer program to determine heat transfer from the pipeline to the soil; the actual testing of a "hot" pipeline in permafrost; the testing of a "cold" pipeline buried in permafrost, crisscrossed by extensive ice wedges; revegetation studies; welding and bending tests; simulated stresses for differential settlement conditions; full-scale pressure and

temperature strain tests on the pipe; and extensive interdisciplinary ecological surveys involving scientists from universities, industry and government. The pipe specifications are the most stringent of any oil pipeline ever manufactured. The rigid environmental regulations that must be met have been called, "a model for the development and use of resources," by Russell Train, Chairman of the President's Council for Environmental Quality. These measures are hardly a countdown to disaster.

With the extension of the land "freeze" in Alaska, I understand public hearings on the pipeline project are scheduled to be held this month here and/or in Alaska. I hope that these hearings will afford an opportunity for the facts to be considered in a dispassionate manner and will contribute to the solution in the overall public interest.

I would like to stress that the petroleum industry does not for a moment take issue with your natural concern about the effects of this pipeline and other petroleum operations on the Alaskan environment. Believe it or not, your concern is shared by this industry. We would only hope that there might be due recognition given to the demonstrated sincerity of purpose manifested by the oil companies in seeking to preserve this great state's natural heritage.

Sincerely yours,

KEITH G. HAY.

GRAZING FEES

Mr. CANNON. Mr. President, grazing fees on public lands have been hotly contested policy questions in the Department of Interior since the Taylor Grazing Act of 1934. While all of us would agree that the Government should receive fair value for services rendered, the method of computing the fair market value of grazing cattle and sheep on public lands is a matter of dispute.

Subsequent to the nearly 400-percent increase in grazing fees announced by the Department of Interior late in 1968, both the Senate and the House held hearings on the subject in view of the understandable outcry from ranchers all over the United States who were suddenly threatened with bankruptcy. One of the major points of contention was whether or not the cost of the grazing permit should be included in the calculation of special expenses incurred by ranchers using public lands—an expense that Interior was not willing to allow.

I am pleased to join with Senator MCGEE, Moss, and HANSEN in sponsoring S. 143, a bill which will amend the Taylor Grazing Act to insure that the cost of permits be included in calculation of the fair market value of the fees. These permits have a value on the open market, are used as collateral for loans by ranchers, and are recognized by the Internal Revenue Service for tax purposes. I feel that because of this widespread acceptance by all factors of the community, the cost of the permits must be included in the Government's calculations of grazing fees.

After the 1960 hearings, to which I contributed along with many other western Senators, the Department of Interior agreed to defer any additional fees increases until publication of the findings of the Public Land Law Review Commission. Recommendation 37 by the Commission states:

Public land forage policies should be flexible, designed to attain maximum economic efficiency in the production and use of forage from the public land, and to support regional economic growth.

Public grazing lands, the report comments, are often crucial to individual ranch operations, supplementing the feed of private lands by supplying seasonal grazing. Without the privilege of grazing public lands, many ranches would be forced out of business.

In these times of economic recession, I hold it is contingent upon the Government to aid the economy, not to depress it further. I am pleased to be joined in this attitude by President Nixon, who is offering a "full employment budget" to pull us out of the economic doldrums in which we find our country.

In view of the attitude of the President, the recommendations of the Public Land Law Review Commission, and the fact that S. 143 when passed will restore grazing fees to a level complementary to the economic needs of America's ranchers, I call on the Secretary of the Interior to extend the moratorium on grazing fees another 2 years. By that time the Senate will have had time to consider our legislation, and the country will hopefully be pulling out of its current crippling recession.

This is a time to trim crippling Government taxation, not increase it. It is a time to hold the line on food price increases, not take actions that will contribute to their continuing rise. We must increase employment, not make rulings that will destroy an industry and throw even more men on the welfare rolls. The time has come to draw the line against Government encroachment upon the rights of the rancher, and of the population altogether. We must fight to stop this unnecessary increase in grazing fees immediately, and then legislate wisely to provide controls against future bureaucratic decrees.

NELL RENN, FORMER KANSAS STATE REPRESENTATIVE

Mr. DOLE. Mr. President, I recently received a copy of a resolution of the Kansas House of Representatives honoring a former member of that body, Nell Renn. I had the honor of serving in the Kansas House with Mrs. Renn. She was a gracious lady and conscientious legislator. It would be entirely appropriate and an additional honor to her memory if the readers of the RECORD could learn of her service to her State and its people; therefore, I ask unanimous consent that this resolution honoring Nell Renn be printed in the RECORD at this point.

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

HOUSE RESOLUTION NO. 1024: A RESOLUTION RELATING TO THE DEATH OF NELL RENN

Whereas, Nell Renn, a former member of the House of Representatives, passed away on June 24, 1970, at the age of seventy-five years; and

Whereas, Nell Renn was born October 8, 1894, at Queen City, Missouri, to Clarence Robert Blurton and Euretta Kaster Blurton. She earned her A.B. degree from the University of Kansas in 1918 and did post-graduate work at Columbia University. She taught school at the Kingman, Kansas High School from 1918 until 1920 when she taught at Dillon, Montana, also teaching at Prescott, Arizona in 1922 and 1923.

She was married to Oscar Renn on June 29, 1924, at Bucklin, Kansas, and they made their home in Arkansas City where he had established a law practice.

Mrs. Renn was a member of the Trinity Episcopal Church, Kansas Federation of Women's Clubs and P.E.O., and was active in numerous civic and political groups. She served on the University of Kansas Advisory Council, and was particularly active in AAUW, sponsoring student housing legislation prior to her career as a member of the Legislature. Mrs. Renn was named as one of the outstanding alumni at the University of Kansas, and was also listed in Who's Who.

At the time of her death she was a member of the Intensive or Coronary Care Committee for Memorial Hospital and was instrumental in its functioning; and

WHEREAS, Nell Renn served as a member of the House of Representatives during the 1951 session, having been appointed by Governor Edward F. Arn to fill the vacancy left by the death of her husband, Representative O. Jack Renn, who passed away on January 30, 1951. Mrs. Renn was relected to serve two more terms, serving during the years 1953, 1955 and 1956. During this period she was seatmate of Bob Dole now United States Senator from Kansas and Chairman of the Republican National Committee. In later years Mrs. Renn enjoyed immensely her continuing correspondence with Senator Dole.

During her years in office, she served on the Governor's Conference on Education, and was appointed by President Dwight D. Eisenhower as a delegate to the White House Youth Conference in 1954 and 1955; and

WHEREAS, In the death of Nell Renn, this state and her community have suffered a great loss: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas: That the chief clerk of the House of Representatives be directed to send enrolled copies of this resolution to Mr. and Mrs. Daniel C. Stark, 1227 North 2nd, Arkansas City, Kansas 67005, Mr. George E. Sybrant, 200 North Summit, Arkansas City, Kansas 67005, to the Dean of the College, Crowley Community Junior College, Arkansas City, Kansas 67005, and to Senator Bob Dole, 2327 New Senate Office Building, Washington, D.C., 20510.

ENVIRONMENT COMMITTEE SUPPORTED

Mr. HUMPHREY. Mr. President, I am delighted to join as a cosponsor of Senate Joint Resolution 17, legislation designed to create within the Congress a Joint Committee on the Environment.

I have long been in favor of creating such a committee and have spoken of this need on many occasions. I believe it is needed in light of two vital imperatives.

First, the Congress must continually update itself—must remain responsive, in a timely fashion, in meeting effectively the needs of the Nation. I have long espoused a comprehensive updating of the Congress. The need for streamlining our procedures and for improving the quality, quantity, and rapid availability of information we use has long been obvious. Increasingly complex issues, in an era of almost geometric multiplication of data inputs, require the Congress be equipped with the very best in staff and equipment. To do otherwise is to practice a very vain and equally foolish economy. Management of hundreds of billions of dollars requires our most dedicated efforts, most superb intellects and finest in equipment.

In many ways, Congress is expected to compete with the collective wisdom and sometimes parochial, self-interested efforts of a Federal bureaucracy numbering in the millions, supported by the ultimate in think tanks, computer technology, and services. If Congress is to remain in this increasingly demanding and competitive game of government and, indeed, move ahead and assert its constitutional leadership mandate, as the most direct voice of the people, we must have the tools. We must not depend on the fact that Congress can change the rules of the game when we get too hopelessly behind. The Congress and the Nation cannot afford such a copout. And the American people will not tolerate it.

The Congress must up-date and streamline itself. We must participate and lead in the governmental process. That is one of the reasons, I believe, that we have 535 legislators in Washington. This legion, well informed and properly equipped and staffed, should come forth with a flood of ideas—an outpouring of the best in intellect and effort.

This Joint Committee on the Environment, if properly staffed and given the wherewithal to do the job of restoring the environment and insuring our survival, can be a model for subsequent across-the-board reform and revitalization in the Congress. We in Congress must give to the American people the best possible expression of their voice.

The second imperative, unless fulfilled, renders the first imperative academic. Unless we halt the depredations on our environment and restore a sick ecology to health, that part of the ecological system known as man will not be around to concern itself with reform of national legislatures.

National and international problems of protecting the world's ecology have multiplied as successive countries begin paying the pollution price of rapidly expanding economies and escalating standards of living.

There is no question of the primacy of this issue. Our environment must be preserved and restored. The Congress realizes its responsibility in this area. I support and applaud this planned establishment of a Joint Committee on the Environment. It is needed now. It is overdue. I urge the unanimous support of my colleagues in the Senate and House of Representatives. Indeed, this idea's time truly has come. Let us act now, before its time, and ours, has passed.

GENOCIDE DEFINED

Mr. PROXMIRE. Mr. President, the tragedy of nazism brought out the need for the free and civilized nations of the world to cooperate in outlawing the shocking crime of deliberate extermination of entire national, ethnical, racial, or religious groups.

In ratifying the Genocide Convention, we will let the world know that the United States does not condone mass atrocities, and we will endorse the principal that such conduct is criminal under international law.

There has been a great deal of controversy among lawyers in the United States as to the Genocide Convention, but much of it has been due, I believe, to a misunderstanding as to what is meant by genocide and an unfamiliarity with the international law of crimes. The principal objection which has been raised by opponents of the convention is that it is contrary to our federal system of government because it takes away an important part of criminal jurisdiction from our State governments.

In response to this objection, it is essential to understand what is meant by "genocide." The history of the drafting of this convention in the United Nations shows that the United Nations delegates meant by the term "genocide" the killing or mutilation of people, or other overt acts specified in the convention, committed as part of a plan to destroy a group, a group in its entirety within a state, and committed on a scale affecting a substanial number of people.

Thus, it should be quite clear that the crime of genocide is quite distinct from the crime of homocide. There must not only be killing, as in the case of homocide, but there must also be the element of an intent to destroy an entire national, racial, religious, or ethnic group as that group exists within the territorial limits of a particular state. In addition, the action must affect a substantial number of persons.

Our membership in the small community of nations that have failed to ratify this human rights convention is becoming an increasing diplomatic embarrassment. Our friends cannot understand it. Our adversaries exploit it. It is a costly anachronism which should be eliminated without delay. I once again urge this body to ratify the Convention on the Punishment and Prevention of Genocide.

SECRETARY ROMNEY REBUTS LIFE ARTICLE

Mr. DOLE. Mr. President, last month Life magazine published what was purported to be an assessment of the first 2 years of the Nixon Presidency; in fact it was little more than a one-sided ax-grinding job. The article's lack of balance and absence of credit where due cannot be remedied after the fact of publication, but in evident recognition of the article's slanted character Life published a "guest privilege" reply by Secretary of Housing and Urban Development George Romney. Secretary Romney makes a powerful, persuasive case for the programs and progress of the Nixon Administration and he sets an accurate perspective for considering the record which the President has compiled.

Mr. President, I ask unanimous consent that Secretary Romney's reply be printed in the RECORD at this point.

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

A REPLY TO LIFE'S EDITORIAL ON NIXON

(By George Romney)

President Lincoln once said he could not answer all the attacks against him, as it would involve him in a "perpetual flea hunt."

Two weeks ago, LIFE meticulously published so many "fleas" about Mr. Nixon and his Presidency—I asked this opportunity to bag the legal limit.

FOREIGN POLICY

Though conceding him high marks in foreign policy, LIFE skates over—in two sentences—the President's historic arms control proposals, Soviet policy, the new footing toward Communist China, the peace initiatives in the Middle East. Instead LIFE zeroed in on Cambodia.

Nowhere was credit conceded for the accomplishments of Cambodia: the new American troop withdrawals; the greatly improved chance freedom in South Vietnam will survive; the dramatic decline in American war dead.

Who would have predicted 24 months ago that by the spring of 1971 almost half of America's troops would be either home or on the way?

Had this President been of a different political philosophy, those dismissing his achievements with faint praise might well be alto sopranos in the Nixon choir.

ECONOMIC POLICY

Ernest Hemingway wrote that two evils inevitably brought nations "temporary prosperity . . . permanent ruin." They are inflation and war; Mr. Nixon inherited them both.

It required both political courage and statesmanship to move away from war and inflation, up onto the high road to peacetime prosperity. Almost two million defense-related jobs had to be eliminated in the transition.

But LIFE's gloomy assessment notwithstanding, unemployment for 1970 was lower than any peacetime year in the '60s. Last year's downturn was the mildest in 25 years. Interest rates have declined. Price rises have dropped 25% in six months. Housing starts are moving up. Food prices have stabilized. The stock market has rocketed 200 points in eight months. Public confidence is everywhere on the upswing. A business recovery is at hand.

SOCIAL POLICY

Doing its bit to "bring us together," LIFE notifies 22 million black Americans that, under President Nixon, you must "be content with the ongoing progress . . . under laws on the books."

Yet, largely through this President's initiatives, millions of poor, many of them black, are exempted from income taxes; the number of Americans getting food stamps has tripled to 10 million; the number getting food assistance nearly doubled to 12 million; "black capitalism" loans to minority business have shot up to $135,000,000. These tremendous gains are not even hinted at in the LIFE editorial.

"Nixon has fought *only* [emphasis added] for welfare reform . . ." claims LIFE. Only for welfare reform!

Where have LIFE's editors misplaced the clippings on the 37-point environmental program; the revenue-sharing bill; postal reform; the all-volunteer Army proposal; extension of unemployment insurance to five million Americans; the D.C. crime law and the billion dollars to combat crime; the proposals to stop the flow of smut to children; the higher education bill; the mass transit bill; Social Security reforms; coal mine safety; consumer proposals; the occupational health and safety law; veterans' programs; manpower training and a dozen others?

THE NIXON STYLE

Clearly, from LIFE's inventory, the Nixon "style" is being weighed in the balance with the style of the retinue that arrived in Washington in 1961. But let us broaden the judgment beyond comparative styles to com-

parative accomplishments. In my book, substance counts more than style.

The men of style who departed government in 1969 left behind a bitter legacy—a division in the country, disruption on the campuses, inflation in the economy, cost overruns in a bloated defense budget, crime in our cities, powderkegs in the ghettos, backlash in the suburbs—and two hundred coffins being ferried home each week from Southeast Asia.

What a price America paid for the overblown rhetoric of the sixties! And what did it all accomplish?

The day the men of style departed Washington—15 years after Brown *vs.* Board of Education—one in 16 Negro children in the South attended school in legally desegregated districts.

It was not they, but Richard Nixon, who presided quietly over the dismantling of the dual school system. He placed his faith, not in pompous rhetoric or federal power, but in the basic goodwill and dedication to law of the people of the South.

The President did not barnstorm the country promising an "end to poverty in 1976." But calmly, articulately, forcefully he proposed to the nation the most far-reaching program in 35 years to eliminate poverty from American life. He has gone to the people: to rally them at the time of the massive street demonstrations—to argue the case for a missile defense—to justify his decision to a nation alarmed over Cambodia—to explain the economic necessity for his veto of a popular health and education bill.

But, if the President truly seemed, in these appearances, a "calculating lawyer"—why, then, almost without exception have they enhanced the President's standing and rallied support for his causes?

If his appearances disappoint, why do networks and Democrats anguish aloud that the President's televised addresses give him too great a power over national opinion? Hopefully, in 1971 the American people are more interested in performance than theatrics.

Were the President genuinely "isolated," how could an informed critic like Eric Sevareid walk away from an hour's live television interview praising the President's mastery of the matters of government?

From my experience, Richard Nixon's severest critics are the pundits who know him least; his staunchest advocates those who know him best.

When the elite of the intellectual community, the media and the capital deserted President Johnson, his Presidency did not survive. But President Nixon can survive and endure their opposition—for never in his career has he had their support.

If the editorialist cannot fathom the nature and depth of Mr. Nixon's support, perhaps it is because he does not understand the American people.

On Jan. 20, 1969, America was most deeply concerned with a tragic war in Asia, campus crises, mob violence in her cities, crime on her streets. If the day Mr. Nixon departs the Presidency, America's concerns have turned to saving the environment, making government more responsive, maintaining peaceful prosperity—then history will not dwell long on comparative styles. History, rather, will write that Richard Nixon guided America through a dark night of the American spirit into the bright calm of a new day, and was, therefore, a great President.

RULES OF THE COMMITTEE ON AGRICULTURE AND FORESTRY

Mr. TALMADGE. Mr. President, section 133B of the Legislative Reorganization Act of 1946, as added by section 130(a) of the Legislative Reorganization Act of 1970, requires the rules of each committee to be published in the CONGRESSIONAL RECORD not later than March 1 of each year. Accordingly, I ask unanimous consent that rules of the Committee on Agriculture and Forestry be inserted in the RECORD at this point.

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

RULES OF THE COMMITTEE ON AGRICULTURE AND FORESTRY

1. Regular meetings shall be held on the first and third Wednesday of each month when Congress is in session.

2. Voting by proxy authorized in writing for specific bills or subjects shall be allowed whenever a majority of the Committee is actually present.

3. Five members shall constitute a quorum for the purpose of transacting committee business: *Provided*, That one member shall constitute a quorum for the purpose of receiving sworn testimony.

DURING WAR, ISRAEL STILL MAKES GESTURES OF PEACE WITH HUMANITARIAN EFFORTS

Mr. WILLIAMS. Mr. President, I have recently come across a letter to the editor of the Christian Science Monitor written by one of my constituents, Benjamin J. Waldman, of New Milford, N.J. The letter reflects on a quickly forgotten, and almost unnoticed event during this long 22-year war in the Middle East. It tells of a 19-truck Israel convoy which crossed into Jordan at the direction of Israel's Defense Minister to deliver 145 tons of food to starving victims of Jordan's civil war.

I believe it is extremely important that we in the Senate of the United States keep ourselves aware of events such as these as we do of the destructive events which claim all of the notoriety. Therefore, I ask unanimous consent that Mr. Waldman's letter to the editor be printed in the RECORD.

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

HUMANITARIAN EVENT

To the Christian Science Monitor: In the annals of military history, prowess in destruction is hailed as progress and efficiency. A destructive, victorious army is admired and intensively studied by analysts. Humanitarian achievements prove uneventful, of minor value to the military expert, and soon forgotten.

A grandiose humanitarian event was carried out by the Army of Israel immediately following the recent Jordanian civil war. Without fanfare or advance publicity, a 19-truck Israeli convoy loaded with 145 tons of food crossed the Israeli border into Jordan for distribution to starving victims of Jordan's civil war. The trucks contained 80 tons of flour, 35 tons of sugar, 25 tons of oil, and five tons of powdered milk donated by the Israeli Government.

Defense Minister Moshe Dayan directed the operation and informed Jordanian authorities that additional supplies would be contributed as required.

Dayan ordered Israeli guards to admit wounded Jordanians seeking medical treatment in Israel. Israel hospitals warmly welcomed wounded Arab civilians from both sides of the civil conflict.

What other army in recorded history actually delivered food and medical supplies to an avowed and uncompromising enemy during the course of a war? These unique charitable gestures should be remembered by people who truly believe in peace and goodwill.

BENJAMIN J. WALDMAN.

NEW MILFORD, N.J.

THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Mr. HOLLINGS. Mr. President, this afternoon Dr. Robert M. White, Administrator-Designate of the National Oceanic and Atmospheric Administration spoke eloquently of the future programs of NOAA. His speech, delivered to the American Oceanic Organization, is an excellent summary of the capabilities and promise of this new organization. In NOAA lies the promise that the oceans will be known and used for the benefit of our Nation and for mankind. I am pleased that the Administration has seen fit to increase NOAA's proposed budget for fiscal year 1972 by 13 percent, but I question whether that increase is commensurate with the capabilities and promise that this new organization holds. During this session, the Subcommittee on Oceanography will closely scrutinize the program and budget of NOAA, and will do everything in its power to promote the new concepts about which Dr. White spoke today.

Mr. President, I ask unanimous consent that Dr. White's speech, "NOAA—A New Concept" be printed in the RECORD.

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

NOAA—A NEW CONCEPT

It is a great pleasure to come before the American Oceanic Organization to report on the new National Oceanic and Atmospheric Administration. I have greatly enjoyed these luncheons in the Capitol. It has given me an opportunity to get to know a great many people and to renew many acquaintances. It has given me exposure to many ideas and views on the problems and opportunities that confront us in marine affairs. I know that my meteorological friends will forgive me for focusing today on things nautical, for the time is short and it is impossible to cover everything adequately and besides this is principally an oceanic group.

Perhaps the most frequent comment I hear is "now that NOAA is here maybe we can 'get going'." Everyone agrees that the past decade was a significant one for oceanography. It was a decade of studies and efforts in the Congress, in the Executive Branch, in our academies, universities and industries to give new impetus to the nation's ocean affairs. These efforts culminated during the past year in the creation of a Federal mechanism which could act as a civil focus for a new and invigorated national ocean effort.

While there have been many new and significant achievements in new fields in ocean effort and past decade, we must admit it was also a decade of ocean rhetoric, when measured against the expectations of many. The same energies and interests that have brought institutional focus to civil ocean and atmospheric affairs must now be enlisted in a new task, that of converting ideas, dreams, and proposals into a program of action which will stand the hardest kind of competitive test for the investment of the Federal dollar, and will offer the greatest return to the American public.

The formation of NOAA is significant because it represents the establishment of a potential civil center of strength for ocean affairs and related atmospheric and other geophysical activities.

For those who may still be unfamiliar with NOAA, allow me to review briefly what NOAA is.

Its formation brought together the functions of the Environmental Science Services Administration and its major elements, the Weather Bureau, Coast and Geodetic Survey, Environmental Data Service, National Environmental Satellite Center, and Research Laboratories, from the Commerce Department.

The Bureau of Commercial Fisheries, Marine Game Fish Research Program and Marine Minerals Technology Center, from the Interior Department,

The National Oceanographic Data Center and the National Oceanographic Instrumentation Center, from the Navy,

The National Data Buoy Development Project, from the Coast Guard,

The National Sea Grant Program, from the National Science Foundation,

And elements of the U.S. Lake Survey, from the Army Corps of Engineers.

These have been given an interim reshaping. Our major organizational elements now are the National Ocean Survey, the National Weather Service, the National Marine Fisheries Service, the National Environmental Satellite Service, the Environmental Research Laboratories, the Environmental Data Service and the Sea Grant Office. The Data Buoy Project Office, the Marine Minerals Technology Center and the National Oceanographic Instrumentation Center have been assigned interim reporting points.

Today we are a collection of disparate groups which have been involved in one form or another with the oceans, the Great Lakes, and the atmosphere. Now, these groups must be transformed into an effective mechanism which can carry the civil leadership for oceanic, atmospheric and certain related geophysical affairs in our Nation. The building blocks we have to work with to bring about this new and vigorous entity are impressive but unfinished. As I learn more and more about NOAA, I find that even the building blocks in many cases are in need of important repair if we are to insure a sound foundation for building the future. We will be asking the Congress for funds for a start toward this process—operating our ships, staffing our laboratories and improving our facilities.

However, even without additional funds or manpower or new program assignments, NOAA is now the center of civil strength in ocean and atmospheric affairs in the Federal Government. Of the total Federal marine sciences budget as compiled by the Marine Council in Fiscal Year 1971, NOAA will spend $112.6 million, representing 21.1% of the total Federal effort in this field. Of the total Federal Atmospheric Science and Service budget as defined by the Federal Council for Science and Technology and the Federal Coordinator for Meteorology, NOAA will spend $152.9 million, representing 23% of the total. Only the Department of Defense exceeds NOAA's expenditures in those fields.

In Fiscal Year 1971 NOAA will spend a total of $291 million, appropriated directly to it by Congress, and an additional $34 million, transferred from other agencies of the Federal government to do work for them, for a total of $325 million.

For Fiscal Year 1972, the President has sent forward a budget providing a 20 percent increase in oceanic effort for NOAA. Had all the agencies now housed in NOAA been with us for the entire year, a total of $98,770,000 would have been expended on ocean programs in Fiscal Year 1971. The President's budget for 1972 allows $118,516,000 for NOAA's ocean programs. The percentage increase for the entire NOAA budget of $333,900,000 stands at 13 percent. To me, this is indicative of the Administration's keen interest in the oceanic environment.

I am sure you are aware that the President has just proposed a sweeping reorganization of the Executive Branch of the Federal government. Although, under its terms, most of our parent Department—Commerce—would become a part of a Department of Economic Development, NOAA would be transferred to a Department of Natural Resources. It would be one of four major components of that new department along with land and recreation, water resources and energy and minerals. Let me assure you that we in NOAA intend to move forward vigorously and without delay to begin accomplishing the tasks already set forth for us by President Nixon in the Reorganization plan which created our agency.

NOAA brings together unique capabilities which should enable it to mold a formidable instrument for governmental policy and action in the fields of oceanography and meteorology and certain aspects of the solid earth sciences. In one agency we have brought together 9,200 scientists and technicians and others covering the broadest spectrum of environmental and marine sciences of any organization in the Federal government. NOAA joins in one agency both the physical and the life scientist, enabling it to approach problems of the interaction between living systems and their environmental surroundings in a comprehensive manner. It brings together a unique complex of facilities. For example:

A fleet of 50 vessels, ranging from the most advanced and largest ocean research vessels constructed in this country, to small research and exploratory fishing vessels.

The outstanding space environmental observational capabilities of the Environmental Satellite Center formerly of ESSA.

The worldwide weather, ocean, seismic, and solar observing, communication and data processing facilities of the National Weather Service, the National Marine Fisheries Service and the National Ocean Survey, and the National Data Buoy Project.

NOAA is naturally and traditionally one of the most active collaborators with other nations in scientific and service endeavors in the entire Federal Government. Its programs and missions are inextricably intertwined with and dependent upon international cooperative efforts with other nations. NOAA participates in the work of nine different international commissions on bilateral agreements on fisheries, five specialized agencies of the United Nations System, such as the United Nations Educational, Scientific and Cultural Organization, the World Meteorological Organizations, and the Food and Agricultural Organization. I anticipate we will increasingly be the focus for bilateral agreements in oceanography with other nations.

Only during the past several weeks NOAA has been asked to be the focus of the most recent bilateral arrangements with Canada on undersea technology.

NOAA has now been designated the focus within the Department of Commerce for Departmental activities in connection with the Law of the Sea. I shall ask our Deputy Administrator to become the focal point for this substantial task. Before 1973, when a United Nations conference will consider the problem in Geneva, many questions vital to the United States position must be resolved. We shall be working closely with the Departments of State, Defense and Interior to establish our national position.

Lest my enthusiasm get the better of me, let me assure you that there are many things that we are not. We are not, nor was it ever intended, that NOAA be a monolithic agency in the fields of ocean and atmospheric affairs to the exclusion of the missions and interests of other agencies of the Federal government. It is not and has no intention of becoming a competitor of industry for the university community. To the contrary, we believe NOAA's role is to encourage, foster and support those things which our industries and universities can do best. We intend to be a center of strength and not a center of domination.

As NOAA proceeds to formulate its programs it will be done in close conjunction with the other Federal agencies . . . the Defense Department, the National Science Foundation, the Coast Guard, the Environmental Protection Agency, and Interior. We look to collaborative efforts with these agencies, and I am pleased to report that we are in contact with each to work with detailed arrangements for mutual interest. The response, I may say, is gratifying. We look for many sources and mechanisms outside of government to work with us, and advise us on our future program efforts, such as the Ocean Science and Ocean Engineering Boards, of our National Academies, and the numerous *ad hoc* advisers or study groups that are called together for many purposes.

Perhaps the greatest, most direct influences on NOAA from non-governmental sources will come from two new national groups. The first is the National Advisory Committee for the Oceans and Atmosphere, which President Nixon indicated would be formed in his message transmitting Reorganization Plan Number Four, legislation for which has been passed by the House. The second will be a National Marine Fisheries Advisory Committee, an important group now being formed at the request of Secretary of Commerce Maurice H. Stans, NACOA will be broadly representative of all segments of the oceanic and atmospheric community. The National Marine Fisheries Advisory Committee will be broadly representative of the commercial, game fishing and conservation, as well as scientific, interests. The task of assembling nominations for both of these committees is actively under way.

I am increasingly confronted, even in the short time that I have been associated with NOAA, with the question of "where is NOAA going?" "Why have the fish been put together with the weather?" "What has mapping and charting to do with observing the sun?"

These are fundamental questions and they require fundamental answers. The oceans and the atmosphere are the environments which cradle and sustain us. They can be used or misused. Some of the properties of these environments are now or can become critical for our safety and well being. They contain living and non-living resources necessary for the sustenance of the nation with all indications of an even greater dependence upon them in the future. These resources must be developed and husbanded wisely. This requires knowing what is there, understanding why it is there, having the technology to assess and develop it, comprehending the environmental effects of development, and having the mechanisms that can manage wisely.

In the oceans, the resources we seek are so intimately related to the conditions of the environment that their husbanding and development depend critically upon a knowledge and understanding of other properties of those environments, properties which enable their use as a media for all manner of human and industrial activity. These properties extend the importance of these environments far beyond the question of living and non-living resources, and we find that a knowledge and understanding of all environmental processes now becomes essential to almost all human activity. Our air and water transportation, our agricultural, industrial, space and defense operations, to name a few, are conditioned in their efficiency and safety by the state of the air and ocean environment. As environments however, they can from time to time channel the wrath of nature into cataclysmic events such as hurricanes and tornadoes, earth-

quakes, and tidal waves, storm surges, radio blackouts, and mass mortalities of sea life, and they can be a hazard to man's life and a danger to all he owns.

Today the word "environment" and our concern about it have taken on a new meaning. It has become evident that the air and water environments of our planet, which we once thought were infinite sinks for the insults of man, are indeed fragile. They are being contaminated and degraded by the very beings who depend on them for sustenance. Indeed, our very survival depends upon our ability to manage wisely our environments and the resources they contain. It was no happenstance that the President submitted his proposals for establishing EPA and NOAA at the same time. NOAA is and will be one of the major environmental agencies of the government.

This, then is what NOAA is all about. It is about the environment and its resources, and the need to understand the processes of the environment and their impact on, and the interrelationship with, the resources of these environments.

It is about living marine resources and the need to understand the chain of marine life, the dynamics of marine ecosystems, the need to assess and predict the stocks of marine species and the effects of environmental changes and the effect of fishing on stocks, to enable us to regulate and manage their harvesting and their conservation, and to assist the industry which derives its sustenance from them and improve their availability for recreational use.

It is about assisting with non-living resources development, particularly providing the basic maps and charts that can be used to delineate them and the need to understand the environmental impact of developing them.

It is about observing, predicting and possibly controlling the processes and phenomena of our air, water and solid earth environment, and the need to protect the life and safety of the people of this nation against the ravages of nature.

It is about providing the environmental forecasts and data and the need to heighten the efficiency and safety of our economic, industrial, agricultural and defense activities.

It is about monitoring and predicting the consequences of man's pollution of his air and ocean environment and the need to arrest environmental deterioration.

And so, as we sort ourselves out, the major thrusts of our activities in NOAA come sharply into focus.

We see our task as one of setting up systems to assess and measure, develop, and conserve all ocean resources. It is also to encourage the establishment of new Federal/State institutional arrangements for living resources which can deal effectively with the political, legal, and jurisdictional problems that prevent rational marine management. We are requesting increases in funds to initiate such programs. In the area of environmental monitoring and prediction we see our task as establishing a coordinated national environmental monitoring and prediction and warning system and we are seeking increases in funds to operate, maintain and develop our satellite, buoy and other related observing and data processing systems.

In the area of ocean exploration we will survey our inshore, continental shelf, and deep ocean regions at an increasing rate, and we are seeking funds to use our vessels fully and to accelerate the charting process. We will focus our initial efforts on the navigational and geophysical mapping and charting, in collaboration with the Departments of the Interior and the Navy. Such information will be essential for the ultimate management of all ocean activities.

In the area of the coastal zone, we will devote substantial resources to a variety of programs for which NOAA presently has the competence, knowledge and facilities. In addition to our mapping and charting of the coastal zone areas, we will enter into cooperative programs with States for boundary delineations. We will increase our efforts in basic marine ecosystem dynamics. We hope to increase our studies of the dynamics of estuarine and coastal zone waters and seek to improve our systems for the prediction of tides and currents and weather. We will be working closely with the Environmental Protection Agency, the Corps of Engineers, Department of the Interior and the Coast Guard, to make sure that our work and our knowledge of the dynamics of ocean current systems are available for decision-making on ocean uses.

In the area of environmental quality, we hope to mount a major program to examine the impact of man's activities upon the quality of the air and the oceans. We hope to increase our capabilities for the long-term monitoring of both the atmosphere and the oceans and our theoretical studies of the effect of contaminants on marine ecosystems, and on the climate and on the weather and our plans call for increases in funds for this purpose. We hope to extend and improve our systems for predicting air pollution potential and we have asked Congress for additional funds.

Already, we are involved in numerous problems of great immediacy, notably that of contaminants in marine life. We are intensifying our efforts to define this problem through the National Marine Fisheries Service. We have very recently initiated new actions in this connection through reprograming and will seek additional funds for this purpose.

We are seeking to define more clearly the nature and extent of many kinds of heavy metal contamination in fish found in coastal and offshore waters. A systematic survey of major commercial and sport species supplied from commercial boats and our own research vessels is now underway. Initially, we are checking for the presence of mercury. Other heavy metals also will be investigated. An initial screening survey has begun of more than 30 fishery products. In connection with this effort, tests by NMFS scientists already have shown that nearly all of 200 samples of commercially important fish products have tested well below Food and Drug Administration guidelines of .5 parts per million of mercury.

The fish tested in the NMFS program included 30 tuna from African waters, in which only three of the 30 exceeded the FDA guidelines for mercury content, and in no case did mercury content exceed .7 parts per million, a small amount over acceptable figures.

Let me point out that the tests thus far are too limited to provide a complete picture of the presence or absence of mercury contamination. However, these limited findings certainly give rise to optimism as we continue this monitoring and testing program.

It is our belief that these programs will give us a much better insight into the contaminant problem than we presently possess. Within the bounds of our statutory responsibility, we in NOAA intend to make the best contribution of which we are capable to the solution of a problem that has plagued us all.

In the area of environmental control, we will step up our programs looking at ways in which man can consciously manipulate ocean and atmospheric processes for the benefit of all. Our major initial attempts will be in the field of weather modification, an area of enormous potential and great promise, capitalizing on the work done by the previous components of NOAA and other agencies, and we are requesting support in this effort.

I might say at this point that the Nation's achievements in weather modification research have been exciting over the past few years. Encouraging progress has been made in augmentation of snowpack for water resources, in augmenting rainfall from tropical cumulus clouds. Perhaps the most exciting progress has been made in exploring the possibility of hurricane modification. Wind reduction did occur in connection with the seeding of Hurricane Debbie in 1969. We must now determine whether such results can be duplicated. The implications for public safety and the preservation of property, should we be able to lessen the destructiveness of these storms in the Atlantic and the Pacific are obvious.

To carry these tasks forward will require an adequate base of scientific and technological capabilities. We are taking the view in NOAA that there is a need to build certain national capabilities which can be used for a wide variety of ocean and atmospheric purposes, and that NOAA should take the lead in ensuring that such capabilities as may be required for civil uses are available. We will be asking for resources to initiate the following effort. We believe that there should be a national capability for enabling our scientists and others to explore ocean processes by means of submersibles and underwater habitats. We believe that there should be a national ocean research and survey ship capability, properly instrumented to enable the nation to accomplish its varied ocean missions. We believe there is a need for a national capability of instrumented aircraft for probing and measuring both atmosphere and oceans for a variety of field experiments or routine measurements. We believe that there needs to be a national computer capability adequate to meet the needs for mathematical simulation of both the oceans, and the atmosphere for research; and ocean and atmospheric data processing and numerical prediction to meet operational needs. We believe that all of this work must be underpinned by a healthy and vigorous basic science activity supported by the various agencies of the Federal government, and we will do our share. Plans call for increased funds for the International Field Year for the Great Lakes, Sea Grant and other ocean activities.

It must be clear, however, that when we speak of national capabilities or national needs, our thrust in NOAA is to encourage the establishment of such capabilities, facilities and programs. It is not necessary that NOAA fund or manage all of these alone. NOAA must join with all the other agencies of the Federal Government in carrying out such tasks.

It is my hope that the years ahead will prove that my remarks are more than rhetoric. In the next year we will make a start. But if the start is to flower into what I know we would all like to see, then our rhetoric must be converted to sound and solid justification for national investment.

One of the major tasks facing us in the next few years is doing just that. One of the tasks facing you is helping us to do that. During the next year, this Administration will support a vigorous beginning of NOAA. Our task will be to go beyond a beginning. With your help, I know we will.

TRANSPORTATION STRIKE EMERGENCIES

Mr. GRIFFIN. Mr. President, yesterday I introduced S. 560, the administration's bill to provide more effective means for protecting the public interest in national emergency disputes involving the transportation industry.

I did so with a sense of urgency since we are confronted with the possibility of a national railroad strike in less than a month unless four operating unions and the railroads come to an agreement.

Today, there is even more a sense of urgency.

For, according to an Associated Press dispatch today, a fifth union—the Brotherhood of Railroad Signalmen—has joined the others in threatening a strike.

The Associated Press dispatch said:

The Executive Council of the Brotherhood of Railroad Signalmen ordered its 13,000 members to strike 30 days from now, under the advance notice provisions of the Railway Labor Act.

Mr. President, this is additional reason why Congress should act without delay on the President's request for emergency legislation. It underscores the need for it.

While there are reports that one or more of the operating unions and the railroads have reached or are near agreement on a contract, the need would still exist.

As the New York Times said editorially in today's paper, there is an obligation on the part of Congress—

To take some effective action this year to establish a sounder system of public protection along the lines proposed by the President.

Mr. President, I ask unanimous consent that the text of the Times editorial be printed in the RECORD.

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

[From the New York Times, Feb. 4, 1971]

ARBITRATING CRISIS STRIKES

The strongest argument in favor of President Nixon's renewed call for better statutory protection against transportation strike emergencies as the abysmal record of collective bargaining in the railroad industry since the President first made his proposal less than a year ago.

Congress has been obliged to pass three special laws to keep threatened strikes from halting all train service and a fourth such law may be needed when the next in an endless series of strike deadlines arrives March 1. The frequency with which intervention by the White House and Capitol Hill has been proved necessary makes it plain that the national emergency provisions of the 45-year-old Railway Labor Act have broken down.

The most unusual aspect of the Nixon plan is the inclusion of a novel form of compulsory arbitration among the various remedies open to the President in crisis disputes. Its aim is to get around the age-old argument that any arbitration requirement would discourage both labor and management from making any serious independent attempt to arrive at a fair agreement for fear that their bargaining positions would put them at a disadvantage when and if the case went to an arbitrator for impartial decision.

Under the Administration proposal, the arbitrator would not follow the usual practice of splitting the difference between the last management offer and union demand but would have to choose one or the other of these last-ditch positions. The plan has won no enthusiasm from either employers or unions, and Congress itself thought so little of it last year that no hearings ever were held in either house.

That kind of legislative evasion makes no sense when the alternative is the periodic passage on Capitol Hill of stopgap laws that solve nothing on a permanent basis and often make immediate problems worse. That was conspicuously the case with the law Congress rushed through last December after the Brotherhood of Railway Clerks had spearheaded a strike over the admirable settlement recommendations of a Presidential fact-finding board. The panel had recommended substantial pay increases coupled with changes in a few of the archaic work rules that hobble the railroads.

The strikers wanted more money and no rules changes. When Congress voted to compel the rail crews to stay at work until March 1, it ordered that the first-year pay increases proposed by the fact-finders be put into effect on a retroactive basis. But the legislators ignored the rules changes through which the carriers hoped to get some offset in increased efficiency. Now the statutory time limit is nearing expiration with no agreement and little bargaining leverage left to encourage an equitable accord.

In the light of that doleful experience, the Congressional obligation is great to take some effective action this year to establish a sounder system of public protection along the lines proposed by the President.

THE 1899 REFUSE ACT

Mr. BOGGS. Mr. President, considerable public interest has been expressed in the administration's Refuse Act permit program and the documents to implement the program.

I believe that all relevant documents are now available and I ask unanimous consent to insert these documents in the RECORD. I also ask unanimous consent to include in the RECORD the remarks on the Refuse Act program by the General Counsel of the Council on Environmental Quality, Mr. Timothy Atkeson. His comments were presented to the American Bar Association-American Law Institute meeting held last week at the Smithsonian. Also, I ask unanimous consent to include in the RECORD a summary statement of the Environmental Protection Agency on the Refuse Act filed today with the Subcommittee on Air and Water Pollution.

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

[From the Federal Register, Dec. 31, 1970]

PERMITS FOR DISCHARGES OR DEPOSITS INTO NAVIGABLE WATERS—PROPOSED POLICY, PRACTICE, AND PROCEDURE

(Department of Defense, Department of the Army, Corps of Engineers—33 CFR Part 209)

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Secretary of the Army (acting through the Corps of Engineers). The proposed regulation prescribes the policy, practice, and procedure to be followed by all Corps of Engineers installations and activities in connection with applications for permits authorizing discharges or deposits into navigable waters of the United States or into any tributary from which discharged matter shall float or be washed into a navigable water (33 U.S.C. 407).

Prior to the adoption of the proposed regulation consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Office of the Chief of Engineers, Washington, D.C. 20314, Attention: ENGCW-ON, within a period of 45 days from the date of publication of this notice in the FEDERAL REGISTER.

Dated: December 23, 1970.

F. P. KOISCH,
Major General, U.S. Army,
Director of Civil Works.

§ 209.131 Permits for discharges or deposits into navigable waters.

(a) *Purpose and scope.* This regulation prescribes the policy, practice, and procedure to be followed by all Corps of Engineers installations and activities in connection with applications for permits authorizing discharges or deposits into navigable waters of the United States or into any tributary from which discharged matter shall float or be washed into a navigable water.

(b) *Law and executive order authorizing permits.* (1) Section 13 of the Act approved March 3, 1899 (33 U.S.C. 407), hereafter referred to as the "Refuse Act," provides in part that it is unlawful "to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or we washed into such navigable water * * * *And provided further,* That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful."

(2) Executive Order No. 11574 (dated December 23, 1970) directs the implementation of a permit program under the authority of the Refuse Act and provides for the cooperation of affected Federal agencies in the administration of the program.

(c) *Related legislation.* (1) Section 21(b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 *et seq.*) (see particularly the Water Quality Improvement Act of 1970 (Public Law 91-224, 84 Stat. 108)), reflects the concern of the Congress with maintenance of applicable water quality standards and, subject to certain exceptions, requires any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities which may result in a discharge into the navigable waters of the United States to provide with his application an appropriate certification that there is reasonable assurance that such activity will be conducted in a manner which will not violate applicable water quality standards. Hereafter, section 21(b) will be referred to as a section of the Water Quality Improvement Act of 1970.

(2) The concern of the Congress with the need to encourage the productive and enjoyable harmony between man and his environment and the need to promote efforts which will prevent or eliminate damage to the environment was manifested in the enactment of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347). Section 102 of that Act directs that:

to the fullest extent possible: (1) The policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

* * * * *

(B) Identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations * * *.

(3) The concern of the Congress with the conservation and improvement of fish and wildlife resources is indicated in the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c), wherein consultation with the Department of the Interior is required regarding activities affecting the course, depth, or modification of a navigable waterway.

(d) *General policy.* (1) Except as otherwise provided in the Refuse Act (33 U.S.C. 407), all discharges or deposits into navigable waters of the United States or tributaries thereof are, in the absence of an appropriate Department of the Army permit, unlawful. The fact that official objection may not have yet been raised with respect to past or continuing discharges or deposits should not be interpreted as authority to discharge or deposit in the absence of an appropriate permit, and will not preclude the institution of legal proceedings in appropriate cases for violation of the provisions of the Refuse Act. Similarly, the mere filing of an application requesting permission to discharge or deposit into navigable waters or tributaries thereof will not preclude legal action in appropriate cases for Refuse Act violations.

(2) The decision as to whether a permit authorizing a discharge or deposit will or will not be issued under the Refuse Act will be based on an evaluation of the impact of the discharge or deposit on (i) anchorage and navigation, (ii) water quality standards, which under the provisions of the Federal Water Pollution Control Act, were established "to protect the public health or welfare, enhance the quality of water and serve the purposes" of that Act, with consideration of "their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses," and (iii) in cases where the Fish and Wildlife Coordination Act is applicable (where the discharge for which a permit is sought impounds, diverts, deepens the channel, or otherwise controls or similarly modified the stream or body of water into which the discharge is made), the impact of the proposed discharge or deposit on fish and wildlife resources which are not directly related to water quality standards.

(3) Although the Refuse Act vests in the Secretary of the Army authority to determine whether or not a permit should or should not issue, it is recognized that responsibility for water quality improvement lies primarily with the States and, at the Federal level, with the Environmental Protection Agency (EPA). Accordingly, EPA shall advise the Corps with respect to the meaning, content, and application of water quality standards applicable to a proposed discharge or deposit and as to the impact which the proposed discharge or deposit may or is likely to have on applicable water quality standards and related water quality considerations. Specifically, Regional Representatives of EPA will determine and advise District Engineers with respect to the following:

(i) The meaning and content of water quality standards which, under the provisions of the Federal Water Pollution Control Act, were established "to protect the public health or welfare, enhance the quality of water and serve the purposes" of that Act, with consideration of "their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses.";

(ii) The application of water quality standards to the proposed discharge or deposit, including the impact of the proposed discharge or deposit on such water quality standards and related water quality considerations;

(iii) The permit conditions required to comply with water quality standards;

(iv) The permit conditions required to carry out the purposes of the Federal Water Pollution Control Act wehre not water quality standards are applicable;

(v) The interstate water quality effect of the proposed discharge or deposit.

(4) In any case where a District Engineer of the Corps has received notice that a State or other certifying agency has denied a certification prescribed by section 21(b) of the Federal Water Pollution Control Act or, except as provided in subparagraph (6) of this paragraph, where a Regional Representative has recommended that a permit be denied because its issuance would be inconsistent with his determination or interpretation with respect to applicable water quality standards and related water quality considerations, the District Engineer, within 30 days of receipt of such notice, shall deny the permit and provide notice of such denial to the Regional Representative of EPA.

(5) In the absence of any objection by the Regional Representative to the issuance of a permit for a proposed discharge or deposit, District Engineers may take action denying a permit only if:

(i) Anchorage and navigation will be impaired; or

(ii) Where the discharge for which a permit is sought impounds, diverts, deepens the channel, or otherwise controls or similarly modifies the stream or body of water into which the discharge is made, and after the consultations required by the Fish and Wildlife Coordination Act, the District Engineer determines that the proposed discharge or deposit will have a significant adverse impact on fish or wildlife resources.

(6) In any case where the District Engineer believes that following the advice of the Regional Representative with respect to the issuance or denial of a permit would not be consistent with the purposes of the Refuse Act permit program, he shall, within 10 days of receiving such advice, forward the matter through channels to the Secretary of the Army to provide the Secretary with the opportunity to consult with the Administrator. Such consultation shall take place within 30 days of the date on which the Secretary receives the file from the District Engineer. Following such consultation, the Secretary shall accept the findings, determinations, and conclusions of the Administrator as to water quality standards and related water quality considerations and shall promptly forward the case to the District Engineer with instructions as to its disposition.

(7) No permit will be issued in cases where the applicant, pursuant to 21(b)(1) of the Water Quality Improvement Act of 1970, is required to obtain a State or other appropriate certification that the discharge or deposit would not violate applicable water quality standards and such certification was denied. No permit will be issued for discharges or deposits of harmful quantities of oil, as defined in section 11 of the Federal Water Pollution Control Act since primary permit and enforcement authority for all oil discharges is contained in that Act.

(e) *Authority to issue permits.* The Refuse Act provides that, "the Secretary of the Army, whenever in the judgment of the Chief of Engineers that anchorage and navigation will not be injured thereby, may permit the deposit of any material * * * in navigable waters, within the limits to be defined and under conditions to be prescribed by him * * *." The Chief of Engineers, in the exercise of his judgment under the Act, has made the general determination that anchorage and navigation will not be injured when the discharge or deposit permitted will cause no significant displacement of water or reduction in the navigable capacity of a waterway. Except as otherwise provided in this regulation, the Secretary of the Army has authorized the Chief of Engineers and his authorized representatives to issue permits allowing discharges or deposits into navigable waters or tributaries thereof, if evaluation leads to the conclusion that (1), as determined by the Chief of Engineers, anchorage and navigation will not be injured thereby, and (2) issuance of a permit will not be inconsistent with the policy guidance prescribed in paragraph (d) of this section. Accordingly, within these limitations, District Engineers are authorized, except in cases which are to be referred to higher authority for decision (see paragraphs (d)(6) and (1)(7) of this section), to issue permits or to deny permit applications for discharges or deposits covered by the Refuse Act.

(f) *Relationship to other corps permits.* (1) Operators of facilities constructed in navigable waters under a valid construction permit issued pursuant to section 10 of the Rivers and Harbors Act approved March 3, 1899 (33 U.S.C. 403) must apply for and receive a new permit under the Refuse Act (33 U.S.C. 407) in order to lawfully discharge into or place deposits in navigable waters or tributaries thereof.

(2) Any person wishing to undertake work in navigable waters which may also result in a discharge or deposit into such navigable waters or tributaries thereof must apply for a permit under section 403 for such work and for a permit under section 407 to cover any proposed discharge or deposit. However, if the work proposd to be undertaken in navigable waters is limited to the construction of a minor outfall structure from which the proposed discharge or deposit will flow, District Engineers may, in their discretion and within the guidance provided in ER 1145–2–303, require a single permit application under this regulation (ER 1145–2–321). If a single permit is issued authorizing both work in navigable waters and a discharge or deposit, the permit should cite both sections 403 and 407 as authority for its issuance.

(g) *Information required with an application.* (1) An applicant for a permit involving a discharge or deposit in navigable waters or tributaries thereof must file the required form with the District Engineer. Until the required form is printed and made available to District Offices, applicants should provide a letter requesting that the permit be issued. The letter must bear the address of the applicant and the date, identify the waterway involved and the precise location of the proposed discharge or deposit and contain a statement as to whether the facility from which the proposed discharge or deposit will originate is within the corporate limits of a municipality. The applicant must also furnish information which will fully identify the character of the discharge or deposit and monitoring devices and procedures which will be used. Such information shall include, but need not be limited to, data pertaining to chemical content, water temperature differentials, toxins, sewage, amount and frequency of discharge or deposit and the type and quantity of solids involved, if any. If the discharge or deposit will include solids of any type, applicants must (i) identify the proposed method of instrumentation to determine the effect of the disposition of solids on the waterway, and (ii) either assume responsibility for the periodic removal of such solids by dredging or agree to reimburse the United States for costs associated with such dredging.

(2) An application submitted by a corporation must be signed by the principal executive officer of that corporation or by an official of the rank of corporate vice president or above who reports directly to such principal executive officer and who has been designated by the principal executive officer to make such applications on behalf of the corporation. In the case of a partnership or a

sole proprietorship, the application must be signed by a general partner or the proprietor. Each application must contain a certification by the person signing the application that he is familiar with the information provided and that to the best of his knowledge and belief such information is complete and accurate.

(h) *State certification.* (1) Section 21(b)(1) of the Water Quality Improvement Act of 1970 provides that "Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters of the United States, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that there is reasonable assure, as determined by the State or interstate agency that such activity will be conducted in a manner which will not violate applicable water quality standards * * *. No license or permit shall be granted until the certification required by this section has been obtained or has been waived" (as provided in a portion of section 21(b)(1) not quoted here). In cases where certification is required and no express notice of waiver has been received from the certifying agency, District Engineers should, as a general rule, provide the certifying agency with a full year within which to take action before determining that a waiver has occurred. If, however, special circumstances (as identified by either the District Engineer or the Regional Representative) require that action on a permit application under the Refuse Act be taken within a more limited period of time, the District Engineer shall determine a reasonable lesser period of time, advise the certifying agency of the need for action by a particular date, and that if certification is not received by the date established that it will be considered that the requirement for certification has been waived. Sections 21(b)(7) and (b)(8) of the Act identify circumstances in which permits of limited duration may issue without the certification required by section 21(b)(1). See paragraph (n) of this section.

(2) In cases involving discharges or deposits from facilities the construction of which was not lawfully commenced prior to April 3, 1970, certification pursuant to 21(b)(1) is required. District Engineers may accept, but not fully process, any permit application until the applicant has provided the required certification. When persons who will eventually require a Department of the Army permit seek State or other certification they shall (i) provide the appropriate certifying agency with the information on the discharge or deposit required by paragraph (g)(1) of this section, and (ii) file a copy of the certification application with the District Engineer. These steps will facilitate the processing of any formal application which may later be filed with the District Engineer and will enable the District Engineer to determine if the certification required is being waived by inaction on the part of the certifying authority.

(3) In cases involving a discharge or deposit from a facility, the actual construction of which was lawfully commenced prior to April 3, 1970, it will be the policy of the Corps of Engineers to accept but not to fully process any permit application until the applicant or the State has provided a letter from the State describing the impact of the proposed discharge or deposit and indicating the view of the State on the desirability of granting a permit. If such a letter is not provided within 1 year or within such lesser reasonable period of time as the District Engineer may have determined this requirement shall be waived.

(i) *Processing of permit applications.* (1) When an application for a permit is received, care should be taken to assure that the applicant has provided all of the information required by this regulation. Copies of applications received and all other information received relating thereto will be promptly forwarded by the District Engineer to the Regional Representative of EPA.

(2) If all of the required information has been provided but the applicant has failed to provide, as appropriate, the required certification or other letter discussed in paragraph (h) of the section, the applicant should be advised that no action will be taken on his application until the required certification or letter is provided or until a year or such lesser reasonable period of time as the District Engineer may have determined shall have expired and that his application will be processed only to the extent of sending a copy of the application to the Regional Representative of EPA.

(3) When all of the required information has been provided and the applicant has also provided, as appropriate, the required certification or letter discussed in paragraph (h) of this section, together with assurances that the character of the discharge or deposit was fully described to the State agency prior to the issuance of the certification or letter, the applicant shall be advised that his application is in order and that it will be processed as expeditiously as possible.

(4) When the application is found to be in order the District Engineer shall promptly forward a complete copy of the application or such additional information as has not already been furnished to the Regional Representative of EPA. The Regional Representative of EPA will be asked to review the application and to (i) advise the District Engineer within 30 days whether the proposed discharge or deposit may affect the quality of waters of another State (as required by section 21(b)(2) of the Water Quality Improvement Act of 1970), and (ii) provide the other information identified in paragraph (d)(3) of this section within 45 days. If, however, additional time beyond said 45 days (or any extension thereof) is required to respond, the Regional Representative shall notify the District Engineer and shall advise him as to the additional period of time which will be required to provide such information. In cases where a Regional Representative does not provide such information and advice to a District Engineer within the time period specified herein (including any extensions of time required by the Regional Representative) the advice furnished by a State or other certifying authority shall be considered by the District Engineer to be the advice of the Regional Representative. In the event that the Regional Representative determines that the proposed discharge or deposit may affect the quality of the waters of any other State and so notifies the District Engineer, the matter should be reported to the Chief of Engineers, Attention: ENGGC–K. In such cases, special procedures are provided for in section 21(b)(2) of the Water Quality Improvement Act of 1970.

(5) At approximately the same time a completed copy of the permit application is furnished to the Regional Representative of EPA, a public notice, as described in paragraph (f) of this section, will be issued. Notice will also be sent to all parties known or believed to be interested in the application, including the appropriate Regional Director of the Department of the Interior, the National Oceanic and Atmospheric Administration of the Department of Commerce, navigation interests, State, county, or municipal authorities, adjacent property owners, the heads of State agencies having responsibility for water quality improvement and wildlife resources, and conservation organizations. Copies of the notice will be posted in post offices and other public places in the vicinity of the site of the proposed discharge or deposit. A copy of every notice issued will be sent to the Chief of Engineers, Attention: ENGCW–ON.

(6) If notice of the permit application evokes substantial public interest a public hearing may be held. Policy with respect to the holding and conduct of public hearings is discussed in paragraph (k) of this section.

(7) In the absence of objection by the Regional Representative of EPA or, in the cases involving the Fish and Wildlife Coordination Act, by the Regional Director of the Department of the Interior or the National Oceanic and Atmospheric Administration of the Department of Commerce, District Engineers may, consistent with the policy guidance contained in paragraph (d) of this section and, after considering all of the information developed with respect to the permit application, including written or oral information presented in response to a public notice or at a public hearing, issue a permit, with or without conditions. In the event that the District Engineer determines that issuance of the permit with or without conditions, is appropriate but there is objection to the issuance of the proposed permit by the Regional Representative of EPA or, in cases involving the Fish and Wildlife Coordination Act, by the Regional Director of the Department of the Interior or the National Oceanic and Atmospheric Administration of the Department of Commerce, the matter must be forwarded to higher authority for decision. Every effort should be made to resolve differences at the District Engineer level before referring the matter to higher authority. In the event that differences cannot be resolved, District and Division Engineers will forward the application, copies of the public notice and addresses to whom sent, the comments of State and Federal agencies, a copy of the transcript of any public hearing held, a narrative report and recommendations to the Chief of Engineers, Attention: ENGCW–ON. In any case referred to the Secretary of the Army pursuant to paragraph (d)(6) of this section, consultation with the Administrator shall take place within 30 days of the date on which the Secretary receives the file from the District Engineer. Following such consultation, the Secretary shall accept the findings, determinations, and conclusions of the Administrator as to water quality standards and related water quality considerations and shall promptly forward the case to the District Engineer with instructions as to its disposition.

(j) *Public notice.* (1) As required by paragraph (i)(5) of this section a public notice will be issued after a permit application is determined to be in proper order. In cases where the permit applied for pertains to a discharge or deposit and does not involve construction or other work in navigable waters, the notice shall (i) state the name and address of the applicant, (ii) identify the waterway involved and provide a sketch showing the location of the proposed discharge or deposit, (iii) fully identify the character of the discharge, (iv) include any other information which may assist interested parties in evaluating the likely impact of the proposed discharge or deposit, if any, (v) provide 30 days within which interested parties may express their views concerning the permit application. All public notices involving a proposed discharge or deposit shall contain the following statement:

The decision as to whether a permit authorizing a discharge or deposit will or will not be issued under the Refuse Act will be based on an evaluation of the impact of the discharge or deposit on (1) anchorage and navigation, (2) water quality standards and

related water quality considerations as determined by State authorities and the Environmental Protection Agency, and (3) in cases where the Fish and Wildlife Coordination Act is applicable (where the discharge for which a permit is sought impounds, diverts, deepens the channel, or otherwise controls or similarly modifies the stream or body of water into which the discharge is made), the impact of the proposed discharge or deposit on fish and wildlife resources.

(2) Comments received from interested parties within the period provided for in the public notice will be retained and will be considered in determining whether the permit applied for should be issued.

(3) When a response to a public notice has been received from a Member of Congress, either in behalf of a constituent or himself, the Division or District Engineer will inform the Member of Congress of the final action taken on the application.

(4) When objections to the issuance of a permit are received in response to a public notice, the Division or District Engineer will furnish the applicant with copies of the objections and afford him the opportunity to rebut or resolve the objections.

(k) *Public hearings.* (1) It is the policy of the Corps of Engineers to conduct the civil works program in an atmosphere of public understanding, trust, and mutual cooperation and in a manner responsive to the public interest. To this end, a public hearing may be helpful and will be held in connection with an application for a permit involving a discharge or deposit in navigable waters or tributaries thereof whenever, in the opinion of the District Engineer such a hearing is advisable. In considering whether or not a public hearing is advisable, consideration will be given to the degree of interest by the public in the permit application, requests by responsible Federal, State, or local authorities, including Members of the Congress, that a hearing be held, and the likelihood that information will be presented at the hearing that will be of assistance in determining whether the permit applied for should be issued. In this connection, a public hearing will not generally be held if there has been a prior hearing (local, State, or Federal) addressing the proposed discharge unless it clearly appears likely that the holding of a new hearing may result in the presentation of significant new information concerning the impact of the proposed discharge or deposit. The need for a hearing will be reported to the Division Engineer and his concurrence obtained. In certain circumstances a public hearing may be mandatory (see subparagraph (4) of this paragraph).

(2) The success of a public hearing depends upon the degree to which all interests are aware of the hearing and understand the issues involved. The following steps will be taken for each hearing:

(i) A public notice will be prepared and issued in clear, concise, objective style, stating the purpose of the hearing; details of time and place; description of the application involved; and identification of the proposed discharge or deposit. Care will be exercised to avoid creating any impression that the Corps is an advocate or adversary in the matter.

(ii) The Public Notice will be issued sufficiently in advance of the hearing, generally not less than 30 days, to allow time for interested persons to appear for the hearing. It will be distributed to addresses on compiled lists and will include all known parties directly affected, all governmental entities concerned, all general public news media within the geographical area, appropriate specialized news media for reaching interested groups and organizations, and directly to the principal officers of such groups and organizations, including national offices of nationwide organization.

(iii) As appropriate, supplementary informational matter, fact sheets, or more detailed news releases, will be distributed to the general or specialized news media, or other groups and interests involved.

(iv) Notification will be given to interested members of the Congress and Governors of the States involved.

(3) The hearing will be conducted in a manner that permits open and full advocacy on all sides of any issues involved. A transcript of the hearing, together with copies of relevant documents, will become a part of the permit application assembly.

(4) In addition to the hearings which may be required by the policy specified in the preceding paragraphs, hearings are required under sections 21(b)(2) and 21(b)(4) of the Water Quality Improvement Act of 1970 when (i) a State, other than the State of origin, objects to the issuance of a permit and requests a hearing on its objections or (ii) the Secretary of the Army proposes to suspend a Department of the Army permit upon notification by the certifying authority that applicable water quality standards will be violated. When a hearing is required pursuant to the Water Quality Improvement Act of 1970 the matter should be reported to the Chief of Engineers, Attention: ENGGC–K. The Chief of Engineers will provide additional guidance with respect to holding of such hearings.

(5) In any case, when a District Engineer intends to schedule a public hearing he shall notify the Regional Representative of EPA not less than 10 days in advance of the deadline for filing of comments by the Regional Representative upon the permit application so that the Regional Representative will be able to defer such comments until after the public hearing has been held.

(l) *Environmental impact statement.* (1) Section 102(2)(c) of the National Environmental Policy Act of 1969 requires all Federal agencies, with respect to major Federal actions significantly affecting the quality of the human environment, to submit to the Council on Environmental Quality a detailed statement on

(i) The environmental impact of the proposed action,

(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) Alternatives to the proposed action,

(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

(2) Section 102(2)(c) statements will not be required in permit cases where it is likely that the proposed discharge will not have any significant environmental impact. Moreover, the Council on Environmental Quality has advised that such statements will not be required where the only impact of proposed discharge or deposit will be on water quality and related considerations. However, such statements may be required in connection with proposed discharges or deposits which may have a substantial environmental impact unrelated to water quality. In cases in which a section 102 (2)(c) statement may be required, the report of the District Engineer accompanying any case referred to higher authority (see paragraphs (d)(3) and (l)(7) of this section) will contain a separate section addressing the environmental impact of the proposed discharge or deposit, if any, and, if issuance of a permit is recommended, a draft section 102(2)(c) statement should be attached.

(m) *Publicity.* District Engineers will, in consultation with Regional Representatives, establish and maintain a program to assure that potential applicants for permits are informed of the requirements of this regulation and of the steps required to obtain permits for discharges into navigable waters. Whenever the District Engineer becomes aware of plans being developed by either private or public entities who will require permits in order to implement the plans a letter will be sent to the potential permittee advising him of statutory requirements and the need to apply for a permit under this regulation.

(n) *Duration of permits issued.* (1) In cases where appropriate certification has been received indicating that there is reasonable assurance that the proposed discharge or deposit will not violate applicable water quality standards and issuance is otherwise proper, no permit may be issued which authorizes a discharge or deposit for more than 5 years without providing for revalidation of such permit.

(2) In cases involving a facility, the construction of which was lawfully undertaken prior to April 3, 1970, and it appears after evaluation that issuance of a permit would be appropriate although certification has not been provided, a permit may be issued provided (i) that the permit will expire on April 2, 1973, and (ii) that it is conditioned so as to require annual demonstration by the permittee that the discharge or deposit is in compliance with State water quality implementation schedules.

(o) *Permit conditions.* (1) Until a standard permit form is developed, every permit shall, as a minimum:

(i) Require compliance with applicable water quality standards, including implementing schedules adopted in connection with such standards;

(ii) Include provisions incorporating into the permit changes in water quality standards subsequent to the date of the permit, and requiring compliance with such changed standards;

(iii) Provide for possible suspension or revocation in the event that the permittee breaches any condition of the permit;

(iv) Provide for possible suspension, modification or revocation if subsequent to the issuance of a permit it is discovered that the discharge or deposit contains hazardous materials which may pose a danger to health or safety.

(2) Permits shall also be subject to conditions as determined by EPA to be necessary for purposes of insuring compliance with water quality standards or the purposes of the Federal Water Pollution Control Act. Such conditions may include but are not necessarily limited to:

(i) Requirements for periodic demonstrations of compliance with water quality criteria, established implementation schedules or prescribed levels of treatment;

(ii) Site and sampling accessibility;

(iii) Requirements for periodic reports as to the nature and quantity of discharges or deposits.

[From the Federal Register, Jan. 21, 1971]

PERMITS FOR DISCHARGES OR DEPOSITS INTO NAVIGABLE WATERS—PROPOSED POLICY, PRACTICE AND PROCEDURE

(Department of Defense, Department of the Army, Corps of Engineers [33 CFR Part 209])

Proposed regulations prescribing the policy, practice and procedure to be followed by all Corps of Engineers' installations and activities in connection with applications for permits authorizing discharges or deposits into navigable waters of the United States or into any tributary from which discharged matter shall float or be washed into a navigable water (33 U.S.C. 407) were published in the FEDERAL REGISTER of December 31, 1970 (35 F.R. 20005). Public comment on the proposed regulations was invited within a period of 45 days from December 31, 1970.

The proposed Memorandum of Understanding set forth below relates to the proposed regulations and to Executive Order 11574 which deals with the administration of the Refuse Act Permit Program (35 F.R. 19627). If executed, the proposed Memorandum of Understanding will be an additional paragraph to the proposed regulations 33 CFR 209.131(p).

Comments, suggestions, or objections to the proposed Memorandum of Understanding should be submitted in writing to the Office of Chief of Engineers, Washington, D.C. 20314, Attention: ENGCWON, within 30 days of publication of this notice in the FEDERAL REGISTER.

Dated: January 18, 1971.

F. P. KOISCH,
Major General, U.S. Army,
Director of Civil Works.

§ 209.131 Permits for discharges or deposits into navigable waters.

* * * * *

(p) *Memorandum of understanding between the Administrator of the Environmental Protection Agency and the Secretary of the Army.*

PERMIT PROGRAM

MEMORANDUM OF UNDERSTANDING BETWEEN THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE SECRETARY OF THE ARMY

In recognition of the responsibilities of the Secretary of the Army under section 13 of the Act of March 3, 1899, "the Refuse Act," (33 U.S.C. 407) relating to the control of discharges and deposits in navigable waters of the United States and tributaries thereof, and the interrelationship of those responsibilities with the responsibilities of the Administrator of the Environmental Protection Agency under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq.) in recognition of our joint responsibilities under Executive Order No. 11574 (dated December 23, 1970) we hereby adopt the folowing policies and procedures:

POLICIES

1. It is our policy that there shall be full coordination and cooperation between our respective organizations on the above responsibilities at all organizational levels, and it is our view that maximum efforts in the discharge of those responsibilities, including the resolution of differing views, must be undertaken at the earliest practicable time and at the field organizational unit most directly concerned. Accordingly, District Engineers of the U.S. Army Corps of Engineers (hereinafter "the Corps") shall coordinate the review of applications for permits under the Refuse Act for discharges or deposits into navigable waters of the United States or tributaries thereof with Regional Representatives designated by the Environmental Protection Agency (hereinafter "EPA").

2. EPA shall advise the Corps with respect to the meaning, content and application of water quality standards applicable to a proposed discharge or deposit and as to the impact which the proposed discharge or deposit may or is likely to have on water quality standards and related water quality considerations. The Corps shall accept such advice on matters pertaining to water quality standards and related water quality considerations as conclusive and no permit shall be issued which is inconsistent with any finding, determination or interpretation of a Regional Representative with respect to such standards or considerations.

3. In acting upon applications for permits, the Corps shall be responsible for considering the impact which the proposed discharge or deposit may have on navigation and anchorage and, in cases where the Fish and Wildlife Coordination Act is applicable, on fish and wildlife resources.

PROCEDURES

1. Applicants for permits pursuant to section 13 of the Rivers and Harbors Act of 1899 shall be required by District Engineers to supply data identified by EPA and the Department of the Army. A uniform format for supplying such data will be developed by the Corps and EPA.

2. District Engineers shall provide Regional Representatives of EPA at the earliest practicable time with copies of an applicant's request for a permit, request for certification from a State pursuant to section 21(b) of the Federal Water Pollution Control Act, other requests for State approval, and State or interstate agency certifications or other actions relating to such permit applications.

3. In reaching determinations as to compliance with water quality standards, including determinations and interpretations arising from its review of State or interstate agency water quality certifications under section 21(b) of the Federal Water Pollution Control Act, Regional Representatives of EPA will determine and advise District Engineers with respect to the following:

(i) The meaning and content of water quality standards, which under the provisions of the Federal Water Pollution Control Act, were established "to protect the public health and welfare, enhance the quality of water and serve the purposes" of that Act, with consideration of "their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses."

(ii) The application of water quality standards to the proposed discharge or deposit, including the impact of the proposed discharge or deposit on such water quality standards and related water quality considerations;

(iii) The permit conditions required to comply with water quality standards;

(iv) The permit conditions required to carry out the purposes of the Federal Water Pollution Control Act where no water quality standards are applicable;

(v) The interstate water quality effect of the proposed discharge or deposit.

4. Regional Representatives of EPA shall provide advice as to the effect, if any, of the proposed discharge or deposit on the quality of the waters of any other State not later than 30 days after receipt of copies of both the completed permit application and the State certification or other State action from the District Engineer. The other information and advice identified above shall be provided not later than 45 days after such receipt. If, however, additional time is required to respond, the Regional Representative shall so notify the District Engineer and shall advise him as to the additional period of time which will be required to provide a report. In cases where a Regional Representative does not provide such information and advice to a District Engineer within the time periods specified herein (including any extensions of time requested by the Regional Representative), the advice furnished by a State or other certifying authority shall be considered by the District Engineer to be the advice of the Regional Representative.

5. In any case, where a District Engineer of the Corps has received notice that a State or other certifying agency has denied a certification prescribed by section 21(b) of the Federal Water Pollution Control Act, or, except as provided in a subsection G below, where a Regional Representative has recommended that a permit be denied because its issuance would be inconsistent with his determination or interpretation with respect to applicable water quality standards and related water quality considerations the District Engineer, within 30 days of receipt of such notice, shall deny the permit and provide notice of such denial to the Regional Representative of EPA.

6. In the absence of any objection by the Regional Representative to the issuance of a permit for a proposed discharge or deposit, District Engineers may take action denying a permit only if:

(i) anchorage and navigation will be impaired; or

(ii) the discharge for which a permit is sought impounds, diverts, deepens the channel, or otherwise controls or similarly modifies the stream or body of water into which the discharge is made, and, after the consultations required by the Fish and Wildlife Coordination Act, the District Engineer determines that the proposed discharge or deposit will have significant adverse impact on fish or wildlife resources.

7. In any case where the District Engineer believes that following the advice of the Regional Representative with respect to the issuance or denial of a permit would not be consistent with the purposes of the Refuse Act permit program, he shall, within 10 days of receiving such advice, forward the matter through channels to the Secretary of the Army to provide the Secretary with the opportunity to consult with the Administrator. Such consultation shall take place within 30 days of the date on which the Secretary receives the file from the District Engineer. Following such consultation, the Secretary shall accept the findings, determinations, and conclusions of the Administrator as to water quality standards and related water quality considerations and shall promptly forward the case to the District Engineer with instructions as to its disposition.

8. No permit will be issued in cases where the applicant, pursuant to 21(b)(1) of the Water Quality Improvement Act of 1970, is required to obtain a State or other appropriate certification that the discharge or deposit would not violate applicable water quality standards and such certification was denied.

REGULATIONS

The Department of the Army shall consult with EPA before promulgating regulations pursuant to the Refuse Act which relate to the subject of this memorandum of understanding. In no case will such regulations be issued unless at least 30 days prior to issuance, they shall have been forwarded to EPA for comment or unless prior to that time the Department of the Army and EPA have reached agreement. EPA shall consult with the Department of the Army prior to the issuance of guidelines, policies or procedures relating to the subject of this memorandum of understanding. In no event shall such guidelines, policies or procedures be issued prior to 30 days from the date they were forwarded to the Department of the Army for comment unless prior to that time the Department of the Army and EPA have reached agreement. In no event shall regulations, guidelines, policies or procedures which are inconsistent with the provisions of this memorandum of understanding be published or issued.

PERMIT CONDITIONS

1. Every permit issued shall:

(i) Require compliance with applicable water quality standards, including implementing schedules adopted in connection with such standards;

(ii) Include provisions incorporating into the permit changes in water quality standards subsequent to the date of the permit, and requiring compliance with such changed standards;

(iii) Provide for possible suspension or revocation in the event that the permittee breaches any condition of the permit.

(iv) Provide for possible suspension,

modification or revocation if, subsequent to the issuance of a permit, it is discovered that the discharge or deposit contains hazardous materials which may pose a danger to health or safety.

2. Permits shall also be subject to conditions, as determined by EPA, to be necessary for purposes of insuring compliance with water quality standards or the purposes of the Federal Water Pollution Control Act. Such conditions may include, but are not necessarily limited to:

(i) Requirements for periodic demonstrations of compliance with water quality criteria, established implementation schedules, or prescribed levels of treatment;

(ii) Site and sampling accessibility;

(iii) Requirements for periodic reports as to the nature and quantity of discharges or deposits.

3. Regional Representatives of EPA may also provide District Engineers with advice as to the duration for which permits should be issued. Relevant considerations shall include the nature of the discharge, basin plans, and changing treatment technology.

TECHNICAL DATA

EPA, in consultation with the Department of the Army, shall develop and make available analytical procedures, methods and criteria to be employed in identifying the meaning and application of water quality standards and pursuant to which EPA's determinations and interpretation respecting water quality standards will be made.

AMENDMENT

If, in the course of operations within this memorandum of understanding, either party finds its terms in need of modification, he may notify the other of the nature of the desired changes. In that event, the parties shall within 90 days negotiate such amendments as are considered mutually desirable.

(Secretary of the Army)

(Administrator of the Environmental Protection Agency)

DRAFT GUIDELINES FOR LITIGATION UNDER THE REFUSE ACT PERMIT PROGRAM

In view of (a) the signing by the President of the attached Executive Order 11574 which establishes a permit program under the Refuse Act to regulate the discharges of pollutants and other refuse matter into the navigable waters of the United States or their tributaries, (b) the signing of the attached Memorandum of Understanding between the Corps of Engineers and the Environmental Protection Agency with respect to the enforcement of the Refuse Act, and (c) the consolidation within the Land and Natural Resources Division pursuant to the attached order of criminal as well as civil responsibility for the administration of the Refuse Act, the Guidelines for Litigation Under the Refuse Act transmitted to the United States Attorneys on June 13, 1970 are hereby withdrawn and the following procedures are to be adhered to by all United States Attorneys:

1. United States Attorneys are authorized to initiate any action, either civil or criminal, referred to them for litigation by the District Engineer of the Corps of Engineers or the Regional Representative of the Environmental Protection Agency, pursuant to their Memorandum of Understanding.

2. All allegations of violations of the Refuse Act submitted to the United States Attorneys from sources other than the District Engineer of the Corps of Engineers or the Regional Representative of the Environmental Protection Agency shall be referred to the District Engineer of the Corps of Engineers and the Regional Representative of the Environmental Protection Agency for investigation and recommendations, in accordance with the procedures set forth in the Memorandum of Understanding between the Corps of Engineers and the Environmental Protection Agency, as to whether or not legal action should be initiated.

3. The provisions of paragraphs 1 and 2 above shall not apply to actions under the Refuse Act against vessels, which actions shall continue to be handled in the manner set forth in Departmental Memorandums 374 and 376, dated June 3, 1964.

4. All requests for instructions and guidance relating to the enforcement of the Refuse Act, whether of a civil or criminal nature, or whether involving vessels or shore-based sources of pollution, shall be referred to the Pollution Control Section of the Land and Natural Resources Division, Washington, D.C. 20530 (202–739–2707).

5. No criminal or civil action under the Refuse Act shall be dismissed or settled without the prior authorization of the Assistant Attorney General for the Land and Natural Resources Division.

6. Prior to the filing of civil complaints, criminal informations and the return of indictments in Refuse Act cases, the United States Attorney shall telephonically contact the Land and Natural Resources Division (202–739–2800).

7. The United States Attorneys shall supply the Pollution Control Section, Land and Natural Resources Division, copies of all pleadings, motions, memorandums, etc., filed in Refuse Act cases.

8. United States Attorneys shall, no later than the fifth day of each month, submit to the Pollution Control Section a report of Refuse Act activities for the previous month on a form to be provided by the Land and Natural Resources Division.

MEMORANDUM OF UNDERSTANDING BETWEEN THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE SECRETARY OF THE ARMY

The Administrator of the Environmental Protection Agency and the Secretary of the Army, recognizing the interrelationship between section 13 of the Act of March 3, 1899 (33 U.S.C. 407) (the "Refuse Act") administered by the Department of the Army and the statutory responsibilities of the Environmental Protection Agency under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 *et seq.*), and further recognizing their responsibilities under the National Policy Act of 1969 (42 U.S.C. 4321–4347), and their responsibilities under Executive Order 11574 dated December 23, 1970, which directs the Federal Government to implement a permit program under the Refuse Act to control the discharge of pollutants into navigable waters and their tributaries, have entered into this memorandum of understanding to delineate more fully the respective responsibilities of said Agency and Department for water pollution abatement and control, and to establish policies and procedures for interagency cooperation in the enforcement of the Refuse Act.

I. RESPONSIBILITY FOR WATER POLLUTION ABATEMENT AND CONTROL

A. At the Federal level, the Environmental Protection Agency has primary responsibility, pursuant to the Federal Water Pollution Control Act, for the abatement and control of pollution of interstate and navigable waters of the United States.

B. The Department of the Army has primary responsibility for the enforcement of the Refuse Act.

C. Under Executive Order 11574, the Secretary is directed to develop regulations and procedures in consultation with the Administrator governing the issuance of discharge permits under the Refuse Act, and, in connection with the grant, denial, conditioning, revocation and suspension of such permits, to adopt determinations and interpretations of the Administrator respecting water quality standards and compliance therewith.

D. The Department of the Army and the Environmental Protection Agency have in cooperation undertaken to implement the permit authority of the Refuse Act pursuant to a Memorandum of Understanding dated January , the terms of which are incorporated herein and made a part hereof.

II. THE REFUSE ACT

A. The Refuse Act, 33 U.S.C. 407, provides that:

It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of the navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: *Provided,* That nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the United States officers supervising such improvement or public work: *And provided further,* That the Secretary of the Army whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful. Mar. 3, 1899, c. 425.

B. Criminal sanctions may be imposed against persons or corporations found guilty of violating provisions of the Refuse Act. As prescribed in 33 U.S.C. 411, the penalty upon conviction is . . . "a fine not exceeding $2,500 nor less than $500, or imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or both such fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction."

C. Civil proceedings may also be instituted to enjoin conduct which would violate provisions of the Refuse Act. *United States* v. *Republic Steel Corp.*, 362 U.S. 482 (1960) and *Wyandotte Transportation Co.* v. *United States*, 389 U.S. 191 (1967).

III. POLICY WITH RESPECT TO ENFORCEMENT OF REFUSE ACT

The policy of the Environmental Protection Agency and the Department of the Army is to utilize the Refuse Act and the authorities contained therein to the fullest extent possible and in a manner consistent with the provisions of the Federal Water Pollution Control Act to ensure compliance with applicable water quality standards and otherwise to carry out the purposes of the Federal Water Pollution Control Act. Persons wishing to discharge into or place deposits in navigable waters or tributaries thereof will be required to apply for and obtain a permit from the Department of the Army. Per-

sons without an appropriate permit who discharge into navigable waters or tributaries thereof or who discharge into such waters in violation of the terms of a valid permit may be subjected to legal proceedings under the Refuse Act.

IV. INTERAGENCY COOPERATION

A. In recognition of the expertise of the Army and the Corps of Engineers in matters pertaining to the navigability of a waterway, it is agreed that the Department of the Army, acting through the Corps of Engineers, has primary Federal responsibility for identifying and investigating violations of the Refuse Act which have an adverse impact on the navigable capacity of a waterway. Whenever a District Engineer has reason to believe that a discharge has or may have occurred having an adverse impact on water quality, he shall so notify the appropriate Regional Representative of the Environmental Protection Agency and shall provide him with all information, including, if the discharger is the holder of a Refuse Act permit, a copy of said permit and all of the conditions attached thereto. The said Regional Representative shall make such investigation as he deems appropriate and shall advise the District Engineer in a timely manner whether in his opinion a violation of the Refuse Act having an adverse impact on water quality has or may have occurred. If the Regional Representative is of such opinion, he shall make a report to the District Engineer as to the following:

1. The nature and seriousness of the apparent violation (including, if the discharger is the holder of a Refuse Act permit, information as to the conditions of such permit which appear to have been violated).

2. The nature and seriousness of the impact on water quality.

3. The measures, if any, taken or being taken by the discharger to comply with applicable water quality standards or the conditions of a Refuse Act permit, if any.

4. The existence and adequacy of State or local pollution abatement proceedings.

5. The applicability of the Federal Water Pollution Control Act, whether any administrative or judicial proceedings are being taken or contemplated thereunder, and the status of any such proceedings.

6. His recommendations as to the action, if any, which should be taken under the Refuse Act and his reasons therefore. If the discharger is the holder of a Refuse Act permit, such recommended action may include in addition to or in lieu of prosecution under the Refuse Act for one or more of the remedies available thereunder, the suspension or revocation of the permit. A recommendation to suspend shall include a recommendation as to the period and conditions of the suspension.

B. In recognition of the expertise of the Environmental Protection Agency in matters pertaining to water quality, it is agreed that said agency has primary Federal responsibility for identifying and investigating cases involving discharges into interstate or navigable waters which have an adverse impact on water quality. District Engineers shall assist Regional Representatives of the Environmental Protection Agency by providing them with such information as may become available concerning known or suspected discharges which may adversely affect water quality (including, if the discharger is the holder of a Refuse Act permit, a copy of said permit and all of the conditions attached thereto), and, to the extent of available resources, shall assist in the conduct of investigations concerning such discharges. Regional Representatives shall be responsible for notifying District Engineers of known or suspected violations of the Refuse Act and for providing District Engineers with timely reports of investigations conducted. Whenever in the opinion of the Regional Representative a violation of the Refuse Act having an adverse impact on water quality has or may have occurred, such report shall include all of the same information and recommendations called for in subparagraphs 1 through 6 of Paragraph A with respect to reports submitted under that paragraph.

C. In connection with any remedial action recommended or taken pursuant to this memorandum of understanding, due regard shall be given to the provisions of section 21(b) of the Federal Water Pollution Control Act, and in particular the provisions of sections 21(b)(4), 21(b)(5) and 21(b)(9)(B) relating to the revocation on suspension of permits.

D. In any case in which a Refuse Act permit is suspended, if the District Engineer has reason to believe that the permittee has or may have violated the terms of the suspension, he shall notify the appropriate Regional Representatives of the Environmental Protection Agency and provide him with all available information. The Regional Representative shall make such investigation as he deems appropriate and shall make a report to the District Engineer, such report to include, to the extent relevant, the information and recommendations called for in subparagraphs 1 through 6 of paragraph A with respect to reports submitted under that paragraph.

E. If upon review of all reports and information prepared pursuant to this memorandum of understanding and any other available evidence, it is determined by the District Engineer of the Corps or the Regional Representative of EPA to request legal proceedings under the Refuse Act, such District Engineer or Regional Representative shall, in consultation with each other, forward all available evidence and information, including recommendations, if any, of both the Regional Representative and the District Engineer, to the appropriate United States Attorney. A copy of any covering letter forwarding information and evidence to the appropriate United States Attorney should be mailed, together with a brief summary of the factual background of the case, to the Assistant Attorney General for Lands and Natural Resources, Department of Justice, Washington, D.C. 20530.

WILLIAM D. RUCKELSHAUS,
Administrator,
Environmental Protection Agency.
STANLEY R. RESOR,
Secretary of the Army.

Dated: January 12, 1971.

STATE CERTIFICATION OF ACTIVITIES REQUIRING A FEDERAL LICENSE OR PERMIT—NOTICE OF PROPOSED RULE MAKING

(Environmental Protection Agency [18 CFR Part 615])

Notice is hereby given that the Administrator, Environmental Protection Agency, pursuant to the authority in sec. 103, 84 Stat. 91, proposes the addition of a new Part 615 to Title 18, Chapter V of the Code of the Federal Regulations, as set forth below.

The Federal Water Pollution Control Act vests certain authorities in the Secretary of the Interior. On December 2, 1970, those authorities were transferred to the Administrator, Environmental Protection Agency, by Reorganization Plan No. 3 of 1970.

Section 21(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1171(b), requires any applicant for a Federal license or permit to conduct any activity, including, but not limited to, the construction or operation of facilities which may result in any discharge into the navigable waters of the United States, to obtain a certification from the State in which the discharge originates, or, if appropriate, from the interstate agency having jurisdiction or, under certain circumstances, from the Administrator, that there is reasonable assurance that such activity will be conducted in a manner which will not violate applicable water quality standards. In any case where actual construction of a facility from which a discharge is made has been lawfully commenced before April 3, 1970, no certification is required for the issuance of a license or permit after April 3, 1970, except that any such license or permit shall terminate on April 3, 1973, unless a certification is submitted to the licensing or permitting agency prior to April 3, 1973. Where any license or permit application was pending on April 3, 1970, and such license or permit is issued before April 3, 1971, no certification is required for one year following the issuance of such license or permit, except that any such license or permit shall terminate at the end of one year unless a certification is submitted to the licensing or permitting agency prior to that time.

The proposed Subpart A would provide definitions of general applicability for the regulations and would provide for the uniform content and form of certification.

The proposed Subpart B would establish procedures for determination by the Administrator whether a discharge which will result from an activity for which certification is required by Section 21(b) may affect the quality of the waters of any State other than the State in which the discharge originates.

The proposed Subpart C would establish procedures for obtaining certifications from the Administrator in certain cases where standards have been promulgated by the Administrator, and in cases where no State or interstate agency has authority to certify that there is reasonable assurance that an activity requiring a Federal license or permit and which may result in a discharge into navigable waters will be conducted in a manner which will not violate applicable water quality standards.

The proposed Subpart D would provide for consultation between the Administrator and Federal licensing and permitting agencies with respect to the meaning, content and application of water quality standards and related matters.

A form suitable for use by certifying agencies is being prepared and will be published in the *Federal Register* in the immediate future.

Interested persons may submit, in triplicate, written data or arguments in regard to the proposed regulations to the Administrator, Environmental Protection Agency, Washington, D.C. 20460. All relevant material received not later than 30 days after publication of this notice will be considered.

Authority: The provisions contained in this Part 615 are issued pursuant to section 21(b) and (c) of the Federal Water Pollution Control Act (P.L. 91-224), Section 103, 84 Stat. 91; 33 U.S.C.A. 1171(b) (1970); and Reorganization Plan No. 3 of 1970.

SUBPART A—GENERAL

615.1 *Definitions*

As used in this Part, the following terms shall have the meanings indicated below:

(a) "License or permit" means any license or permit, including leases for livestock grazing or oil, mineral, or other exploitation, granted by an agency of the Federal government to conduct any activity which may result in any discharge into the navigable waters of the United States.

(b) "Licensing or permitting agency" means any agency of the Federal government to which application is made for a license or permit.

(c) "Administrator" means the Administrator, Environmental Protection Agency.

(d) "Certifying agency" means the person or agency designated by the Governor of a State to certify compliance with applicable water quality standards. If an interstate agency has sole authority to so certify, such

interstate agency shall be the certifying agency. Where a Governor's designee and an interstate agency have concurrent authority to certify, the Governor's designee shall be the certifying agency. Where water quality standards have been promulgated by the Administrator pursuant to section 10(c)(2) of the Act, or where no State or interstate agency has authority to certify, the Administrator shall be the certifying agency.

(e) "Act" means the Federal Water Pollution Control Act, 33 U.S.C.A. 1151 *et seq.*

(f) "Discharge" means any direct or indirect addition of matter to receiving waters.

(g) "Water quality standards" means standards established pursuant to section 10(c) of the Act, and State-adopted water quality standards for navigable waters which are not interstate waters.

615.2 *Form of Certification*

A certification made by a certifying agency shall include the following:

(a) the name and address of the applicant;

(b) A description of the facility or activity, and of any discharge into navigable waters which may result from the conduct of any activity including, but not limited to, the construction or operation of the facility, including the biological, chemical, thermal and other characteristics of the discharge, and the location or locations at which such discharge may enter navigable waters;

(c) A description of the function and operation of equipment or facilities to treat wastes or other effluents which may be discharged, including specification of the degree of treatment expected to be attained;

(d) The date or dates on which the activity will begin and end, if known, and the date or dates on which the discharge will take place;

(e) A statement of the probable effects of the discharge on the quality of the receiving water;

(f) An identification of applicable water quality standards;

(g) A statement of the probable effects of the discharge on the quality of waters of a State other than the State in which the discharge occurs or will occur;

(h) A statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;

(i) A statement of the conditions applicable to the discharge, reliance upon which provided the basis for the statement described in subsection (h); and

(j) Such other information as the certifying agency may determine is appropriate.

SUBPART B—DETERMINATION OF EFFECT ON OTHER STATES

615.11 *Notification*

Upon receipt of an application for a license or permit and a certification, the licensing or permitting agency shall immediately notify the Administrator of such application and certification.

615.12 *Copies of documents*

Immediately after certification has been granted, an applicant shall provide the Administrator with three copies of (i) the application for a license or permit, (ii) the application for certification, and (iii) any certification received or notification that certification has been waived. The applicant may provide the Administrator with copies of the applications as soon as the applications are made to the relevant State, interstate, or Federal agencies.

615.13. *Review by Administrator and notification*

The Administrator shall review the applications and certification, provided in accordance with section 615.12, and if the Administrator determines there is reason to believe that a discharge may affect the quality of the waters of any State or States other than the State in which the discharge occurs, the Administrator shall, no later than 30 days of the date of notice of application and certification from the licensing or permitting agency provided in section 615.11, so notify each affected State, the licensing or permitting agency, and the applicant.

615.14. *Forwarding to affected State*

The Administrator shall forward to each affected State a copy of the material provided in accordance with section 615.12.

615.15 *Hearing on objection of affected State*

When a licensing or permitting agency holds a public hearing on the objection of an affected State, such objection shall be forwarded to the Administrator by the licensing or permitting agency, and the Administrator shall at such hearing submit his evaluation with respect to such objection and his recommendations as to whether and under what conditions the license or permit should be issued.

615. 16 *Waiver*

If the certification requirement with respect to an application for a license or permit is waived due to the failure or refusal of a State or interstate agency to act on a request for certification within a reasonable time as determined by the licensing or permitting agency (which period shall not exceed one year) after receipt of such request, the Administrator shall consider such waiver as a substitute for a certification and, as appropriate, shall conduct the review, provide the notices, and perform the other functions identified in sections 615.13, 615.14, and 615.15. The notices required by section 615.13 shall be provided not later than 30 days after the date on which the waiver becomes effective.

SUBPART C—CERTIFICATION BY THE ADMINISTRATOR

615.21 *When Administrator certifies*

Certification by the Administrator that the discharge resulting from an activity requiring a license or permit will not violate applicable water quality standards will be required where:

(a) Standards have been promulgated by the Administrator pursuant to section 10(c)(2) of the Act; or

(b) Water quality standards have been established, but no State or interstate agency has authority to give such a certification.

615.22 *Applications*

An applicant for certification from the Administrator shall submit to the Administrator a complete description of the discharge involved in the activity for which certification is sought, with a request for certification signed by the applicant. Such description shall include the following:

(a) The name and address of the applicant;

(b) A description of the facility or activity, and of any discharge into navigable waters which may result from the conduct of any activity including, but not limited to, the construction or operation of the facility, including the biological, chemical, thermal and other characteristics of the discharge, and the location or locations at which such discharge may enter navigable waters;

(c) A description of the function and operation of equipment or facilities to treat wastes or other effluents which may be discharged, including specification of the degree of treatment expected to be attained;

(d) The date or dates on which the activity will begin and end, if known, and the date or dates on which the discharge will take place;

(e) A statement of the probable effects of the discharge on the quality of the receiving water;

(f) An identification of applicable water quality standards, together with a statement as to whether, in the applicant's opinion, discharge resulting from the activity will or will not violate applicable water quality standards; and

(g) A statement of the probable effects of the discharge on the quality of waters of a State other than the State in which the discharge occurs or will occur.

615.23 *Notice and hearing*

The Administrator will provide public notice of each request for certification by publication in the *Federal Register*, and may provide such notice in a newspaper of general circulation in the area in which the activity is proposed to be conducted and by such other means as the Administrator deems appropriate. Interested parties shall be provided an opportunity to comment on such request as the Administrator deems appropriate. All interested and affected parties will be given reasonable opportunity to present evidence and testimony at a public hearing on the question whether to grant or deny certification if the Administrator determines that such a hearing is necessary or appropriate.

615.24 *Certification*

If, after considering the complete description, the record of a hearing, if any, held pursuant to section 615.23, and such other information and data as the Administrator deems relevant, the Administrator determines that there is reasonable assurance that the proposed activity will not result in a violation of applicable water quality standards, he shall so certify. If the Administrator determines that no water quality standards are applicable to the waters which might be affected by the proposed activity, he shall so notify the applicant and the licensing or permitting agency in writing and shall provide the licensing or permitting agency with advice, suggestions and recommendations with respect to conditions to be incorporated in any license or permit to achieve compliance with the purposes of this Act. In such case, no certification shall be required.

615.25 *Adoption of new water quality standards*

(a) In any case where:

(i) a license or permit was issued without certification due to the absence of applicable water quality standards; and

(ii) water quality standards applicable to the waters into which the licensed or permitted activity may discharge are subsequently established; and

(iii) the Administrator is the certifying agency because:

(*1*) no State or interstate agency has authority to certify; or

(*2*) such new standards were promulgated by the Administrator pursuant to section 10(c)(2) of the Act; and

(iv) the Administrator determines that such uncertified activity is violating water quality standards;

then the Administrator shall notify the licensee or permittee of such violation, including his recommendations as to actions necessary for compliance. If the licensee or permittee fails within six months of the date of such notice to take action which in the opinion of the Administrator will result in compliance with applicable water quality standards, the Administrator shall notify the licensing or permitting agency that the licensee or permittee has failed, after reasonable notice, to comply with such standards and that suspension of the applicable license or permit is required by section 21(b)(9)(B) of the Act.

(b) Where a license or permit is suspended pursuant to subsection (a) of this section, and where the licensee or permittee subsequently takes action which in the Administrator's opinion will result in compliance with applicable water quality standards, the Administrator shall then notify the licensing or permitting agency that there is reasonable assurance that the licensed or permitted activity will comply with applicable water quality standards.

615.26 *Inspection of facility or activity before operation*

Where any facility or activity has received certification pursuant to section 615.24 in connection with the issuance of a license or permit for construction, and where such facility or activity is not required to obtain an operating license or permit, the Administrator or his representative, prior to the initial operation of such facility or activity, shall be afforded the opportunity to inspect such facility or activity for the purpose of determining if the manner in which such facility or activity will be operated or conducted will violate applicable water quality standards.

615.27 *Notification to licensing or permitting agency*

If the Administrator, after an inspection pursuant to section 615.26, determines that operation of the proposed facility or activity will violate applicable water quality standards, he shall so notify the applicant and the licensing or permitting agency, including his recommendations as to remedial measures necessary to bring the operation of the proposed facility into compliance with such standards.

615.28 *Termination of suspension*

Where a licensing or permitting agency, following a public hearing, suspends a license or permit after receiving the Administrator's notice and recommendation pursuant to section 615.27 of this Subpart, the applicant may submit evidence to the Administrator that the facility or activity or the operation or conduct thereof has been modified so as not to violate water quality standards. If the Administrator determines that water quality standards will not be violated, he shall so notify the licensing or permitting agency.

SUBPART D—CONSULTATIONS

615.30 *Review and advice*

The Administrator may and upon request shall provide licensing and permitting agencies with determinations, definitions and interpretations with respect to the meaning and content of water quality standards where they have been federally approved under Section 10 of the Act, and findings with respect to the application of all applicable water quality standards in particular cases and in specific circumstances relative to an activity for which a license or permit is sought. The Administrator shall also advise licensing and permitting agencies as to the status of compliance by dischargers with the conditions and requirements of applicable water quality standards. In cases where an activity for which a license or permit is sought will affect water quality, but for which there are no applicable water quality standards, the Administrator shall advise licensing or permitting agencies with respect to conditions of such license or permit to achieve compliance with the purposes of the Act.

THE REFUSE ACT PERMIT PROGRAM

(Remarks by Timothy Atkeson, general counsel, Council on Environmental Quality to ALI–ABA Seminar on Environmental Law, Smithsonian Institution, January 28, 1971)

My assignment today is to lay out, in under half an hour, what you need to know about Federal water quality legislation. I think it is only fair to warn you that like some of the professors we all knew at college, I will begin at the beginning—with the Refuse Act of 1899, and that I have sufficient to say about my first topic that you may have to dig some of the other statutes and regulations out of the books on your own. But there are some mitigating considerations: First, the Refuse Act permit program launched by the President just before Christmas takes you through the full range of existing Federal statutory authority (Section 13 of the Act of March 3, 1899, better known as the Refuse Act (33 U.S.C. 407); the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 *et seq.*); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661–666c); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347). Secondly, the Refuse Act permit program highlights the critical issues of standards and enforcement in our Federal water quality program. And thirdly, the Refuse Act permit program was drawn up with acute awareness that additional statutory authority would be needed to have a satisfactory water quality program and my comments today will indicate some areas where we think Congressional action this Session is necessary.

First, let us go back to the Refuse Act itself—that sparkling innovation in antipollution legislation of the McKinley Administration. From a technical point of view, to those of you interested in legislative drafting, I suggest you compare what was done here in one paragraph with the results of hundreds of paragraphs, sections and titles in more modern water quality legislation. In essence the Refuse Act says:

"a. It shall not be lawful to throw, discharge, or deposit . . . any refuse matter of any kind or description whatever (other than liquid sewage from municipal sources) into any navigable water of the U.S. or any tributary of any navigable water of the U.S.

"b. The Secretary of the Army, acting on the advice of the Corps of Engineers, may issue permits for such deposit, within limits to be defined and under conditions to be prescribed by him."

To this statutory language you must add the gloss of Supreme Court decisions in the 1960's (*U.S.* v. *Standard Oil Co.*, 384 U.S. 224 (1966); *U.S.* v. *Republic Steel Co.*, 362 U.S. 482 (1960)) to the effect that the Act serves anti-water pollution as well as navigation protection goals. The Refuse Act is backed up by misdemeanor fines of $500–$2,500 or imprisonment or from 30 days to a year and, most significantly, by the equity power of a Federal court to enjoin violation of the Act.

Next, to understand the Refuse Act permit program, you have to turn to Section 21(b) of the Federal Water Pollution Control Act, a provision inserted in the Act last April. This, in essence, says that any applicant for a Federal permit to conduct an activity resulting in a discharge into the navigable waters of the United States shall provide the permit issuing agency with a certificate from the appropriate State or interstate water pollution control agency that there is reasonable assurance, as determined by the State or interstate agency, that such activity will be conducted in a manner which will not violate applicable water quality standards. I should emphasize that Section 21(b) by its own terms applies to Federal permits both for existing facilities and for new facilities so that it could be applied to set water quality standards for a Refuse Act permit program covering both new and existing facilities.

Thirdly, you have to realize what a wide group of agencies play roles with respect to the Refuse Act and the Federal Water Pollution Control Act. The *Army Corps of Engineers* has, of course, the statutory responsibility for the Refuse Act, and the *Department of Justice* is assigned responsibility to conduct the necessary legal proceedings to enforce the Refuse Act. As a footnote, I will remind the few of you who don't know it already that the Refuse Act contains a provision to pay informers half of the fine imposed for information leading to conviction. It has been asserted that this entitles an informer to bring a *qui tam* action on his own for a Refuse Act violation if the U.S. District Attorney does not, but, to date, no court to my knowledge has espoused this view.

The *Environmental Protection Agency* has responsibility for administration of the Federal Water Pollution Control Act and Sections 21(b) and (c) assign EPA (which succeeded to the responsibilities of the Secretary of the Interior in this area by virtue of Reorganization Plan No. 3 of 1970) a number of specific responsibilities with respect to the water quality aspects of Federal permits: (a) under Section 21(b)(2) EPA must determine whether a discharge has a multistate effect in which case the other states affected are given a chance to intervene and protect their interests, (b) under Section 21(b)(9) (A) there is a provision that where the permit covers activity for which there are no applicable water quality standards, the Federal permit issuing authority shall impose a requirement that the permittee shall comply with the purposes of the Act. Under this, until there is a more satisfactory statutory provision, we plan that EPA will issue guidelines to Federal permit granting authorities including the Corps to regulate discharges of hazardous substances such as mercury where the applicable water quality standards do not address the problem, and (c) under Section 21(c) EPA is given the responsibility to provide relevant information to the permit granting agency as to what the applicable water quality standards are and to comment on methods to comply with these standards. We contemplate that, pursuant to this responsibility, EPA will issue guidelines on how it construes the requirement in the present standard for treatment of industrial discharges in most States that they receive "secondary or equivalent treatment." In actual practice this will require the evolution of guidelines for the standard of the treatment of effluents from some 22 different industries.

You will note that I have spelled out primary roles for three Federal agencies with respect to the Refuse Act permit program—the Corps of Engineers, the Department of Justice and the Environmental Protection Agency. (I will not attempt to enumerate the State or interstate agencies which must review the applications and which play an important role.) There are three other Federal agencies to note: first, there is the *Department of the Interior* which must be consulted in certain circumstances under the Fish and Wildlife Coordination Act and which will share this responsibility for certain fishing grounds with the *Department of Commerce* to which the Bureau of Commercial Fisheries was transferred at the formation of the National Oceanic and Atmospheric Administration in Reorganization Plan No. 4 of last year. Finally there is our own *Council on Environmental Quality* in the Executive Office of the President. Under Executive Order 11514 implementing the National Environmental Policy Act the Council has been assigned to coordinate Federal programs related to environmental quality. You will note that in Executive Order 11574 the Council is assigned responsibility to coordinate the regulations, policies and procedures of Federal agencies with respect to the Refuse Act permit program.

At this point I have introduced you to the principal players with respect to the Refuse Act permit program in the Executive Branch. You are undoubtedly aware that at various points during last year, Interior, Justice and the Corps all attempted on their own to bring some coherent relationship between the Refuse Act and our Federal water quality legislation. Interior announced that it would seek prosecution under the Refuse Act of types of discharge not adequately covered by our Federal-State standards—notably thermal pollution from power plants and mercury discharges. Justice issued guidelines to U.S. district attorneys on when to bring Refuse Act prosecutions that were intended to draw a logical distinction between use of the summary processes of the Refuse Act and the more protracted enforcement procedures of the Federal Water Pollution Control legislation. The result of these guidelines was instead a mistaken public impression that Justice was attempting to curb local initia-

tive in use of the Act. Thereafter, without stating what relationship such a program would have to applicable water quality standards, Army announced in the late summer that it would initiate a Refuse Act permit program.

In the light of these events the need for a coordinated program was clear to all. We in the Council on Environmental Quality were concerned that such a program when launched should be legally well grounded, should relate the Refuse Act permits with water quality standards in the manner contemplated in Section 21(b) of the Federal Water Pollution Control Act, and should make the greatest impact on our national water quality problems consonant with the nature of the limits on Federal authority in the relevant legislation and the problem of applying the program to over 40,000 existing discharges without creating crippling uncertainty and delays. As the fall progressed and both Houses of Congress failed to take any action on the Administration's proposals to fill out the gaps in Federal authority (principally by an extension of jurisdiction over the waters for which the Federal Government must approve water quality standards from just interstate waters to all navigable waters and a new requirement that these Federally approved standards extend to effluent standards), we realized that any action on the Refuse Act permit program would have to start with admittedly deficient Federal water quality legislation. We also concluded that even without these improvements there were very considerable benefits that could be achieved by drawing together all our existing water quality authorities into one coherent permit program giving strong coordination from the President through the Council and starting the program before another year of debate slipped past us. The culmination of this effort was Executive Order 11574 signed by the President December 23—and published in the *Federal Register* Christmas Day—which initiated the Refuse Act permit program.

Like many Christmas presents, this program met at the outset with a mixed reception.

My purpose in spelling out all the background is to give you a basis for making your own evaluation.

There are four or five reasons for some questions at this early point about the program:

1. There has been a slowness and uncertainty up till now in the enforcement procedures under the Federal Water Pollution Control legislation which has driven some to the view that we might as well forget its concepts of Federal and State responsibility and applicable water quality standards in favor of a Russian roulette enforcement of the Refuse Act to attack any discharge into navigable waters regardless of the Refuse Act's lack of water quality standards. It became harder to hold this latter view after passage of Section 21(b) of the Federal Water Pollution Control Act last April and with the formation of EPA, but I still occasionally encounter in its pristine form the theory that in 1899 Congress granted the Army Corps of Engineers full power to regulate the water quality aspects of any and all discharges into the navigable waters of the United States on any basis the Corps believes reasonable and that Congress' efforts to develop satisfactory water quality legislation since then have been a misplaced and irrelevant effort.

2. There has been an impression, perhaps because the flourish of a criminal statute by a district attorney always makes headlines, that sporadic prosecutions under the Refuse Act are a more potent enforcement tool than any systematic plan to use Federal permits to bring all discharges up to the mark. Somehow the mental picture of Federal agents by the dark of the moon and with muffled oars scooping up evidence from a single outfall will always catch the imagination more than thousands of data cards containing this and much more information supplied at regular intervals under a systematic, nationwide permit program. But I suggest that if we are serious about attaining clean water on some timetable we think less of enforcement as a "Fox strikes again" or "High Noon" game and more as a systematic, nationwide requirement that every discharger bring to the water quality authorities the full facts on his discharge, with provision for public availability of this information, and with regular monitoring and strong penalties and personal responsibility for false statements. (Just to give you a comparison in penalties, the Refuse Act provides for up to a year in jail and a fine of up to $2,500. In contrast the penalty in Section 18 U.S.C. Sec. 1001 for false statements under the (Refuse Act) permit program will be up to five years in jail and $10,000 in fines.)

3. Another reason for questions about the Refuse Act permit program has been that not all the components are yet visible to the public. In addition to the Executive Order and draft Corps of Engineers regulations (which have been put out for 45 days public comment in the expectation they can be improved), there will be EPA regulations covering EPA's role with respect to State certifications under Section 21 (b) and (c) of the Federal Water Pollution Control Act, EPA's guidelines regulating hazardous discharges which are not covered by applicable water quality standards and EPA guidelines interpreting for some 22 industries what is meant by "secondary or equivalent treatment," revised Justice Department guidelines on Refuse Act prosecutions by U.S. district attorneys, implementing agreements between the Corps of Engineers and EPA, and further clarification of the relationship of the Fish and Wildlife Coordination Act to the program. In short, the Executive Order which triggered this program is like the tip of the iceberg—not a bad image when we are discussing a water quality program. I am confident we will see the full outlines of the program within a few more weeks. Only then will it be fair to assess the program's potential impact.

4. A fourth reason for some of the questions about the program is that it involves the necessity of coordinated action by more than one agency. Some critics say "unleash the Corps of Engineers without interference by other agencies"; while others say nothing should be done until it can all be done by EPA. Our decision was to initiate the program now, using statutory authorities as we find them, drawing on the very substantial resources of the Corps but at the same time making clear within the Federal Government that only one agency decides water quality questions and that is EPA. We fully expect that in time arrangements for the administration of the program can be improved and the Council plans to make recommendations to the President in this respect. But we felt, particularly after last year's experience on our water quality legislative proposals that it would be wise to start the program now with admittedly imperfect legislative provisions, rather than wait another year for tidier legislative authority.

5. A fifth ground for questions in forming a judgment about the Refuse Act permit program is lack of a full picture as to how it fits into our legislative proposals. This uestion will also be resolved within a few weeks. At this time I think it is clear that we will again be supporting an expansion of Federal supervision of standards to all navigable waters and provision for limitations on effluents. With this authority the present distinctions that have to be made about State certifications for discharges into interstate as opposed to intrastate waters will disappear and the way will be clear for an overall upgrading of Federal-State water quality standards.

One label for this program that does not fit is that the permits will be "licenses to pollute." The permits will not be granted unless the discharge satisfies applicable water quality standards. Where intrastate waters are involved EPA can fill in gaps in the standards (as for hazardous discharges) and check the facts; where interstate waters are involved EPA can do this and issue guidelines on what constitutes secondary treatment of industrial wastes. No permit will be issued for any discharge that would not meet these standards. I do not believe that there has been decision by any court under the Refuse Act to date requiring a higher standard.

Despite the fact that the Refuse Act specifically provides that "it shall be the duty of district attorneys of the United States to vigorously prosecute all offenders" there have also been comments in the press that the permit program would put a damper on effective enforcement, the comments of the President, Mr. Train and Mr. Ruckelshaus to the contrary notwithstanding. Here I think the wisest course may be to let events speak for themselves, but just in case you have not pieced these events together, let me sum up the evidence:

Item. At the time the program was announced the President said that the phased implementation of the program would not be a moratorium on Refuse Act prosecutions and as a matter of fact new prosecutions under the Act have been going forward since the program was announced.

Item. At the time the program was announced Mr. Ruckelshaus indicated that a permit application filed by a suspected polluter would be given accelerated review and if denied would be followed by prompt referral to the district attorney for prosecution.

Item. The Justice Department Division assigned responsibility for the Refuse Act has just created a centralized pollution control operation with authority to give prompt policy guidance on both the civil and criminal aspects of Refuse Act enforcement.

Item. The Justice Department has under consideration revised guidelines for district attorneys which I believe you will find very flexible, very practical and quite satisfactory. Do not prejudge the Justice Department on this score before these guidelines are available.

To my friends here who have been working over the Corps of Engineers regulations with quite thoughtful and legitimate questions such as:

"Why don't you apply the 'public interest test' of the dredge and fill permit regulations to each and every one of these Refuse Act permit applications?"

"Why haven't you assured that regardless of what elements to protect fish and wildlife are contained in the applicable water quality standards considered by the State water quality authority and EPA that the Department of the Interior gets a full second review of the same elements under the Fish and Wildlife Coordination Act?", and

"Why, even though the State water quality authority has held hearings can't we have another round of Corps hearings on the same subject?"

I can only answer that we are trying to devise a program that has both a sound legal base and is workable in the context of decision on 40,000 plus existing discharges covering the entire range of U.S. industry and hundreds of millions of dollars in investment. We need a program that will produce water quality results—not fascinating legal arguments.

I find that, as I expected, my layout of Federal water quality legislation to you has not gotten much beyond legislation passed in 1899. But I am sure you will find the subject lively enough to do some digging

on your own and I anticipate that this year will be one of considerable progress in this area. You yourself, in the light of the changes in prospect, should become an expert in short order.

Let me sum up for you five reasons why Chairman Train said on December 23, that the Refuse Act permit program is the single most important step to improve water quality that this country has yet taken:

1. For the first time we will have a mechanism to make all discharges into all navigable waters of the country come in to report the content of these discharges and make periodic follow up reports.

2. We plan to back up this new policy of requiring what has been called "Truth in Pollution" by public availability of this information, spot checks and enforcement of the substantial penalties for giving false statements to the Federal Government.

3. We have in the Refuse Act permit program and Section 21(b) of the Federal Water Pollution Control Act a mechanism for determining the standards applicable to all discharges into all our navigable waters. This is an action forcing process that will bring every State face to face with the hard question of what effluent rules to apply. Where the discharge is subject to a Federal-State standard, EPA will issue guidelines on these effluent standards.

4. All applications for the State certifications required must be accompanied by public notice and there will be public hearings on specific applications where appropriate.

5. This program will give EPA and the State water quality authorities great leverage to develop consistent water quality policies applicable to all Federal permits—including those of AEC for nuclear plants, FPC for hydro facilities and the Corps of Engineers for dredge and fill permits.

I greatly appreciate this chance to tell you something about the Council's thinking on this very important subject.

ANSWERS OF THE ENVIRONMENTAL PROTECTION AGENCY REGARDING THE REFUSE ACT PERMIT PROGRAM

(Filed with the Senate Subcommitte on Air and Water Pollution during an oversight hearing on the water pollution control program, February 4, 1971)

Q. Describe the Refuse Act permit program.

A. The President directed by Executive Order 11574 dated December 23, 1970 that a permit program be implemented pursuant to the Refuse Act of 1899, under which dischargers into navigable waters are obliged to obtain permits from the Army Corps of Engineers. At the present time there are in excess of 40,000 industrial dischargers into navigable waters to which the permit requirement applies. This permit authority of the Refuse Act has not been used to date. It does not apply to waste discharges from municipal sewers. Court decisions have made it clear that the authority of the Refuse Act may be addressed to environmental considerations as well as to navigational hazards.

The Corps will now require permits of all dischargers into navigable waters to which the permit requirement applies. The Corps will require as a condition of each permit that the discharger comply with applicable water quality standards. The State in which the discharge occurs will have an opportunity to certify whether the activity for which a permit is sought will result in a discharge in violation of applicable water quality standards. The Corps will also receive advice from EPA concerning applicable water quality standards in connection with permit applications. The advice of EPA in these cases will consist of an identification, clarification, complete definition, and interpretation of applicable water quality standards as necessary. Pursuant to Executive Order 11574, the Corps is obliged to accept the advice of EPA concerning water quality standards as conclusive. On the basis of State certification and EPA advice, the Corps will either issue, deny, or appropriately condition the permit. The Corps will be precluded from issuing a permit where State certification is denied.

Through this mechanism we will be able in a systematic and effective manner to implement water quality standards applicable to individual dischargers. The obligations and requirements necessary to meet such standards will be clearly spelled out in the permit conditions for the benefit of Federal and State regulatory authorities and for the dischargers. This Federal permit program gives us the opportunity to identify the specific obligations of a discharger and the remedial measures which must be taken before further pollution occurs. We need not wait until the damage is done and then commence abatement actions on an ad hoc basis. We believe the permit program will overcome the problem of uncertainty with respect to the specific requirements of water quality standards as applied to particular industrial dischargers.

Q. What is the relationship of the Permit Program to section 21(b) of the Federal Water Pollution Control Act?

A. Under the provisions of section 21(b) the State certifies whether or not an activity for which a Federal license or permit is sought will result in a discharge which violates applicable water quality standards. In the context of the Permit Program the State will provide its assessment of the water quality standards and its determination with respect to an individual discharger seeking a Corps permit. At this stage, maximum effort will be made by EPA field personnel to work with and to advise the State agency with respect to the Federal assessment and interpretation of applicable water standards.

Pursuant to the Permit Program EPA will have an opportunity to advise the Corps with respect to the meaning and content of water quality standards as they apply to an individual permit applicant. As we view the two authorities, the provisions of section 21(b) provide the necessary link between the State and the Corps and the Permit Program provides the necessary link between the Corps and EPA. We see these two authorities as consistent and mutually supportive. We believe that, taken together, the provisions of section 21(b) and the Permit Program will give us the maximum assurance that water quality standards will be met by individual dischargers.

Q. What will be the role of EPA in the Permit Program?

A. EPA has the responsibility, in the case of each application for a permit, to advise the Corps with respect to the meaning and content of water quality standards as applied to the particular discharger seeking the permit. The Permit Program will also serve as an additional mechanism enabling EPA to work with State Water Pollution Control Agencies. Regional and field people of EPA will be instructed to work closely with the States and to advise State Water Pollution Control Agencies as to EPA interpretations and determinations with respect to water quality standards in individual cases. EPA will not issue or deny or suspend or revoke permits. However, we will advise the Corps with respect to water quality standards.

Q. Will EPA's role in the Permit Program be the same in the case of both interstate and intrastate waters?

A. EPA's role will be broader with respect to standards for interstate waters, which are developed by States subject to Federal approval, than with respect to standards for intrastate waters, which under present law are entirely the responsibility of the States. In the case of standards for interstate waters, EPA will be providing the Corps with both factual determinations and interpretations of their meaning, content and application. In the case of standards for intrastate waters, EPA will provide factual determinations but will defer to the States with respect to interpretations of their meaning and application in particular circumstances.

Q. What will be the role of the Corps in the Permit Program?

A. The Corps has the statutory responsibility under the Refuse Act to issue or deny permits. In exercising that authority under the Permit Program, the Corps will address such factors other than water quality as may be lawfully considered under that Act. The Corps will have responsibility for the general administration of the Permit Program. But on all questions relating to water quality standards, it is clear that the determinations, findings and interpretations of EPA will be conclusive.

Q. What will the role of the States be in the permit program?

A. The States will have the central, most important role in the permit program. They will provide the Corps with their assessment of the water quality standards applicable to particular dischargers and their assessment of necessary conditions to be included in any permit so as to insure compliance with such standards. If a State denies the issuance of a certification to the effect that a particular discharge will be in compliance with water quality standards, the Corps will be precluded by section 21(b) of the Federal Water Pollution Control Act from issuing a permit with respect to such discharge.

Q. Will EPA have authority to override State certifications?

A. It is not EPA's purpose here to override State certifications. The primary function of EPA in this program is to advise the Corps of Engineers with respect to the meaning, content and application of water quality standards, in the interests of ensuring that permits issued by the Corps will contain whatever conditions may be necessary to achieve compliance with those standards. In most cases we expect our advice in this regard to be a "completion" of the State certification—a "fleshing out"—a more precise and complete definition of water quality standards components. In those cases where EPA's interpretation of Federal-State standards differs from the State's view, it is EPA's view which the Corps must accept. We believe these cases will be the small exception.

Q. Isn't this permit program inconsistent with the idea of EPA—a centralization of environmental authority in one agency?

A. No. We do not believe that the permit program is inconsistent with the idea of EPA. Federal responsibility for environmental concerns, and for water quality standards compliance in particular, is not fragmented by the permit program. EPA will make the conclusive Federal decisions with respect to water quality standards. This responsibility is not to be shared with or delegated to the Corps or any other Federal agency.

Q. Doesn't the permit program weaken the effective use of the Refuse Act as an abatement tool?

A. No. The permit program does not weaken the abatement authority under the Refuse Act. Since all permits will contain as essential conditions the necessity of complying with applicable water quality standards and requirements as to hazardous substances, a violation of such standards will constitute a violation of the permit and subject the permittee to liabilities under the Refuse Act in addition to enforcement proceedings under the Federal Water Pollution Control Act.

Q. Describe the function of the so-called "base level of treatment" criteria.

A. This term refers to criteria which EPA is developing with respect to 22 major categories of industrial dischargers. Basically it is both a determination of the state-of-the-art of water pollution control in those

industries, and an interpretation of what constitutes the equivalent of secondary treatment for industry. On the basis of this information, we will be able to specify requirements for meeting water quality standards, taking into account existing pollution control technology, with much more clarity and precision than we have been able to do to date.

Q. On what basis will a permit be issued prior to development of the base level of treatment criteria?

A. Prior to the development of the base level of treatment criteria we will use all of the information we presently have with respect to industrial pollution and remedial measures. However, where our information lacks precision, we will recommend to the Corps that permits be issued for limited durations and with general requirements subject to later definition and clarification.

Q. How many personnel will be required at the State and Federal level to implement the Permit Program?

A. The Corps of Engineers has already received authorization for 200 positions for the Permit Program for FY 1971 and will request an additional 200 positions for FY 1972. This compares with EPA's plans for 432 positions to be staffed by December 31, 1971.

Our staffing needs are predicated on (1) the anticipated receipt of approximately 41,000 permit applications by June 30, 1971; (2) the need to develop effluent criteria for the 22 major types of industry; (3) the requirement for extensive coordination with the Corps and the States.

Staffing requirements at the State level will vary considerably depending on the concentrations of water users in each State, the nature of the discharges, and the effectiveness of any programs already established in the States. Although we know the personnel needs will be large, we cannot at this time estimate the State staffing requirements. As regulations and agreements are being finalized, we will be meeting with the States and at that time the figures should become more evident.

Q. Has provision been made for recruiting the necessary personnel to carry out the program?

A. We have prepared and announced tentative personnel needs for each region, which includes a variety of professional, technical, administrative, and clerical positions. Efforts are being initiated now to publicize the possible vacancies and to tentatively commit the required personnel. Although we anticipate that in some areas of the country there will be difficulty in obtaining a sufficient number of highly qualified professionals, we believe that there will be sufficient technical, administrative, and clerical support personnel available internally or through outside sources to meet our needs. Naturally, the more lead time we have to staff the program prior to its actual initiation, the better equipped we will be to process the application workload.

The PRESIDING OFFICER. Is there further morning business?

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the period for the transaction of routine morning business has expired.

AMENDMENT OF RULE XXII OF THE STANDING RULES OF THE SENATE

The Senate resumed the consideration of the motion to proceed to the consideration of the resolution (S. Res. 9) amending rule XXII of the Standing Rules of the Senate with respect to the limitation of debate.

The PRESIDING OFFICER (Mr. BENTSEN). The question is on agreeing to the motion of the Senator from Alabama (Mr. ALLEN) to postpone until the next legislative day the consideration of the motion of the Senator from Kansas (Mr. PEARSON) that the Senate proceed to the consideration of Senate Resolution 9, a resolution to amend rule XXII of the Standing Rules of the Senate with respect to the limitation of debate.

Mr. ALLEN. 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. BYRD of West Virginia. 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. ALLEN. Mr. President, I ask unanimous consent that I may speak at this time for not to exceed 2 hours, notwithstanding the provisions of rule XIX.

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

Mr. ALLEN. Mr. President, I made the request that I be allowed to speak notwithstanding the provisions of rule XIX because, as to the pending motion, I have already addressed the Senate on two different occasions, and Senate rule XIX, of course, provides, among many other things, that no Senator may speak more than two times on any question pending before the Senate.

The resolution under consideration, Senate Resolution 9, was submitted by the distinguished Senator from Idaho (Mr. CHURCH) and the distinguished Senator from Kansas (Mr. PEARSON), I believe, on Monday, January 25. It did not go to the Rules Committee for consideration. Notice was given that the resolution seeking to amend the rule would be brought up for consideration on the next legislative day. So on the next legislative day, which was Tuesday, January 26, the distinguished Senator from Kansas made a motion to proceed to the consideration of Senate Resolution 9. It was at that time that the junior Senator from Alabama moved that consideration of the motion be postponed to the next legislative day.

Mr. President, each day that the Senate has concluded its business since that time, instead of adjourning to the next legislative day, it has merely recessed, so that even though we would come back into the Senate on a new and different calendar day, we would still be in the same legislative day. So the motion that the junior Senator from Alabama has made, that consideration of the motion of the Senator from Kansas be postponed to the next legislative day, is still under discussion here in the Senate.

Now it is the hope of the junior Senator from Alabama that this matter will be brought to a head within the next few days and that the Senate will vote down this resolution which seeks to amend the Senate rules and that the Senate, in order to vote it down, would vote not to apply cloture.

The junior Senator from Alabama was informed earlier today by some of the proponents of this resolution providing for the rules change that, on tomorrow, a cloture motion will be filed by 16 Senators under rule XXII.

Under such rule, the Senate, on the next calendar day, but one, which in effect would mean to skip one day and then on the next day, would vote on the cloture motion seeking to cut off discussion of this proposed rules change.

Now, Mr. President, what is the issue at stake?

Two years ago, the Senate was faced with this very same question, whether the Senate would amend rule XXII providing that, in order to cut off debate in the Senate, two-thirds of the Senators present must vote to cut off debate, or to apply cloture as it is called.

The resolution seeks to reduce that number to three-fifths of Senators present and voting. Two years ago, when this matter came before the Senate, and when the cloture motion was up for a vote in the Senate, I believe the vote was 51 to 47 to apply cloture.

The then Vice President of the United States and Presiding Officer of the Senate, Mr. HUMPHREY, ruled—as he had given fair warning to the Senate that he was going to—that cloture had been applied, under the fiction that at the start of a new Congress a majority of the Senate could cut off debate in the Senate notwithstanding rule XXII requiring a two-thirds majority to apply cloture.

His reasoning was based on the fact that section 5 of article I of the Constitution provides that both Houses of Congress shall have the right to make their own rules. But it does not say that a majority could cut off debate under the existing rules of the Senate, because the Senate in compliance with that section of the Constitution has promulgated its rules, and one of those rules is rule XXXII which provides that the rules of the Senate shall carry over to succeeding Congresses and shall continue in force until amended by the Senate in accordance with the rules.

The rules can be amended if a majority of Senators vote on the specific issue of amending the rules in favor of amending them. But that question must first come before the Senate for consideration. Rule XXII provides that debate on a debatable question—and certainly amendment of the Senate rules or a motion to proceed to consideration of the rules is a debatable question—can be cut off only by application of cloture which requires a two-thirds vote of the Senate.

Now, Mr. President, the distinguished former Senator from Florida, Mr. Holland, who served with great distinction in this body for 24½ years, and who was succeeded in that office by the present distinguished junior Senator from Flor-

ida (Mr. CHILES), who is now presiding over this body, was in charge of those Senators who were fighting for the right of extended debate in the Senate. He immediately took an appeal from the ruling of the Chair.

If the Chair had been sustained on his ruling that a majority of Senators, but fewer than two-thirds of Senators, by their votes on the cloture motion had applied cloture, then cloture would have been applied and the Senate would then have proceeded to a consideration of the rules change and, having received 51 votes to apply cloture, it would have been a foregone conclusion, of course, that they would have proceeded to adopt the rules change.

Thus, former Senator Holland of Florida, taking an appeal from the ruling of the Chair 2 years ago, set up what this Senator feels was the most important vote taken in the Senate in the 91st Congress, and that was on the question of whether that ruling of the Vice President would be allowed to stand.

To the great credit of the Senate, it overturned and overruled that ruling of the Vice President by a vote, I believe, of 53 to 45. Such Senators as the distinguished senior Senator from Maine (Mrs. SMITH), who had voted to apply cloture, voted to overrule the Chair, and the distinguished majority leader of the U.S. Senate, the senior Senator from Montana (Mr. MANSFIELD), voted to overrule the titular head of his party on this matter. Because, Mr. President, the rules provide for a vote by two-thirds of the Senators present and voting to cut off debate. No fewer number must be allowed to cut off debate.

Mr. President, we now come again to this important question, and it has not lessened in importance in the last 2 years. It is still the most important single question that is going to come before the Senate in the 92d Congress.

Are we going to continue to have extended debate in the U.S. Senate, or are we going to continue to erode this great bulwark of strength in our democracy by agreeing now to a three-fifths vote for cloture, going on then to majority cloture, which would certainly be the next step, if not in this Congress, then in the next Congress.

Already the distinguished senior Senator from New York (Mr. JAVITS) has filed, for possible calling up later, an amendment to the present resolution which would provide for cloture by what we might call a constitutional majority, which would be 51 percent of the elected membership of the U.S. Senate, which of course would be 51. So, if we open up the floodgates, Mr. President, by adopting a three-fifths cloture rule, we will have a constitutional majority cloture come next, followed by a majority of those present, which inevitably would come next.

Mr. President, what is the value of extended debate in the U.S. Senate? Why have extended debate? It is the factor that makes the U.S. Senate the greatest deliberative body in the world. It is the factor which sets this body apart from all other legislative bodies.

Why have extended debate? It is the protection of a minority in this body and a minority in this country from the tyranny of a ruthless majority.

Mr. President, the right to extended debate is what sets this body apart from all other parliamentary bodies in the world. It affords protection to a minority in this body and throughout the country from the tyranny of a ruthless majority.

Yes, Mr. President, the right to extended debate in the U.S. Senate is the only hope that we have of keeping big government from getting bigger, of slowing down the mushrooming Federal bureaucracy, of continuing to maintain the separation of powers we have in our Government today.

Mr. President, just the other day the distinguished Senator from North Carolina (Mr. ERVIN) was giving an example of a constructive result from the operation of the present two-thirds cloture requirement.

He was pointing out that had we not had the requirement that it takes two-thirds of our Senators to cut off debate, we would have as Chief Justice of the United States Mr. Abe Fortas. We would also have on the Supreme Court Judge Thornberry. Extended debate was had on the matter of whether the nominations made by the President of these two individuals should be brought up for consideration by the Senate, and they were unable to get a two-thirds majority in the Senate to cut off debate.

Mr. President, what constructive pieces of legislation have been defeated in the Senate because of the exercise by Senators of the right of extended debate? Much has been said about the logjam which existed in the Senate in the closing days of the 91st Congress. That was not wholly the fault of extended debate. One factor that contributed to that logjam was other rules of the Senate, or at least silence by other rules of the Senate that permit the adding of nongermane amendments to legislation under consideration by the Senate.

We all recall, I am sure, that the social security bill providing for an increase in social security benefits was before the Senate and in the Committee on Finance. It was thought to be a good plan to add the import quota legislation, the so-called trade bill, and later on the floor of the Senate to add the Presiden's Family Plan. There was an attempt to add these two controversial measures to a bill about which there was little controversy and to let them ride piggy-back to enactment by the Senate.

It was not until those two pieces of controversial legislation were taken from the social security bill that the social security bill finally passed the Senate, and it passed so late in the session that very properly the leaders in the House refused to consider it.

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

Mr. ALLEN. I yield for a question.

Mr. EASTLAND. The distinguished Senator is making a very able address. Is the Senator familiar with the rule change in the House of Commons where the previous question could be raised, and that it could be moved—and that is really what is at stake here—in order to destroy Ireland?

Mr. ALLEN. That is the understanding of the junior Senator from Alabama. I understand that did take place.

Mr. EASTLAND. Its object was to destroy the Irish people.

Did the Senator know that in the Roman Senate the right to shut off debate was enacted there in order to cause a dictatorship and destroy the Roman Republic?

Mr. ALLEN. Yes, the use of extended debate does go back to Roman days. Julius Caesar used it, and after he came to power he objected to its use by the younger Cato, I believe.

Mr. EASTLAND. Which caused the dictatorships in ancient Rome.

Mr. ALLEN. That is correct.

Mr. EASTLAND. That could be the result here.

Mr. ALLEN. Very definitely. That is what we must fight against. I thank the distinguished Senator from Mississippi for calling to my attention these lessons from history.

The distinguished Senator from North Carolina on yesterday quoted from a famous writer in saying that history teaches everything, even the future, and certainly it does. These looks backward at history show not only what happened in the past, but they cast a shadow and show very clearly what can happen in the future.

A little later on, if I can do so in the time that has been allotted me, I wish to go back to the early days of our Republic and to call attention to some of the efforts in the Senate to change the rule that we have in the Senate providing for extended debate.

At one time, and I believe in the very first Congress, we did have a rule providing for calling for the previous question. But that motion was debatable, so they would get back to the very proposition we have now of extended debate. That was taken from the rules, I believe, around 1806. Since then we have never had the previous question in the Senate.

Extended debate allows the country to catch up with what is going on in Congress. We all know that under the rules of the other body, with limitation on debate in most cases of 5 minutes, with the right of the rules committee to report gag rules they vote on themselves, that they cannot even offer amendments to a bill. With big government, with pressure groups ramming legislation through the other body, it is in the interest of the country and it is in the interest of the people of the United States to slow that legislation down and take a look at it.

The real aim of those who propose 60-percent cloture is to end up with majority cloture. I do not say that with respect to the two Senators who introduced this resolution. I am saying that Senators generally who favor the 60 percent rule also want to go from there to majority cloture. So if we are going to turn matters over to 51 Senators who might happen to be a majority for a day, then we are going to pass some very unwise legislation and have a Senate which is completely dominated by the executive department.

I am not talking about the present

administration or the last administration; I am talking about the Government of the United States. You are going to have the Senate dominated by the executive department.

Mr. President, we have seen the power of the Senate eroded. We have seen the executive department gain tremendously in strength, and the legislative department has seen its power eroded continually. That is what we are headed for with the liberalization of the cloture rule.

Among some people—not among Senators, but among some people—there is a misconception about what rule XXII does. Many people think that rule XXII gives the right of unlimited debate. Nothing could be farther from the truth. What rule XXII does is to limit debate. It provides a method for limiting debate.

We have not always had rule XXII as it exists today. I think we have had a rule XXII possibly for 100 years but not as written today, and it did not come into existence with this provision for limiting debate until 1917. It came about as a result of extended debate here in the U.S. Senate during the weeks immediately prior to the entry of the United States into World War I. Prior to 1917 there was no limitation on debate in the U.S. Senate.

So, Mr. President, at that time, as the war clouds were gathering in this country and as the Germans had set up their submarine blockade of American shipping, President Wilson proposed the arming of the merchant marine, and he proposed a bill to Congress to authorize the arming of the merchant marine.

This is just an example of the great change that has taken place in the relative power of the legislative department and the executive department since the year 1917. I think we would all concede that under similar circumstances today, if we were a neutral nation and a conflict were taking place on another continent and one of the countries participating in that conflict set up a submarine blockade of our shipping, and the President felt that it would be good to arm our merchant shipping so that they could protect themselves from that submarine blockade, today, or next year, or 5 years ago—I do not speak with respect to any one President, but under conditions today—the President would arm our merchant shipping without consulting anybody. He would just issue orders before breakfast some morning, without giving it a second thought, and we would feel that he had acted wisely.

But the President of the United States in 1917 felt that it was necessary to send to Congress a bill providing for arming that merchant shipping. Well, the bill sailed through the House, of course, came to the Senate, and a group of Senators, I think some 12 in number, or possibly one or two fewer, or one or two more felt—and I am not impugning their patriotism or being critical of them—that this legislation would carry the United States into World War I, and they fought here on this very floor where we are standing today. They were able to kill this much-needed piece of legislation.

We all recall that President Wilson referred to those men who had participated in that extended debate and said that—

> A little group of willful men, representing no opinion but their own, had brought the great government of the United States to a standstill.

And he urged his legislative leaders—I believe he called a special session of Congress—to do something about it; and rule XXII, I believe as it exists today, was put into effect at that time.

Since that time there have been amendments. At one time the rule stood that it took a constitutional two-thirds of the Senators to cut off debate and to invoke cloture. That has since been changed. Also at one time, the junior Senator from Alabama understands, the very motion by which we are seeking to postpone to the next legislative day did not come under the application of the cloture petition. The junior Senator from Alabama understands that the cloture proceedings did not apply to such a motion. That has now come under the coverage of rule XXII, providing a method of cutting off debate.

We have had this rule since 1917. It has served the country well. There is no need to amend it. It would not be in the best interest of this country if it were amended.

The charge is made that no other body has this right of extended debate, and that is true. That is the very feature that makes the Senate great. Are we going to rob the Senate of this great tradition, this great factor, this great feature that does contribute to its greatness and to the greatness of the Government of the United States and to the greatness of this country?

Are we going to make the Senate of the United States conform to the procedures of all other bodies? Is that what we are seeking to do? If that is our goal, I certainly hope that efforts to accomplish such a goal are not successful.

The distinguished Senator from North Carolina has prepared and placed on the desks of all Senators, quotations from distinguished students of government, political commentators, having to do with rule XXII of the U.S. Senate. I should like to read at this time several of these, for the information of the Members of the Senate and for the information of the public generally and for all those who might read it in the CONGRESSIONAL RECORD.

Mr. Walter Lippmann, famous political commentator, student of government:

> The filibuster—

That is a word applied to what I have been calling extended debate—

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

Mr. President, this two-thirds vote that is required under rule XXII to cut off debate was not just a figure that the Senators reached out into thin air and came up with. It is a figure that has tradition, it has precedent, it has example in our Constitution for decisions of great importance in this body and in the other body. The submission of a constitutional amendment by this body or by the other body requires a two-thirds vote of the Senators present or of the Representatives present. I believe it takes a two-thirds vote in both bodies to expel a Member. It takes a two-thirds vote to impeach the President or any other Federal officer over whom the House of Representatives and the Senate have jurisdiction.

Mr. President, the other day—and I wish that more Senators had been in the Chamber—the distinguished Senator from North Carolina (Mr. ERVIN) made one of his eloquent and sagacious speeches on this subject, regarding the two-thirds requirement. I have already pointed out that he called attention to the fact that Mr. Justice Abe Fortas and Mr. Justice Thornberry are not now on the Supreme Court bench because we have a two-thirds cloture vote in the U.S. Senate.

He also called attention to, and read—and I am surely glad that he did, because I had the pleasure of listening to him as he read—from President Kennedy's "Profiles in Courage" the story of Senator Edmund Ross, of Kansas. I had read it a number of years ago, when the book first came out, but I was glad to have my recollection refreshed on this occasion.

As Senators know, the House of Representatives had voted impeachment, just following the War Between the States, following the assassination of President Lincoln, following the efforts of the radical Republicans to dominate President Johnson, following the Tenure in Office Act by which Congress very insolently passed a law saying that the President could not discharge anyone that he had appointed to office whose appointment required the confirmation of the Senate without the approval of the Senate. That was an effort to keep Secretary of War Stanton in office when he was disloyal to Johnson.

So these trumped up charges—and I say "trumped up" advisedly—were made against President Johnson. They sailed through the House of Representatives, they came to the Senate, and it looked as though, in the hysteria of the period, they would have no trouble convicting the President here in the Senate.

As we all recall, of course, the House of Representatives votes impeachment charges, which in effect is an indictment. I remember when I was a boy in school, the teacher would ask the question, "Has there ever been a President of the United States impeached?" Well, the student would probably think, "We have not had one impeached, because he was not convicted." But the impeachment takes place when the House votes the impeachment charges. So impeachment is more or less a synonym for indictment; and he was, in effect, indicted by the House of Representatives, impeached by the House and tried by the Senate.

Under that procedure, of course, the Chief Justice of the United States presided over the Senate. Of course they had no Vice President, because Johnson had gone up from the Vice Presidency to the Presidency, and the next man in line was the President pro tempore of the

Senate, and he voted to convict, because he would have taken over the Presidency of the United States had Johnson been convicted.

Senator Edmund Ross of Kansas was a man who disliked President Johnson, a man who was a strong Republican from the most radical of States. I say that not in the sense of a radical today, but that is the way they referred to that branch of the Republican Party at that time, the radical Republicans. He was a radical Republican and his constituency were radical Republicans, and fully expected him to vote to convict President Andrew Johnson of these trumped up charges that the House of Representatives had sent over for trial.

The long and short of it, Mr. President, is that it required, of course, a two-thirds vote—there again, that magic two-thirds—of the Senators present to convict the President. With Ross's vote against conviction, the vote was 35 to 19. Ross had felt that if Congress took over the executive department in this fashion, and made the Executive completely subservient to the legislative branch of the Government, our system of constitutional Government would have been destroyed. So he had the courage of his conviction, and he saved constitutional government in this country. All of the other Senators were committed on the subject except Ross. He never committed himself until he voted, here in this very Chamber, "not guilty."

They had about a 10-day recess after the first vote on one of the specifications, thinking they could bring enough pressure to bear on Ross or on some of the other Senators to get a conviction. But they did not get the required two-thirds vote.

Mr. President, I am hopeful that in this case the proponents of the rules change will not get the required two-thirds vote to choke off debate and that this matter will be laid aside. It has been coming up here in Congress after Congress—this question or a similar question.

I do hope that we can take an early vote on this cloture question. I have been advised by the proponents of the application for cloture that on tomorrow they are going to file a cloture motion which would then call for a cloture vote on Monday. At that time, when an effort is made to choke off this debate on the rules change, we are going to have the most important vote that will be cast in this Chamber in the entire 92d Congress.

I do not believe there have been many changes in this body since the vote of 2 years ago, when I believe there were 51 who voted to choke off debate; and it would take somewhere in the neighborhood, I assume, of 64 to 66—67, if all Senators should be present. Under the present rule, the two-thirds rule, it is possible, if only 51 Senators are present at the time of the vote, to choke off debate in the U.S. Senate with 34 Senators; because 34 Senators voting for cloture and 17 Senators voting against it would result in cloture being invoked. So how much more liberal a rule would one want than to be able, as a minimum and under certain circumstances, to cut off debate with a 34 vote?

This is a most important question. It deserves close and careful consideration.

I had planned to speak for a somewhat longer period, but I notice several other Senators who are anxious to speak on the subject, and I will not invade the time that has been set apart for them.

(The following colloquy, which occurred during the delivery of Mr. ALLEN's address, is printed at this point in the RECORD by unanimous consent:)

Mr. ALLEN. Mr. President, I ask unanimous consent that, without losing my right to the floor and without the resumption of my remarks after the interruption being considered a second speech, I might yield to the distinguished senior Senator from Alaska (Mr. STEVENS) for not to exceed 3 minutes, with the understanding that his remarks appear in the RECORD following the conclusion of my remarks.

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

Mr. STEVENS. Mr. President, today the State of Alaska——

Mr. BYRD of West Virginia. Mr. President, I am most reluctant, first, to interrupt the able Senator and, second, I am equally reluctant, if not more so, to have to object to waiving the Pastore rule.

The subject matter which the Senator is about to discuss is not germane to the pending business. I hope I would have the understanding of the Senator in asking that he not proceed with the matter until the time for the Pastore rule has expired.

The PRESIDING OFFICER. Would the Senator from Alaska yield to the Senator from West Virginia who is making the request?

Mr. STEVENS. Mr. President, in view of the remarks of the able majority whip, I will make my remarks later.

Mr. BYRD of West Virginia. Mr. President, I thank the able Senator from Alaska for his customary courtesy and cooperation.

(This marks the end of the colloquy which, by unanimous consent, was ordered to be printed at this point in the RECORD.)

Mr. EASTLAND. Mr. President, once again the Senate is considering the question of whether to change rule XXII of the Senate, pertaining to the manner by which debate may be brought to a close.

Let me state here, Mr. President, that this is a republic. The Senate is a unique institution, in that we have had the right of unlimited debate. I think it has guarded this Republic, and I think it has preserved what is left of the liberties of the American people.

In fact, I know it is impractical, but I think we should go back to the rule as it prevailed after 1917, when cloture could be invoked on a measure but could not be invoked on a motion to bring a bill up for consideration in the Senate of the United States. I think that rule was wise. I think it protects minority groups in this country.

I recall that at one time, when Vice President Dawes denounced the cloture rule after he was inaugurated in 1924, the American Federation of Labor said it was a great protection for the working man in this country. I believe that it is a protection for justice and righteousness. I think it was a good rule, and I certainly think that we should go back to that rule.

Senate Resolution 9, sponsored by the distinguished senior Senator from Idaho and the distinguished senior Senator from Kansas, provides, in essence, that debate may be closed by a vote of three-fifths of those Senators present and voting

In my judgment it is vital to the survival of the Senate as the greatest deliberative body in the world that we retain rule XXII in its present form. Rule XXII, as it now exists, stipulates that debate may be closed by a vote of two-thirds of the Senators present and voting.

The decision of whether or not to change the rules of the Senate so as to make it easier to throttle debate should be decided on a realistic basis. Realism compels us to admit that the end result of these demands for change in the rules of the Senate would be majority cloture; not cloture imposed by a constitutional majority of 51 Senators, but cloture imposed by a vote of a majority of those present and voting. I do not doubt in the slightest the sincerity of those who assure us that although they favor cloture by three-fifths, they will never support cloture by a simple majority. However, history teaches us that trends and events have a momentum of their own.

If we adopt a rule providing for cloture by a three-fifths' vote, you may be certain that in the near future some bill, measure, or nomination favored by those who control the news media in this country will fail of approval because a majority, but not a three-fifths' majority, of the Senate will have voted to impose cloture and cut off debate. When that happens, we will hear another great hue and cry about "obstructionists," "undemocratic procedures of the Senate," and "filibusters." Then the demand will be broadcast throughout the country by these same news media that more "reforms" must be made immediately in the procedures of the Senate. Of course, these "reforms" will consist of a rule providing for cloture by a majority of those present and voting. We will be given horrible examples of how the undemocratic rule has frustrated the will of the majority of the Senate. Like the Supreme Court, we will become ensnared in the dogma of simple majoritarianism, to which all customs, habits, traditions, and constitutional principles must yield.

This effort to reduce the requirements for imposing cloture from two-thirds to three-fifths reminds me of the 6-year-old boy who wanted to cut his dog's tail off a little at a time so that it would not hurt so much.

We must not overlook the fact that a number of Senators—and I suspect that it is a considerable number—presently support the principle of majority cloture. They realize that the day is not quite yet here that the Senate is willing to completely embrace this idea, so they have agreed to temporarily abandon this plan in support of the proposed three-fifths rule. This is evidenced by the introduction by the distinguished senior

Senator from New York, on behalf of himself and the distinguished senior Senator from Michigan, of an amendment to Senate Resolution 9 to provide for cloture by a majority vote of the Senate. This amendment to Senate Resolution 9 by Senator JAVITS was introduced on January 26, 1971.

I say and believe that the adoption of the proposed three-fifths rule as embodied in Senate Resolution 9 would merely be the first step in the inevitable process of achieving majority cloture.

There is absolutely no way to appease the demands of those who call for majority cloture. Certainly, the adoption of this three-fifths rule would not appease such persons. They would grudgingly concede that "some progress has been made," but they would conclude that "We must finish the job." We must nip this insidious process in the bud here and now, and the only way to accomplish this is by defeating Senate Resolution 9.

My friend, the senior Senator from Michigan, has, in my opinion, given us an excellent reason for the retention of rule XXII in its present form; that is, that had it not been for the existence of rule XXII, Abe Fortas would have been confirmed by the Senate as Chief Justice of the United States. I completely agree with my friend from Michigan, but I think that subsequent events have shown that the right of Senators to engage in extended debate within the framework of rule XXII was most beneficial to the Nation in that instance.

The CONGRESSIONAL RECORD of May 14, 1969, carries the text of an article written by Senator HART on the Fortas nomination. This article is entitled "The Discriminating Role," and appeared in Prospectus, a student law journal published by the University of Michigan Law School. Senator HART made some preliminary remarks which I quote:

I believe that were it not for the unique circumstances of last summer—the erosion of the power of the President with the approach of a political campaign, the nearness of the end of the legislative session, and the opportunity the nomination afforded for political attacks on the Court and the President—the nomination would have been endorsed by a majority of my colleagues. If my view is correct, then the nomination procedure established by the Constitution was thwarted by a minority of the Senate who turned events to their advantage and were indifferent to the support given the nominee by the bar, by the academic community, by businessmen who recognized his perceptive handling of their problems and by the deprived members of our society who felt his concern for them.

I agree with the Senator from Michigan that the Fortas nomination had the support of a majority of the Senate. I think it is completely accurate to say that a majority of the Senate favored this nomination. The Fortas nomination was defeated only because a number of us thought it deserved extended debate.

At a subsequent point in his article, Senator HART addressed himself specifically to the question of changing the rules of the Senate pertaining to cloture:

I appear to be advocating that the Senate continues to muddle along as it has done in the past: approving most appointments, but occasionally being cantankerous. But this does not mean that there are not lessons to be learned and to be applied arising out of our experience last session with the Fortas nomination.

First, it is the unmistakable teaching of the recent controversy that use of the filibuster, an anti-democratic device in the legislative process, is intolerable in the process whereby the Senate advises and consents to a nomination to the Court. Were it not for the filibuster, Mr. Justice Fortas would now be Chief Justice. He had the support of a majority of the Senate. In the hands of a well-organized but small band of men, however, the filibuster frustrated the will of the majority.* * *

In my judgment, it was one of the brightest hours of the U.S. Senate when we refused to impose cloture on the Fortas nomination. The reputation of the Supreme Court among the American people suffered a severe shock when Mr. Fortas resigned as an Associate Justice of the Supreme Court under charges of misconduct. Consider how much more harmful it would have been if Mr. Fortas had resigned from the Supreme Court under those circumstances while he was Chief Justice of the United States. The Chief Justice may only be "first among equals," as some legal scholars have written, but in the eyes of the American people he is supposed to embody the virtues of rectitude and probity, and, like Caesar's wife, be above suspicion.

It would have been a great shock to the American people if the person at the pinnacle of the American judicial system had been forced to resign his office under such questionable circumstances.

If, on the other hand, Mr. Fortas had been confirmed as Chief Justice and Judge Homer Thornberry had been confirmed as an Associate Justice, and the revelations had not been subsequently made which caused Mr. Fortas to resign from the Court, then the Supreme Court today would still be totally dominated by the judicial activists who have twisted and distorted the Constitution and laws of the United States in the fields of criminal law, pornography, subversion, and many other areas. With the addition of Chief Justice Burger and Mr. Justice Blackmun, the Court has recently begun to take more moderate and balanced view of cases involving certain areas of the law.

In my judgment, the United States and its people are far better off with Burger and Blackmun on the bench than they would have been with Fortas and Thornberry. The extended debate on the Fortas nomination played a key part in these events, and I believe it affords an excellent reason for retaining rule XXII in its present form.

Mr. President, as we consider the grave and serious question of whether we should modify or abolish rule XXII of the Senate, it is imperative that we consider the thoughts and ideas of some of the great men who have preceded us in this body on this important question. We would be most foolish and vain to assume that we are the repositories of all knowledge and wisdom on this subject. The truth is that many of the great minds of the Senate and this Republic have carefully scrutinized the question of whether rule XXII should be abolished and modified and have come to the compelling conclusion that it should be left as it is. These conclusions have been reached by Senators from all sections of the Nation and of widely divergent political philosophies.

On May 4, 1918, during the crisis of World War I, Senator Underwood of Alabama introduced Senate Resolution 235, which was reported from the Committee on Rules on May 31, 1918, modified so as to read:

Resolved, That during the period of the present war the rules of the Senate be amended by adding thereto the following:

"That no Member shall occupy more than one hour in debate, except by unanimous consent, on any bill or resolution and not over twenty minutes on each amendment proposed thereto."

Fortunately, this resolution was rejected by the Senate on June 13, 1918, by a vote of 34 to 41. Preceding this vote a great debate was had in the Senate on this issue. One of the greatest speeches was given by Senator James A. Reed of Missouri. I should like at this point to quote from excerpts of this speech:

Cloture means the granting of a power. Whenever you grant a power you must assume that the power will be exercised. So, when we discuss this proposed rule, we must do so in the light, not of how it may be exercised so as to do no harm, but we must consider how it may be exercised to do harm.

I need not pause to add to the argument already made that when it is proposed to bring in a great measure involving the expenditure of vast sums of money, if it be a bill for the appropriation of money, or a bill for the collection of taxes from the entire country, affecting intimately the industries of the country, an hour's debate upon such a bill is utterly insufficient, utterly inadequate, and that a rule limiting debate to one hour would mean the end of debate. The truth is that this measure, if adopted, will empower a majority to throttle freedom of speech upon this floor and enable sinister and wicked measures to be carried to consummation without the country being advised of the iniquities they bear.

Gag rule is the last resort of the legislative scoundrel. Gag rule is the surest device of the rascal who presides over a political convention and proposes to accomplish something which will not bear discussion. Gag rule is the thing that men inexperienced in legislative proceedings always advocate at first, and if they have any sense, nearly always retire from as gracefully as possible after they have seen it in operation.

There is justification for unlimited debate in this body. I am getting a little tired of hearing about the sacred rights of the majority; that this is a country ruled by majority; and that the majority has the right to have its way. This is not a country ruled by the majority. This is not a country of majority rule. The Constitution of the United States was written, in large part, to prevent majority rule. The Declaration of Independence was an announcement that there are limitations upon majority rule.

The rights to life, liberty, and the pursuit of happiness were declared in the Declaration to be inalienable rights. They could not be given away by the citizen himself. Much less could they be taken away by temporary agents, sitting in legislative bodies, holding a limited authority of brief duration.

The Constitution itself is a direct limitation upon the majority rule. "You shall not take property without due process of law," says the Constitution, and before we can take that safeguard away what must we do? We must obtain not a majority by this body, not a majority of the House of Representatives,

but a two-thirds majority in each House concurring in a resolution, and that resolution must be approved by three-fourths of the States. What about majority rule in connection with that proposition?

The right to trial by jury cannot be taken away by majority rule. The right for the habitation of the citizen to be free from unreasonable searches and seizures cannot be taken away by majority rule. If it could have been so taken away Volstead and his like would have invaded every home in America and fanaticism would have thrust its ugly face into every home of the land long ago. Before you can trample upon certain rights of the American people you must have more than a majority, sir, and I believe it to be true that there are certain rights which, even by amending the Constitution of the United States, we cannot take away from the citizens of the United States.

Majority rule! Where is the logic or the reason to be found back of majority rule except in the mere necessity to dispatch business? The fact that a majority of 1 or 10 vote for a bill in the Senate is not a certification that the action is right. The majority has been wrong oftener than it has been right in all the course of time. The majority crucified Jesus Christ. The majority burned the Christians at the stake. The majority drove the Jews into exile and the ghetto. The majority established slavery. The majority set up innumerable gibbets. The majority chained to stakes and surrounded with circles of flame martyrs through all the ages of the world's history.

Majority rule without any limitation or curb upon the particular set of fools who happen to be placed for the moment in charge of the machinery of a government! The majority grinned and jeered when Columbus said the world was round. The majority threw him into a dungeon for having discovered a new world. The majority said that Galileo must recant or that Galileo must go to prison. The majority cut off the ears of John Pym because he dared advocate the liberty of the press. The majority to the south of the Mason and Dixon's line established the horrible thing called slavery, and the majority north of it did likewise and only turned reformer when slavery ceased to be profitable to them.

Oh, but somebody says—and we have heard it ad nauseam, indeed, until the gorge would rise in the gizzard of an ostrich at the sheer idiocy of the statement—"we must speed up the public business. We must enact more laws." We must not consider them. We must not analyze them. We must not talk about them. Of course, if we cannot talk about them we ought not to think about them. There are a good many men who do a good deal of talking in favor of stopping talking who never stop long enough talking themselves to do any thinking themselves.

What we need to do is to stop passing laws. We have enough laws now to govern the world for the next 10,000 years. Every crank who has a foolish notion that he would like to impose upon everybody else hastens to some legislative body and demands that it be graven upon the statutes. Every fanatic who wants to control his neighbor's conduct is here or at some other legislative body demanding that a law be passed to regulate that neighbor's conduct.

What is it [that] has made this race great? It has not been the proud blood of any illustrious ancestry; it has not been because we could trace our lineage back to kings and a royal household; it has not been because of the peculiar graces or abilities of those immigrants who came to our shores and from whose loins we are sprung. It is simply because for once in the history of the world the chains were taken from the arms, the shackles from the brain, the shadows of fear were dissipated by the sunlight of liberty and freedom, and every brain of every human being, great or small, was at liberty to function, every arm and every limb was at liberty to move. So we unleashed the latent powers of a race of people; and from the cottage of poverty there came forth the genius, and from the house of the man of humble estate there emerged the child who could turn the dull and inexpressive canvas into pictured harmony of color, light, and shade, and paint the rainbow's mingling hues and marvelous tints.

From the cottages of the impoverished, from the homes of ancestors who had been enslaved and enthralled, there came forth children who in the full liberty of our civilization were able to attack every problem and to undertake every great vocation of life; so that within one generation of time we produced here orators whose words of flame could fire the hearts of all the people of this land; poets whose words will be read so long as men shall love the music of our tongue, and a citizenry who have defended our soil and our flag with unexampled valor in every contest of this Republic. All these triumphs of intellect, all these great advances in the arts and in the sciences, all our wondrous advance in wealth are due to one great fact; that we have allowed the individual in this land the opportunity to develop, the opportunity to express himself.

Mr. President, what has this to do with the question I am discussing? Everything, sir. Before any law to bind 110,000,000 people could be passed it should somewhere be subjected to free debate; somewhere it should encounter opposition; somewhere the fires of keen intellects should burn their heat about it and test it for its metal; somewhere and somehow it should be determined by all that the intellect can do and all that the tongue can express whether the particular law which is proposed is fit to be fastened upon 110,000,000 people who think they are free and who once were free. That one forum reserved of all places in the world is the Senate of the United States. Here a man can stand and express his views until exhaustion comes. And what of it? Some rules of common sense and decency and gentlemanly conduct have their effect. Not in all the nearly 16 years I have sat in this body have I ever seen but two or three instances of what might be really called a filibuster.

Time and time again I have seen the opportunity under the rules for the minority to have stood and obstructed legislation, but as soon as debate was fairly over they have invariably given way and the vote has come. In the two or three instances which I remember a very simple expedient was adopted. Freedom of speech was not denied, but continuance of speech was demanded. It was insisted that the bill was before the Senate and that the opponents or advocates of the bill should speak for or against it and that no other business should intervene.

* * * * *

Sir, I know it is popular to attack the Senate. So many an ass has stood and brayed at the lions. He who would claim this body perfection would prove himself a fool. But the more imperfect we are, the more we need to counsel and to take advice. The less we know, the more we ought to strive to know. There may be some men of such supernatural power of intellect that they can gain nothing by the discussions their fellows may produce; but I have never seen an important bill upon the floor of the Senate, unless there was some political organization in control determined to pass it without the dotting of an 'i' or the crossing of a 't,' that has not been amended and amended to its benefit.

As long as we can keep this forum free, as long as a vigorous and determined minority can prevent the passage of a statute, so long this country will be safe, reasonably safe, at least, for no great act of treachery can ever be consummated where there are not some brave souls to stand in its resistance and to stand to the end.

But strike down this safeguard of public discussion, apply the gag, and imagine, if you please, that it is to be applied only to pass good measures, only to accomplish the virtuous and the wise and the holy, only to bring the thing of rectitude; imagine that, if you please. He is a fool, he is every kind of a fool, that has ever cursed this earth or cursed himself, who thinks that any power will always be used wisely and justly. Power is almost invariably abused.

Has there ever been one of those important measures discussed on the floor of the Senate when it was not found that many changes were necessary, when the proponents of the measure have not been willing to accept amendment after amendment? Why should there not be some place in this country where the virtues or the iniquities of proposed legislation could be exposed without gag, without rule, without limit; some place where every public act must come under the surveillance of men who have complete freedom of speech, so that the good that is in it may be properly exemplified and the evil that exists may be properly exposed?

I believe that these words of the late Senator Reed are as true today as the day he uttered them, more than 50 years ago.

In 1925, Vice President Dawes advocated changing rule XXII in order to make it easier to impose cloture. The giants of the Senate vigorously and successfully opposed this effort. One of the greatest liberal Senators of that time, Robert M. La Follette of Wisconsin, discussed rule XXII in the following language:

I shall stand while I am a member of this body against any cloture that denies free and unlimited debate. Sir, the moment the majority imposes the restrictions contained in the pending rule upon this body, that moment you shall have dealt a blow to liberty; you shall have broken down one of the greatest weapons against wrong and oppression that the members of this body possess. * * *

But, when there is organized power behind measures, it is all the more reason we should have unlimited debate in the United States Senate. There is a chance to be heard where there is opportunity to speak at length and where, if need be, under the constitution of our country and the rules as they stand today, the constitutional right is reposed in a Member of this body to halt a Congress or a session on a piece of legislation which will undermine the liberties of the people and be in violation of that Constitution which Senators have sworn to support. When I take that power away from Members of this body. I let loose in a democracy forces that in the end will be heard elsewhere, if not here.

Now, Mr. President, I submit that Senator La Follette's views are not only worthy of consideration but that they are accurate; and while the present rule has worked all right, yet, as some people predicted, usually the great business interests and corporations that were influential in this country at that time—we were entering on a period when we gradually ate away the rules, chip by chip, and at that time the racial groups, minority groups, labor organizations bitterly opposed it.

Now I quote from Senator Moses of New Hampshire. This thing in the past had not been a party matter, and it is not now. It has not been a partisan matter. He replied to Vice President Dawes,

and again it is his reasoning which certainly applies here; and that is the test and not what Dawes advocated or what he did not advocate. This is from the New York Times, dated May 9, 1925, Syracuse, N.Y.:

Senator Moses, of New Hampshire, took direct issue with Vice President Dawes against any radical change in the rules of the Senate in an address here today before the national convention of the Psi Upsilon fraternity, of which he is a member.

The Senator pointed out that the present Senate rules had come down from the foundation of the Government, and that the particular rules against which opposition now is raised had existed for 119 years. The previous question, he said, was a recognized privilege of senatorial debate up to 1806, and it was fair to assume that those of the conscript fathers who were still in the Senate 30 years after the Declaration of Independence had some good object in mind when they struck down this means of majority oppression.

Referring to Senator Cummins's statement that nine-tenths of the Senators desired a change in the rules, to the end that limitation of debate might be procured, Mr. Moses expressed doubt that, at any one moment, even 51 percent ever had been willing to establish such a change. It probably was true, however, that at one time or another fully nine-tenths of the Senators, when smarting under the defeat of some measure in which they had taken great personal interest, had impatiently expressed a desire for a change in rules. He had felt that way himself at times, he admitted.

"On the other hand, when I recall the great instances falling under my own observation in which the rules of the Senate have saved the country and its Treasury from embarrassment," Mr. Moses added, "I cannot feel that these rules work more than a fancied hardship, and I cannot believe that even more seasoned legislators than I can freely contemplate a movement to change them."

"It is to be observed that with few exceptions the demand for a change in the rules of the Senate arises from those whose contact with the Senate is either brief or nonexistent," the Senator continued. "Many a man has come into the Senate with a determination to tame it, and almost without exception these men themselves have been tamed by the Senate and have come to realize the true value of the Senate rules."

Mr. Moses declared that limitation of debate already existed in the Senate. "It was generally applied," he said, "under unanimous-consent agreements—agreeing to a time for a vote and that, pending such vote, no Senator should speak more than once, nor more than a given time, upon a measure or a proposed amendment."

"Rule XXII of the Senate, which has been singled out for discussion," said Senator Moses, "provides that whenever 16 Senators—a small fraction, it will be noted, of the entire senatorial body—wish to bring debate to a close, they may test the sentiment of the Senate by presenting a petition to that effect. This petition, after lying over for one day, must be voted upon, and without debate; and, if two-thirds of the Senators present approve, debate is thenceforward limited to 1 hour for each Senator who may wish to speak.

"It is argued with more plausibility than truth that this means 96 hours more of talk. The fact is that, on the two occasions when I have seen this rule applied, less than one-third of the Senators have availed themselves of its privileges, and debate has been promptly brought to an end. Surely it cannot be claimed that a body which permits one-sixth of its membership to produce a gag for the remaining five-sixths is hampered by its rules."

It is, of course, axiomatic that the majority has the right to rule. But majorities differ from day to day, and the majority in the Senate is no longer partisan or even political. In point of fact, except through artificial means, strict party division is rarely to be had nowadays at either end of the Capitol, and the engrossing questions of Federal legislation nowadays are those of economic import affecting the material interests of sectional groups of States. Under these conditions, a bloc system has arisen in Congress; and the changing exigencies, which should be met by operations of economic law, are sought to be remedied by Federal statute.

The inevitable result is a series of coalitions differing from day to day and with the character of the proposals which the various groups espouse. Under these circumstances, majorities are bound to be as reckless as they are ephemeral; and the safest and the strongest stafeguard against the powers which the bloc system entails is to be found in the opportunity for unlimited debate which the rules of the Senate now provide.

Here is Senator Beveridge speaking in Indianapolis, Ind., June 30, 1925:

Speaking before the General Assembly of the National Educational Association in session here tonight, ex-Senator Albert J. Beveridge attacked Vice President Dawes' demands for changes in the Senate rules and urged that no changes be made in the American system of Government, "unless those alterations are obvious and undeniable improvements on the original."

"The designers of the American plan had such a deep and keen distrust of temporary majorities," Mr. Beveridge asserted, "that they provided against majorities in many cases—so many, indeed, that the so-called majority principle does not permeate American institutions."

I submit, Mr. President, that is certainly true and that one of the great precepts of Americanism is that, under our system, minorities can be protected against the will of the majority. I think the statements are made that in a parliamentary body, at some time during the proceedings, the majority in every case has got the right to place its power over the minority, to make its will felt that the majority must prevail, statements that I hear made—I think those statements are certainly not good Americanism, because it is one of the fundamental precepts of Americanism that the minorities can protect themselves and are entitled to protection under our system. He goes on and says:

"The attack upon the basic rule of the Senate," Mr. Beveridge continued, "is an assault, though unintentional, of course, upon the theory and nature of the checks and balances of our system which assure to the people safety from impulsive and immature legislation, the Senate is by far the most important. It was established to prevent hasty action."

That is one of the fundamental reasons that we have a Senate—to prevent hasty action. To continue:

Several alterations "of our form and methods of government" are proposed at present, he said, and "three of these schemes are radical changes in American fundamentals."

"Not one of them is new," he added, "and each of them is frankly destructive of an institution which is peculiarly American, and each of them proposes to adopt a European institution in its place. All three today are sponsored of late by able and honest men, just as was the case when they were offered in days gone by.

"John W. Davis, a liberal conservative, says we should alter our Constitution so that a temporary majority of the Senate can ratify a treaty; the late Senator La Follette, an advanced radical, said we should alter our Constitution so a temporary majority of Congress could reverse constitutional decisions of the Supreme Court, and Vice President Dawes, an acknowledged reactionary, says we should alter a basic rule of the Senate.

"Of these three proposals," Mr. Beveridge declared, the "most radical" is that of cloture for the Senate, and "in practical results, if adopted, it would be worse than the other two combined."

Reviewing arguments in behalf of the cloture proposal, he declared "If any purely domestic danger threatens the American Republic, that danger is excess legislation," and urged those who endorsed the proposal to point out "a single great wrong that has been perpetrated upon the American people" because of unlimited Senate debate, and to name "a single benefit which has been denied the American people" because of it.

"Throughout our history," he continued, "no filibuster ever succeeded which, in the end, the people did not approve.

"Public opinion is the most powerful force on earth; no sane man wants to oppose it, and no sane man ever did resist the ultimate majority and final judgment of a nation."

Meredith Nicholson, in a discussion of "culture and brass tacks," concluded with a tribute to Mr. Beveridge for his work on the life of John Marshall, which he declared to be "the most important biography every written by an American."

During the course of this debate Senator Key Pittman of Nevada wrote a letter to the New York Times. I now quote the text of that letter:

The campaign of Vice President Dawes is exciting considerable interest in the West. I have recently been requested to address several semicivic societies and public service clubs upon this subject. I hope that the majority and minority leaders in the Senate would set forth the reasons for the attitude which I believe a majority of the United States Senate holds in opposition to the position taken by the Vice President.

The subject is not only very interesting but, in my opinion, of vital importance to the proper functioning of the legislative branch of our Government. Much may be said on both sides of the question. So far as I am aware only one side has been presented to the public, and that by a very prominent and earnest advocate. I believe I understand the feeling of impatience that actuates the Vice President. His life has been spent as an executive, and largely in a position of command. There is no position of command in the legislative body.

Every legislator stands upon an equality with every other member of his body. The States and districts of the United States represented by Senators and Representatives are as widely separated as the most divergent countries of Europe, and the conditions of life, commerce, and production are equally divergent. In the very nature of things, national legislation in a republic, therefore, must be accomplished through persuasion or compromise.

Every beginner in national legislative life is a crusader. On my entry into the Senate in 1913 I was classified as a fanatical crusader. For three years I fought for the same thing that Vice President Dawes now seeks to force upon the United States Senate. Experience, through long years of legislative practice, has forced me to the conclusion that I was in error.

I am not in favor of unlimited debate in the United States Senate. Unlimited debate does not now exist in the United States Senate. At any time two-thirds of that body may

limit debate on any question to the extent that a Senator may only speak once, and then for a period not to exceed 1 hour. This, in my opinion, is a reasonable limitation and is sufficient.

Without regard to the necessity of the rule, it must be admitted that bills of great importance, containing thousands of different items, are passed within a few hours and without sufficient debate or consideration. It has been the extended and full debates in the Senate that advised the country with regard to vital legislation, and, through this information, molded public opinion.

The Senate was founded as a part of our institutions for the protection of minorities, not alone minority parties, but minority populations and minority principles. To establish a cloture such as they have in the House would nullify the very purpose of the United States Senate. It is true that legislation has been delayed by extensive debate, but when has such delay caused any serious harm to our Government?

Let those who contend for the cloture point to particular instances, if they can, wherein the rules of the Senate have been destructive of the progress of our people. It is possible that our country suffers from too much legislation, rather than too little.

Senator Pittman, representing what was then and is now a small, western State, recognized that the principle of political equality between the States in the Senate was and is directly related to the retention of rule XXII.

During the time of the cloture debate of 1925, Senator Duncan U. Fletcher, of Florida, addressed the legislature of his State on the subject of changing rule XXII. I quote from a portion of his address:

Propagandists have been busy apparently seeking to discredit Congress and particularly the Senate in the public mind.

There must be some purpose back of the efforts to create the impression that the Senate is a huge talking machine, time-wasting, inefficient, and partisan-directed. We hear much about the filibuster. The Vice President, who was taking a comfortable nap at the only time he could vote after his lecture on efficiency, is going about the country advocating a change in the Senate rules in order to have cloture in the Senate.

I can illustrate very briefly what that means. The House has cloture now. The result is the Speaker of the House, who is privileged to recognize whom he pleases, will recognize the leader of the majority to make any motion he desires. The leader, we may suppose, wishes to take up and dispose of some particular bill. The chairman of the Committee on Rules can call his committee together in his room adjoining the chamber and bring in a rule limiting debate on the discussion. So that three men in the House have it in their power, with their party backing, to say what bills shall be laid aside, what bills shall be considered, and in what form they shall pass.

Shall we amend the Senate rules in order that similar conditions will prevail there? If so, three men in the House and three in the Senate will have it in their power to enact such legislation as they may determine, and the people may know practically nothing about it until such laws are written upon the statute books.

The Senate is today the only branch of the National Legislature where full and free discussion is had of every measure it is proposed to have enacted into law, and I think it should so continue in the public interest.

Rule 22 provides that, on motion signed by 16 Senators and a vote of two thirds in its favor, debate may be limited. My experience is that a filbuster is rarely successful, even at a short session of Congress, unless it is supported in sentiment by a majority of the Senate. As ranking minority member of the Commerce Committee, I had charge of the opposition to the ship-subsidy bill. That bill, in effect, meant practically giving away our superb fleet of merchant ships, which had cost the taxpayers over $3,000,000,000, to a few private shipowners, and then paying them $75,000,000 a year for 10 years out of the money in the Treasury to operate those ships. So it seemed to me, and I felt it should be defeated.

Day after day, as the debate proceeded, I had assurance—sub rosa—from Republicans that they agreed with me, and offers of help if it was needed; however, if the bill came to a vote, they would feel obliged to vote for it because the administration was so strongly urging it. The bill was finally laid aside, not because of the so-called filibuster, really, but because a majority of the Senate was opposed to it, although it would have passed—if a vote had been reached.

After the resolution sponsored by Vice President Dawes and others failed, the question of whether to modify rule XXII was raised on a number of occasions. One of the ablest Senators to serve in this body was the late Eugene D. Millikin of Colorado. Like Senator Key Pittman, he represented a small, western State. Here is what he had to say on the subject of cloture in a speech he made on the Senate floor on February 9, 1946:

Now as to cloture: The Senate of the United States is one of the few legislative forums in the world which operates on, and guards the right of, free speech. If my country were confronted with the horrible choice of surrendering all of the individual rights of its citizens under our Constitution save one to be selected by it, I should unhesitatingly counsel the preservation of the right of free speech, for so long as this right remains unimpaired all other rights, if lost, may be regained.

History confirms this. Every dictator knows it well and selects free speech as the first victim of his aggression.

Is the right abused? Of course, it is abused. It is abused everywhere it exists—it is abused at times in the Senate. But there are reasonably adequate measures against abuse which do not destroy or seriously violate the right.

We have laws against obscenity. We have laws against speech which incites public disorder. We have laws against slander. Men have always had their own ways, outside the courts, some of them regrettable and to be abhorred, to end or punish on the spot certain forms of personal insult.

The Senate has its law for temporarily ending free speech in this Chamber. It is by operation of the rule of cloture which requires a two-thirds vote.

I have heard it argued that this is unfair to the rights of the majority, that the operation of the rule subjects the majority to the will of the minority, that this is a violation of democratic practices, from which the conclusion necessarily follows that a majority of one should have the power to do as it pleases.

There is so much error in this argument and it has not much significance because of its studious cultivation by people who do not know better, by people who should know better, and by those who wish to destroy our system of Government that it calls for full treatment. But on this occasion I shall limit myself to touching on some of the highlights of the matter in rather summary fashion.

It is manifest that if a majority of one could end free speech in the Senate it would not be long until there would not be any free speech.

The majority of any party in power would find the suppression of free speech a convenient method of expediting what it conceived to be useful and urgent legislation. It is always annoying to have errors exposed, and it would not be long until a majority of one decided that for political purposes it should retain the illusion of infallibility by preventing exposure here of its errors. And then it would not be long until corrupt and even more ominous legislation might be shephereded through this Chamber in enforced silence.

It should never be forgotten, I respectfully suggest, that the rules of a legislative body in a country which understands, appreciates, and desires to conserve the principles of human freedom are adopted not to enhance or render unshakable the power of the majority of its members, but rather to protect those in the minority.

The other day in his classic speech on cloture, the senior Senator from Maine (Mr. White), in developing the same theme in a manner which I cannot equal, found support in Jefferson's Manual on Parliamentary Practice which appears on page 237 of our Senate Manual. It deserves frequent repetition. I read from what is said there:

Mr. Onslow, the ablest among the Speakers of the House of Commons, used to say it was a maxim he had often heard when he was a young man from old and experienced members that nothing tended more to throw power into the hands of administration and those who acted with the majority of the House of Commons than a neglect of, or departure from, the rules of proceeding; that these forms, as instituted by our ancestors, operated as a check and control on the actions of the majority; and that they were, in many instances, a shelter and protection to the minority against the attempts of power. So far the maxim is certainly true, and is founded in good sense; that as it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power are the forms and rules of proceeding which have been adopted as they were found necessary from time to time and are becoming the law of the House, by a strict adherence to which the weaker party can only be protected from those irregularities and abuses which these forms were intended to check and which the wantonness of power is but too often apt to suggest to large and successful majorities.

When we talk of the rights of the majority of one, when we would give such a majority all-embracing power over our actions here, we simply overlook the fact that in this Chamber and outside of it, rules and practices and law, out of the wisdom of centuries of experience, provide that in many of the most important decisions in life those rights are qualified so as to protect the minority.

The rights of the minority have not been imposed by a minority; they have been freely granted by majorities which realize the fact that majorities are not always right, that there is an inherent tendency in majorities to oppress minorities, which realize that under natural or moral law the individual and minority groups have certain rights which should not be subjected to the caprice of others, no matter how numerous, that these minority rights by their nature and by the formal mandates and consents and relinquishments of power, by thoughtful, just, and civilized majorities, when they are engaged in laying out the long-term rules for the government of all, are truly and deservedly unalienable.

I should like to conclude this portion of my speech by quoting the words of one who has recently left us, a man acknowledged to be the equal of Clay, Webster, Calhoun, La Follette, and Taft. I refer,

of course, to the late Richard B. Russell of Georgia. The Senate Committee on Rules and Administration held hearings January 24, 25, 26, 28, 31, and February 1, 1949, on the question of whether rule XXII should be modified. Senator Russell appeared as a witness before that committee, and this great man, who epitomized the spirit and the substance of the Senate, made some magnificent statements as to why he thought it was necessary to retain rule XXII in order to protect the institutional integrity of the Senate.

I quote from portions of Senator Russell's testimony, which still rings true:

Now the Senate, as I have stated, was the result of a compromise growing out of the most bitterly debated and highly controversial issue before the constitutional convention. We had at that time 13 sovereignties undertaking to combine into one, seeking to work out that glorious state of affairs that all of us have heard referred to on the 4th of July as being an indissoluble union of indestructible States, and the smaller States were determined that they would not be overwhelmed by the numbers involved in the composition of the House of Representatives, based on population.

The framers of the Constitution finally went so far as to provide not only equal representation in the Senate to each State, but the only instance where the Constitution of the United States cannot be changed by the usual method of amendment is the provision that no State should be denied equal representation in the Senate without its consent. They went to that extreme, that you could not deny the small States their rights and their powers, you could not deny the minority, which is so despised by this majority view being pressed here, their equal representation unless they gave their consent. The rules of the Senate grew out of that importance that was attached to representation on an equal basis of the States without regarding to population.

The Senator from Florida has ably stated some of the effects that can flow to the majority by unequal representation in the Senate or by changing the rules. My concern is for the minority. The majority has numerical representation in the other branch of the Congress, and they may be able to stop any legislation there that the Senate might pass if we changed our rules. This protection is available to the heavily populated States, but the sparsely populated States and those having peculiar interests have no protection on earth excepting the constitutional composition of the Senate of the United States and the rules which have guided this body since its inception.

I have been surprised to see Senators from small States here insisting upon the adoption of a majority rule. The founding fathers never intended to have a pure democracy. There is nothing that can be found in any debate at the constitutional convention which would justify that belief. As a matter of fact, we were seeking to escape from the tyranny that comes from a pure democracy and to avoid the effects of majority action in the heat of political passion or without any restraint, and if these Senators representing the small States, insisting that we must have a pure democracy and majority rule in this country and are in good faith—they should be willing to surrender the privilege of equal representation in the Senate of the United States now enjoyed by their States.

If you go to that, New York State alone would have as many Senators as the States of Wyoming, Delaware, New Hampshire, Vermont, Arizona, Idaho, New Mexico, Utah, Montana, North Dakota, South Dakota, Rhode Island, Maine, Oregon, Colorado, Nebraska, Connecticut, and Washington.

But those representing small States here that come in with this talk about a pure democracy, and insisting that we start in the Senate by adopting majority rule to conclude debate, they overlook the fact that if they went to the logical conclusion, they would have to give up many rights their State has to be represented in the Senate on a basis of equality. In the last analysis that is where they would end.

We are told, Mr. Chairman, that these rule changes are necessary in order to prevent filibusters in the Senate. I have always been somewhat confused in my own mind as to just when a filibuster starts in the Senate, when legitimate debate on a measure has ended, or when the filibuster might start. There has been a change in viewpoint on that in recent years.

Some of the greatest orations ever delivered in the Senate of the United States, speeches that have immortalized men in our history, were very long and they would certainly be called filibusters now. The great speech of Daniel Webster that lasted 8 hours was not called a filibuster. If you are talking about civil rights now and a man speaks 40 minutes, it is denominated a filibuster, and the charge goes out over the country before the bill is before the Senate that there is a very vicious filibuster being conducted in the Senate.

I do know that the rules of the Senate as they exist today are the last refuge of those who are likely to be oppressed by political legislation directed at them by those who have no problem of their own similar to that which they seek to cure by legislation and sometimes seeking political advantage at the expense of those living under different conditions.

Mr. Chairman, Senators as a rule have a pretty high sense of responsibility here. I hear all this talk about hairsplitting—would you let it be eight or nine or seven to stop the majority or would you do this, that or the other? We have been inconvenienced by lengthy debate, but by and large the Senators have had a great sense of responsibility, and we look back down the years of bitterly fought issues that have been decided in this forum, the amazing thing is that there have not been more cases where the right of unlimited debate has been used to slow measures supported by the majority to which the minority were opposed.

It takes a great sense of responsibility and much courage of conviction to carry on a lengthy fight on the floor of the Senate against any measure. It is not a thing that men do lightly, even when it comes to the type of legislation that you are seeking to enact through this change in the rules. It is most unpleasant. Men must have hides like that of the rhinoceros to stand up and fight even though they know they are right. They know they are going to be the target of attack in every paper in the land and over every air wave emanating from Washington, and it requires a very deep conviction and a considerable degree of courage, if I may be pardoned for saying it, for men to utilize the freedom of discussion in this Senate in order that they may get before the country what they are really undertaking to do and their real views.

That is not an easy matter at all times when the majority of the propaganda is all in the hands of those who are on the other side and who claim to represent the majority. * * *

We should not in casual manner change any rules of the Senate. There is a reason for every rule. As a matter of fact, when your cloture was adopted in 1917, there was a change in language, in that the original resolution referred to "issue" and it was changed to "measure" before it was adopted, showing the Senators in that day intended to present the right of Senators to debate a motion to proceed to consideration of a bill. The cloture or gag rule was only intended to apply to a measure that had reached the floor for consideration and amendment.

Now, Mr. Chairman, before I conclude, I wish to read briefly from the remarks of two men for whom I have a very high regard. I hope Senators will heed. The rules of the Senate are the product of vast experience and they should not lightly, just to set a sail in order to catch a little political breeze, be changed or stricken down.

I was interested in reading a statement by Vice President Adlai Stevenson, Vice President under Cleveland, that when he first came to preside over the Senate from the House of Representatives, that he thought he had come to the Cave of Winds, that the lengthy speeches there annoyed him and harassed him to death, but he concluded by saying:

"It must not be forgotten that the rules governing this body are founded deep in human experience, that they are the result of centuries of perilous effort in legislative halls to conserve, to render stable and secure the rights and liberties which have been achieved by conflicts. By its rules the Senate wisely fixes the limits of its own powers. To those who clamor against the Senate and its methods of procedure, it may truly be said 'they know not what they do.' In this Chamber alone are preserved without restraint two essentials of wise legislation and of good government: The right of amendment and of debate."

And, Mr. Chairman, if we lose the right of debate, the next step could easily be to devise rules to restrict or eliminate the right of amendment in the Senate. I continue to read:

"Grave evils often result from hasty legislation, rarely from the delay which follows discussion and deliberation. In my humble judgment the historic Senate, preserving the unrestricted right of amendment and of debate, maintaining intact the time-honored parliamentarian methods and means, which unfailingly secure action after deliberation, possesses in our scheme of government a value which cannot be measured by words."

Mr. Chairman, the years that have come and gone since 1897 when Vice President Stevenson made that statement have completely justified every line and every word of it.

I have also, Mr. Chairman, an article by a man who was a great legislator and, more than that, a great scholar and student of our Government, the late Senator Henry Cabot Lodge, predecessor in name and seat in the Senate of the distinguished present Senator from Massachusetts. It was an article he had written for a boy's magazine, explaining the operation of our Government and of the Senate, and it goes into detail as to the reasons for the rules and states in effect that the cloture rule would not have been adopted in 1917 had it not been for the fact that we were at war.

Mr. President, the late Senator Russell made reference to a statement made by the elder Senator Henry Cabot Lodge of Massachusetts on the subject of cloture, which statement was printed in the record of the hearings held by the Rules Committee in 1949. This statement of Senator Lodge is so appropriate that I quote from it:

It is not necessary to trace the long struggle between these opposing forces which ended in the most famous compromise of the Constitution of which the Senate was the vital element, and which finally enabled the Convention to bring its work to a successful conclusion.

It is sufficient here to point out that, as the Constitution was necessarily made by the

States alone, they yielded with the utmost reluctance to the grants of power to the people of the United States as a whole and sought in every way to protect the rights of the several States against invasion by the national authority. The States, it must be remembered, as they then stood, were all sovereign States.

Each one possessed all the rights and attributes of sovereignty, and the Constitution could only be made by surrendering to the General Government a portion of these sovereign powers.

In the Senate accordingly the States endeavored to secure every possible power which would protect them and their rights. They ordained that each State should have two Senators without reference to population, thus securing equality of representation among the States. They then provided in article V of the Constitution that "no State without its consent should be deprived of its equal suffrage in the Senate."

Except on some rare occasions the Senate has been the conservative part of the legislative branch of the Government. The cloture and other drastic rules for preventing delay and compelling action which it has been found necessary to adopt and apply in the House of Representatives have never except in a most restricted form been admitted in the Senate. Debate in the Senate has remained practically unlimited, and, despite the impatience which unrestricted debate often creates, there can be no doubt that in the long run it has been most important and indeed very essential to free and democratic government to have one body where every great question could be fully and deliberately discussed. Undoubtedly there are evils in unlimited debate, but experience shows that these evils are far outweighed by the benefit of having one body in the Government where debate cannot be shut off arbitrarily at the will of a partisan majority.

The Senate, I believe, has never failed to act in any case of importance where a majority of the body really and genuinely desired to have action, and the full opportunity for deliberation and discussion, characteristic of the Senate, has prevented much rash legislation born of the passion of an election struggle and has perfected still more which ultimately found its way to the statute books.

The Members of the United States Senate have always cherished the freedom of debate which has existed in this Chamber. Senators have been reluctant to adopt any rule of cloture, and, even after the present rule was adopted in 1917, they have been reluctant to invoke it. Cloture is a gag rule; it shuts off debate; it forces all free and open discussion to come to an end. Such a practice destroys the deliberative function which is the very foundation for the existence of the Senate. It was the intent of the framers of the Federal Constitution to obtain from the upper Chamber of the Congress a different point of view from that secured in the House of Representatives. Thus, the longer term, the more advanced age, the smaller numbers, the equal representation of all States. Careful and thorough consideration of legislation is more often needed than limitation of debate.

Mr. President, I am firmly of the opinion that we should pay heed to the wisdom expressed by these and other great Senators. We should not modify or scrap rule XXII.

Mr. President, there has never been any question in my mind about the importance of rule XXII in our political structure. It has been, and is, a major bulwark against the erosion of our constitutional and republican form of government in this Nation. Majorities by their nature oppress, and the present rule is a barrier to such oppression. If one wishes to preserve the personal rights and liberties of the minority from destruction by the natural predatory instincts of the majority—if one desires that—rule XXII had better remain as is without change, modification, or amendment.

Here we are again on our once-in-every-2-year trip to the abyss of our own destruction, for it is no exaggeration to state that the present attack on the rule threatens the very fabric of our constitutional system, pierces the soul of our existing Government, and endangers the rights and liberties of minorities.

Now, Mr. President, we have all heard the parable of the saucer and the Senate. The story goes that the House of Representatives acts fast and swiftly, thus heating up the contents of the cup; whereas, the Senate acts as a saucer to cool with its debate the contents thereof. I suppose the story would go that, in the cooling off process, evil and bad legislation would precipitate to the bottom as dregs and be discarded as waste should be. I have often heard this story, and in fact, while perusing old hearings, I was amused to find it attributed to two different sources. In one place it is mentioned that in the history of free and unlimited debate the Senate is often referred to as a check. It is said that Benjamin Franklin, the wise old owl of the Revolution, spoke of the Senate as a saucer. Let me quote the paragraph from the Senate hearings.

In other words, it (the Senate) was a saucer into which the hot coffey was to be poured to give it time and opportunity to cool. The House of Representatives, if at any time it took hot action, if it acted with too much speed and didn't thoroughly consider and thresh out the full significance and effect that action, had always this saucer waiting for the measure to cool.

Mr. President, in another place and another year our worthy Senate hearings attribute this saucer story to Thomas Jefferson who spelled it out to George Washington in his analyzation of the Senate's position of importance in the Government. Who was the author, I do not know, but I lean toward Franklin for he also said in Poor Richard's Almanac: "Act in haste and repent at leisure," which, as I see it, this body proposes to do as regards rule XXII.

A change in the rule of cloture from a two-thirds vote of invocation to a three-fifths vote is a whittling away and erosion of a great liberty bastion. Water dripping will erode rock, friction from a cotton thread will cut steel, and the dunes of the deserts are moved hundreds of miles of gentle winds. Anything can be destroyed by small persistent effort constantly applied. Again, Ben Franklin sums it up for us in: "Little strokes fell great oaks."

When those on this floor, who advocate change, rationalize that it is just a little change—I say beware! Hitler became dictator of Germany with little constitutional changes. Liberties not zealously guarded are liberties eroded, and liberties eroded are liberties lost, and liberties lost are never to be regained.

Washington in his Farewell Address expressed a great fear of what he called party spirit. This fear was also mentioned by James Madison and Governor Morris. In fact, Washington spelled it out a little further as "the baneful effects of party spirit." It is found in this address in the following:

I have already intimated to you the danger of parties in the State with particular reference to the founding of them on geographical discrimination. Let me now take a more comprehensive view and warn you in the most solemn manner against the baneful effects of the spirit of party generally.

This spirit, unfortunately, is inseparable from our nature, having its roots in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed, but in those of the popular forum it is seen in its greatest rankness and is truly their worst enemy. Without looking forward to an extremity of this kind, which nevertheless ought not to be entirely out of sight, the common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it.

The thing that averts the danger of party spirit, its baneful effects as Washington said, was our very free and unlimited debate in the Senate of the United States.

Everyone knows that it makes no difference in the House of Representatives which party is in control. The Speaker, the party leader, the chairman of the Rules Committee and perhaps a selected few others get together, usually in the Speaker's office, and determine what shall be done; and believe-you-me that is how it is done. I do not criticize the House, for obviously it is too large and unwieldly to permit free debate. Physically and practically there can be none. Their membership is too large. So be it for them. The manner in which the House operates is exactly what Washington meant by "party spirit," and he warns us in his address of its "baneful effects."

Praise it be that the size of the Senate permits it to operate practically with free and unlimited debate, and that is what has saved this country, not just from the tyranny of the majority, but actually from the tyranny of a small caucus of the majority.

The first attempt to change rule XXII was by Senate Resolution 235 on May 8, 1918. This came from the war hysteria of World War I which I shall discuss later, for foreign policy has recently been called upon by the proponents of change.

In opposition to change, Senator William Allen Smith from Michigan stated:

The proposed new rule is intended to curtail the individual right and power of Senators. How can a Senator represent his State appropriately in a crisis if a few Senators may decree in caucus and then absent themselves, leaving the State to its fate, shorn of the power to be effective?

The instances where this rule of unlimited debate has been abused and has worked to the disadvantage of the Government are very rare indeed and the cases where it has been of tremendous advantage to the Government and to the people of the United States can be counted by hundreds and hundreds.

The longer I stay here the less I speak. Some of the best men who ever served in the body have grown to dislike verbal controversy.

Men get over the fascination of their own speech; but if the occasion would require,

or if some injustice was sought to be done, unlimited debate would be a very desirable and potential weapon to reside in the senatorship.

It is not that a Senator wishes to be heard at great length; it is the power to defend his State which you are attempting to curtail.

Take away the right of unlimited debate and you take away the great distinguishing characteristic of senatorial procedure.

Also speaking in opposition on that occasion was Jacob H. Gallinger, a Senator from New Hampshire, and I quote:

A great deal of agitation had been heard at varying times concerning the necessity for having some rule that would limit debate. There were those of us who did not think any rule at all was necessary. There were others who thought a somewhat drastic rule necessary. I speak now advisedly, as a member of the Committee on Rules, when I say that that rule was adopted as a compromise rule, and assurances were given that if it should be agreed to—as it was, without any controversy—it would end this matter of so-called cloture legislation. It has answered its purpose.

During my somewhat protracted membership of this body, a few filibusters have been engaged in. I was the victim of one of those filibusters, Mr. President. A bill in which I was deeply interested, which had been debated for weeks in this body, as I remember it, was at the end of a session defeated by a filibuster.

At that time I felt very keenly on the subject but, when I came to look it all over, I was led to the conclusion that the evils that grew out of our present system were insignificant compared to the benefits that grew out of it.

I think I have myself participated in two filibusters during the time I have been a Member of this body, and I have never had occasion to regret it. I believed that they were justified. I believe that great good came to the country because of those protracted discussions.

Further in the debates the Senator from Massachusetts Henry Cabot Lodge stated his position as follows:

The case for free dabate in the Senate has never been better stated than in a paragraph I am about to read from a well-known book. It is there said:

It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the Government, the country must be helpless to learn how it is being served; and unless Congress both scrutinizes these things and sift them by every form of discussion the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct.

The informing function of Congress should be preferred even to its legislative function. The argument is not only that discussed and interrogated administration is the only pure and efficient administration, but more than that, that the only really self-governing people is that people which discusses and interrogates its administration. The talk on the part of Congress which we sometimes justly condemn is the profitless squabble of words over frivolous bills or selfish party issues. It would be hard to conceive of there being too much talk about the practical concerns and processes of government. Such talk it is which, when earnestly and purposefully conducted, clears the public mind and shapes the demands of public opinion.

That, Mr. President, is taken from Congressional Government pages 303 and 304, written by the present President of the United States [Woodrow Wilson], and I think it would not be easy to find a more powerful exposition of that necessity for debate which, I think, is infringed on by this proposed rule.

Mr. President, the debate in 1918 was one of the most erudite and soul-searching that has ever taken place in this body. A few more excerpts are worth quoting and please notice that the speakers are not from the South, that they were leaders of their day, and most of them were Republicans. Here they are.

Warren G. Harding, a Senator from Ohio:

I have been hearing about the reformation of the Senate since I first entered politics; and it was rather an ironical thing the other day that one of the most emphatic speeches made in favor of the adoption of this rule was uttered by the very latest arrival in this body.

But the reformation of the Senate has long been a fad. I came here myself under the impression that there ought to be cloture and limitations on debate; and the longer I sit in this body, the more convinced do I become that the freedom of debate in the United States Senate is one of the highest guarantees we have of our American institutions.

Mr. President, before I take my seat I wish to say that the length of a speech is not the measure of its merit.

While the Senate may not listen, because the Senate does not listen very attentively to anybody, I discover, though Congress may not be apparently concerned and though the galleries of this body may not be filled to add their inspiring attention, I charge you now, Mr. President, that the people of the United States of America will be listening. This is the one central point, the one open forum, the one place in America where there is freedom of debate, which is essential to an enlightened and dependable public sentiment, the guide of the American Republic.

Charles E. Townsend, a Senator from Michigan:

It will be a sad day for our Republic when the Senate ceases to be a free and open forum.

When I was a Member of the other House, to me one of the attractive features of service in the Senate was that there was an opportunity for debate and full consideration. I did not expect to abuse that privilege, and I never have done so.

Most new Senators are instinctively for reforming the rules.

We have been in the habit of condemning long speeches sometimes and I confess that at times I have criticized them, too; but I have recalled that subsequent events have shown that many Senators were right in appealing to the Senate to consider the question under discussion, and it was their duty to make those appeals to the Senate if by doing so they had any hope of changing the sentiments of the Senators.

James E. Watson, a Senator from Indiana:

If this had been the rule of the U.S. Senate for the first 50 years of its existence John C. Calhoun would not have been able to thunder forth the doctrines in which he believed; Hayne could not have announced on the floor the ideas which he so eloquently espoused; Henry Clay would have been unable to deliver in full any one of the score of speeches that accomplished so much for his country; and Daniel Webster, imperious orator of American history, could not have blazed the pathway of the future in that historic utterance in which he announced the essential policies of the Republic if its institutions are to endure, for on the floor of the U.S. Senate and in the open forum of debate he in a sense shaped the destiny of the Republic and molded the future of the Nation.

Mr. GALLINGER. Speaking for 8 hours.

Mr. WATSON. And 8 hours, the Senator from New Hampshire informs me, he spent in delivering that masterful oration.

If this had been the rule of the Senate even in our day, the great debates that have occurred upon the financial and economic problems which have engaged the thought and attention of the Republic could not have taken place to the full.

Reed Smoot, a Senator from Utah:

The passage of this resolution means that running debate will be closed in the future, and I say now that there has been more information given to Senators, actual information, information that affected the votes of Senators, more real information gained, in a running debate where questions are freely asked, than there is in all the set speeches that were ever made in this body.

James D. Phelan, a Senator from California:

It is the history of this body that there are empty benches occasionally when a Senator exceeds what, in the judgment of the absentees, may be a reasonable time limit. I believe it was held in the House of Commons that, whereas a man had a right to speak, he had no right to be heard.

The Senate rules serve by arresting hasty action. Members of the House have appealed to me to save the power of the Senate on which the Members of the House themselves so often rely. On it the country relies to have time to deliberate and if necessary protest.

Men are carried away by passion, heat, and rancor, and they enact laws thoughtlessly; again they enact laws ignorantly. Debate restrains passion; debate restrains heat; debate restrains rancor, and at the same time debate commands deliberation. Therefore I oppose the arbitrary rule and stand for the power and dignity of the Senate which has served the country so well in this way.

Frank B. Brandegee, a Senator from Connecticut:

Mr. President, I look at this right of debate not as a right, much less a privilege, which we are conferring upon ourselves as a matter of favor. I look upon it as a right which attaches to the sovereign States of the Union, each of which is represented here by 2 Senators, and whose sole method of putting its case before the people of the United States and before this body is through the voice of its 2 Senators.

So, I say that this is the forum of the States. This is a federated Government, in which the States reserved the right of equal suffrage in the Senate of the United States, and made that the only provision of the Constitution which never should be subject to amendment.

Mr. President, within the lifetime of the Members of the body there was a period when the Republicans had but a scant 16 votes. There was a total of 96 votes in the Senate, Alaska and Hawaii not having achieved statehood. The will of the majority at that time, if unfettered and maliciously used—as Washington would say, "party spirit"—could have destroyed the Republican Party as a political entity forever except and, but for, the right of unlimited debate as now preserved by rule XXII. It just happened to be the Democratic Party at that time in the overwhelming majority. By the grace of God, next time it may be the Repub-

lican Party and, although I love my brethren on the other side of the aisle, I pray that, when they wax supreme in numbers, they are forced to guide themselves by the beacon of the right of unlimited debate.

Who knows what is going to happen in the shifting political sands of today? Two years from now who will be the majority? The oppressor now may be the future one oppressed. He screams loudest whose ox is getting gored, and the resultant offal may be the demise of our country.

Those today who press hardest to change the rule; those who insist most determinedly for change; those who would deny our present free and unlimited debate; those, I warn you, will be the very ones who will find in the future that this free and unlimited debate is needed for the protection of their rights.

The world struggle today is between those people who are free and those people who are regimented. Will free people and free government survive or will they succumb to the forces of totalitarianism? The vital target of all tyrants is political freedom. We are told that democracy no longer serves the people, that its processes are too cumbersome and too slow. Regimentation means efficiency, speed, and progress, so efforts are made to tear away our safeguards to the institutions of free governments.

The Senate has always been reluctant to invoke the cloture rule, and rightly so, and there is a reason therefor.

Cloture by its nature is designed for exceptional circumstances. Like the extraordinary writs, cloture is an extraordinary procedural remedy. It has been used gingerly and for limited purposes. The purpose of cloture was not to gag the opposition. It was not designed to cut debate short except where the number of Senators in favor of a measure is overwhelming.

Let us remember that even in the situation where 99 Senators are in favor of a bill and only one Senator opposes it, it is the bounden duty of the vast majority not to cut off the debate before the one Senator has an opportunity to set forth his views.

The power to cut off debate resides with the 99, but the right to cut off does not reside with the 99; for our political heritage is a heritage which says "No, a thousand times no." This is the essence of free and unlimited debate.

The minority must have the right to submit its views, and the power of the majority to cut off debate must be hobbled. The balance between how much hobbling versus how much free debate is a most delicate one, and this body has solved it with the two-thirds ratio.

Why two-thirds, one may ask? The answer would seem to be that our history of politics teaches us that the ratio of two-thirds is a proper working ratio with the safeguards needed to accomplish the purpose. Notice that this is the ratio for treaties, constitutional amendments, impeachments, et cetera.

Proponents say that cloture is beneficial since it stops filibusters. That is not the point. The point is simply that cloture is inherently dangerous since it can operate to cut off debate. The crowning glory of the Senate of the United States is its right of unlimited debate. This element distinguishes it from any other elected assembly or representative body in the world.

When issues are smothered, liberties die. Our press is free, and our right of open debate is unlimited. The Senate is our forum to prevent issues from being hidden from the people.

With free debate the weaker States are protected by the Senate and minority opinion has a citadel that has withstood the ravages of the impatient.

Mr. President, in 1925 Vice President Dawes took the oath of office as Vice President, and in doing so addressed the Senate that there was need of a change of the rules. The press at that time polled the individual Senators as to their views of the Vice President's remarks. It is interesting that those who responded to the poll concluded invariably that the Vice President had in mind cloture, although he had not mentioned cloture. Some of the responses have been preserved, and I offer them here to shed light on the present effort to change rule XXII.

William D. Borah, a Senator from Idaho:

I do not know what changes Vice President Dawes proposes with reference to the Senate rules. In a general way it seems that he would adopt strict cloture. I am opposed to cloture in any form.

I have never known a good measure killed by a filibuster or a debate. I have known of a vast number of bad measures, unrighteous measures, which could not have been killed in any other way except through long discussion and debate.

There is nothing in which sinister and crooked interests, seeking favorable legislation, are more interested right now than in cutting off discussion in Washington.

Smith W. Brookhart, a Senator from Iowa:

I do not think the Senate rule of unlimited debate will be materially changed. It is this rule that makes the United States Senate the one great open legislative forum in all the world.

The rule sometimes delays good legislation, but never kills it. Good legislation always comes back, and finally wins. The rule kills a great deal of bad legislation. That class of legislation which cannot stand the light of publicity will always be killed by unlimited debate.

Mr. President, I for one, to keep my conscience, cannot agree to place the Senate under the same procedures as the House of Representatives. I refuse to permit the procedural machinery of this body to be used by the majority to defeat a proposal before it has had a chance to reach the floor for debate. If I will not permit this, I most certainly will not consent to a rule which allows a measure to reach the Senate floor but then arbitrarily cuts off debate.

Almost all constitutional authorities agree that under our Constitution the Senate is a continuing body and that it has equal representation for all States regardless of any consideration of either population or area. In fact, the Constitution specifically prohibits any change in State representation in the Senate, an outcome, of course, of the great compromise of the Constitutional Convention.

In fact, there would be no Union today without equal Senate representation as between the small and large States, for the small States were not going to give up their sovereignty without the protection of equality in the U.S. Senate.

A House Member represents his district whereas a Senator represents his State. The Representative serves for 2 years, and the entire body faces the electorate at the same time. The Senate serves for 6 years only, one-third of which is up for election at one time. These are elemental differences, but it is not easy to realize that they are fundamental and make for fundamentally different legislative bodies.

It makes the Senate a continuous body whose rules carry over from Congress to Congress.

It charges a Senator with representing his State in the National Legislature regardless of his party. And it is only the Senate privilege of unlimited debate which insures that a Senator may discharge his duty effectively.

Mr. President, there is no doubt that examples and cases are more telling in an argument than words. Let me give the example of the defeat of two measures by extended debate, two measures that should have been defeated, and, save the right of the Senate to debate, they would have passed.

On June 4, 1926, Senator Oscar W. Underwood, of Alabama, introduced a cloture bill. Two Senators rose in opposion: Joseph T. Robinson of Arkansas, and Senator Reed of Missouri. They each gave an example of bad bills defeated by unlimited debate. One gave an example of the atrocious force bill and another, as gall to Senator Underwood, called attention to a bill that the latter had defeated himself by debate. After the cloture bill was brought up, the RECORD reads as follows:

Joseph T. Robinson, a Senator from Arkansas:

The filibuster has been invoked comparatively few times in the history of the country, and every time it has been invoked and proved successful it has been justified in the judgment and in the conviction of the public. If it had not been for the filibuster that the Senator from Alabama himself waged, which he led and of which he boasted, we would not have been able to defeat a bill which authorized the Federal Government to permit judgments in damages against counties and municipalities for no alleged wrongful act, a bill which took away from the local governmental institutions the few remaining powers which they are permitted to exercise.

The force bill would have become a law but for the organized and persistent opposition of Senators who saw in its provisions dangers to the fundamental institutions of this Republic. They defeated it by fighting and falling back and fighting again until the hosts which were assaulting them realized that the attack had failed.

Mr. Reed of Missouri:

The late Senator Lodge, sponsor for what is called the force bill, years afterward, indeed, only a year or two before his lamentable death, stated to me upon the floor of the Senate that he was convinced that the force bill was wrong and that the result of

the filibuster had been a great blessing to the country.

Mr. Robinson:

Of course, the rules could be amended and improved, but that, Mr. President, is not the question. The proposition is, 'Shall the voice of the people through their Senators be stifled and suppressed?' I care not whether Senators come from New England or from the South, whether they come from the West or from the East. The proposition is that here is one forum which, under traditions and precedents, affords an opportunity for the public to have expressions of its views through the representatives of the people.

When I recall the fact that under the rules of the House of Representatives one man on one side and another man on the other side, frequently both of them, really agreeing as to the proposition in dispute, actually control all the time that is allotted; that no Member may speak except by permission of someone else, and that his only remedy is to print in the RECORD a speech which frequently he himself does not comprehend and which nobody on God's earth will ever read, I am willing to vindicate this forum of open debate where fools may be arrogant, but where men who have studied problems still have a chance to speak.

Mr. President, the history of attempts to make cloture more restrictive always echo the same; it is restrict, restrict and gag, gag, gag. Proponents give us reasons that the country cannot afford the time for debate and that the country must move with speed or it will collapse or not be able to stand up in an accelerating, atomic, moon-shooting world.

It just is not true. Under the free and unlimited debate of the Senate, the country went through all the terrible War Between the States. It fought World War I which, at the time, was the greatest war in the history of the world. Then the depression, then World War II, then Korea, and now Vietnam. These all were times to try men's souls. Yet we went through them without cloture, and we went successfully through. I have heard no one say that it was imperative that we have restrictive debate in these emergencies.

Throughout the world today, we are protecting liberty by arming our friends, and all this in the climate of unlimited debate.

Our country is not great because of restrictive laws and prohibitions. It is great because of the character of the people and the character of the men who represent those people in its Government.

Socrates exercised his right as a free Athenian to lecture in the marketplace, which lectures became increasingly political as the despots abridged the liberties. It was part of the heritage of Greece that government took place in the streets through free and unlimited debate. The tyrants gave Socrates a choice: A cup of hemlock or banishment. This was the first great example of a gag rule in a democracy, an example of cloture in Athens. It behooves us all to read today the great oration of Socrates explaining why he chose the hemlock to exile. His right to speak was more precious than his life, for he knew that a gag was the guillotine of liberty.

Many Senators have changed their minds on free debate versus cloture. In fact, it is almost a pattern that new Senators favor cloture and the longer they remain in this Chamber the more they change their minds.

Earlier today, I gave us an example of the infamous force bill that was defeated in the Senate by debate, which by length at the time was labeled a filibuster, but which history in its wisdom has labeled a debate preserving the country from a horrendous law.

The bill was introduced in the House and fought for by Senator Henry Cabot Lodge of Massachusetts.

He came over to the Senate. He was very much opposed to free and unlimited debate; he favored cloture.

He was a man of great erudition. He was a great student not only of U.S. Government but of all the governments of the world. However, he had one great thing to learn; and, being a man of intellectual integrity, he learned it well and admitted it. His change of attitude covered the entire problem so well, it is worth setting out here at some length.

Senator Lodge said:

It is not necessary to trace the long struggle between these opposing forces which ended in the most famous compromise of the Constitution of which the Senate was the vital element and which finally enabled the convention to bring its work to a successful conclusion. It is sufficient here to point out that, as the Constitution was necessarily made by the States alone, they yielded with the utmost reluctance to the grants of power to the people of the United States as a whole and sought in every way to protect the rights of the several States against invasion by the national authority. The States, it must be remembered, as they then stood, were all sovereign States. Each one possessed all the rights and attributes of sovereignty, and the Constitution could only be made by surrendering to the General Government a portion of these sovereign powers. In the Senate, accordingly, the States endeavored to secure every possible power which would protect them and their rights. They ordained that each State should have two Senators without reference to population, thus securing equality of representation among the States. They then provided in article V of the Constitution the "No State without its consent should be deprived of its equal suffrage in the Senate."

What I am advocating is that the State of Iowa or Mississippi or Arizona or California or any other State shall not be denied its right to be heard in the U.S. Senate.

Senator Lodge went on:

Except on some mere occasions, the Senate has been the conservative part of the legislative branch of the Government. The cloture and other drastic rules for preventing delay and compelling action which it has been found necessary to adopt and apply in the House of Representatives have never, except in a most restricted form, been admitted in the Senate. Debate in the Senate has remained practically unlimited, and despite the impatience which unrestricted debate often creates, there can be no doubt that in the long run it has been most important and indeed very essential to free and democratic government to have one body where every great question could be fully and deliberately discussed.

Senator Lodge continued:

The Senate, I believe—

And here is the man whose bill was defeated by free and unlimited debate—

The Senate, I believe, has never failed to act in any case of importance where a majority of the body really and genuinely desired to have action and the full opportunity for deliberation and discussion characteristic of the Senate has prevented much rash legislation born of the passion of an election struggle and has perfected still more that which ultimately found its way to the statute books.

And then he closed with these words:

The Members of the United States Senate have always cherished the freedom of debate which has existed in this chamber. Senators have been reluctant to adopt any rule of cloture, and, even after the present rule was adopted in 1917, they have been reluctant to invoke it. Cloture is a gag rule. It shuts off debate. It forces all free and open discussion to come to an end. Such a practice destroys the deliberative function which is the very foundation for the existence of the Senate. It was the intent of the framers of the Federal Constitution to obtain from the upper Chamber of the Congress a different point of view from that secured in the House of Representatives. Thus the longer time, the more advanced age, the smaller number, the equal representation of all States. Careful and thorough consideration of legislation is more often needed then the limitation of debate.

Many years later Senator Lister Hill from the State of Alabama commented on Senator Lodge's statement in the following vein:

Senator Lodge knew, even as we know, of the temptations and the pressures that come. He knew how a party in control, perhaps at the moment somewhat intoxicated with its new-found power or perhaps forgetful of the great responsibility of power, may be whipped on by pressure groups or spurred by some political expediency to act without full and complete deliberation and mature consideration and do the very thing that George Washington warned us against.

Mr. President, it is my belief that those who ask today for a three-fifths cloture rule are not looking to that end alone. That is just an oasis stop on the way to their Mecca. What some of the proponents of a three-fifths cloture really desire is majority rule on cloture. They want a rule to cut off debate by a majority, and I expect that by a majority they mean a majority of a quorum. Now, of course, that statement does not, by any means, apply to all who support Senate Resolution 9.

The temptations of a majority cloture to the party in power are overwhelming. The majority cloture would be an offensive weapon in the hands of the party in power awesome to behold. Abuses could not be prevented. It is certainly true that power corrupts and total power corrupts totally.

When any party program becomes bogged down by debate, the gag would come out. And in time the very threat of the gag being available would coerce the minority into sullen silence.

The majority would then rationalize the bringing out of the gag. It is best for the country; the majority of the voters want it applied; an extensive debate is a sign of weakness to our foreign adversaries; the majority would be derelict in its duty if the gag was not used.

I believe the majority would be completely helpless from the great pressure groups who in their greed to secure fa-

vorable legislation, would continually clamor for the use of the gag. In fact every citizen to protect himself economically would have to join a pressure group to obtain equality in the rush for legislative favors.

I believe that the Senate today has a sense of responsibility and a devotion to duty unmatched in any legislative body of the world. But put in harsh cloture rules and you not only open wide the door but you extend the invitation for men to depart from these fine sensibilities. The party spirit will envelope the Senate, for me the individual is no more, the caucus of the party takes over. The cry of anguish in the House is: "I must go along with the party," for the House operates by party.

Mr. President, there are many types of majority and if we are not careful we can confuse ourselves. For instance, a majority of the Senate does not always mean a majority of the Senators from States of large population. A Senate majority composed largely of Senators from sparsely populated States might well represent only a small percentage of the total population. Therefore, a minority of Senators might represent States with a majority of the total population. The power of the Senate minority to protect itself by free and unlimited debate is a pedestal upon which we all can enshrine our liberty. The minority has rights and when these rights are trampled upon by the majority there is a remedy, a protection. In the Senate of the United States the minority can debate its loss of rights. The great force of our media will pick up the debate and disseminate the views and counterviews throughout the land. After the people think about it and discuss the majority view of the Senate might be the minority view of the country. It can happen. It has happened.

The able senior Senator from Arkansas in his debate on the 1967 cloture change pointed out from quotes that geography has nothing to do with this issue. I, too, am a Southern Senator and I, too, wish to point out that geography is not controlling. For decades cloture became enmeshed in the northern cities with civil rights. This is a fallacy and it has hurt the country. Let us consider Senator McCLELLAN's sectional quotes which run the gamut from New England to the West:

During the course of his speech in opposition to cloture, Senator George T. Hoar, of Massachusetts, said: "There is a virtue in unlimited debate, the philosophy of which cannot be detected upon surface consideration."

Senator Key Pittman, of Nevada, after noting that in his early years in the Senate, he had been a crusader for strict cloture, declared: "Experience, through long years of legislative practice, has forced me to the conclusion that I was in error."

He became convinced of the great value, of the tremendous merit of unlimited debate.

Then, referring to the cloture rule in the House and its effect on the legislative process in that body, he went on to state that—

"* * * it must be admitted that bills of great importance, containing thousands of different items, are passed within a few hours and without sufficient debate or consideration. It has been the extended and full debate in the Senate that advised the country with respect to vital legislation, and, through this information, molded public opinion.

He stated further:

The Senate was founded as a part of our institutions for the protection of minorities, not alone minority parties, but minority populations and minority principles. To establish a cloture such as they have in the House would nullify the very purpose of the United States Senate. * * *

Mr. President, I am not fully advised, but there is a rumor abroad in the Chamber, in the corridors, and in the cloak rooms that a movement is underway, by a manipulation of the rules and by curious interpretation of them, to bring about that very result: To nullify one of the original and fundamental purposes of the Senate.

Senator Pittman stated further: "Let those who contend for the cloture point to particular instances, if they can, wherein the rules of the Senate have been destructive of the progress of our people. It is possible that our country suffers from too much legislation, rather than too little."

I ask any Senator who is interested in the subject at this hour to meditate upon that statement. Where do we find ourselves today? What is our leader in this body admonishing us? What did the President intimate in his state of the Union message?—that we have acted hastily, that we have passed much legislation without due study and proper deliberation, and that today we have a hodgepodge on our hands. Our leader has called upon the Senate at this session to do an oversight job, to go back and try to correct some of the things that have already been done, which should not have been done, and would not have been done, possibly, had there been more debate and more constructive deliberation instead of undertaking, as we did in some instances, to whip up the horses and drive through to the finish line irrespective of the waste and squander that fell by the wayside in our rush to the goal.

Senator Smith W. Brookhart, of Iowa, pointed out that, "The Senate Rule of unlimited debate makes the United States Senate the one great open legislative forum in all the world.

"That is still true today.

"The rule sometimes delays good legislation, but never kills it. Good legislation always comes back and finally wins. The rule kills a great deal of bad legislation (Congressional Digest, Nov. 1926, p. 308)."

Mr. President, the rule does not kill all of the bad legislation by any means.

Senator Hiram Johnson, of California, in a vigorous statement in opposition to cloture declared that, "The last place in all this world where freedom obtains, the place where freedom of speech may be abused, abused, abused, and abused again, but the last free forum, in that day will then have been destroyed and we here this day have commended and made easy that destruction."

Senator Hiram Johnson, of California, was not a conservative, he was not a reactionary, and he was not a southerner. In his day and time he was a great liberal. He recognized that there would be forged a two-edged sword, one that would serve to impede liberal progress, just as it would serve to assassinate any opposition.

Senator Henry Cabot Lodge, the elder, of Massachusetts, also opposed cloture saying: "Careful and thorough consideration of legislation is more often needed than the limitation of debate."

Mr. President, in some respects the Senate acts as a court of review. It reviews nominations on its advice and consent. It reviews treaties. It reviews impeachments. And strangely enough in its evolution, it has come to act as an appellate court to the legislation passed by the House of Representatives. The lapse of time between the passage of a House bill and the ultimate Senate often gives the country a chance to "jell" its opinions. This "stop-gap" time as it has often been called is most helpful on many occasions. Hasty majority action is prevented by prolonged debate. The gears of the Senate mill grind fine, for the Senate in its peculiar construction does not represent a consensus of the people or even of the States.

The independence of the legislative disappears in exact proportion to the diminishing of deliberation. Bossism and cloture are synonyms. Gag rule is the foundation of machine rule. The Reichstag stopped talking when Hitler said nein, and a nyet in Russia served the same purpose. When we lay the foundation, the mechanics of machine rule become very simple. We take one or two bosses, shake them up with a party caucus, then salt with the principle of control through a majority of a majority and presto we have a machine rule. It is also interesting to note that a majority of a majority by way of the caucus route is almost invariably a minority of the whole.

What do bosses do when they become bosses? Boss, I guess, means to push around and that is what they do, but we know it as coercion. They have at their fingertips many kinds of the rack and screw. They would be in the position to take care of subservient Members primarily interested in local legislation, and to dispense patronage favors to those who prove faithful. Machines such as this are manipulated from the outside by dominant political and economic interests. Pressure groups would be supreme in the land. I am against any change in the rules which places the mace and scepter of power in the hands of the lobbyists.

A former chairman of the Senate Judiciary Committee from the Far West State of Nevada made this statement to the chairman of the Rules Committee on a pending cloture hearing:

The rules which govern the Senate are founded in deep human experience. They are the result of more than a century of tireless effort to conserve and to render stable and secure the rights and liberties of the people. The Senate of the United States preserves, without restraint, as no other legislative body preserves, the two basic essentials of wise legislation—the right of free amendment and the right of unlimited debate. The urgent need of the Congress is seldom greater speed, but always more thorough consideration in law making. Great evils often result from hasty legislation. Rarely, on the contrary, do such evils result from the delay occasioned by full discussion and deliberation.

I am in wholehearted agreement with my former committee colleague, Senator Pat McCarran, of Nevada.

If the Senate acts in an appellate capacity, and most people agree it does, then it would seem that open debate is imperative, for how else could it carefully inspect legislation? The House does not debate; it uses the caucus and the gavel. So there would seem to be a need for one place of mature deliberation. The difference between Government fiat and

democracy is the difference of time the representatives of the people are permitted to scrutinize the law to be.

It is true that under present Senate rules a minority bloc or even one steadfast Senator may retard hasty legislation. However, neither the bloc nor the one can prevent legislation indefinitely where there is a widespread and insistent demand by the public. By its very nature a successful filibuster against an important bill indicates there is substantial public and senatorial opinion against the bill. I say, Mr. President, let the minority express itself.

Mr. President, for the above and many other reasons, it is necessary and proper that the Senate reject Senate Resolution 9.

Mr. KENNEDY. Mr. President, at the start of the current session of the Congress, 51 Members of the U.S. Senate are seeking to bring the rules of the Senate into accord with its responsibilities. The two rights of Members of the Senate that are critical in the democratic system are the right to debate and the right to vote. Not only are they rights but in responding to the needs of the Nation and to their constituents, Senators have corresponding responsibilities both to explore each issue in full debate and ultimately to express the majority will through a public recording of the ayes and nays.

Historically, the balance between those two rights has been changing and the Nation is becoming more convinced that ultimately the point is reached when the right to debate must give way to the right to vote.

Even 75 years ago, Henry Cabot Lodge stated:

> If the courtesy of unlimited debate is granted, it must carry with it the reciprocal courtesy of permitting a vote after due discussion. If this is not the case, the system is impossible. Of the two rights, moreover, that of voting is the higher and more important. We ought to have both, and debate certainly in ample measure, but if we are forced to choose between them, the right of action must prevail over the right of discussion. To vote without debating is perilous, but to debate and never vote is imbecile.

Since the two-third rule was adopted 54 years ago in 1917, there have been 49 attempts at cloture. Eight succeeded. If the proposed amendment to the rules is adopted, 15 not just eight of those petitions would have been successful. What is important to recognize is that it would not have opened the floodgates in any way, shape, or form. It would not have unduly restricted the ability of the Senators to expose questions to debate. But in important instances it would have permitted the Senate to act.

At some point, a substantial majority must be able to work its will in order to carry out its representative function. Without that ability, the right to the vast majority of the citizens of this land to equal representation would be denied by the will of a handful of Senators.

The issue at hand is the determination of how substantial a majority is required to justify the stilling of Senate spokesmen for a particular minority viewpoint. The present two-third rule has no holy or preordained origin. It was created by men on the basis of their experience in the 1917 era.

Since then, we have had five decades of experience to evaluate their conclusions, and now 51 Senators are suggesting a reasonable and justifiable modification from two-thirds to a three-fifths majority of those Senators present and voting on the basis of our past experience.

But that is not all that is being decided during these debates. Also, we are debating whether a majority of the Senate has the right to adopt or change the standing rules at the start of each session and whether the Senate is itself a continuing body. I cannot believe that the Nation's founders meant for a Senate meeting for the first time to be bound by the rules adopted by a previous Congress.

What is being sought here today is a reasonable, balanced compromise that would blend and protect the best of Senate tradition—its ability to expose to the Nation the details of any single bill—and to ease the impact of its worst traditions—the obstinate denial of the Senate's ability to act.

At a time in our history when men are restless with the responsiveness of its institutions, the delay in the enactment of vital social legislation can produce a disintegration of respect for institutions and laws. That potential exists today and it is a condition that we cannot afford. Much of the loss of faith in our institutions relates directly to the continued failure of American democratic institutions to make good on past promises whether to end poverty or hunger or discrimination. Historically, the inability to end debate on the filibuster has meant the delay or defeat of many of these measures.

The conclusion of Senate business last year was perhaps the most recent example of the difficulty that the Senate can unwittingly impose upon itself by archaic and restrictive rules.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, informed the Senate that, pursuant to the provisions of 20 United States Code 42 and 43, the Speaker had appointed Mr. MAHON, Mr. ROONEY of New York, and Mr. Bow members of the Board of Regents of the Smithsonian Institution, on the part of the House.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The Chair, on behalf of the Vice President, pursuant to Public Law 754 of the 81st Congress, appoints Larry A. Herrmann to the Federal Records Council.

S. 594—INTRODUCTION OF A BILL TO AMEND EMERGENCY LABOR DISPUTE PROVISIONS OF THE LABOR-MANAGEMENT RELATIONS ACT

Mr. JAVITS. Mr. President, I introduce and I ask to have appropriately referred a bill aimed at giving the President broad power to deal with paralyzing strikes and lockouts which threaten national or regional health and safety.

I believe early hearings will be scheduled by the Committee on Labor and Public Welfare on emergency dispute legislation, including this bill and the administration proposal. I say this after consultation with the chairman of the committee.

This is a very urgent matter. Our country has been very lucky in recent years not to have been plunged into a very profound crisis because of the absence of such legislation. For example, if we faced a railroad strike and a determined minority took it into its mind to prevent action upon an ad hoc bill, then a strike might occur, in which event the Secretary of Transportation predicts chaos in any effort to work out with the unions a means for moving whatever is essential to the national health and safety. The unions might disagree, but we never know until we get into it. That is one of a dozen examples involving transportation, and other basic industries, which could produce grave national emergencies. So we have been lucky, but our luck cannot hold out forever. It is critically important that this matter be dealt with.

Yesterday the Senator from Michigan (Mr. GRIFFIN) introduced the administration bill. I said then that I hailed that action by the administration and by Senator GRIFFIN. I am introducing my own bill today, which differs in several important respects from the administration bill.

Mr. President, my bill would amend the emergency dispute provisions of the Labor-Management Relations Act in order to provide permanent protection for the national or regional health and safety when it is threatened by paralyzing strikes or lockouts. This bill is designed to end the periodic crises in which we find ourselves because of strikes or lockouts which threaten the national or regional health and safety.

The bill would make the following major changes in present law:

First. In the event that an emergency dispute is not settled within the 80-day cooling off period provided under the Taft-Hartley Act, the President would have the power to issue an Executive order, prescribing the procedures to be followed by the parties thereafter, and any other actions which he determines to be necessary or appropriate to protect the health and safety of the Nation or region of the Nation affected by the dispute.

Second. The emergency disputes provisions of Taft-Hartley would be made applicable to disputes which threaten the health and safety of a region of the country, as well as the whole nation. That is a very important and material change.

Third. The existing emergency procedures of the Railway Labor Act would be repealed; all industries would be subject to the emergency procedures of the Taft-Hartley Act, as it would be amended by the bill.

Fourth. Emergency boards would be permitted to make recommendations if

the President so directs and the President would be given power to freeze the status quo for 30 days before invoking the court-ordered 80-day injunction in order to permit bargaining with respect to emergency board recommendations or findings.

For many years I have been calling attention to the need for permanent legislation to fill the gap in our present laws which requires Congress to act on an ad hoc basis to protect our health and safety when it is threatened by strikes or lockouts. In the past I have advocated a limited seizure approach, as the traditional governmental remedy, and the one which interferes least with free collective bargaining.

As a result of our experience over the years with one-shot emergency legislation, I have decided that a much broader approach to this problem is more appropriate, and will also have a better chance of gaining support in Congress and from the public.

This bill would provide the comprehensive, permanent protection against paralyzing strikes or lockouts which the Nation so desperately needs. At the same time, because it does not limit the remedies available to the President to one, or a few selected steps, it would also provide the flexibility which is essential if we are to preserve collective bargaining and deal with extraordinary types of disputes. The President would be authorized to invoke any of the traditional remedies utilized to resolve labor disputes. For example, fact-finding, extension of the status quo, seizure and partial operation, mediation to finality, arbitration, and the "final offer selection" procedure of the administration's bill would be among the available remedies.

I emphasize that no remedy could be invoked by the President which was vetoed by one House of Congress within 15 days after he proposes it. That procedure is analogous to the Reorganization Act procedure which has built into it a means to deal with filibusters or extended debate in the Senate, so this action could not be blocked and the resolution would have to be acted on.

Admittedly, the powers which would be granted to the President under this bill are extremely broad. They are not, however, unlimited. There are several built-in checks against arbitrary action by the President. Thus, as I have noted, either House of Congress may veto the President's order within 15 days; the action ordered by the President must be "necessary or appropriate" to deal with the threat to health and safety posed by the dispute; and the President's exercise of his broad power must be preceded by a court determination that a threat to health and safety exists and the issuance of an 80-day cooling-off injunction.

Furthermore the bill specifically provides that—

> Such executive order shall be in effect for the shortest period of time consistent with the emergency and the resolution of the dispute, and shall (1) provide for the maintenance or resumption of operations and services essential to the national or regional health and safety (2) encourage resolution of the dispute through collective bargaining (3) encourage and preserve future collective bargaining with industry affected, and (4) to the extent consistent with meeting the emergency, avoid undue interference with the rights of the parties to the dispute.

The thrust of the bill is essentially to deal with threats to the national health and safety—emergencies—and provide for how they may be obviated or how the people may be safeguarded notwithstanding a strike or lockout.

Mr. President, the bill I introduce today is designed to cover the whole field. The administration's proposal—and I paid my respects to it—is limited; it deals only with transportation. In addition, my bill applies to regional as well as national disputes, and, again, in that way it is broader than the administration's. The third way in which it is broader is that the remedies it authorizes are not limited to three remedies specified in the administration's bill; namely, a 30-day extension of the status quo, partial operation, and "final offer selection."

I do not, however, want these differences to be construed as criticism of the administration's proposal. The President deserves enormous credit for sending up an imaginative proposal, which merits the most serious consideration by the Congress, and for according this legislation the high priority it deserves.

I have introduced my own proposal today because I believe that broader protection, and more flexibility, is necessary to protect the country, and because I believe that the Labor and Public Welfare Committee should have alternative approaches before it when hearings are held on this legislation. It may well be that the committee, and the Congress, will conclude that it would be better to begin with a limited law in the most critical area, which unquestionably is transportation, than to legislate more broadly.

The point I want to emphasize today is my complete agreement with the President and the Secretary of Labor that this legislation deserves top priority in the 92d Congress.

Four times in the past 7 years—twice last year—Congress has been required to act to avert nationwide railroad strikes. At present we are facing a March 1 deadline in the dispute on which we acted last December; if no settlement is reached by that date we may well have to act again.

For all of these reasons, I believe this legislation to be very urgent. I just cannot believe that we will not have the courage to face our responsibility to protect the American people from these types of disputes.

The best way to destroy government is by anarchy, and this is what my bill seeks to avoid.

The fact is that congressional inaction on permanent emergency labor-management dispute legislation is an invitation to tragedy. The American people should not be left hanging on the edge of a precipice as they are now, wholly dependent on ad hoc congressional action to protect the Nation from the crippling impact of major labor disputes involving national or regional paralysis.

I am aware that the continuing stalemate over legislation to deal with the emergency strike problem, coupled with the enactment of ad hoc laws to deal with railroad disputes four times in the last 7 years, has led some to conclude that perhaps no legislation is really desirable—that Congress can always be counted upon to act when a true emergency occurs and that it is best to leave the nature of the solution in doubt until Congress does act. By keeping the parties guessing, you encourage them to bargain, according to this theory.

That is an appealing rationale for avoiding a hard issue, but in my opinion those who embrace it are playing Russian roulette with the American people's security.

Congress may or may not act promptly to deal with an emergency dispute, and equally important, under the stress of an immediate emergency cannot always be counted on to act in the most desirable way. If the experience of the four ad hoc laws for railroad disputes and one near-miss in the airlines dispute of 1966 has taught us anything, it is that rational consideration of these problems is exceedingly difficult given the enormous political, economic and regional pressures which are brought to bear during an emergency. We got a small taste of what is in store for us last December in the dispute which erupted over whether to legislate a pay increase of 13½ percent in connection with extending the strike deadline until March 1, 1971. Whatever the merits of that increase, I do not think there can be any argument at all that the floor of the Senate or the House is not an appropriate place to resolve wage rates, work rules or any other issue involved in a labor dispute.

Mr. President, there is no doubt in my mind that we in Congress have been remiss in our duty to come to grips with the issue of emergency strikes and lockouts. Particularly regrettable is the failure of either the Senate Labor and Public Welfare Committee or the House Interstate and Foreign Commerce Committee to hold hearings on the administration's proposal submitted to the last Congress. We have a responsibility to the American public to see to it that the public is protected from paralyzing labor disputes. That responsibility demands that permanent emergency dispute legislation be made the top priority by the committees concerned, and that action in this area not be delayed in the hope that some sort of consensus between labor and management can be achieved on this issue. No one would prefer to see such a consensus more than I, and I shall do everything I can to help achieve it. But whether or not agreement is reached, it is our duty to proceed.

In this connection I have consulted with Senator WILLIAMS the distinguished chairman of the Labor and Public Welfare Committee and he has assured me that early hearings will be scheduled on this legislation.

Mr. President, our responsibility to act promptly on this legislation has been noted in numerous editorials throughout the country, a representative sample of which I ask be printed in the RECORD. I

also ask that a copy of my bill be printed in the RECORD.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The bill will be received and appropriately referred; and, without objection, the editorials and bill will be printed in the RECORD, as requested.

The bill (S. 594) to amend the Labor-Management Relations Act, 1947, and the Railway Labor Act to provide for the settlement of certain emergency labor disputes, introduced by Mr. JAVITS, was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the RECORD, as follows:

S. 594

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 "Emergency Labor Disputes Act of 1971"

SEC. 2. (a) Congress hereby finds—

(1) that the present procedures established by sections 206–10 of the Labor-Management Relations Act, 1947, and section 10 of the Railway Labor Act for dealing with labor disputes which threaten the health and safety of the American people or tend to deprive any section of the country of essential transportation services are inadequate and have, in certain cases, produced a deterioration of the collective bargaining process as well as an intensification of emergencies created by such disputes;

(2) the use of present procedures for resolving such labor disputes has not prevented serious disruptions in operations and services essential to the health and safety of the nation or a substantial part of its population or territory; and

(3) a permanent range of flexible procedures permitting prompt action by the President to deal with national or regional emergencies created by labor disputes is necessary to prevent imperiling the health and safety of the nation or a substantial part of its population or territory by such disputes and to encourage and maintain free collective bargaining.

(b) It is the purpose of this Act to make available to the President on a permanent basis of a range of flexible procedures to be utilized by him in taking emergency action to prevent the interruption of operations or services essential to the health and safety of the nation or a substantial part of its population or territory because of actual or threatened strikes or lockouts.

SEC. 3. Sections 206–210 of the Labor-Management Relations Act, 1947, are amended to read as follows:

"SEC. 206. (a) Whenever in the opinion of the President of the United States, after consultation with the Director, a threatened or actual strike or lockout or other labor dispute in an industry affecting commerce may, if permitted to occur or to continue, imperil the health or safety of the Nation or a substantial part of its population or territory, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its own position, and, if the President so directs at any time, there shall be included in such report or in a supplemental report the recommendations of the board of inquiry for the settlement of some or all of the issues in dispute. The President shall file a copy of such report with the Service and shall make its contents available to the public.

"(b) Upon receiving a report or a supplemental report from a board of inquiry, the President may direct that for a specified period not to extend 30 days no change in the conditions out of which the dispute arose shall be made by the parties to the dispute, except by agreement. During such period the parties to the dispute shall be under a duty to bargain collectively, but neither party shall be under a duty to accept in whole or in part any recommendations of the board of inquiry."

"SEC. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

"(b) Members of a board of inquiry shall receive compensation, at the daily rate prescribed for GS–18 under section 5332 of title 5, United States Code, for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

"(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of section 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1964, as amended (U.S.C. 19, title 15, sections 49 and 50, as amended), are hereby made applicable to the powers and duties of such board.

"SEC. 208. (a) Upon receiving a report from a board of inquiry, or upon the expiration of any period fixed by the President under Sec. 206 (b) for bargaining, the President may direct the Attorney General to bring a civil action in any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuance thereof, and if the court finds that such threatened or actual strike or lockout—

"(i) affects an industry engaged in commerce; and

"(ii) if permitted to occur or to continue, will imperil the health or safety of the Nation or a substantial part of the population or territory thereof, it shall have jurisdiction to issue an order enjoining any such strike or lock-out, or the continuance thereof, and to issue such other orders as may be appropriate.

"(b) Any action brought under this section shall be heard and determined by a three-judge district court in accordance with section 2284 of title 28, United States Code. The order or orders of the court shall be subject to review by the Supreme Court in accordance with section 1253 of title 28, U.S.C.

"SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the health or safety of the Nation or a substantial part of the population or territory thereof, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

"(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employers' last offer of settlement. The report shall also include the final recommendations of the board if the President so directs. The President shall make such report available to the Public. If the board of inquiry so recommends, and the President so directs, the National Labor Relations Board shall, within the succeeding fifteen days, take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

"(c) Whenever a labor dispute with respect to which the provisions of section 208 of this Act have been invoked has not been settled prior to the expiration of the sixty day period referred to in subsection (b) of this section, the President may, at any time thereafter, issue a proclamation declaring an emergency and invoking the provisions of this section if he finds that the conditions set forth in section 206 of this Act are still operative. Upon issuing such a proclamation the President shall issue an executive order prescribing the procedures to be followed by the parties thereafter and any other actions which he determines to be necessary or appropriate to protect the health and safety of the Nation or that substantial part of the population or territory thereof which is relevant to such labor dispute. Such executive order shall be in effect for the shortest period of time consistent with the emergency and a resolution of the dispute, and shall (1) provide for the maintenance or resumption of operations and services essential to the national or regional health and safety, (2) encourage resolution of the dispute through collective bargaining, (3) encourage and preserve future collective bargaining with industry affected, and (4) to the extent consistent with meeting the emergency, avoid undue interference with the rights of the parties to the dispute. Such executive order shall be immediately transmitted to the Congress, and shall be effective at the end of the first period of 15 calendar days of continuous session of the Congress after the date on which such order is transmitted to Congress unless, between the date of transmittal and the end of the 15 day period, either House passes a resolution stating in substance that the House does not favor the order, in which case it shall not take effect. The provisions of sections 906(b), 908 and 910–913 of title 5, U.S.C. shall be applicable to any such resolution.

"SEC. 210. (a) The provisions of this title and orders of the President issued thereunder shall be enforceable upon suit by the Attorney General, through such orders as may be appropriate by any court having jurisdiction of any of the parties.

"(b) Upon the issuance of an executive order under section 209 (c) of this Act, the Attorney General may move to modify any order issued under section 208 of this Act in order to carry out the provisions of the executive order, and the court shall so modify its order unless the executive order is found to be arbitrary or capricious or in violation of the Constitution.

"(c) The Attorney General shall move the court to vacate an order issued under section 208 with respect to a dispute, and such motion shall be granted, upon any of the following events:

(1) Settlement of the dispute,

(2) The expiration of 80 days from the date of such order without the President having issued an executive order under section 209(c) with respect to the dispute,

(3) Unless otherwise provided in such resolution, the adoption by either House of a resolution stating in substance that that House does not favor an executive order issued under section 209 (c) with respect to the dispute.

(4) The President directs the Attorney General to so move.

"(d) In the event that pursuant to an executive order issued under Sec. 209(c) the United States shall take possession of and

operate, in whole or in part, any business enterprise of an employer involved in a given dispute, such enterprise shall be operated by the United States for the account of the employer: *Provided,* that employer shall have the right to elect, by written notice filed with the court within ten days of such taking of possession, to waive all claims to the proceeds of such operation and to receive in lieu thereof just, fair, and reasonable compensation for the period of such possession and operation by the United States, to be paid by the United States as follows: (A) The President shall ascertain the amount of just, fair, and reasonable compensation to be paid as rental for the appropriation and temporary use of such enterprise while in the possession of the United States, such determination to be made as of the time of the taking hereunder, and taking into account the existence of the labor dispute which interrupted or threatened to interrupt the operation of such enterprise and the effect of such interruption or threatened interruption upon the value to the employer of the use of such enterprise; (B) if the amount so ascertained is not acceptable to the employer as just, fair, and reasonable compensation for the appropriation and temporary use of the property taken hereunder and as full and complete compensation therefor, the employer shall be paid 75 per centum of such amount and shall be entitled to sue the United States in the Court of Claims or in any district court of the United States in the manner provided for by sections 1357 and 1491 of title 28 of the United States Code to recover such further sums as when added to the amount so paid shall constitute just, fair, and reasonable compensation for the appropriation and temporary use of the property so taken.

"(e) In any action brought under this title, subpoenas for witnesses who are required to attend a United States district court may run into any other district.

"(f) In granting relief under this title, the jurisdiction of the court shall not be limited by the provisions of sections 6 and 20 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and other purposes", approved October 15, 1914, as amended (15 U.S.C. 17, and 29 U.S.C. 52) or the provisions of the Act entitled "An Act to amend the Judicial Code, to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101–115)."

SEC. 4. Section 212 of the Labor-Management Relations Act, 1947, is amended to read as follows:

"REPEAL OF SECTION 10 OF THE RAILWAY LABOR ACT

"SEC. 212. Section 10 of the Railway Labor Act is hereby repealed; *Provided,* That such section shall continue in effect with respect to any emergency board in existence on the effective date of this Act. Disputes heretofore subject to section 10 of the Railway Labor Act shall be subject to provisions of this title."

SEC. 5. Title II of the Labor-Management Relations Act, 1947, is amended by adding at the end thereof the following new section:

"RIGHTS OF EMPLOYEES

"SEC. 213. Nothing in this title shall be construed to limit the right of any employee to resign from his position of employment."

The editorials, presented by Mr. JAVITS, are as follows:

[From the Washington Post, Dec. 11, 1970]

THE MISSING EMERGENCY STRIKE LAW

If the national railroad strike which afflicted the country yesterday were not so disruptive and costly, it would qualify as a first rate comedy. For months the country has known that an emergency was in the making, but the President did not ask for a stopgap law to prevent the strike until Monday night. Congress got into action on Wednesday, but did not pass its antistrike bill until after the strike had began. The President signed the bill at 2:10 a.m. and Judge Pratt, clad in pajamas and robe, issued a temporary order to restrain the strike at 3:17 a.m. Meanwhile the defiant president of the Brotherhood of Railway Clerks had disappeared so that no court order could reach him, and the nation-crippling strike went merrily on through the day. What a way to run a railroad, or a nation!

In its haste, Congress sought to sweeten the bitter but necessary pill that it was administering to the four unions involved. It legislated a 13.5 per cent wage increase for the employees, which corresponds to the first installment of a 37 per cent increase in three years recommended by an emergency fact-finding board. But Congress ignored the other parts of the emergency board's proposed settlement designed, as the President noted in signing the bill, to "increase productivity and cut back the inflationary effect of the pay increase." In effect, this attempt to meet a transportation crisis through special legislation failed to prevent the strike; it put Congress on record in support of an inflationary wage settlement; and it ignored the proposed work-rule changes designed to make higher wage rates economically feasible.

Essential though it was to take away the union's right to strike in the current circumstances, it is difficult to avoid the conclusion that Congress botched the job. Virtually every member was irritated, moreover, by the disruptive effect of this special legislation on its already overburdened catchup session. The basic fact is that Congress cannot legislate properly in such circumstances, and that is an overpowering argument for not letting crises of this sort go to Capitol Hill for settlement.

The chief ray of hope in the situation, therefore, is that the 92d Congress will overhaul the Railroad Labor Act so as to save itself and the country from fiascos of this kind in the future. Congress might not like the kind of legislation that the President recommended last February to deal with transportation emergencies which cannot be settled under existing law, but it has not said so. The inexcusable fact is that not a single hearing was held on the bill, and neither house did anything to initiate substitute legislation of its own. There is not much hope of meeting these occasional emergencies more satisfactorily until Congress is ready to buckle down and pass a new law to protect the public interest.

[From the New York Times, Mar. 4, 1970]

RAIL UNION FOLLY

The four shopcraft unions seem determined to discredit all of organized labor by their reckless course that has now obliged President Nixon to ask Congress for special legislation to block a nationwide railroad strike at midnight tonight.

The strike threat is the final folly in a chain of irresponsibility by these four unions, representing fewer than one-tenth of the 575,000 employes on the rail roads. In a real sense, even that figure exaggerates the numbers of those who are abjuring rationality in collective bargaining. For the entire dispute stems from the refusal of some 3,000 members of the Sheet Metal Wrokers Union on the railroads to go along with rank-and-file machinists, electricians and boilermakers in ratifying a new contract negotiated in good faith by their union leaders.

The agreement, negotiated with the aid of Secretary of Labor Shultz under the club of an earlier union threat to paralyze the railroads, gave the shopcrafts a 1969 wage increase double the pattern already accepted by the rest of rail labor. In return, the carriers were promised a modest measure of flexibility in assigning mechanics outside the ironclad limits of union jurisdiction.

The sheet metal rank and file balked at this *quid proquo;* it insisted on the higher pay with no sacrifice of its featherbed. The three other unions made clear their lack of sympathy by offering to sign independently, but the carriers rightly pointed out that the agreement would be inoperative unless all the unions came into line. Intervention by George Meany as a special mediator failed to budge the intransigent minority of a minority.

When it came to strike action, however, union solidarity took precedence over either responsibility or common sense. The four unions joined in ordering tonight's national shutdown after a Federal judge ruled that they could not seek to shatter the employers' front through divide-and-conquer strikes against individual lines. That ruling was an alternative to chaos in an industry in which the tradition of national bargaining was established more than two decades ago.

Congress can make its necessary contribution to sanity by swift passage of the President's bill. It calls for mandatory acceptance by all the carriers and all four unions of the agreement negotiated in Secretary Shultz's office three months ago. Passage of that emergency measure should be followed by prompt consideration of the proposals Mr. Nixon sent to Capitol Hill last week for better public protection against strike crises in all fields of transportation.

[From the Elizabeth (N.J.) Daily Journal, Mar. 5, 1970]

DOWN TO THE WIRE

President Nixon's eleventh hour move to head off a nationwide railroad strike has put the rail unions and Congress on the spot. The unions must agree on a new contract that raises their pay an average of 19 per cent or else risk an enforced settlement by the federal government by the end of a 37-day period.

The White House, which waited patiently for 14 months for a settlement between management and the unions, has been forced to abandon its policy of patience and non-intervention in major labor disputes that affect the health, safety and economy of the nation. But in a year when a number of major transportation unions, such as the Teamsters and the airline workers, are seeking hefty new contracts, the continued intervention of the White House as a virtual arbitrator of last resort is packed with danger. Instead of nationwide and industrywide bargaining, we are likely to find that the big unions will seek to evade government controls by dividing up territories for bargaining purposes in an unmanageable and chaotic pattern of individual settlements and strike threats. The White House would be confronted with an endless series of disputes that could break its will to intervene.

Indeed, the President and Secretary of Labor George Schultz are well aware of this danger. Mr. Nixon's earlier recommendations to Congress for settling national transportation strikes offer a sensible and moderate use of government power. The Nixon formula provides alternatives to the unions, management and government: The President, in the event of the failure of the two sides to agree, could order 30 days of additional negotiations; he could enforce partial operation of the affected transit operations; or he could name an impartial panel to choose between the last offers of labor or management. This leaves primary responsibility for a settlement on management and labor, where it belongs, and still protects the public by allowing government the leeway to induce a settlement or finally arbitrate one.

The President has taken a risk by allowing

the latest rail strike threat to go down to the wire, but it seems to have been a carefully calculated move to win the bigger prize. Mr. Nixon has awakened Congress, the public and the transportation unions and management to the fact that something better than last minute emergency action by the White House and Congress is needed. The President has deftly maneuvered the Congress into the control tower.

[From the Minneapolis Tribune, Dec. 11, 1970]

MUST THE RAIL CRISIS BE PERPETUAL?

Midnight legislation is hardly the judicious way to resolve railway labor disputes. If the kind of last-minute scrambling that took place Wednesday night were an extraordinary occurrence, one could accept it more philosophically. But rail negotiations have been carried on for so many years in such a state of perpetual crisis that a pajama-clad judge issuing a restraining order at 2 a.m. seemed to fit the current scenario quite well.

Despite all the activity there remained, of course, two problems: The dispute was not resolved and a strike was not prevented. Congress acted as it has before to extend the strike deadline, and acted against precedent by legislating a pay increase. The assumption, apparently, was that a further "cooling-off period," in Railway Act parlance, would accomplish something more than nearly a year's cooling off without a contract between rail industry and labor.

Probably the clearest illustration of the disharmony that exists was the defiance by the clerks' union (BRAC) of the back-to-work order. Put another way, BRAC rejected the wage increase recommended earlier by the President's rail emergency board—an increase specifically criticized last week as inflationary by the President's Council of Economic Advisers.

The result harms the nation in a number of ways. Rail shippers, travelers and commuters are inconvenienced; ultimate wage settlements are sure to carry the country farther on its inflationary binge, and public confidence in the ability of industry, labor and government at the highest level to reach sensible agreements is shaken again.

The last point in particular is one we believe needs concerted effort by the federal government—the kind of effort that's impossible in last-minute legislation and the kind that has not been made all year. Just before the last rail crisis—only nine months ago—President Nixon sent to Congress a message calling for extensive revisions in legislation to deal with national emergency labor disputes. Among other recommendations, he proposed that a new law governing strikes or lockouts in nation-wide transportation industries, including railroads, replace the Railway Labor Act of 1926 and the applicable portions of the 1947 Taft-Hartley Act.

One proposed innovation, for example, was a "final offer selection." If arbitration failed, the parties would be required to submit final proposals to a neutral panel for selection of whichever offer the panel decided was fairer—an incentive, theoretically, to make collective bargaining faster and more realistic.

All such negotiating devices have drawbacks and cause labor leaders to decry the threat of compulsory arbitration. But the negotiating record this year, when then criterion for wage increases seems to have been to outdo previous settlements, ought to provoke a public demand for binding arbitration in such critical industries as rail transportation.

In spite of all this, Congress has held no hearings on the President's proposals of last February. Nor has the administration mounted a campaign urging House and Senate to do so. Whatever may be the merits, or lack of them, in "final offer selection" and all the other suggested changes, the arguments won't be heard and the laws modified in a continued legislative vacuum.

Perhaps there is something good to be said about the BRAC strike. That action might just possibly convince the White House, the Congress and the public that a comprehensive overhaul of emergency strike laws is a high priority for the nation early in 1971.

[From the Los Angeles Times, Dec. 11, 1970]

IN SEARCH OF A RAIL SOLUTION

For some public problems there appear to be no good solutions, only a series of alternatives more or less makeshift. Such is the case with collective bargaining in the railroad industry.

Circumstances work against effective collective bargaining between rail labor and rail management. Each side knows that industry is so important to the national economy that the federal government will do whatever it can to prevent a damaging strike, so neither side has the normal incentive to reach a settlement on its own.

Once again the federal government has stepped in, this time by act of Congress. Once again the solution is jerry-built and unsatisfactory.

Although some leaders of the four unions involved argue that rails are no longer so crucial to the economy that a rail strike should be treated as an emergency, the facts are otherwise. Rails move, among other things, coal that produces electric power, 76% of automobiles shipped, 78% of lumber, 63% of chemicals, 86% of pulp and paper, 46% of meat and dairy products. Not to mention Christmas packages.

Secretary of Labor James Hodgson told Congress that a rail strike lasting a week would increase unemployment to 8.4%; eight weeks, to 22.1%. With government policy at the moment directed toward economic expansion, the prospects correctly appeared intolerable.

So Congress hastily passed a bill to forbid a strike until March 1, in order to give the negotiators more time to reach an agreement, the cooling-off and bargaining provisions of the Railway Labor Act having already expired.

The trouble with the bill is that Congress felt constrained to include an immediate 13.5% pay increase for the half million workers involved as an inducement for them to return to work. As a practical matter, in these days when militant union members seem ready to defy their own leaders and the government alike, it was only prudent for Congress to include the pay provision. But this unprecedented action was definitely a step backward in the handling of important labor disputes. Congress shouldn't be in the wage-setting business.

Moreover, as President Nixon pointed out when he reluctantly signed the bill, Congress imposed a wage increase without imposing the work rule changes recommended earlier by the presidential emergency board, which changes, as Mr. Nixon said, would have offset wage increases somewhat by increases in productivity. For, as the President said, increases in productivity per man hour are "absolutely essential" in fighting inflation.

Granting that no solution looks either perfect or easy to achieve, the question is whether some means, not quite so sloppy, not quite so threatening to all concerned, cannot be found to handle this kind of labor dispute.

Two interesting approaches have been suggested. Mr. Nixon proposed 10 months ago a reform in the Railway Labor Act that would have allowed a presidential panel to ask labor and management to put their final offers in writing, then leave it up to the panel to choose between them—not to arbitrate differences; the theory being, that such a system would induce each side to move more realistically toward a final, acceptable position.

More recently George Meany, president of the AFL–CIO, talked in general terms about new approaches throughout the union movement to voluntary arbitration. In other words, both parties would agree in advance to accept the decision of an arbitrator.

We certainly hope the manifest absurdities of the current dispute will jog Congress into further exploration of these and other new ways to handle collective bargaining in the creaky but vital railroad industry.

[From the Chicago Daily News, Dec. 12–13, 1970]

WHEN LAW LEAVES THE TRACK

It is hard to find any encouraging note in the test of power that brought a one-day railroad strike. In spite of the fact that the processes of law ended the strike quickly, the outcome is likely to invite less respect for law and more resort to muscle as the way to win a goal.

The Brotherhood of Railway Clerks specifically defied the law until it became clear that further defiance would deflate the union treasury at the rate of $200,000 a day. Yet in doing so the union president merely joined a long and growing list of unionists who hold the law in contempt when it interferes with their designs.

The economic pressures that underlie the wave of unrest and defiance are clear enough. As long as inflation persists, the struggle to catch up, keep up or pull ahead will also persist, and the union game plan makes a liberal allowance for tactics that skirt the foul line.

Inevitably, the chief victim is the public interest, and the public has no choice but to depend on the government to act firmly and fairly. In the rail dispute, Congress violated the fairness rule in ways that are bound to haunt it later on.

A presidential commission had proposed a formula for settlement. If the wage boost seemed a bit on the high side, at least it was balanced by work-rule changes that would have increased productivity. Yet in its haste and under the threat of the paralyzing strike, Congress wrote a first-year retroactive pay hike into the law and ignored the essential offsetting factor of the rule changes. The result was accurately described as inflationary by President Nixon. He might also have noted that the Democratic congressional leadership in this fiasco had called on him only the week before to freeze wages and prices as an inflation stopper.

What better invitation could the powerful unions have to carry their fights to the brink? If Congress itself caves in, where can the public turn for protection? And if the law is as lopsided as this one, how can respect for the law be maintained?

Congress has another chance, now that the strike has been called off, and instead of passing stopgap legislation as it has to date in dealing with the troubled railroads, it should undertake the broad reforms recommended by President Nixon. Unfortunately, its performance in this instance doesn't inspire much confidence that either the lawmakers or the railroads can stay on the track.

[From the Washington Star, Dec. 13, 1970]

LEGISLATIVE CHALLENGE OF THE RAIL CRISIS

One of the less gratifying congressional activities over three generations has been the attempt—repeated in successive times of crisis—to assure that labor disputes do not hurt the national interest. Congress first started grappling with railroad work stoppages in 1886, and the inauspicious result

was a pocket veto by President Cleveland. The measure of the success of later efforts to solve the problem is the strike that brought the nation's railroads to a halt Thursday, and the fact that there is no law on the books to prevent the same thing from happening again after March 1.

Not that the possibility of a resumed rail strike is conceded by all to be a problem. The four rail unions involved in the current dispute want the right to strike, and did have the legal right to do so until Congress passed and the President signed the special law forcing a further delay.

The strike is the main weapon of organized workers—the threat of it, if not the actuality, is seen as indispensable to agreement on most labor contracts. The freedom of a man to work or not to work, besides, is inherent to democracy, and its denial a hallmark of totalitarianism.

Add to this the sanctity of the collective bargaining process, free of compulsive government interference, and the obstacles to would-be tinkerers loom all the larger. Labor leaders cherish the legal respectability and the protections their classic tactics gained with passage of the Wagner Act in 1935. They argue, convincingly, that meaningful bargaining is impossible if, in the end, the issues must be decided and a settlement imposed by an agent of the government.

The champions of untrammeled collective bargaining, however, are by no means confined to the union halls. They include stalwarts in the cause of preserving the free market place, where the price of labor, like that of goods, is governed ideally by supply and demand. President Nixon, perhaps influenced by his first Secretary of Labor, George Shultz, generally has followed a nonintervention policy in labor disputes, departing from this line only when rail stoppages have threatened to bring much of the economy to a halt. With respect to the inflationary effects of union wage settlements, Mr. Nixon's original economic game plan called for reliance on indirect pressures to act beneficially on the bargaining process. Thus, slack employment would temper demands by workers, and slow business would stiffen the backs of employers. While policy was aimed at cooling the economy, a strike was not always seen as a bad thing.

But repeatedly in the history of labor relations in the United States, there have come times and circumstances when strikes in vital industries cannot be permitted—even at the price of some freedom—because the cost to the nation would be too great. In wartime, strikes that hurt the fighting effort are unthinkable, and the government has seized industries (including the railroads during World War I and the Korean conflict) rather than let this happen. In other times, work stoppages in some industries can threaten such damage to the national welfare as to pose something akin to a wartime emergency.

No highly developed nation can survive for long without its transport, its fuel, its utilities and basic industrial materials. People cannot, because of a labor dispute, do without food or without health and sanitation services. Stoppages in some industries, as in the case of the railroads, can cut such a wide swath through the economy that the total loss is prohibitive.

While labor leaders do not always buy the public-interest arguments against major strikes, they may be in the process of downgrading the importance of the strike weapon for other reasons. AFL-CIO President George Meany, because of the increasing sophistication and affluence of American workers, recently put new stress on the possibilities of voluntary arbitration as a substitute for strikes, and named five of his vice presidents to take part in a study of the matter.

When a strike threatens to deal a major blow to the public welfare, American law offers only partial protection. The Railway Labor Act, passed in 1926 and amended in 1936 to take in the airlines, provides for a series of delays when labor and management cannot agree. But following the report of a presidential emergency board and a final 30-day cooling-off period, there is no legal impediment to a strike or lockout that can bring much of the nation to a literal halt. The Taft-Hartley Act of 1947, covering other industry, has the same limitation. After a presidentially ordered cooling-off period of 80 days, the parties are free to wage war and the affected industry shuts down. In 1971, this could happen in the pivotal steel industry.

Over the years, there have been countless proposals for improving this state of affairs. These schemes have had one thing in common, in that they have gone no place.

Besides the philosophic differences in American society over how to handle the problem, political realities have complicated the task of protecting the country against cripling work stoppages. Most important has been the ballot-box power of the labor movement, which remains dead set against any form of government compulsion as the last phase of the bargaining process. Congressmen facing re-election shy away from the explosive issue, and Presidents prefer other political battlegrounds. President Johnson's 1966 State-of-the-Union promise of action on the subject was followed by three years of silence.

Mr. Nixon has had no luck in seeking legislation covering a part of the territory. Last February, he proposed a law providing a system for ruling out national-emergency strikes in the transportation field. Neither House nor Senate has yet to hold a hearing on the plan, despite the prominence of the railroads in this year's labor crises, and the damage caused by the dock strike a year ago.

The crucial provision of the administration bill would permit the government to impose the "final offer" of either union or management as the settlement of an otherwise insoluble dispute. For labor, this has raised the spector of "compulsory arbitration," and the administration's preference for other terminology is not likely to cover up the basic argument.

One concept that has enduring merit is that of a labor "court of last resort" or a system of courts to adjudicate labor disputes, as an alternative to the wasteful practice in which management and labor match their ability to absorb economic punishment. The idea was advanced by Bernard Baruch after World War I, and labor courts have been employed in several other countries including Australia, Germany and Sweden.

The chance for congressional action on basic changes in labor law will be better in 1971 than it has been in most years. The remoteness of the next election is a plus for the cause. And there are signs that the congressmen, after being pressed into service this year as a court of last resort, may be tired of the imposition.

Congress had to intervene in railroad disputes three times during the Johnson administration, in 1963, 1966 and 1967. Officials of that administration came to regard this as a sort of policy, the number of interventions not warranting what then-Labor Secretary Wirtz called "a permanent intrusion on collective bargaining." Earlier this year, Congress actually legislated the terms of a settlement between the railroads and their shopcraft unions.

Thursday's intervention delaying the nationwide rail strike by four other unions, and the strong possibility of a call to similar duty early next year, may convince more congressmen that they should hire experts to do the job. If that happens, the day the trains didn't run last week will have provided a beneficial sequel.

[From the Los Angeles Herald Examiner, Dec. 15, 1970]

RAIL TALKS

Top union and management negotiators in the nation-wide rail dispute which erupted last week in a short-lived, federally aborted rail strike are meeting again for alleged "substantive discussions" on wages and work rules.

Perhaps now that the Congress and the courts have shown that the government will not tolerate a national rail walkout, negotiations might progress at a faster pace.

Both the unions and the railroads have played a dangerous waiting game during the past several months with both sides procrastinating on a settlement. Collective bargaining, in fact, has hardly been noticeable.

When the government finally did step in to persuade the rail carriers to offer a substantial 37 per cent wage increase, union leaders rejected it out of hand and deliberately entered into an illegal strike.

The threat of massive fines and possible jailings along with a sweet retroactive bribe from Congress finally brought the workers back on the job and at least temporarily saved the economy from a potentially disastrous setback.

The intelligent course for union leaders now would be to accept the already generous offer that has been made and agree to work rule changes and productivity guarantees that would in the long range be to their own best interests.

The Administration and the Congress could spur a less intransigent labor attitude and more flexible bargaining techniques on the part of the rail carriers by getting to work on sweeping revisions of the unsatisfactory Railway Labor Act—a reform which was proposed ten months ago and has received little attention from the Administration or Congress.

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

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

Mr. GRIFFIN. I thank the Senator for yielding. I want to commend him for the work that is evident from his statement and his proposal. It is creative and certainly presents some fresh and important approaches to what is a very serious problem.

I appreciate the kind comments that he has made concerning the administration's bill, which I introduced yesterday.

While I think there are aspects of his bill that I probably would not favor immediately, there are other features that might well improve on the administration bill, or at least ought to be considered.

I refer specifically to the concern indicated about strikes which creates a regional emergency situation rather than a national emergency. For a long time there has been an unfortunate void in this particular area. Without the Taft-Hartley Act, as the Senator from New York knows, a State would be in a position to deal with a strike that presented an emergency in the State. But because of preemption by the Taft-Hartley Act, the power of a State to act in such situations has been taken away. Yet the President can act, under the Taft-Hartley

Act, only where there is a national emergency.

So if there is not a national emergency, it does not matter how serious the situation might be, for example, in the city of New York or in the city of Detroit. Nobody can do anything about it at the present time and this is certainly a very unfortunate situation.

Some persons have suggested that the State have a residual power there. That would be one approach. The other approach is the one suggested by the Senator from New York—that the President be given authority to act in a situation where the emergency is real but cannot be described as a national emergency.

So I certainly commend the Senator for presenting this proposal. I am delighted to hear his report that the Committee on Labor and Public Welfare is going to hold early hearings on this subject and that all these important proposals will be considered.

Mr. JAVITS. I thank my colleague. I wish only to add the comment that the reason why we feel the President should be called on to act in regional matters is that most regions that have a metropolitan character bring into play an interstate problem.

The Senator named the New York region. Of course, there we have a problem with respect to three States—New York, New Jersey, and Connecticut. In other areas, for example, in the Chicago area, it is easily conceivable that an emergency there would represent an emergency in Indiana as well. In the Detroit area, it might run into an international problem through river traffic or some other aspect due to the fact that Detroit is right next to the Canadian border.

We thought, on the ground of uniformity and also on the ground of prestige, if an emergency were so real that it threatened to paralyze a region, we really would want to impress on all parties that we meant business about protecting the public health and safety, and we would probably need that kind of executive authority.

I am sure the President would use his regional authority sparingly—he would prefer that the Governors act—but that would be entirely within his discretion. He could use his remedy within a State, if it was all within one State, if he thought it necessary.

I have given the reasons for the bill. I am very grateful to the Senator from Michigan (Mr. GRIFFIN), and I look forward, with him and the Senator from New Jersey (Mr. WILLIAMS) and the other members of the Committee on Labor and Welfare, to a very fruitful collaboration in trying to resolve this serious problem.

I hope very much that the essentiality of labor-management cooperation in this matter will be brought into focus. I can see many ways in which this would be very harmful to organized labor, jeopardizing its position very seriously in the eyes of the people, and the same thing is true of management. So I think we are entitled to have their best cooperation in our effort to resolve the problem. I think we will have that, I certainly think it is deserved.

PROGRESS REPORT ON BLACK LUNG BENEFIT PAYMENTS AND QUESTIONS CONCERNING HEALTH AND SAFETY

Mr. JAVITS. Mr. President, one of the significant features of the Coal Mine Health and Safety Act passed by Congress in 1969 was a provision in title IV providing for the payment of special benefits to the victims of coal workers pneumoconiosis, better known as black lung. As I was deeply involved in the shaping of the provisions of title IV, I have been following closely HEW's implementation of its provisions. Over a year has now passed since enactment of this law, and I believe that the Senate will be interested in knowing the results achieved under title IV in the payment of benefits to black lung victims. I therefore ask unanimous consent that a progress report to me dated January 26, 1971, from Robert M. Ball, Commissioner of Social Security, be printed in the RECORD, at this point.

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

SOCIAL SECURITY ADMINISTRATION,
Baltimore, Md., January 26, 1971.

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

DEAR SENATOR JAVITS: This is a further report on our progress in processing black lung benefit claims under the Federal Coal Mine Health and Safety Act of 1969.

We have now made decisions in over 170,000 claims nationally (close to double the number I reported to you at the end of November).

Monthly benefits have been awarded thus far to over 95,000 miners and widows. Adding wives and dependent children covered by these claims, brings the total number of beneficiaries to about 153,000. Total benefits paid nationally since the enactment of the program a year ago is over $150 million.

We have received a total of more than 250,000 claims thus far and new claims continue to be received at the rate of over 2,500 a week.

Some 75,000 claims have been denied for failure to meet the requirements of the law. In each case, the claimant is advised of the reason for the denial and given an opportunity to request reconsideration. Our local offices are also providing full assistance to these applicants in presenting any additional evidence in support of their claim.

As you know, the recently-enacted pay increase for Federal employees has the effect of increasing the benefit rate for black lung beneficiaries, effective January 1971. We are taking special steps to include the increases in all beneficiary checks starting February 3. The monthly benefit for an eligible exminer or widow is increased from $144.50 to $153.10; maximum family benefits will be increased from $288.90 to $306.10.

We are continuing to give high priority to the completion of pending claims so that notices of decision may reach the applicants as promptly as possible.

Sincerely yours,

ROBERT M. BALL,
Commissioner of Social Security.

Mr. JAVITS. Mr. President, I call particular attention to the information in Commissioner Ball's report that over 250,000 claims for benefits have been received by HEW during the past year, and that decisions have been made on over 170,000 cases resulting in benefits being awarded to about 153,000 miners and other beneficiaries. The total benefits already paid under this program exceed $150,000,000.

I think the officials of the Social Security Administration responsible for implementing this program in such an expeditious manner deserve the highest praise. They include Commissioner Ball and Bernard Popick, Director of the Bureau of Disability Insurance. Theirs was an extremely difficult assignment, abounding with controversies over such matters as the proper criteria for determining the existence of total disability due to pneumoconiosis. Most of the beneficiaries receiving black lung benefits are desperately poor and those HEW officials concerned with administering the program have responded to the conditions which this program was designed to help alleviate. I should like to give great credit to Commissioners Ball and Popick for their work, in an extraordinarily fair way. Mr. President, with respect to this matter.

I think it also should be noted, in the light of the criticisms which were made of the high cost estimates of the administration at the time this program was before us, that the experience under this program has been closely in accord with the cost estimates of the administration. I do not call attention to this in any spirit of criticism; I think the large number of beneficiaries who have been awarded benefits underscores the need for the program. Decades of neglect of the black lung problem have resulted in a health problem of catastrophic dimensions among coal miners, and the Federal Government bears a share of the responsibiliy. However, I also believe that the large cost of this program—next year's budget estimate is over $300 million—fully justifies my own actions in insisting that the law provide that after January 1, 1973, industry bear the responsibility, through adequate workmen's compensation of paying benefits to the victims of black lung.

I hasten to add that the way in which this part of the program has been handled is not matched by the way in which the health and safety features have been handled. We have very grave problems on that score, highlighted by the tragic disaster which took place at Hyden, Ky. I shall deal with that subject separately, but I did not wish to speak of this act, with which Senator WILLIAMS and I had so much to do as to its outcome, in part, without referring to the whole. I can assure the Senate that I am very deeply concerned about what has happened and about what seemed to be the very serious shortfalls in the enforcement of the safety features of the law, and I assure the Senate that I shall get at it, and I have every confidence that Senator WILLIAMS feels exactly the same way.

Mr. President, I yield the floor.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. 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. GRIFFIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

UNITED STATES, SOUTH VIETNAMESE FORCES INTERDICT INFILTRATION ROUTES

Mr. GRIFFIN. Mr. President, the news blackout on military operations against the Communists in Southeast Asia was lifted today.

It has now been recorded that no American ground forces have been engaged either in Laos or Cambodia.

American withdrawal from South Vietnam and the rest of Southeast Asia proceeds on schedule. Communist threats to that orderly withdrawal are being parried by South Vietnamese and Cambodian ground forces, with American air combat and air logistics support in those cases where South Vietnamese air components could not handle the job alone.

According to a memo provided to correspondents in Saigon today and released here by the Department of Defense, three Americans were wounded in operations inside South Vietnam, in the border area near Laos.

As indicated by Defense Secretary Laird and others, the news embargo was imposed on the recommendation of the commander in the field, Gen. Creighton Abrams.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point the texts of an operational summary supplied to correspondents in Saigon on operations in the northwest corner of South Vietnam, and of a message to General Abrams from Assistant Secretary of Defense Dan Henkin, commenting on the information policies which were followed.

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

SUBJECT: DEWEY CANYON II

The following operational summary of Dewey Canyon II was issued as a Memorandum to Correspondents in Saigon 4 February.

To counter a North Vietnamese buildup threatening the western regions of Military Region I, a combined operation of South Vietnamese and U.S. forces was initiated on 30 January into the western regions of the Republic's two northernmost provinces.

The attack was launched to interdict enemy supply and infiltration routes and potential staging areas in MR–I. The operation began on 30 January 1971, but announcement was held up until this time to ensure the safety and security of U.S. and South Vietnamese forces.

Included in this operation were elements of the U.S. 1st Brigade, 5th Mechanized Division and the 101st Airborne Division. RVNAF participation includes elements of the ARVN Airborne Division, elements of the 1AT ARVN Division, and elements of the Vietnamese Marine Corps.

As these forces deployed, 7th Air Force airlift and RVNAF air elements moved troops and logistics northward into MR–I.

On 30 January at about 0100, the operation began with elements of TF 1/5th Mech. moving westward along Route 9 toward Khe Sanh. While this force moved overland, other elements of TF–1/5 (with units from the 101st and 23rd Infantry Divisions under operational control) made a helicopter assault into Khe Sanh.

Engineer elements from the 45th Engineer Group accompanied the overland forces and moved into Khe Sanh to begin improving the old air field, and to build a dirt assault strip alongside the former strip. Other engineer elements worked at improving Route 9.

These positions were consolidated and improved during 31 January and on the 1st and 2nd of February.

On the 1st of February TF 1/5 Mech conducted reconnaissance in force west along Route 9 to the vicinity of Lange Vei. Other elements conducted screening operations north and south of Route 9 west of Khe Sanh.

On 2 February, a raid on a suspected enemy position was conducted some 14 km south of Khe Sanh. Units of the 101st Division have fired artillery on enemy positions in the vicinity of the A Shau valley.

On 3 February ARVN units began to deploy by airlift to the Khe Sanh area. Near the coast, Vietnamese Marine Corps element conducted an attack on enemy positions in a coastal region north of the mouth of the Cua Viet River. U.S. casualties have been three wounded up to 0810 on 4 February. Helicopters have drawn some small arms fire while operating in the vicinity of Khe Sanh, and one U.S. tank received moderate damage when it struck a mine along Route 9 in the vicinity of the Rock Pile.

The fol operational up-date was provided at 040815Z Feb 71.

In Operation Dewey Canyon II, elements of the 101st AirMobile Division observed a possible ammunition storage area approximately 15 KM south of Khe Sanh at 1235 yesterday (3 Feb). These Air Cavalry units engaged the area with on board ordnance. for the next half hour, forty-four (44) secondary explosions were observed.

Near this area, this same Air Cavalry element observed a camouflaged truck and destroyed it. Condition of the truck prior to its destruction is not known.

Near the Khe Sanh base, an infantry element early today (040600Z) found approximately 40 rounds of 105mm artillery in a bunker.

During the period there were three attacks by fire in North Central Quang Tri Province. Late in the afternoon on 3 February. Camp Carroll, some 6 KM southwest of Cam Lo, received approximately 20 rounds of 122 mm rocket fire; and at about the same time fire support base Fuller (5 km north-north west of Camp Carroll) received less than 5 rounds of 122 mm rocket fire. No casualties reported in either ABF.

The following statement and query responses on Toan Thang OI–71 in Cambodia were released in Saigon 4 February 1971.

"MACV is conducting air operations to supplement VNAF support of South Vietnamese forces in their efforts to prevent reestablishment of enemy sanctuaries in Cambodia. The objective of these air operations is to reduce the enemy threat to the Republic of Vietnam, thereby assuring the success of the Vietnamization program, facilitating the withdrawal of U.S. forces, and protecting American lives. There are no U.S. ground combat forces in Cambodia nor are there advisors with ARVN forces.

In response to queries:

Some helicopter troop lift and combat air missions have been provided to supplement the VNAF capability. Other U.S. air logistical and air combat operations will be provided from time to time to supplement South Vietnamese air assets as required.

These missions are considered air support as discussed extensively by Secretary Laird in Washington.

We will announce this support when it has been provided. We will not give specifics on troop lift, gunships or tactical air support because of its value to the enemy. We will provide data on logistical support.

Command and control helicopters with airborne coordinators will be used if U.S. helicopter gunship support is made available. Their use is to prevent inadvertent firing on friendly forces by maintaining liaison with FACs and friendly troops and civilians on the ground and controlling gunship fires.

Type of air support provided to this operation will be similar to that provided in the past which includes supplementary air combat and logistical support. Requests will be considered on a case by case basis to determine if they are beyond the capabilities of the VNAF."

MESSAGE SENT TODAY TO GENERAL ABRAMS

On behalf of Secretary Laird, I want to express our great appreciation for your successful efforts to provide accessibility by newsmen to the facts and to the on-the-scene coverage of U.S. troop movements.

The temporary news embargo obviously and most importantly saved American lives. It also made it possible for you to arrange for intelligence and operational briefings and for the movement of newsmen to various points in Military Region I.

I know that you and I share the view that, consistent with security requirements, the on-the-scene presence of professional U.S. newsmen provides the American public with the facts they need and deserve about U.S. military activities.

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

Mr. GRIFFIN. I yield.

Mr. JAVITS. Mr. President, I do not wish to make the Senator from Michigan the object of a debate upon this subject, which would not be fair to him, though he certainly is at liberty to respond to anything I say; but, the subject having been raised, as I have spoken about it off the Senate floor, I should just like to lay these observations before the Senate, with the permission of the Senator from Michigan:

Mr. President, this blackout has worried us a great deal. It has worried me, and I think it has worried many other Senators, because it was very hard to see why the people were not entitled to know if the Communists knew, if the enemy knew, as undoubtedly they did; and there is a certain concern quite above and beyond the Cooper-Church amendment.

I have said before, and I repeat, that I have no doubt—and I heard the Secretary of State in executive session—that the administration is complying with the letter of the Cooper-Church amendment. I have no reason to doubt that whatever. But I think the question has now gone beyond that, Mr. President. Even if one does—and I do—credit the President—and he is the man who is making these decisions—with entire good faith, in really believing that we are doing something which is entirely essential to the continuance of his policy of withdrawing our troops from South Vietnam—and let us assume he is in the utmost good faith about it, and I assume that—we may still differ with him in our own independent analysis, and that is our duty; we are a coordinate branch of government, with authority to give the authority and to vote the money for war. We may very well feel that we are blundering into a new Indochinese war.

It is for that reason, Mr. President,

that I have urged the Committee on Foreign Relations, and will continue to do so, to make an independent inquiry as to this whole situation, with the authority of the Senate regarding advice and consent, where we have a responsibility, not exactly the same as that of the President, but a material responsibility, in the field of foreign policy and the field of military affairs.

I hope very much that we can get the information from the administration—and there have been some complaints on that score; this is hardly the moment to argue whether they are justified or unjustified. Again, the good faith of Secretary Rogers and Secretary Laird I do not challenge at all. But we may have to go and check on our own sources, just as do the Appropriations Committee, the Committee on the Judiciary, and the Committee on Government Operations.

I think we owe the country an appraisal from the point of view of the Senate and the Senate committee charged with this responsibility—we have the staff responsibility for the Senate—to come to an independent judgment as to whether, quite apart from, over, above, and beyond the Cooper-Church amendment, what is happening now puts us in the posture of inviting another element, another area of combat in respect of Southeast Asia and the Indochina complex.

I urge such an inquiry on our committee. I hope very much our committee will perform its responsibility in that regard, and I hope very much—and I express this with the greatest feeling that the administration and the President will not feel that this is in any way a challenge to their credibility and good faith or their honest judgment, but that we are only doing our duty, and we have a duty and an independent one under the Constitution, as the staff committee for the Senate of the United States, to let the Senate know what is really going on, in our judgment, and where it is taking us.

I thank my colleague from Michigan, and I repeat, this is not in any way said in opposition to what he has stated—he did his duty in presenting a very proper and temperate report—but only because, the subject being before us, I thought it was useful to add these observations.

THE PRESIDENT'S REVENUE-SHARING PROPOSAL

Mr. BAKER. Mr. President, Congress has received today a message from the President of the United States describing in detail the proposed sharing of Federal revenues with the States that he first made known in his state of the Union message on January 22.

I have read the President's message, and it is no less than an extraordinary blueprint for the restoration and revitalization of our Federal form of democratic government.

There is flexibility in the President's proposals, and no one would be more surprised than he if the total program were enacted by the Congress in exactly the form in which it is to be submitted. Careful scrutiny by the Congress and by various individuals and groups throughout the country may indicate that changes should be made. But the President has provided the Congress and the American nation with a clear indication of the kind of bold steps that simply must be taken to relieve the various States and localities of increasingly unmanageable fiscal crises and to restore the capacity of State and local governments to effectively provide for the needs of their people.

There would be little point in my trying to elaborate on the need for this reform, so explicitly and comprehensively set out in the President's message. But because I do expect to be the principal sponsor of the administration's general purpose revenue-sharing proposal, which I will introduce on Tuesday of next week, I would like to take this brief opportunity to make one or two remarks about the future of this particular proposal in the 92d Congress.

The first and most important point I would like to make has to do with the President's desire and my desire that a revenue-sharing bill be enacted by this Congress and that it be a truly bipartisan accomplishment. Some have already begun to allege that, as they put it, the President wants "an issue and not a bill." This is absolutely without foundation and a gross error of political observation.

The President has not lightly proposed a major shift in the pattern of governmental growth in this country. He is, I need not say, aware of the fact that the party of which he is the head controls neither House of the National Legislature. If revenue sharing is to become a reality, its proponents, including the President, must have the help and support of many members of the Democratic Party. The President asks for that support, and I ask for that support. It is not a token solicitation. It is a sincere and earnest one. If this bill or some variation of it is enacted, there will be sufficient credit for everyone. That is not important. What is important is the concept itself, the idea of restoring some share of this massive central power to the States and to the people.

The second point I would like to make with respect to the general revenue-sharing proposal has to do with the way in which it was devised. Although the bill itself is not of great length and has a superficial appearance of considerable simplicity, its construction has taken place over many months and with the most intimate cooperation of groups representing the Nation's State, county, and municipal officials. This cooperation cannot be overemphasized. Although it is an administration bill, it is the product of the work of many minds of many different political persuasions. The bill will have the support of, we hope, a great majority of this Nation's public officials at every level of government.

Third, I would like to suggest, in soliciting the support of Senators for this bill, that each of us will want to keep options open as the Congress proceeds to consider the proposal. Cosponsorship of this bill is not a wedding to every line and comma. Although I personally feel that the bill has very special merits—its directness, its simplicity, its flexibility—it is above all else a vehicle for an idea whose time has come. As I indicated earlier, Congress in its wisdom may make changes that will improve the bill. But the bill represents a major step toward revenue sharing, and it is the result of months of work by eminent academic, fiscal, and Government experts.

I urge each of my colleagues to pay the most careful attention to the message of the President. The need for action is clear and urgent.

PROGRAM

Mr. BYRD of West Virginia. Mr. President, for the information of the Senate, the program for tomorrow will be as follows:

The Senate will convene at 12 o'clock meridian following a recess. Immediately following the prayer and the approval of the Journal, if there is no objection, and the laying before the Senate of the pending business, there will be a period for the transaction of routine morning business, not to exceed 30 minutes, with statements therein limited to 3 minutes. For emphasis, I call attention once again to the order entered on January 29, under which the majority leader and the minority leader, during the remainder of this session of Congress, are to be first recognized during the period for the transaction of routine morning business.

Also, under an order entered earlier today, the Senate will stand in recess, upon the close of business tomorrow, until 12 o'clock meridian on Monday next.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, for the information of the Senate, what is the pending question before the Senate?

The PRESIDING OFFICER. The pending question before the Senate is on agreeing to the motion of the Senator from Alabama (Mr. ALLEN) to postpone until the next legislative day the consideration of the motion of the Senator from Kansas (Mr. PEARSON) that the Senate proceed to the consideration of Senate Resolution 9, a resolution to amend rule XXII of the Standing Rules of the Senate with respect to the limitation of debate.

Mr. BYRD of West Virginia. I thank the distinguished Presiding Officer.

RECESS

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until 12 meridian tomorrow.

The motion was agreed to; and (at 4 o'clock and 56 minutes p.m.) the Senate recessed until tomorrow, Friday, February 5, 1971, at 12 meridian.

NOMINATIONS

Executive nominations received by the Senate February 4 (legislative day of January 26), 1971:

U.S. PATENT OFFICE

John Finley Witherspoon, of Maryland, to be an Examiner-in-Chief, U.S. Patent Office, vice James E. Keely, resigned.

SECURITIES AND EXCHANGE COMMISSION

William J. Casey, of New York, to be a member of the Securities and Exchange Commission for the remainder of the term expiring June 5, 1974, vice Hamer H. Budge, resigned.

NATIONAL CREDIT UNION BOARD

Richard H. Grant, of New Hampshire, to be Chairman of the National Credit Union Board; new position.

The following-named persons to be Members of the National Credit Union Board for the terms indicated; new positions.

John J. Hutchinson, of Connecticut, for a term expiring December 31, 1971.

Lorena Causey Matthews, of Tennessee, for a term expiring December 31, 1972.

DuBois McGee, of California, for a term expiring December 31, 1973.

Joseph F. Hinchey, of Pennsylvania, for a term expiring December 31, 1974.

James W. Dodd, of Texas, for a term expiring December 31, 1975.

Marion F. Gregory, of Wisconsin, for a term expiring December 31, 1976.

U.S. MARINE CORPS

The following-named officer of the Marine Corps Reserve for temporary appointment to the grade of major general: William J. Weinstein.

The following-named officer of the Marine Corps Reserve for temporary appointment to the grade of brigadier general: Harold Chase.

HOUSE OF REPRESENTATIVES—*Thursday, February 4, 1971*

The House met at 12 o'clock noon.

Rev. John S. Nichols, administrator of Fair Acres Farm, Lima, Pa., offered the following prayer:

Almighty God and our Father, we approach Thee through Jesus Christ, Thy Son, to pray. Speaking to Thee, we ask that Thou wouldst bless this House of Representatives of the 92d Congress of these United States; give them health, to live and work daily; reason, that their minds shall ever be clear and aware; strength, to be statesmen; power, that comes from Thee.

Bless, O Lord, the Senate, our President, the Supreme Court, and all others in the service of our people in Government.

Bless, our Father, too, those of us who follow. Give us grace to be good followers, to uphold our elected and appointed officials who act for us in this Republic.

And, merciful Lord, in these days let our differences be our collective wisdom and strength so that together we may better serve Thee. In the name of our Savior. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House of Mr. Geisler, one of his secretaries.

ON HOUSE ADMINISTRATION

The SPEAKER laid before the House the following resignation from a committee:

FEBRUARY 2, 1971.

Hon. CARL ALBERT,
Speaker of the House,
The Capitol, Washington, D.C.

DEAR MR. SPEAKER: I hereby tender my resignation from the Committee on House Administration.

I will appreciate your taking the action necessary to remove me from the aforementioned committee.

Best regards,

JOHN W. DAVIS.

The SPEAKER. Without objection, the resignation is accepted.

There was no objection.

APPOINTMENT AS MEMBERS OF BOARD OF REGENTS OF SMITHSONIAN INSTITUTION

The SPEAKER. Pursuant to the provisions of 20 U.S.C. 42 and 43, the Chair appoints as members of the Board of Regents of the Smithsonian Institution the following Members on the part of the House: Mr. MAHON, of Texas; Mr. ROONEY, of New York; and Mr. BOW, of Ohio.

REVITALIZE OUR MERCHANT MARINE

(Mr. ANDERSON of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ANDERSON of California. Mr. Speaker, last year the Congress passed the Merchant Marine Act of 1970. The purpose of the act is to revitalize our merchant marine by providing a ship building program of 30 ships a year for the next 10 years. I supported this measure and applauded the administration for their action.

To implement the ship construction program, money must be made available. Last year, Congress appropriated $187.5 million to begin construction of 19 ships. For fiscal year 1972, the administration is requesting $229.7 million in order to begin the construction of 22 ships.

Thus, Mr. Speaker, over a 2-year period, the administration envisions the construction of 41 ships. This is a great improvement over our commitment of earlier years, but I feel we must attempt to reach our goal of 30 ships a year.

As a result, Mr. Speaker, I call upon the Appropriations Committee to closely examine the budget proposal and to place additional funds to the shipbuilding program so as to attain our goal of 30 ships a year.

ANNOUNCEMENT OF INTENTION TO CHALLENGE TRADITION

(Mr. WALDIE asked and was given permission to address the House for 1 minute.)

Mr. WALDIE. Mr. Speaker, at the appropriate time in today's proceedings a resolution that encompasses the decisions of the majority caucus with relationship to chairmen of standing committees and the members thereof will be presented to the House for approval. It is my understanding that customarily the decision of the majority caucus in these matters has been traditionally accepted without any objection from any Member of the House of Representatives. It will be my intention at this particular moment, however, to subject that tradition to a test today, and I will ask the House to vote down the previous question when the previous question is sought in order to permit that resolution to be open to amendment.

If the previous question is voted down, and the resolution is thereupon open for amendment, it would be my intention to offer an amendment to the resolution appointing standing committee chairmen to delete the standing committee chairman of the House District of Columbia Committee. It would be my hope, if that vote is acceded to, that a majority of the House of Representatives would determine that it is not in the best interests of this institution that that committee chairman remain in his position, and that the resolution with that name deleted would then be acted upon by the House. It would then require the committee on committees of the majority to come back to the majority caucus to ask the caucus for approval of a substitute chairman of that committee to be offered to the House of Representatives.

SHALL SAIGON EXERCISE THE RIGHT TO CENSOR NEWS OF AMERICAN INVOLVEMENT IN VIETNAM?

(Mr. VANIK asked and was given permission to address the House for 1 minute.)

Mr. VANIK. Mr. Speaker, the news censorship on American military activities in Southeast Asia—which was just lifted—constitutes a most shocking assault on democracy and the right of the