By Mr. COLMER:

H.J. Res. 859. Joint resolution authorizing the President of the United States to issue a proclamation declaring Sir Winston Churchill to be an honorary citizen of the United States of America; to the Committee on the Judiciary.

SENATE

THURSDAY, AUGUST 23, 1962

The Senate met at 10 o'clock a.m., and was called to order by the President pro tempore.

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

Eternal Spirit, Thou who art not far off on the vast rim of the universe, but closer than hands or feet—a present help: As we move through this world of abounding wonder, give us to realize that every gleam of beauty is a pull toward Thee, every pulse of love is a tendril that draws in Thy direction, every vindication of truth links our finite minds up to the Mind that undergirds us, and every deed of good will fulfills all our tiny adventures of faith.

As we think of the peace that comes alone with the climate of unselfish good will to all men, we pray Thy blessing upon the President of this body as he wings his way to faraway, historic lands where the ferment of these agitated times is erupting in yeasty social commotion. Strengthen the impact his presence brings as the voice of America in the countries to which he goes, as he speaks for the Republic whose servant he is, as he refutes false witness spread by those who hate freedom, and as he brings to multitudes the assurance that the hope and might of this free land are with them in resisting tyranny and in their quest for more abundant life.

This we lift up as our soul's prayer in the Spirit of Christ. Amen.

THE JOURNAL

On request of Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Wednesday, August 22, 1962, was dispensed with.

MESSAGES FROM THE PRESIDENT

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

LIMITATION OF DEBATE DURING MORNING HOUR

On request of Mr. MANSFIELD, and by unanimous consent, statements during the morning hour were ordered limited to 3 minutes.

COMMITTEE MEETINGS DURING SENATE SESSION

On request of Mr. MANSFIELD, and by unanimous consent, the following committees or subcommittees were authorized to meet during the session of the Senate today:

The permanent Subcommittee on Investigations of the Committee on Government Operations.

The Public Lands Subcommittee of the Committee on Interior and Insular Affairs.

The Internal Security Subcommittee of the Committee on the Judiciary.

The Committee on Armed Services.

EXECUTIVE COMMUNICATIONS, ETC.

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

REPORT ON MODIFICATIONS AT ATLANTIC MISSILE RANGE, CAPE CANAVERAL, FLA.

A letter from the Administrator, National Aeronautics and Space Administration, Washington, D.C., reporting, pursuant to law, on certain modifications to the gantry at pad 12, Atlantic Missile Range, Cape Canaveral, Fla.; to the Committee on Aeronautical and Space Sciences.

WORLD FOOD CONGRESS

A letter from the Secretary of State, transmitting a draft of proposed legislation authorizing an appropriation to enable the United States to extend an invitation to the Food and Agriculture Organization of the United Nations to hold a World Food Congress in the United States in 1963 (with an accompanying paper); to the Committee on Foreign Relations.

CONVEYANCE OF CERTAIN LAND ON CROW INDIAN RESERVATION

A letter from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to ratify certain conveyances of land on the Crow Indian Reservation (with an accompanying paper); to the Committee on Interior and Insular Affairs.

AMENDMENT OF HAWAIIAN HOMES COMMISSION ACT

A letter from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to amend subsection 204(4) of the Hawaiian Homes Commission Act (with an accompanying paper); to the Committee on Interior and Insular Affairs.

REPORT ON IDENTICAL BIDDING IN PUBLIC PROCUREMENT

A letter from the Attorney General, transmitting, pursuant to law, a report on identical bidding in public procurement, dated July 1962 (with an accompanying report); to the Committee on the Judiciary.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the PRESIDENT pro tempore:

A resolution adopted by the Legislature of the State of Florida; to the Committee on the Judiciary:

"HOUSE MEMORIAL 18–X

"Memorial to the Congress of the United States of America urging the Congress to submit a constitutional amendment reserving, granting, and confirming power and jurisdiction relating to the apportionment and reapportionment of the membership of State legislatures to the States without review of the Federal courts, and further urging the Congress to enact immediate interim legislation under article III, section 2, of the U.S. Constitution limiting appellate jurisdiction of the Supreme Court

"Whereas the apportionment of the membership of State legislatures, both the house and senate, is properly a State and not a Federal question; and

"Whereas there has been some effort recently by some of the lower Federal courts, not only to determine the validity of the apportionment or reapportionment of the membership of State legislatures, but also to make apportionment or reapportionment by judicial decree; and

"Whereas such judicial proceedings seriously interfere with States rights and the freedom of government by the people of the several States; and

"Whereas such judicial proceedings are a massive repudiation of the experience of our whole past and are a deliberate, palpable, and dangerous exercise of powers not granted to the Federal judiciary by the U.S. Constitution; and

"Whereas it appears to be the view of the Federal judiciary that population numbers are a principal consideration in determining the validity of apportionment laws relating to the representation in both houses of a bicameral legislative body; and

"Whereas it has long been the custom, usage, and law of the State of Florida and the several States that other factors in addition to population ought to be considered in arriving at fair and equitable representation in State legislative bodies; and

"Whereas it is necessary that the Congress enact suitable laws relating to both the original jurisdiction of the Federal district courts and appellate jurisdiction of the U.S. Supreme Court, pursuant to power vested in the Congress by article III, section 2, of the U.S. Constitution and any other applicable laws until such time as the Federal judiciary's encroachment into the field of State legislative apportionment traditionally reserved unto the States is curbed: Now, therefore, be it

"Resolved by the Legislature of the State of Florida, That the Florida Legislature hereby and herein petitions the Congress of the United States of America, and each House and Member thereof, to draft and submit a suitable amendment to the U.S. Constitution, specifically reserving, granting, and clearly confirming exclusive power and jurisdiction relating to the apportionment and reapportionment of the membership of State legislatures to the several States and to spell out that State action in this field is not subject to review by the Federal courts; and be it further

"Resolved, That the Florida Legislature hereby and herein petitions the Congress of the United States of America, and each House and Member thereof, to draft, submit, and enact a suitable law having the effect of excluding from the original jurisdiction of the Federal district courts cases relating to State legislative reapportionment and excluding from the appellate jurisdiction of the U.S. Supreme Court cases relating to State legislative apportionment pursuant to powers conferred upon the Congress by article III, section 2, of the Constitution of the United States, which provides in material part as follows:

" 'In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make'; and be it further

"Resolved, That copies of this memorial be transmitted forthwith by the chief clerk of the house and the secretary of the senate of the State of Florida to the President of the United States, the Vice President of the United States as Presiding Officer of the Senate, the Speaker of the House of Representatives of the Congress of the United States, to each of the congressional delegation from

Florida in the U.S. Congress, and to each of the Governors, secretaries of state, and attorneys general of the several States; and be it further

"*Resolved*, That a copy of this memorial be spread upon the journal of both the senate and house of representatives of the State of Florida, and sufficient copies thereof be furnished to the press."

CITY OF NEW YORK BAR ASSOCIATION ASKS FOR PROMPT ACTION ON THURGOOD MARSHALL NOMINATION

Mr. KEATING. Mr. President, I present, for appropriate reference, a resolution unanimously adopted by the executive committee of the Association of the Bar of the City of New York with regard to the nomination of Judge Thurgood Marshall. The resolution reads as follows:

Resolved, That the Association of the Bar of the City of New York urge the Committee on the Judiciary of the U.S. Senate to file promptly a report favorable to Judge Thurgood Marshall's confirmation and that the Senate act promptly to confirm Judge Marshall's appointment to the Court of Appeals for the Second Circuit.

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

The resolution was referred to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHAVEZ, from the Committee on Public Works, without amendment:

H.R. 3801. An act to authorize the Secretary of the Army and the Secretary of Agriculture to make joint investigations and surveys of watershed areas for flood prevention or the conservation, development, utilization, and disposal of water, and for flood control and allied purposes, and to prepare joint reports on such investigations and surveys for submission to the Congress, and for other purposes (Rept. No. 1910).

By Mr. ERVIN, from the Committee on Armed Services, with an amendment:

H.R. 11257. An act to amend section 815 (article 15) of title 10, United States Code, relating to nonjudicial punishment, and for other purposes (Rept. No. 1911).

By Mr. JACKSON, from the Committee on Armed Services, without amendment:

H.R. 10263. An act to authorize the Secretary of the Air Force to adjust the legislative jurisdiction exercised by the United States over lands within Eglin Air Force Base, Fla. (Rept. No. 1915);

H.R. 10825. An act to repeal the act of August 4, 1959 (73 Stat. 280) (Rept. No. 1916);

H.R. 11251. An act to authorize the Secretary of the Army to relinquish to the State of New Jersey jurisdiction over any lands within the Fort Hancock Military Reservation (Rept. No. 1917); and

H.R. 12081. An act to authorize the Secretary of the Army to convey certain land and easement interests at Hunter-Liggett Military Reservation for construction of the San Antonio Dam and Reservoir project in exchange for other property (Rept. No. 1918).

By Mr. JACKSON, from the Committee on Armed Services, with an amendment:

S. 2421. A bill to provide for retrocession of legislative jurisdiction over U.S. Naval Supply Depot, Clearfield, Ogden, Utah (Rept. No. 1912).

By Mr. JACKSON, from the Committee on Armed Services, with amendments:

S. 3221. A bill to provide for the exchange of certain lands in Puerto Rico (Rept. No. 1913); and

H.R. 7278. An act to amend the act of June 5, 1952, so as to remove certain restrictions on the real property conveyed to the Territory of Hawaii by the United States under authority of such act (Rept. No. 1914).

By Mr. MAGNUSON, from the Committee on Commerce, without amendment:

H.R. 2446. An act to provide that hydraulic brake fluid sold or shipped in commerce for use in motor vehicles shall meet certain specifications prescribed by the Secretary of Commerce (Rept. No. 1920).

By Mr. McGEE, from the Committee on Commerce, with amendments:

S. 2138. A bill to provide that a greater percentage of the income from lands administered by the Fish and Wildlife Service of the Department of the Interior be returned to the counties in which such lands are situated (Rept. No. 1919).

BILLS INTRODUCED

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

By Mr. BURDICK:

S. 3668. A bill to provide for a scenic parkway connection between units of the Theodore Roosevelt National Park, N. Dak., and for other purposes; to the Committee on Interior and Insular Affairs.

(See the remarks of Mr. BURDICK when he introduced the above bill, which appear under a separate heading.)

By Mr. PASTORE:

S. 3669. A bill for the relief of Giannino Monaco; to the Committee on the Judiciary.

By Mr. SMITH of Massachusetts (for Mr. BIBLE) (by request):

S. 3670. A bill to amend certain criminal laws applicable to the District of Columbia, and for other purposes; to the Committee on the District of Columbia.

By Mr. KEATING:

S. 3671. A bill for the relief of Lisette Chomali; to the Committee on the Judiciary.

By Mr. HUMPHREY (for Mr. SYMINGTON):

S. 3672. A bill for the relief of Henry Hein and Sadie Hein; to the Committee on the Judiciary.

By Mr. DODD (for himself, Mr. KEFAUVER, and Mr. CARROLL):

S. 3673. A bill to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to regulate the manufacture, compounding, processing, and distribution of habit-forming barbiturate drugs, and of amphetamine and other habit-forming central nervous system stimulant drugs; to the Committee on Labor and Public Welfare.

(See the remarks of Mr. DODD when he introduced the above bill, which appear under a separate heading.)

By Mr. MANSFIELD (for Mr. ANDERSON):

S. 3674. A bill for the relief of Leobardo L. Gonzalez; to the Committee on the Judiciary.

By Mr. PASTORE:

S. 3675. A bill to create or charter a corporation by act of Congress; to the Committee on the Judiciary.

THEODORE ROOSEVELT NATIONAL PARK

Mr. BURDICK. Mr. President, I introduce, for appropriate reference, a bill for a needed improvement in the Theodore Roosevelt National Park.

I am particularly pleased to be able to introduce this bill calling upon the Congress to authorize sufficient money to construct a surface road between the north and south units of the Theodore Roosevelt National Park in western North Dakota.

Pleased I am because this long-needed improvement in this beautiful, rugged, unspoiled national park will afford the many hundreds of visitors to the park an opportunity to move about freely in this same region that Theodore Roosevelt did many years ago.

Mr. President, I am pleased because the Theodore Roosevelt National Park is close to the hearts of the people of North Dakota. As I am sure Senators are aware, President Theodore Roosevelt spent some time in this area as a cattle rancher and in his own words became "as much a westerner as an easterner."

Mr. President, this is the area where I was raised as a boy. I remember the rugged Badlands which are now the Theodore Roosevelt Park. Let me say that the improvements made there have been tremendous, and this road will be only another in a line of improvements in this important memorial to a great President, Theodore Roosevelt.

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

The bill (S. 3668) to provide for a scenic parkway connection between units of the Theodore Roosevelt National Park, N. Dak., and for other purposes, introduced by Mr. BURDICK, was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

REGULATION OF MANUFACTURE AND DISTRIBUTION OF HABIT-FORMING BARBITURATES AND AMPHETAMINE DRUGS

Mr. DODD. Mr. President, it is with a sense of urgency that I introduce today a bill to regulate the manufacture and distribution of habit-forming barbiturate and amphetamine drugs. I am pleased to have the Senator from Tennessee [Mr. KEFAUVER] and the Senator from Colorado [Mr. CARROLL] as cosponsors of this measure.

It is our objective to crush an epidemic of illegal, irresponsible and harmful use of these drugs by a growing number of young people and adults throughout the country.

It is an epidemic that is destroying families and turning children against their parents.

It is an epidemic that is transforming formerly emotionally stable children into vicious animals.

It is an epidemic that is turning previously law abiding and even-tempered youths into wanton criminals.

I am not speaking of a plague being spread by germs in the air we breathe; I am speaking of a manmade plague. Its spawning ground is in the gigantic drug factories, its carriers are the goons and hoodlums who transmit this living

death to its victims, hundreds of thousands of children and young people in every part of this Nation.

I speak of the rampaging illicit traffic in, and abuse of, the dangerous drugs, the pep pills, and the goof balls. This traffic is fast becoming an American tragedy, a stark tale of thousands of pain-racked, convulsing, ulcerated, debilitated human beings who are traveling a path that leads inevitably to insanity, criminality, prostitution, and death.

Mr. President, I reported to the Senate on August 24, 1961, that in the year 1960, drug companies in this country produced 5¾ billion capsules of barbiturates and 4 billion tablets of amphetamine drugs. This is in addition to millions of bootleg drugs that find their way into the black market. At that time, I indicated that we had no idea of the percentage of these drugs that is used illegally. In the interim, based on the quantities involved in seizures of illegal dispensers in these drugs, we now know that the volume of the extremely dangerous "pep pills" and "goof balls" sold illegally equal, and might actually exceed, the amounts sold legally in the Nation's drugstores.

Just think of it, 5 billion of these potential killers let loose to entice, entrap, and enslave our youth.

During recent hearings of the Senate Juvenile Delinquency Subcommittee I heard testimony concerning the bizarre results of the use of these drugs. The witness was the chief of police of Los Angeles, Calif. One boy was a barbiturate addict. After only 4 months of use he, along with two other users, decided on the spur of the moment to rob a taxicab driver. This young boy held a knife at the stomach of the cabbie during the robbery, then with no provocation plunged it into his body. As the wounded man fled down the street the boy pursued him and viciously stabbed him 12 more times. The man died in the early morning hours.

This boy was not a delinquent.

He had never committed an offense. He had been working for 15 months. His neighbors described him as a quiet, even-tempered person prior to the use of barbiturates. The police psychiatrist stated that the use of this drug had completely changed his personality, had turned him into a savage killer.

The second case involved a youngster addicted to the "pep pills," the amphetamines. The long-term effects of this drug are well known. Irritability, aggressiveness and finally self-induced insanity. In this case the youth was started on pep pills by a neighborhood friend. With increasing use the boy began to steal from his family, he actually carried out a mugging attempt of his own father. In desperation, the father bought a gun to protect the family from his own son. Three weeks ago, the boy came home and demanded money to buy pills. When his father refused, the boy threatened him and advanced toward him menacingly. The father fired the gun toward the floor to frighten the boy, but accidentally hit him in the leg. The mother, hysterical, tried to take the gun from her husband, it discharged and she fell to the floor, dead. The result of just these two cases: two dead, two in prison for murder, one wounded, and two families destroyed. And this is happening every day in cities throughout our country.

If this is not a plague, I do not know what is.

Mr. President, 15 months ago I introduced a bill to control this plague, this illegal traffic in dangerous drugs.

The Subcommittee To Investigate Juvenile Delinquency has during the intervening months continued its investigation of the overall problem of narcotic addiction. I have just described some of the bizarre details of the dangerous drug menace. I would like to bring to the attention of the Senate additional information from four areas which, together, show how these conditions have been developing during the last 15 months.

First, I would like to point out that during May, the subcommittee held hearings on the narcotic problem in the southwest United States.

One of the most alarming reports was presented to the committee by Sheriff Peter Pitchess of Los Angeles County and it concerned the use of dangerous drugs. A special commission of the California Governor's office found that in 1959, 10 percent of the total arrests made by the Los Angeles Police Department's juvenile narcotics squad were for dangerous drugs; in 1960, this had jumped to 32 percent, and for the first 4 months of 1961, a staggering 59 percent of all juvenile arrests by this squad were made for using or possessing what youngsters call "bennies," "goof balls," "red devils," "yellow jackets," and so forth. Since 1954, the number of arrests of juveniles for the use of these drugs has increased 468 percent.

These same frightening conditions were found to exist in San Diego and in San Francisco.

One might ask, Where do young people get these deadly drugs? We found the answer. We have been told that 1 million units of these drugs were delivered to Tijuana, Mexico, from a legitimate American drug firm in 23 days. Another 600,000 of these pills were delivered from another American firm over a period of 3 days. The majority of these drugs are carried right back across the border and sold illegally to children in our large cities.

In 1960, the U.S. customs service seized 34,000 units of dangerous drugs which had been purchased in Mexico and smuggled into the United States from Tijuana, Tecate, and Calexico. The San Diego Police Department seized over 36,300 units in the same period.

During the 9 months from October 1959 to July 1960, there were 2,000 arrests made in the State of California for violations of the dangerous drug laws. Over 1,200 or some 60 percent of these arrests took place in the Los Angeles area.

Yet it was obvious to our witnesses that only a fraction of the potentially dangerous drug traffic is coming to the attention of law enforcement.

The relationship of dangerous drugs to overall drug addiction was pointed out by California's Attorney General Stanley Most. In California, the decreased teenage use of marihuana, recognized as a steppingstone to heroin addiction, has been accompanied by a tremendous increase in the use of dangerous drugs. The juveniles themselves explained that while marihuana may cost from 50 cents to $1, one capsule of a dangerous drug costs only 10 cents. There is no smoke, odor, or telltale debris, which means that the likelihood of detection is drastically reduced. In addition, the evidence is swallowed. This hampers any effective enforcement efforts of the police.

Most important, however, the intoxication is greater, and it lasts longer. Because of this, during the past several years, use of these drugs by juveniles has increased from 5 percent of total juvenile arrests by the narcotic squads in the various California cities to over 50 percent.

The Southwest is at an even greater disadvantage than most parts of the country, because of the criminal peddlers across the border, just a few miles from California's large population centers. We were told of one pharmacist in Tijuana, Mexico, who sold California law-enforcement officers 25,000 pep pills. He was buying the drugs legally from a California distributor and retailing them illegally in the United States. Because of our inadequate laws on these drugs, he was in a position actually to order the drugs and have them delivered to an illegal recipient. For simply preparing the order form, this individual could clear as much as a thousand dollars a shipment.

The second development to which I referred was our subcommittee hearings held on August 6 and 7, in Los Angeles, Calif. Testimony received there documented beyond question the fact that millions upon millions of these pills are being shipped into Mexico and back into the United States for illegal consumption. Three days before our hearing began, one drug firm alone shipped 24 barrels, containing 2,400,000 amphetamine pills, to one Mexican druggist. This was the largest shipment of these drugs ever noted by the Bureau of Customs.

Law enforcement officials told us that children as young as 9 years are using dangerous drugs. We heard stories of entire families destroyed because one member became addicted to the amphetamines or barbiturates. The addicts and doctors who testified both confirmed the fact that adult heroin addicts began using pills in their middle teens.

The subcommittee's hearings coincided with the tragic death of a well-known movie personality, and pointed up the dangers inherent in the use of these drugs, the lack of knowledge surrounding their use, and the ease with which large amounts of them can be procured by simply making a telephone call. Marilyn Monroe was one of over 260 persons who died in 1 year in Los Angeles County alone of overdoses of barbiturates. The commercial drug industry and those connected with the dispensing and selling of drugs must be

taken to task for this situation, for in the last analysis they cannot help but be aware of the ultimate destination of over half of these drugs they produce.

All of the witnesses, both in Washington and in California, who daily fight this problem, urged the speedy enactment of the provisions outlined in my bill. These amendments are desperately needed to combat this traffic which is increasing daily in the slums, in the schoolyards, in places of amusement, and on the streets among the children of all families, whether they be rich or poor.

The third indication of the increase in this traffic has been the large seizures made by the Pure Food and Drug investigators. The overwhelming majority of cases arising out of the illegal sale of prescription drugs involves amphetamines and barbiturates.

Last May 11, Pure Food and Drug investigators arrested three "goof ball" peddlers who were part of a gang engaged in selling these drugs to teenage customers. These men were selling to schoolchildren in the Newark, N.J., area. There had been numerous injuries to young people as a result of the use of these drugs.

In addition, teenagers had been found unconscious in the Newark streets from overdoses of barbiturates. Other cases were uncovered in Alabama, Florida, Georgia, Missouri, North Carolina, and Oklahoma. The point is obvious. This is a nationwide problem. These dedicated Pure Food and Drug investigators admit that they are making a fraction of a percentage of the arrests that should be made, which confirms the need for enactment of the recordkeeping and listing provisions of my bill.

The fourth indication is a report by the Department of Health, Education, and Welfare on the bill I introduced originally, S. 1939. The report is from the former Secretary of Health, Education, and Welfare, Abraham Ribicoff. The Secretary presented cases from all over the Nation which detailed the tragic results of this illegal traffic when these drugs are abused by young adults and children.

In the 15 months since the introduction of S. 1939, experts on the problem of dangerous drugs, notably the Pure Food and Drug Administration, have suggested refinements and changes of a technical nature in the bill. I have accepted many of these suggestions and I now offer a new bill, to be entitled the "Barbiturate and Stimulant Drug Control Amendment of 1962." In essence, it is a redraft of S. 1939, to reflect some of the suggested refinements and technical changes.

There are two major provisions in the pending legislation, neither of which calls for licensing. The first requires all manufacturers, compounders, and processors of the drugs to list their names and places of business with the Secretary of Health, Education, and Welfare.

The second provision requires every person selling, delivering, or otherwise disposing of the drugs to keep a record of the kinds and quantity involved, including the name and address of the person to whom the drug is sold—except in the case of duly licensed medical practitioners.

The recording and listing requirements will provide authorities with an effective means of locating the primary sources of illicit distribution; the extension of Federal control to previously immune activity will stimulate a more vigorous prosecution of offenders and increased penalties will emphasize the serious nature of the crime. This will in no way hamper the legitimate, legal, medical use of these drugs, but its stiff penalties will discourage blackmarketing and under-the-counter sales.

The substantive changes that are in the bill I am introducing today are three in number. First, as an outgrowth of the constant research to find drugs to help legitimate medical practitioners, new drugs have been added to the list of stimulants and depressants. We have, therefore, changed the section of the bill which defines the types of drugs involved, and have included generic terms which will encompass all future developments in this area, so that we shall not have to introduce new legislation every time a new compound is developed.

Second, there have been changes in detail in the recordkeeping provisions, to insure more effective enforcement of the bill.

Third, I have incorporated the suggestions of those who will be called on to enforce the penal provisions of the bill. We have clarified the provisions on penalties to the extent that, first, increased penalties for selling to a person under 18 will apply only to persons over 18 years of age, and second, increased penalties for selling to a juvenile on a second offense would apply only where a person had sold to a juvenile on his first offense, and not where the first offense was some other violation of the law.

Mr. President, everyone from the President of the United States to the patrolman on the beat, from the president of the largest producer of amphetamine drugs to the pharmacists who dispense them, has supported and documented the need for this legislation.

I submit that the Congress will be derelict in its duties if it does not take immediate action to stamp out this pestilence that is sweeping the land.

I, therefore, commend this new bill, the Barbiturate and Stimulant Drug Control Amendment of 1962, to the attention of the Senate and urge that it be afforded the swift action it deserves.

Mr. HUMPHREY. Mr. President, I wish to commend the Senator from Connecticut for his constant vigilance and diligence in connection with the regulation of drugs which are habit forming and, when used without proper professional guidance and instructions by doctors, can lend themselves to unbelievably disastrous results, including death itself.

The speech the Senator from Connecticut has made has been greatly needed. It is most timely in connection with the pending drug legislation. He has spent many months and years studying the problems of delinquency and crime; and it is a known fact that the promiscuous use of barbiturate drugs has contributed to delinquency. It is the duty of the Government and of the manufacturers and the dispensers of these drugs to enforce the regulations and laws and to take whatever voluntary action is required in order to prevent abuse in connection with their use.

Mr. DODD. I thank the distinguished majority whip. His encouragement is greatly appreciated.

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

The bill (S. 3673) to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to regulate the manufacture, compounding, processing, and distribution of habit-forming barbiturate drugs, and of amphetamine and other habit-forming central nervous system stimulant drugs, introduced by Mr. DODD (for himself, Mr. KEFAUVER, and Mr. CARROLL), was received, read twice by its title, and referred to the Committee on Labor and Public Welfare.

REVENUE ACT OF 1962—AMENDMENTS

Mr. GORE submitted an amendment, intended to be proposed by him to the bill (H.R. 10650) to amend the Internal Revenue Code of 1954 to provide a credit for investment in certain depreciable property, to eliminate certain defects and inequities, and for other purposes, which was ordered to lie on the table and to be printed.

PROXMIRE AMENDMENT KNOCKS OUT TAX DEDUCTION FOR BUSINESS LOBBYISTS

Mr. PROXMIRE. Mr. President, I submit an amendment, intended to be proposed by me to the bill (H.R. 10650) to amend the Internal Revenue Code of 1954 to provide a credit for investment in certain depreciable property, to eliminate certain defects and inequities, and for other purposes, which would eliminate the proposed tax deduction for lobbying expenses by business groups, and I ask unanimous consent that it be printed in the RECORD.

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

The amendment was ordered to lie on the table, as follows:

On page 38, beginning with line 17, strike out all through line 21 on page 40 (section 3 of the bill, relating to appearances, etc., with respect to legislation).

Mr. PROXMIRE. Mr. President, I oppose the tax deduction for lobbying expenses because it would give a wholly unjustified tax advantage to those who stand to make a profit out of legislation. At the same time it would seriously handicap those who battle for their ideals and the ideals themselves.

Contributions to lobbying organizations that fight for their principles—be they left, right, or center—are not tax deductible. For example, groups like the American Civil Liberties Union, the League of Women Voters, and the Americans for Constitutional Action have no such tax advantage.

But if this provision is enacted, special interest business groups, whose financial interests will often run counter to the public interest, will get a juicy tax break. The same benefit will not be available to the nonbusiness lobby organizations. This means the public interest will have the cards stacked against it whenever it comes up against the dollar sign.

The lobbying deduction is flatly opposed by the Treasury. It was inserted into the tax bill at the last minute in the House of Representatives. No hearings on it were conducted by the House Ways and Means Committee.

This provision makes a mockery of tax reform. Instead of plugging a loophole, it opens one wide enough to drive a truck through. Business firms and groups will be able to deduct costs of direct lobbying, promoting legislation, contacts with Congressmen, lobbying and contacts with State and local officials and legislatures, and expenses incurred by trade associations in propagandizing a particular view of their members.

It is a sweeping departure from the long-established principle that only expenses "ordinary and necessary" to the income-producing conduct of business shall be tax deductible. I strongly hope it will be rejected.

From a legal standpoint, section 3 of the bill represents a change in a long-standing principle which has been supported on several occasions by Federal courts, including the Supreme Court. The Internal Revenue Code provides for deductions only for "ordinary and necessary" expenses. It is far outside the "ordinary and necessary" income-producing procedures of business to attempt to influence legislative decisions. While the Treasury Department has apparently not attempted to enforce fully its present regulations, dereliction of duty should not be a justification for legislative change.

The proposed change can be criticized on equity grounds. It clearly and explicitly discriminates in favor of business lobbying and against lobbying by private citizens or individual specialists. Thus the provision serves to rig the odds against legislation for the general well-being, and in favor of specialized legislation for the few. It is difficult enough at present for the individual legislator to obtain information on both sides of the questions upon which we must legislate. In effect, the new provision means that some tax funds now coming to Uncle Sam will be returned to businesses and trade associations in order that they can present their case more effectively, while at the same time discouraging individuals, who presumably have less capacity to meet lobbying costs, from incurring those costs. Thus the flow of information to legislators is diverted so that it comes more freely from certain sources and is less available from other sources.

The proposed section can be criticized on economic grounds. The Federal Government, through this measure, will be subsidizing the diversion of resources away from productive output for the benefit of the national economy into specialized propagandizing purposes designed solely to benefit the few. These proposed deductions are not equivalent to deductions for advertising. Advertising is intended to disseminate knowledge to the many about products which are available in the market. The proposed deductions are for expenses designed to influence the few for the special benefit of a few.

The proposed provision on lobbying expenses will discriminate against certain nonprofit lobbying organizations, such as the League of Women Voters. These organizations, like industry trade associations, are usually nonprofit and are generally not subject to tax on their own activities. However, contributions to these organizations, like contributions to industry trade associations, are only deductible by the contributors to the extent that the contributions are not used by the associations to support lobbying activities. Section 3, of H.R. 10650, would permit contributions to trade associations to be deductible even though the contributions were used by the trade associations for lobbying purposes. This change would be made on the grounds that the contributions were "ordinary and necessary" business expenses. However, contributions to organizations such as the League of Women Voters would not be deductible to the extent that the league engaged in lobbying activities because the contributions in that case—under the proposed bill—would not be considered as "ordinary and necessary" business expenses. Therefore, the bill tends to discriminate in favor of lobbying activities by industry trade associations and against lobbying activities by certain other groups which have been of great assistance to legislators in the past.

PHILIPPINE WAR DAMAGE CLAIMS—AMENDMENTS

Mr. LONG of Louisiana (for himself and Mr. KEATING) submitted amendments, intended to be proposed by them, jointly, to the bill (H.R. 11721) to authorize the payment of the balance of awards for war damage compensation made by the Philippine War Damage Commission under the terms of the Philippine Rehabilitation Act of April 30, 1946, and to authorize the appropriation of $73 million for that purpose, which were ordered to lie on the table and to be printed.

Mr. KEATING. Mr. President, I send to the desk two amendments, one offered on behalf of myself and Senators JAVITS and CASE, intended to be proposed to the Philippine war damage claims bill, relating to the sale of vested assets of the General Analine Co. The other amendment I am offering on behalf of my colleague from New York [Mr. JAVITS] and myself, to the same bill, relating to the settlement of heirless property claims.

I will also cosponsor an amendment to the Philippine war claims bill, to be offered by the distinguished Senator from Louisiana [Mr. LONG].

All these amendments are designed to permit a final settlement of the American war claims problem on a fair and equitable basis. Certainly if we are to provide for additional payments to Philippine citizens—which I favor—we should at least take some cognizance of the 17-year-old problem relating to American war claims.

The PRESIDENT pro tempore. The amendments will be received, printed, and lie on the table.

TRADE EXPANSION ACT OF 1962—AMENDMENT

Mr. SALTONSTALL. Mr. President, I submit an amendment to the bill (H.R. 11970) to promote the general welfare, foreign policy, and security of the United States through international trade agreements and through adjustment assistance to domestic industry, agriculture, and labor, and for other purposes, on behalf of myself, my colleague, the junior Senator from Massachusetts [Mr. SMITH], the Senators from Connecticut [Mr. BUSH and Mr. DODD], and possibly some other Senators whose names may be submitted at a later time, and ask that it be appropriately referred.

The PRESIDENT pro tempore. The amendment will be received, printed, and referred to the Committee on Finance.

Mr. SALTONSTALL. The amendment is designed to prevent dumping of foreign government surplus firearms and ammunition which has become a serious problem for American companies. In its report on the Anti-Dumping Law Amendments of 1958, the Senate Finance Committee stated:

> The antidumping feature of our Tariff Act is of considerable importance in protecting domestic industries from inroads of foreign goods sold or offered for sale at less than fair value.

Unfortunately, however, the antidumping law as presently written does not effectively prevent the dumping of foreign government surplus merchandise.

The industry which appears to be most affected by this loophole in the antidumping law is the sporting arms industry. There has been an increase of 300 percent in firearms imported since 1956 with the result that low-cost surplus rifles have usurped 37 percent of the American demand for sporting center-fire rifles. Since 1956 more than 1 million surplus military rifle imports have been dumped in the U.S. market bearing average import value of under $4 apiece, less than one-tenth of the least expensive comparable American product.

Unless some remedy is provided, the capability of the industry to survive and to meet its traditional responsibilities in a time of national emergency could be seriously weakened. The proposed

amendment would bring the antidumping law into operation when foreign government surplus merchandise is imported at a price that is less than its cost of production determined in the manner provided by law.

I hope the amendment will be referred to the Finance Committee, which is studying the subject and is in executive session on the whole foreign trade bill.

AMENDMENT OF UNITED STATES CODE RELATING TO MAILING OF CERTAIN READING AND OTHER MATERIALS FOR USE OF BLIND PERSONS—ADDITIONAL COSPONSOR OF BILL

Under authority of the order of the Senate of August 16, 1962, the name of Mr. JOHNSTON was added as an additional cosponsor of the bill (S. 3647) to amend sections 4653 and 4654 of title 39, United States Code, with respect to the mailing of certain reading and other materials for the use of blind persons, introduced by Mr. CURTIS (for himself and other Senators) on August 16, 1962.

NOTICE OF RECEIPT OF NOMINATION BY COMMITTEE ON FOREIGN RELATIONS

Mr. FULBRIGHT. Mr. President, as chairman of the Committee on Foreign Relations I desire to announce that yesterday the Senate received the nomination of Tom Killefer, of Virginia, to be Executive Director of the Inter-American Development Bank for a term of 3 years, vice Robert Cutler, resigned.

In accordance with the committee rule, this pending nomination may not be considered prior to the expiration of 6 days of its receipt in the Senate.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 8134) to authorize the sale of the mineral estate in certain lands; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. EDMONDSON, Mr. ROGERS of Texas, Mr. MORRIS, Mr. SAYLOR, and Mr. WHARTON were appointed managers on the part of the House at the conference.

The message also announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 10566) to provide for the withdrawal and orderly disposition of mineral interests in certain public lands in Pima County, Arizona; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. EDMONDSON, Mr. ROGERS of Texas, Mr. MORRIS, Mr. SAYLOR, and Mr. WHARTON were appointed managers on the part of the House at the conference.

MESSAGE FROM THE HOUSE—ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bills and joint resolutions, and they were signed by the President pro tempore:

S. 1005. An act to amend section 10 and section 3 of the Federal Reserve Act, and for other purposes;

S. 1781. An act for the relief of the heirs of Lt. Col. James Murray Bate (decreased) and Maj. Billie Harold Lynch (deceased);

S. 1849. An act for the relief of Stephen S. Chang;

S. 2179. An act to amend section 9(d)(1) of the Reclamation Project Act of 1939 (53 Stat. 1187; U.S.C. 485), to made additional provision for irrigation blocks, and for other purposes;

S. 2256. An act to amend section 5 of the War Claims Act of 1948 to provide detention and other benefits thereunder to certain Guamanians killed or captured by the Japanese at Wake Island;

S. 2574. An act for the relief of Constantina Caraiscou;

S. 2686. An act for the relief of Stepanida Losowskaja;

S. 2736. An act for the relief of Arie Abramovich;

S. 2751. An act for the relief of Susan Gudera, Heinz Hugo Gudera, and Catherine Gudera;

S. 2835. An act for the relief of Sieu-Yoeh Tsai Yang;

S. 2862. An act for the relief of Mai Har Tung;

S. 2876. An act to extend for 1 year the authority to insure mortgages under sections 809 and 810 of the National Housing Act;

S. 3016. An act to amend the act of March 2, 1929, and the act of August 27, 1935, relating to loadlines for oceangoing and coastwise vessels, to establish liability for surveys, to increase penalties, to permit deeper loading in coastwise trade, and for other purposes;

S. 3039. An act for the relief of Bartola Maria S. La Madrid;

H.R. 3728. An act to amend chapter 11 of title 38, United States Code, to authorize special consideration for certain disabled veterans suffering blindness or bilateral kidney involvement;

H.R. 8564. An act to amend the Federal Employees' Group Life Insurance Act of 1954 to provide for escheat of amounts of insurance to the insurance fund under such act in the absence of any claim for payment, and for other purposes;

H.R. 10651. An act to amend title 28, United States Code, with respect to fees of United States marshals, and for other purposes;

H.R. 11523. An act to authorize the employment without compensation from the Government of readers for blind Government employees, and for other purposes;

H.R. 12355. An act to amend the law relating to the final disposition of the property of the Choctaw Tribe;

S. J. Res. 132. Joint resolution extending recognition to the International Exposition for Southern California in the year 1966 and authorizing the President to issue a proclamation calling upon the several States of the Union and foreign countries to take part in the exposition; and

S. J. Res. 179. Joint resolution authorizing and requesting the President to designate April 21, 1963, as a day for observance of the courage displayed by the uprising in the Warsaw ghetto against the Nazis.

ADDRESSES, EDITORIALS, ARTICLES, ETC., PRINTED IN THE RECORD

On request, and by unanimous consent, addresses, editorials, articles, etc., were ordered to be printed in the RECORD, as follows:

By Mr. RANDOLPH:

Letter from Hon. L. Leo Kohlbecker, chairman, the Mayor's Commission on Human Relations, Charleston, W. Va., to Senator JOSEPH S. CLARK, of Pennsylvania.

By Mr. THURMOND:

Sundry newspaper articles relating to the trade expansion bill.

CONSIDERATION OF CERTAIN CALENDAR BILLS

Mr. MANSFIELD. Mr. President, with the consent of the Senate, I wish to have taken up at this time some measures on the calendar to which there is no objection. These measures have been cleared by both sides; and, so far as I know, there is no opposition to them.

LIMITATION OF ASSISTANCE FOR DRAINAGE OF CERTAIN WET LANDS

Mr. MANSFIELD. Mr. President, I ask unanimous consent for the present consideration of Calendar No. 1762, House bill 8520.

There being no objection, the Senate proceeded to consider the bill (H.R. 8520) to amend the Soil Conservation and Domestic Allotment Act to limit financial and technical assistance for drainage of certain wet lands which had been reported from the Committee on Agriculture and Forestry, with an amendment, to strike out all after the enacting clause and insert:

That the Soil Conservation and Domestic Allotment Act, as amended, is further amended by inserting after section 16 thereof the following new section:

"SEC. 16A. The Secretary of Agriculture shall not enter into an agreement in the States of North Dakota, South Dakota, and Minnesota to provide financial or technical assistance for wetland drainage on a farm under authority of this Act, if the Secretary of the Interior has made a finding that wildlife preservation will be materially harmed on that farm by such drainage and that preservation of such land in its undrained status will materially contribute to wildlife preservation and such finding, identifying specifically the farm and the land on that farm with respect to which the finding was made, has been filed with the Secretary of Agriculture within ninety days after the filing of the application for drainage assistance: *Provided*, That the limitation against furnishing such financial or technical assistance shall terminate (1) at such time as the Secretary of the Interior notifies the Secretary of Agriculture that such limitation should not be applicable, (2) one year after the date on which the adverse finding of the Secretary of the Interior was filed unless during that time an offer has been made by the Secretary of the Interior or a State government agency to lease or to purchase the wetland area from the owner thereof as a waterfowl resource, or (3) five years after the date on which such adverse finding was filed if such an offer to lease or to purchase such wetland area has not been accepted by the owner thereof: *Provided further*, That

upon any change in the ownership of the land with respect to which such adverse finding was filed, the eligibility of such land for such financial or technical assistance shall be redetermined in accordance with the provisions of this section."

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

The title was amended, so as to read: "An Act to amend the Soil Conservation and Domestic Allotment Act, as amended, to add a new section 16A to limit financial and technical assistance for drainage of certain wetlands."

PAYMENT OF INDIRECT FEDERAL COSTS OF RESEARCH AND DEVELOPMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent for the present consideration of Calendar No. 1783, House bill 6984.

There being no objection, the bill (H.R. 6984) to provide for a method of payment of indirect costs of research and development contracted by the Federal Government at universities, colleges, and other educational institutions was considered, ordered to a third reading, read the third time, and passed.

FLOW OF DOMESTICALLY PRODUCED LUMBER IN COMMERCE

Mr. MANSFIELD. Mr. President, I ask unanimous consent for the present consideration of Calendar No. 1817, Senate bill 3517.

There being no objection, the Senate proceeded to consider the bill (S. 3517) to authorize the Secretary of Commerce to establish and carry out a program to promote the flow of domestically produced lumber in commerce, which had been reported from the Committee on Commerce, with an amendment, on page 1, at the beginning of line 8, to strike out "30 per centum" and insert "50 per centum"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture shall transfer to the Secretary of Commerce each fiscal year, beginning with the fiscal year commencing July 1, 1962, from moneys made available to carry out the provisions of section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), an amount equal to 50 per centum of the gross receipts from duties collected under the customs laws on lumber (rough, dressed, and worked), flooring, and moldings and plywood, which shall be maintained in a separate fund and shall remain available for use by the Secretary of Commerce to establish and carry out a program for the purpose of promoting the flow of domestically produced lumber in foreign and domestic commerce, including (1) research and experimentation to develop and increase markets for such lumber, (2) such other experimentation and biological, technological, and other research as may promote such purpose, and (3) the distribution to the domestic lumber industry of the results of the research and experimentation carried out under such program.

SEC. 2. In carrying out the program established under the provisions of this Act, the Secretary of Commerce shall, as far as practicable, cooperate with other appropriate agencies of the Federal Government and with State and local government agencies, private agencies, organizations, and individuals, having jurisdiction over or an interest in the domestic lumber industry. The Secretary may appoint an advisory committee from such industry to advise him in the formulation of policy, rules, and regulations with respect to requests for assistance, and other matters under the provisions of this Act.

SEC. 3. In order to assist the program established under the provisions of this Act, any agency of the United States, or any corporation wholly owned by the United States, may transfer, without reimbursement or transfer of funds, any equipment excess to its needs required by the Secretary of Commerce in carrying out such program.

SEC. 4. The Secretary of Commerce shall annually make a report to the Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives with respect to the use of the separate fund established under the provisions of the first section of this Act.

The amendment was agreed to.

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

LEO F. REEVES

Mr. MANSFIELD. Mr. President, I ask unanimous consent for the present consideration of Calender No. 1831, Senate bill 703.

There being no objection, the bill (S. 703) to validate the homestead entries of Leo F. Reeves was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the status of lots 3 and 4, section 1, township 4 north, range 11 west and lot 12 and the south twenty acres of lot 13, section 31, township 5 north, range 10 west, Seward meridian, Alaska, and the requirements of the homestead laws relating to settlement on entered lands, the Secretary of the Interior is hereby authorized and directed to consider that the homestead entries of Leo F. Reeves of Soldatna, Alaska, Anchorage 031423 and 034503 became valid and subsisting as to the above-described lands as of the date of said Reeves' actual settlement on any portion thereof and to issue patent for the lands to the entryman upon the entryman's compliance with, and subject to, the homestead laws applicable to public lands in Alaska, and upon the entryman's payment to the Secretary of the Interior of the fair market value of lot 12 and the south twenty acres of lot 13, as determined by the Secretary of the Interior on the basis of the most recent sales of similar land in the vicinity of the lands to be patented under the provisions of this Act.

VIEWING WITHIN THE UNITED STATES OF CERTAIN FILMS PREPARED BY THE U.S. INFORMATION AGENCY

Mr. MANSFIELD. Mr. President, I ask unanimous consent for the present consideration of Calendar No. 1845, Senate Concurrent Resolution 84.

There being no objection, the concurrent resolution (S. Con. Res. 84) expressing the sense of Congress that arrangements be made for viewing within the United States of certain films prepared by the U.S. Information Agency was considered and agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the people of the United States should not be denied an opportunity to view the films prepared by the United States Information Agency depicting the recent visit of the wife of the President of the United States to India and Pakistan; and be it further

Resolved, That it is the sense of the Congress that the United States Information Agency should make appropriate arrangements to make the films described above available for distribution through educational and commercial media for viewing within the United States.

AMENDMENT OF THE ARMED SERVICES PROCUREMENT ACT OF 1947

Mr. MANSFIELD. Mr. President, I ask unanimous consent for the present consideration of Calendar No. 1846, House bill 5532.

There being no objection, the Senate proceeded to consider the bill (H.R. 5532) to amend the Armed Services Procurement Act of 1947 which had been reported from the Committee on Armed Services, with an amendment, to strike out all after the enacting clause and insert:

That title 10 of the United States Code is hereby amended as follows:

"(a) Subsection 2304(a) is amended to read as follows:

"'(a) Purchases of and contracts for property or services covered by this chapter shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. If use of such method is not feasible and practicable, the head of an agency, subject to the requirements for determinations and findings in section 2310, may negotiate such a purchase or contracts, if—'.

"(b) Subsection 2304(a)(14) is amended to read as follows:

"'(14) the purchase or contract is for technical or special property that he determines to require a substantial initial investment or an extended period of preparation for manufacture, and for which he determines that formal advertising would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property;'.

"(c) Section 2304 is amended by adding a new subsection as follows:

"'(g) In all negotiated procurements in excess of $2,500 in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured, and written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, price, and other

factors considered: *Provided, however,* That the requirements of this subsection with respect to written or oral discussion need not be applied to procurements in implementation of authorized set-aside programs or to procurements where it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product, that acceptance of an initial proposal without discussion would result in fair and reasonable prices and where the request for proposals notifies all offerors of the possibility that award may be made without discussion.'

"(d) The second sentence of subsection 2306(a) is amended by substituting '(f)' for '(e)'.

"(e) Section 2306 is amended by adding a new subsection as follows:

"'(f) A prime contractor or any subcontractor shall be required to submit cost or pricing data under the circumstances listed below, and shall be required to certify that, to the best of his knowledge and belief, the cost or pricing data he submitted was accurate, complete and current—

"'(1) Prior to the award of any negotiated prime contract under this title where the price is expected to exceed $100,000;

"'(2) Prior to the pricing of any contract change or modification for which the price adjustment is expected to exceed $100,000, or such lesser amount as may be prescribed by the head of the agency;

"'(3) Prior to the award of a subcontract at any tier, where the prime contractor and each higher tier subcontractor have been required to furnish such a certificate, if the price of such subcontract is expected to exceed $100,000; or

"'(4) Prior to the pricing of any contract change or modification to a subcontract covered by (3) above, for which the price adjustment is expected to exceed $100,000, or such lesser amount as may be prescribed by the head of the agency.

"'Any prime contract or change or modification thereto under which such certificate is required shall contain a provision that the price to the Government, including profit or fee, shall be adjusted to exclude any significant sums by which it may be determined by the head of the agency that such price was increased because the contractor or any subcontractor required to furnish such a certificate, furnished cost or pricing data which, as of a date agreed upon between the parties (which date shall be as close to the date of agreement on the negotiated price as is practicable), was inaccurate, incomplete, on noncurrent: *Provided,* That the requirements of this subsection need not be applied to contracts or subcontracts where the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation or, in exceptional cases, where the head of the agency determines that the requirements of this subsection may be waived and states in writing his reasons for such determination.'

"(f) The first sentence of subsection 2310 (b) is amended to read as follows:

"'Each determination or decision under clauses (11)–(16) of section 2304(a), section 2306(c), or section 2307(c) of this title and a decision to negotiate contracts under clauses (2), (7), (8), (10), (12), or for property or supplies under clause (11) of section 2304(a), shall be based on a written finding by the person making the determination or decision, which finding shall set out facts and circumstances that (1) are clearly illustrative of the conditions described in clauses (11)–(16) of section 2304 (a), (2) clearly indicate why the type of contract selected under section 2306(c) is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract, (3) clearly indicate why advance payments under section 2307(c) would be in the public interest, or (4) clearly and convincingly establish with respect to the use of clauses (2), (7), (8), (10), (12), and for property or supplies under clause (11) of section 2304(a), that formal advertising would not have been feasible and practicable.'

"(g) Section 2311 is amended to read as follows:

"'Section 2311. Delegation

"'The head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter except the power to make determinations and decisions under clauses (11)–(16) of section 2304(a) of this title. However, the power to make a determination or decision under section 2304(a)(11) of this title may be delegated to any other officer or official of that agency who is responsible for procurement, and only for contracts requiring the expenditure of not more than $100,000.'

"(h) The amendments made by this Act shall take effect on the first day of the third calendar month which begins after the date of enactment of this Act."

The amendment was agreed to.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time and passed.

The title was amended, so as to read: "An Act to amend chapter 137, of title 10, United States Code, relating to procurement."

APPOINTMENT TO SERVICE ACADEMIES OF CITIZENS OR NATIONALS OF THE UNITED STATES FROM AMERICAN SAMOA, GUAM, OR THE VIRGIN ISLANDS

Mr. MANSFIELD. Mr. President, I ask unanimous consent for the present consideration of Calendar No. 1847, Senate bill 3628.

There being no objection, the bill (S. 3628) to amend title 10, United States Code, to authorize the appointment of citizens or nationals of the United States from American Samoa, Guam, or the Virgin Islands to the U.S. Military Academy, the U.S. Naval Academy, and the U.S. Air Force Academy was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress, assembled, That title 10, United States Code, is amended as follows:

(1) Section 4342(a) is amended—

(A) by striking out the word "and" at the end of clause (8);

(B) by striking out the period at the end of clause (9) and inserting the word "; and" in place thereof; and

(C) by adding the following new clause at the end thereof:

"(10) one cadet from American Samoa, Guam, or the Virgin Islands nominated by the Secretary of the Army upon recommendations of their respective Governors."

(2) Section 4342(c) is amended—

(A) by striking out the words "clauses (1)—(5)" and inserting the words "clauses (1)—(5) and (10)" in place thereof; and

(B) by striking out the words "or Puerto Rico," and inserting the words ", Puerto Rico, American Samoa, Guam, or the Virgin Islands," in place thereof.

(3) Section 6954(a) is amended by adding the following new clause at the end thereof:

"(9) One from American Samoa, Guam, or the Virgin Islands nominated by the Secretary of the Navy upon recommendations of their respective Governors."

(4) Section 6958(b) is amended—

(A) by striking out the words "clauses (3)—(7)" and inserting the words "clauses (3)—(7) and (9)" in place thereof; and

(B) by striking out the words "or Puerto Rico," and inserting the words ", Puerto Rico, American Samoa, Guam, or the Virgin Islands," in place thereof.

(5) Section 9342(a) is amended—

(A) by striking out the word "and" at the end of clause (8);

(B) by striking out the period at the end of clause (9) and inserting the word "; and" in place thereof; and

(C) by adding the following new clause at the end thereof:

"(10) one cadet from American Samoa, Guam, or the Virgin Islands nominated by the Secretary of the Air Force upon recommendations of their respective Governors."

(6) Section 9342(c) is amended—

(A) by striking out the words "clauses (1)—(5)" and inserting the words "clauses (1)—(5) and (10)" in place thereof; and

(B) by striking out the words "or Puerto Rico," and inserting the words ", Puerto Rico, American Samoa, Guam, or the Virgin Islands," in place thereof.

ELIMINATION OF TIN IN ALLOY OF THE 1-CENT PIECE

Mr. MANSFIELD. Mr. President, I ask unanimous consent for the present consideration of Calendar No. 1849, House bill 11310.

There being no objection, the bill (H.R. 11310) to amend section 3515 of the Revised Statutes to eliminate tin in the alloy of the 1-cent piece was considered, ordered to a third reading, read the third time, and passed.

ADMISSION OF CERTAIN ADOPTED CHILDREN

Mr. MANSFIELD. Mr. President, I ask unanimous consent for the present consideration of Calendar No. 1851, House Joint Resolution 677.

There being no objection, the Senate proceeded to consider the joint resolution (H.J. Res. 677) relating to the admission of certain adopted children which had been reported from the Committee on the Judiciary, with an amendment, to strike out all after the enacting clause and insert:

That, in the administration of the Immigration and Nationality Act, the following-named aliens may be classified as eligible orphans within the meaning of section 101 (b)(1)(F) of the said Act, and a petition may be filed in behalf of each alien named in this Act pursuant to section 205(b) of the Immigration and Nationality Act by the petitioner or petitioners specified in each case subject to all the conditions in that section relating to eligible orphans:

Anne Kapsalis, formerly Anna Mastoraki; Mr. and Mrs. John E. Kapsales, petitioners.

Kazimiera Przyborowska; Mr. and Mrs. Anton Hartmann, petitioners.

Marie Antonina (Gutowicz) Olsenwik; Mr. and Mrs. Joseph Olsenwik, petitioners.

Kook Nam Whang; Mr. and Mrs. Cornie L. Van Zee, petitioners.

Wlodzimierz Miska; Mr. and Mrs. Jan K. Miska, petitioners.

Wanda Miska; Mr. and Mrs. Jan K. Miska, petitioners.

Ja Han Hong; Mr. and Mrs. Edward A. Ruestow, petitioners.

Bogumil Getris; Mr. and Mrs. Alex Getris, petitioners.

Tadeusz Romuald Czyz; Mr. and Mrs. Walter Czyz, petitioners.

Cynthia Ann Foutris, formerly Cynthia Ann Fili; Mr. and Mrs. James Foutris, petitioners.

Gaetanina Paola Angelone; Giuseppe Marinucci, petitioner.

Adele Anna Teresa Angelone; Giuseppe Marinucci, petitioner.

John Andrew Nichols; Mr. and Mrs. Nick A. Nichols, petitioners.

Anna Sophia Nichols; Mr. and Mrs. Nick A. Nichols, petitioners.

Manuel Calvete Pereira; Mr. and Mrs. Richard Roeder, petitioners.

Urszula Kosior; John Kosior, petitioner.

Teresita Fernandez; Mr. and Mrs. Felecisimo C. Fernandez, petitioners.

Apolonio Fernandez; Mr. and Mrs. Felecisimo C. Fernandez, petitioners.

Francisek Kopec; Mr. and Mrs. Joseph Kopec, petitioners.

Waldystaw Kopec; Mr. and Mrs. Joseph Kopec, petitioners.

Theresa Godino; Mr. and Mrs. Frank Godino, petitioners.

Vladimir Tsvetanov Trifonov; Mr. and Mrs. Sam Triffin, petitioners.

Teresa Mikucki; Mr. and Mrs. Jan Mikucki, petitioners.

Cecylia Orszula Pulit; Mr. and Mrs. Edward C. Pulit, petitioners.

Krystyna Pietrzycki; Mr. and Mrs. John Pietrzycki, petitioners.

Ignacy Pietrzycki; Mr. and Mrs. Joseph Pietrzycki, petitioners.

Wojciech Antoni Drogoszewski; Mr. and Mrs. Antoni Drogoszewski, petitioners.

Jan Kazimierz Lewandowski; Mr. and Mrs. Chester Lewandowski, petitioners.

Stanislaw Jozef Scislowski; Joseph Scislowski, petitioner.

Filomena Darmi, formerly Coccia; Mr. and Mrs. Dominic Darmi, petitioners.

Despina McCrain, formerly Despina Doxis; Mr. and Mrs. William J. McCrain, petitioners.

Vassilire McCrain, formerly Vassilire Doxis; Mr. and Mrs. William J. McCrain, petitioners.

Jean Mary Haynes; Mr. and Mrs. Robert E. Haynes, petitioners.

Michalina Adela Chudziak; Mr. and Mrs. Michael Chudziak, petitioners.

Joseph Mikulich; Sebastian F. Mikulich, petitioner.

Hyun Poot Dol (Paul Adrian Tucek); Mr. and Mrs. Charles Stanford Tucek, petitioners.

David Gabat Domligan; Mr. and Mrs. Jose Domligan, petitioners.

Apolonia Rudzinski; Mr. and Mrs. Anton Rudzinski, petitioners.

Barbara Kolodziejczyk; Mr. and Mrs. Tadeusz Kolodziejczyk, petitioners.

Augustyna Trzuskot; Mr. and Mrs. Joseph Trzuskot, petitioners.

Urzsula Barbara Kolodziej; Mr. and Mrs. Joseph Kolodziej, petitioners.

Sung Ae Kim; Mr. and Mrs. James Mericle, petitioners.

Anna Carbone Masiello; Mr. and Mrs. Nicola Masiello, petitioners.

Katsutoshi Fujii; Mr. and Mrs. Carl Stephen, petitioners.

Rosina Carpanzano; Mr. and Mrs. Michele Gentile, petitioners.

Jan (Krysztopa) Michniewicz; Mr. and Mrs. Antoni Michniewicz, petitioners.

Yoshiko (Kuba) Hudson; Mr. and Mrs. Eddie F. Hudson, petitioners.

Graziella Pasquale; Mr. and Mrs. Anthony Pasquale, petitioners.

Katherine Ann Pervetich; Mr. and Mrs. Anthony Pervetich, petitioners.

Carmine Antonio Cambio; Mrs. Gennaro Cambio, petitioner.

Evangelia Nicholas Giameos; Mr. and Mrs. Nick S. Giameos, petitioners.

The amendment was agreed to.

The amendment was ordered to be engrossed, and the joint resolution to be read a third time.

The joint resolution was read the third time, and passed.

The title was amended, so as to read: "Joint resolution relating to the admission of certain alien children."

Mr. MANSFIELD. Mr. President, I now ask unanimous consent to have considered in sequence the measures on the calendar beginning with No. 1852 and ending with Calendar No. 1864.

The PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered; and the clerk will proceed to call these measures on the calendar.

DWIJENDRA KUMAR MISRA

The Senate proceeded to consider the bill (S. 2950) for the relief of Dwijendra Kumar Misra which had been reported from the Committee on the Judiciary, with an amendment, to strike out all after the enacting clause and insert:

That, for the purposes of the Immigration and Nationality Act, Dwijendra Kumar Misra shall be held and considered to have been lawfully admitted to the United States for permanent residence as of July 1, 1954.

The amendment was agreed to.

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

BYUNG YONG CHO

The Senate proceeded to consider the bill (S. 2962) for the relief of Byung Yong Cho (Alan Cho Gardner) and Moonee Choi (Charlie Gardner) which had been reported from the Committee on the Judiciary, with an amendment, to strike out all after the enacting clause and insert:

That, in the administration of the Immigration and Nationality Act, Byung Yong Cho (Alan Cho Gardner) and Moonee Choi (Charlie Gardner) may be classified as eligible orphans within the meaning of section 101(b)(1)(F) of the said Act and petitions may be filed by Ralph T. and Virginia Gardner, citizens of the United States, in behalf of the said Byung Yong Cho (Alan Cho Gardner) and Moonee Choi (Charlie Gardner) pursuant to section 205(b) of the Immigration and Nationality Act subject to all the conditions in that section relating to eligible orphans.

The amendment was agreed to.

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

PAUL HUYGELEN AND LUBA A. HUYGELEN

The bill (S. 3085) for the relief of Paul Huygelen and Luba A. Huygelen was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Paul Huygelen and Luba A. Huygelen may be naturalized upon compliance with all the requirements of title III of the Immigration and Nationality Act, except that no period of residence or physical presence within the United States or any State shall be required in addition to their residence and physical presence within the United States since July 7, 1955, and February 6, 1952, respectively.

DESPINA ANASTOS

The Senate proceeded to consider the bill (S. 3265) for the relief of Despina Anastos (Psyhopeda) which had been reported from the Committee on the Judiciary, with an amendment, to strike out all after the enacting clause and insert:

That, in the administration of the Immigration and Nationality Act, Despina Anastos (Psyhopeda) may be classified as an eligible orphan within the meaning of section 101(b)(1)(F) of the said Act and a petition may be filed by Mr. and Mrs. John B. Anastos, citizens of the United States, in behalf of the said Despina Anastos (Psyhopeda) pursuant to section 205(b) of the Immigration and Nationality Act subject to all the conditions in that section relating to eligible orphans.

The amendment was agreed to.

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

ANNA SCIAMANNA MISTICONI

The Senate proceeded to consider the bill (S. 3275) for the relief of Anna Sciamanna Misticoni which has been reported from the Committee on the Judiciary, with an amendment, to strike out all after the enacting clause and insert:

That, in the administration of the Immigration and Nationality Act, Anna Sciamanna Misticoni may be classified as an eligible orphan within the meaning of section 101(b)(1)(F) of the said Act and a petition may be filed by Mr. and Mrs. Anthony Misticoni, citizens of the United States, in behalf of the said Anna Sciamanna Misticoni pursuant to section 205(b) of the Immigration and Nationality Act subject to all the conditions in that section relating to eligible orphans.

The amendment was agreed to.

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

NAIFE KAHL

The bill (S. 3390) for the relief of Naife Kahl was considered, ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of sections 101(a)(27)(A) and 205 of the Immigration and Nationality Act, Naife Kahl shall be held and considered to be the natural-born alien child of Mr. and Mrs. Zaki Joseph Kahl, citizens of the United

States: *Provided*, That the natural parents of the beneficiary shall not, by virtue of such parentage, be accorded any right, privilege, or status under the Immigration and Nationality Act.

TAI JA LIM

The Senate proceeded to consider the bill (H.R. 1388) for the relief of Tai Ja Lim which had been reported from the Committee on the Judiciary, with an amendment, to strike out all after the enacting clause and insert:

That, in the administration of the Immigration and Nationality Act, Tai Ja Lim may be classified as an eligible orphan within the meaning of section 101(b)(1)(F), and a petition may be filed in behalf of the said Tai Ja Lim by John Yung Rhee, a United States citizen, pursuant to section 205(b) of the Immigration and Nationality Act subject to all the conditions in that section relating to eligible orphans.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

KIM HYUNG IN COMSTOCK

The bill (H.R. 7638) for the relief of Kim Hyung In Comstock was considered, ordered to a third reading, read the third time, and passed.

PROPOSED AMENDMENT OF ACT OF MAY 13, 1960

The bill (H.R. 7736) to amend the act of May 13, 1960 (Private Law 86–286), was considered, ordered to a third reading, read the third time, and passed.

SISTER MARY ALPHONSA

The bill (H.R. 8730) for the relief of Sister Mary Alphonsa (Elena Bruno) and Sister Mary Attilia (Filipa Todaro) was considered, ordered to a third reading, read the third time, and passed.

UMBERTO BREZZA

The bill (H.R. 9915) for the relief of Umberto Brezza was considered, ordered to a third reading, read the third time, and passed.

PRINTING OF ADDITIONAL COPIES OF HEARINGS ENTITLED "MILITARY COLD WAR EDUCATION AND SPEECH REVIEW POLICIES" AND REPORT THEREON

The concurrent resolution (S. Con. Res. 87) authorizing the printing of additional copies of the hearings entitled "Military Cold War Education and Speech Review Policies" and the report thereon was considered and agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring) That there be printed for the use of the Senate Committee on Armed Services not to exceed six thousand additional copies of all parts of the hearings entitled "Military Cold War Education and Speech Review Policies," held by the Special Preparedness Subcommittee during the current session, and not to exceed six thousand additional copies of the report thereon to be made to the Senate by that committee.

CONSTITUTION DAY

The joint resolution (S.J. Res. 217) making the 17th day of September in each year a legal holiday to be known as Constitution Day was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the 17th day of September in each year is hereby designated as "Constitution Day" and made a legal public holiday to all intents and purposes and in the same manner as the 1st day of January, the 22d day of February, the 30th day of May, the 4th day of July, the first Monday of September, the 11th day of November, the fourth Thursday of November, and Christmas Day are now made by law public holidays.

Mr. MANSFIELD. Mr. President, that completes the calendar measures which I wish to have considered.

SENATOR FONG OF HAWAII

Mr. SALTONSTALL. Mr. President, I ask unanimous consent to have printed in the RECORD an article from the Boston Herald of Tuesday, August 21, 1962, by Holmes Alexander, entitled "Hawaii Senator Tough Minded." It refers to our colleague, HIRAM FONG, of Hawaii, and describes his actions in the Senate and as a citizen of the United States. I think the article is worthy of reading.

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

A STRAIGHT THINKER: HAWAII SENATOR TOUGH MINDED

(By Holmes Alexander)

WASHINGTON.—It turns out that the Senate got itself a no-nonsense man in the person of HIRAM FONG, Republican of Hawaii, who turned up to represent the 50th State toward the end of the 1959 session.

His colleagues have perceived that, while FONG is the first oriental, a full-blooded Chinese, to serve in the upper body, the fact of his birth and good-natured Far Eastern appearance are the least important things about this 54-year-old rough-and-tumble politico. A Harvard Law School graduate, he spent 14 years in the Hawaii House and three times was its speaker.

DID IT HARD WAY

No nonsense is the key to the FONG character. The son of an indentured laborer who went to the islands from Canton, FONG helped himself to education at McKinley High School and the University of Hawaii by working at many juvenile jobs from beanpicker to golf caddy. He put in 2 years as a clerk at the Pearl Harbor Navy Yard to earn the money to go to Harvard.

Later, as city-county attorney and in private practice, he had to battle his way up the political ladder. Twice his opponents tried to prevent him from taking his house seat on legal technicalities, but he won out. Once he engaged in a robust hollering match with an opponent who accused him of throwing parties and distributing leis whenever he wanted to get a bill through.

Another time he squared off in a fistfight with an enraged legislator, but instead of dramatizing the encounter, FONG dismissed it to reporters as a one-punch fracas in which he was on the receiving end and for which his adversary quickly apologized.

As a Senator of Oriental lineage, FONG decided he should learn more about the region, so after his first session he paid his own way on an extended Far Eastern trip. A friend of mine saw him at a public meeting in Taipei where the first several rows of seats were reserved for Nationalist China lawmakers and where the first question was:

"You're a Chinese, so what are you going to do for us?"

"No, I'm an American," snapped FONG. "I'm Senator from Hawaii, and I'm not Senator from Taiwan."

To this day, Orientals of all kinds who arrive in Washington make a beeline for FONG's office. He understands why this is so and tries to be cooperative, but when they try the ancestral approach for special favors he sets them straight in a manner which puts his message across with no chance of further misunderstanding.

TOUGH, BLUNT

FONG is tough minded about everything. He doesn't mind saying that he smothered a fair employment practices bill when he was speaker for the realistic reason that there was no need for it in Hawaii, where the races voluntarily mingle. On the other hand, and to the dismay of bleeding heart equalizers, he sees no sense in forced race mixing.

Yet the same hardheaded logic tells him that our immigration quotas on Far Eastern races are unrealistically low. As a member of the Judiciary Subcommittee on Immigration, he favors the admission of more Orientals—possibly the only instance where his center of gravity is east of the Senate majority.

On medicare he opposed the administration because he thought its bill was awkward and unfair, though he favors care for the aged, and was cosponsor of the Saltonstall substitute for a voluntary, workable plan.

THE SUPREME COURT PRAYER DECISION

Mr. ERVIN. Mr. President, on July 22, 1962, Dr. Howard C. Wilkinson, chaplain to Duke University, delivered a sermon in Duke University Chapel upon the Supreme Court prayer decision. Dr. Wilkinson made some exceedingly illuminating observations upon the origin of the first amendment and upon the problems which this decision raises. Believing, as I do, that his observations ought to be made available to all Members of Congress, I ask that a copy of his sermon be inserted at this point in the body of the CONGRESSIONAL RECORD as part of my remarks.

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

THE SUPREME COURT PRAYER DECISION

(Sermon preached in Duke University Chapel, Sunday, July 22, 1962, 11 a.m., by the Reverend Howard C. Wilkinson, chaplain to the university)

Forasmuch as many have taken in hand to set forth in order a declaration of their opinions concerning the Supreme Court's ruling regarding prayer in the public schools, it seemed good to me also, having had a keen interest in the subject for 20 years, to write a sermon on it. Few decisions which the Court has made in this generation have stirred up as much discussion and controversy as this one.

Among those who have expressed opposition to the ruling are former President Eisenhower; North Carolina Gov. Terry Sanford; Evangelist Billy Graham; the chaplain to Columbia University, Dr. John Krumm; Cardinal Spellman; Rabbi Shubow; and Justice Stewart, of the Supreme Court itself. Many U.S. Senators and Congressmen have either introduced or supported legislation calculated to set aside the Court's decision.

Among those who have expressed pleasure in the ruling are Dr. Douglas Branch, general secretary of the North Carolina Baptist State Convention; the Reverend Charles Jones, of the Community Church in Chapel Hill; the Reverend W. W. Finlator, of the Pullen Memorial Baptist Church in Raleigh; Dr. Dana Greeley, president of the Universalist Association in America.

Well, how about you and me? What will be our view? Was the decision wise or unwise, valid or invalid?

I

First, let us take a quick look at the decision itself. The State Board of Regents of New York composed a 22-word prayer which they said they believed would be subscribed to by all men and women of good will. They recommend the use of this prayer in the public schools of New York. The Board of Education of the Union Free School District No. 9, New Hyde Park, N.Y., in turn, directed the school district's principal to cause the regents' prayer to be used in each class at the beginning of each schoolday. Shortly after this the parents of 10 pupils in the school brought court action against the use of this prayer, contending that its use was contrary to the beliefs and religious practices of both themselves and their children.

The lower courts and the court of appeals in New York denied the wish of the objecting parents and upheld the action of the board of education. But on June 25, the U.S. Supreme Court reversed the decisions of the lower courts and granted the wish of the objecting parents.

That, in brief, was the case before the Court, and such was the Court's ruling. Why did it make this ruling? Here is a part of the majority's explanation: "It is no part of the business of government to compose official prayers for any group of the American people to recite. One of the greatest dangers to the freedom of the individual to worship in his own way lay in the government's placing its official stamp of approval upon one particular kind of prayer. It is neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance."

This ruling, with this explanation, clearly excludes the possibility of a State board of regents composing an official form of prayer for use in all schools, and it denies the legality of a local school board requiring that any given prayer be said in each classroom every day. If this ruling by the Supreme Court means that, and nothing more, it will certainly deserve the commendation and thanks of all Americans.

II

The haunting question which remains is, Did the Court mean something more than this? Did it intend by its ruling and opinion to stop all prayer in public schools? There is an enormous difference between the two intentions. Having read the complete opinion of the Court three times, I am still not certain of the answer to that question. The Court failed to provide a clear-cut answer to that query, whether because of carelessness or by studied intent, I do not know. The Court must respectfully be urged to supply an answer so unmistakably clear that all rational persons cannot fail to understand it.

Experts in constitutional law who have read the opinion are divided in their interpretation of the ruling. United Press International surveyed the opinions of a variety of these experts and found that some of them think the ruling is very narrow in its application, that it only bans officially composed and officially required prayers. Others take a different view of the ruling, declaring that the majority opinion spelled the end of all religious exercises in public schools, including voluntary prayers, devotional reading of the Bible, and such religious observances as Christmas, et cetera.

Indeed, the concurring opinion of Justice Douglas plainly states that there is no important difference between the kind of religious observance here ruled against and the prayers which open the sessions of the Supreme Court, both Houses of Congress, and many, many other religious observances in governmental agencies. His opinion is that all this should end.

Further evidence that the majority ruling and its supporting opinion may have been calculated to banish all prayer in public schools is gathered from the dissenting opinion of Justice Stewart, who sat with the other Justices when they discussed this matter prior to the ruling. In his dissent, Justice Stewart wrote: "We deal here * * * with whether schoolchildren who want to begin their day by joining in prayer must be prohibited from doing so."

I have already mentioned that we have no problem on our hands if the Court's ruling is directed only against the required use of governmentally written prayer. But in view of the definite possibility that it shall be interpreted as applying in wholesale fashion against all religious observances in all public institutions, it behooves us now to consider the problem we shall be facing in that event. A recent survey shows that 88 percent of the public schools in America regularly hold some form of voluntary religious observance. Therefore, a Supreme Court ruling which banned all this would inescapably effect a sweeping and drastic change in the public life of this country.

When the Court issues a clarification of the June 25 decision, the Justices should give attention to three matters which were not elaborated in their opinion. In fact, these three items have scarcely been touched upon in any of the discussion which has been raging since the Court's decision was handed down. The American public should study and ponder the significance of each of these three important matters which I shall now mention, since all three of them bear in a most direct way upon the question before America at the present time.

III

First, what did the authors and ratifiers of the first amendment mean by the phrase, "an establishment of religion?" The amendment specifies that "Congress shall make no law respecting an establishment of religion," and the Court declared that they based their ruling upon that statement. In deciding a point of constitutional law, the question is never, What do these words mean when we use them now?—or, What can these words be made to mean?—or, What do I wish the authors and ratifiers had meant by their words?

I fear that most of the ink which has been spilled on this subject recently has been in answer to such questions as these, rather than in answer to the only legitimate question which can honestly come before the Court. That question is, What did the authors and ratifiers of the amendment mean when they used the words, and how does that meaning relate to the present situation which the Court is being asked to rule upon?

This is a question which I have studied for a number of years, and I have read extensively in the relevant literature. It is my belief that the answer to this question is not merely probable, but is crystal clear, and that all who will take the time to read the records of that far-off era must come to the unequivocal conclusion that the phrase "an establishment of religion" referred to what we would call an established church or denomination.

It referred to the arrangement whereby government selects a particular denomination as its official, state church; the government appoints that church's ministers, pays them by tax money, constructs and maintains the houses of worship, and in some instances even requires under penalty that all citizens give verbal assent to the theological beliefs of that denomination. At the time of the American Revolution, eight of the American colonies had such established churches. England has an established church, the Anglican Church. The Evangelical-Lutheran Church is the state church of Norway.

Now the first amendment was intended to prevent this arrangement, and as Jefferson said, to erect a "wall of separation between church and state." The founders did not mean to eradicate religion from government, nor did they mean to hamper religious observances within the institutions of the state. They made it abundantly clear that the United States, as a nation, officially believed in and relied upon God, and they repeatedly acknowledged the Government's dependence upon God.

Literally hundreds of statements, decisions, proclamations, and enactments could be brought forward in proof of this. We have time now to cite only a few. George Mason drafted the Bill of Rights which was adopted by the Virginia Convention in 1776 and which was the most influential document in all subsequent bills of rights. Mason's original, handwritten draft of this Bill of Rights is in the Library of Congress, and it contains these words: "No particular religious sect or society of Christians ought to be favored or established by law, in preference to others."

The first Congress which was elected and convened under the Constitution of the United States came together for the first time on March 4, 1789, and recessed on September 29 of that same year. During that period of less than 7 months, this Congress installed the first President of the United States, adopted the Bill of Rights and sent it to the several States for ratification. The Members organized the Congress and fixed many important policies which have continued to this day.

1. One of the very first actions of this first Congress was to make provision for the appointment of two congressional chaplains, among whose duties would be that of leading the Houses of Congress in prayer to Almighty God each day.

2. By joint action of both Houses of Congress, plans were carried out to the effect that, as soon as George Washington took his oath of office as the first President of the United States, he, together with all other Government officials and all Members of both Houses of Congress went directly to St. Paul's Chapel to attend divine services, conducted by a congressional chaplain. This took place on April 30, 1789.

3. During that summer, this first Congress wrote, rewrote, discussed, and debated the proposed Bill of Rights, including what we now call the first amendment. On August 15 there was a lengthy discussion in the House of Representatives on this very amendment. Mr. Madison and Mr. Huntington spoke at length before the House on what the meaning of the proposed first

amendment is. Compulsory belief, the violation of conscience, tax support for churches and ministers, court suits to compel payment of church dues, the domination of all denominations by one established denomination—these were the evils which they said this amendment would avoid. After much discussion, the House adopted the proposed Bill of Rights and sent it over to the Senate on September 24.

4. On September 25 this same House of Representatives, upon motion of Elias Boudinot, of New Jersey, passed the following resolution:

"*Resolved*, that a joint committee of both Houses be directed to wait upon the President of the United States, to request that he would recommend to the people of the United States a day of public thanksgiving and prayer to be observed by acknowledging, with grateful hearts, the many signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a Constitution of government for their safety and happiness."

Quite evidently, the authors of the "no establishment of religion" clause believed they had done nothing on September 24 which prevented their calling for a day of national, public prayer, on September 25.

This resolution reached the Senate later on that same day. By a strange but dramatically significant coincidence, it was acted upon immediately after the Senate took action on the Bill of Rights resolution which had been sent over from the House the day before. The action in both instances was favorable.

The vote on the prayer resolution in the House of Representatives, and its close relationship to the vote on the first amendment, will be seen in even more significant and relevant focus when it is recalled that there was an objection to it made at the time of its proposal. When Boudinot offered his resolution, a Mr. T. T. Tucker, from South Carolina, arose and spoke against it, giving some of the same arguments which the secularists of today use. He said that the Congress and the President should not call upon the people of the United States to set aside a day of thanksgiving to God because, said he, perhaps not all of the people will want to give thanks. But, he continued, whether this is the case or not, it is no business of Congress to call people to prayer, for this is a religious matter. Finally, he said, if a day of thanksgiving must take place, let someone else call it.

Now observe this: After the Members of the House heard all of Mr. Tucker's objections, they voted to ask the President to issue an official call for a national day of prayer and thanksgiving to God—and this within 24 hours of the time they voted not to have "an establishment of religion." So that those who gave us this amendment clearly did not intend it should interfere with religious observances in public institutions.

Before leaving this item, we should take a minute to indicate what Jefferson's understanding of this matter was, because of his great interest in it and his great influence upon it. Having read everything I can find which he wrote on the subject of religion, I can say that I believe Jefferson fully agreed with the viewpoint which I have thus far expressed. For example, in 1787—only 2 years before Congress voted to adopt the first amendment—he published a book, in which he included a section describing his objections to what he therein called "an establishment of religion."

Here are a few representative descriptions: He wrote of "poor Quakers were flying from persecutions in England;" he said that "heresy was a capital offence, punishable by burning. Its definition (being) left to the ecclesiastical judges;" he wrote of "laws giving salaries to the clergy;" and he recited how that "if a person * * * denies the being of a God, or the Trinity, or asserts there are more gods than one, or denies the Christian religion to be true, or the scriptures to be of divine authority, he is punishable * * * by 3 years imprisonment without bail." This was Jefferson's concept of "an establishment of religion."

That he did not believe in the eradication of religion from government is shown by many evidences, one of which is the official resolution which he signed as Governor of Virginia, in 1779. It reads, in part, as follows:

"*Resolved*, That it be recommended to the several States to appoint Thursday 9th of December next, to be a day of publick and solemn thanks to Almighty God, for His mercies, and of prayer for the continuance of His favor and protection to these United States; to beseech Him that He would be graciously pleased to influence our publick councils * * * that He would grant to His church the plentiful effusions of divine grace, and pour out His Holy Spirit on all ministers of the gospel; that He would bless the proper means of education and spread the light of Christian knowledge through the remotest corners of the earth * * * that He would in mercy look down upon us, pardon our sins, and restore us into His favor; and finally that He would establish the independence of the United States upon a basis of religion and wisdom and support them in the enjoyment of peace, liberty, and safety."

IV

Since there are some people who are deeply prejudiced in favor of a secularistic government, they might be helped to see the Constitutional point here if an illustration were used. So let us suppose an amendment to the Constitution which pertained to clothing had been adopted in those early days, and that the Supreme Court were asked in 1962 to rule on the constitutionality of wearing shoes. Suppose, further, that the language of the amendment, as now understood, could be construed to mean either that it is, or is not, constitutional to wear shoes. But if historical research proved conclusively that the Members of the Congress which adopted the amendment wore shoes, and that the members of the legislatures which ratified the amendment wore shoes, the conclusion would seem inevitable that the authors and ratifiers of that amendment did not intend the amendments which deal with clothing to be interpreted as a prohibition against wearing shoes.

By the same token, if we were to find—as we do—that there is an amendment which prohibits "an establishment of religion," and if we were to find—as we do—that the authors of this amendment had prayer in Congress and called upon the President to proclaim a day of national prayer, and if we were to find—as we do—that the State legislatures which ratified this amendment were opened with prayer; then the conclusion would seem inevitable that the authors and ratifiers of the first amendment did not intend that it should be construed to mean that it is unconstitutional to have prayer in such public institutions as Congress, the courts, the legislatures, the Armed Forces, and the public schools.

V

A second matter on which the Court did not elaborate in its June 25 opinion, but which is relevant to any decision concerning prayer in public institutions, is the clause which follows the clause we have just been discussing. The complete statement is this: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Let us see how that statement would read if we remove from it the portion we have already discussed. The remaining statement would go as follows: "Congress shall make no law prohibiting the free exercise of religion."

It's a fair assumption that what the legislative branch of Government is forbidden to do in this area, the executive and judicial branches are also forbidden to do. If, therefore, we substitute the Court in place of Congress, we would have a statement like this: "The Supreme Court shall not make a ruling prohibiting the free exercise of religion."

Does this mean that the Court shall not prohibit students and teachers in schools from freely exercising their religious desire to pray, so long as they do not compel others to do so? Justice Stewart, in his dissenting opinion, thinks it means just that. He wrote: "To deny the wish of * * * schoolchildren to join in reciting * * * prayer is to deny them the opportunity of sharing in the spiritual heritage of our Nation." Let the American people in general, and the Supreme Court in particular, ponder this question. Let us study the meaning of the fact that the first amendment bars the Government from prohibiting the free exercise of religion.

VI

A third matter on which the Court did not elaborate in its June 25 opinion, but which is directly relevant to any decision concerning religious observances in public institutions, is the complete impossibility of neutrality. Notwithstanding the fact that a number of people today imagine that there can be such a thing as a government which is religiously colorless, this is not possible at all, and the promise that it can be achieved is a cruel mirage. Either our public institutions will be oriented favorably toward religious faith, or they will be oriented unfavorably toward it. Our Lord Jesus Christ said, "He who is not with Me is against Me" (Matthew 12: 30). His parable of the empty room and the seven devils (Luke 11: 23–26) clearly teaches the folly of attempting to maintain a religious vacuum which neither affirms nor denies. Christ taught that the attempt to be neutral resulted in "seven devils" taking charge of the allegedly empty room. So would it be with our schools.

Dr. George Buttrick has written words[1] which deserve our sober thought here: "A school, a factory, or a symphony hall ought likewise to be consecrate. The doctrine of the separation of church and state never meant, and can never mean, the dichotomy of life into secular and sacred. The age-old frictions of the doctrine prove that fact. Our Founding Fathers, mindful of the tyrannies they had fled, intended a wise separation of function. But they never doubted that both functions were religious in nature. To teach facts without meanings is worse than teaching notes without music. To cultivate the mind without purpose * * * is worse than intensive farming that yields no food. Either education must become dedicate to a genuine faith or religion will be compelled * * * to provide a reverent education. The school and the Senate, the mill and the home, the hospital and the church should all be consecrate—by corporate prayer. Prayer is the light without which cities are vain."

It is my own belief that those who wrote our Constitution never intended to require that our public institutions should be conducted in such fashion that the thoroughgoing secularist would be the only person who could feel completely at home in them.

The American public in general, and the Supreme Court in particular, must bring careful study to the question of whether

[1] Prayer, by G. A. Buttrick, Abingdon-Cokesbury Press, 1942.

in the long run a genuine neutralism is possible for our public institutions. The idea that it is possible to effect an honest neutrality which will permanently be equally fair both to religion and irreligion presupposes an optimistic concept of the nature of man which Biblical theology knows nothing about; and if this neutrality can indeed be achieved without the support of religious resources and assumptions, then the Biblical doctrine of the nature of man will have been proved false, and I do not think it is false. It might be added, parenthetically that neither Adlerian nor Freudian psychology knows of such a race of humans as this neutralism presupposes. All of life is committed life, whether it be seen privately or in such public institutions as schools.

VII

If voluntary prayers in public schools, and religious observances of various kinds in all governmental institutions are held to be constitutional, this will not relieve the church and the home of their primary duty to cultivate religious faith and practice. Nor will it guarantee that all of the prayers which will be offered in school will be worthy prayers. (Incidentally, the same could be said of prayers offered in church and home.) If public devotions are allowed by the Court to continue, this will not mean that we are "God's chosen people," or that we have thereby purchased the smiling and bountiful favor of God for our land. Rather, it will keep our institutions more intently under the scrutiny of God's stern and righteous judgments than they otherwise would consciously be.

It will mean what the Supreme Court of the United States declared to be true 10 years ago: "We are a religious people whose institutions presuppose a Supreme Being." It will mean that we have officially committed ourselves to high ground, and that as a nation we are obligated to live in terms of that commitment.

As George Washington said, in proclaiming the first day of national thanksgiving, "It is the duty of all nations to acknowledge the providence of the Almighty God, to obey His will, to be grateful for His benefits, and humbly to implore His protection and favor."

PRAYER

O God,
Thy love divine hath led us in the past;
In this free land by Thee our lot is cast;
Be Thou our Ruler, Guardian, Guide, and Stay,
Thy word our law, Thy paths our chosen way.
Amen.

AID RELEASE SHOWS WISCONSIN SHORTCHANGED IN FOREIGN AID

Mr. PROXMIRE. Mr. President, I have received through the mail recently a publication from the Agency for International Development. While I favor foreign aid, and have voted for it in the past, I must say this publication presents an argument that undermines the position I have taken. Apparently this publication is supposed to induce me to vote for the foreign aid bill by pointing out that firms in 34 Wisconsin communities received a total of $26 million in foreign aid funds for providing goods and services from January 1954 through December 1961 out of a total of $4,400 million. But Wisconsin is getting less than one-third of the share it should get on a pro-rata basis. We have 2 percent of the people, 2 percent of the income, pay 2 percent of the taxes, and have far more than 2 percent of the factories. Since more than $4.4 billion is involved our pro rata share would be $88 million, but we get only $26 million.

I can see why AID should send this release to the Senators from New York, because 58 percent of the foreign aid purchases in the country—more than half—were made in New York State alone; but the publication was sent to the junior Senator from Wisconsin apparently to help persuade me to vote for this foreign aid bill. Why?

I ask unanimous consent that this release be printed at this point in the RECORD.

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

WISCONSIN RECEIVED $26 MILLION IN U.S. FOREIGN ASSISTANCE BUSINESS

Firms in 34 Wisconsin communities received a total of $26,044,944 in foreign aid funds for providing goods and services during the period of January 1954 through December 1961, the U.S. Agency for International Development reported today.

Under the current AID program, about 80 percent of the money used for grants and nearly 100 percent of the funds for commodities financed through loans are spent in the United States. A total of $4,429,581,138 has been expended in 44 States and the District of Columbia in this way under the U.S. foreign assistance program in the past 8 years.

The amounts cover grants and loans financed by AID and its predecessor agencies as well as payments to approved U.S. voluntary agencies for the cost of freight on shipments under their own oversea programs and on shipment of surplus agricultural commodities under the food-for-peace program.

Figures on each State's share in business resulting from the U.S. foreign assistance program are based on AID-financed transactions with exporting firms—either the foreign sales unit of a firm or an export merchant who is located on that State and engaged in oversea sales of American-produced commodities.

Here is how Wisconsin communities shared in the program:

Appleton	$1,741
Baraboo	13,874
Belgium	27,199
Beloit	184,493
Burlington	2,770
Clintonville	821,886
Cudahy	2,503
Eau Claire	137,967
Edgerton	22,621
Fond Du Lac	502,464
Fort Atkinson	11,520
Grafton	2,627
Green Bay	2,335
Janesville	56,940
Kenosha	2,047,970
Kohler	221,883
La Crosse	448,013
Madison	246,813
Manitowoc	1,621
Marinette	48,556
Milton	362
Milwaukee	16,565,146
New Richmond	2,588
Oshkosh	709,961
Port Washington	14,187
Racine	3,672,354
Rothschild	2,710
Sheboygan	12,700
South Milwaukee	115,352
Superior	2,181
Waukesha	50,258
Waupin	13,563
West Allis	38,552
West Bend	39,234

In the nationwide total of more than $4.4 billion in AID-supported foreign purchases, individual State shares of the business are as follows:

Alabama	$12,473,307
Arizona	4,547,884
Arkansas	1,637,752
California	269,366,484
Colorado	5,835,159
Connecticut	36,130,708
Delaware	7,634,460
District of Columbia	2,535,281
Florida	4,198,810
Georgia	3,216,885
Hawaii	10,038
Idaho	594,671
Illinois	121,178,586
Indiana	13,489,809
Iowa	8,446,602
Kansas	809,332
Kentucky	11,278,933
Louisiana	92,870,549
Maine	1,060
Maryland	7,295,451
Massachusetts	21,643,030
Michigan	29,321,289
Minnesota	10,183,396
Mississippi	5,388,270
Missouri	15,301,398
Nebraska	988,657
New Hampshire	479,411
New Jersey	57,042,722
New Mexico	1,333,668
New York	2,567,529,605
North Carolina	8,182,124
Ohio	94,647,086
Oklahoma	14,377,166
Oregon	76,072,705
Pennsylvania	152,603,751
Rhode Island	3,216,607
South Carolina	1,088,014
Tennessee	193,748,138
Texas	487,904,994
Utah	727,177
Vermont	853,705
Virginia	38,552,185
Washington	14,175,379
West Virginia	4,623,956
Wisconsin	26,044,944
Total	4,429,581,138

AID officials pointed out that, because a large part of the foreign aid commerce is handled by merchant exporters who tend to locate in port cities, large amounts of financing are shown for States containing major ocean ports. However, the Agency noted, these exporters generally are selling many commodities produced in inland cities and towns.

Mr. PROXMIRE. Mr. President, this release underscores the current short shrift Wisconsin gets from the Federal Government. Defense contracts won by Wisconsin firms are 1 percent of the total or one-half what our proportion of population, income, taxes paid, or factory facilities would seem to entitle us to receive. Space contracts are spread in a crescent from Florida to Texas. Wisconsin's share is infinitesimal. Research and development contracts go to California and New England, and generally overlook the Midwest and our great universities.

The great and often wasteful public works projects of this Government costing billions are concentrated overwhelmingly in the West and Far West. Wisconsin gets almost no public works.

I think it is time that this Wisconsin Senator protested vigorously, because I think we are overlooked, and badly overlooked. To rub salt into our wounds, our great dairy State suffers a farm bill

this year which does nothing to improve the tragically low dairy farm income.

INVESTMENT CREDIT WOULD BLOW ANOTHER BIG LOOPHOLE INTO TAX LAWS

Mr. PROXMIRE. Mr. President, 2 days ago I submitted an amendment to knock out the investment credit provision in the tax bill. I want to emphasize what a very serious mistake inclusion of this tax giveaway would be. Virtually every authority who has studied the tax laws has said that they are riddled with too many exemptions and deductions and opportunities for special groups. This provision would add to them, and would be a $1 billion windfall. It would make it necessary to increase the taxes of the ordinary taxpayers that much more. We would never, ever be able to repeal it. It would grow and spread, weakening our tax system seriously.

THE THURGOOD MARSHALL NOMINATION

Mr. JAVITS. Mr. President, I wish to say a word about the observations of the President of the United States, yesterday, made at his press conference on the Thurgood Marshall nomination and confirmation.

In the first place, we have got to keep our eye on the ball, whatever the digression of the President of the United States. He confirmed the assurance of the majority leader, the deputy majority leader, and the minority leader, on which we completely relied, that the Senate would have an opportunity to vote on the confirmation of the nomination of Thurgood Marshall before we adjourned. The President's confirmation that that is the determination of the majority party will be very much welcomed. I welcome it. I praise the President for having made the nomination. But it is unfortunate that the President saw fit to mar the force of his words by reference to the fact that while the two Senators from New York had something to say about the appointments to seven other circuit vacancies during the Eisenhower administration, Thurgood Marshall was not nominated for any of them.

With all respect, I submit that the President can hardly know whom we recommended for judgeships or to what extent any of our recommendations were favorably received by President Eisenhower. In fact, I deeply feel that the recommendations I made were of a character and quality equal to that of Thurgood Marshall—and I have the highest opinion of him as a judge; I repeat, a nomination for which the President is entitled to full credit. Also, Thurgood Marshall was in those years, 1952 to 1960, deeply occupied with historic Supreme Court litigation. Whether he would have wished to leave that litigation for the bench is also a question.

If the President's digression was meant to question the sincerity of my views or those of my colleague [Mr. KEATING] on appointments of Negroes to high public office, I doubt that I, or, for that matter, my colleague [Mr. KEATING] will accept that feeling as being reasonable in view of our attempts in civil rights struggles or in the appointment of Negroes to high office.

The unfortunate implication of the President's additional remark is to evidence some feeling that the criticism we have directed against the subcommittee's holding up on the Marshall confirmation in some way was directed against the President. Nothing could be further from the fact. The President has made the appointment. Again I say I give him full credit for it. I have every feeling that the President, as much as I do, wants the confirmation of Thurgood Marshall's nomination before we go home. I have every confidence that the united determination which has been expressed will bring this about.

In view of the slightly discordant note, Mr. President, it is necessary to reaffirm my own faith in the bipartisan good faith of all who are fighting for confirmation of the nomination of Judge Marshall and my determination to stand solidly with them in this fight. I reaffirm also my statement—after all, one has only one's self to depend upon—that, come what may, the Senate shall have its opportunity to vote on confirmation of the Marshall nomination. I have no doubt whatever now, with all these assurances in hand, that this will be brought about.

Mr. President, I hope, therefore, that the country will look at what the President said about getting the nomination of Mr. Marshall confirmed, and that the country, too, will keep its eye on the ball, for I do not think that either my colleague [Mr. KEATING] or I need protest devotion to the basic cause, which we fear is what has slowed down and delayed so unreasonably and intolerably the confirmation of the Marshall nomination.

In short, Mr. President, I forgive the President of the United States, if he needs it, in the interest of the larger purpose, which is the bipartisan dedication to getting this job done. I would urge the President, on the other hand, to give some attention to what I fear he has sadly neglected, which is calling on the Congress to enact very urgently needed civil rights legislation.

The PRESIDING OFFICER (Mr. YOUNG of Ohio in the chair). The time of the Senator from New York has expired.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may proceed for a half minute longer.

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

Mr. JAVITS. Appointments to high office, desirable and wonderful as they are, are not substitutes for legislation to win voting rights in the South; to do something to avoid situations such as those in Albany, Ga.; to do something to desegregate the public schools; to do something to put a statutory base under the President's Committee on Equal Opportunity Among Government Contractors.

I would in turn, so long as the President mentioned me, be bold enough to suggest that he consult his own campaign pledges and his own ideas and purposes in terms of coming to the Congress for legislation which is so urgently needed in the civil rights field.

Mr. KEATING. Mr. President, I rise in the interest of accuracy. Yesterday, at his press conference, the President of the United States indicated strong support for his nominee to the Court of Appeals in New York, Judge Thurgood Marshall. Of course, I am delighted that the President made that statement.

Then the President added—according to the article in today's New York Times:

> In regard to Senator KEATING, I do think it's interesting to point out that there were seven circuit court vacancies during the previous administration. The two Senators from New York had something to say about the appointments to those and Thurgood Marshall was not nominated in that—on any of those occasions.

In the first place, Mr. President, it must be noted that during the previous administration, unfortunately, the Senators from New York and, indeed, all Senators as far as I am aware, did not have as much to say about appointments to the bench as many of them thought they should have.

But, be that as it may, during my tenure as a U.S. Senator under the previous administration, only one appointment, Judge Friendly's, was made to the Court of Appeals in New York. But now the President of the United States has septupled that number—has multiplied it by seven. If the one doing that were not the President, one would be inclined to call the statement gross exaggeration. In the case of the President, I suppose one would have to call it a septuplication, for certainly he has septupled the one—that of Judge Friendly—up to seven.

In order to be accurate, I thought the RECORD should be set straight.

More important than this, I hope this nomination will not be approached in any way on a partisan basis. My efforts have always been on a completely bipartisan basis and I intend to continue to work for Judge Marshall's confirmation with interested Members on both sides of the aisle. I have been confident that all Republican members of the Judiciary Committee vigorously supported this nomination. I feel confident that they still do; but I hope that nothing will be said or done to imperil the bipartisan teamwork which will be needed if the nomination is to come before the Senate for a vote.

THE GRAND OLD MAN OF THE LAW

Mr. HRUSKA. Mr. President, at the annual meeting of the American Judicature Society, held recently in San Francisco in conjunction with the American Bar Association Convention, Roscoe Pound received its first golden anniversary award.

The society has honored its only surviving founder most appropriately. The writings of Dean Pound stimulated sweeping changes in the administration

of justice; his work has been a major factor in the revitalization of the judiciary.

Nebraska, where he was born and raised and first began his illustrious career in the law, is understandably proud of Dean Pound. A profile entitled "The Grand Old Man of Law," printed in the New York Times of August 9, 1962, captures the rare spirit and describes the brilliant work of this schoolmaster of the bar.

I ask unanimous consent, Mr. President, that the article honoring Dean Roscoe Pound be printed in the RECORD.

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

GRAND OLD MAN OF LAW: ROSCOE POUND

Fifty-six years ago this month a little-known lawyer from the plains of Nebraska rose to address an evening session of the 29th annual meeting of the American Bar Association in St. Paul.

The speaker, then 35 years old and dean of the College of Law of the University of Nebraska, was Roscoe Pound, later dean of the Harvard Law School in its golden years and now, at 91, the grand old man of the law who was honored by the American Judicature Society in San Francisco yesterday.

For the complacent conservatives of the law who heard him at St. Paul, it had been a pleasant summer evening until Mr. Pound spoke. His address, a landmark in modern jurisprudence, was entitled 'The Causes of Popular Dissatisfaction With the Administration of Justice."

He proceeded to denounce an archaic system of courts, procedure that was behind the times, lavish granting of new trials, frittering away of the courts' time on points of legal etiquette and the sporting theory that justice would somehow triumph when opposing lawyers used all the tricks of oratory, surprise, and cross-examination that were available.

Iconoclastic as it was in 1906, the address has received a major share of credit for the changes in legal thinking and methods in the succeeding years. The lawyer from Nebraska came to be called the schoolmaster of the American Bar Association.

Years later, with the promulgation of the Federal Rules of Civil Procedure in 1938, Dean Pound was to remark how long it had taken to overcome the doctrine that the law ought to be left to change itself.

WAS KNOWN AS BOTANIST

Dean Pound was already recognized as a great botanist when the speech at St. Paul thrust him onto the center stage of the law. Born in Lincoln, Neb., on October 27, 1870, the son of a lawyer, he received most of his education as a young boy from his mother.

At the University of Nebraska, he majored in botany and did graduate work in plant geography, ecology and parasitic fungi, earning a B.A., an M.A. and a Ph. D. in the field. He was the first director of the botanical survey of Nebraska.

Although he attained far greater prominence in the law, Dean Pound never received a bachelor of laws degree. Admitted to the Nebraska Bar in 1890 after a year's law study at Harvard, he practiced for a time in Lincoln, served as Commissioner of Appeals in the Supreme Court of Nebraska, taught jurisprudence and Roman law at the University of Nebraska and became dean there in 1903.

After further stints of teaching at Northwestern University and at the University of Chicago, he returned to Harvard in 1910 as story professor of law. Six years later, still one of the newest members of the Harvard faculty, he was appointed dean.

On his faculty over the years were such men as Edward H. Warren, James M. Landis, and Felix Frankfurter. The number of students rose from 791 to a peak of 1,440 in 1925. Among them were Thomas Corcoran, David E. Lilienthal, and Dean Acheson.

Witty, a great storyteller and a powerful yet matter-of-fact speaker who never lost his Nebraska accent, Pound was one of Harvard's most popular lecturers.

In his teaching, he followed the traditional case method, adding others of his own out of his philosophies of sociological jurisprudence. He often turned to illustrations from actual practice, and he treated the ideas of his students seriously.

When he resigned as dean in 1936, Mr. Pound became Harvard's first roving professor—entitled to teach in any faculty of the university he wished.

During the New Deal and afterward, Dean Pound assailed what he called administrative absolutism, contending that the new administrative agencies were seeking exemption from judicial scrutiny.

His critics recalled that in the celebrated speech of 1906 he had condemned the "spectacle of law paralyzing administration." He continued to attack the agencies even after a conservative Congress had enacted the Administrative Procedure Act to rectify the very shortcomings of which he had complained.

HIS LEARNING IS VAST

Dean Pound is renowned for his encyclopedic mind and his vast learning. At 76, already a master of French, German, Italian, Spanish, Sanskrit, Greek, Latin, and Hebrew, he took up Chinese for a trip to China.

A prolific author, he was revising two articles on labor unions and the law when he flew West to be honored by the American Judicature Society, of which he is the only surviving founder.

Heavy framed, standing 5 feet 10 and weighing 200 pounds in his prime, Dean Pound was long possessed of great physical stamina. According to one story, he could still run a mile in less than five minutes at the age of 50.

It was his habit for years not to wear an overcoat in the winter, believing in the body's ability to adjust to cold temperatures.

Still working in the green eyeshade he has worn for most of his life to protect his poor sight, Dean Pound now maintains an 8-to-5 schedule 5 days a week at Harvard. He also goes to his law school office from 9 to 1 on Saturdays. He takes his exercise in walking in the vicinity of his home at the Commander Hotel in Cambridge, Mass., and his relaxation in philosophy.

Dean Pound, who was twice a widower, met his second wife while serving in Washington as a member of the National Commission on Law Observance and Enforcement, known as the Wickersham Commission. The commission was appointed to recommend whether prohibition should be continued. Dean Pound, never a teetotaler, voted nonetheless with the majority of the commission that prohibition should be given a further trial.

HENRY L. GIORDANO, U.S. COMMISSIONER OF NARCOTICS

Mr. BUTLER. Mr. President, it is my pleasure to call to the attention of the Senate that the newly appointed U.S. Commissioner of Narcotics, Mr. Henry L. Giordano, comes from the Free State of Maryland, which has long held him in high regard as a public servant and a private citizen.

As a veteran of 21 years with the Bureau, he still puts in a 60-hour workweek, keeping close check on narcotics traffic around the world. Mr. Giordano has stated that he will make no major changes in Bureau policy set by the retired Commissioner Harry J. Anslinger, who I might add has done a truly magnificent job since the formation of this Bureau.

I would be remiss if I did not comment upon former Commissioner Anslinger, who won for himself and this Nation worldwide acclaim as a man dedicated to fulfilling the responsibility of public office to the highest possible degree. He headed a highly sensitive Bureau dealing with a highly emotional subject, and I believe it the mark of the man that he never sought personal publicity or gain. His efforts were of significant help in combating the heinous crime of illicit drug traffic. On August 30, Mr. Anslinger will receive the Alexander Hamilton Award, the highest Treasury Department medal award, for his outstanding service as Commissioner of the Bureau of Narcotics.

Mr. President, we are indeed fortunate to have Mr. Giordano, a man of integrity, dedication, and high qualifications as the successor to Mr. Anslinger. Mr. Giordano was sworn in as the new Commissioner on August 17 by Secretary of the Treasury Douglas Dillon.

Mr. President, I ask unanimous consent to have printed in the RECORD, following my remarks, the article from the Evening Star entitled "Crime Fighter's Exit," the article from the New York Times entitled "Tough Narcotics Chief," and the "Portrait" from Drug Trade News.

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

[From the Washington Evening Star]

CRIME FIGHTER'S EXIT

Harry J. Anslinger, having reached the compulsory retirement age of 70, is about to retire, with colors flying, from the crime front where he for many years has waged a relentless war on the illicit drug traffic. But he is not through fighting the narcotics racketeers. The United States will continue to have his services as its representative at international conferences of the U.N. on the narcotics problem.

Although Mr. Anslinger has differed with the American Medical Association and some other groups on how to handle drug addicts, the White House announced that his retirement was voluntary. The controversy has been over whether addicts should be treated as victims of a disease, as the doctors contend, or as law violators, as the veteran head of the Treasury's Narcotics Bureau has insisted.

Actually, however, Mr. Anslinger often made it clear that he thought addicts should be hospitalized instead of penalized—unless they had committed a crime, such as peddling drugs to others or robbing or murdering to gain narcotics or the money with which to buy them. But he has opposed medical proposals for clinics at which addicts could be supplied with their drug needs, legally. Since such clinics would restrict the amount of drugs used, he said, the urge for more narcotics would lead to further illicit activities.

It is of interest that Mr. Anslinger's successor will be his right-hand deputy, Henry L. Giordano, who is known to share generally Mr. Anslinger's views on means of combating the vicious drug racket. Those of us who regret the impending exit of the vigorous and outspoken Commissioner will hope

that his successor will be as relentless and as successful in sending the peddlers and other scum to prison or into exile.

[From the New York Times]

TOUGH NARCOTICS CHIEF—HENRY LUKE GIORDANO

WASHINGTON, July 8.—Few men can lay a better claim to having come up the hard way in their profession than Henry Luke Giordano, the new Commissioner of the Federal Bureau of Narcotics.

At 48, he is a 21-year veteran of the Bureau. He made—and for a long time maintained—his mark as an ace undercover operative in one of the most hazardous fields of law enforcement.

Posing at various times as a down-at-the-heels narcotics peddler, a flashily prosperous racketeer, a small-time gambler, an escaped convict or a sailor on the beach, he has penetrated and won the confidence of some of the most ruthless criminal bands on the North American Continent.

Then he has turned the tables on them in court and helped send scores to prison.

President Kennedy announced Mr. Giordano's promotion to the top narcotics post on Thursday. Talking to reporters afterward, Mr. Giordano conceded that the job of a narcotics agent was a dangerous one.

"Most of the fellows recognize that, and take the proper precautions," he said disarmingly.

Even so, the record shows that 9 agents have been killed in the line of duty in the 32 years of the Bureau's existence and a good many others have suffered injuries.

But undercover work is about the only means of breaking a tough narcotics case, Mr. Giordano continued.

"You've got a satisfied seller on the one hand and a happy user on the other," he said. "Neither one, in most cases, is going to tell on the other. So you have to get in between these two some way to break up their traffic, and about the only way to do it is by deception."

It was in the guise of a tough-talking, free-spending Seattle racketeer that Mr. Giordano broke up the Mallock narcotics ring in western Canada in 1949. He was "borrowed" for the purpose by the Royal Northwest Mounted Police when their own efforts to pin the ring down had failed. He was gladly "loaned" by his superiors because the Canadian syndicate was extending its operations into Washington, Oregon, and California.

HE GOT SOME SAMPLES

In his racketeer role, Mr. Giordano drove an expensive car into Vancouver, British Columbia, put up at the best hotel and made himself conspicuous. He let it be known he could arrange an outlet for heroin in Seattle.

A new acquaintance arranged to get him some samples. He took these back to Seattle. Later, he called his man in Vancouver to say the samples had gone over well and the Seattle people wanted a regular supply. He said he was coming back to Vancouver to negotiate at the top, not with underlings.

Weeks went by while he waited in Vancouver. Then he was taken to a modest suburban house. There he met George Mallock, who, with his brother John, was believed to head one of the largest drug syndicates in North America. A large sum of money and a large quantity of heroin changed hands. The Seattle "racketeer" got in his car and drove away.

"I told them I was heading back to Seattle," Mr. Giordano recalled the other day "but they didn't seem quite to trust me. They followed me 5 or 6 miles, just to make sure.

"When they turned back, I stopped at the first telephone I could reach and called the Mounties. They moved in right away, picking up George and John Mallock and a number of their confederates."

TOUGH BUT NOT ROUGH

Mr. Giordano, a man of compact frame and pleasantly rugged features, has a manner that is relaxed, amiable and forthright.

"He is tough without being rough," an associate said.

Born June 10, 1914, in San Francisco, he attended the University of California School of Pharmacy in that city and received a graduate pharmacist's degree in 1934.

He was employed as a pharmacist in his native city from 1935 until he went to the Narcotics Bureau in 1941.

There he started as a junior agent. By 1958 he had become Deputy Commissioner.

During World War II he spent 3 years with the Coast Guard.

In 1955–56 he served as chief investigator of a House Ways and Means Subcommittee on Narcotics.

Mr. Giordano lives in suburban Silver Spring, Md., with his wife, the former Elaine Watson, and two teenage daughters.

Asked if he himself had any addictions, he said: "Just to cigarettes, and a little weekend gardening and grass cutting."

NARCOTICS POLICY DIVIDES OFFICIALS—BUREAU'S NEW CHIEF BACKS ANSLINGER ON PENALTIES

(By Cabell Phillips)

WASHINGTON, July 8.—A new man took over last week as Chief of the Federal Bureau of Narcotics. As he did, a small but intense controversy enveloped his predecessor and the whole attitude of the Government toward narcotics addiction.

The new Commissioner is Henry L. Giordano, a 48-year-old Californian who has been with the Bureau since 1941.

He succeeds Harry J. Anslinger, who retired upon reaching the age of 70 and who had headed the Bureau since its establishment in 1930.

Mr. Giordano stands with his former chief in believing that stiff prison penalties are the strongest deterrent to the illegal traffic in drugs. Present laws permit up to 10 years' imprisonment for a first offense of illegal possession and require a minimum sentence of 5 years for a first offense of illegal sale.

But Mr. Giordano would also like to see legislation to permit compulsory confinement and treatment of addicts under civil as well as criminal law.

"I think we should do everything we can," he said the other day, "to treat addicts whenever we find them, and not wait for them to commit a crime."

Legislation to accomplish this end has been introduced in Congress by Senators KENNETH B. KEATING and JACOB K. JAVITS, New York Republicans, among others.

There is statistical evidence that the small and highly professional Bureau of Narcotics has done much to cut down the use of illicit drugs.

The incidence of narcotics addiction in the United States today is estimated at 1 in 4,000 as compared with 1 in 2,100 in 1950, the peak of a brief postwar resurgence of drug addiction.

The decline coincides with two control measures enacted by Congress, the Boggs Act of 1952 and the Narcotics Control Act of 1956. Both increased sharply the penalties for illegal possession and sale of narcotics.

But critics, largely in the field of medicine and mental health, contend that under Commissioner Anslinger the Narcotics Bureau was deficient in its attitude toward curative, as well as penal, treatment of addicts.

They say the Bureau could have had even a better and a more lasting record of achievement if it had been more sympathetic to medical and psychiatric treatment of addicts, rather than regarding them all as criminals.

Mr. Anslinger was frequently accused of having "the viewpoint of a cop" toward all problems surrounding the illicit use of drugs.

Dr. Robert H. Felix, Director of the National Institute of Mental Health of the Department of Health, Education, and Welfare, said, for example, that he felt Commissioner Anslinger took the view that, "once a person becomes an addict, he is dangerous and is breaking the law and should be confined."

"Addiction to narcotics," he continued in an interview, "is a severe form of emotional disorder. But there are many forms of emotional disorders, and they do not all lead to crime by any means.

"But if a person acquires a criminal record solely because of his addiction, the problem of treating and curing him is made a great deal more difficult."

This approach, he said, has made it virtually impossible for an addict to obtain help in overcoming his condition from a private physician.

"Under Mr. Anslinger's interpretation of the law," Dr. Felix said, "if a physician treats an addict by giving him gradually diminishing sustaining dosages of narcotics, both the physician and the patient could technically be regarded as violating the law. And few doctors want to take that chance."

Mr. Anslinger's defenders—and Mr. Giordano is prominent among them—deny most such allegations. The Bureau, they note, has long pursued a policy of committing addicts for treatment at the Federal hospitals at Lexington, Ky., and Fort Worth, Tex.

Most addicts, they point out, reveal themselves only after they have got involved in some sort of criminal activity, usually theft to get money with which to buy illegal drugs. And under the law, they add, possession of narcotics is prohibited.

At all events, they add, the stiffer the legal penalties have become over the years, the more rapidly the narcotics traffic has declined. They are firmly against any dilution of the legal sanctions now in force.

The Bureau has 290 agents in field offices across the country, plus several in foreign countries. Its work is concentrated mainly in the large cities of the Nation.

New York State (and this means primarily New York City) accounts for 46.6 percent of all the known addicts in the country today. California (principally Los Angeles and San Francisco), has 16.2 percent, and Illinois (Chicago) 14.6 percent.

[From Drug Trade News, May 28, 1962]

PORTRAITS: HARRY J. ANSLINGER, FEDERAL COMMISSIONER OF NARCOTICS

George Eliot once declared that "our deeds determine us, as much as we determine our deeds." What one does fashions his character and his character etches his place in society. The difficulties of the task, the impossibilities of the burden, bring out in bold relief the utter immensity of the objective and the ironclad dedication of the man resolute enough and courageous enough to undertake it.

The acceptance of highly sensitive public obligations which involve the national interest demands a lofty sense of duty and affords the true measure of the man. Our deeds determine us as much as we determine our deeds. It is within this framework of duty and performance that this "portrait" of the Federal Commissioner of Narcotics is thoughtfully presented. It is bound to stir a sense of appreciation among all who place high value upon constructive public service.

Harry J. Anslinger was born in Altoona, Pa., on May 29, 1892, and has long maintained

the family residence in nearby Hollidaysburg, in addition to a Washington home in connection with his official duties and responsibilities. He attended Pennsylvania State University and later enrolled in the School of International Relations, The Hague.

REMINGTON MEDALIST FOR 1962

He has been chosen to receive the Remington Honor Medal for 1962, pharmacy's highest distinction. He holds the LL.B. degree from the Washington College of Law. The University of Maryland conferred its LL.D degree upon him in recognition of his highly constructive contribution to the national interest and the public safety.

Public service has been his life's work. After significant connections with governmental agencies, both at home and abroad, Mr. Anslinger was appointed Federal Commissioner of Narcotics in 1930, and has been reappointed by each succeeding President, the most recent having been made by President Kennedy. It is widely recognized that no man, in such a sensitive field of Government, has served so long and so well.

During this long period Commissioner Anslinger has participated in numerous world conclaves dedicated to the suppression and control of narcotic addiction. He is at present Chairman, United Nations Commission on Narcotic Drugs, and has taken a leading part in other national and international agencies engaged in combating the illicit traffic in narcotic drugs. Indeed he has won wide acclaim for his leadership dealing most effectively with the underworld aspects of this public evil.

Commissioner Anslinger is the recognized world leader in efforts dedicated to international control of narcotic drug problems and worldwide cooperation toward the ultimate deletion of the illicit commerce in narcotic drugs. He has been awarded membership in many organizations dedicated to various segments of public service and is the recipient of outstanding professional and civil distinctions.

UNIVERSALLY RENOWNED

No attempt is herein made to enumerate all the many honors bestowed upon him in recognition of his profoundly valuable contributions to the public interest. Conspicuous among these are the following: Procter Medal, by the Philadelphia Drug Exchange; Career Service Award, National Civil Service League; Alumni Service Award, American University, and the Pennsylvania State University.

He has, on many occasions, been signally honored by the American pharmaceutical industry and other bodies deeply interested in the control and eradication of the illicit narcotic drug problems, so profoundly beneficial has been his public service in this profoundly important field.

Commissioner Anslinger has been accorded worldwide acclaim as a person dedicated to the welfare of his fellow man, a public servant of integrity and ability, a diplomat of distinction, and the foremost citizen of the world in matters relating to the overall field of narcotic drugs. He has valiantly served his day and generation and won the acclaim of all concerned with the quality and intrinsic worth of true dedication and lasting benefits to the public interest.

TRIBUTE TO BRUCE BEDFORD, SR.

Mr. CASE. Mr. President, Trenton and the State of New Jersey have lost one of their leading and best beloved citizens with the passing recently of Mr. Bruce Bedford, Sr., who had resided since 1955 at 36 Boudinot Street in the neighboring town of Princeton.

He had been a member of the board of directors of Trenton Trust Co. for the past 35 years, and a member of the New Jersey Advisory Banking Board. A leading industrialist of the State, he was the founder of the Luzerne Rubber Co. of Trenton, and president of the United New Jersey Railroad & Canal Co.

He was chairman of the board of directors of the Trenton Savings Fund Society, where he had served as president from 1934 to 1951. Always active in civic affairs, Mr. Bedford was a former president of the Trenton Chamber of Commerce, the first campaign chairman of the Trenton Community Chest, and a former member of the Trenton Board of Education.

A graduate in 1899 of Princeton University, he served on the Princeton University Athletic Committee, and belonged to the Ivy and Nassau Clubs, the Princeton Club of New York, and the Trenton Club.

Mr. Bedford's earlier home was in Wilkes-Barre, Pa., where he was a member of a very distinguished fourth-generation family. Survivors here include the widow, Mrs. Mathilde H. Bedford, two sons, Hugh Hamill and Bruce, Jr., a brother, Paul, who still resides in Wilkes-Barre; five grandchildren and one great-grandchild.

TRIBUTE TO SENATOR KUCHEL

Mr. BEALL. Mr. President, yesterday one of the Nation's most interesting and thought-provoking political columnists discussed the forthcoming elections in California. This writer, Thomas O'Neill, has gained an impressive reputation for calling the shots as he sees them, and this trait has occasionally resulted in articles which have raised the temperatures of politicians on both sides of the aisle.

With these remarks as background, I wish to offer for inclusion in the RECORD the portion of Mr. O'Neill's August 22 column in the Sun, of Baltimore, Md., dealing with my good friend, Senator THOMAS KUCHEL. Prior to this segment of the article, Mr. O'Neill discussed whether or not President Kennedy will give active support to Senator KUCHEL's opponent in the current campaign.

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

Whatever path President Kennedy picks, Senator KUCHEL will probably be hard to unseat. He is in the middle road California political tradition of Earl Warren, whose protege he was in much of a 25-year career in public life. Although he is the assistant Republican leader in the Senate, Mr. KUCHEL pursues an independent course, the inspiration of an attempt by the ultra right to sidetrack him in the primary election last June, an assault he stood off handily.

In the administration's losing battle for the medical care bill, among others, Senator KUCHEL was on the side of the President. It was a stand unlikely to damage him among California's nearly 1½ million voters in the age range of 65 and up. He has prudently kept his candidacy separate from that of Mr. Nixon who, in quest of votes (he trails in the polls) has arrived at a semi-accommodation with the frantic far right wing of the GOP. Senator KUCHEL is an uncompromising critic of that element, and has repeatedly condemned its asinine clamor for the impeachment of Chief Justice Warren. He entered the Senate originally by appointment of then Governor Warren to replace the newly elected Vice President Nixon in 1952.

As a political realist Senator KUCHEL (the name rhymes with "people") accepts that he can expect no direct help from the Democratic President in a partisan campaign without regard to their private relationship. His attitude remains much the same as on an earlier occasion when he declined to change his campaign style under prodding from party leaders to punch harder: "If the people want me they will vote for me." They did.

At their last joust Senator KUCHEL ran up a majority of 450,000 over Senator Richards while General Eisenhower was winning California by 600,000, an indication of the formidable Richards strength. Senator Richards notes with satisfaction that there will be no equivalent magnet for votes leading the GOP this year and is campaigning strenuously to close the 1956 gap.

THE BUILDUP OF ATOMIC ARMS—POTENTIAL FOR DESTRUCTION

Mr. McGEE. Mr. President, the course of humanity has taken some rather bumpy detours in the search for peace and prosperity. Today we possess the power to destroy ourselves. Those that have witnessed the use of this power are perhaps in a unique position to counsel mankind on the dangers in the buildup of atomic arms. While this action is at present an unwelcome necessity it is equally necessary that we keep in mind the potential for destruction that is at our fingertips.

An excellent article on this subject appeared in the Casper Tribune-Herald on August 17. It was written by the Reverend Frank Edmund See, pastor of the First Christian Church of Casper after his recent visit to Nagasaki, Japan. I ask unanimous consent that the article be printed in the RECORD.

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

CASPER CLERIC FINDS MEMORY OF "BOMB" LINGERS IN JAPAN

(By Frank Edmund See)

(EDITOR'S NOTE.—Now touring Japan, the Reverend Frank Edmund See, pastor of the First Christian Church in Casper, describes present day Nagasaki, where he found emotional scars lingering from the day in 1945 when America dropped its second atomic bomb on the city. His dispatch was dated August 9.)

"Today, the anniversary of the fateful morning in 1945 when the world's second atomic bomb fell on this shipbuilding city of 300,000 people, I stood on the very spot where the bomb fell," writes the Reverend Frank Edmund See, pastor of the First Christian Church, who is now concluding a preaching mission in Japan.

"Nagasaki is a busy city. Here the capricious tides of the Pacific Ocean rise and recede with clocklike regularity. The pungent smell of the sea is inescapable. Nestled among the high green hills Nagasaki is known as the Naples of the Orient. It is the oldest trade port in Japan dating from 1570. Through the Nagasaki gateway Christianity gained a foothold in these islands in 1506 when a Spanish missionary, Francis Xavier,

landed here to begin his preaching of the Christian gospel. In 1962 it is one of the strongholds of the Christian religion in a land that is dominated by Buddhism, Shintoism and countless postwar sects.

"Today I saw very little evidence of the destructive force which tore this attractive city to shreds and seared and destroyed the lives of 70,000 people. In the memorial park where the bomb exploded, tourists silently gazed at the tall green marble marker that has been erected on the place where the weapon landed among the hills. Nearby a huge statue has been erected in the interests of world peace. On a hill towering over this now peaceful scene the International Cultural Building houses ominous exhibits of that day when, as one Japanese said, 'all hell broke loose.' On this memorial day people hurried to their places of employment shoe-horned into crowded buses, mothers with their babies strapped to their backs nonchalantly shopped in the marketplaces, the corner sandlots rang with the enthusiastic shouts of Little League baseball games and children ran and romped and laughed in this city's parks and playgrounds. I found absolutely no animosity in Nagasaki. The citizens and shopkeepers were friendly and gracious. The vice governor of the Nagasaki prefecture kindly received me in his spacious, well-appointed office and spent most of the time telling me of the problems of democracy in Japan. He made no mention of the bomb.

"However, while the external evidence reveals little sign of the physical destruction Nagasaki experienced or any deep-seated resentment on the part of the citizenry, there are hints here that the emotional scars have not been completely wiped out by the erasures of time. The citizens of Nagasaki apprehensively watch the big nations playing with thermonuclear fireworks. They see this nuclear buildup as an ominous threat to the security of mankind. As one man said to me, 'If the scientists and militarists in the Soviet Union and America really knew what it was like to be in hell when a nuclear weapon explodes over a city, they would stop this folly before the point of no return is reached.'

"The recent decision of the Soviet Union to resume nuclear testing even as the 17-nation disarmament conference reconvened in Geneva, is being loudly condemmed in Nagasaki. The feeling here is that the Soviet Union committed a crime against humanity when she unilaterally broke the nuclear moratorium. But the Japanese cannot seem to understand that the United States has resumed testing in the Pacific only as a defensive measure. A Japanese Christian clergyman asked a colleague of mine today: 'What will be the end to all this nuclear testing?' And I overheard him reply 'I am very sure that America will never drop the first H-bomb or trigger the first intercontinental ballistic missile, but if Russia ever his voice trailed off as though he was too starts a nuclear war I'm afraid * * *,' and appalled at the thought of the prospect to further discuss it.

"Since this city is one of the two cities of the world to experience a nuclear holocaust, there is good reason for the way people in this community feel about it. It is impossible for me to describe to you the pictures I have seen on the destruction the A-bomb created. I had a chat with a teacher of English at Kwassui Junior Christian College for Women, Miss K. Chujo. This attractive Japanese professor was in a bomb shelter when the bomb exploded just a few short blocks away. She said it was so bad that she does not wish to think about it anymore. An official of the Atomic Bomb Casualty Commission here told me that victims of the 1945 bombing are still being carefully observed and checked for telltale signs of radiation which cloaked this city like a cloud of death 17 years ago. It is small wonder that the citizens of Nagasaki are so unalterably opposed to using nuclear energy as a military weapon. They believe that a sword of Damocles is poised over the heads of the world's population.

"After spending several hours walking through the city and talking to its citizens, I climbed a hill to the home of Madame Butterfly, the famous character in Puccini's opera. From there I had a panoramic view of the city's scenic harbor. It was so peaceful there. Yet far below me in Nagasaki many people anxiously watch the nuclear drama on the world's stage. They wait in hope. They look to the day when humanity will turn back from its tragedy-fraught course before the night forever descends. Perhaps the world ought to pause and listen to people who know from actual experience what the ultimate tragedy would mean to mankind."

THE GALLUP POLL ON THE MEDICARE BILL

Mr. McGEE. Mr. President, most of the Members of this body had the experience of being buried by a deluge of mail during the recent debate on the administration's medicare proposal.

This mail was distressing to me for two reasons: First, a great deal of it was obviously engendered by organizations opposing the measure; and, second, it demonstrated that a great many people did not understand how the plan would work. Many people opposed this bill because they believed it would affect their choice of doctors or because they thought it would provide a direct payment to doctors or would limit the free choice of hospitals. Of course, the bill would do none of these things.

And, Mr. President, it is apparent that now, even after the extensive debate on this issue which culminated in the vote which ended consideration of this legislation for this year at least, there are many people who do not understand what this bill would do.

The confusion over this issue is amply demonstrated in the recent Gallup poll published Wednesday in the Washington Post. I ask unanimous consent to have this poll printed in the RECORD.

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

PUBLIC FOUND IN CONFUSION ON MEDICARE

(By George Gallup, director, American Institute of Public Opinion)

PRINCETON, N.J., August 21.—Although medicare will be one of the hotly debated issues in the coming political campaign, the public today is confused about many of the details of the administration's plan for hospital benefits to the aged.

A great many Americans have heard or read about medicare, but a surprisingly large number do not know such details as who will be covered by it and how the plan will be financed.

In a nationwide poll, conducted after medicare's defeat in the Senate caused President Kennedy to promise that he will take the issue to the people in the approaching campaign, Gallup poll reporters first sought to find out how much the public knows about some of medicare's basic details.

All of those who said they had heard or read about the Kennedy plan (81 percent), were asked:

"Do you happen to know how the medicare plan would be paid for?"

The results indicate that only half of those who have heard something about medicare are aware that it would be financed through social security:

How medicare paid for?

	Percent
Through social security	50
Other ways	20
Don't know	30

People who had heard about the plan were next asked:

"Who would be covered by the plan?"

Only a small minority volunteered that those covered would be persons 65 and over who have social security. Just over half said they thought it would include all older persons or everyone over 65 without referring to the social security limitation:

Who would medicare cover?

	Percent
Persons over 65 on social security	11
All older persons	53
Others	19
Don't know	17

At the heart of the complicated medicare controversy is the fundamental issue whether such aid should be financed through public funds or through private insurance such as Blue Cross or a plan like that recently proposed in New York State by a group of insurance companies.

To see how the public stands on this basic question—in the wake of medicare's defeat—all those in the survey were asked:

"Which of these two different proposals do you prefer for meeting hospital costs for older persons:

"One proposal—the medicare plan—would cover persons on social security and would be paid by increasing the social security tax deducted from everyone's paycheck.

"The other proposal would leave it up to each individual to decide whether to join Blue Cross or buy some other form of voluntary hospital insurance.

"Which of these two proposals would you prefer?"

The vote today:

	Percent
Social security	44
Private insurance	40
No opinion	16

Before the administration bill's defeat in the Senate, when a similar question was asked, indications were that the social security approach was losing some of its earlier appeal.

In April, 55 percent of the public voted for social security financing; 34 percent for private insurance handling.

On the eve of the Senate action, support for public financing had dropped to 48 percent while 41 percent preferred private insurance.

PRIZE-WINNING ARTICLE BY DR. ARTHUR D. WILLIAMS

Mr. SCOTT. Mr. President, one of the outstanding clergymen in Pennsylvania is Dr. Arthur D. Williams, Th. D., Protestant chaplain at the Eastern State Penitentiary. He attended Knoxville College, and won the highest honors in the college and the seminary at Lincoln University. He received his master's degree from Temple University, attended Yale and Harvard Graduate Divinity Schools and was awarded his Th. D. by the American Bible School of Chicago. He has had a long and distinguished career of teaching and has held churches

in many parts of the country. His specialty is penology and is called upon often to lecture on the subject.

Recently he entered a hospital for surgery and while recuperating he entered a writers' contest that was sponsored by the American Legion. His article was awarded first prize. It expresses with a conviction that comes only from firsthand experience, what it means to bring the word of God into a prison.

I ask unanimous consent to insert Dr. Williams' article in the RECORD.

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

FIRST PRIZE

My 6 years as an Army chaplain seems to pay off. This week I have met at least a dozen men I knew during the "good old days." When these learned that I am serving as a "wailing" at the Eastern State Penitentiary—maybe I should add the prefix "ancient," since it was 136 years old this October—they invariably ask "What is it like to be a chaplain in the 'pen'?"

With no attempt to be partisan, here is my simple answer. I know of no place where the moral level is lower. It is a place of depression. Indeed it is depressing to see thousands of men taken out of life's mainstream and cloistered in a house of madness and "exaggeration." Here we have all sorts of men. Here we have men who have committed all sorts of crime—murder, forcible rape, robbery, aggravated assault, burglary, larceny, and auto theft.

One thing is sure: crime is a hostile act. All crime is a selfish act. In explicit language all crime is doing to someone something we would not want someone to do to us. All crime hurts our fellow men, our family, and ourselves.

Crime makes the prisoner a social misfit. He has failed to make an honest and honorable living. He has also made a failure of his life in a dishonest or dishonorable way, or he would not be in prison.

Recidivism is very high. This is because the man in prison is hostile. He has a grudge against society. He knows that society creates the crime and that he commits the crime. He sees others making the quick buck. He makes crime a challenge. Why work for $30 a week, when he can steal $300 or $3,000 in 3 minutes? What is the need to marry and have children, when he can live out of legal wedlock and let society provide for his siblings? The odds are heavy in favor of his being a "repeater," if he leaves the prison, for breaking the laws of the State or county. He is there for breaking laws which were written long before the State was ever named. He is not in prison because he is poor, unemployed, or lacked education. Every prison has in its population many men who were materially "well off," many men who held good jobs, as judges, policemen, bankers, ministers, lawyers, engineers, and there are many men advanced in the arts and sciences. Some are physicians, professors, philosophers, soldiers, and sailors.

Men are in prison for lack of morals, not manners, money or minds. Crime costs the prisoner separation from family, friends, and society. He gives up his liberty. His freedom is that of a 6 year old. He loses time, wastes life, is burdened with guilt, is homesick, gives up name for a number, wears clothes of shame, is forced to associate with men of crime 7 days a week and 24 hours each day. Each man lives 730 hours each month, 8,760 hours each year with men of crime. This is more time than a man spends with his wife or a baby with its mother.

Many prisoners adopt religion to bear up their inadequacies. When life comes apart at the seams men resort to a shallow brand of "religion." It is true that if men had a God they would avoid the prison. The great religions of Buddha, Confucius, Zoroaster, Brahma, Shinto, Mohammed, Jewish, Catholic, and Protestants, all teach not to steal, lie, murder, rape, or do anything to anyone that you would not want them to do to you. We gambled with the Devil and caught hell. It is now time to gamble with God.

I know of no prisoner, Gandhi, John the Baptist, Socrates, George Fox, John Bunyan, Roger Williams, St. Paul, Martin Luther King, Joseph, or Jesus, who ever regretted taking God. Many prisoners do accept God and their record for stability is above the average. Finally, according to St. Paul (Hebrews 13: 3) we all are prisoners. We have all broken God's law, hence prisoners of sin. We must take interest in prisoners. Jesus said that He was in prison and we visited Him.

This means that any man who feels that he is serving the prisoner is moved by a low motive, but when we serve the men in prison as though we were serving Jesus, then our motivation is high and the quality of service is lofty and rewarding. This makes each prisoner my brother and sister. I am not only a chaplain of a prison, but also a chaplain in a prison. Prisoners are human and can only be helped by love of their fellow men.

LEE DOCK ON

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1410.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H.R. 1458) for the relief of Lee Dock On.

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

There being no objection, the Senate proceeded to consider the bill (H.R. 1458) for the relief of Lee Dock On which had been reported from the Committee on the Judiciary, with an amendment on page 2, after line 2, to insert a new section, as follows:

SEC. 3. For the purposes of the Immigration and Nationality Act, Mrs. Chow Chui Ha shall be considered to be within the purview of section 4 of the Act of September 22, 1959, and the provisions of section 24(a) (7) of the Act of September 26, 1961 (75 Stat. 657), shall be inapplicable in this case.

Mr. MANSFIELD. Mr. President, on behalf of the Committee on the Judiciary, I ask that the committee amendment be rejected. The matter has been handled in another bill.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was rejected.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill (H.R. 1458) was ordered to a third reading, was read the third time, and passed.

The PRESIDING OFFICER. Without objection, the amendment to the title is rejected.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to executive session for the purpose of considering nominations placed on the Secretary's desk.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE MESSAGES REFERRED

The PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting several nominations, which were referred to the Committee on Labor and Public Welfare.

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

EXECUTIVE REPORTS OF COMMITTEES

The following favorable reports of nominations were submitted:

By Mr. PASTORE, from the Joint Committee on Atomic Energy:

James T. Ramey, of Illinois, to be a member of the Atomic Energy Commission; and

John Gorham Palfrey, of New York, to be a member of the Atomic Energy Commission.

EXECUTIVE REPORTS OF COMMITTEE ON ARMED SERVICES

Mrs. SMITH of Maine. Mr. President, from the Committee on Armed Services, I report favorably the nominations of eight officers for temporary promotion to grade of rear admiral in the Navy and the nominations of two generals and one lieutenant general, four major generals and two brigadier generals in the Air Force. I ask that these nominations be placed on the Executive Calendar.

The PRESIDING OFFICER. The nominations will be placed on the Executive Calendar, as requested by the Senator from Maine.

The nominations are as follows:

Martin T. Macklin, and sundry other officers of the Navy, for temporary promotion to the grade of rear admiral;

Gen. Lauris Norstad (major general, Regular Air Force), U.S. Air Force, to be placed on the retired list in the grade of general;

Lt. Gen. John P. McConnell (major general, Regular Air Force), U.S. Air Force, to be assigned to positions of importance and responsibility designated by the President, in the rank of general;

Maj. Gen. Joseph J. Nazzaro (major general, Regular Air Force), U.S. Air Force, to be assigned to positions of importance and responsibility designated by the President, in the rank of lieutenant general; and

Brig. Gen. Jack N. Donohew, Regular Air Force, and sundry other officers, for temporary appointment in the U.S. Air Force.

Mrs. SMITH of Maine. Mr. President, in addition to the above, I report favorably the nominations of 1,594 officers in the Army, Marine Corps, and Air Force, in the grade of colonel and below. All of these names have already appeared in the CONGRESSIONAL RECORD, so in order to save the expense of printing on

the Executive Calendar, I ask unanimous consent that they be ordered to lie on the Secretary's desk, for the information of any Senator.

The PRESIDING OFFICER. The nominations will lie on the desk, as requested by the Senator from Maine.

The nominations are as follows:

Howard F. Stevenson, and sundry other officers of the Marine Corps, for temporary appointment to the grade of colonel;

Willard F. Angen, and sundry other officers, for promotion in the Regular Army of the United States;

Jacquard H. Rothschild, for reappointment as a temporary brigadier general in the Army of the United States and for reappointment as colonel in the Regular Army of the United States;

Edward J. Osborne, and sundry other persons, for appointment in the Regular Army;

Franklin H. Andrew, Jr., and sundry other distinguished military students, for appointment in the Regular Army of the United States; and

Lawrence A. Adams, Jr., and sundry other officers for promotion in the Regular Air Force.

The PRESIDING OFFICER. If there be no further reports of committees, the clerk will state the nominations placed on the Secretary's desk.

COAST AND GEODETIC SURVEY

The Chief Clerk proceeded to read sundry nominations in the Coast and Geodetic Survey.

The PRESIDING OFFICER. Without objection, the nominations will be considered en bloc; and, without objection, they are confirmed en bloc.

U.S. COAST GUARD

The Chief Clerk proceeded to read sundry nominations in the U.S. Coast Guard.

The PRESIDING OFFICER. Without objection, the nominations will be considered en bloc; and, without objection, they are confirmed en bloc.

Without objection, the President will be immediately notified of the confirmation of all nominations confirmed today.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to; and the Senate resumed the consideration of legislative business.

Mr. MANSFIELD. Mr. President, is there further morning business?

The PRESIDING OFFICER. Is there further business in the morning hour? If there is no further business, morning business is concluded.

DRUG INDUSTRY ACT OF 1962

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the unfinished business be laid before the Senate.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The CHIEF CLERK. A bill (S. 1552) to amend and supplement the antitrust laws with respect to the manufacture and distribution of drugs, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request by the Senator from Montana?

There being no objection, the Senate resumed the consideration of the bill.

PRIVILEGE OF THE FLOOR

Mr. EASTLAND. Mr. President, I ask unanimous consent that during the consideration of the drug bill, Mr. Jerome N. Sonosky, special assistant to the Assistant Secretary for Legislation of the Department of Health, Education, and Welfare, be allowed the privilege of the Senate floor.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that Mr. Clarence M. Dinkins, chief counsel of the Patents Subcommittee, be authorized to be present on the floor of the Senate during the discussion of the bill today.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BURDICK in the chair). Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time used for the call of the roll not be charged to the time on either side under the unanimous-consent agreement.

The PRESIDING OFFICER. Is there objection to the request by the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. EASTLAND. Mr. President, on behalf of the Committee on the Judiciary, I ask unanimous consent to withdraw the substitute amendment contained in the bill as reported to the Senate on July 19 last, and that the additional substitute amendment reported on the 21st of August be considered in lieu thereof. Under the Senate precedents, this latter substitute amendment would be deemed to be the original text for the purpose of amendment.

The PRESIDING OFFICER. Is there objection to the request by the Senator from Mississippi? The Chair hears none, and it is so ordered.

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

Mr. EASTLAND. I yield.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time under the control of the majority leader be allotted to the chairman of the committee which reported the bill.

The PRESIDING OFFICER. Is there objection to the request by the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. EASTLAND. Mr. President, S. 1552 as reported by the Committee on the Judiciary to the Senate on July 19, 1962, together with the additional amendments voted by the committee on August 20, 1962, is the result of long and intensive study. Under the chairmanship of the senior Senator from Tennessee [Mr. KEFAUVER], beginning in 1959, the Antitrust and Monopoly Subcommittee studied the drug industry for many months, with particular emphasis on prices, profits, and patent matters. The Senator from Tennessee [Mr. KEFAUVER] then introduced S. 1552, in April 1961, and the subcommittee held additional hearings from July 1961 to February 1962 on this bill. On March 8, 1962, the subcommittee reported out a revised bill. The full committee then referred the bill to the Patent Subcommittee for study of the patent provisions. In reporting the bill back to the full committee, the Patent Subcommittee withheld for further consideration two of the patent provisions and suggested amendments of the third provision.

The Judiciary Committee then spent many weeks in executive sessions going over the bill line by line, sentence by sentence, and section by section. In addition to the suggestions from the two subcommittees, the committee was guided by the recommendations of the President in his consumer message of March 14, 1962, and in his letter dated April 10, 1962, to the chairman of the Judiciary Committee.

After this intensive study, the committee approved a bill which in its opinion struck a reasonable and workable balance among the conflicting views of the Department of Health, Education, and Welfare, the majority and minority of the Antitrust Subcommittee, the pharmaceutical industry, and the medical profession. The committee felt that it covered the recommendations of the President in his letter of April 10 in every respect except one, the recommendation for legislation to establish special controls for habit-forming barbiturates and amphetamines, a matter on which the committee took no action because a bill on this subject is now pending before the Committee on Labor and Public Welfare.

The bill was reported to the Senate on July 19, 1962. Thereafter, as a result of the tragic thalidomide episode, the committee undertook a further review of the Food, Drug, and Cosmetic Act and the text of the pending bill on the calendar to determine whether additional amendments were necessary and appropriate. On August 4 the President submitted seven amendments to the bill. Beginning on August 6 the committee held a number of meetings at which these amendments were carefully reviewed. As a result the committee voted unanimously, on August 20, to recommend a number of amendments to the bill previously reported.

In general, the principal features of the bill as it would be amended by the committee amendments would accomplish the following:

First. Provide for cooperation between the Patent Office and the Department of Health, Education, and Welfare on questions relating to drug patents.

Second. Insure greater Government supervision of drug manufacturers by

(a) requiring every plant to be registered; (b) strengthening the inspection authority and requiring inspection of each plant at least once in every 2 years; and (c) authorizing the seizure of a drug if, regardless of its quality, it is made under inadequate methods, facilities or controls.

Third. Require that a new drug be shown to be effective, as well as safe, before it is cleared for the market, and authorize withdrawal of such a drug from the market if new evidence shows it to be ineffective.

Fourth. Strenghen the authority to withdraw a new drug from the market on safety grounds, and include a provision, in the event of an imminent hazard to the public health, for immediate suspension from the market pending a hearing.

Fifth. Add to the Secretary's existing authority to issue regulations to control the testing of new drugs before they are placed on the general market, by giving him specific authority to require records and reports as to data obtained as the result of investigational use of, and clinical experience with, both new drugs and antibiotics.

The committee drafted a drug bill responsive to the recommendations of the administration and to the needs of the American people. It will provide a framework under which industry and Government, working together, can continue to make available improved medicines and new medicines that are safe and useful. It will preserve the system of incentives which has made U.S. industry the most inventive and the most productive and will guarantee continued American prominence in this field.

SUMMARY OF THE PROVISIONS OF S. 1552 AS AMENDED BY THE COMMITTEE AMENDMENTS OF AUGUST 20, 1962

On the desk of each Senator appears Senate Report No. 1744 of July 19, the further amendments adopted by the Judiciary Committee on August 20, and a supplementary report explaining the committee amendments of August 20. I believe it would be helpful if I summarized the provisions of the bill, together with the committee amendments of August 20, 1962.

INFORMATION OF PATENTS FOR DRUGS

Section 2, which is not affected by the August 20 amendments, would amend the Federal Food, Drug, and Cosmetic Act to establish the basis for assistance from the Department of Health, Education, and Welfare to the Patent Office on questions relating to drug patents submitted by the Commissioner of Patents. It is designed to achieve the kind of collaboration that is in effect between the Patent Office and the Agriculture Department in connection with patents on plants. Any information on drugs furnished by the Secretary of Health, Education, and Welfare would be advisory. The final decision as to patentability would be left to the Commissioner of Patents, as has been the practice in the past. With such help from the Department of Health, Education, and Welfare, the Commissioner of Patents will be better equipped to make the decision as to whether a new drug represents the kind of genuine technical advance and new-product competition that should continue to be stimulated by patent rights.

This section of the bill is in lieu of three proposals in the bill as reported by the Antitrust Subcommittee to the full committee. One of such provisions would have imposed compulsory licensing on every drug patent; the committee did not feel that this proposal, which would drastically affect patent rights, should be included in legislation at this time, particularly in view of the testimony that it would seriously reduce the incentives to incur the risks of conducting research and developing new products for the market. Another would have created a new test of patentability for certain drug products; the committee felt that this provision raised so many technical questions that it should not be included in the bill as reported out. The third patent provision would have required all agreements relating to drug patents to be filed in the Patent Office; the committee felt that such proposals should be considered in the light of proposals with respect to patent agreements in general, not limited to drugs, and should therefore not be a part of S. 1552. Indeed, a bill on the subject of filing patent settlement agreements has been passed by the House and has been referred to the Senate Judiciary Committee.

REGISTRATION OF PRODUCERS OF DRUGS

Section 3, which was affected in only minor and technical respects by the August 20 amendments, calls upon every person who owns or operates any establishment for the manufacture, preparation, propagation, compounding, or processing of a drug or drugs to register each year with the Secretary of Health, Education, and Welfare. The Secretary is directed to inspect each such establishment at least once every 2 years. The purpose of this section is to enable the Secretary of Health, Education, and Welfare to be able to identify every manufacturer of prescription and nonprescription drugs and facilitate the inspection of each establishment. It is not a licensing system. The committee decided that it was not necessary, and would be inadvisable, to establish a system of licensing drug plants and operators. The committee felt that this registration provision, coupled with the added inspection authority in section 4 of the bill and the quality manufacturing controls in section 5 of the bill, were preferable to the provisions recommended by the subcommittee which would have set up a complete per-drug-per-plant licensing system.

FACTORY INSPECTION

Section 4, as it would read under the August 20 amendments, broadens the authority of the Food and Drug Administration to inspect establishments in which prescription drugs are made or held. The basic new authority is stated in such sweeping terms that it is necessary to set forth certain limitations necessary to exclude access to data that should be allowed to be held in confidence. Thus, it is provided that financial data, sales data other than shipment records, and pricing data shall be protected from inspection. There would also be a protection for personnel data other than data as to qualifications of technical and professional personnel performing functions subject to the act. Also protected from inspection would be a company's research data, other than records and reports of the type required by the regulations issued under the new drug and antibiotic sections of the act. The object of these limitations is to give the Government adequate power to insure high standards of manufacture and distribution without delving into the unrelated private affairs of a company, or exposing matters at the heart of its capacity to survive and grow in a highly competitive industry. In addition, it would be specified that this additional inspection authority does not extend to pharmacies, medical practitioners, and persons engaged in research, teaching, or chemical analysis.

A further amendment would permit the Food and Drug Administration to obtain injunctions against refusals to permit inspection.

QUALITY MANUFACTURING CONTROLS

Section 5, as it would read under the August 20 amendments, is designed to assure that drugs are manufactured according to good manufacturing practice. It would deem a drug to be adulterated and thus subject to seizure if made under facilities, methods, or controls that are inadequate to assure that the drug meets the specifications of a quality product. Adulteration could also be found if such facilities, methods, or controls were not operated or administered in conformity with good manufacturing practice.

Since the competitive position of responsible manufacturers depends in large part on the confidence of the medical profession and the public, it will be in their own interest to maintain high standards of current good manufacturing practice which will provide a readily determinable basis for enforcement proceedings against any substandard operator. The Secretary could use his general rulemaking authority under section 701(a) of the act to announce what he, in the administration of the act, considers to be good manufacturing practice insofar as methods, facilities, controls, and their operation and administration are concerned. As in the case of other regulations, the courts in the final analysis will pass upon the scope and effect of such regulations.

NEW DRUG CLEARANCE PROCEDURES

Section 6, in the context of the August 20 amendments, changes the procedure on original clearance of new drug applications. Under the present law, such applications become effective, and the drug thus cleared for the market, unless the Food and Drug Administration acts to block the drug within a period of 60 days—extendable to 180 days—after the filing of the application. The bill would change this procedure so that no new drug application would be cleared until

the Food and Drug Administration had issued an affirmative approval. Within the 180-day period after the filing of an application, it would have to be either approved or notice given for opportunity for a hearing. If the applicant within 30 days after such notice requests a hearing, the hearing must be commenced within 120 days after the notice and be conducted on an expedited basis.

These provisions give the Food and Drug Administration greater flexibility in the light of the volume of new drug applications, the more complex nature of new drugs, and the shortage of personnel for study and investigation. The 180-day maximum and the provision for expedited hearings will help to assure that no useful drug will be held off the market for an inordinate period because of bureaucratic inertia or inability to act. It is hoped that the Food and Drug Administration will, as it now does, advise the applicant as soon as practicable after the filing, of any deficiencies it observes in the completeness of the material presented. It is also hoped that in the administration of this new provision, there will continue to be close cooperation and liaison between the Food and Drug Administration and the new drug applicants so that the flow to the market of safe and effective new drugs will not be excessively retarded.

Section 6 would also designate the U.S. court of appeals, instead of the district courts, as the forum for appeal from the Secretary's orders under the new drug procedures.

RECORDS AND REPORTS AS TO EXPERIENCE ON NEW DRUGS AND ANTIBIOTICS

Section 7, which was not affected by the August 20 amendments, authorizes the Secretary to issue regulations requiring manufacturers to maintain records and to make reports as to investigational and clinical experience with new drugs and antibiotics, as requested by the administration. It should be pointed out in this connection that, under the act as it now reads, new drugs and antibiotics cannot be marketed or moved in interstate commerce unless they have passed the applicable tests and been cleared. The statute directs the Secretary to establish regulations exempting such products from these prohibitions to the extent necessary for investigational use. In issuing such regulations, the Food and Drug Administration could, under existing law, impose conditions relating to records and reports. In fact, the Food and Drug Administration has recently issued new regulations bearing on this subject. However, in view of the President's recommendations of April 10, the committee felt it desirable to add language specifically referring to records and reports.

EFFECTIVENESS AND SAFETY OF NEW DRUGS

Section 8 of the bill, as it would read under the August 20 amendment, makes major changes—in addition to the procedural changes in section 6—in the new drug provisions of the act.

DEFINITION OF "NEW DRUG"

The term "new drug" is presently defined as one not generally recognized to be safe for the claimed uses or one, which while so recognized, has not been used for a material time or to a material extent for such uses. The bill would expand this definition so that the term "new drug" would also include not generally recognized to be effective for the claimed uses or one, which while so recognized, has not been used for a material time or to a material extent for such uses. Thus, every brandnew product, and every new claim for an existing product, would be subject to the tests and procedures established in section 505 of the act.

NEW GROUNDS FOR REJECTION OF NEW DRUG APPLICATION

Section 505(d) of the act sets forth certain grounds for refusing to approve new drug applications. Since 1938 the grounds have been expressed in terms of failure to pass safety tests, without reference to the effectiveness of the drug for the uses claimed. Under the bill, there would be added the test of effectiveness. The committee recognized that legitimate differences of opinion may exist among responsible clinicians with respect to the effectiveness of a particular new drug. Experience has shown that a majority of so-called experts has often been wrong in initially condemning a new drug, just as new inventions in other fields are usually regarded with skepticism and often with hostility. The new ground for rejection of a new drug application is therefore expressed in terms of "a lack of substantial evidence," evaluated on the basis of all the information before him, that the drug will have the effect claimed for it. The term "substantial evidence" is defined in terms of the kind and quality of the investigations that must support the claims.

The bill would also provide for rejection of a new drug application upon a finding that the proposed labeling is false or misleading.

NEW GROUNDS FOR WITHDRAWAL OF APPROVAL

Section 505(e) of the act sets forth the grounds for withdrawal of approval of a new drug application. Since 1938 the grounds have been expressed in terms of lack of safety of the drug, without reference to the effectiveness of the drug for the uses claimed. The bill would accomplish the following:

First. Clarify and expand the authority to withdraw approval on safety grounds so that the manufacturer would continue to have the burden of showing that the drug is safe, as he has on the original submission.

Second. Provide for withdrawal of approval if on the basis of new evidence, evaluated with the evidence at the time of approval, the Secretary finds that there is a lack of substantial evidence that the drug will have the effects claimed. This is a corollary of, and subject to the definition of "substantial evidence" in, the provisions for rejection of a new drug application on the original submission.

Third. Permit withdrawal of approval upon a finding that the manufacturer has failed to establish a system for maintaining required records, or repeatedly or deliberately failed to maintain such records or make required reports, or refused access to such records.

Fourth. Permit withdrawal of approval upon a finding that the methods, facilities, and controls are not adequate and were not made adequate within a reasonable time after notice of inadequacy.

Fifth. Permit withdrawal of approval upon a finding that the labeling is false or misleading and was not corrected within a reasonable time after notice.

Withdrawal of approval of any new drug application on the basis of the foregoing grounds would be preceded by a hearing and an order with findings on the basis of the record. In addition, however, the bill includes a provision for immediate suspension of approval upon a finding of an imminent hazard to the public health; in this case, the applicant would have to be given prompt notice and an opportunity for an expedited hearing. The committee believes that this authority, which could have grave effects upon a manufacturer and upon the confidence of the public in a drug which might later be found appropriate for continued availability to physicians, should only be exercised under the most extreme conditions and with the utmost care. For that reason, it is provided that it may be exercised only by the Secretary or the Acting Secretary. I feel that it would be desirable, wherever possible, for the Secretary, before taking action, not only to confer with the manufacturer, but also to consult a committee of experts appointed by the National Research Council. It should not be forgotten also that there may be other remedies available to the Secretary to cope with the situation instead of using the potentially lethal weapon of immediate suspension.

TRANSITIONAL PROVISIONS

As a result of the change in the definition of "new drug" and the addition of the new effectiveness test, it is necessary to include transitional provisions. Under these provisions, the new effectiveness test, in the case of drugs previously cleared under a new drug application, will apply only to new or amended claims unless the application is withdrawn or suspended. Withdrawal on the ground of a lack of substantial evidence of effectiveness will not apply, for a period of 2 years, to existing claims, unless the approval of any of the claims is withdrawn on other grounds. Established drugs which have never been required to go through new drug procedures will not be affected by the new effectiveness test insofar as their existing claims are concerned.

NAMES ON LABELS AND LABELING

Section 9 of the bill, as it would read under the August 20 amendment, would require the label of a drug to bear the established name of the drug, the established name of each active ingredient, and, in the case of prescription drugs, the quantity of each active ingredient. On the label, and on any labeling on which the drug or any ingredient thereof is named, if a trade name is used for the

drug or the ingredient, the established name of the drug or the ingredient, as the case may be, must be shown in type at least half the size of the type used for the trade name. The term "established name" is defined as the name designated by the Secretary—under the authority granted in section 10 of the bill—or if there is none so designated, the name recognized in an official compendium, or if there is no such official name, the common or usual name.

These provisions preserve trademark rights, which give incentives to strive for excellence surpassing minimum standards. At the same time, they will make sure that established names are used so that physicians and pharmacists can more readily identify the characteristics of the product and more readily consider the use of competitive products where appropriate. The committee rejected proposals that would have required such subordination of trade names that the important functions of trademarks would have been weakened. There must be no loss of incentive for the manufacturer to build a reputation based on integrity and quality of product. In the pharmaceutical industry, above all, the individual manufacturer's pursuit of excellence is to be encouraged, not discouraged. Trade marks and trade names represent an important factor in assuring that this pursuit never flags.

DESIGNATION OF NAMES OF DRUGS

Section 10, which was not affected by the August 20 amendments, has to do with the designation of names of drugs. The Secretary of Health, Education, and Welfare is authorized to designate the name for any drug if he determines that such action is necessary or desirable in the interest of usefulness and simplicity. He is also directed to review existing names recognized in the official compendia to determine whether any revision is necessary or desirable in the interest of usefulness and simplicity. This provision is substantially as reported by the Antitrust Subcommittee.

INFORMATION TO PHYSICIANS

Section 11 would require manufacturers of prescription drugs to transmit to practitioners who request information about a drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed. This is to insure that every physician has ready access to full information about a drug. It would also require the Secretary to distribute such material to doctors, hospitals, medical schools, and libraries.

In addition, section 11 would add a new provision to the act applicable to the content of prescription drug advertising and other descriptive printed matter. This provision would require that such matter include the established name printed prominently and in type at least half as large as that used for any trade name. It would also require inclusion of the formula showing the quantity of each ingredient. Finally, it would require information relating to side effects, contraindications, and effectiveness; in this respect, the Secretary would be under a mandate to issue regulations setting forth the information to be included. Since heretofore the Federal Trade Commission has had jurisdiction of advertisements it would be provided that upon the issuance of regulations with respect to prescription drug advertising under the Food, Drug, and Cosmetic Act, such advertisements would, with respect to the matters covered by the new provision, be removed from the coverage of the Federal Trade Commission Act.

CERTIFICATION OF ANTIBIOTICS

Section 12 of the bill, as it would read under the August 20 amendments, extends batch certification controls, now applicable to five named antibiotics, to all other antibiotics. In the same connection, the provision of the act relating to exemptions of covered antibiotics from the batch certification controls would be strengthened by setting forth considerations which the Secretary must take into account in determining whether to grant an exemption. In order to keep exempted and covered manufacturers on an equal competitive basis, it would be made clear that, in labeling or advertising, an exempted manufacturer could represent that the product has been exempted and a covered manufacturer could represent that the product has been certified.

Mr. President, I believe that the committee has come up with a good drug bill which will protect the American people. Mr. President, I urge the passage of S. 1552 as amended by the committee.

Mr. KEFAUVER. Madam President——

The PRESIDING OFFICER (Mrs. NEUBERGER in the chair). Does the Senator from Tennessee have control of the time on his side?

Mr. KEFAUVER. Yes. Madam President, I yield myself 20 minutes.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 20 minutes.

Mr. KEFAUVER. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Tennessee will state it.

Mr. KEFAUVER. Senate bill 1552 was reported from the Judiciary Committee on July 19. An additional amendment, in the nature of a substitute, changing many sections of the bill, was reported on August 21. Do I correctly understand that, by unanimous consent, the August 21 amendment in the nature of a substitute has replaced the bill reported on July 19 which originally was before the Senate?

The PRESIDING OFFICER. That is correct.

Mr. KEFAUVER. Is the amendment in the nature of a substitute, reported on August 21, now the pending question, and is it subject to amendment?

The PRESIDING OFFICER. That is correct.

Mr. KEFAUVER. Madam President, I have heard that yesterday a unanimous-consent agreement was entered into. I trust that we shall be able to conclude the debate within the time allowed by the unanimous-consent agreement. However, several Senators have informed me that they wish to speak; and for fear that they might not have sufficient time under the limitation in the agreement, I ask unanimous consent that any time left over, during consideration of the amendments, may be added to the time available for general debate on the bill.

The PRESIDING OFFICER. Is there objection?

Mr. HRUSKA. Madam President, reserving the right to object, would that include any amendments which may be submitted, but are not now pending? If so, I can anticipate that the debate might be extended 3 or 4 additional days, and that it would be in violation of the spirit of the unanimous-consent agreement.

Mr. KEFAUVER. I do not know of any amendments which would be offered, but which are not now pending, although certainly I cannot say. But I do not think we shall go beyond the time. Several Senators have complained to me that they might not have sufficient time in which to speak. I have not complained.

Mr. HRUSKA. I suggest, Madam President, that the Senator from Tennessee withhold his request for unanimous consent until a later time.

Mr. KEFAUVER. Very well.

Mr. HRUSKA. Because, I say frankly, I do not know where that request might lead; and at this time we are not short of time.

Mr. KEFAUVER. Very well; I shall do that.

Mr. HRUSKA. I thank the Senator from Tennessee.

Mr. KEFAUVER. Madam President, the speech by the distinguished Senator from Mississippi [Mr. EASTLAND], the chairman of the Judiciary Committee, has accurately defined the provisions of the substitute which was reported on August 21. I wish to take this occasion to say that insofar as the Food and Drug Act is concerned, I think this measure is a good one. It is not as strong in some respects as I should like it to be. It is not as strong in some respects as the President recommended in the seven recommendations in his letter of August 3, or as has been recommended in the latest presentation in executive session by representatives of the Food and Drug Administration.

But this measure constitutes a genuine effort on the part of the majority and the minority of the Judiciary Committee—regardless of what may have happened in the past—and on the part of the President, the Food and Drug Administration, and the staff of the committees—to whom I pay the very highest tribute—and on the part of the industry itself to bring the food and drug law up to date and make it effective and modernized. If ever there was a law which needed to have new teeth put into it and needed to be modernized and made more effective, it is the food and drug law.

In my opinion, the bill now before us will assure the people of the United States safer, more effective and better prescription drugs; that physicians will have more accurate information as to

drugs; that false and misleading statements as to the efficacy and side effects in advertising and promotion material will be eliminated, that physicians will receive recent and accurate information about drugs, and that prescribing by generic names will be made simpler and safer.

The bill gives the Food and Drug Administration much needed powers. It will also go far toward preventing repetition of the near calamity with respect to the drug thalidomide, about which we have read so much, was kept off the market largely by the heroic efforts of Dr. Frances Kelsey.

Drugs are big business, sales of drugs and appliances being more than $3 billion a year, or more than the amount received by doctors.

If the bill is passed, drugs will be safer, purer, and more reliable; they will be more properly tested; and information going to physicians will be more accurate as to side effects, warnings, and contradictions.

I want to compliment all who have had anything to do with bringing out this bill. There has been give and take. There has been an honest effort to bring out a good bill so far as the food and drug provisions of the bill are concerned. I endorse it. I think it is in the public interest. I think it should be passed immediately, for the protection of the public.

If Senators will turn to the original bill, introduced on April 12, 1961, of which I had the privilege of being the chief sponsor, and of which the Senator from Michigan [Mr. HART] was a cosponsor, they will find the bill as originally introduced, with lines drawn through it. As a result of hearings by the Antitrust and Monopoly Subcommittee, refined certain changes and revisions were made.

The original bill was stronger, in most respects, than the bill we have before us at the present time, but the bill we have before us is good legislation and it is strong legislation.

On page 23 of the report of the Judiciary Committee filed on July 19, Senators will find the bill reported by the full committee on that date.

Then, as we all know, on August 3 the President of the United States sent a letter to the Chairman of the Judiciary Committee, the Senator from Mississippi [Mr. EASTLAND], in which he made seven excellent recommendations for strengthening the bill that had been reported by the full committee, the history of which is well known.

The chairman of the full committee immediately instituted hearings, day after day, for the consideration of the President's recommendations. They were considered seriously on their merits, with the aim of getting the best possible bill.

There was some give and take. Concessions were made by all sides. Some recommendations were weakened, but not fatally so. Others were even strengthened.

Thus, the bill is the product of a fine, genuine, and cooperative effort. I want to compliment every Senator who has had anything to do with this bill since the President's recommendations of August 3 came to the Judiciary Committee. Without going into detail, I shall try to state briefly what the bill does.

The first section requires that the Commissioner of Patents—who passes on patents for drugs, but who, unfortunately, does not have pharmacologists or doctors in the Patent Office to inspect and test drugs—may call upon the Secretary of Health, Education, and Welfare to furnish full and complete information concerning any drug application, and the Secretary of Health, Education, and Welfare is authorized and directed to do so. The Secretary, of course, may draw upon the doctors of the National Institutes of Health or other doctors in the Department of Health, Education, and Welfare. This information will be supplied to the Commissioner of Patents for his consideration in passing upon whether or not a drug should be patented.

The next section provides for registration. Companies engaged in the manufacture of drugs are required to file with the Secretary of Health, Education, and Welfare their names and places of business.

With respect to the factory inspection provision, section 4, as matters now stand, Food and Drug Administration inspectors are unable, unless the factory permits, to get certain types of information or have access to certain types of records. This provision is not as strong as had been recommended, but should be generally satisfactory. It applies to pharmacies only to the extent that a pharmacy is engaged in manufacture of drugs.

The provision for factory inspection does not apply to proprietary, that is, over-the-counter drugs. There has been some misunderstanding as to what I said, as chairman of the subcommittee, in connection with proprietary drugs. I did say that the investigation, as started back in 1959, was concerned with the ethical drug industry. The companies we wanted to examine were all manufacturers of ethical drugs, and, of course, some of them also manufactured proprietary drugs. As time went on, I said that certain sections of the bill did not apply to proprietary drugs. But, since some ethical drugs become proprietary drugs, it is difficult to arbitrarily make a distinction in all of the provisions of the food and drug law between proprietary drugs and ethical drugs.

Then, the bill which was filed on April 12, 1961, in some respects did apply to proprietary drugs. Yet, although hearings began in August 1961 and went through February 1962, representatives of the proprietary drug producers did not ask to testify. Then, after the hearings were over, they protested that they had not had a chance to be heard.

It must be recognized that in proprietary drugs there is not the same level of concentration. The consumer is not captive. A person who wants a proprietary drug can shop around. There are usually several different products, selling at different prices. There are several different brands of aspirin, for instance, or mouthwash, or other such products.

In contrast, in ethical drugs, when the doctor writes the prescription in terms of a trade name, the patient has no alternative. He has to purchase the brand which the doctor prescribes and pay for it. As I have said before, in ethical drugs, he who orders does not buy and he who buys does not order. This is not true in proprietary drugs. There the buyer and the orderer are the same.

Furthermore, proprietary drugs are not as dangerous, or otherwise they would not be sold across the counter.

Nonetheless, the factory inspection provision, in my opinion, should apply to proprietary drugs, but since whatever the reason, they did not have a hearing, I agreed to their exclusion from this bill, but I have filed a separate and companion bill applying the factory inspection provision to proprietary drugs. If they are included in the House bill, of course, that provision will go into conference.

Effectiveness, as well as safety, should apply to new proprietary drugs, but proprietaries now on the market are not to be subject under the present bill to the provisions requiring them, upon notice by the FOA, to support their claims for effectiveness. I think they should be so required. That is a matter which can be remedied in conference or by other legislation.

I think that there is validity to the suggestion that proprietary drugs should not have to disclose their exact formula, which may constitute a trade secret.

Quality manufacturing controls are covered in section 5. This provision has been strengthened considerably in comparison to the bill which was reported in July. It is not as strong as the President recommended, or as was recommended by the majority members of the Antitrust and Monopoly Subcommittee. The Department of Health, Education, and Welfare believes it to be adequate and I hope they are proved to be correct.

On this point the bill which the Senate is now considering differs from the bill recommendation by the majority of the Antitrust and Monopoly Subcommittee in that the original bill would have set up certain positive and explicit standards which anybody who wished to get into business would have had to meet. It would certainly have prevented "bathtub operators" from getting into the business and making improper drugs.

In respect to the manufacture of vaccines and other products a license must be secured upon a showing that the manufacturer is qualified to make that particular kind of drug. Under the original bill this same approach of licensing would have been extended to all drugs. It is a good approach.

The present approach calls for a combination of registration, a good inspection system and quality manufacturing controls. If the manufacturers do not live up to these provisions, their products can be seized by the Food and Drug Administration. This is an alternative

with which we are going along. It does represent a great improvement over what exists at the present time.

The next section covers the new drug clearance procedure. As has been stated, many drugs have been approved for sale on the market when they should not have been. Senators can look at page 43 of the report of the Committee on the Judiciary of July 19, 1962, and there they will find a list of drugs which have been approved for marketing but then had to be withdrawn because of serious side effects. Some have caused cataracts, blood disorders, kidney ailments, even death. Though not as dramatic as thalidomide, their side effects were serious.

The reason why some of these drugs have gotten onto the market is that the Food and Drug Administration simply did not have time to consider them, to test them, and to get all of the information needed with respect to the drugs before the time limit ran out and the drug was entitled under the present law to be put on the market automatically.

As stated by the chairman of the committee, the time period would be extended from 60 to 180 days. Thereafter, a 30-day notice could be given of a hearing. A hearing could be held. It would have to be commenced in 90 days. Then, if the new drug application were denied, the company would have a right to go to the U.S. court of appeals.

There would be no mandatory requirement that the Food and Drug Administration allow a drug to be put on the market automatically. There would have to be affirmative action by the Secretary, either approving or disapproving the application or giving notice of a hearing.

Section 7 relates to records and reports as to experience with new drugs and antibiotics. This section would require the keeping of records of experience on new drugs and antibiotics. A company would have to keep records as to the effectiveness and as to the side effects of drugs, and the Food and Drug Administration would have access to that information.

This has been one of the great failures in the past. Records have not been available to the Food and Drug Administration, it could not learn, for example, how many cases of aplastic anemias have been reported to a company because the records were not available to it. This can be a very effective provision.

The next section, section 8, relates to effectiveness and safety of new drugs.

The present situation, as was pointed out by former Secretary Ribicoff, of the Department of Health, Education, and Welfare, is that since 1913 manufacturers of drugs for hogs and other animals have been required to show not only that they were safe but also that they were efficacious for what it was claimed they would do. That has never been the rule as to prescription drugs used by human beings. Animals, but not humans, have been assured of receiving effective drugs.

This section would require, in addition to proof of safety, a showing by substantial evidence, by experts who are experienced in making investigations of the drug involved, that the drug will not only be safe but also will have the effect it purports or is represented to have.

The PRESIDING OFFICER. Does the Senator from Tennessee wish to extend his allotted time? His 20 minutes have expired.

Mr. KEFAUVER. Madam President, I yield myself an additional 15 minutes.

What I have described should have been done a long time ago. It is obviously very much in the public interest.

Theoretically—and it has almost happened in some cases—a certain almost completely inert drug might be safe, and claims might be made for its being efficacious for a certain purpose. Where safety is not involved the Food and Drug Administration has not had a basis for disapproving this new drug application.

Where a product does little or no good at all, physicians, because of claims by manufacturers, might be induced to give them to patients when they ought to be giving them older, proven effective medicines instead. Hence the proposal would be a great step toward the protection of the public health.

Another portion of the section would authorize the immediate suspension of a drug if there were an imminent hazard to public health. For example, suppose thalidomide had gotten on the market, and it was then found, as has unfortunately happened, that thousands of horribly deformed children were being born. Under that provision the Food and Drug Administration could immediately take the drug off the market if a hearing would be held after the action.

There are additional grounds for the withdrawal of a new drug from the market—if the manufacturer does not keep the proper records, or does not correct improper control procedures within a reasonable length of time, or does not comply with other provisions of that section.

Section 9 deals with the conspicuousness of official, or generic, names. We hope that as to nonpatented drugs, the bill will bring prices down substantially. Already as a result in part of the hearings before the Subcommittee on Antitrust and Monopoly, States and hospitals are buying drugs by generic names rather than by trade name. Mr. Ribicoff pointed out that in Connecticut hundreds of thousands of dollars had been saved. Sometimes when a drug is purchased by generic name, the price is one-half or one-third of what it would be under a trade name. Hospitals are buying drugs by generic name. The U.S. Government is buying drugs by generic name. In some cases, it is getting them for one-tenth of what it would otherwise pay if bought by trade name, even though they may be made by the same company and be exactly the same drug.

In times past the generic name has been printed in very small letters, both in advertisements and on the label. One must get a magnifying glass to see the generic name at times. It is often to be found in the corner somewhere in microscopic type. Often, it is simply omitted entirely. We recommended in the Subcommittee on Antitrust and Monopoly that the generic name be printed in letters as large as the trade name. Unfortunately, however, some generic names are very long. Finally, as a compromise, it was agreed that the Secretary should establish regulations that the generic name must be carried in print at least half as large as the trade name on the label as well as in advertisements.

Doctors would be able to see more readily the generic name of drugs, if they are in larger type. Knowing that all drug plants are inspected fully and have good control procedures, and that necessary safeguards are provided, there should be no doubt in the minds of any reasonable physicians that when they buy drugs by generic name instead of trade name, they are getting good and safe drugs.

With reference to section 10, as matters now stand, some drugs have no generic names; some have two or three. It is the company which coins the generic name. The U.S. Pharmacopoeia tries to persuade manufacturers to agree to generic names, and it has done a fine job. The AMA is setting up a committee to work on that subject. But, at the present time, unless the company agrees, nothing can be done about it. Under this section after the U.S. Pharmacopoeia has worked with the company and has been unable to reach a satisfactory generic name, the Secretary of HEW would have the standby authority to establish the generic name. In addition the Secretary would be required to make reviews of all the generic names—some of which are several inches long and entirely unpronounceable—and provide more simplified generic names so that physicians can remember, pronounce, and spell them.

Under section 11 advertisements must be accurate with respect to what it is said a drug will do. An advertisement must state the side effects and effectiveness, or a summary thereof, which must be approved by the Secretary of Health, Education, and Welfare.

This relates to advertisements in journals, promotion material, and any other similar type of material, including what is carried on the label, including the accompanying material.

We found cases concerning drugs that were addictive and in which nothing at all was said about side effects, and also cases in which drugs had other harmful side effects, but it was explicitly stated that there were no adverse side effects. That has been misleading to the physician. This proposal is a very important part of the bill. It will provide the physicians with honest and useful information.

There was an outdated provision in the law that longstanding antibiotics had to be batch-tested. But the new antibiotics, introduced since the law was passed, and are more in need of batch-testing than the old ones, were not covered. Section 12 requires the testing of all antibiotics, unless, as a

result of experience, the Secretary of Health, Education, and Welfare finds that any particular one no longer needs to be tested.

Madam President, insofar as the Food and Drug Administration is concerned, I think we have here a good bill, which will do the job required of it.

Later I shall discuss three amendments. If Senators will examine the individual views of the Senator from Colorado [Mr. CARROLL], the Senator from Connecticut [Mr. DODD], the Senator from Michigan [Mr. HART], the Senator from Missouri [Mr. LONG] and myself—the majority members of the Antitrust and Monopoly Subcommittee—in the earlier committee report, beginning at page 33, they will see the amendments that we had in mind offering at that time.

I wish to say that the first three have been adequately taken care of after reconsideration of the bill by the Judiciary Committee, following the President's recommendations. Later on I shall offer an amendment, which I believe will be acceptable, to make it possible for the Food and Drug Commissioner or to require, if he deems it necessary, the testing of a new drug on animals before it is actually given to human beings. If thalidomide had been tested on rabbits, before the drug was introduced, the resulting deformities of baby rabbits would have been discovered so that this whole catastrophe would have been avoided in the countries where it occurred. Apparently, some thalidomide children are being born in the United States also.

The second amendment relates to making available the agreements with reference to the settlement of interference proceedings in the Patent Office, so that the Department of Justice and the Federal Trade Commission can see if the Sherman Act or other antitrust laws have been violated.

This amendment, dealing with interference proceedings, would do much to bring the price of prescription drugs down, because we have found that in many cases when several companies apply for a patent, they agree that one of them will get it, and the others withdraw. Then the company that gets the patent usually licenses the others, but they all sell at the same high price.

The third amendment would require compulsory licensing after 3 years of a qualified applicant upon the payment of 8-percent royalty and open a finding by the Federal Trade Commission that the drug is sold by the manufacturer to the druggist at more than 500 percent of the production and research cost.

Madam President, I wish at this point to pay tribute to the very competent staff who worked in the entire investigation, including Dr. John Blair, Horace Flurry, Paul Rand Dixon—before he left the subcommittee—Dr. E. Wayles Browne, Jr., Dr. Irene Till Hamilton, Mrs. Lucille Wendt, Mrs. Emily Zayyani and Miss Jo Anne Youngblood. Their work was supplemented from time to time in particular aspects by excellent contributions from Bernard Fensterwald, Jr., Mrs. Dorothy Goodwin, Winslow Turner, George Clifford, Dr. Walter Measday, Herman Schwarts and Paul Green. I also wish to express appreciation for the work of the minority staff members—Peter Chumbris, Ronald Raitt, Nicholas Kittre and James Bailey. All worked devotedly on all or some parts of this long and difficult investigation.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KEFAUVER. I yield myself 15 minutes on the bill.

The staff started its staff work early in 1959. The first hearing was held on December 7, 1959. For some 2 years we held investigatory hearings, and for almost another year we held hearings on the bill itself. There has been a great deal of acrimony, and much criticism has been heaped upon the chairman and upon some of the majority members of the staff. But we felt we were doing a good job. As far as I am concerned, that is past history. The record is available for anyone who is interested.

I believe that anyone who reads the 13 volumes of hearings in the investigation and the 7 volumes of hearings on the bill as well as the report, will find them detailed and accurate. I have had the privilege of heading many investigations, but I have never known a staff that has worked more effectively, conscientiously and accurately.

Every figure and every statement, aside from typographical or inadvertent errors, is based on fact. The tables and charts are accurate. I cannot pay too high a tribute to those who did the work.

To show what was taking place in the Food and Drug Administration, in May 1960 we held hearings with reference to Dr. Henry Welch, who had been the head of the Antibiotic Section of the Food and Drug Administration. There had been some rumors that he had been receiving honorariums for editorial work in connection with several medical publications, in one of which he was associated with Dr. Felix Marti-Ibanez. John Lear, science editor of the Saturday Review, wrote some articles about it. Mr. John Connor, the president of the Merck Co., and then the chairman of the Pharmaceutical Manufacturers Association, became alarmed about a possible conflict of interest. In 1956 Mr. Connor called it to the attention of the Food and Drug officials. Apparently he did not have the full facts. Perhaps he could not get them. Then the Food and Drug Administration released a statement to the effect that Dr. Welch was not going to accept any large fees in the future. But they never asked him how much he had received. During our hearings, we found that he had received some $280,000 from the magazine of which he was half owner, based on reprints of articles paid for by the very companies that he was supposed to be regulating.

It was estimated that half went to the cost of publishing the reprints, and the other half was divided 50–50 between him and Dr. Felix Marti-Ibanez. At about the time of our hearings into the matter he resigned. The matter now is the subject of a grand jury investigation.

I have always thought that the Food and Drug Administration, and its head, Mr. George Larrick, should have pursued the matter further and received the full information at the time the situation was first brought to their attention several years earlier. But that is past history. That kind of conflict of interest is highly reprehensible. I am confident there are no present similar cases in the Food and Drug Administration.

When Mr. Flemming, then Secretary of Health, Education, and Welfare, appeared before our committee, he stated he would appoint two committees, the Bronk committee, which made an outside or "scientific" investigation and the Kendall committee which made an "inside" investigation. They did a great deal of work, but I do not know exactly what if anything, has been done as a result of their recommendations and reports.

During our investigatory hearings the pharmaceutical manufacturers testified that everything was all right as it was. They were against everything we proposed. The companies and their associates, in their advertisements and public relations, were very critical of the staff of the committee. But it should be said to their credit that when the bill was introduced in April 1961—and the bill was not one recommended by the Food and Drug Administration, although the Food and Drug officials later recommended most of its provisions.

The bill was aimed at reducing the unreasonably high prices of drugs, at providing safer, sounder, more dependable drugs, and at insuring advertising that was truthful concerning the purpose of drugs and their side effects for the benefit of physicians and the Nation.

The bill before the Senate accomplishes two of those objectives. It does not accomplish anything with respect to lowering the price of patented drugs. The patent provisions were eliminated.

It should be said to the credit of the pharmaceutical manufacturers that when they returned to testify on the bill, they accepted about three-fourths of the provisions of the bill. They had become convinced that some reforms were needed.

In contrast, representatives of the American Medical Association who testified on the bill, stated that in this entire omnibus bill there was nothing which they could support. In my opinion, 90 percent of the doctors of the Nation, including members of the American Medical Association, favor the bill which is now before the Senate. Many members of the AMA appeared before the committee, including members of its own council on drugs, outstanding physicians and specialists in their respective fields, to favor the bill. I pay tribute to those outstanding physicians who took the time and trouble to come here to help us with our investigation and to produce a good bill.

The committee covered all the important ethical drugs, including the steroids, oral antidiabetic drugs, tranquilizers, and antibiotics—the wonder drugs which cost so much money.

That distinguished medical journal, the New England Journal of Medicine carried series of six editorials endorsing and recommending the passage of most of the bill.

The report on the drug investigation, including the individual views of several members of the subcommittee, was circulated in March 1961, and finally filed on June 27. It contains a wealth of information about the entire drug field.

Before introducing the bill, as a result of the investigation, I spoke with the distinguished senior Senator from Alabama [Mr. HILL], chairman of the Committee on Labor and Public Welfare, and pointed out to him that, as of that time, three of the provisions dealt with antitrust or patent matters within the jurisdiction of the Committee on the Judiciary, and that others dealt with the Food and Drug Act. I discussed with him recommending that the FDA section be referred to the Committee on the Judiciary. The Senator from Alabama replied that he was very busy with other legislative matters and would be glad to have the Committee on the Judiciary handle that part of the bill. So he joined with me in asking that the Parliamentarian refer the bill to the Committee on the Judiciary, and it was so referred. The Senator from Alabama is an outstanding leader on problems of health research, both in the Committee on Labor and Public Welfare and the Committee on Appropriations. His backing, help, and suggestions have been appreciated throughout the investigation. There have been no committee conflicts.

Because two of the provisions in the original bill related to patent policy, I spoke with the distinguished senior Senator from Arkansas [Mr. MCCELLAN], chairman of the Subcommittee on Patents, and he agreed that the Subcommittee on Antitrust and Monopoly should handle the whole matter. He said he was busy with other problems, particularly in the Committee on Government Operations, and that he would be glad to have the Subcommittee on Antitrust and Monopoly proceed with that part of the investigation. Thus, our subcommittee heard the testimony of a number of patent lawyers with respect to the patent sections, and the results of that investigation are contained in the report.

Representative CELLER introduced a companion bill in the House of Representatives on the same day the bill was introduced in the Senate.

The bill now before the Senate accomplishes two of the stated objectives of the subcommittee. In January 1962, in his message to the Congress, the President of the United States said that action should be taken to reduce the high cost of prescription drugs. Following that came the President's consumer message of March 13, 1962, describing in general language desirable objectives in connection with drugs.

About that time, the then Secretary of Health, Education, and Welfare, Mr. Ribicoff, made an excellent statement before our committee, endorsing strongly all the food and drug provisions of the bill. Although he thought that the patent and antitrust provisions of the bill were generally in the public interest, and he favored the objectives which they sought, he said they were not within the jurisdiction of his Department and that he would not, therefore, wish to express an official position with respect to them. Throughout the time he was Secretary of Health, Education, and Welfare, he gave the subcommittee consistent and strong backing. Mr. Larrick, Commissioner of the Food and Drug Administration, testified in favor, generally, of the food and drug provision. Likewise, he did not express any position as to the patent or the antitrust sections of the bill.

The bill was considered by the Antitrust and Monopoly Subcommittee. I wish to thank the Senator from Nebraska [Mr. HRUSKA] and the Senator from Illinois [Mr. DIRKSEN] for suggesting improvements in the bill at that time. But when the bill was reported, it was approved by a vote of 5 to 3, along party lines.

Then the bill was sent to the full Judiciary Committee. As everyone knows, the three patent sections then were referred to the Subcommittee on Patents, which recommended against two of them and in favor of one of them. But the full Judiciary Committee eliminated all three.

Senators are familiar with what occurred in July in the Judiciary Committee, which resulted in the reporting of the bill and the submission of a report on July 19.

The PRESIDING OFFICER. The time the Senator from Tennessee has yielded to himself has expired.

Mr. KEFAUVER. Madam President, I yield myself 5 additional minutes.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 5 additional minutes.

Mr. KEFAUVER. Madam President, as I have said, everyone has cooperated now in trying to bring before us a very fine bill, insofar as the food and drug provisions are concerned.

On April 10, the President wrote a letter in which he generally recommended the bill as reported by the Antitrust and Monopoly Subcommittee. I ask unanimous consent that the letter be printed at this point in the RECORD.

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

THE WHITE HOUSE,
Washington, D.C., April 10, 1962.

Hon. JAMES O. EASTLAND,
U.S. Senate,
Washington, D.C.

Dear SENATOR: In the message I sent to the Congress on March 14, I called attention to the need for new legislative authority to advance and protect the interests of consumers in the marketing of drugs.

S. 1552, which is now pending before your committee, incorporates the major recommendations I made. It will strengthen and broaden existing laws in the food and drug field, contribute toward better, safer and less expensive medicines, and establish a better system of enforcement. As you know, the bill is the outgrowth of 28 months of intensive investigation and hearings by your Subcommittee on Antitrust and Monopoly. I believe that early passage of this legislation will substantially improve the ability of the drug industry to serve the Nation and help provide consumers with quality drugs at low, competitive prices.

I understand that the members of the Subcommittee on Patents have decided that the compulsory licensing feature of the legislation requires further study and consideration. I would hope that this would not, however, delay enactment of the other provisions of the bill—provisions which will establish necessary safeguards to assure the reliability and effectiveness of drugs placed on the market, provide for standardization of drug names, and thereby encourage physicians to prescribe drugs by nonproprietary rather than by brand names, require disclosure of adverse as well as beneficial effects of drugs in drug promotion, and assure consideration of therapeutic effectiveness in the granting of patents for drugs that are modifications of other drugs.

The message I sent to the Congress made several other suggestions which, it would seem to me, might appropriately be included in the bill now before your committee. They are:

1. Drug manufacturers should be required to keep records on and report to the Department of Health, Education, and Welfare any indications of adverse effects from the use of a new drug or antibiotic.

2. The Department of Health, Education, and Welfare should be empowered to withdraw approval of a new drug on the basis of a substantial doubt of its efficacy or safety.

3. The provisions requiring drug manufacturers to maintain facilities and controls to assure the reliability of their product, and to institute more effective inspection to determine whether drugs are being manufactured in accordance with the law, cannot feasibly be limited to a particular class of drugs and should therefore be made applicable to over-the-counter as well as prescription drugs.

4. An enforceable system of preventing the illicit distribution of habit-forming barbiturates and amphetamines should be provided.

The need for these amendments is based upon the accumulated years of experience of the Food and Drug Administration, and they appear to be properly within the scope of the subject matter dealt with in the extensive hearings of the Subcommittee on Antitrust and Monopoly.

In addition, I recommend two minor procedural changes:

1. In the section having to do with the rendering of advisory opinions by the Department of Health, Education, and Welfare to the Patent Office on the therapeutic effect of modifications and combinations, I suggest that the requirement providing the applicant with an opportunity for a plenary hearing be deleted. Under the provisions of S. 1552 in its earlier form, the Secretary's finding was conclusive and therefore should have required a formal hearing. But since the bill in its present form requires no binding decision to be made by the Secretary, the requirement of the hearing seems inappropriate and would tend to unduly delay the rendition of the Secretary's purely advisory opinion to the Commissioner. The action of the Commissioner is, of course, subject to well established de novo judicial review.

2. The provision requiring the filing of patent agreements with the Commissioner of Patents should more properly be in the form of an amendment to the Patent Act rather than the Sherman Act.

I have asked the Department of Health, Education, and Welfare to transmit to you promptly any additional recommendations to strengthen, clarify, or improve the bill that it may have and that will not require

additional hearings or substantially delay action on the bill.

It would not appear that the consideration of these proposed changes should occasion any further delay in the approval of this important measure.

With the above changes, S. 1552 adequately deals with the most pressing problems in the drug field, and it is my sincere wish that it be enacted during the current session of the Congress. Your cooperation and assistance to this end will be greatly appreciated.

Sincerely,

JOHN F. KENNEDY.

Mr. KEFAUVER. Madam President, we are also familiar with the fact that on August 4 the President wrote to the Senator from Mississippi [Mr. EASTLAND] a subsequent letter, making seven specific recommendations. Since then, regardless of what happened before, there has been a genuine effort, on all sides, to work out a strong, effective bill; and that has been done. The results of this effort are set forth in the supplemental report which I hope Senators will read—part 2 of Senate Report No. 1744.

In May, on the recommendation of the Food and Drug Administration, a bill was introduced by Representative OREN HARRIS, the chairman of the House Committee on Interstate and Foreign Commerce. That bill has many provisions similar to those in the measure now before us, although there are a number of differences. I am gratified that Representative HARRIS is holding hearings on that bill. I hope that as a result of the hearings and as a result of the conference to be held between the House and the Senate, the bill will be passed by both Houses of the Congress and will be sent to the President.

Madam President, in concluding this part of my presentation, let me say there are many important measures before the Congress, but none is more important than this for the protection of the public.

Madam President, we are about to accomplish a great deal; and I wish to thank the majority members and the minority members and the staff members of the subcommittee and the full committee. I wish to say that in recent weeks Tom Collins of the full Judiciary Committee has virtually worked his heart out; and I desire to thank all who have made this measure possible.

The PRESIDING OFFICER. The time the Senator from Tennessee has yielded to himself has expired.

Mr. SCOTT. Madam President, to the committee amendment, I offer an amendment which I send to the desk and ask to have stated.

The PRESIDING OFFICER. The amendment to the committee amendment will be stated.

The LEGISLATIVE CLERK. In the committee amendment on page 2, in line 23, it is proposed to strike out "December 31" and insert "June 30."

Mr. KEFAUVER. Madam President, I had difficulty hearing the amendment read. Is it offered to the bill?

Mr. SCOTT. Madam President, if the Senator from Tennessee will let me proceed for a moment with my remarks I think he will understand my purpose in offering the amendment. I expect to withdraw it at the conclusion of my remarks.

Mr. EASTLAND. Madam President, let me ask how long the Senator from Pennsylvania wishes to speak.

Mr. SCOTT. Between 15 and 20 minutes.

Mr. EASTLAND. Madam President, I ask unanimous consent that the Senator from Pennsylvania may proceed for 20 minutes. If consent is given, it will not be necessary for him to offer the amendment, which I judge is only a pretext.

Mr. KEFAUVER. Madam President, reserving the right to object, let me say—as I have previously stated—that several Senators were disappointed at the time limitation which was applied. Under the circumstances, why do we not let the Senator from Pennsylvania speak on his amendment?

Mr. SCOTT. I have no objection, if I can obtain unanimous consent to speak for 15 or 20 minutes on the bill.

Mr. EASTLAND. Madam President, I have propounded a unanimous-consent request.

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

Mr. HUMPHREY. Madam President, I shall be compelled to object; otherwise, there would be no use in having the unanimous-consent agreement entered into. The Senator from Pennsylvania has offered an amendment, and he is entitled to speak on it.

The PRESIDING OFFICER. Objection is heard.

Mr. DIRKSEN. Madam President, if the distinguished Senator from Pennsylvania will withdraw his amendment—for I suppose it is only a pro forma amendment——

Mr. SCOTT. That is correct.

Mr. DIRKSEN. If he will withdraw it, I will yield him 20 minutes on the bill.

Mr. SCOTT. I shall be happy to do so, with the understanding that the distinguished Senator from Illinois will yield me 20 minutes on the bill.

Mr. DIRKSEN. Madam President, I yield the Senator from Pennsylvania 20 minutes on the bill.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 20 minutes on the bill.

Mr. SCOTT. Madam President, I now withdraw my amendment.

The PRESIDING OFFICER. The amendment of the Senator from Pennsylvania is withdrawn.

Mr. SCOTT. Madam President, in my opinion this is a good bill. It has been carefully considered at great length in the subcommittees and in the Judiciary Committee. Many provisions of the original bill have been revised, altered, or omitted, in favor of carefully drawn legislation.

The President's wishes in regard to certain amendments, which have been referred to as the President's amendments, have been recognized and carried out in a bipartisan fashion. As a result, we now have what I believe is a far better bill than the original one, by virtue of the care and attention which have been given to the bill by the members of the committee, and also by reason of the expert assistance which has been rendered to us by the staff members.

COMMITTEE STAFFING

Madam President, in referring to the staff, I should like to address myself to the entire problem of minority staffing. I manage as well as I can with the assistants I have, and I have been considerately treated by the chairmen of my committees. We have a large and busy office, although we are not always able to do all that I should like to do as a Senator. But certainly it is true that if there were more minority staff members on the committees of which I am a member and on the other committees, more constructive contributions might be made by those of us on the minority side.

It is a most important problem if Congress is to meet its obligation to provide adequate research and staff assistance on a fair and equitable basis to members of both parties. As one who has served as a Member of both the House of Representatives and the Senate, I observe that this situation has too long suffered from neglect and indifference.

All Senators are familiar with the objectives of the Legislative Reorganization Act of 1946 in regard to committee staffs. The staffs were to be nonpartisan, and selected and promoted solely on the basis of merit. The report accompanying the act recommended that committee staff personnel "should be appointed without regard to political affiliation and should not be dismissed for political reasons." The intention was to establish a type of legislative civil service headed by a director of congressional personnel, but this body amended the act, empowering each committee of the Senate and House to choose its staff by majority vote. The ideal of the professional nonpartisan staff remained as the core of the resources—including the Legislative Reference Service and Legislative Counsel—that were to enable Congress to fulfill its historic and proper function in the legislative process.

Ernest S. Griffith, dean of the School of International Service of the American University, and former Director of the Legislative Reference Service of the Library of Congress, commented optimistically on the position of the Congress following the Legislative Reorganization Act. He suggested that—

> Congress has mastered, or has provided itself with the tools to master, the problem of assuring itself an unbiased, competent source of expert information and analysis which is its very own. By the same token it has mastered the problem of recapturing its constitutional role as the independent policy determiner, a self-respecting coequal of the bureaucracy, its legal master in policy matters, and in practice its competent partner or its intelligent critic. Congress has done this without sacrificing its own amateur standing as the elected representatives of the people. This has been no small contribution to the content of governance in a complex and technical age.

Since this has by no means occurred, I take a much less sanguine view of our situation. Not only have we failed to

develop the strength of congressional staffs, but we have also witnessed the deterioration of the nonpartisan concept of the Legislative Reorganization Act. Roscoe Drummond, distinguished columnist of the New York Herald Tribune, through a series of perceptive columns, has called national attention to the abuses of the majority power. Congressional Quarterly and the North American Newspaper Alliance have also carried major articles on the subject of staffing. Certainly, there has been a failure to live up to the spirit of the Legislative Reorganization Act, but was the nonpartisan staff concept adequate in the first place? Our system of committee government within the Congress is based on a differentiation of majority and minority roles. We cannot expect committee staffs to function in an isolated nonpartisan world. Rather, it is my firm belief that we must broaden our concept of congressional staffing to recognize the two-party basis of the committee system, and the necessity for equitable control of staff resources between majority and minority. I am in no way suggesting that we move away from a professionally competent staff, but, that we insure a fair distribution of such staff resources as exists and work to increase the number of qualified staffs across the board. Such a move will improve, not impair, the effectiveness of congressional government.

Madam President, I am concerned about the unhealthy imbalance that has developed in majority versus minority staff in place of the original though inadequate goal of nonpartisan staffs. This situation has an important bearing on the future on the two-party system in this country. For the first time since 1952, the Republican Party finds itself without control of either the executive or legislative branch. It has had to learn anew the role of the loyal opposition. In this experience it has been gravely handicapped by its lack of staff resources. Until effective control by the majority of the vast bulk of these resources is expanded to close the information gap of the minority side, the problem will remain acute.

One hears too often that the Republican Party has few ideas, few alternatives, and little vision, or that it is merely the party of blind opposition and obstruction. This is a myth spread by our opponents, but it can also be a self-fulfilling prophecy when the party in power denies the minority adequate staff to develop distinctive constructive policies.

The most severe limitation to the effectiveness of a Representative or Senator is time. Faced with a busy schedule of committee work, speaking, corresponding with constituents, and performing a heavy burden of legislative duties, we must have staff assistance if we are to study and comment in depth on the major issues of the day. Staff is essential for the research, preparation, and presentation of major policy speeches. They are required for a coordinated effort among colleagues within the Congress and for the effective utilization of radio and TV time.

The limitation of time is doubly acute for the Republican minority in the Senate. As a distinct minority in this body, we Republicans have an extra burden in adequately covering our committee assignments. If we find it difficult for an individual Senator to do his homework in comparison to a Congressman, how much more difficult it is for a Republican Senator to do his job properly, covering more area per man, with less staff, than his Democratic colleagues? Deprived of competent, adequate professional staff, and in such a statistical minority, we cannot begin to match the resources of the bureaucracy downtown, or of a much better staffed Democratic majority on the Hill.

The minority in the Senate is also faced by a geographical imbalance. We have lost key seats in the North and West and we are just beginning to see the emergence of a genuine two-party system in the South. Many of these States have Republican Governors and/or Congressmen. If we, the Republican Party in the Senate, are to give adequate representation to Republicans in these areas, we need more staff. If we are to study such crucial problems as conservations, water resources, and reclamation we need staff authorized to make field trips and carry out investigations to fill in the broad gaps of our knowledge. The ideal of good government requires that we be a national party with a national vision serving the national interest, not a regional party hamstrung by a glaringly deficient number of minority staff assistants.

We of the minority are greatly concerned because the means of offering constructive alternatives, through adequate help in researching policy problems, is presently unavailable to us. Many of us have supported Republican initiative on a number of fronts, including for example the fields of employment, worker retraining, and civil rights. But, without adequate staff good ideas die for lack of public airing. In our system of government, we cannot rely on one party, the majority party, to produce all the ideas. By the very nature of politics, there are areas of public policy where the party in power cannot or will not act. The minority party must prod the majority party into action. It must nurse the neglected orphans of majority politics. The most glaring example of majority party paralysis is civil rights, as highlighted and exemplified presently in the Thurgood Marshall confirmation matter, on which the two Senators from New York [Mr. JAVITS and Mr. KEATING] have been exerting their maximum efforts, not only to do justice to the nominee, and to the President who appointed him, but to the system of appointment and to the integrity of the Senate itself, particularly in view of the quality of the person designated for this high judicial office.

As I said, the most glaring example of majority party paralysis is civil rights, but on every issue there will be some facets the majority will ignore or deemphasize in terms of its own party interests. This is simply politics, and this is the reason the minority must be in a position to think out and develop its own position on every major public issue. It must have the resources to provide a real competition of ideas in the political marketplace. It should have a staff to read and study the CONGRESSIONAL RECORD, the latest books and magazines, professional journals, and learned papers; to monitor news broadcasts and analyses, to channel ideas to appropriate party spokesmen; to think out what should be the role of the minority in each particular area of policy.

Good minority staffing should service minority needs in addition to the actual membership of the committee where possible. Where a Member has a particular interest, say in foreign policy, agriculture, public works, or economic policy, he should be able to tap the expertise of minority staff familiar with that area. When staffing is kept to a bare minimum, this kind of cooperation in pooled resources among the minority is not possible.

Apart from proposing new programs or alternatives to the administration's proposals, much of the hard work of legislation and oversight rests in the sifting, evaluation, and reassessment of old programs. Too often in our budgeting and and program development, we start with last year's base and merely weigh the proposed additions. We should be examining the historical basis of proposals as well, including support, where warranted, of existing programs which are serving their purpose, or the elimination or pruning of existing programs no longer useful as presently operated. Government is or should be a dynamic business, responsive to the genuine needs of the citizenry. Yet without the prodding and questioning of the Republican minority, who have no vested interest in the growth of the bureaucracy, these new empires of agency personnel may become frozen into the structure of government. Obviously, effective oversight and investigation of the administration's programs requires adequate minority staffing.

An ambitious and attractive President can exploit the national media far more effectively than a numerical minority of individuals in Congress. If the minority is to cope effectively with its responsibility as to programs presented by the President and the majority, it must have resources to document its arguments. The real results of minority effort either in the form of constructive alternatives or sound criticism of administration policies, come in the committee reports, the speeches prepared by minority spokesmen when the bill comes before the Chamber for consideration, the amendments offered on the floor, and in other similar forms. It is doubly important that the minority have these resources, for the editors and newsmen who control the news media of our country will tend to judge the minority and its actions by what it reads of their reactions on the wire services and receives from its own services. Mailings of minority views by the Republicans on the Joint Economic Committee, including my colleague, the Senator from Connecticut, PRESCOTT BUSH, and my House colleague, Representative CURTIS, of Missouri, and others, have been well received.

The House Republican policy committee's release of the report of its task

force on "Operation Employment" last year is an excellent example of what needs to be done much more often. The response of the press to this sort of thing has been encouraging, but this needs to be done on a regular, systematic basis. It is disturbing to me that many minority reports are never written, filed, or distributed for one basic reason—lack of adequate staffs.

The minority member needs information from sources other than the administrative departments and the majority-controlled staffs. While it may be going too far to suggest that these sources are captive, it is not unreasonable to expect some will not go out of their way to volunteer information inimical or embarrassing to the policy objectives of the President and the majority party.

This need for independent information is particularly crucial in the field of foreign policy. I have commented on the floor of this Chamber, with other of my colleagues, on particular aspects of the administration's foreign policy that appeared to us to be deficient. There are policies concerning trouble spots in the world that need searching review and responsible constructive criticism from the minority. The strong pro-Arab bias in our Near East policy, and the troika experiment in Laos are two problems of deep personal interest to me. Yet, without the inclusion of minority staff members in connection with foreign policy surveys in Washington and abroad, the minority must depend on secondary and not always explicit sources for these policy reviews.

A recent Senate mission to Africa and the Congo included three Senators of the majority party and their staff. If the minority had had a part with a minority staff member in this survey team, it might have been better equipped to deal with the subsequent furor over the Katanga. The Joint Economic Committee's study of the U.S. economic policy in Latin America would have been entirely a majority party project but for the initiative of the senior House Republican on the committee. It has been stated that the staff of the Committee on Foreign Relations is nonpartisan. This is an excellent staff. Yet, can a nonpartisan staff serve two masters which have differing degrees of commitment to any given administration policy? Can it do an equal job with both? Do the critics of administration policy, especially from the academic world, enjoy equal access to both majority and minority members, or are the best ideas channeled to the majority, or smothered before they reach minority members who may be more receptive to them? Without adequate minority staff, I fear that we shall continue to operate at a decided disadvantage to our colleagues on the majority side of the aisle.

Madam President, these arguments have all dealt with the more general problem of increasing the effectiveness of the minority in congressional government. They are set forth within the context of a need for greater congressional staffing regardless of majority and minority roles. We may disagree as to the exact form staffing arrangements should take, but we should all agree that good government suffers when the minority is deprived of the means to: First, develop constructive alternatives; second, offer sound criticism and evaluation; third, document and communicate its views; and, fourth, check information supplied by the majority against impartial sources. The fact that these minimal minority rights have not been achieved is by itself the most serious and disturbing aspect of the entire problem. It has serious implications for the future of our two-party system. Our system of government was founded on the unwritten understanding that the party in power will not attempt to exterminate the party in opposition; that the ins and outs can exchange roles periodically; that the majority may press its advantage, but still will respect the integrity of the minority.

Madam President, the majority is not playing by the rules of the game, and if the American people knew the full facts of the story, their sense of justice and fair play would cry out against the shame of a loaded legislative procedure. Would they endorse a ratio of 14 to 12 to 1 between majority and minority staffs? Would they approve a system that places virtually complete control of congressional committee staffs under the majority chairmen? The chairman empowered to hire and fire, set salaries, and determine tenure? Would they condone the limitations placed upon the minority in terms of office space, travel, telephone calls, secretarial services, and other essentials to the mechanics of adequate staffing? Would they affirm the policy of some committee chairmen not permitting minority staff to question witnesses? Would they justify the power of a majority chairman to select witnesses to arrive at prearranged conclusions? Would they applaud the inaction of some of the minority who would rather keep the personal perquisites they have than risk losing them by rocking the majority boat too hard? I hardly think so. This is not a party partisan issue, Madam President. This is not a division between liberals and conservatives. It is a contest between those who are dedicated to achieving effective congressional government and those who are complacently content with the inequities that breed inefficient committee work and detract from the power and prestige of the Congress. It is a cause that includes in its ranks representatives of business and labor, civic action groups, the individual voter—all those who are dedicated to good government above petty political gain.

Why, then, have we not corrected the wrongs? Why are the loaded dice still in play? No one can be against good government—or can they? I should like to examine a few of the roadblocks or excuses for inaction and answer them one by one.

There are some who deny that the problem even exists. Chairmen of several committees have challenged assertions that the nonpartisan staff concept has broken down. They have also challenged tabulations of majority and minority staffs compiled in the House by Representative FRED SCHWENGEL, and in the Senate by my esteemed colleague, the Senator from Nebraska [Mr. CURTIS], and further researched by Roscoe Drummond, Congressional Quarterly, and the North American Newspaper Alliance. If the problem does not exist, why are so many of my Republican colleagues so exercised about it? In the past few months there have been speeches on the floors of the House and Senate by numerous Members. Representative FRED SCHWENGEL, of Iowa, has received letters supporting his stand for more equitable minority staff from ranking Members of the Congress and outstanding Republicans across the country. These are indications of a real discontent, not an imagined inequity.

The problem is real. One could point out a number of instances in the various Senate committees where more staffing is needed. A few examples will illustrate where the lack of staffing has limited the effectiveness of the Senate and Congress. The Aeronautical and Space Sciences Committee is moving into new virtually unexplored policy areas, yet it recently reviewed the $3.8 billion NASA budget in less than a week of cursory hearings. Observers have commented on the lack of critical discussion of major policy problems before various committees.

The Appropriations Committee has assumed a new importance with the increasingly frequent requests on the part of the Executive for greater authority and discretionary power. The minority needs adequate resources if it is to find out what the administration is doing and planning. Without sufficient minority staff, the majority will have unchecked control of the power of the purse.

The Armed Services Committee, with a defense budget of almost $48.5 billion, with the rapidly changing technology of weapons and weapon systems, with the recent charge of President Eisenhower to adopt a more critical attitude to defense spending, has perhaps the most demanding requirements for staff.

The committees with major responsibilities for domestic and foreign economic policy—Banking and Currency, Finance, Public Works, and Joint Economic—may be called upon in the next 6 to 12 months to face the first recession of this administration. Will they have sufficient staff, both the majority and minority, to assess the adequacy of the administration policies? Will the minority, which has already made a major contribution toward the solution of the unemployment problem through a House Republican task force, have the resources to develop new approaches to the vexing long-term problems of our economy? The minority has at present only one professional economist on the Joint Economic Committee.

One could go on at length but these illustrations should give us a sufficient indication of the magnitude of the problems we face.

The actual numerical ratio between the majority and minority staffs has also

been challenged. Again it should be stressed that the distinction is between staff controlled by and responsible to majority and minority respectively. Different tabulations vary somewhat, perhaps by one or two per committee. We can quibble endlessly about figures, especially when the exact information about staffing is so difficult to obtain, but, and I stress this, the basic proportions stand as imbalance.

Madam President, I ask unanimous consent to have printed in the RECORD at this point the North American Newspaper Alliance release which gives the Schwengel-Curtis breakdowns for the committee staffs in the House and the Senate.

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

STAFF IMBALANCE DECRIED—RUNDOWN SHOWS 993 DOMOCRATS, 84 REPUBLICANS ON COMMITTEES

(By Sid Goldberg, North American Newspaper Alliance)

NEW YORK, April 22.—Republicans in the Senate and House are moving to increase minority representation on committee staffs. Right now the imbalance between Republicans and Democrats on these staffs, all of whom are appointed by the committee chairmen, is spectacular.

On the Senate committees, there are 462 Democrats to 39 Republicans.

On the House committees, there are 461 Democrats to 43 Republicans.

On the joint committees, there are 70 Democrats to 2 Republicans.

This adds up to a total of 993 Democrats compared to 84 Republicans—more than 10 to 1—who perform the vital tasks of doing the research and drawing up the reports for the regular and joint committees of Congress.

This ratio (which jumps to 35 to 1 for the joint committees) clashes head on with the proportion of Republicans to Democats among the elected Members of both Houses. In the Senate the Democrats outnumber the Republicans by about 2 to 1, and in the House by about 3 to 1.

(A committee-by-committee breakdown of the reputed party sympathies of staff members is published for the first time in the adjoining columns.)

In the Senate, CARL T. CURTIS, of Nebraska, had an aid personally visit each committee and get from minority members or staffmen an up-to-date rundown of party allegiances.

In the House, the job was taken on by Representative FRED SCHWENGEL, of Iowa, who with the assistance of other House Members and some national Republican leaders, obtained the committee-by-committee breakdown. It took about 3 months to get, and the list has just been completed and given to NANA for distribution.

A Republican source said the breakdown would have been vastly more difficult to get if it had not been for the cooperation of some Democrats.

"The country would get much more positive action from Congress if committee staffs were more equitably divided," Representative TOM CURTIS, of Missouri, told NANA. "As it stands now, minority members must rely on the research and reports of staffers who sympathize with the opposing party.

"Not only is the political division of the staffs imbalanced, but the total size of the staffs is dreadfully insufficient," said CURTIS who was one of several Republicans, working closely with SCHWENGEL. He pointed out that on his Committee on Ways and Means, there is only one staff member who works part time in the important area of foreign economic policy. "We need at least 10," he said.

TOM CURTIS added that the Ways and Means Committee has no staffer who works full time in the social security field. The situation, he said, is similar in many House and Senate committees and is made worse by the political dominance of one party.

On April 4 Representative WILLIAM E. MILLER, of New York, the GOP national chairman, wrote Representative SCHWENGEL:

"This is a matter of extreme urgency because the condition is so serious it can undermine the very effectiveness and even routine functions of Republican Members of the House."

SCHWENGEL has introduced House Resolution 570 which would enable the minority members of a committee, when most of them feel the staffing arrangement is unfair, to obtain a minority-majority staff proportion of 40 to 60. Also, the 40 percent of the staff appointed by the minority side would be paid by and be responsible to the minority members, not the committee chairman.

A comparable resolution has been introduced to the Senate by CARL CURTIS, and his resolution has the additional provision that all special committees, too, must have minority staff representation.

Representative JOSEPH W. MARTIN, JR., of Massachusetts, on April 11 pointed out in a letter to SCHWENGEL that "this move is not new. England has long recognized this vital need of representative government and has carefully made sure the minority is adequately staffed."

Several Democrats in both the House and Senate agree that reform is needed in the manner in which staff members are chosen.

JOINT COMMITTEE STAFFS HAVE ONLY TWO REPUBLICANS

Following is a breakdown of party sympathy among staff members of joint committees, as compiled by Representative FRED SCHWENGEL, of Iowa:

Joint committee	Democrats	Republicans
Atomic Energy	20	0
Defense Production	5	0
Disposition of Executive Papers	0	0
Economic	16	1
Internal Revenue Taxation	19	0
Library	0	0
Printing	8	1
Reduction of Nonessential Federal Expenditures	2	0
Total	70	2

HOUSE GOP STAFF MEN OUTNUMBERED 461 TO 43

Committee	Democrats	Republicans
Agriculture	10	1
Appropriations	48	13
Armed Services	15	0
Banking and Currency	12	2
District of Columbia	8	1
Education and Labor	45	2
Foreign Affairs	15	0
Government Operations	46	3
House Administration	4	2
Interior and Insular Affairs	7	2
Interstate and Foreign Commerce	25	0
Judiciary	42	1
Merchant Marine and Fisheries	8	1
Post Office and Civil Service	16	0
Public Works	40	5
Rules	2	1
Science and Astronautics	16	0
Un-American Activities	51	1
Veterans' Affairs	12	2
Ways and Means	17	4
Select Small Business	18	2
Select Export Control	4	0
Total	461	43

SENATE GOP STAFFERS OUTNUMBERED 462 TO 39

Following is a committee-by-committee breakdown of party sympathy among Senate staff aids as compiled by Senator CARL T. CURTIS, of Nebraska:

Committee	Democrats	Republicans
Astronautics and Science	11	1
Agriculture and Forestry	6	1
Appropriations	33	3
Armed Services	25	1
Banking and Currency	17	3
Commerce	27	3
District of Columbia	7	1
Finance	5	1
Foreign Affairs	28	0
Government Operations	44	4
Interior and Insular Affairs	17	1
Judiciary	146	11
Labor and Public Welfare	28	4
Post Office and Civil Service	10	1
Public Works	11	2
Rules and Administration	10	1
Small Business	18	0
Aging	19	1
Total	462	39

Mr. SCOTT. Madam President, while some refuse to face the fact of partisan control of committee staffs, and the imbalance between the majority and the minority, there are others who regard the abuses that have been revealed as deviations from the norm of professional nonpartisanship. They oppose reforms suggested by the minority for fear that an alleged party "spoils system" will destroy the professional competency of staff. This is not our intent. The touchstone of our approach is: "That course of action to achieve the most effective congressional government." We must recognize that these are legitimate functions for both majority and minority to perform, and that this requires adequate staff resources. A full solution of the problem would require both a redistribution of staff between majority and minority on a more equitable basis, and an overall increase in staffing levels—quantitatively and qualitatively. The disciples of nonpartisanship make a basic error by attempting to eradicate the two-party distinction from our committee system of government and its sine qua non committee staffing.

Some of my Republican colleagues ask why am I so concerned about staffing now. Instead, they argue, we should concentrate on at least regaining control of the House this November. When we are back in power, we will be able to right the wrongs, maybe even with a bit more charity than has been shown to us, they say.

Madam President, what is required is a statesmanlike solution and not political revenge. Our best course of action is to press immediately and persistently for a solution to the staffing problem, in keeping with the principles of responsible government.

The excuses for inaction can be multiplied and refuted. Those who disagree have their own arguments justifying the status quo. Yet when we pause to examine the immense and growing workload of legislative business, the backlog of bills not yet reported from committee, the prospects for a possible fall session during an election year, can we be complacent? My esteemed colleague, the

junior Senator from Vermont [Mr. PROUTY], has asked in a speech before this body, if the committee system, the backbone of our operation, is to have "ribs on only one side, do we not abuse the greatest body in the world?"

What progress has been made in correcting the situation I have outlined and what more needs to be done?

There have been several significant attempts in recent months to break the staffing barrier which deserve recognition and due credit.

Our colleagues, the Senator from Nebraska [Mr. CURTIS] and the Senator from New York [Mr. KEATING] attempted in February to establish at least a 1-to-10 minority-majority staffing ratio on Senate investigations and special studies. I think Senators will recall the outcome of that test. The issue was decided on a straight party-line vote 30 to 55, the effect of which is a ruling by the majority party that the minority is not entitled even to 1 staff member for every 10 of the majority.

In March my good friend and colleague, the junior Senator from Vermont [Mr. PROUTY] introduced Senate Resolution 309, which provided:

> The staff of each committee and subcommittee of the Senate should include such number of individuals designated by the members thereof who are members of the minority party as may be required to uphold in equitable recognition of the minority rights of those members.

He was joined in that by Senators JAVITS, BOGGS, ALLOTT, MILLER, and myself. In the House, Representative FRED SCHWENGEL, of Iowa, has introduced House Resolution 570, which would enable a majority of the minority members of a committee, when they are not satisfied with the staffing of their committee, to request that 40 percent of the professional staff be appointed by them and assigned to such committee business as they, the minority members, deem advisable. Representatives SCHWENGEL and CURTIS of Missouri deserve special recognition for their initiative in bringing this problem to the attention of the House.

I can remember some years ago that the Representative from Missouri, Mr. CURTIS, was almost alone in decrying the imbalance in committee staffs, and the inadequacy of staffing levels regardless of majority or minority. Today, a large number of the Republicans in the House have indicated their support for broadened, more equitably balanced, congressional staffing. A partial list of the Republican Members of Congress favoring reform includes: Representatives ALGER, AYRES, BASS, BROMWELL, CONTE, CRAMER, DERWINKSI, DWYER, ELLSWORTH, FRELINGHUYSEN, FULTON, GOODELL, GRIFFIN, DURWARD HALL, KEARNS, LINDSAY, MCVEY, JOE MARTIN, MATHIAS, BILL MILLER, MORSE, ANCHER NELSEN, PELLY, SCHWEIKER, SCRANTON, SIBAL, STAFFORD, TABER, TOLLEFSON, JESSICA WEIS, and BOB WILSON.

The Representatives and Senators who have fought for increased staffing on an equitable basis have received strong endorsement for their cause from a broad range of editorial opinion. Typical of the comments of outstanding Republican leaders not in the Congress is a letter from former Vice President Richard M. Nixon to Representative SCHWENGEL which appeared in the CONGRESSIONAL RECORD of June 25. Mr. Nixon remarked:

> Indeed, the issue is not partisan at all. The shoe after all may well be on the other foot as early as January 1963, but the overriding consideration, all political preferences aside, is simply that democratic governmental processes demand an informed and responsible opposition. Your resolution surely works toward that goal, and thus it ought to be vigorously supported by every thoughtful Member of Congress.

No action has been taken on either the Prouty or Schwengel resolutions to date, yet they are significant illustrations of the deep concern the staffing issue has created among dedicated and respected members of the minority, and they point to possible solutions of the problem.

There have been some encouraging recent developments in the campaign for adequate minority staffing that also deserve comment. My good friend and colleague, the Senator from New York [Mr. KEATING], in an excellent statement entitled, "A New Republican Offensive," singled out committee staffing as the No. 1 issue for the Republican Conference. The following week the Republican Governors attending the 54th National Governor's Conference at Hershey, Pa., unanimously passed a resolution favoring reform of committee staffing and encouraging the Republicans in Congress to urge their leadership "to insist upon and take immediate action to correct the inequities which currently exist in committee staffing." I have had the benefit of the views of a number of Republican Governors, and I find that the current staffing ratio is of particular handicap to them. These men face an especially difficult assignment as a minority representation of this country's Governors when they or their representatives are called upon at frequent intervals to testify before various committees of the Congress. They do not now receive adequate Congressional staff assistance in preparing minority views and testimony, in organizing briefings with minority members of the House and Senate, in developing their ideas during hearings, or in following them up with the various levels of the Government. One point of particular concern is that the Democratic majority staffs, in dealing with problems of Federal-State relationships, are more favorably disposed toward increasing the responsibilities of the Federal Government than in developing the authority of our State, county, and local governments.

I could go on and document the views of members of my own party, but how do the members of the majority party feel? There are many who know that the present system is wrong, that it is unfair and unhealthy. Members of the Senate and House in the majority party who love the institutions of the Congress and are concerned about its position and its balance in relation to the increasing Executive power could well give more active attention to this problem. There are Democrats who are aware that the problem of staffing could develop into an important campaign issue. Differing points of view are not being brought out between majority and minority, and the electorate may be particularly sensitive to the Republican demands for more equitable staffing resources.

What is the attitude of majority staff to the situation of the minority? Some are candid enough to admit that the level of committee debate and of the legislative process in general would improve markedly with the introduction of more new challenging ideas. Virtual one-party control of committee staff has stifled the atmosphere of committee work. How many good staff people have left the Hill because they did not find their work sufficiently stimulating and challenging? Many have. I am confident that adequate minority staffing would go a long way toward infusing new life and vitality into the entire committee system.

Madam President, I have stated the arguments for and documented the broad and growing base of support for a reform in committee staffing. What should our course of action be from here?

First, we should resolve to take immediate action. Nothing is to be gained by waiting. We should begin to move on this problem at once, regardless of whether we can bring it to a successful conclusion before the end of this session. The issues at stake are far more fundamental than the shifting of personnel between the majority and the minority.

Next, after careful consideration, I recommend that an ad hoc committee be established to consist of three Senators and three Representatives who have expressed interest in staffing reform. This committee, with staff assistance, should review actions taken to date and make further representations to the minority leadership. The work yet to be done is considerable. Facts must be organized, research must be pursued, support must be mobilized, strategy must be planned.

If the ad hoc committee is to complete its preliminary work with reasonable speed, it will have to utilize outside resources. Under the pressing legislative schedule that we all face, and with the fall elections drawing near, we cannot realistically expect a group of Senators or Representatives to be able to cover all the aspects of this problem. We must draw upon resources in the Republican Party and among public-spirited citizens regardless of party affiliation from across the country. We shall need all available help if we are to get our story to the public at large and to state our case persuasively to the political scientists, national leaders, and other individuals who influence and arouse public opinion.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SCOTT. Madam President, will the Senator from Illinois yield me 5 more minutes?

Mr. DIRKSEN. Madam President, I yield 5 more minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania may proceed for an additional 5 minutes.

Mr. SCOTT. Madam President, in addition to gathering data and planning a strategy to correct the basic problem of imbalance in committee staffs, the ad hoc committee should explore possible innovations in the staffing arrangements of the minority itself—reforms that could be instituted, unlike the other problems I have stressed, without recourse to the majority. Of course, an increase in minority staff would greatly facilitate the adoption of such innovations by providing the minority with more staff flexibility.

One important innovation that should be explored is the establishment of leadership seminars. Periodically the joint Republican leadership of the House and Senate—or of each body independently—could meet with key minority representatives from areas with particular problems not common to all areas with Republican representatives. They would cover one subject at each session, rotating the subjects considered on a periodic basis. Academicians and lay experts could be invited to present position papers or to testify. These sessions would provide the leadership with continuing familiarity with a broad number of subjects in substantial depth.

The leadership seminars would also provide a voice for and an outlet for ideas of Republicans who do not normally participate in leadership decisions. They should tap Republican sources and assistance at all levels, placing primary emphasis on practical experience and knowledge. The seminars would provide a forum for any individual member who has obtained a specialized knowledge of a subject of national, area, or group interest through surveys, trips abroad, or by reason of his own study and interest.

In this way, the leadership seminars, in addition to coordinating minority policy, could become the mechanism for a two-way process of channeling ideas from the leadership down to the Republicans on the various committees and their staffs, and stimulating and communicating new policy ideas and alternatives from the lower ranks of the committee staff and committee membership to the leadership. I join my colleague in the other House, Representatives CURTIS of Missouri, in believing that this two-way communication of ideas between the leadership and rank and file is needed in order to build a strong and healthy minority party in the Congress.

Another innovation that should be considered is the formation of a staff clearinghouse—a central unit that could recruit and refer qualified job applicants to vacancies on the committees. This would seem to be an essential step toward raising the professional level of minority staff, yet it has not been instituted on any systematic basis.

When the ad hoc committee has completed its preliminary work, and consulted with the minority leadership, it should ask for a meeting with the majority leadership to present the case for adequate staffing. I feel that this course of action offers us the best hope for an early solution to the staffing problem which remains as one of the gravest weaknesses of, and one of the most serious limitations to effective, constructive congressional work.

Mr. KEATING. Madam President, will the Senator yield?

Mr. SCOTT. I am very happy to yield to the distinguished junior Senator from New York.

Mr. KEATING. I wish to compliment the distinguished Senator from Pennsylvania for a very thoughtful and perceptive analysis of a real problem in both Houses of Congress. It is a matter which has been of concern to me. Like the Senator from Pennsylvania, I have no personal feeling about it and do not speak because of a particular lack on my own part. It is a general problem which is very serious and which should be faced up to by the leadership in both Houses of Congress.

I think the Senator from Pennsylvania has performed a real service by his well documented and very carefully analyzed speech on this subject.

Mr. SCOTT. I thank the Senator.

Mr. JAVITS. Mr. President, will the Senator yield to me?

Mr. SCOTT. I am happy to yield to the distinguished senior Senator from New York.

Mr. JAVITS. I have been attending a meeting of the Appropriations Committee and therefore was unable to hear the remarks of the Senator, but I have read every word of his speech.

Considering the multitudinous number of things Senators have to do, the staff activity which the Senator describes is absolutely indispensable in respect to doing our job.

In addition, I think we have shown on a thousand battlefronts—I think this is true of nearly every one of us on the minority side—how, in our country, the minority is not merely a critical organ, but instead is an indispensable part of the creativity of legislation.

We do not have a parliamentary system in which the Government, namely, the majority, is the only fountainhead of legislation. On the contrary, legislation is shaped in the legislative body with the creative participation of the minority. We will be better able to do that if we have the kind of assistance which the Senator has described. Indeed, it is inconceivable that we should have gone so long without it.

As Senators, we are all indebted to the Senator from Pennsylvania. The country is indebted to him for highlighting, dramatizing, articulating, and particularizing the issue as ably as he has. I congratulate him on a fine effort.

Mr. SCOTT. Madam President, I thank both distinguished Senators from New York. I am indebted to them. I may add parenthetically, as an illustration of the difficulties involved, that the consultation, research, and preparation of what is, after all, by Senate test, a comparatively brief speech, has consumed a good part of 1 month. I have had to displace work that I might have been doing in other areas.

Senators know that a speech of that length cannot be turned out over night, and it cannot be turned out without adequate and valuable help by one's office and staff assistants. That is a further illustration of why the reform is needed.

Madam President, I yield back the remainder of my time.

Mr. DIRKSEN. Madam President, I yield 6 minutes to the Senator from New York.

Mr. KEATING. Madam President, I think it is fair to say that there is no division in the Senate on the need of doing everything necessary to protect the health and safety of our citizens.

None of the differences which existed in the past over the provisions of proposed drug legislation was based on disagreement as to the overriding importance of protecting the public health. The point at issue rather was whether regimentation of this industry in the manner originally proposed by some would go so far in stifling research, initiative and the promotion of useful new drugs that unwittingly more harm than good would be done in serving the Nation's health needs. As a result of months of painstaking work pursued with the utmost diligence and attention by members of the Committee on the Judiciary on both sides of the aisle, and by the very accomplished and helpful staff, that did so much in assisting us to fashion the proposed legislation, we have finally devised a bill which will safeguard the people from harmful and useless drugs without jeopardizing the vital contribution of free enterprise in the fight against disease.

The bill in its present form has my full support, as it did the support of all members of the Judiciary Committee when it was unanimously reported. It contains important provisions strengthening existing drug laws. It will assure a safer and more reliable supply of drugs and, if properly enforced, will make impossible the use on human beings of such perilous compounds as thalidomide, which has caused such consternation in this and other countries. Its recordkeeping, inspection, and other control provisions will be of tremendous assistance in keeping unfit drugs off the market. Its reporting requirements and provisions for the withdrawal of previously approved drugs will enable continuous surveillance to be maintained by the Food and Drug Administration over drugs on the market and permit their prompt withdrawal whenever necessary to protect the public. Finally, the provisions for the identification of drugs and the furnishing of full information with regard to new drugs will reduce the possibilities of confusion or mistakes in the dispensing of drugs to the public.

All of these provisions represent significant improvements in the present law. They reflect recognition that the drug industry is affected with the public interest and must be subject to special controls in order to safeguard the

public. I do not believe that this statement would be challenged by any official of the industry and I have every confidence that they will comply with the provisions of this law in a manner which will reflect the industry's own deep concern with the health and safety of the population.

At the same time, the committee has rejected or revised some proposals which would have converted this industry into a creature of the Government and stifled its continued contribution to the health of our people. Mistakes have been made, serious and even tragic mistakes. New laws were needed to prevent such mistakes in the future insofar as it is humanly possible to do so. But mistakes can be made by Government officials as well as private citizens as we all know too well. Socialistic control over any industry is no guarantee against errors and is a sure way of curbing progress, initiative, and incentive. Fortunately, the specter has been avoided and the drug industry will continue to be a part of our free enterprise system.

The people of this Nation enjoy the best standards of health of any people in the world. New drugs have curbed or cured such dread diseases as tuberculosis, diphtheria, polio, diabetes, and arthritis. As a result of tranquilizers, the population of our mental hospitals has been able to receive more humane and effective treatment than was ever before possible. No one who wanted this progress in the development and marketing of new, but safe and effective drugs to continue, can be accused of any lack of concern with the health of our people. On the contrary, those who would go so far as to hamper if not prevent these new products from being developed or reaching the market would not be acting in the public interest.

What most of the members of the Committee on the Judiciary were seeking were methods of preventing any unsafe drugs from reaching the market which would not interfere with the development or use of safe and needed medicines.

There were two objectives. First, and, it would be fair to say the most important, it would keep unsafe drugs off the market; second, we would see that as quickly as is safe, important new drugs reach the market. For example, we know that today we have no drug, that will cure cancer. Perhaps sometime we will have one. If we have one and its side effects are not disastrous, of course, it is to the advantage of the public to have that drug reach the market as early as is safe.

In my judgment, in the pending bill we achieve the two objectives in a reasonable and fair way. I am confident that the debate will make it clear to every Member that the bill would pass with virtually no opposition.

Mr. HRUSKA. Madam President, I yield myself 20 minutes on the substitute.

Madam President, S. 1552, the Drug Industry Act of 1962, as reported by the Senate Judiciary Committee on August 21, is a carefully drafted, thoroughly considered piece of legislation. It was reported out by a unanimous vote. It has my unqualified support.

The bill provides for the strengthening of our basic food and drug laws. It brings up to date the 1938 act, which was the latest major revision of the existing statutes in the drug field.

In general, the bill provides for the registration of all drug manufacturers. It provides for increased and improved factory inspection, quality controls, and the maintenance and submission of various records and reports, especially in regard to investigational use and clinical experience. It provides for the standardization and simplification of official names for drugs. It insures that the names will be prominently displayed on all labeling and advertising, and that all antibiotics will be certified by the Government. Advertising will be subject to appropriate regulation. Under the present law, the test which a new drug had to meet before it could be put on the market was that it be safe. Now a new test has been put into the bill: it must not only be safe to those who use it, but it must be effective for the claims made for its use. This is a major development.

COMMENTS ON THALIDOMIDE

In the past several weeks, there has been widespread discussion of the thalidomide episode. It started with the recent tragic news concerning the sale of this sleeping pill in Europe, particularly to expectant mothers, many of whom delivered malformed babies as a result of the use of that drug.

Efforts to secure Food and Drug Administration permission to place this drug on the market in the United States were begun nearly 2 years ago. Had such permission been given, the drug would have been available upon prescription, unlike the practice in Europe where the pill was sold over the counter. This at once indicates the greater care and protection afforded the public in America than elsewhere in the world in handling drugs.

The new drug application was assigned to Dr. Frances Kelsey in the Food and Drug Administration. The story is familiar from this point on. She had some misgivings about the safety of the drug, and requested additional evidence. More tests were run and additional clinical experience reports were submitted. This went on for some time. Then came the sad news from Europe that this drug was responsible for the tragic experience at childbirth. So Dr. Kelsey's doubts and determined refusal to grant permission to manufacture this drug in America were well justified.

Very properly, President Kennedy gave Dr. Frances Kelsey an award for this splendid contribution to public service. All of us rejoice for her. We express our gratitude also for the system by which she was able to exercise enough authority to protect the public in this manner.

It is noteworthy that thalidomide was barred and the public was protected under the 1938 act for Food and Drug Administration, as amended. Later testimony showed that even then not all of the powers in the drug field granted to the Secretary of Health, Education, and Welfare were employed by him or by the Food and Drug Administration. It is further noteworthy that new proposed rules are drafted and are being promulgated under the present law and without reference to any new authority contained in the pending bill.

Notwithstanding the fact that the present law was ample to detect and bar thalidomide here in America, the episode was useful to illustrate the necessity of additional provisions in the law, which I shall discuss later. Largely, however, they are a refinement of procedures and provisions already contained in S. 1552, as originally reported, rather than an enlargment of the scope of the bill. It should be observed that S. 1552 was first reported on July 19. It was sent back to the Judiciary Committee for further consideration and amendment, and reported in its present form on August 21.

WHY WAIT FOR A NEAR TRAGEDY BEFORE AMENDING THE LAW?

Quite often the question has been asked, Why was it necessary to have awaited or risked the near tragedy which threatened us in the thalidomide case before action is taken to strengthen the drug laws?

The plain answer is that the proceedings leading to the formulation and introduction of the instant bill long predated the thalidomide case.

Hearings were started by the Antitrust and Monopoly Subcommittee in 1959. They had to do, not with passing an original law on the subject, but to strengthen and to improve the existing statutes. The original Food and Drug Act was passed way back in 1906, during President Theodore Roosevelt's administration. Since then, from time to time, there have been several revisions of that law. Scientific methods change. New drugs appear. New operative procedures develop. And as they do, new problems arise and the law has to be changed.

The latest change in the drug laws was made in 1938, nearly 24 years ago. That was shortly after the appearance of the wonder drugs, particularly the antibiotics. It is now thought well to revise the drug laws again, this time radically and fundamentally so as to catch up with the times. That is what has been going on for 3 years, and that is the point at which we now find ourselves.

COMMITTEE?

Much curiosity exists as to why the Senate Judiciary Committee should be supporting and sponsoring a bill pertaining to the drug industry. Very frankly, some of us on the committee have wondered about this, too.

After all, the Judiciary Committee has jurisdiction over the courts, the national penitentiaries, immigration laws, antitrust laws, patents, constitutional rights and amendments, and similar subjects.

Why did it get into a bill which amends the statutes regarding the manufacture and distribution of drugs?

Frankly, the reason is that it was first thought that the antitrust laws were being violated by the drug industry; that a concentration of the industry resulted in monopoly; that the patent laws were not adequate; and that as a result of all this, drug prices were too high.

It is logical for the Antitrust and Monopoly Subcommittee to inquire into these subjects and to recommend whatever corrective action is necessary.

Although I will discuss some of these specific provisions later, at this point I should like to observe that the bill has no provisions for new antitrust laws, no provisions dealing with monopoly, no provisions amending the patent law, and no provisions against price fixing.

In fact the bill, as has been stated, relates to the conditions under which prescription drugs are made, distributed, admitted to the market, retained or withdrawn therefrom, and similar subjects. All of these matters are more properly within the jurisdiction of the Senate Committee on Labor and Public Welfare, to which food and drug administration measures are ordinarily assigned.

OPPOSITION TO BILL AS ORIGINALLY DRAFTED

S. 1552, in its original form, was introduced in April 1961. It contained several provisions which the committee subsequently rejected because they were detrimental, not only to the drug manufacturers, but more importantly and especially to the physicians who prescribed such drugs and the patients who would take such drugs and benefit from them.

With those detrimental provisions, the bill drew steadfast opposition from several members of the subcommittee. This generated much unwarranted and improperly founded criticism. However, by patiently developing the facts and reasons for their opposition, those members gained considerable support by the time the bill reached the entire committee. This is clearly seen by the fact that when the bill reached its final form, as reported to the Senate this week, it had unanimous approval of the entire Judiciary Committee membership—yet none of the highly objectional provisions remained.

In general, these objectional provisions had to do principally with our patent system and with the proposal to federally license manufacturers of prescription drugs.

These and other detrimental sections of the bill were wisely deleted.

Any attempt to resurrect any of these rejected provisions, in the form of an amendment to the bill, should be resisted and defeated.

In the main, it can be said that the bill in its present form fills a need and serves a purpose recognized as proper and desirable, not only by the Food and Drug Administration, physicians, and the general public, but also by the pharmaceutical industry itself. In fact, there was strong support for revision of the 1938 drug laws from the industry and the practicing physicians. But there was also grave concern expressed about the pending bill until the objectional provisions referred to above were deleted.

THE PATENT SYSTEM SHOULD NOT BE DESTROYED OR IMPAIRED

The bill as originally introduced provided for compulsory licensing under patents; that is, an inventor who secured a patent on a new drug would be forced to license any qualified manufacturer to make and sell the patented drug under certain conditions. Also, the original bill would have prohibited the holder of any patent from withdrawing any application for patent or conceding the priority of invention to any other applicant. He would likewise be required to file any agreements settling any interference suits or claims pertaining to such a patent.

Further restrictions as to patentability were sought in cases of so-called minor or molecular modifications of any drug or combination of drugs.

All of these proposals were very wisely rejected.

The patent system is very important to America. It has done much to make our Nation the leader in industry, commerce, and the sciences. We should remember that it is a system which the Federal Constitution itself provides and protects.

While it is generally vital, a patent is particularly important in the manufacture of pharmaceutical products.

Research by which new drugs are invented or discovered is very expensive. The cost sometimes runs into the millions of dollars. More often than not such research does not result in any marketable product. Just as in the oil drilling operation, many of the holes are dry.

The only way a company can justify the expenditure of stockholders' funds is by the assurance that it can recover the expense of research, development, and marketing of a new medicine. The patent system affords that assurance by giving the inventor for a term of years the exclusive right to manufacture, sell, or license such new drugs.

If the patent system were impaired by provisions such as those originally contained in the proposed bill, such a recovery of expense would no longer be possible. The specification of compulsory licensing to any qualified applicant after 3 years, as originally proposed, would completely dry up research funds, permanently retarding the dramatic advance in health standards and public care.

Consider that over two-thirds of the new drugs of the past 25 years have been discovered and developed here in America. Tremendous progress has been made. Yet there is so much more to be done in the search for new medicines and drugs to relieve pain and save lives. We need only to recall the enormous research which yet must be done in the fields of cancer, heart cases, multiple sclerosis, nephritis, arthritis, and a host of other diseases to realize this fully.

In order to have new discoveries, we must have an effective patent system. It is interesting to note that the trend in the world today is toward strengthening and making patent laws more effective rather than to dilute, impair, or repeal them. Particularly notable is the fact that the European Common Market is right now engaged in perfecting a system of product patents on pharmaceuticals. When that system is made effective, it will include Italy, which now has no patent laws on pharmaceuticals.

One of the outstanding witnesses on this subject during the course of the hearings was Dr. Vannevar Bush, an eminent scientist and inventor in his own right.

Madam President, I ask unanimous consent that an excerpt from the testimony of Dr. Bush be printed at this point in the RECORD.

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

EXCERPT FROM TESTIMONY OF DR. VANNEVAR BUSH

I was Chairman of the President's Science Advisory Board appointed in 1943 to study the patent system, and I was a member of a similar Patent Survey Committee created in 1945.

I am one of few recently to propose a program of far-reaching changes in the patent system to bring it in line with modern conditions. This appeared as Study No. 1, conducted by your sister Subcommittee on Patents, Trademarks, and Copyrights, entitled "Proposals for Improving the Patent System" and published in 1956. I am still learning things, and I would not today attempt to support every proposal I then made.

I continue to be convinced, however: (1) that the patent system is an essential part of our free enterprise system; (2) that it has been responsible for a significant part of the great technical and industrial advance of this country; that in particular it has made possible the salutary advent of many small independent individual companies; (3) that the system is not perfect, and that revisions could be made which would bring it into step more fully with modern conditions; (4) that when such a revision is made it must be done on an overall basis, by a group that fully understands the system, and also understands modern research and development, and that any attempt to do it piecemeal would inevitably result in damage to the system and to our national progress.

If I were to attempt to analyze the system in all its aspects, I would be here for a week. I will therefore speak only of aspects affected by the present bill.

As far as patents are concerned, the central feature of the present bill is that it would require the licensing of all drug patents to all comers after a 3-year interval, and at royalties with a stated maximum.

The simple fact is that, if this were the law of the land, we would soon no longer lead the world in the development of new and useful drugs. Our industrial research programs on drug development would be severely cut back. How great a catastrophe this would be is not hard to visualize.

Mr. HRUSKA. Madam President, if we are to continue to have new discoveries and new inventions in the drug field or in any other field, it is necessary to keep the patent system and improve it, rather than to repeal or impair it.

Madam President, the pending bill can be recommended, not only for what it contains, but also for what it avoids. The bill does not contain an elaborate system of Federal licensing for drug manufacturers as originally proposed. The drug industry is not a public utility. It has enormous responsibility to the

American people, but so long as its products are safe and pure and will do what they are represented to do, the industry should be left free to conduct its own affairs in the American tradition of free enterprise.

The bill will bring reform, but it will not remove the responsibility from the industry to develop and distribute worthwhile drugs. The Government has extensive powers, especially in the area of factory inspection, advertising, and the quality control. There were attempts to give the Government even greater powers in these areas, but the committee wisely drew a line.

After all, a balance should be observed in legislation of this kind. The law which is placed on the statute books should, by all means, provide sufficient power to protect the public. At the same time, it should not impose insuperable obstacles upon industry, the public, and on the Government agencies themselves which prevent the introduction of useful medicines on the market. The task of the Food and Drug Administration is to protect the public. It discharges that mission in two ways: One, is by preventing harmful drugs from reaching the public. The other is by seeing that useful drugs and medicines receive approval and are placed on the market. When that latter mission fails, the public is not protected, because it is denied products which are helpful. We should not suffer that to happen any more than we would to expose the public to harmful products.

ARE DRUG PRICES EXCESSIVE?

To charge that prices are too high and to promise a reduction by legislation leads many a demagogic politician into a wonderful dream world. Sometimes it goes so far that he even convinces himself of his own virtue and prowess as a "friend and deliverer of the people."

An appeal to the emotions bring many plaudits. In turn this generates even more extravagant promises.

I mean promises that far too often cannot be fulfilled, Mr. President. I refer to promises that are not realistic. Promises that are cruel and deceptive to those to whom they are extended.

Everyone is for lower prices for clothing, food, rent, and services of all kinds. Who would not favor lowering the costs even on entertainment for which the average American spends 4 cents out of every dollar of disposable income; or on liquor or tobacco, on which he spends 5 cents out of such dollar. The record shows incidentally, that he spends only 1 cent for drugs out of such dollar.

However, prices cannot be legislated. It is possible, of course, to pass a law that a certain pill must not sell for more than $2 per hundred rather than the previous price of $3. But the undoubted result would be that no pills will be made and thus available under such a law.

One witness appearing before the Antitrust and Monopoly Subcommittee, Dean Eugene Rostow of the Yale Law School discussed the question, "Are prices and profits too high?" in this way:

The committee's report, and a good deal of the testimony here, criticizes the industry performance of prices and profits which are deemed to be too high. Indeed, the chairman's opening statement takes the view that "the principal, though not the only reason for the bill, is that ethical drug prices are generally unreasonable and excessive." That is the end of the quotation from the chairman of this committee. I have two comments to make about that arresting statement. The first is that the committee's report does not convince me that the charge is valid, and what other evidence I have seen tends to support the contrary conclusion, for an expanding industry like the drug industry. The second point I should like to make is that even if we could agree that drug prices are too high, by some manageable standard, the committee report is static rather than dynamic; that is, it attempts to deal with prices at a moment of time, and not over a period of time. It therefore poses a problem which the whole tradition of the antitrust law regards, and I think rightly regards, as irrelevant. On the first point—whether drug prices can in fact be considered too high in some sense—Professor Markham has reviewed the evidence, and I do not wish to burden you with repetitive material. The most appropriate criterion to use in attempting to answer the question is that of company profitability, not profitability for particular products, and especially particular new products. Company profitability is the only way to judge the combined effect of new and old products, and of research failures and successes.

PRICES AND PROFITS

There are many factors that go into price. A distinction should be made between prices and profits. It would be a considerable help in this debate.

In his testimony, Dr. Vannevar Bush spoke to this subject.

Now do not gather from this that I think our whole system of providing drugs for the public is perfect. I do not. I believe it can be improved. In particular I believe the cost of drugs to the user can be reduced. But the way to do this is not to knock out the source of new and better ones. The reason for the high cost of drugs does not lie in undue profits realized by the pharmaceutical industry. If an individual goes into a drugstore and pays a dollar for a prescription, 4 or 5 cents of that dollar represents profit to the concern which made it. If we knocked out all the manufacturer's profit, we would not reduce the cost much, and soon we would have an industry in distress. Personally, I never want to buy a drug made by a company that is losing money and is therefore tempted to cut corners. We need a healthy industry if we aspire to a fully healthy population.

The record shows that the average price of prescriptions in the United States is about $3. Sixty percent of them cost $3 or less. One in 100 prescriptions costs as much as $10. The manufacturer gets about 50 percent of the retail cost. Out of that he must underwrite the production expense and the costs of selling, advertising and promotion, pay the general and administrative expenses, taxes, licenses, royalties, and put aside reserves for depreciation, quality controls and research. All these must be taken care of before a profit is realized.

It is even more significant to compare such prices with other items. In the 10 years starting in 1948, average real wages of chemical and allied products workers increased 70 percent. Construction costs rose 64 percent. Wholesale drug prices rose 3 percent.

In that same decade, increases in retail prices of drugs have been substantially less than cost of living—rents, personal care, transportation and other essential items for the well-being and security of our citizens.

On the wholesale price index, using 100 for the year 1949, the Bureau of Labor Statistics shows that all commodities except farm and food products have gone up over 26 percent. Using that same index of 100, our committee record shows that there was a decline of prices for prescription drugs by over 10 points through the year 1961.

The same index shows that wholesale prices of industrial products rose 22 percent while wholesale drug prices rose only 3 percent.

GREATER EFFECTIVENESS OF DRUGS

We have the finest physicians in the world. They have the best training; the best hospitals in which to work and the best medicines which can be prescribed for the ills of their patients. It is this health team which has produced a standard which is the envy of the world.

In the past three decades the average life span has been increased by 10 years and 4.4 million working-age people are alive today who would have been dead if 1935 mortality rate continued.

The committee hearings show that the reduction in mortality contributes as much as $10.4 billion to the gross national product. The reduction in disability time contributes $2.5 billion.

WHAT ABOUT SPECTACULAR MARKUP IN DRUG PRICES?

Much has been made during the entire hearings and in this debate about tremendously high markups. Usually those who call attention to these astronomical percentage figures are careful to call it a "markup," or "margin by the factory cost and price to the retail druggists." However, the general public leaps to the conclusion that it is "profits" that are being talked about. Thus the repeated assertions of such great percentages are very misleading and inflammatory.

One example given was that after a compound had been made into tablets and put into bottles, the cost—including the cost of labor and the cost of making the tablets and placing them in bottles and preparing the bottles for shipment to the pharmacies—was $1.50; but the same pills were sold to the pharmacists for $15; so there was a markup of 1,000 percent.

The plain fact is that the term "markup," as thus used, covers only the production cost and the raw material in most of these cases. There is omitted from the calculation of profit all of the other expenses of doing business, including selling, advertising and promotion, general overhead, taxes—Uncle Sam gets 52 percent out of every dollar of profit—reserves for depreciation, quality control, and research.

This fact was brought out many times, but that did not deter the practice of using these extravagant and misleading figures on the part of those who just cited them.

The PRESIDING OFFICER (Mr. McCARTHY in the chair). The time the Senator from Nebraska has yielded to himself has expired.

Mr. HRUSKA. Mr. President, I yield myself 5 more minutes.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 5 more minutes.

Mr. HRUSKA. Mr. President, very often the pharmaceutical industry is portrayed as one of the highest profit makers on the American industrial scene. It will be noted that all too frequently a particular year is selected and used to illustrate this point. Unfortunately, no industry or company can live forever on the experience of any single calendar year. This is both good and bad, because some years also produce losses; hence, it is necessary to take an average over a period of years. In our committee hearings we find the statistic that for the 10 years of 1949–58, thus including several of the higher postwar years and the unusual years of 1957 and 1958, the average profit on sales for 10 larger companies was 12.2 percent. This is a much more fair way to compute profits.

The basis of profits is also a very interesting, although perplexing and baffling, subject. It is one thing to compute profits on the basis of net worth, a very highly flexible and variable method. It is another thing to use the normal standard of profits on basis of sales. Many hours of testimony were taken on this subject.

Still another fallacy in the computation of profits is that a particular product at a particular time, is taken rather than the entire range of products which are researched, developed, and marketed. Obviously, no company's profit position can properly or accurately be figured on such a restricted basis.

In summary, Mr. President, we must strengthen and preserve the system which has made possible the high standard of health care our country enjoys. But we cannot make progress by downgrading the practice of medicine or by destroying the manufacturer of drugs.

The Food and Drug Administration has a vital mission—to protect the public. Our efforts in Congress will be constantly devoted and directed toward improving the food and drug laws so as to assure the continued success of this mission.

Mr. President, the bill before the Senate complies with the President's recommendations. The bill originally reported to the Senate received the unanimous vote of the committee, as did the one which was reported earlier this week.

Having personally considered this legislation at each stage of the long course of committee hearings and executive session markups, I confidently commend it to my colleagues and the country.

Finally, Mr. President, I should like to extend my own congratulations to the staff of the committee and to the staff of the Antitrust Subcommittee. They have worked hard, and they have been most helpful.

I also wish to express my appreciation to the chairman of the subcommittee, Senator KEFAUVER. He has been considerate and patient, and has worked well with us. From time to time we have had differences which occasionally were quite spirited. But when they arose and there was the possibility of reconciliation, the chairman of the full committee, the Senator from Mississippi [Mr. EASTLAND], was always willing to serve as an arbitrator and invariably found an acceptable solution.

I also join in the thanks and compliments which have been extended by other Senators to all who have participated in this important work.

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

Mr. HART. Mr. President——

Mr. KEFAUVER. Mr. President, I yield 15 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 15 minutes.

Mr. HART. Mr. President, today we are discussing this bill in a vastly different atmosphere from that which prevailed in recent months.

As Senators will observe, the bill was introduced on April 12 by the Senator from Tennessee [Mr. KEFAUVER], on behalf of himself and myself; and on July 19 the bill was reported by the Senator from Mississippi [Mr. EASTLAND], with amendments.

There is no need to discuss the chronological sequence of events which have led up to our consideration of the bill today, even though such a study may be of interest, as a case study, to those who may desire to evaluate such developments.

Mr. President, the terrible conditions of work which existed during the late 1800's in factories in which women were employed were finally improved following the terrible fire in the Triangle shirtwaist factory.

Very dangerous conditions which had long existed in the mines were finally improved, after terrible accidents had occurred.

In dealing with the dangerous practices followed in the drug industry, for a long time the Senator from Tennessee [Mr. KEFAUVER] was almost alone. I was glad to join him in attempting to impress upon the Congress the absolute necessity for marked improvements in both the production, the controls, and the pricing practices used in connection with ethical drugs.

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

Mr. HART. Gladly.

Mr. KEFAUVER. At this time I want to express my deep appreciation to the Senator from Michigan for his interest, cooperation, and support throughout the whole investigation and all proceedings in connection with the bill. He was, along with me, a sponsor of the bill. He studied the problem. He was present at practically all the hearings, and spent a great deal of time and gave a great deal of thought to what should be done about this problem.

In the hearings, in the action of the subcommittee, in the action of the full committee, in getting the message to the people about the need for improvement in connection with the drug industry, he has been a valiant force and a strong and effective voice. I personally am grateful. The Senator deserves a great deal of credit, and I know the good people of his State of Michigan have much appreciation of the work the Senator has done and for his support of the bill.

Mr. HART. I can only express my thanks to the Senator from Tennessee for a statement which I shall treasure so long as I have mind and memory.

Mr. KEFAUVER. I hope that will be a long time.

Mr. HART. Mr. President, other Senators will describe, and the report of the committee in detail analyzes, all of the aspects of the bill now before the Senate. I wish to discuss just two aspects.

First, I hope Senators will agree, as they look at the complete record of the subcommittee hearings, that the committee took pains to build a complete record. That record makes clear to laymen a subject which is difficult and complex, and it reveals the need for the various provisions of S. 1552.

My remarks today will not be devoted to an analysis of that bill. Rather, I want to discuss briefly the sections relating to generic names and to advertising. I have a special interest in the provisions affecting generic names. In May 1960, when it was necessary for the Senator from Tennessee [Mr. KEFAUVER] to be absent from Washington, he designated me to preside over the 4 days of hearings devoted to the perplexing and most difficult problems involving the prescribing of drugs by generic and brand names. At that time, the committee was examining the prescription drug industry, as a part of its study of administered prices. From that, the drug antitrust bill now before the Senate evolved.

I know that I was one of those who needed to be reminded that in the field of prescription drugs, the person who pays for the prescription has nothing to say about what drug is to be ordered. Necessarily, it is the doctor who makes that choice. One of the purposes of the bill is to bring about conditions under which doctors may prescribe drugs by generic name and be confident that drugs meeting the highest standard are supplied.

At the root of this whole problem is the fact that certain drugs have achieved acceptance by their trade names in the mind of the physician who writes the prescription. That acceptance has been won through the efforts of the industry's salesmen, who are called detail men; it has been won by sustained and expensive and, why blink at the unhappy fact, sometimes misleading advertising; and, finally, that acceptance flows from the weakness of the law which makes it possible for a few unqualified manufacturers to operate.

I think it would be interesting to note here that, under present law, one can take a glass of water, put a little coloring in it, it can be called a manufacturing process, and he can obtain from the Food and Drug Administration a license to market it as a new drug. There is nothing the Food and Drug Administration can do about it. Why? Because it does not hurt anyone. It does not do anyone a blessed bit of good.

The shocking thing is that under present law a license must automatically issue, and thereafter, as Secretary Ribicoff testified, a cat and mouse game must be played to see if the Food and Drug Administration can find if there has been mislabeling or misleading advertising.

It is most unfortunate that high prices in prescription drugs should result from the fact that many doctors are uneasy about prescribing by generic names. Why is this so? The answer is that it is the weakness of the law which makes for this insecurity and makes high prices inevitable for prescription drugs.

Perhaps the situation will be made clearer if we move for a moment from drugs, which no one on this floor is qualified to prescribe, to the purchase of beef, with which all of us are familiar. When one goes to the butcher shop to buy a rib roast, he may like or dislike the price or the amount of fat on the beef displayed, but when he sees stamped on the meat the words, "USDA Prime," or "USDA Choice," or "USDA Good," he knows that a Government agency has impersonally graded the meat. The consumer then does not have to ask himself whether the name of the packer is one which has been dinned into his consciousness. The product has acceptance as prime, choice, or good. Is it surprising that packers who are heavy advertisers should try to have Government grading forbidden? One hears that this is so. When we have confusion and insecurity, it is the heaviest advertiser, not necessarily the maker of the best product, who prevails.

We may say that their attitude is shortsighted and not concerend with the public interest, but our problem is not a complicated one. The problem simply comes to an end when we demand that all drug manufacturers meet strict standards—and when we provide that any manufacturer who fails to meet the standard for a given product cannot continue to make that product.

The stricter standards for inspection imposed by this bill, and its requirement for registration, will guarantee the quality of every drug sold in the United States. The physician will know it is of adequate and acceptable quality whether it is marketed under a brand name or under a generic name.

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

Mr. HART. Gladly.

Mr. KEFAUVER. The Senator conducted this important part of the hearings. Is it not true that the drug manufacturers spend $5,000 a year per physician to send out detail men who provide the physician with sample drugs and give him information about their own drugs, and for other selling and promotional expenses?

Mr. HART. That was indicated from our record of the hearings.

Mr. KEFAUVER. Is not the principal purpose of detailing to impress on the mind of the physicians a trade name and to leave the impression that if they used a drug with a trade name of a well-known manufacturer, they were perhaps getting a purer drug or a better drug or a more efficacious drug than would be so if the drug had been purchased by the generic name at a lower price?

Mr. HART. The testimony indicated clearly that that was the purpose of detailmen, and that was, in fact, the way they performed.

Mr. KEFAUVER. While the provision of the bill which the Senator is talking about now, relating to stricter factory inspections and control measures, may not be as effective as licensing, it will, in the first instance, be effective and give the physician adequate grounds for relying upon the soundness, purity, strength, and efficacy of any drug purchased or manufactured in this country, whether prescribed by the generic name or by the trade name. Is that correct?

Mr. HART. I feel that is so. Certainly it is our hope.

Something which bothered me very much and which bothered the Senator from Tennessee very much was the discovery that in certain States and in certain cities it was required that a prescription written for a person on public welfare be written in the generic name. If it is safe for the welfare patient, it is safe for all of us. If it is not safe, then it should not be done for any of us.

Mr. KEFAUVER. Did not the American Medical Association recommend that prescriptions be prescribed by generic name in the cases of welfare patients? But did not the same association fail to make such a recommendation for all other people?

Mr. HART. It is my recollection that this position was taken by the association in December of 1960.

Mr. KEFAUVER. The Senator feels as I do, does he not, that merely because a person is not so fortunate as to have as much money as somebody else, there is no justification for discrimination as to the purity or effectiveness of the kinds of drugs he takes?

Mr. HART. The question answers itself.

There are a great many reasons which were assigned as to why it was all right for the military to buy generically and why it was all right for large hospitals to buy generically, because they had formularies and they had hypothecaries and they could test the drugs. It was said that they could be sure of the quality.

What about the welfare patient? He did not have those services, but still it was felt all right to give him that type of prescription.

Let us not churn up the water now over the dam. Let us be thankful that we have a bill before us which will give assurance to physicians that if they prescribe generically the sources from which the drugs will be secured will be inspected, so that standards will be met. I think this is a most important aspect of the proposed legislation which, in the excitement and emotions following the incidents with respect to thalidomide, has been overlooked.

Mr. President, the effect of an easy and safe system of generic name prescribing is lower prices for drugs. I am anxious that my colleagues have always in mind this fact, so I want to touch briefly upon what the record reveals as to the pricing situation. The 1961 report of the Senate Judiciary Committee on "Administered Prices—Drugs," gives concrete examples of how small companies, marketing drugs under generic names, offer them at prices much below those of large manufacturers marketing the same drugs under brand names. These examples, of course, are drawn from those drugs which are not patented, such as penicillin, and prednisone, over which a patent dispute raged and enabled the development of a bulk market in the drug.

The Judiciary Committee's report shows comparative wholesale prices between selected small companies and large companies for penicillin potassium G tablets. Among the small companies—which traditionally sell by generic name—the prices for 100 tablets range from $2.95 to $3.30, to $4 or $5. In contrast, Merck and the Squibb division of Olin Mathieson charge $12 for the same quantity. The record is filled with instances of similar price disparity.

The PRESIDING OFFICER. The time allotted to the Senator from Michigan has expired.

Mr. HART. May I have 10 more minutes?

Mr. KEFAUVER. Mr. President, I yield 10 more minutes to the distinguished Senator, from the time on the bill.

The PRESIDING OFFICER. The Senator may proceed for 10 additional minutes.

Mr. HART. For prednisone and prednisolone, the small manufacturers again offer at the lower prices, that of the lowest price manufacturer being $4 for prednisone and $4.85 for prenisolone. Other offerings of small manufacturers were as high as $7.50 for prednisone and $7.75 for prednisolone. This relatively high figure, however, contrasts with the price of $17.90, for both prednisone and prednisolone, in which there is absolute price identity among the major manufacturers which offer it.

So much for certain aspects of the pricing practices as shown in the record. What this bill would do is insure the quality of all drugs. With this assurance, physicians could prescribe generically with greater confidence—and in many cases with a resulting price saving. It further would encourage generic prescriptions by strengthening the whole generic name system.

The drug antitrust bill moves effectively to end the chaos that now exists in the naming of prescription drugs. First, the authority to designate an official name for any drug in appropriate cases is to be conferred upon the Secretary of Health, Education, and Welfare.

When that name is established for any drug, it shall be the only official name used for the drug in any official compendium, and for the other purposes of the Food, Drug, and Cosmetics Act.

The bill removes authority for choosing generic names from the manufacturers—who profit when generic names cannot be remembered—and making the selection the responsibility of the Secretary of Health, Education, and Welfare. The bill would end an evil which is stated with remarkable clarity and economy in a single sentence in the report:

If the generic name—

The report says—

is too long to remember, too complex to spell, or, even simpler, if there is no generic name whatever, the physician is almost compelled to write his prescription in terms of the trade name, which is usually simple, short, easy to remember, and continually impressed upon his mind by advertising and promotion efforts.

And the report correctly comments:

The present confusion is the combined result of an incentive for the drug companies to minimize the use of generic names and an absence of authority by any public body over the designation.

Whether we excuse or condemn the tendency of drug companies to minimize the use of generic names so as to focus the doctor's attention on their trade-name products, the bill before us would effectively end the practice.

The bill would provide that every drug advertisement, regardless of what medium is used, must include the generic name, which must be printed in type one-half as large and as prominent as that used for the trade or brand name in the advertisement. The advertisement would have to include a warning or a summary as to any dangerous or harmful property or effect from the drug. And finally, every advertisement would have to include a full and correct statement of the drug's efficacy.

I have said that there was a practice of subordinating or minimizing generic names, and the record amply demonstrates this. In that record are examples of advertisements with no generic names. There are instances of generic names printed in type so small as to be almost beyond reading. But was this accidental? No, for the record also discloses directives from drug firms instructing their advertising agencies not to use generic names except where absolutely necessary. A publication which does require the use of generic names in advertisements is the Journal of the American Medical Association. The record shows even here an attempt to evade this requirement. Again and again, there is the depressing evidence of the Journal calling to account one of the very largest advertising agencies, specializing in ethical drug promotion, for its failure to list the generic name, or for listing it in type of too small a size. And if this is not enough, we have the spectacle of a large manufacturer of drugs failing to designate any generic name at all. In such a case, there could be no fear of a doctor failing to prescribe by the company's brand name and instead prescribing by a nonexistent generic name.

It might be argued that in all the instances which I have cited the error was inadvertent. This bill recognizes the transcendent importance of generic names if the American people are to have good drugs at reasonable prices, and it seeks to end the failure to disclose generic names, whether that failure is intentional or unintentional.

I believe an inseparable part of the generic name safeguards is the bill's requirement that when a drug has harmful side effects or contraindications, the advertisement must list them or, if their length is too great for use in an advertisement, summarize them. Such a summary would have to be approved by the Secretary of Health, Education, and Welfare—the importance of which should be noted.

Is there a danger, and is the provision for disclosure of side effects necessary? Indeed, yes. The requirement comes from the fact that most drug advertisements fail to give anything approaching sufficient information, even as to injurious side effects. How widespread is this failure? To determine this, the subcommitee asked the Library of Congress to survey drug advertisements in six leading medical journals. The survey covered a 9-month period from July 1958 through March 1959. Thirty-four important trade-name products were covered. The advertisements for these drugs appeared in 2,033 pages of the journals. In no fewer than 89 percent, the report of the committee says:

The advertisement contained no reference to side effects at all or only a short dismissal phrase which was typically less of a warning than a reason for prescribing.

Please observe: 11 percent listed the warning, 89 percent failed to mention it.

The Committee on the Judiciary in 1962 submitted to the Senate its report entitled "Administered Prices—Drugs." That document told of the case in which one drug company failed to disclose significant information about the side effects of a new antidiabetic drug. Evidence showed that the medical officer of the company informed the president and others, by way of a summary report, the results of a clinical test. This report stated that out of nearly 2,000 clinical cases reported, 27 percent reported one or more side effects. Among the side effects were minor irritations, adverse effects upon the nervous system, serious skin disorders and jaundice.

The original advertising material accompanying the drug began with the statement:

Side effects are generally of a transient and nonserious character.

Now, if any of my colleagues tell me that the company acted in perfect good faith in thus paraphrasing the warning as originally prescribed by the company's own medical officer, I shall not argue with him. I concede that human beings can act in perfect good faith and that their actions may be suspected by their neighbors, especially when self-interest is served. But I submit to my colleagues that there is a way to end all controversies of this kind. The way is that taken by this bill before us. Guided by the abuses, or the mistakes of the past, the bill requires that where the side effects are summarized, that summary must be approved by the Secretary of Health, Education, and Welfare.

Mr. President, I submit that the provision is eminently fair. The story which I have recited shows how self-interest may lead a company to distort a warning, even granting that it is done in good faith. This provision, with its requirement that all advertising summarizing side effects must be approved by the Secretary, is a guarantee that the public health will be safeguarded.

Mr. President, the provisions strengthening generic names protect the public and do an injustice to no drug manufacturer and to no consumer. The provisions cover all manufacturers, not merely the large ones.

Mr. President, all of us certainly wish to salute the distinguished Senator from Tennessee [Mr. KEFAUVER]. As I said initially, human beings move for a variety of reasons, not all of which in any moment make sense. But his was the voice which pleaded with the conscience of the Senate and sought to reach the conscience of America for many months, protesting that existing law was inadequate, and that there were dangers and abuses. It required a tragic series of instances to make vivid the message that the Senator from Tennessee had been preaching and to bring this body to this day when, I am confident, it will respond and materially improve the safeguards to the people of America with respect to drugs. When we have done that, let us remember that had it not been for the groundwork laid by the Antitrust and Monopoly Subcommittee, under the chairmanship of the Senator from Tennessee [Mr. KEFAUVER], we would not have been in a position to move so quickly and effectively as we are now able to do in the light of the thalidomide incident. During that period there were heaped upon him many words, but none of praise. Now it is quite proper that he should be saluted for the leadership he has given. History will find for him a very secure place, and I am sure there will be an acknowledgement by a grateful people.

Mr. KEFAUVER. Mr. President, I call up my amendment designated "8–21–62—B" and ask unanimous consent that the name of the Senator from Minnesota [Mr. HUMPHREY] may be added as a cosponsor.

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

The amendment will be stated.

The CHIEF CLERK. On page 32, line 17, of the committee amendment, after "Secretary." it is proposed to insert the following new sentences: "Such regulations shall include provisions for adequate tests in animals and approval by the Secretary of the results of such tests before a new drug may be distributed by a manufacturer to scientific experts for testing and evaluation of its

effects in human beings. Such regulations shall also include provisions requiring said experts to register with the Secretary, to keep records with respect to the tests performed, and to furnish to the Secretary simultaneous copies of their reports to the manufacturer and, upon request of the Secretary, reports at other times."

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

The PRESIDING OFFICER. From which side will the time necessary for the quorum call be taken?

Mr. KEFAUVER. Mr. President, I ask unanimous consent that the time necessary for the quorum call be charged to neither side.

The PRESIDING OFFICER. Is there objection?

Mr. KUCHEL. Mr. President, reserving the right to object, may I inquire first whether the Senate is operating under a time agreement both on amendments and on the bill?

The PRESIDING OFFICER. Yes.

Mr. KUCHEL. How much time on the bill remains?

The PRESIDING OFFICER. On the bill the opponents have 54 minutes remaining and the proponents have 4 minutes.

Is there objection to the request of the Senator from Tennessee? The Chair hears none, and it will be so ordered.

The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. SMITH of Massachusetts in the chair). Without objection, it is so ordered.

Mr. KEFAUVER. Mr. President, I yield myself 10 minutes. I ask unanimous consent that the distinguished Senator from New York [Mr. JAVITS] may be a cosponsor of the amendment; as well as any other Senator who may wish to add his name.

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

Mr. KEFAUVER. Mr. President, let me say, first, what the procedure in drug testing is at the present time. Before a drug manufacturer files a new drug application, that is, for permission to sell the drug on the market, he places the drug with physicians. In the case of thalidomide, 1,200 physicians received the drug. Up to the present time, the Food and Drug Administration, although it may have some authority in the matter, has not used the skimpy authority it may have. It usually does not even know what physicians received the drug, nor how much of the drug has been sent out for testing, nor even that the drug has been placed with doctors for testing. The drug has been placed with physicians for testing on human beings, in many cases without having been tested on animals first. As Dr. Louis LaSagna of Johns Hopkins Hospital, stated before our subcommittee on July 19, 1961:

I might add that the present FDA prerogatives do not satisfy me with regard to toxicity either. It is shocking that experimental drugs are subject to essentially no FDA regulation of any sort before patients receive them. Some drughouses perform extensive animal tests before a drug is first put into man; others perform almost none. It is reprehensible for man to be the first experimental animal on which certain kinds of toxicity tests are run, simply because bypassing adequate acute or chronic toxicity tests in laboratory animals saves time and money.

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

Mr. KEFAUVER. I yield.

Mr. DOUGLAS. Was that done with the consent or without the protest of the Food and Drug Administration?

Mr. KEFAUVER. Up to this time the Food and Drug Administration has not come into the picture at all.

Mr. DOUGLAS. I thank the Senator.

Mr. KEFAUVER. That is a dangerous situation. There ought to be adequate testing on animals. The malformation of babies as a result of thalidomide could have been avoided if the drug had been tested on rabbits, because in England after the association of malformation with thalidomide in humans had been established and after the drug had been taken off the market, the British licensee, the Distillers Corp., tested the drug in rabbits and they found that the baby rabbits were malformed, in the same way as human babies.

I ask unanimous consent that the Senator from Rhode Island [Mr. PASTORE] be added as a cosponsor of the amendment.

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

Mr. KEFAUVER. The noted English medical journal, the Lancet, published the story of thalidomide testing on rabbits. There has not been adequate animal testing done either in England or in the United States, and certainly not in Germany, where thalidomide had been sold over the counter.

It might be of interest to have printed in the RECORD this and another interesting article published in The Lancet on the need for determining the effect of drugs, generally, on the embryo.

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

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

IATROGENIC DISEASES OF THE NEWBORN

That one person's meat may be another's poison can be especially trying when the two individuals are connected by a placental circulation: thus the drugs taken by the pregnant woman may enter and upset her fetus. Moreover, drugs prescribed in doses relatively safe for older children and adults may harm the newborn even when given in proportionate amounts. So many surprising examples of this danger, admirably reviewed by Nyhan [1] and Lucey [2] have been recorded in the past few years that it behooves all who care for the pregnant woman or the newborn infant to be on the alert for it.

Tolbutamide [3] has been blamed for the congenital malformations of infants of diabetic mothers. This has not yet been confirmed; but undoubtedly the androgens,[4] the androgenic progestogens,[5 6] and occasionally the synthetic œstrogens,[7] if given in early pregnancy, can masculinise the female fœtus. Malformation has followed attempted abortion with aminopterin,[8] and congenital goitre may result from treatment of the mother with anti-thyroid drugs [9] or with iodide-containing mixtures as recorded again, in our present issue, by Dr. Anderson and Dr. Bird. The use of hexamethonium bromide for maternal hypertension has caused paralytic ileus in the fœtus;[10] while temporary nasal discharge, costal retraction, lethargy, and anorexia have been reported in newborn infants of mothers receiving reserpine during labour.[11] The thoughtless administration or large volumes of intravenous fluids to labouring women can certainly influence the plasma-sodium concentration and the tonicity of the fœtus, although there is still no direct evidence that this is harmful.[12]

The vitamin-Kanalogue, naphthaquinone, Synkavit (the diphosphoric acid ester of 2-methyl-1: 4-naphthohydroquinone), is now known to cause hyperbilirubinaemia and even kernicterus in the newborn,[13 14] particularly in the premature,[15] when (on the false assumption that if a little of it does good then a lot must do much better) it is given in doses far exceeding the 1–2 mg. necessary for the correction of hypoprothrombinaemia, or when it leaks across the placenta after a really big dose has been given to the mother before delivery. It is directly harmful to red blood cells even in vitro, and it may be more so in the presence of hypoglycaemia or when vitamin E levels are as low as they are in prematures.[15] On the other hand it causes the abnormal breakdown of red blood cells in which as a genetic defect the enzyme, glucose-6-phosphate dehydrogenase, is deficient and glutathione stability is altered. But in the low doses now recommended it should be harmless.

That redoubtable antimicrobial warrior, chloramphenical, has habit of returning bloody but unbowed from the recurrent near-mortal wounds inflicted by his critics. At present this invaluable antibiotic is shunned by many because there is considerable evidence that it has caused the death of newborn infants.[16] Several observers, principally in the United States, have described how babies, particularly prematures,

---

[1] Nyhan, W. L., J. Pediat., 1961, 59, 1.

[2] Lucey, J. F., Pediat., Clin. N. Amer., 1961, 8, 413.

[3] Larrson, Y., Sterky, G. Lancet, 1960, ii, 1424.

[4] Grumbach, M. M., Ducharme, J. R. Fertil. Steril. 1960, 2, 157.

[5] Moncrieff, A. Lancet, 1958, ii, 267.

[6] Wilkins, L. F. Amer. med. Ass. 1960, 172, 1028.

[7] Bongiovanni, A. M., DiGeorge, A. M., Grumbach, M. M. F. chr. Endocrin. 1959, 19, 1004.

[8] Warkany, J., Beaudry, P. H., Hornstein, S. Amer. F. Dis. Child. 1959, 97, 274.

[9] Wilkins, L. The Diagnosis and Treatment of Endocrine Disorders in Childhood and Adolescence. Oxford, 1957.

[10] Hallum, J., Hatchuel, W. Arch. Dis. Childh. 1954, 29, 354.

[11] Budnick, I. S., Leikin, S., Hoeck, L. E. Amer. F. Dis. Child. 1955, 90, 286.

[12] Battaglia, F., Prystowsky, H., Smisson, C., Hellegers, A., Bruns, P. Pediatrics, 1960, 25, 2.

[13] Allison, A. C. Arch. Dis. Childh. 1955, 30, 299.

[14] Meyer, T. C., Angus, J., ibid., 1956, 31, 212.

[15] Crosse, V. M., Meyer, T. C., Gerrard, J. W., ibid., 1955, 30, 501.

[16] Lischner, H., Seligman, S. J., Krammer, A., Parmelee, A. H. F. Pediat, 1961, 59, 21.

have after a few days' treatment with chloramphenicol developed poor appetite, irregular shallow respiration, abdominal distension, hypothermia, flaccidity, ashen-gray cyanosis, and circulatory collapse, and have died. These signs can, of course, result from the infection for which chloramphenicol is given; and it is only fair to point out that the "gray syndrome" has usually appeared when this antibiotic has been prescribed for newborns in daily doses of 100 mg. or more per kg. body-weight, and that it has not been reported when the manufacturers' recommendation of 25 mg. per kg. daily for prematures and double this amount for full-term babies in the first week of life has been followed. The susceptibility of the newborn seems to lie in a failure of glucuronidation whereby relatively low doses produce effective or high plasma-levels of free chloramphenicol and excretion of the inactive glucuronide is reduced.

This is a further example of enzyme immaturity; and here, as in the poor glucuronidation of bilirubin in neonatal hyperbilirubinaemia, a deficiency of glucuronyl transferase is important. A dose of 25 mg. per kg. daily is probably adequate not only for prematures but for all babies in the first week, and administration need only be twice daily. Thus although there has been a swing away from chloramphenicol, and even frank condemnation of it, its use continues in hospitals where it has been freely used for years in the newborn in low but effective doses without the "gray syndrome" having been observed. Nyhan points out that similar problems of immaturity in relation to glucuronidation may affect the metabolism in the baby of thyroxine, hydrocortisone, and (more important) progesterone and morphine. The newborn is also deficient in the enzyme pseudocholinesterase;[17] and this may be of practical importance, since long-continued apnoea has been described where succinylcholine has been used in anesthesia in the absence of normal enzyme activity.[18]

High circulating levels of unconjugated bilirubin, due partly to glucuronyl-transferase deficiency, are associated with a risk of kernicterus which varies directly with the level and indirectly with maturity. An explanation of kernicterus at lower indirect-bilirubin levels after administration of the sulphonamide, sulphafurazole, has been offered by Odell. Unconjugated, toxic bilirubin is loosely bound with plasma-albumin and in this form may be less likely to cause damage. Sulphafurazole, however, as well as salicylate and caffeine sodium benzoate, competes favourably with bilirubin for the binding sites on the albumin molecule and can displace bilirubin from them. Thus the administration of sulphafurazole may, without altering the indirect-bilirubin level, cause a rise in free cerebrotoxic bilirubin. The possible danger of the long-acting sulphonamides in this connection is unknown, but their use has been discouraged. Similarly a deficiency in the plasma-albumin level, as in prematurity, may so reduce the available binding sites for bilirubin that higher free levels develop.

Certain neonatal tissues (again particularly in the premature) may be unusually susceptible to various substances. The classical example is the retina, which can be so disturbed by sustained high atmospheric concentrations of oxygen that retrolental fibroplasia results. More simply, the newborn may be damaged because in a proprietary antibiotic mixture a high but harmless dose of one (for example, penicillin) selected by the physician is necessarily accompanied by a toxic dose of another (for example, streptomycin). Lastly, skin contact with unlaundered marking ink may produce severe methemoglobinemia.

A pregnant diabetic woman on tolbutamide with or without insulin may receive sulphafurazole or chloramphenicol for a complicating pyelonephritis, cobalt, and other hematinics for an anemia, a self-restricted diet and hydrochlorothiazide for toxemia, copious intravenous fluids before delivery, and a large dose of synkavit to help reduce the risk of hemorrhage in her premature baby. All the drugs prescribed by all concerned with each patient should be carefully recorded and their possible role in the etiology of unexpected disorders in the infant should be carefully examined.

THALIDOMIDE AND CONGENITAL ABNORMALITIES

SIR: Since the reports of Dr. McBride[19] and Dr. Lenz[20] associating thalidomide ("Distaval") with congenital malformations in babies, we have been investigating extensively its possible teratogenic effects in laboratory animals. As testing for teratogenic effects is not part of standard pharmacological screening procedure, experience in this field is very limited.

Our first experiments in rats showed resorption sites but no malformations. Now we have succeeded in producing deformities in rabbits remarkably similar to those seen in humans.[21] The experiments were carried out in New Zealand white rabbits which we have bred in our laboratories in a close colony over a period of 14 years. The mother rabbits, in a weight range of 3.3–3.5 kg., were given 0.5 g. (150 mg. per kg.) of thalidomide orally each day, from day 8 to day 16 of pregnancy, which was allowed to go to full term with normal delivery. The thalidomide was a blend of samples from seven batches.

The results were as follows:

Rabbit No.	Body weight (kilograms)	Treatment	Born	Litter stillborn	Deformed
1	3.5	Thalidomide	8	2	7
2	3.3	do	6	2	4
3	3.3	do	4	1	2
4	3.4	do			
5	4.0	Control	3	0	0
6	3.6	do	9	0	0
7	3.7	do	8	0	0
8	3.75	do	9	0	0

Three rabbits produced litters containing stillbirths and young with deformities. The fourth, being 4 days overdue, was killed and examined post mortem. The uterus was grossly distended with a straw-coloured fluid, probably indicating that the embryos had died and autolysis had taken place. In the first litter, seven of the young showed limb defects in the front and rear legs. The front legs were foreshortened owing to a reduction in long-bone formation of the radius and ulna; while the rear legs showed a varus deformity involving the tibiofibula. Radiologically the bone malformations were seen to be similar to those described by Morgan. The young in litters two and three are being reared for chromosome analysis and observation of other defects. One, in the second litter, which has died shows a defective femur.

Further experiments are being carried out, but these initial results have already been confirmed. In a second experiment, involving eight does, thalidomide administered under exactly the same condition has induced similar malformations in the first four litters born. No deformities of this kind have been previously observed in the colony, involving the breeding of over one thousand progeny, and our chief animal technician, Mr. R. E. Hughes, states that he has never seen anything like this during 50 years' experience of rabbit breeding.

It is hoped that the techniques employed will permit a method to be developed which will be of general application in the screening of all new drugs for possible teratogenic effects. Full details of these and other experiments in mice, rats, and hens' eggs will be published shortly.

G. F. SOMERS.

[17] Jones, P. E. H., McCance, R. A. Biochem. J. 1949, 45, 464.

[18] Kaufman, L., Lehmann, H., Silk, E. Brit. Med. J. 1960, 1, 107.

[19] Lancet, 1961, ii, 1358.

[20] Ibid. Jan. 6, 1962, p. 45.

[21] Morgan, B. C. Brit. Med. F. 1962, i, 792.

Mr. KEFAUVER. Mr. President, section 505 of the Food and Drug Act establishes the procedure for placing a drug on the market. Section 505(i) contains all the statutory authority the Food and Drug Commissioner has for controlling or testing a drug before it is placed on the market. It provides an exemption from the new drug application procedure set forth in section 505. It provides:

> The Secretary shall promulgate regulations for exempting from the operation of this section drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs.

The Food and Drug Administration thinks it may have adequate statutory authority now to require the testing of a drug on animals before it is administered as medicine to human beings. I do not believe this to be so. I have the utmost respect for the legal judgment of Horace Flurry, senior counsel on the staff of the Subcommittee on Antitrust and Monopoly who, with his long years of experience in antitrust law, is one of the most thoughtful and careful lawyers I know. He does not believe that the Food and Drug Administration now has the authority which this amendment would provide. In any event, the authority would be discretionary with the Secretary. Under the provisions of the amendment, he would be entitled to receive identical reports from doctors at the same time the drug companies get them. That has been one of the shortcomings in the present law.

The distinguished senior Senator from Minnesota [Mr. HUMPHREY] is not only an able legislator and our assistant majority leader; he is also a competent pharmacist, the only one who is a Member of Congress, so far as I know. He has shown a keen interest in the bill. His advice and counsel have been helpful to the Subcommittee on Antitrust and Monopoly. Moreover, as chairman of a subcommittee of the Committee on Government Operations, he, too, has held hearings on the very problem before us. Mr. Larrick and other witnesses appeared before his subcommittee. He,

too, doubts that the Secretary has adequate authority at the present time. As a cosponsor of the amendment, he has suggested language which might improve the amendment. I shall yield the floor for the Senator from Minnesota to make his explanation.

Mr. HUMPHREY. Mr. President, I yield myself 5 minutes on the amendment.

I commend the Senator from Tennessee for his initiative in seeking an improvement in drug legislation. Particularly I commend him for his alertness and his constant vigilance in the public interest as it concerns the safety, efficacy, therapeutical effect, and side effects of new drugs.

We are very proud that the United States has a high caliber of pharmaceutical manufacturers with the capacity and ability to perfect new drugs which have had almost a miraculous effect upon sickness and upon problems relating to human health. I do not believe it would be right for the record ever to indicate that this Nation has had anything else but a superior pharmaceutical industry in terms of quality.

However, the Senator from Tennessee, with his constant vigilance with respect to the public health and the public safety, has put his finger upon what is now recognized as a glaring weakness in existing law and existing regulations concerning the testing of new drugs.

The amendment, as modified, which the Senator from Tennessee has offered, and as to which he has permitted me to join as a cosponsor, as also he has permitted the Senator from New York [Mr. JAVITS], the Senator from Rhode Island [Mr. PASTORE], and perhaps other Senators to join as cosponsors, would fortify the Secretary of Health, Education, and Welfare with statutory authority to require, in his discretion, when he believes it to be necessary, after receiving expert counsel and professional advice, the testing of animals prior to any testing on or use by human beings.

From the limited hearings which were held by the Subcommittee on Reorganization, a subcommittee which has a special directive from Congress to examine into scientific research, the evidence revealed that administrative types of regulations are frequently subject to court tests. It seems to me only wise and prudent to legislate in that field when there is any doubt as to whether the statutory authority is clear and evident, particularly if a regulation seeks to do very much the same thing that the proposed legislation would require. Therefore, I am happy to join with the Senator from Tennessee in offering the amendment. I believe we should write into the law a statutory requirement for the testing of drugs on experimental animals prior to testing on humans. At least, we should provide in the law discretionary authority for the Secretary of Health, Education, and Welfare. In my judgment, it is not sufficient merely to write such a requirement into the regulations of the Department of Health, Education, and Welfare.

As I have said, these and other administrative types of regulations are subject to court tests; and they, like any other regulations, might be invalidated in the courts because of a possible insufficiency of authority under existing law.

A number of Senators have been consulted concerning the amendment, and every one of them is interested, as are the Senator from Tennessee [Mr. KEFAUVER] and other Senators who are cosponsors. I am happy over the result of consultation and discussion, and the leadership that has been afforded by the committee and the Senator from Tennessee. Consultation has been had with the chairman of the committee, with the ranking minority member of the committee, with the distinguished minority leader, and also with representatives of the Department of Health, Education, and Welfare. I took the liberty of communicating with those who would manufacture the drugs.

I told them exactly where we stood; and I am happy to say that they, too, recognize the importance of the additional legislation.

I believe that we should write into the law a statutory provision for the testing of drugs on experimental animals prior to testing on humans.

In my judgment, it is not sufficient to write such a standard merely into the regulations of the Department of Health, Education, and Welfare.

These or any other administrative-type regulations are subject to a court test; they—like any other regulations—might be invalidated in the courts because of possibly insufficient authority under existing law.

I do not know that this particular regulation may be tested in the courts nor would I presume to predict what a court test would ultimately decide.

However, I do know that we must not leave this particular need to chance.

Fortunately, the Nation's pharmaceutical manufacturers are now thoroughly alerted to the danger of premature testing on humans.

I have little doubt that there will be a tremendous increase in the testing on pregnant laboratory animals, in particular.

But there is always a danger that some company in its zeal to speed a new drug onto the market might "shortcut" its procedures.

In a previous statement in the Senate on August 6, I cited a considerable body of evidence on the importance of a thorough procedure for the testing on laboratory animals.

It may be argued by some that most drug companies have performed such animal testing prior to human testing all along.

That argument is, however, refuted by the facts. A number of distinguished pharmacologists have stated exactly to the contrary.

They have commented that, based upon their experience, a very considerable number of drug applications do not contain records as to prior testing on experimental animals, including pregnant laboratory animals.

In my earlier statement, I reprinted excerpts to that effect from two such authorities as Helen B. Taussig, M.D., Department of Pediatrics, the Johns Hopkins Hospital, and Louis Lasagna, M.D., Department of Clinical Pharmacology, the Johns Hopkins University, Baltimore.

Mr. President, I ask unanimous consent that there be printed at this point in the RECORD excerpts from the Government Operations Subcommittee hearings on the need for prior and thorough animal testing, particularly testing on pregnant laboratory animals. These excerpts are taken from the verbatim transcript of our hearings, which are now being printed at the Government Printing Office.

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

Senator HUMPHREY. Now, do you have any type of explicit rules or any type of systematic testing on pregnant experimental animals, for example, and animal fetuses. Is this required?

Commissioner LARRICK. Now, coming to your animal testing, I do not believe that there is a consensus of opinion today that there is any animal test which you can rely—which you can depend upon, with complete reliability, to say that this drug is safe for pregnant women throughout the course of their pregnancy. If you give it to rabbits, and the rabbits have malformed offspring, I think you could say we will not permit the drug on the market. But if you gave it to the rabbit, and nothing happened to the offspring, I do not think you would be safe in concluding that it is safe for the women.

In the final analysis, there are many circumstances where the transition of testing from animals to humans cannot be made with certainty today.

Senator HUMPHREY. Obviously that is very true.

Commissioner LARRICK. So in addition to the retrieval of scientific information, we have a vast area of scientific facts that we need to ascertain to keep abreast of this rapid flow of new drugs that are coming on the market, and food additives, and pesticides, and substances that are adding to our pleasures of life, but also the hazards of living.

Senator HUMPHREY. Yes, sir.

* * * * *

Dr. HAROLD AARON. Senator HUMPHREY, I think thalidomide, the thalidomide experience, teaches us that one component of a new drug application must be adequately tested, of any new drug, on as many species of that experimental animal as are necessary to determine whether that drug, that new drug, has any injurious effects on the fetus of that experimental animal. That has not been a requirement of new drug applications up to the present time. And not only on new drugs is that necessary but I think that same sort of experiment should be done with many old drugs.

We are not aware of all the effects on man of many of the drugs that are now used systemically. In addition to tranquilizers, there may be other drugs that may have potentially injurious effects on the fetus, and I think a start should be made on a broad ambitious program of testing of drugs, of their effects, new and old, on the pregnant animal, both in man and in experimental subjects.

Senator HUMPHREY. I appreciate your comments very much, Dr. Aaron. This is obviously an area in which there is very little information by a Member of Congress, and it is a matter which requires very careful scientific handling and analysis.

I asked the staff to check with the National Institutes of Health and the U.S. Children's Bureau on some of this, this question of the use of drugs during pregnancy. Apparently from what limited information we were able to get in just a short period of time, and I stand to be corrected if I am in error here, neither the NIH nor the Children's Bureau had ever fully discussed with the Food and Drug Administration any degree or any—well, any major program as to the amount of drugs which women of childbearing age are consuming and which pregnant mothers are consuming. In other words, this whole area of the drug, experimental or even commercial, a drug that is in the commercial state as to the amount of that drug that can be consumed or utilized by women at the childbearing age or women in the state of pregnancy, has not been a subject of basic collaboration between the Children's Bureau, the NIH and the FDA.

Am I in error on that? If I am, I want to be corrected.

Dr. DAVID PRICE. I think you are correct, Senator HUMPHREY, in your statement.

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

Mr. HUMPHREY. I yield.

Mr. EASTLAND. The Senator's amendment provides discretionary authority, does it not?

Mr. HUMPHREY. Is the Senator referring to the amendment to be offered by the Senator from Tennessee?

Mr. EASTLAND. I thought the Senator from Minnesota would offer the amendment.

Mr. HUMPHREY. The Senator from Tennessee is the principal author. I would not want to deny him the privilege of offering this worthy addition to the public law. I am happy to be a cosponsor of the amendment.

Mr. EASTLAND. As I understand, the amendment places discretionary authority in the Secretary of Health, Education, and Welfare.

Mr. HUMPHREY. That is correct.

Mr. KEFAUVER. If the Secretary wishes to authorize testing on animals, he may do so.

Mr. EASTLAND. If the Senator will offer the amendment, I will accept it.

Mr. KEFAUVER. Mr. President, I send the amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. On page 12, line 24, after "Secretary." it is proposed to insert the following new sentences:

Such regulations may, within the discretion of the Secretary, include among other conditions relating to the protection of the public health, provisions for adequate tests in animals and disclosure to the Secretary of the results of such tests before a new drug may be distributed by a manufacturer to scientific experts for testing and evaluation of its effects in human beings, and for revoking the exemption if the Secretary finds that it is not reasonably safe to make such tests in human beings, and may within the discretion of the Secretary, also include provisions requiring said experts to register with the Secretary, to keep records with respect to the tests performed, and to furnish to the Secretary simultaneous copies of their reports to the manufacturer and, upon request of the Secretary, reports at other times.

Mr. KEFAUVER. Mr. President, I am grateful to the Senator from Minnesota for having taken the lead in drafting this amendment. I think it is much clearer than it was before.

Mr. HUMPHREY. I am happy to have been of assistance. I think it is a good amendment.

Mr. EASTLAND. Mr. President, on behalf of the Judiciary Committee, I accept the amendment.

Mr. DOUGLAS. Mr. President, before formal action on the amendment is completed, I wish to ask several questions of the distinguished Senator from Tennessee.

The PRESIDING OFFICER. Who is yielding time, and how much?

Mr. KEFAUVER. Mr. President, how much time on the amendment remains available to those of us on this side?

The PRESIDING OFFICER. Seventeen minutes.

Mr. KEFAUVER. I now yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 5 minutes.

Mr. DOUGLAS. Mr. President, will the Senator from Tennessee yield to me?

Mr. KEFAUVER. I yield.

Mr. DOUGLAS. First, let me compliment the Senator from Tennessee for his persistent efforts, against great odds and great pressures by a powerful industry and against an almost unanimous press. He has taken a tremendous amount of abuse but it has not deterred him.

Second, let me ask him whether he feels that such discretionary power will be sufficient. Is it not true that the Secretary will depend in large part upon the advice he receives from the Food and Drug Administration?

Mr. KEFAUVER. I wish to say frankly that if there is not a good Secretary of the Department, and if there is not a good Food and Drug Administration, of course there will be difficulties, no matter how good the law may be. It may well be that there are some ethical drugs for which tests need not be required.

Mr. DOUGLAS. All of us commend the heroic Dr. Kelsey, who resisted such great pressures—50 visits, I believe, by representatives of the manufacturer—in connection with the drug thalidomide.

But let me ask whether the problem in connection with the Welch matter has been cleared up. I refer to the situation which existed when Dr. Welch, of the Antibiotics Division, of the Food and Drug Administration, was writing magazine articles on the side, and received approximately $288,000 profit from the firms he was supposed to be regulating.

Mr. KEFAUVER. That is correct. He and his partner published, under the name "M.D. Publications," many articles, some of which were reprinted by the drug manufacturers. Dr. Welch was a half partner, and received one-half of the profits. When reprints were made, one-half of the amount received covered the publishing costs, and the other half was profit of which Dr. Welsh received half. In that way Dr. Welch received $288,000 from the industry which he was supposed to be regulating.

Mr. DOUGLAS. Should not the Food and Drug Administration have known about that?

Mr. KEFAUVER. The Food and Drug Administration had the matter called to its attention several years ago by Mr. John Connor, then chairman of the predecessor to the Pharmaceutical Manufacturers Association. They did this to their great credit. They asked his superior about the so-called honorariums Dr. Welch was receiving. They were apprehensive about the propriety of these "honorariums." In not going into that matter, his superiors were derelict in the performance of their duty; I say that very frankly. Instead, they whitewashed it. At our hearings we brought out that matter fully; and at about that time Dr. Welch was allowed to resign. We believe that the FDA officials should have gone into the matter thoroughly several years earlier. He was not even asked by them how much his "honorariums," as he called them, amounted to. That was an outrageous conflict of interest; and the matter is now before a grand jury.

Mr. DOUGLAS. Does not the Senator from Tennessee think that in permitting Dr. Welch to resign, rather than dismissing him from the public service, the then Secretary of the Department of Health, Education, and Welfare was derelict in the performance of his duty?

Mr. KEFAUVER. Yes, I think so.

Mr. DOUGLAS. Does the Senator from Tennessee believe that situation has really been cleared up?

Mr. KEFAUVER. I think there needs to be a great deal of vigor injected into the Food and Drug Administration.

Mr. DOUGLAS. And also new personnel?

Mr. KEFAUVER. Yes. I am sure there are many fine people there, and I am sure they are honest in their efforts. But they do not have the necessary "push" and leadership, which are greatly needed in this important branch of the Government.

Mr. DOUGLAS. Furthermore, people such as Dr. Kelsey and Dr. Barbara Moulton who also served with competence and courage are not always backed up and encouraged but instead frequently are discouraged and slighted.

Mr. KEFAUVER. That is true, although I am happy to say that Dr. Kelsey was. As to Dr. Moulton, I doubt if she received the backing she deserved.

Mr. DOUGLAS. The Secretary of Health, Education, and Welfare would also receive help from the National Institutes of Health, would he not?

Mr. KEFAUVER. Yes; they regularly call on the doctors of the National Institutes of Health for assistance.

Mr. DOUGLAS. Let me ask what assistance the Senator from Tennessee received from the National Institutes when he was looking into these drug matters.

Mr. KEFAUVER. We received very little cooperation from the National Institutes.

Mr. DOUGLAS. Did the Senator encounter hostility?

Mr. KEFAUVER. No, just coolness—for "meddling in someone else's affairs." But, after the revelations of such a shocking nature were brought out at some of the subcommittee hearings, we

began to receive better cooperation from the Food and Drug Administration.

Mr. DOUGLAS. Would the mere enactment of a new law be sufficient, in view of the fact that discretionary powers are to be vested in the Secretary and the control is to remain where it has been; or is a thorough housecleaning needed in the National Institutes of Health and in the Food and Drug Administration, in order to have people in those agencies who really have the public interest at heart and who are energetic?

Mr. KEFAUVER. Although we did not receive much cooperation, the people in these agencies with whom I have had any dealings since the Welch affair are, I am sure, honorable public servants and wish to do their best. Our problem is that they have not always had the backing of Congress.

Mr. DOUGLAS. Have they had the backing of the various Secretaries and top bureaucrats?

Mr. KEFAUVER. No, they have not had as much backing by the Secretary as they need, and they have not had the necessary appropriations, and they have not had sufficient encouragement. They have been subjected to intensive pressure of public relations efforts by the industry. While they are stopped by honorable and honest people, the agencies need rejuvenation and infusion of new blood.

Mr. DOUGLAS. How would the Senator suggest that that be done?

Mr. KEFAUVER. I would suggest more aggressive and imaginative personnel, and more money.

Mr. DOUGLAS. Would a change of personnel in the upper levels help?

Mr. KEFAUVER. Yes, in some cases. I think the Bureau of Medicine by the FDA, particularly, needs beefing up rejuvenation, new strong leadership, and more money.

Mr. DOUGLAS. I wish to congratulate the Senator from Tennessee and his associates on the committee, and also the heroic people, such as Dr. Kelsey and Dr. Moulton, who have worked for the public interest, against such great odds. The good people need to be encouraged, and the others need to be replaced; is that true?

Mr. KEFAUVER. Yes, that is very true.

Mr. HUMPHREY. Mr. President, will the Senator from Tennessee yield?

Mr. KEFAUVER. I yield.

Mr. HUMPHREY. I think it should be pointed out that there are 12 doctors in the Bureau of Medicine, and they receive an average of 370 applications a year in connection with new drugs.

Mr. KEFAUVER. Yes. The Food and Drug Administration has been operating on a budget which is entirely too low while Congress has usually granted the agency nearly as much money as has been requested for it, the Budget Bureau's requests have been too low, and generally the agency has not had adequate backing of Congress.

The PRESIDING OFFICER. The additional time the Senator from Tennessee has yielded himself has expired.

Mr. KEFAUVER. Mr. President, I yield myself an additional 3 minutes.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 3 additional minutes.

Mr. DOUGLAS. Mr. President, let me ask the Senator from Tennessee how they could justify the payment of $288,000 to the head of the Antibiotics Division by the manufacturers of the very drugs he was supposed to be supervising?

Mr. KEFAUVER. They did not attempt to justify it. I think my own feeling is that he held the upper hand down there; and I think his superiors were afraid to challenge him.

Mr. HUMPHREY. Mr. President, will the Senator from Tennessee yield to me?

Mr. KEFAUVER. I yield.

Mr. HUMPHREY. For years we conducted hearings on the subject of the exchange of information among and between governmental agencies, but we got no help and no appropriations and no assistance from Congress, except a few dollars to investigate, with no headlines and no interest. We finally got the Department of Defense to register 22,000 research projects for which they were paying hundreds of millions of dollars, so the people and the Congress could know of the projects and eliminate duplication.

The Senator now speaking and a subcommittee, about which little is known and about which no headlines have been seen, have been begging for 5 years for an interchange of information between the Institutes of Health, the Public Health Service, and other agencies of government. Had Dr. Kelsey and the Bureau of Medicine in the Drug and Food Administration had an exchange of information, she would not have had to, by accident, read a British medical journal and find a letter to the editor about thalidomide, in order to do what she did. The information would have been indexed and cross indexed. It would have been possible to press a button and have the information become immediately available by IBM machine. It can be done by machine. In this town, unless one finds that there is a scoundrel or a culprit, he does not get much help.

Mr. KEFAUVER. The Senator is right in what he has said about the necessity for an interchange of information. It is quite true that he has received little cooperation. Perhaps now he can get something done about it.

Mr. HUMPHREY. The Senator from Tennessee has done the job. I am not complaining, on my part, because of lack of cooperation. What I am saying is that, with respect to the Food and Drug Administration—and it has had some bad apples—we cannot expect 12 trained doctors who are overworked, none of them getting more than $15,000 a year—one could make more than that by treating ingrown toenails—to do it. Here are professional doctors working their heads and hearts out.

Mr. DOUGLAS. Mr. President, if the Senator will yield, I do not want to detract from what the Senator from Minnesota is saying about the need for cross indexing or interchange of information, that is necessary, but what justification can there be for the head of the antibiotic section taking $288,000 from the very group he was supposed to regulate?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KEFAUVER. I yield myself 3 more minutes.

Let me say to the Senator from Illinois that there can be absolutely no justification for it. The facts about that incident were brought to the attention of the Secretary and the head of the Food and Drug Administration.

Mr. DOUGLAS. He was not dismissed.

Mr. KEFAUVER. They should have gone into it thoroughly several years earlier. They simply asked about it. Their questions were brushed aside. They did not find out how much Dr. Welch was getting. We did not find out the amount he had received until we issued subpenas and got the facts. It was shocking to find out how he had obtained $288,000 from the very companies he was supposed to regulate. There can be no justification for it.

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

Mr. KEFAUVER. I yield to the Senator from New York.

Mr. JAVITS. I have also had an amendment submitted generally on the same subject, and I would like to be sure that when the amendment of the Senator from Tennessee is adopted, as the chairman of the committee has graciously indicated he would do, we have actually effected the result we want.

My amendment provided that a drug may be withdrawn from experimental use when substantial ground exists for doubt as to its safety. The amendment of the Senator from Tennessee now pending provides prior approval of the plans.

Does the chairman of the committee concur with the Secretary of Health, Education, and Welfare that he now has the power to withdraw the drug from experimental use if he finds that it is unsafe, as contemplated in the Senator's amendment?

Mr. EASTLAND. Yes.

Mr. JAVITS. I thank the Senator. That is the attitude of the Secretary. If we are going to accept the amendment, I want to make sure that the residual power to withdraw exists.

Mr. KEFAUVER. I agree with the chairman of the committee.

Mr. JAVITS. I thank the Senator. It is permissive; it is not mandatory. My amendment and the Senator's was, but this is probably the best we can do under the circumstances. I believe, with my colleague, it will be implemented, therefore.

I shall not press for my own amendment, which is essentially in the same area, because if we can accomplish something, it is better than merely to argue about it. I congratulate the Senator for being able to work this matter out to some extent.

Mr. KEFAUVER. We are glad to have the backing and support of the Senator from New York.

Mr. President, has the amendment been accepted?

Mr. EASTLAND. Yes. It was accepted before the colloquy between the Senator from Illinois and the Senator from Tennessee.

Mr. HUMPHREY. I suggest that the Chair put the question on the amendment.

The PRESIDING OFFICER. Does the Senator yield back all his time on the amendment?

Mr. DIRKSEN. Mr. President, I was going to take a little time. Here we have a classic example of the difficulties the Senate Judiciary Committee had with the bill. In the first place, it did not properly have jurisdiction of the bill and its predominant subject matter, and it got before the committee mainly because there was a patent item written into the bill. But it was that item, and none other, that made it possible for that bill to go to the Judiciary Committee.

This question of drug hearings and administered prices has been under consideration for a long time. It was in 1957 that Representative BLATNIK, of Minnesota, first introduced a drug bill, and extensive hearings were held. Certainly, they were not as extensive as the hearings before the Senate, but it was 5 years ago that a committee of Congress began to interest itself in the whole problem.

The Antitrust and Monopoly Subcommittee, after nearly 2 years, began investigating on December 7, 1959.

It was rather interesting, I thought, that actually we had no Government witnesses before the committee until 35 days of hearings had been undertaken. Of course, the burden of the effort was the question of administered prices, rather than the regulation, control, or regulation of the drug industry in the interest of the safety and efficacy of drugs and in the interest of the consumers and users of drugs.

Then Senate bill 1552, which is the bill before the Senate at the present time, in amended form, was introduced on April 12, 1961. That was nearly 19 months ago.

Our hearings continued, and at long last the bill was reported out of the subcommittee and went to the full committee.

The very first problem was the patent problem. The bill provided for compulsory licensing. I know nothing so alien to the whole American system, and the interesting thing is that we have a Subcommittee on Patents in the Judiciary Committee. It had never seen the bill. It had never considered this provision. There was no testimony on it as such. I think the Judiciary Committee very rightly sent the bill to the Patent Subcommittee to have at least a look at it to determine what ought to be done about the compulsory licensing system and other patent items of the bill.

At long last that subcommittee reported back. Incidentally, the chairman of that subcommittee is a very distinguished Senator, the Senator from Arkansas [Mr. MCCLELLAN]. The subcommittee authorized him to move to strike rather substantial portions of the bill. That motion to strike was supported by a very substantial vote in the committee.

Then came the business of dealing with the other additions. For weeks we wrestled with them until, at long last, two things happened. The first was that the distinguished chairman of the subcommittee called a meeting, not attended by any Senator but attended by some of the staff members. My staff member was present. Others were present. I had no idea who they were. The hope was that somehow we could get a drug bill. Many considerations were involved.

First and foremost, of course, was the consumer. Second, and not in order of importance, perhaps, next to the consumer, the industry had a right to be heard as to whether the proposal was feasible, whether the suggestion was workable.

There was also a question as to enforcement, once something was written into a statute. There was the question of regulation, and whether there was authority under existing law to issue other regulations.

Frankly, Mr. President, I was not a little astonished when one of the meetings of the committee was attended by Mr. George Larrick, the Commissioner of the Food and Drug Administration; also attended by one of his assistants; and also attended by Mr. Jerome Sonosky, a very personable young man and talented legislative draftsman who we thought represented the Secretary of Health, Education, and Welfare, Mr. Ribicoff. In addition, there was present Mr. Theodore Ellenbogan, a very distinguished lawyer from the Department of Health, Education, and Welfare. I think at one time there also was present Mr. Rankin, the Assistant Commissioner of the Food and Drug Administration.

This was a concerted effort with the enforcing officials of the Government and the interpreting officials of the Government, in the hope that we could get a bill which would protect the consumers, which would continue to provide incentives for research. When all is said and done, that is the essence of the business—to go ahead in this field with research in the interests of the well-being and health of our people.

This week there appeared on the front pages of the American press a very short statement to the effect that according to the mortality tables we have now reached an average longevity in this country of 70.2 years. That is pretty phenomenal, Mr. President, but I think it is a testimony to what private enterprise has done in this country and what has been accomplished because we have preserved the incentives for the constant spending of almost fantastic sums of money in the interest of the well being and the health of the people of our country.

That procedure continued for some time. Then came the President's consumer message, in which he made some money in the interest of the well-being which was then already on the Senate Calendar. Why, certainly, any Member of the Senate, whether on the committee or not, is always more than glad, in the interests of the people and their health and well-being, to make sure that nothing is overlooked. So we were more than glad to consider those proposed amendments. And they were considered thoroughly. It was amazing to me how much discussion each one of them elicited. We wanted to do that which was in the interest of the country and of its people and in the interest of the continuance of research for the people.

There was a subsequent meeting, when we had before us Mr. Nicholas Katzenbach, the Deputy Attorney General. We also had Mr. Wilbur Cohen, the Assistant Secretary of the Department of Health, Education, and Welfare, with us. At the same time, we had with us Mr. Theodore Ellenbogan and Mr. Jerome Sonosky.

So there was a rounded effort on every front in order to test out every proposition. To show the difficulties, what has happened on the Senate floor now is the best evidence.

I compliment my distinguished pharmaceutical friend from Minnesota [Mr. HUMPHREY]. He did confer with me, he did confer with the chairman, he did confer with other Senators, he did confer with the distinguished Senator from Tennessee—in the hope that somehow we could devise a further safeguard and do it in such a fashion that every interest would be properly protected.

I think it has been worked out rather admirably, but when we stop to consider that an amendment like that in the committee was sometimes considered for days before every aspect of it was on the table, so that the committee could properly see what action to take or what direction to pursue, we know it is a difficult subject.

Still another amendment which will probably be offered relates to the notifying of prospective patients about a drug which will be experimentally used.

A question of psychology is involved. What will the drug do for a patient? Also, what will this do to a patient?

Suppose I am a doctor and I walk in and say to a patient, "I am going to give you a little shot of a drug called X–29–C," just to pick a name out of the air. The patient might make inquiry of the doctor, or he might not. The doctor might volunteer the statement: "Now, this is experimental, and under the law I must notify you that this is completely clinical."

Would that set up a psychological reaction, or even a physical reaction? I do not know. That is a matter for the medical fraternity to determine.

There are no doctors on the Judiciary Committee, and we had to make that determination as laymen from the testimony which was before us. So we finally got the job done as well as we could. It is now suggested that the notice become mandatory under the law. Perhaps that can be done.

I think I remember correctly the position of the Commissioner. If I am in

error I certainly will withdraw my statement. Drawing on recollection, I believe when that question was presented to the Commissioner of the Food and Drug Administration he backed off from that very suggestion, as I recall. I believe he actually did.

So what should the committee do about the question? By dint of give and take this matter has finally been resolved, and we have before the Senate an amended substitute for the bill, which I think meets nearly every requirement, and which came from the committee by unanimous vote.

I wish to include in my observations, Mr. President, that the pending proposal deals, in brief, with information to the Patent Commissioner on request, registration, inspection, adulteration, new drugs, records, efficacy, labels, official names, information to physicians, and certification of antibiotics.

If my figures are correct, we had in all 16,506 pages of hearings on this whole matter.

The amendments which were rejected in committee were rejected very substantially; ofttimes by votes of 10 to 1, of 9 to 2, of 9 to 3, and so forth.

But, notwithstanding all of the difficulties, we got the job done. I was not too happy that Secretary Ribicoff, after we finished and after his agents had sat with the committee, went before the House Committee on Interstate and Foreign Commerce on the 20th of June, 1962, and, according to the press, said he was very unhappy about the amendments.

What kind of a business is this, Mr. President, that, after we ask the Cabinet member to send his people to the committee, he then goes before another body and testifies that he is unhappy about it?

I agree with my friend from Minnesota. I suppose we need a little coordination in the executive branch of the Government to make sure that those untoward things do not happen.

I compliment the distinguished chairman of the committee, because on his own responsibility he called the meeting. No Senators were present. His own staff members, my staff members, and the staff members of the Senator from Nebraska [Mr. HRUSKA] were present. Others were also present. There was an effort to prepare a drug bill under very difficult circumstances.

Mr. President, in all of this effort I have been pretty well excoriated in the press. Drew Pearson's column wrote of me in a fashion that was, frankly, unfair. I am not the whimpering type. I do not take exception to what members of the press in the gallery write about me that appears on the front page—if it gets on the front page. But that article was too much, and it was below the belt. I called up Drew Peason because he has been a friend of mine ever since 1933. I used to visit his house. I have met him at social functions. He had been in California when that article was written.

I said, "Drew, when you needed a friend, I sat in the courtroom all day and testified for you. I do not ask you to modify that column. I ask you to talk to your associate and find out how unfair and how unfounded it really was."

I let it go at that. Whether or not restitution will be made I do not know, and I do not care.

But, Mr. President, I do care about the unconscionable leaks that leak half the story or a third of the story, permitting a syndicated column to go into all sections of the country excoriating a Senator for certain alleged conduct, when there is no warrant for the allegation and no truth in it.

Even Mrs. Eleanor Roosevelt had to columnize on the subject. I guard my words when I say she did not know what she was talking about.

All those people should have sat with the Judiciary Committee in hearings day after day and week after week in the determined effort to produce a fair bill that would take into account the interest of everyone who might be affected.

So I do not whimper. It does not make any difference to me. I have a responsibility and I try to articulate it under my oath as best I can.

I am a little proud of a record that goes pretty far back, Mr. President, as I think of my own conduct as a public servant. I had no opportunity to comment yesterday when 35 Senators, including the majority leader, the distinguished Senator from Montana [Mr. MANSFIELD], the distinguished Senator from Minnesota [Mr. HUMPHREY], the distinguished Senator from Ohio [Mr. LAUSCHE], the distinguished Senator from Oklahoma [Mr. KERR], and others, paid some tribute to the minority leader. It brought to mind that if I should promptly respond, it would be within the character of the admonition which one author of the Gospel wrote more than a thousand years ago upon the sacred parchments when he wrote the standard of judgment when one's time comes. In effect he said that it is not our sins of commission but our sins of omission upon which the eternal judgment will be predicated.

In thunderous words, the author said:

You did it not.

That is the basis for the judgment.

I want to be sure that I have not left undone those things that a public servant and a member of the human race is called upon to do to fulfill his responsibility.

The old Irish poet of long ago, John Donne, said:

Every man's death diminishes me for I am a part of mankind.

Mr. President, I am of mankind. May that sentiment, that feeling and that impulse never forsake me when I undertake to sit with my senatorial colleagues to contrive difficult and perplexing language that must be constantly referred back to other legislation and other statutes before it ever makes sense, in the hope that we can derive something feasible, workable, and in the interest of the whole country, and in particular the consumer.

What a magnificent job the pharmaceutical industry of our country has done. So magnificent indeed is their work that our secrets are often times pilfered, then taken abroad, and in those countries in which there is no patent protection, frightful advantage is taken of the American pharmaceutical manufacturers.

No, we had better salute them. When we see the various drugs—medicines of all kinds, particularly in the antibiotic field—that are conducive to longer life, to well-being, and to the assuagement of man's ills—yes, I think we can salute them.

The other day out at home it was said of me that I was a creature of special interests. The man who made that statement is seeking political office. Let him go ahead and say it.

Mr. President, we shall lament and rue the day when we destroy the incentives that have builded up to a high level the pharmaceutical industry of the United States, which towers so high above that of Germany, which was in the lead for so long, that the comparison is almost pathetic.

In closing I salute the distinguished chairman of the committee, the Senator from Mississippi [Mr. EASTLAND], for his devotion and his effort to arrive at a proper bill. He did not let some of the cynical cartoons that appeared here and elsewhere deter him in that effort. I was depicted in certain cartoons. I could pay my compliments to the cartoonists, but I shall not do so. We have a task to perform, in good faith; and, with the fidelity that is expected of a public servant, we will try to do it.

The bill is here today. Though I disagreed, and often violently, with the distinguished Senator from Tennessee [Mr. KEFAUVER], I compliment him on his persistence, tenacity, combativeness, and instinct, with which he was born in the hills of Tennessee, and his effort to drive through and produce a bill in the face of many obstacles. He agrees that wherever we had to disagree, we approached the job in the utmost of good faith.

Our objection was not unlike his. Frankly, I compliment the Senator that at long last we have rounded out a bill, after all these hearings, which will be enacted this afternoon. I looked at the hearing dates, and I believe I should put them in the RECORD. In 1959 we held six hearings. In 1960; 6 days in January, 4 days in February, 8 days in April, 8 days in May, 2 days in June, and 6 days in September. In 1961 we had 10 days of hearings in April, 1 in May, 7 in July, 2 in September, 4 in October, 2 in November, and 5 in December. In 1962 we held two hearings in January and three in February. I do not know how I got other work done, because I belong to other committees and I have a few chores around here as minority leader. These hearings account for the thousands of pages of testimony in order to get the job done.

I shall present a little summation to conclude the record. As to section 2 of the bill, so far as changes in the original bill are concerned, there were no changes made in this section, which deals with information on patents. In section 3, on registration, no changes were made

except for the provision for a grandfather clause and transitional period.

In section 4, dealing with factory inspection, no significant changes were made other than to provide for limited information on personnel. In section 5, quality manufacturing controls, there was provided limited information on personnel. However, there was deleted the provision for regulations by the Secretary of Health, Education, and Welfare.

In section 6, dealing with new drug clearance procedure, there was removed an automatic effective date for new drug applications at the end of 180 days. It provides for hearing and judicial review. However, even if this amendment had not been approved, the Food and Drug Administration could hold up a new drug application after 180 days by merely asking for more information, which was done in the thalidomide case, which was held up for 1½ years.

How was it held up? By asking for more and more information on the subject. That was done within existing law.

I said to Commissioner Larrick, in the hearing, "Didn't you have some authority in this field?"

He said, "I did."

Three times he made his response. Then I asked him the question, "Why didn't you use it?"

"Well," he said, "Senator, I can't tell you."

That is a great business, Mr. President. We put a law on the books to be used. I asked why they did not use it, and why they did not issue regulations, and he said, "I don't know." That is all the answer I got. That is all the answer that is in the record, if any record was made of the executive hearings.

Secretary Celebrezze was alive to the problem. I compliment him. I wish we could have had him before the committee. He had not been in office 20 days when he issued an announcement and issued these regulations, a great number of them, effective 60 days after they were announced. If Senators want an answer as to whether there was authority on the statute books, I say to them that Secretary Celebrezze found it and issued regulations under it, and that goes a long way.

Section 7—Records and reports: No changes.

Section 8—Effectiveness and safety of new drugs:

First. Definition of a new drug amended by adding the word "effectiveness" to safety.

Second. Classifying what constitutes substantial evidence.

Third. Only Secretary may take a drug off the market if there is imminent hazard with right to immediate hearing.

Fourth. Additional grounds for removal of application or suspension of a drug.

Section 9—Conspicuousness of official name: Relates only to prescription drugs as to quantity, and generic name must be one-half size of trade name and prominently displayed.

Section 10—Review and designation of official names: No changes.

Section 11—Information to physicians:

Paragraph o: No changes.

Paragraph p: Amended so that size of generic name one-half size to brand name and prominently displayed; and, also, provides a grandfather clause.

Section 12—Certification of antibiotics:

Deleted section 301(1).

Deleted provision for exemption of drugs for antibiotics for animal use.

Section 13—Definition: No changes.

So when we put this jigsaw puzzle together, it is not quite so simple as Mrs. Franklin Delano Roosevelt would make it appear in her column. I have great affection for the lady. I believe that is the right term, Mr. President. However, I disagree violently with some of the things that appear in her column, which are not founded upon the facts. As Charles Dickens said, "There is nothing so stubborn as a fact." It reminds me of the chap who had seen an automobile accident and was called as a witness in the case. He was asked, "Did you see the accident?"

He said, "Yes."

Counsel said, "How far away were you when it happened?"

He said, "22 feet, 9¾ inches."

Counsel looked at the court and the jury and said to the witness, "Now, sir, advise the court and jury how you know it was 22 feet, 9¾ inches."

"Well," he said, "When it happened I took out a tape measure and measured from where I stood to the point of the collision, because I knew some damn fool lawyer like you was going to ask me that." [Laughter.]

A great many questions have been asked and the answer always is, "This is the fact." The records of the Judiciary Committee stand out there with great illumination to indicate what the facts are in contriving what is here today before us for approval. Unless all signs fail I think this bill will get the unanimous vote of the Senate, even as it did last Monday morning of the Senate Judiciary Committee, when we put it all together.

I believe it will command the respect and the endorsement of the House of Representatives, and I hope there will be time enough, even though everyone wants to go home, for the House to consummate this legislation.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DIRKSEN. I yield myself 1 more minute. I wish to compliment the distinguished members of the staff, Thomas Collins; my staffman, Peter Chumbris, who was for a long time a law associate of a distinguished judge here in the District of Columbia; and Ronald Raitt, who is on the staff of the Senator from Nebraska [Mr. HRUSKA].

Never have I seen greater fidelity. Never have I seen greater devotion to duty. Never have I seen greater competence in staffmen. Never have I seen staff people who were willing to work, not merely during the day, but also into the night, as long as it took, and on Sundays, in order to gather all the facts on which ultimately the legislative judgment must be predicted. Ron, Peter, and Tom, I salute you. You deserve the plaudits of the Senate for the great service you have rendered to us.

I have set out the record. I could go on for hours, but what I have said narrates the subject pretty well. I hope we may now get on with the business. I doubt whether other amendments are necessary.

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

The amendment was agreed to.

Mr. JAVITS. I call up my amendment identified as "8–22–62—A."

Mr. HUMPHREY. Mr. President, will the Senator withhold the offering of his amendment for a moment? The chairman of the committee has stepped out of the Chamber for a few minutes. I wonder if we could have a quorum call first.

Mr. KEFAUVER. Mr. President, will the Senator withhold his amendment? The Senator from Connecticut [Mr. DODD] would like to make an address on antibiotics. He is very anxious to have a little time yielded to him for that purpose. I was going to ask unanimous consent that he have 15 minutes, not to be charged against either side.

Mr. JAVITS. I should like to have my amendment stated. Then I shall wait until the Senator from Connecticut has made his speech before I speak on the amendment.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. On page 12, line 17, strike out the colon and the words "*Provided, however,* That", and insert in lieu thereof a period and the following:

Such regulations shall contain provisions effective to require that, subject to such exceptions as the Secretary by regulation may prescribe, no such drug may be administered to any human being in any clinical investigation unless (1) that human being has been appropriately advised that such drug has not been determined to be safe in use for human beings, or (2) that drug previously has been determined to be safe in such use. Except as otherwise specifically provided by this subsection,".

On page 14, lines 7 and 8, strike out the colon and the words "*Provided, however,* That", and insert in lieu thereof a period and the following: "Such regulations shall contain provisions effective to require that, subject to such exceptions as the Secretary by regulation may prescribe, no such drug may be administered to any human being in any clinical investigation unless (1) that human being has been appropriately advised that such drug has not been determined to be safe in use for human beings, or (2) that drug previously has been determined to be safe in such use. Except as otherwise specifically provided by this subsection,".

Mr. KEFAUVER. Mr. President, I ask unanimous consent that the Senator from Connecticut [Mr. DODD] be permitted to speak for 15 minutes, and that the time not be charged to either side.

Mr. JAVITS. Mr. President, reserving the right to object, first, I ask unanimous consent that both parts of my amendment be considered en bloc.

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

Mr. JAVITS. Mr. President, the Senator from Colorado [Mr. CARROLL] has an

amendment along the same line. I wished to state that myself, because I have no desire in any way to have a race with him. I shall endeavor, while the Senator from Connecticut [Mr. DODD] is speaking, to see if the Senator from Colorado and I can agree on one text.

Mr. HUMPHREY. Mr. President, I must object to the unanimous-consent request of the Senator from Tennessee. The time can be yielded on the bill.

Mr. DIRKSEN. Mr. President, if the distinguished Senator from Tennessee will withdraw his request, I will yield 15 minutes to the Senator from Connecticut on the bill.

Mr. KEFAUVER. Mr. President, I withdraw my request.

Mr. DODD. Mr. President, first, I take this opportunity to pay tribute to a very great public servant, the distinguished senior Senator from Tennessee [Mr. KEFAUVER]. His dedicated labors in behalf of drug legislation to protect the American people are largely the cause of the bill being before us today for action.

It has been my privilege to work alongside this great man on the Subcommittee on Antitrust and Monopoly and to watch him, day by day, laboring in the thankless task of contending against some of the great corporate interests of the Nation in an attempt to protect the public interest.

The bill before us, inadequate though it is in some respects, is but one of the fruits of the dedication of the Senator from Tennessee. I am proud to join with him today in offering amendments to make the bill stronger, just as I am proud to join with him in his day-by-day struggle to make the American system stronger by preserving its essential element, the element of free competition.

(At this point the Senator from Connecticut [Mr. DODD] addressed the Senate. His remarks appear elsewhere in the RECORD under the appropriate headline.)

Mr. HUMPHREY. Mr. President, I desire to suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. METCALF in the chair). To which side is the time required for the quorum call to be charged?

Mr. HUMPHREY. I ask unanimous consent that the time required for the quorum call not be charged to either side.

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

Mr. HUMPHREY. Mr. President, I now suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that further proceedings under the quorum call may be dispensed with.

The PRESIDING OFFICER (Mr. PELL in the chair). Without objection, it is so ordered.

Mr. HUMPHREY. Mr. President, I yield myself 3 minutes from the time on the bill.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 3 minutes.

SMALLPOX CASE REMINDS AMERICA THAT "ALLIANCE FOR PROGRESS" MUST BE BUILT ON "ALLIANCE FOR HEALTH"

Mr. HUMPHREY. Mr. President, it is a great pleasure to invite the attention of the Senate to an important international assembly now taking place in Minneapolis.

I refer to the 16th Pan American Sanitary Conference.

Once again, Minneapolis, Minn., is proud to be host to ministers of health.

MINNESOTA'S TRADITION OF HOSPITALITY

Four years ago, Minneapolis played a similar role—not merely for the Western Hemisphere, but literally for the world. At that time, the World Health Organization held one of its most successful convocations there.

It is with pride that I recall that many participants in the 1958 conference later staged this judgment: never, in their memory, did a city more extend itself to be hospitable to a great international assembly than did Minneapolis on behalf of WHO.

This was to be expected. Hospitality in Minnesota is a deep tradition. In addition, the State of Minnesota has a great medical heritage—both as regards domestic and international health. And, the State of Minnesota is proud of its contributions to international friendship.

HEALTH FOR PEACE

By deeds, not merely words, Minnesota has helped build foundations of health for peace.

So, too, it has helped build schools for peace, homes for peace, energy for peace, loans for peace, and ideas for peace.

With this background, I personally suggested Minneapolis as the site for this Conference. The suggestion was accepted.

Now, Minneapolis and all Minnesotans have taken to their homes and to their hearts the leaders of the healing arts from our sister republics to the south.

The spokesman for these arts—the Pan American Health Organization—is, it should be noted, the oldest international health organization in existence. It is the regional office in the Americas for the World Health Organization.

MY PREVIOUS EFFORTS IN CONNECTION WITH PAHO

It has been a pleasure for me, personally, to assist in some small way in its noble efforts.

Thus, it was my pleasure to serve with my distinguished associate from Minnesota [Mr. MCCARTHY] as cosponsor of the legislation under which a site has been made available in our Nation's Capital for the PAHO headquarters building, now under construction.

In May 1960 I issued, as chairman of a Senate Government Operations Subcommittee, a 102-page publication entitled "Health in the Americas and the Pan American Health Organization." This was the only congressional publication ever to be devoted exclusively to an analysis of the health of Latin America and to the great organization which serves as the hemisphere's arm for that purpose. In the 2 years which have followed, excerpts of our committee print have been widely reprinted and translated.

PROGRESS UNDER ALLIANCE PLANS

Nineteen hundred and sixty-two is a historic year for the PASB assembly.

The Alliance for Progress has emerged from its first year as a vital force for accelerated progress in the Americas.

Realism compels us to note that it has not achieved all the goals we had sought. We are impatient—and rightly so—for more results. But let there be no discounting of its solid achievements to date.

Among the foremost of these achievements is the area of public health. The Alliance for Progress has always required as its very foundation the Alliance for Health.

Under the able leadership of the Director of PAHO, Dr. Abraham Horwitz, some of the greatest steps forward in the history of inter-American health are now on their way to realization. I refer particularly to programs in environmental sanitation—including clean water and adequate refuse disposal.

I refer also to a whole series of steps which the assembly in Minneapolis is examining at this very moment: For the progress in eradication of malaria; additional steps against tuberculosis; improved nutrition; stronger national and community health departments; and so forth.

THE UNION OF HEALTH AND ECONOMIC DEVELOPMENT

What is perhaps most important, however, is that nowhere in the world have plans for health been more closely integrated with overall plans for development.

I know of few if any more dynamic spokesmen for the union of health and economic development plans than Dr. Horwitz and his associates.

The fact is a prosperous community requires good health. Conversely, a healthy community requires economic vitality.

Fortunately, these principles are built into the heart of the historic act of Bogotá, into the Charter of Punta del Este and the 10-year public health program of the Alliance for Progress—resolution A–2 of the charter.

Instead of strengthening health in isolation, it is being improved in concert with progress all along the line.

Leadership is being built—leaders, particularly, in the rural areas, in the remote villages.

A new clinic, a new well, a new school, a new road, a new cooperative, a new group of homes, this is the stuff and substance of human progress.

This is what lifts men's hearts. This is what lifts men's burdens. This is what frees them from the curse which otherwise dooms some to the misery of their fathers and of their grandfathers.

The endless cycle of disease, breeding poverty, breeding malnutrition, breeding despair, breeding more disease, breeding more poverty, and so forth can thereby be broken.

THE ROAD AHEAD

Today, bold national health plans for the next decade are being developed and evaluated. Implementation of these plans is beginning.

The road ahead is long. The obstacles are many. In many countries, it is still far easier to get money allocated for a dramatic steel mill, a highway, a fertilizer plant, a dam, than it is to have funds set aside for the less obvious health of human beings.

Gradually, however, the ministers of health are being given the resources with which to do the job.

It must be remembered that Latin America has a strong health base. It has great universities and schools of medicine.

Its situation should not be compared to that of certain developing regions where there is yet neither a medical base nor a tradition nor a national will.

Latin America is fortunately on the march. And we are marching with it—side by side.

THE SMALLPOX CASE

Within the past few days, a news story has dramatically symbolized the interdependence of health in the Americas.

I refer, of course, to the case of the missionary's son who came down with smallpox, after a trip from Brazil to Canada, via a stopover in the United States at Idlewild Airport.

Today, widespread inoculation is taking place along the youngster's route. This situation reminds us that in the jet age—disease anywhere is a potential threat everywhere.

Fortunately, the nations of the Americas have made great progress in eradicating smallpox. It has been eliminated in country after country. Last year, there remained but two focuses of infection—Brazil and Ecuador.

But it takes only one focus to endanger one hemisphere and one world.

Smallpox in this year of 1962 is an incredible anachronism. It is absurd for the world of the 20th century to be bothered by recurrent epidemics of this particular disease.

As far back as A.D. 900, it had been diagnosed by a Persian physician.

Over 160 years ago, a British physician, Edward Jenner, developed an antismallpox vaccine. While the vaccine does not cure, it does prevent the disease.

Yet, as late as 1947, 12 persons died of the disease in New York. In 1958, 15,000 died in East Pakistan.

Every time an epidemic starts, vast sums are spent to halt and wipe it out. But no one can count the intangible costs of an epidemic, including the costs of fear which grips the hearts of countless individuals who may have been contacted by a carrier.

Whether the tangible or the intangible costs are counted, or both, it is infinitely cheaper to wipe out this and other diseases than it is to try to live with them.

In 1957, 5 million New York City residents had to be vaccinated before the danger passed. It would have been a lot cheaper to have given more help to stamp out the original focus of infection—in that instance, Mexico. Fortunately, Mexico has since eradicated smallpox.

Communicable disease is never a respecter of frontiers. That is true more so today than ever before. A so-called well person might visit every continent, before it is discovered that he is a carrier of communicable disease.

Competitive coexistence may be all right sometimes, but not in the case of contagious disease.

OUR OWN RESPONSIBILITY TO ELIMINATE DANGER OF YELLOW FEVER

Let us Americans not assume that it is only the other fellow who must clean up his health problem, lest infectious disease spread.

In the case of urban yellow fever, certain areas of our own country are still infested with the mosquito, *Aedes egypti*. No eradication work is yet taking place in the United States. Fortunately, a program is being planned by the administration.

Meanwhile, the vector—the dread mosquito—is under surveillance and control at international airports and in the principal seaports of Southeastern United States.

However, the fact that certain areas of our country are still infested means that these areas pose a threat of reinfestation to those countries in Latin America which have freed themselves of this scourge.

This, then, is our challenge of the future—a challenge to us, as North Americans, to cooperate with our Central and South American friends to clean up our own house.

EXCERPTS ON HEALTH AND ECONOMIC DEVELOPMENT

I ask unanimous consent that there be printed at this point in the RECORD the text of excerpts from the excellent Quadrennial Report of the Director of the Pan American Sanitary Bureau for the years 1958–61.

These excerpts relate to the role of health in economic development.

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

[Excerpt from the Charter of Punta del Este]

QUADRENNIAL REPORT OF THE DIRECTOR OF THE PAN AMERICAN SANITARY BUREAU REGIONAL OFFICE FOR THE AMERICAS OF THE WORLD HEALTH ORGANIZATION 1958–61

[HEALTH OBJECTIVES FOR THE DECADE OF THE 1960'S]

To increase life expectancy at birth by a minimum of 5 years, and to increase the ability to learn and produce, by improving individual and public health. To attain this goal it will be necessary, among other measures:

To provide adequate potable water supply and sewage disposal to not less than 70 per cent of the urban and 50 percent of the rural population;

To reduce the present mortality rate of children less than 5 years of age by at least one-half;

To control the more serious communicable diseases, according to their importance as a cause of sickness, disability, and death;

To eradicate those illnesses, especially malaria, for which effective techniques are known;

To improve nutrition;

To train medical and health personnel to meet at least minimum requirements;

To improve basic health services at national and local levels; and

To intensify scientific research and apply its results more fully and effectively to the prevention and cure of illness.

AUGUST 17, 1961.

GENERAL VIEW OF THE PERIOD AND FUTURE PROSPECTS

Without doctrine, principles, and methods no organization can be efficient. An institution's doctrine expresses its raison d'être, its ultimate goal, its principles of action; it is the motivating force of everything that is accomplished or contemplated, the framework of its ideas and efforts, the spirit that animates and governs its activities; it is expressed in tenets and principles, and these in turn in policies, guidelines, and methods, each of which reveals the essential purpose of the institution.

On such foundations is an organization built, and its growth is fostered by sound intentions and experience. The more dynamic and diversified its objectives, the greater the responsibility of its sponsors to keep abreast of new knowledge and be alert to the conditions that cause problems to arise, so that they can perfect policies or incorporate those that are justified by needs.

The doctrine of the Pan American Health Organization and of the World Health Organization is chartered in the constitution. Their aims are the prolongation of life, the prevention of disease, and the promotion of health. Those aims are embodied in the advisory services they extend to the Governments, and the fields in which they are given—individual and collective medicine—are services provided by the Governments for the common good.

Although health problems do not change their nature with the passage of time, they appear in different guises in different societies and environments. What has changed is the theory of their origin and their implications, the methods of identifying them and, with the growth of knowledge and experience, of solving them. Because the factors that determine health and disease are essentially biological and social, they reflect the social life and cultural values of a given society, the importance it attributes to them, and the resources it possesses. That is why in every age the marshalling of measures to prevent or cure diseases—health policy—reveals its theory of disease and the importance it attaches to health as a social function. Evident at all times have been the complexity of the process and, in order to understand its deepest implications, the necessity of reckoning with the many factors in play.

In the Americas, overriding emphasis has been laid in recent years on the necessity of harmonizing development and welfare, needs with resources, economic growth with social progress. In the definition of the Economic Commission for Latin America: "The problem of economic development is essentially that of rapidly assimilating the vast resources of modern technology in order to raise the living standards of the broad masses. Considerable difficulties stand in the way of solving this problem, both because of the magnitude of the process of transferring technology and because of the special circumstances in which the problem arises." [1] Equally important is a

[1] E/CN.12/582/Rev.1 (Eng.), p. 1.

substantial change of attitude on the part of those who participate in and benefit from development. If indifference or pessimism prevails, it will be difficult, if not impossible, to stimulate production and redistribute the national income more equitably, even though all the necessary technical and financial resources are available. Because it is impossible today to conceive of an economic system without humanitarian purposes, one which is not aimed at improving the living conditions of the people and creating in them a feeling of responsibility and participation, a sense of national purpose. That social progress stimulates and is stimulated by economic growth is now an accepted tenet in the Americas, which are seeking to translate it into practice. The dominant policy, both nationally and internationally, is to accelerate development and to abolish the enormous disparities in the distribution of income, in order to raise standards of living. Those are but two phases of a single process which should be brought about simultaneously, step by step.

Colm and Geiger view development as a social process that produces results which can be described and measured in economic terms. In Asia, Africa, and Latin America, development requires social and cultural change as well as economic growth; that is to say, qualitative transformations must occur concurrently with quantitative increases. There is, in fact, a reciprocal relation between the two, and neither process is likely to continue for long or go very far without the other. Hence, "development means change plus growth."[2]

It cannot be stated that in Latin America today an increase in the national product brings with it an automatic increase in per capita real income and, consequently, increased well-being. For a number of reasons, that phenomenon has not been demonstrated in this century. The rate of development—where development has occurred—has not been sufficient to meet the basic needs of a population that has grown more rapidly. Economic policy has not had the vigor and consistency that the pressure of problems and the anxieties of human beings demanded. Oversimplified formulas that merely call for the distribution of existing wealth among a larger number of persons and ignore the need to increase production and the rate of investment have no place today in Latin America, where countries are gaining an increasingly clearer insight into the ways of achieving progress and well-being.

The responsibility for the attainment of this goal rests principally with those who have had an opportunity of acquiring knowledge and experience and who are aware of the momentum of change in their countries and in the hemisphere. Whether in government, the universities, or in public or private institutions, they are the ones who must create a strong public opinion that will guide efforts toward definite objectives—the establishment of a broadly based economy, the improvement of living conditions, and increased opportunities for physical or intellectual employment as varied as each country's progress requires.

International organizations, and especially agencies like the World Health Organization and the Pan American Health Organization that were established by governments to work for the common good, have a similar responsibility. The application of the precepts that govern them to this phase of the continent's development and to the factors that determine existing social and health problems, according to the pace of the development process, explains the active part played by the Organization at the meetings of the so-called Committee of Twenty-one, the Special Committee of the Organization of American States To Study the Formulation of New Measures for Economic Cooperation. At its second meeting in Buenos Aires in April 1959, Resolution VII was approved: "To recommend to the Governments that, in programing and negotiating the financing of economic development, they include public health programs, inasmuch as they are essential to, and supplement, economic programs." Also, "To recommend to Governments that they seek technical advice from the Pan American Sanitary Bureau for the formulation of the above-mentioned programs."[3]

The third meeting was held in Bogotá in September 1960. Out of that meeting was to come an historic document, the Act of Bogotá, which situates measures for social progress and development within the framework of "Operation Pan-America." Its preamble is a lucid statement of the interrelation of the interests of the American Republics and the mutual dependence of economic and social problems. That is why activities must be carried out in both spheres mentioned in the document. The Organization had an active part in drawing up the section on health activities. That section calls for a reexamination of programs and policies, special regard being had to the strengthening of campaigns for the control or elimination of communicable disease, in particular malaria, and the progressive development of measures for the promotion, protection, and restoration of health.

The philosophy of the Act of Bogotá is reaffirmed and expanded in the Charter of Punta del Este, a new historic document resulting from the special meeting of the Inter-American Economic and Social Council at the ministerial level, held in Punta del Este, Uruguay, from August 5 to 17, 1961. The Charter of Punta del Este establishes the objectives of the Alliance for Progress within the framework of Operation Pan-America.

In that document health is acknowledged as a social function and an economic investment of itself and in relation to the other components of human welfare. The objectives the Governments have committed themselves to achieve during the decade are: "To increase life expectancy at birth by a minimum of 5 years, and to increase the ability to learn and produce, by improving individual and public health. To attain this goal it will be necessary, among other measures, to provide adequate potable water supply and sewage disposal to not less than 70 percent of the urban and 50 percent of the rural population; to reduce the present mortality rate of children less than 5 years of age by at least one-half; to control the more serious communicable diseases, according to their importance as a cause of sickness, disability, and death; to eradicate those illnesses, especially malaria, for which effective techniques are known; to improve nutrition; to train medical and health personnel to meet at least minimum requirements; to improve basic health services at national and local levels; and to intensify scientific research and apply its results more fully and effectively to the prevention and cure of illness."[4]

The 10-year public health program of the Alliance for Progress, Resolution A.2, of the Charter of Punta del Este, sets forth the measures the Governments are recommended to adopt in order to achieve those goals. In doctrine, it reaffirms the reciprocal relationship between health, economic development, living standards, and well-being, and consequently the need to foster economic development simultaneously with social progress. It draws a distinction between long-term methods and those that produce immediate results, in the sense that they represent the continuation and expansion of all activities that are being directed at the solution of urgent problems.

There is now general agreement on the need for each country to prepare a national health plan for the next decade as a long-range measure that will ensure the orderly development of activities for the protection, promotion, and restoration of health. A health plan is a method, a tool, and not an end in itself; it is a dynamic process which must be simple in its beginnings and which must be improved as time goes on by making successive evaluations of the results in relation to the precise objectives in view. The plan should indicate the direction to be followed, that is, policy, rather than overelaborate formulas that are divorced from reality in their disregard for existing resources, economic possibilities, and the administrative experience of the country. It should contain a straightforward presentation of the problems and their priorities, the goals to be attained within a given period of time, the available resources and their mobilization, the cost of the whole undertaking, and the methods of financing.

The formulation of a national health plan is a complex task, particularly in countries where vital statistics are very incomplete. Nevertheless, imperfections in that regard should not be a deterrent. There will always be ways of estimating or projecting the available data, no matter how inadequate, so as to establish definite objectives for a certain period of time. The preparation of such a health plan is an educational process which will benefit all public health officials. The work follows a specific orientation along lines that lead to significant achievement.

"More specifically, planning seeks directly or indirectly to influence those factors believed to determine the rate and direction of development. Hence, every development plan either consciously or unconsciously implies some particular theory of development and some notion of the specific ways in which the factors considered relevant can be stimulated to produce their effects. Development planning is, explicitly or implicitly, a strategy for development."[5]

When the health plan for the country has been prepared and specific priorities are determined, their incorporation into the different programs for economic development and social welfare will have to be effected. Obviously, large-scale undertakings, whether private or governmental, have not always considered health functions indispensable. In the mobilization of domestic resources, the relationship between the prevention and cure of diseases and the labor force is obvious. That explains why the 10-year public health program of the Alliance for Progress includes the following recommendations: "To adopt legal and institutional measures to insure compliance with the principles and standards of individual and collective medicine for the execution of projects of industrialization, urbanization, housing, rural development, education, tourism, and others."[6] At a later date, after special studies are made, it will be possible to prepare, by region, sector programs that consider the most widespread economic and social problems and the way to solve them through balanced development.

---

[2] Colm, G. and Geiger, T. "Country Programing as a Guide to Development" (1961). In "Development of the Emerging Countries, an Agenda for Research," 45–71 (239), Brookings Institution, Washington, D.C. (February 1962).

[3] "OAS, Council series, C–sa–331" (approved) July 8, 1959 (original: Spanish).

[4] OAS Official Records, OEA/Ser. H/X.II.1 (Eng.), 1961, p. 11.

[5] Colm and Geiger, op. cit.

[6] OAS Official Records, OEA/Ser. H/X.II.1 (Eng.), 1961, p. 31.

The first need is to formulate health plans, programs, and projects in accordance with the characteristics of each country and possibilities for financing. To that end, the Charter of Punta del Este suggests, among other measures, the establishment within the health ministries of planning and evaluation units; these would have proper representation in the national development agencies, so as to insure the necessary coordination. However, there is a shortage of experts in the field of health planning, and measures to remedy that situation must be urgently considered by the governments, universities, and international organizations. Under the auspices of the Latin American Institute of Development Planning and the Pan American Health Organization, the first course for the training of such experts will be inaugurated in 1962. Plans have been made to train 100 experts in the next 5 years for Latin American countries.

A committee of experts has made recommendations on health planning which the Organization will put into practice. The Center for Development Studies of the University of Caracas has undertaken, in collaboration with the Pan American Sanitary Bureau, the preparation of a detailed guide for the formulation of national or regional health programs. All these efforts will obviously benefit from the activities of governments and the universities of each country, both for the training of experts and for the periodic review of plans and their improvement.

From another standpoint, health plans will permit governments to determine the areas where the collaboration of international organizations is needed. They may need advisory services on specific problems or opportunities for the training and improvement of the professional and auxiliary personnel that are indispensable for the achievement of the proposed objectives. Thus health plans will make it easier for international agencies to implement their policy of coordinating activities and making more productive use of available resources.

What is proposed is the logical way of harmonizing resources and their growth with needs and their extent. This in no way implies the undervaluing of what has been accomplished and of what is being done. On the contrary, if the plan is to meet with success, it must be based on past experience and profit from past mistakes so as to promote greater progress. As stated before, a health plan is a means but not an end. This explains why the Charter of Punta del Este contained the recommendation that governments complete the projects underway, particularly those related most directly to development. They are certain to be included in a long-term plan as social priorities. The charter makes special mention of the control or eradication of communicable diseases, sanitation, nutrition, medical care, maternal and child health, and health education. Activities in these fields have already been of benefit to the people of the Americas and continue to benefit an increasing number of them, and therein lies their greatest justification. To proceed with them is to make the past a prelude to the future, both at the national and at the international level. The purpose of this report is to describe what the Pan American Health Organization and the World Health Organization have done in the service of the governments in the past 4 years.

The period under review is characterized by certain general facts. The principles that govern the Organization were adapted to the current circumstances in the Americas and the need to incorporate health methods and concepts into programs of development and social progress was emphasized. The governing bodies of the Organization expressed their approval of this policy in several resolutions and promoted its application in the programs conducted with the assistance of the Organization. Great progress has been made in the Pan American Sanitary Bureau's traditional task—the control or eradication of communicable diseases, according to the nature of each disease, experience acquired as to the most effective techniques, the wishes of the governments, and the existing resources. Malaria eradication stands out among these diseases, for in the period under review it has become a worldwide undertaking.

Substantial progress was made in the control of all the common infectious diseases in the Americas, as is shown in the summary of the statistics appearing in the report.

Comparable progress is also evident in what have become known as the tools that public health uses in the control of diseases: the organization and administration of services, the education and training of personnel, planning, and research.

The Organization has provided advisory services at the national or local level, or both, to most of the countries of the hemisphere on problems relating to the organization and administration of health services, the formulation of general and specific programs, in-service training of personnel, and the revision of health legislation. Increased activities in medical care, nutrition, statistics, mental health, and radiation protection, to mention but a few, have constituted a fundamental part of this effort.

The importance of training the professional and auxiliary personnel necessary to allow health services to discharge their social function was recognized. Even though the funds allotted to those activities steadily increased, they still fell short of the real needs of the countries. Two expert committees defined the problem and the role that the Organization can play in the successive stages of its solution. The governing bodies have suggested that the large sums of money the plan calls for should be obtained from extrabudgetary funds, if possible in the form of voluntary contributions. In any event, as the report reveals, advisory services to professional schools, assistance with the training of auxiliaries, and the award of fellowships for the training of specialists have yielded positive results.

The need to formulate health plans has come to the fore in recent years. Reference has already been made to the decisions of the governments of the Americas in that connection, and to the steps the Organization is taking to help them incorporate health in the economic growth process.

The investigation of medico-social problems connected with the major diseases prevailing in the hemisphere also assumed great importance. Steps were taken to formulate a long-term program for which, in view of its value, it is hoped to obtain financing.

DRUG INDUSTRY ACT OF 1962

The Senate resumed the consideration of the bill (S. 1552) to amend and supplement the antitrust laws with respect to the manufacture and distribution of drugs, and for other purposes.

Mr. JAVITS. Mr. President, I yield myself 10 minutes on my amendment.

Mr. President, I modify my amendment by striking out the word "shall" in line 3 on page 1 of the amendment and inserting the words "may, within the discretion of the Secretary"; and on page 2, line 5, by striking out the word "shall" and making the same insertion.

The amendment proposes that, insofar as the Secretary may exercise his discretion, subject to such exceptions as the Secretary may by regulation prescribe, notice must be given to those to whom experimental drugs are to be administered.

This is a very much mooted point that has been very hotly argued in the committee, and in various circles in which the subject has been considered extending to this point in our discussions on the floor of the Senate. The point is critical. It is said that there is no need to make any provision on that score, not even a discretionary provision, because the decision can be left safely to the ethics of the medical profession on a State-by-State basis and that the profession will take care of the situation.

I have had the Library of Congress look into the question. I report to the Senate as follows from the survey:

In our search of the laws of the 50 States we found no State statute which covered the use of an experimental drug and required the physician to inform the patient of such use.

The survey submitted by the Library of Congress contains an annotation of State laws on the question of new drugs, which supports that fundamental finding of fact. I ask unanimous consent that the statement of the Library of Congress, together with its conclusion and detailed analysis of the laws of the respective States, be printed at this point in my remarks.

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

THE LIBRARY OF CONGRESS,
Washington, D.C., August 13, 1962.

To: Hon. JACOB JAVITS.
(Attention of Mr. Grey.)
From: American Law Division.
Subject: Summary of State laws on use of experimental drugs by physicians.

This is in response to your request for a synopsis of State laws on whether or not it is necessary for a physician to inform his patient that he is treating him with an experimental drug.

In our search of the laws of the 50 States we found no State statute which covered the use of an experimental drug and required the physician to inform the patient of such use. However, many of the States have statutes covering the requirements for new drugs which statutes are modeled after the uniform State food and drug law. We are enclosing a summary of the State laws which have this uniform statute or a closely related statute.

The uniform law, adopted by many of the States, provides that no person shall sell, deliver, offer for sale or give away any new drug unless an application had become effective under section 505, or section 355, of the Federal Food and Drug Act. The laws generally provide that this shall not apply to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety in the drug and provided the drug is labeled "for investigational use only."

Also, we are sending a copy of a text published by Commerce Clearing House, Inc., "General State Food and Drug Laws Annotated," by David H. Vernon and Franklin M. Depew, which may be of interest to you.

FRANK L. CALHOUN,
Legal Assistant.

SUMMARY OF INDIVIDUAL STATE LAWS RELATING TO USE OF EXPERIMENTAL DRUGS BY PHYSICIANS AND STATUTES RELATING TO USE OF NEW DRUGS

(By Frank L. Calhoun, legislative attorney, American Law Division)

Alabama: No statutory provisions.

(NOTE.—When used throughout this refers only to statutes relating to new drugs.)

Alaska—Alaska Compiled Laws Annotated:

Section 40–5A–17. New drugs. (a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless (1) an application with respect thereto has become effective under section 355 of the Federal act, or (2) when not subject to the Federal act unless such drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the commissioner of health an application setting forth (a) full reports of investigations which have been made to show whether or not such drug is safe for use; (b) a full list of the articles used as components of such drug; (d) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (e) such samples of such drug and of the articles used as components thereof as the commissioner of health may require; and (f) specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subsection (a)(2) shall become effective on the 60th day after the filing thereof, except that if the commissioner of health finds after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) This section shall not apply (1) to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety in drugs provided the drug is plainly labeled "For investigational use only"; or (2) to a drug sold in this Territory at any time prior to the enactment of this act (this chapter) or introduced into interstate commerce at any time prior to the enactment of the Federal act; or (3) to any drug which is licensed under the Virus, Serum and Toxin Act of July 1, 1902 (U.S.C. 1934 cd. 42, ch. 4).

(d) An order refusing to permit an application under this section to become effective may be revoked by the commissioner of health.

(Follows pattern of uniform State food and drug law.)

Arizona: No statutory provision.

Arkansas: No statutory provision.

California—Section 26211, health and safety code, West's Annotated California Code:

New drug defined: New drug means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug as a result of investigations to determine its safety for use under such conditions, has become recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions (added Stats. 1939, c. 730, p. 2257, effective January 1, 1940).

Section 26287. Health and safety code—

The using on the labeling of any drug or device or in any advertisement relating to such drug or device of any representation or suggestion that an application with respect to such drug or device complies with the provisions of that section is prohibited. (Added Stats. 1939, ch. 730, p. 2257, effective January 1, 1940, as amended Stats. 1955, c. 1079, 10.)

West's Annotated California Codes (1961 suppl.).

Section 26288. New drugs and devices; application; contents of application.

The sale, offering for sale, holding for sale, delivering or giving away of any new drug or devices is unlawful and prohibited unless (1) an application with respect thereto has become effective under section 505 of the Federal act, or (2) if the drug or device is not subject to the Federal act unless such drug or device has been tested and has been found to be safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug or device there has become effective an application filed with the board setting forth:

(a) Full reports of investigations which have been made to show whether or not such drug or device is safe for use;

(b) A full list of the articles used as components of such drug or device;

(c) A full statement of the composition of such drug or device;

(d) A full description of the methods used in, and the facilities and controls used for, the manufacture, processing and packing of such drug or device;

(e) Such samples of such drug or device and of the articles used as components of the drug or device as the board may require; and

(f) Specimens of the labeling and advertisements proposed to be used for such drug or device. (As amended Stats. 1959, c. 1623, p. 3992, § 1.)

(Follows pattern of uniform State food and drug law.)

Section 17500, Business and professions code (1961 suppl.).

False or misleading statements—It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this State, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised. (As amended Stats. 1955, c. 1358, p. 2443, § 1.)

Colorado—Colorado Revised Stats. 1953. (1957 Suppl.):

48–8–3. New drugs—when sale permissible. (Similar to California statute—follows pattern of uniform State food and drug law.[1])

[1] Throughout when references are made to California statute, it is to secs. 26211 and 26288, Health and Safety Code, pp. 2 and 3, which is similar to text of uniform law.

Connecticut—title 19–212(h), definition of new drug, same as California definition—uniform law.

General Statutes of Conn. (Rev. of 1958) title 19, section 213—(Uniform Food Drug and Cosmetic Act) Prohibited Act. The following acts and the causing thereof shall be prohibited: (k) the using in intrastate commerce, in the labeling or advertisement of any drug, of any representation or suggestion that on application with respect to such drug is effective under section 355 of the federal act or under section 19–229, or that such drug complies with the provisions of either such section (1949 Rev., S. 3931, 1955, S. 2091(d)).

SEC. 19–229. New drugs (similar to California statutes follows uniform food and drug law). See California, section 26288.

Delaware—Del. Code Anno.

16 § 3315. The State Board of Pharmacy shall adopt Federal Food, Drug and Cosmetic Act so far as applicable.

Florida—Fla. Stats. Anno.

Title 31–500.03–(14). The definition of new drug—similar to California—uniform law.

Sec. 500.16. Sale, etc., of new drugs; exceptions.

(Follows uniform State food and drug law. See California.)

Georgia—Ga. Code Ann.

Title 42–1510 (1961 Suppl.)—procedure for marketing new drugs, application, exceptions.

(Follows uniform law. See California.)

Hawaii—Revised Laws of Hawaii, 1955.

Chap. 51–4(b) defines "new drug"—follows uniform law.

Chap. 51–16. New drugs, regulation of sale, etc., exceptions.

(Follows uniform law. See California.)

Idaho—Idaho Code—

Title 37–114(n)—definition of new drugs—follows uniform law.

Title 37–128—sale of new drugs, etc.—follows uniform law.

Illinois—Ill. Revised Stats. 1961.

(Uniform Drug, Device and Cosmetic Act.)

Chap. 111½—section 402–16—definition of new drug.

Section 418–19. New drugs.

Section 420. Drugs intended for investigational use only.

(Illinois statutes follow uniform law. See California.)

Indiana—Burns Ind. Stats. Anno.

Section 10–104 prescribing secret medicines—whoever prescribes any drug or medicine to another, the true nature and composition of which he does not, if inquired of, truly make known, but avows the same to be a secret medicine or composition, and thereby endangers the life of such other person, shall, on conviction, be fined not less than $30.00, nor more than $100.00, and be imprisoned in the county jail not less than 60 days, nor more than 6 months. [Acts 1905, ch. 169, section 366, p. 584.]

Section 35–3316–3319. New drugs—(follows uniform law. See California.)

Iowa—Iowa Code Anno. (1961 Suppl.) Uniform Act 203 A.2(13), definition of new drug 203A.11—application to sell new drugs, etc.

(Follows uniform law. See California.)

Kansas: No statutory provision.

Kentucky: No statutory provision.

Louisiana: No statutory provision.

Maine: No statutory provision.

Maryland: No statutory provision.

Massachusetts: No statutory provision.

Michigan: No statutory provision.

Minnesota: No statutory provision.

Mississippi: No statutory provision.

Missouri—Vernon's Mo. Stats. Anno.

Ch. 196.105—Provisions governing selling or delivering of new drug.

(Follows uniform law. See California.)

Montana: No statutory provision.

Nebraska: No statutory provision.
Nevada—Nevada Revised Stats.:
Ch. 585.140—New drug defined—follows uniform law.
Ch. 585.490—No person shall introduce or deliver for introduction into intrastate commerce any new drug which is subject to section 505 of the Federal Act 121 U.S.C. § 355 unless as application with respect thereto has become effective thereunder.
(Follows uniform law.)
New Hampshire: No statutory provision.
New Jersey—New Jersey Stats. Anno.
Title 24:1–1 Definition of new drug—follows uniform law.
Title 24:6A–1 Requirement for new drugs, etc.—(follows uniform law. See California).
New Mexico—N.M. Stats. Anno. (dangerous drugs):
Section 54–6–21(b). Licensed physicians, dentists, and veterinarians may dispense * * * any dangerous drugs provided that a record of all such dispensations * * * shall be kept showing the date when issued and bearing the name and address of the patient for which drug dispensed.
Section 54–6–2. New drugs—definition follows uniform law.
Section 54–6–11. New drugs—requirements—(follows uniform law. See California).
New York—McKinney's Consolidated Laws of N.Y. Anno.
New drugs. Education section 6809 (title 8. Art. 137).
(Follows uniform law. See California.)
North Carolina: No statutory provision.
North Dakota: No statutory provision.
Ohio—Pages Ohio Rev. Code Anno.
Section 3715.65—new drugs.
(Follows uniform law. See California.)
Oklahoma: No statutory provision.
Oregon: No statutory provision.
Pennsylvania—Purdon's Penna. Stats. Anno. (1961 Suppl.).
Title 35—section 780–16—new drugs.
(Follows uniform law. See California.)
Rhode Island—General Laws of R.I. (1961 Suppl.).
(Follows uniform law. See California.)
South Carolina: No statutory provision.
South Dakota: No statutory provision.
Tennessee: Tenn. Code Anno.
Section 52–117—new drugs, requirements.
(Follows uniform law. See California.)
Texas: No statutory provision.
Utah—Utah Code Anno. (1961 Suppl.).
Title 4–26–16—new drugs—follows uniform law.
Vermont—Vt. Stats. Anno. (1961 Suppl.)
Title 18—Section 4065—new drugs—follows uniform law.
Virginia: No statutory provision.
Washington: No statutory provision.
West Virginia: No statutory provision.
Wisconsin—West's Wisconsin Stats. Annc
Title 15—ch. 146.17—Nothing in this statute shall be construed to authorize interference with the individual's right to select his own physician or mode of treatment.
Wyoming: No statutory provision.
District of Columbia: No statutory provision.
The Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 is the basic regulatory law in the District of Columbia.

Mr. JAVITS. Mr. President, what has alarmed the country and, in my opinion, brought the bill to the point of passage as a bill—and I hope very much that the bill does pass—is the great concern which was sparked by the use of the drug thalidomide. Let us remember that thalidomide was not adminstered to mental patients—at least not in main—to people who would suffer terribly in terms of being upset if they knew they were taking a medicine which was experimental in character, or to people who had some fatal disease. The ladies to whom the drug was administered were pregnant. The ones we were worried about were those who had a fatal disease that a doctor did not desire to inform them about. The drug was administered to people who could have been told, and then if they chose to take it, they would have taken it. If they did not choose to take it, they did not have to take it.

I am for experimentation. I feel deeply that some risks must be assumed in experimentation. But we must hold the balance between personal dignity and personal responsibility and the right of the individual to know how his life is being disposed of, at least with his consent, and the virtues of experimentation.

We have found that there are always enough people, whatever may be the danger of the drug—often, for example, inmates of the jails—who are willing to lend themselves to experiments. Therefore, experimentation should not be conducted in a blind way, without people giving their consent.

I understand the problems in cases in which there is some fatal terminal disease, and in which the doctor, in the exercise of the judgment which the Hippocratic Oath assures will be used conscientiously, decides he will not tell. The Secretary could exempt any new drugs from any such regulation. There is the case of the hypertense patient, or the situation in which the drug may have some other effect if a person knows he is taking it for a specific reason, in which the Secretary may decide that the testing reason is greater than the possible risk which might be run. My amendment applies only to the question of safety.

In short, only if the drug has not yet been reasonably demonstrated to be safe would my amendment apply at all.

Finally, the amendment in completely discretionary.

It is said—I think in perfectly good faith—and was the cause of a great deal of discussion in the Judiciary Committee itself, that if we should write such a provision into the bill, the bill might fail and go down the drain.

It is said that doctors would not want it, and it might encounter such opposition that the bill would not become law. I think that begs the question. If it is right, sound, just, decent, and proper, and we cannot tell a mature adult who is going to be used for experimentation with a drug which has not yet been reasonably demonstrated to be safe and who is well able to come to the decision that he wants it himself and is not going to be adversely affected either in his illness or as a possible testing ground for the particular drug, where is the dignity, the responsibility, and the freedom of the individual?

In short, some balance must be maintained. I do not think we can summarily sweep the whole problem under the rug and let the situation continue as it has existed up to this time.

I should like to point out one other point which I think is very important. The amendment of the Senator from Colorado [Mr. CARROLL] contained a provision which, I believe, called for a written statement on the part of the testing expert. In the discussions on the bill it was said to relate to experts, that is, to those who are qualified by the fact that they are watching the drug experimentally, to advise the Secretary as to its merits or demerits. They are called experts. But when we debated the subject in the Committee on Government Operations, of which I am a member, and heard the whole debate before the subcommittee presided over by the Senator from Minnesota [Mr. HUMPHREY], the upshot of the debate and the testimony before us was that almost any doctor could qualify as an expert. All he has to do is to sign a paper saying that he is an expert.

It is claimed that under the bill as it is now written the Secretary would be a great deal tougher about deciding who is and who is not an expert and that he might or might not accept the statements of certain individuals who merely sign a paper and say they are experts. We know nothing about that whatever. Past experience on the question is very clear. Any physician who signs a document stating that he is an expert is thereby deemed to be an expert, and that will be the end of that dispute. It seems to me that under those circumstances we would certainly need something by way of an expression on the part of Congress that where it is feasible and practicable, the course suggested should be followed. That is all the amendment provides. Where it is possible, feasible, and practicable, it should be done, and under no other circumstances.

There is real need and a real problem. It is not a problem that can be solved by forgetting about it.

We should manifest a sense of responsibility by dealing with it. I would not make the provision mandatory. I would make it completely discretionary. I am allowing for as many exceptions as the Secretary wishes to impose. Indeed, my amendment is nothing but a license to complain, if that is an apt phrase to describe what I have in mind.

In short, there would be opportunity to complain where there was ground for complaint in the administration of the law. We should not forego the opportunity to write into the bill the right to complain where we feel injustices are being done or risks are being taken.

It is for these reasons, knowing full well that this matter has been discussed and considered and talked about, and, I believe, rejected by the Judiciary Committee, for which I have great regard, and I understand the complexities involved, that I believe the Senate, in the final analysis, must weigh in the balance these two questions of personal consent and personal dignity and the overriding interest—which I agree is overriding—in experimentation. I believe both can be reconciled in the way in which this amendment has been drafted, with all of the "outs" which the amendment provides.

I see the Senator from Colorado on the floor. I hope that it will be very clear

that whatever is done in this matter is done by both of us.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JAVITS. I yield myself 1 additional minute. I am not opinionated about it. I doubt that the Senator from Colorado is. However, in all good conscience I deeply feel that this is a matter which must be submitted to the conscience of the Senate. If the Senator from Colorado desires me to yield to him, I shall be happy to do so.

Mr. CARROLL. Yes; I would appreciate it.

Mr. JAVITS. I yield 10 minutes to the Senator from Colorado.

Mr. CARROLL. Mr. President, if I may have the attention of the chairman of the committee I should like to address to him a number of questions.

Before I do so I wish to say that I have no desire to criticize the chairman of the subcommittee or the members of the Judiciary Committee, the Senator from Tennessee [Mr. KEFAUVER], the Senator from Michigan [Mr. HART], or all the other men who have worked on this bill for 3 years. It is a very complex bill. In many ways this bill is a strong bill. In some respects, however, it needs further strengthening.

I call attention to the problem that has greatly aroused the people of America. I refer to the use of the drug thalidomide, which was administered on an experimental basis to many Americans. This same drug, it is now known, was responsible for the birth of hundreds of deformed children in Europe. All America knows of the courage and determination of Dr. Kelsey, who singlehandedly prevented a similar tragedy from occurring in America by stalling for time and thus keeping this drug from general sale. It is to strengthen the authority of such as Dr. Kelsey that we consider this bill today.

In our Judiciary Committee, we had the privilege of hearing the testimony of Commissioner Larrick of the Food and Drug Administration. In my questioning of Commissioner Larrick, I was shocked to learn that in this great Nation many drugs made by various pharmaceutical houses are going out into clinical investigation, in hospitals and by doctors, without any record being kept by the pharmaceutical house as to what doctors are receiving the drug. There is no evidence either that the doctor receiving the drug told the patient that he was to be used for experimental purposes.

This was all a great shock to me.

I believe that under normal circumstances when a man or a beloved member of a family goes to a doctor, that man has a right to know if he is to be given untested experimental medicine.

I wish to be as fair as I can about this. I have great confidence in the doctors of this Nation. I have great confidence in our medical profession. I know the physician recognizes his ethical responsibility to the patient. I realize that. I know that in most cases the doctor is going to act in the interest of his patient.

However, I repeat that I believe firmly every human being has a right to know whether he is being treated with experimental medicine.

I have conferred with officials of the Food and Drug Administration on the importance of maintaining adequate records. These officials agree with me in this regard. When a test of a new drug is to be undertaken in a community, I suggested that not only should the FDA be informed of the fact; the FDA in turn should notify the Governor of the State, State public health officials, the State and county medical associations and local officials of the test.

It should be made very clear to Senators and to the country; this is not a Federal control bill.

This is a Federal information bill.

I have two amendments at the desk, but I am withholding them at this time. I do so because I believe I will be able to join with the Senator from New York in offering an amendment acceptable to us both.

I share the viewpoint of the able Senator from New York that we must tighten up the regulatory authority of the FDA.

I am not talking about regulating medicine between the physician and the patient. Let me make that clear.

We must tighten up the regulatory authority. I believe we are doing so in this bill.

The question is, Are we doing it adequately and sufficiently?

I realize there may be cases in which a doctor cannot inform his patient of the treatment, because the patient may be suffering from a serious case of cancer, and the doctor has not informed the patient of his illness.

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

Mr. CARROLL. I shall be glad to yield as soon as I complete my statement.

There may be involved a rare blood disease. The patient may be in a coma. It may be a child that needs medication. Such cases as these are the exceptions. As a general rule I believe that a man should be told that he is to be used as a guinea pig.

In regards the question of insuring the health and safety of the public, let me ask a series of questions of the chairman of the committee.

Under the pending bill may a member of the pharmaceutical industry send a drug to a doctor or clinical research group without a record being made of the transfer of that drug, and without notification to HEW?

Mr. EASTLAND. The Senate has now adopted an amendment which authorizes the Secretary of Health, Education, and Welfare to issue regulations, at his discretion, which among other things, would require physicians engaged in clinical testing "To keep records with respect to the tests performed, and to furnish to the Secretary simultaneous copies of their reports to the manufacturer."

Mr. CARROLL. I believe the Senator has read the Kefauver amendment.

Mr. EASTLAND. That is correct.

Mr. CARROLL. I was a cosponsor of the Kefauver amendment.

Mr. KEFAUVER. That is correct.

Mr. CARROLL. We must make a record here, and I expect the Secretary of Health, Education, and Welfare, the pharmaceutical industry, and members of the medical profession will pay some attention to the record which we make.

Mr. EASTLAND. I also call attention to section 7 of the additional amendments, or substitute bill, at page 12, beginning at line 10, and running through line 17, which reads:

> Such regulations may provide for conditioning such exemption upon the establishment and maintenance of such records, and the making of such reports to the Secretary, of data obtained as the result of such investigational use of such drugs, as the Secretary finds will enable him to evaluate the safety and effectiveness of such drugs in the event of the filing of an application pursuant to subsection (b).

Mr. CARROLL. I think we can now discuss specifics. Let us talk about thalidomide.

Mr. EASTLAND. We have provided for recordkeeping.

Mr. CARROLL. Let us talk about this one drug the distribution of which Dr. Kelsey was successful in stopping.

Mr. EASTLAND. On August 9, the Food and Drug Administration issued regulations which require that the Food and Drug Administration be notified and be given full information about the distribution of drugs for investigational use.

Mr. CARROLL. I hope I have not interpreted the Senator's remarks incorrectly.

Mr. EASTLAND. Let me finish. The amendment to the bill furnishes a firm statutory basis for such regulations.

Mr. CARROLL. I return to the drug to which the public has been alerted. Under the old practice, if such a drug were produced by a pharmaceutical house, it could be distributed on an experimental basis without prior notificaton to anyone.

Under the bill, what would be the authority of the Secretary of HEW? The regulation which the chairman has just read is of course a proposed regulation, not yet adopted.

Mr. EASTLAND. The Secretary of HEW could require animal testing; he could even seize the drug as an imminent hazard to human health.

Mr. CARROLL. In other words, the old practice will be brought to an end.

Mr. EASTLAND. The Secretary would have the power to require testing on animals before the drug was given to human beings.

The PRESIDING OFFICER. The time of the Senator from Colorado has expired.

Mr. JAVITS. Mr. President, may I suggest that the Senator from Mississippi might like to yield more time?

Mr. EASTLAND. How much time does the Senator from Colorado desire?

Mr. CARROLL. About 10 minutes, in order to make the RECORD.

Mr. EASTLAND. Mr. President, I yield 10 minutes to the Senator from Colorado.

Mr. CARROLL. Again, to be more specific, because I think this information is vital for the record, for the public, and for the Senate, do I correctly understand that the practice of moving drugs from the pharmaceutical industry to clinical research centers or to doctors' offices without clearance by HEW will be ended? If so what sort of clearance will be required?

Mr. EASTLAND. What was the question?

Mr. CARROLL. The question is whether the pharmaceutical industry will be able to place such drugs as thalidomide in the hands of doctors or clinical research centers without prior notification to HEW?

Mr. EASTLAND. No.

Mr. CARROLL. Therefore, when such a drug is sent to HEW, HEW will determine whether the drug should first have animal testing?

Mr. KEFAUVER. That is correct.

Mr. CARROLL. I note that the able Senator from Tennessee has that understanding.

Mr. KEFAUVER. That is correct; and that is provided in the amendment of which the distinguished Senator from Colorado was a cosponsor.

Mr. CARROLL. That was the amendment which was accepted on the floor of the Senate and is now a part of the bill under consideration?

Mr. EASTLAND. That is correct.

Mr. CARROLL. Now let us go to the next step. If there are some drugs on which HEW does not require testing, will the Department have the authority to require a report on them?

Mr. EASTLAND. That is correct. Whether animal testing is required or not, the Secretary is given the further discretionary authority to require experts engaged in animal testing to register and to keep records of the tests performed.

Mr. KEFAUVER. Furthermore, simultaneous reporting to HEW of their report to manufacturers may be required.

Mr. CARROLL. I think this is a substantial step forward. I observe in the Chamber many Senators who worked on the bill. I note that none of them seem to be in opposition, at least at this time, to the interpretation which we are placing on the bill by reason of the acceptance of the Kefauver amendment.

One point still bothers me—and frankly I do not know how we can tackle the problem. We still have not met the basic problem of patient notification.

How can doctors be required to inform their patients that they are using drugs for experimental purposes? It is most difficult to draw that type of amendment. If we were to approve a strict, mandatory prenotification requirement, we might prevent the doctor from helping his patients in times of extreme emergency.

Mr. EASTLAND. The distinguished Senator referred to the case of a person in a coma.

Mr. CARROLL. Or a person having cancer.

Mr. EASTLAND. It might be an experimental drug, a single injection of which would provide him with a chance to live. How could he be notified that an experimental drug is being used?

Mr. CARROLL. The Senator from Mississippi is correct. That is why I think it would be most difficult to draft such an amendment. It is my hope that no doctor or clinical research group, except in cases of rare emergency, would take it upon themselves to administer drugs for clinical reasons unless the patients were told what the effect of the drugs might be. Generally speaking, I believe a person has a right to this information.

I am confident that doctors will read the RECORD. The legislative history we are making will be transmitted to them. I warn them—and I am now speaking as a lawyer—that the use of drugs for experimental purposes, without the knowledge of their patients, is a hazardous step to take. I am now talking about the law which protects patients—the malpractice law. I have had the privilege of discussing some of these problems with my physician friends in Colorado.

For the first time in many years, the Senate is considering a bill on this subject; the HEW has drafted proposed regulations. Let me emphasize, there is no desire on the part of the HEW, the Senate, or the junior Senator from Colorado to have the Government control medicine at the grassroots; what is desired is to protect the public interest.

Mr. EASTLAND. Does not the remedy lie in the right of the patient to bring a malpractice suit?

Mr. CARROLL. It is my hope that no patient would have to resort to the bringing of a malpractice suit. That would be a remedy; but I am talking about the indiscriminate use of drugs, perhaps in a county hospital, where there are many poor people who do not think about malpractice suits, who do not have the money for such suits. I am thinking of the public interest.

What remedy would a malpractice suit offer to the parents of a deformed child?

The able Senator from Arkansas [Mr. MCCLELLAN] propounded some pointed questions to the representatives of HEW. Throughout the years, some of us have believed HEW had the power to issue regulations to curb dangerous practices. This was not the case. That is all beside the point now, because after 3 years of excellent work by the distinguished Senator from Tennessee and his staff, and by other members of the subcommittee, a solution seems to be in sight. I commend the distinguished Senator from Mississippi, the chairman of the committee, for his interest in the subject and for having reported to the Senate a bill which will cope with the situation which now exists.

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

Mr. CARROLL. I yield.

Mr. KEFAUVER. The Senator from Colorado is a member of the Subcommittee on Antitrust and Monopoly. He has worked hard, long, and diligently. He has performed a great service on the bill during the hearings. I am disturbed about the same danger which concerns the Senator from Colorado and the Senator from New York [Mr. JAVITS], namely, the danger of doctors not informing patients, when it is feasible for them to do so, that they are being administered experimental drugs. On the other hand, it is very difficult to write such a requirement into the proposed legislation.

Some of us have been conferring in the cloakroom, trying to agree upon proper wording. As the Senator from Colorado has said, there might be cases of cancer in its last stages, or cases of patients who might be in a coma and could not be notified, or another case of children who require the emergency administration of medicine, and it would be impossible to notify the parents.

Mr. EASTLAND. Mr. President, will the Senator from Tennessee yield?

Mr. KEFAUVER. I yield.

Mr. EASTLAND. Is it not true that the medical profession says that in many cases it is desirable that a patient who is taking one of these drugs not know just what he is taking, in view of the fact that if the patient knew of his condition, the emotional reaction would cause him great harm?

Mr. KEFAUVER. Certainly that is true. This matter involves the relationship between the doctor and the patient.

Mr. EASTLAND. Would not the requirement to notify the patient put the Federal Government into the practice of medicine?

Mr. KEFAUVER. I do not think so, but I think it would be very difficult to administer and about impossible to police.

Mr. President, certainly the legislative history should be made here; and if suitable language can be prepared this afternoon, we shall be glad to give it consideration.

Mr. CARROLL. Mr. President, will the Senator from Mississippi yield?

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

Mr. CARROLL. Mr. President, I have yielded for questions. Will the Senator from Mississippi yield 2 more minutes to me?

Mr. EASTLAND. Yes; but I do not wish to yield much more.

Mr. CARROLL. Of course I can speak later, at length, if necessary.

Mr. President, I do not want the Federal Government to be put into the practice of medicine. Under this bill, when experimental drugs are distributed, a record of their movement will be made. I think this RECORD now shows clearly that such a record will be made when these medicines move from a drug house to a doctor. A report will then be made. It seems to me that the knowledge that the report will be made will cause the doctor and the company to exercise greater caution, as the Senator from Tennessee says.

We are moving into a new era. We of the Antitrust and Monopoly Subcommittee have learned much. I think the pharmaceutical industry and the medical profession have learned, too.

In other words, the recent revelations have "shook them up," too.

However, although we are now making a record, certainly no one should receive the impression that after this bill is passed, we are going to leave this subject alone. We must keep alert. In that connection, I point out that the people at home are watching. I hold in my hand three excellent editorials from Colorado newspapers. The first from the Grand Junction Sentinel, the second from the Denver Post, the last from the Rocky Mountain News.

I ask unanimous consent that the editorials be printed at this point in the RECORD.

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

[From the Daily Sentinel, Aug. 3, 1962]

OUR DRUG TRAGEDY

There are no words to express the horror of the thalidomide drug tragedies. These are manmade tragedies, touching the most sacred part of man's existence, birth itself. They are brought about by man's carelessness, his egotistic assumption that his scientific knowledge supersedes his human responsibilities, his overconfidence in himself, his indifference to human life.

The victims are helpless babies and trusting parents who assumed doctors they consulted for high fees were capable of making sound judgments and would not needlessly put patients' lives in jeopardy. The doctors, around 1,200 of them in the U.S. and 10 in Colorado, were deliberately, by agreement with a drug firm, conducting experiments on human beings.

It is possible to agree with the Food and Drug Administration that experiments on humans are "necessary" if new drugs are to be developed. There is no moral basis for conducting experiments without the knowledge and consent of the humans involved. They are no more justifiable than the evil medical experiments carried out by the Nazis on helpless victims.

Our Nation was founded on the basic principle that man is free to make his own decisions. Not even in time of national crisis is he legally forced to put his life in jeopardy against his own conscience. Yet in the interests of science and progress we have reverted to the Dark Ages principle that human lives can be controlled by those who have the knowledge and the power to control them regardless of the wishes of the human beings involved.

Had a report such as that dealing with thalidomide come out of Soviet Russia it would have been used for a decade to prove the "Godless disregard for human lives" in that country. Since it involves American doctors, an American drug company and American laws it is being excused on the grounds of "necessity."

There are many areas in which our Food and Drug laws must be strengthened even over the loudest protests of both science and industry. The foremost area is that within which some few chosen men are given the right to experiment upon human beings without either their knowledge or their consent.

[From the Denver Post, Aug. 2, 1962]

DRUG TESTING PROCEDURES NEED STUDYING

The current furor over a sleeping tablet called thalidomide dramatizes in a shocking fashion a problem which affects the entire American public and which has long been a matter of serious concern for the Nation's medical scientists.

The problem can be stated simply: Are new drugs being adequately tested before they are put on the market?

Thalidomide, a nonbarbiturate which produces sleep without a hangover, has now been linked to a rare deformity known as phocomelia, a defect in which infants' limbs are missing or a hand or foot are attached directly to the body.

Although the drug, which was introduced in West Germany 5 years ago, has been widely consumed in several European countries and in Australia and Canada, it has never been approved for use in the United States by the Federal Food and Drug Administration. But some U.S. physicians have been supplied with thalidomide for use in a clinical testing program run by the drug's American supplier.

In recent years, several drugs which have been given FDA approval after having been exposed to similar clinical tests have been found to have harmful—and sometimes fatal—side effects.

When confronted with evidence of harmful side effects of new drugs, the drug companies justify their testing programs by saying they take all reasonable steps to make certain new drugs are safe, adding that more complete testing would be impossible or unfeasible for two main reasons:

First, in order to be able to say with absolute certainty that a drug is completely safe, it would be necessary to have much longer test periods in order to compile a sufficient number of statistics; and during this period, the drug would be denied to the general public.

Second, the more elaborate testing would be much more expensive and would cause the price of drugs to skyrocket.

Both of these contentions are of dubious merit, especially when viewed in the light of the patent fact that the drug industry is highly competitive and seems occasionally to be excessively motivated by the desire for profit.

None of this is to imply that drug companies willfully market drugs which they know to be harmful. It is certain that no reputable firm would market a new drug which it had the slightest reason to believe was unsafe.

The point is that the testing programs are now not sufficiently long or sufficiently detailed to reveal possible harmful side effects which no one could predict and which can only be discovered after the drug has been widely consumed.

Further, it does not seem to be an altogether desirable practice to have the company which has developed (and will market) the drug conduct the research on the safety of the drug.

It has been suggested that such research be conducted by an independent firm financed by the pharmaceutical houses and administered by a professional organization such as the American Medical Association. This suggestion seems eminently worth pursuing.

The FDA obviously is not pleased with the present testing system. Its Commissioner, George Larrick, has noted that "over 20 percent of the drugs evaluated" by the AMA's Council on Drugs since 1956 have had "one or more proposed uses that the council did not endorse, based on the evidence before it."

It also seems clear that the FDA, while staffed by competent and devoted public servants, is grievously understaffed, and consequently not able adequately to enforce its regulations and to make its own independent investigations.

The whole matter of the testing of new drugs needs—and has needed for some years—considerably more investigation. If the unfortunate case of thalidomide's harmful side effects serves to bring about this investigation and the necessary reforms, perhaps some good can yet come out of what up to now is an extremely ugly situation.

[From the Rocky Mountain News, July 31, 1962]

TESTING DRUGS

The United States can thank its lucky stars it has averted a major medical tragedy.

Through a fortunate chain of circumstances, plus the alertness of a woman physician at the Food and Drug Administration (FDA) and the conscientiousness of her boss, a dangerous medicine was kept off the U.S. market.

The drug is thalidomide. Originally regarded as a harmless sedative, it has turned out to be a medical monster. By the end of next fall, expectant mothers in at least 13 countries who used this drug during early pregnancy will have given birth to more than 7,000 deformed babies.

Though the drug didn't reach the prescription market in the United States, it now develops the medicine was supplied to 1,200 physicians throughout the country for exprimental use to establish its safety—before its disastrous effects became evident in Europe—where it had been in use for several years.

Safety-testing of new drugs is, of course, a necessity. But it is appalling to learn the FDA has no real control over such tests.

Indeed, it doesn't even have to be told about them until a drugmaker feels the medicine is safe enough to seek the Government's okay.

Presumably, if a drug turns out to be too dangerous to market the manufacturer need never advise the FDA about it. Yet knowledge of such adverse test results could help avert future trouble.

This whole situation cries for a quick remedy—because we may not be so lucky the next time a new drug is developed.

The FDA, as the official watchdog of the Nation's medicine cabinet, should also know who is testing what kind of drugs and where. The FDA also should be advised promptly of all bad reactions to all drugs—both before and after they are marketed.

The Pharmaceutical Manufacturers Association is to be commended for moving to develop safer methods to test drugs. But more needs to be done more quickly.

Compulsory reporting of untoward reactions by pharmaceutical manufacturers requires a change in the law.

This should be written into the drug bill pending in the Senate.

Meanwhile, stricter policing of experimental drugs apparently can be achieved by a mere change in regulations.

By ordering such a change, the Secretary of Health, Education, and Welfare, Anthony Celebrezze, could make an auspicious start in his new job.

Mr. CARROLL. Mr. President, I thank the able Senator from Mississippi, the chairman of the committee, for his courtesy in yielding to me.

Mr. EASTLAND. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 1 minute.

Mr. EASTLAND. Mr. President, in connection with this proposal, the record should show that the Food and Drug Administration is opposed to it. Furthermore, it is not one of the recommendations the President of the United States made.

In connection with this proposal, I should like to refer to the testimony given by a very prominent doctor, Dr. Chester Keefer, of Boston, who supervised the clinical testing of penicillin

and streptomycin, and is a leading authority on the subject. On August 20, he testified before the House Committee on Interstate and Foreign Commerce; and he stated that, in his experience, most clinical investigators tell their patients when they are receiving experimental, new drugs; and that when they do not tell their patients, it is for a valid medical reason—such as the risk that the patient's response might be affected by his knowledge that he was receiving the drug. This is particularly true in psychiatric diseases, blood pressure diseases, and other cases in which the response of the patient is directly affected by his state of mind and emotional condition.

The PRESIDING OFFICER. The time the Senator from Mississippi has yielded to himself has expired.

Mr. EASTLAND. Mr. President, I yield myself 1 more minute.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 1 additional minute.

Mr. EASTLAND. Mr. President, it is also true in cases of fatal diseases, such as cancer, when the doctor may think it best not to advise the patient of the seriousness of his condition. In such a case, the doctor could hardly tell the patient that he was administering an experimental cancer drug; yet such a drug might be the only chance of prolonging life or alleviating suffering.

Mr. McCLELLAN. Mr. President, I ask unanimous consent that I may proceed to address the Senate for 10 minutes, and that the time I use be charged against the 1 hour available to those in opposition to the proposed amendment identified as "8–21–62—A," proposed to be offered by the distinguished Senator from Tennessee [Mr. KEFAUVER], on behalf of himself and certain other Senators. I ask consent that I may speak out of turn, because of a very important committee meeting which is in progress, and I need to be there. I wish to oppose this amendment and one other amendment; and I ask that the time I use be charged to the time available to those in opposition to those amendments.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered; and the Senator from Arkansas is recognized for 10 minutes.

Mr. McCLELLAN. I thank the Chair very much.

Mr. President, I understand that the distinguished Senator from Tennessee [Mr. KEFAUVER] will offer an amendment which has been printed, and is at the desk, and is identified as his amendment labeled "8–21–62—A." It is known as the compulsory licensing amendment.

Mr. President, as chairman of the Subcommittee on Patents, Trademarks, and Copyrights I desire to speak briefly concerning the pending amendment presented by the senior Senator from Tennessee [Mr. KEFAUVER] and others. This amendment would authorize the Federal Trade Commission, upon complaint made to it by a qualified applicant for a license under a drug patent, to order the licensing of such drug patent whenever the Commission determines that the price of the patented drug is more than 500 percent of the cost of production for such drug. This amendment would permit the compulsory licensing of drug patents after the first 3 years of the life of the patent, whenever the Federal Trade Commission makes certain determinations. It also provides for cancellation of patents when the patentee fails to comply with the Commission's order. If this amendment were approved, it would require the Federal Trade Commission to become involved in lengthy proceedings to determine the costs of production of drugs.

The present version of this amendment has not been considered by the Patents Subcommittee or the full Committee on the Judiciary. There was a provision in S. 1552, as introduced, which would have provided for the compulsory licensing of drug patents after 3 years to all qualified applicants, with the payment of a royalty of up to 8 percent. When the Committee on the Judiciary referred S. 1552 to the Patents Subcommittee for study, it was the desire of the subcommittee—and, Mr. President, I shared in that desire and in that purpose—to speed consideration of any needed reforms in the drug statutes. However, it was clear that further study and probably hearings would be required before the subcommittee could act wisely and intelligently on the patent provisions. The majority of the subcommittee therefore concluded that the best course was not to approve the compulsory licensing provision, but to retain our jurisdiction over this subject pending further study and probably hearings. The full Committee on the Judiciary concurred in the view of the subcommittee that action on the patent provisions should be deferred—and also, I may say, that action on the other patent provisions in the bill should be deferred.

I note with considerable interest that in the report on Senate bill 1552, the junior Senator from Colorado [Mr. CARROLL], while concurring in most of the individual views of the Senator from Tennessee and his associates, withheld his support from the compulsory licensing amendment. The Senator from Colorado has stated the issue so clearly that I should like briefly to quote from his views. What I quote appears on page 51 of Report No. 1744. The distinguished Senator from Colorado said:

> However, in attempting to achieve justice, unsettled constitutional doubts arise in connection with altering the patent traditions of our free economic system.
>
> Without fuller discussion in separate Senate hearings, I am not convinced that amendment of the patent laws to achieve low drug prices is the proper means to a good end.

I note further in the report, on page 52, that two of the distinguished minority members of the committee said, and I quote from their statement in the report:

> We fully agree with the action taken by the full Judiciary Committee and also the action taken by the Patent Subcommittee which has retained jurisdiction of the patent provisions of S. 1552 for full examination and study.

I fully concur in the views of the Senator from Colorado and the views that I have read of the minority members of the committee that the Senate should not tamper with the patent laws without most careful study and, if necessary, hearings by the appropriate subcommittee. I am aware that the Subcommittee on Antitrust and Monopoly did receive testimony on the original patent provisions of S. 1552, and I certainly cast no reflections on the value of that testimony. I am sure it will be beneficial in a further study of this issue. However, I remind the Senate that quite recently during the consideration of the communications satellite bill, the Senator from Tennessee strongly advocated referring that bill to the Committee on Foreign Relations for further study, although extensive hearings had previously been held by other committees.

The Senator from Tennessee has done a marvelous job in his devoted and dedicated work and effort to bring forth a bill in this field. A bill is needed, and I highly commend him for it. But I feel under these circumstances that he will join in the request that the proposal be withheld for further study by the Patents Subcommittee of the Senate Committee on the Judiciary. I should think he would not only approve of this course, but that he would want to make a study of the changes in the patent laws—the committee that has jurisdiction over this specific provision in the bill.

The amendment being offered by the Senator from Tennessee and other Senators is most complex. I do not know, at this time, whether this amendment, or some modification thereof, is desirable, and therefore I cannot presently discuss the full merits involved. I do know that many who are well acquainted with drug research are seriously perturbed as to the implications of compulsory licensing.

The Committee on the Judiciary has labored hard and well in preparing this bill. I do not contend that the bill is perfect, but it does provide important additional safeguards to protect the public from unsafe and ineffective drugs. If the amendment of the Senator from Tennessee to which I have referred should be adopted, there would be serious question as to whether we might get any drug bill at all at this session of Congress.

I therefore hope the Senate will sustain the action of the Subcommittee on Patents and of the Committee on the Judiciary of the Senate in postponing any action with respect to drug patents, pending further study by the appropriate subcommittee of this body.

In that connection, I may point out that when the bill was referred to the Patents Subcommittee, after the Antitrust and Monopoly Subcommittee of the Judiciary Committee had reported it back to the full committee, I worked cooperatively, with the distinguished Senator from Tennessee and other Senators who are vitally interested in the bill, to expedite consideration of it. We simply withheld jurisdiction of the patent provisions so that they might receive appropriate and necessary study for us to act wisely and judiciously with respect

thereto. I cooperated in expediting the matter to the end that we might process this bill—and I think it is a good bill—so it would be acted on at this session of the Congress, and so its good provisions might go into effect at the earliest practicable date.

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

Mr. McCLELLAN. I yield.

Mr. KEATING. I wish to reiterate the statement of the distinguished Senator from Arkansas about the expedition exercised in the Patents Subcommittee in reporting it back very promptly to the full committee.

I wish to ask the Senator a question. In the other body, as I understand, the drug bill is in the Commerce Committee. Is there not a real danger that, if we should endeavor, on this side of the Capitol, to write patent provisions into the bill without any review by the Patents Subcommittee, when it went to the other body, where patent legislation is under the jurisdiction of the Committee on the Judiciary, which has never had a look at the bill in the House, it would be very likely to kill any drug legislation in this session, which, in my judgment, would be a tragedy of the first order?

Mr. McCLELLAN. I have just pointed that out. I appreciate the remarks of the Senator from New York. It is not worth adopting the amendment. Assuming it is good, assuming it is finally adopted, assuming its merits are 100 percent, it is not the wise thing to do under the conditions that prevail. It would place in jeopardy the passage of any bill in this session. I hope it will not be done. I can assure my colleagues there will be action by the Patents Subcommittee of the Committee on the Judiciary.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. McCLELLAN. How much time have I used?

The PRESIDING OFFICER. The Senator has used 10 minutes.

Mr. McCLELLAN. I yield myself 5 minutes to be charged to the opposition on the amendment 8–21–62—D, offered by the Senator from Tennessee.

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

Mr. McCLELLAN. Mr. President, the senior Senator from Tennessee [Mr. KEFAUVER] and other Senators are offering an amendment which would add to title 35 of the United States Code a requirement that every contract, agreement, or understanding entered into by any applicant for a drug patent with any other person, granting any rights with respect to the patent application, or for the purpose of having a patent granted, shall be made in writing and filed with the Commissioner of Patents. It further provides that such agreements shall be available to the Department of Justice and the Federal Trade Commission, with penalties for failure to file.

There may well be merit to the requirement for the filing of certain agreements made in connection with the acquisition of patents. However, I do not understand why drug patents should be singled out for special treatment. I would like to call the attention of the Senate to H.R. 12513, which has been approved by the other body and recently referred to the Subcommittee on Patents.

The bill was passed in the House early this month; I believe August 7. Of course, we have not yet had time to consider it. My understanding is that the bill would not restrict the provision simply to drug patents, but would be applicable to all patents. I think I am correct in that.

While the language of the pending bill is not identical with that contained in the amendment of the Senator from Tennessee, it would provide for the filing of all agreements made in connection with interference settlements in the Patent Office, and would not be confined exclusively to agreements involving drug patents.

The Subcommittee on Patents, of which the Senator from Tennessee is a member, is acting expeditiously to consider the bill approved by the other body. This bill came to the Senate on August 7. I have already announced that the subcommittee will hold a public hearing on H.R. 12513, on September 4. Therefore, Mr. President, I hope that the Senate will not approve this amendment and will permit the Subcommittee on Patents to give further study to the suggestion made by the Senator from Tennessee and his associates.

It may very well be—and the other body has so thought, Mr. President—that such a provision should apply across the board in the patent field. If so, certainly the Patents Subcommittee of the Committee on the Judiciary is the proper subcommittee to give that matter initial consideration, to hold hearings thereon and to report to this body its findings and recommendations through its parent committee.

Mr. KEFAUVER. Mr. President, I hope the distinguished Senator from Arkansas will yield, before he leaves the Chamber, for I would like to ask one or two questions. I appreciate the fact that the Senator is in charge of some very important hearings, at which there are witnesses, and that the Senator wishes to return to those hearings.

When S. 1552 was first introduced, is it not true that I spoke to the Senator from Arkansas and explained to him there were two or three patent provisions in the omnibus bill, at which time I asked him if he had any objection to the Antitrust and Monopoly Subcommittee considering the whole bill? At that time the Senator explained that he was very busy with other investigations, and that he had no objection to the Antitrust and Monopoly Subcommittee holding hearings on the whole matter, as I had suggested, did he not?

Mr. McCLELLAN. The Senator is quite correct, Mr. President. I am glad I did. By so doing I think we have expedited the consideration of this measure. By reason of that cooperation I think we have before us today a good bill, which should be passed and enacted into law, thus to give earlier protection than otherwise would have been provided.

Mr. KEFAUVER. The Senator has been every cooperative. We are always faced with problems when we consider omnibus bills containing several different kinds of matters. One committee has to take the lead in the hearings, and the Senator has cooperated magnificently.

The PRESIDING OFFICER. The 5 minutes the Senator yielded have expired.

Mr. KEFAUVER. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 3 minutes.

Mr. KEFAUVER. The omnibus bill was referred to the Committee on the Judiciary and, according to the record, on page 11, was referred to the Subcommittee on Patents on March 14, 1962. There were two or three meetings of the subcommittee. On April 11, about 1 month later, the bill was referred to the Committee on the Judiciary with the recommendations of the Patents Subcommittee. Is that not the situation?

Mr. McCLELLAN. The Senator has the dates before him. I do not question at all the accuracy of the dates he has mentioned.

Mr. KEFAUVER. Is the Senator aware that the drug industry itself has agreed to accept and has recommended the opening up of the agreements in reference to the interference proceedings for the benefit of the Federal Trade Commission and the Department of Justice?

Mr. McCLELLAN. I am not fully advised with regard thereto. As the Senator knows, I have been quite occupied with other things. I know that the House has passed a bill and sent it to the Senate, which would apply all the way across the board. The bill is now before the Senate Patents Subcommittee, and we are preparing to expedite consideration of it.

Mr. KEFAUVER. Does the Senator think there will be time for hearings on and for reporting H.R. 12513 during this session of Congress?

Mr. McCLELLAN. The Senator's judgment about that may be as good as mine. I would not undertake to say. I do not know when Congress proposes to adjourn. I know we are all burdened and overworked. The fact that we are does not necessarily mean we should act in haste on a matter of this importance. I think, sometimes, that is when we make our mistakes.

I think we shall have a good bill if we do not load it down with amendments so that when it goes to the other House it will be tied up. Let us pass this bill.

Again I say, Mr. President, the distinguished Senator from Tennessee has done yeoman service in bringing the bill to the Senate and working on it in such a dedicated manner as he has, along with other Senators who have cooperated with him. Let us pass the bill. I can tell the Senator and anyone else who is interested in the legislation that there

will be no procrastination or unnecessary delay by the Patents Subcommittee with respect to taking action on the bills embodying the substance of these amendments.

Mr. KEFAUVER. I thank the Senator.

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

The PRESIDING OFFICER. Does the Senator wish to have the time charged to his time?

Mr. KEFAUVER. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum and that the time necessary for the call of the roll not be charged to either side.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Tennessee? The Chair hears none, and it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

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

[No. 214 Leg.]

Aiken	Gore	Monroney
Allott	Hart	Morse
Bartlett	Hartke	Moss
Beall	Hayden	Mundt
Boggs	Hickenlooper	Murphy
Burdick	Hill	Muskie
Bush	Holland	Neuberger
Butler	Hruska	Pastore
Byrd, Va.	Humphrey	Pearson
Byrd, W. Va.	Jackson	Pell
Cannon	Javits	Prouty
Capehart	Johnston	Proxmire
Carlson	Jordan, N.C.	Randolph
Carroll	Jordan, Idaho	Robertson
Case	Keating	Russell
Chavez	Kefauver	Saltonstall
Church	Kerr	Scott
Cooper	Kuchel	Smathers
Cotton	Lausche	Smith, Mass.
Dirksen	Long, Hawaii	Smith, Maine
Dodd	Long, La.	Sparkman
Douglas	Magnuson	Stennis
Eastland	Mansfield	Talmadge
Ellender	McCarthy	Thurmond
Engle	McClellan	Tower
Ervin	McGee	Wiley
Fong	McNamara	Williams, Del.
Fulbright	Metcalf	Young, N. Dak.
Goldwater	Miller	Young, Ohio

Mr. HUMPHREY. I announce that the Senator from Nevada [Mr. BIBLE], the Senator from Pennsylvania [Mr. CLARK], the Senator from New Jersey [Mr. WILLIAMS], and the Senator from Texas [Mr. YARBOROUGH], are absent on official business.

I also announce that the Senator from New Mexico [Mr. ANDERSON], the Senator from Alaska [Mr. GRUENING], the Senator from Wyoming [Mr. HICKEY], and the Senators from Missouri [Mr. LONG and Mr. SYMINGTON] are necessarily absent.

Mr. KUCHEL. I announce that the Senator from Utah [Mr. BENNETT], the Senator from South Dakota [Mr. BOTTUM], the Senator from Nebraska [Mr. CURTIS], and the Senator from Kentucky [Mr. MORTON] are necessarily absent.

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

Mr. JAVITS. Mr. President, I yield myself 2 minutes. I should like to have the attention of the chairman of the committee, the Senator from Mississippi [Mr. EASTLAND].

We have been endeavoring to work out some way of dealing with the problem presented by the amendment. It is recognized to be a real problem. It is a question of what we can do without spoiling the experimentation of drugs, which we feel is necessary, without interfering with the professional relation between doctor and patient, and without trying to run the doctor; but at the same time flagging a situation which to us seems very clear, and that is, that in many cases we feel the patient can be informed when he is being used as the subject for experimentation.

We have tried various ways in which to obtain this objective. The objective is very clear. The Secretary of Health, Education, and Welfare has great authority in respect of regulations. Indeed, he is issuing new regulations now. Under those regulations he can specify those who qualify before him as experts. He can also specify the kind of expert report which he will accept.

It is because we believe that to be the case that the Senator from Colorado, who has been working with me, and I, neither of us having any idea of preference or priority in respect to this matter, have tried to work out something, something that we consider to be, at least under the stresses of the moment, in the interest of the patient, so that the interest of the patient can be flagged, because that is what we are talking about.

Having consulted all of the parties on both sides, I am prepared to offer, on behalf of the Senator from Colorado [Mr. CARROLL] and myself, a substitute for my own amendment which would accomplish what we have in mind. I hope Senators will listen to this suggestion.

Mr. PASTORE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. JAVITS. It has to do with a release today by the Food and Drug Administration that relates to what may be in a person's medicine chest and which may look as innocent as an aspirin tablet——

Mr. CARROLL. Mr. President, may we have order? We cannot hear.

The PRESIDING OFFICER. The Senate will be in order.

Mr. JAVITS. It relates to something that may look as innocent as an aspirin tablet, but may be extremely harmful. The Food and Drug Administration this afternoon has issued a release about this in connection with thalidomide. It is my opinion that the amendment which I propose might be adopted by the Senate. However, I have no desire and the Senator from Colorado has no desire in any way to destroy the bill by putting up some new structure different from the structure which is contemplated by the bill.

However, we do want the patient to be considered—at least considered, Mr. President. We want at least to raise a red flag, to say that the patient should be considered, at least to give a license to every Senator to complain if he thinks the patient's interests are not being protected to the extent that it is medically feasible to do so.

Therefore the Senator from Colorado and I, after laboring on this matter for many hours, have developed a modification of the amendment, to insert in the committee substitute, on page 12, line 20, after the word "profession," the words "and the interests of patients."

As I said, we have worked under great stress. We would provide that at least the operative aspects of the regulations which the Secretary would issue must give due regard, as this law would then say, not only to the professional ethics of the medical profession, but also to the interests of the patients. Beyond that we trust in the Secretary and in our own lung power, if we feel there is a grievance. At least there will be something in the bill which shows our intent with respect to our solicitude for the patients, without in any way destroying the structure of the bill.

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

Mr. JAVITS. I yield myself 2 additional minutes. I yield now to the Senator from Colorado.

Mr. CARROLL. I associate myself with the remarks of the able Senator from New York. We have worked hard on this amendment. We have tried to perfect it.

I wish to commend members of the Committee on the Judiciary, especially the Senator from Tennessee [Mr. KEFAUVER], chairman of the Subcommittee on Antitrust and Monopoly, for their work upon this bill.

As the able Senator from New York has stated, a startling news release has appeared today with respect to the drug thalidomide.

I ask unanimous consent to insert the release in the RECORD at this point.

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

NEWS RELEASE FROM U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, FOOD AND DRUG ADMINISTRATION, AUGUST 23, 1962

Tablets of thalidomide, unidentified by name, and which may be mistaken for other drugs, are still at large in family medicine cabinets, the Food and Drug Administration warned today.

The warning was based on information obtained by FDA inspectors in their nationwide survey of doctors who received thalidomide for clinical investigation.

FDA disclosed that 410 out of 1,168 doctors interviewed by its inspectors had at that time made no effort to contact patients to whom they had given the drug. Many of the 410 felt it was not necessary because of the time lapse, or they had no records to indicate which of their patients had received the drug. Inspectors were able to convince many doctors of the need to make certain that patients did not have the drug in their possession.

When advised of the FDA findings, Anthony J. Celebrezze, Secretary of Health, Education, and Welfare, contacted the American Medical Association and requested their cooperation. He said he had been assured of the AMA's assistance in attempting to get the cooperation of these doctors.

Thalidomide was never approved for sale in this country, but under the law the manufacturer could distribute thalidomide tablets to doctors for clinical investigation. On this basis, the FDA survey shows, more than 2,500,000 tablets were distributed to 1,267 doctors.

Thalidomide is the drug which was sold widely in Europe as a sleeping pill. It there resulted in gross deformities in a large number of babies, and has been found to be particularly dangerous when taken in the early stages of pregnancy.

The thalidomide tablets distributed in the United States came in a variety of sizes and colors. Generally they were given out by the doctor-investigator in envelopes and containers bearing only directions for use.

"People would be wise to follow the advice given by the President at his press conference 2 weeks ago and check their medicine cabinets," said George P. Larrick, Commissioner of Food and Drugs.

"If they have medicines left over from a previous illness or any unidentified drugs, the safe thing is to dispose of them by flushing them down the toilet."

Pointing up the importance of the medicine cabinet cleanout, the Commissioner mentioned an FDA inspector's report that a doctor in Omaha, Nebr., who contacted his patients after the inspector's visit, was able to retrieve 150 tablets from 4 patients who had received the drug as far back as 1959.

A doctor in Kansas City, Mo., gave 50 tablets to a male patient who passed some of them on to his married daughter. She took the drug during the early stages of pregnancy and is due to deliver by October 1962. The case is being followed up.

Six doctors donated supplies of thalidomide to religious groups for charitable distribution overseas and are unable to trace the present location of these drugs. In one instance, six bottles were donated to a religious group which traded them to a hospital pharmacy for other drugs. These have been recovered, FDA said.

Records furnished by the firms show that 2,528,412 thalidomide tablets were distributed to doctors for investigational use. They varied in strength (quantity of the active ingredient) from 12½ to 200 milligrams. Lesser quantities of liquids and powders containing the drug were also distributed.

More than 50 percent of the doctors interviewed had no record of the quantities returned or destroyed pursuant to the manufacturer's instructions. There is no way of knowing the amounts actually returned or destroyed, FDA said.

Most of the doctor-investigators said that they had received the manufacturer's advice in March 1962 to stop using the drug, but 85 said they were not warned of adverse reactions and 42 said they did not get any message from the manufacturer. The notice to discontinue was given by letters, with follow-up phone calls and visits by detail men beginning in March and continuing through July 1962.

Doctors interviewed reported that 19,822 patients had received thalidomide. Of these, 3,760 were women of child-bearing age, of whom 624 were reported as pregnant. According to the doctors, most of the pregnant patients got the drug in the last trimester of pregnancy or just prior to delivery. There are reports of 21 women who have not delivered. Three of these are reported to have received the drug in early pregnancy.

Three cases of abnormalities have been reported in offspring of patients who took thalidomide distributed in the United States, FDA said.

One doctor and his patient reported the drug was taken only during the final trimester of pregnancy. The doctor concluded the drug was not responsible, and FDA concurred after reviewing the case.

In the second case, the attending physician said he did not know that thalidomide was responsible for the abnormal fetus. The child was stillborn and the doctor refused to disclose the name of the mother. Whether thalidomide was responsible has not been resolved. Investigation continues.

The third case concerns a deformed child who died in her 11th month. This case is also under investigation.

When asked if they had signed a statement on their qualifications, required by FDA regulations to be obtained by the manufacturer, 640 doctors stated they had signed such statements but 247 said they had not. Others said they could not remember or did not answer the question.

Written reports were made to the manufacturer by 276 doctors, and 102 doctors said they gave verbal reports. Many of the verbal reports were given to company detail men. Others made no reports or did not answer the question.

The following tabulation updates figures in the August 7, 1962, progress report on FDA's survey of the investigational use of thalidomide in the United States:

	Aug. 7	Aug. 21
Number of doctors reported as investigators or users of thalidomide	1,248	1,267
Interviews completed	1,097	1,168
Number of patients who received the drug	15,904	19,822
Women of child-bearing age who received the drug	3,272	3,760
Number of pregnant women reported to have received the drug	207	624
Number of doctors interviewed who still had the drug on hand	74	79
Quantity of tablets on hand	22,948	25,096

FDA noted that the number of doctors having the drug exceeds the number of investigators (1,231) as previously reported by the manufacturer because a few investigators gave some of the drug to their partners or to other physicians. As of August 21, 99 physicians had not been interviewed. In a few cases, the physicians have died. Others to be contacted are still on vacation or otherwise away from home but are being interviewed as quickly as possible.

Mr. CARROLL. Mr. President, it has now been found that the drug thalidomide has been in the hands of hundreds of doctors, some of whom have not made reports, some of whom have not yet told their patients they have been prescribed the drug. Much of the drug is still unfound; there are no doubt babies still unborn who will be affected by the drug. The effects wrought by thalidomide will bring years of pain and suffering to parents and offspring.

The purpose of the amendment we now offer is to put doctors and the pharmaceutical industry on notice to give consideration to the patient who is being used for clinical investigations. This amendment is not mandatory. It does not require doctors to notify their patients that they are to be used for experimentation. We call upon physicians through the ethics of their own profession. We also seek to alert doctors to some of the dangers of which we have been appraised within the last few weeks.

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

Mr. JAVITS. I yield to the Senator from Rhode Island.

Mr. PASTORE. I am interested in the amendment; but, as a practicable matter, what would be accomplished by the words "interests of patients"?

Mr. CARROLL. I had prepared an amendment which would have been mandatory; that is to say, it would have provided that the doctor "shall" notify the patient. However, it was pointed out that certain types of emergency cases would not make it feasible for a doctor to do so in every case.

The PRESIDING OFFICER. The time of the Senator from New York has expired.

Mr. JAVITS. Mr. President, how much time have I remaining?

The PRESIDING OFFICER. The Senator from New York has 5 minutes remaining.

Mr. JAVITS. Mr. President, will the Senator from Illinois yield time to me on the bill?

Mr. DIRKSEN. I yield 5 minutes to the Senator from New York on the bill.

Mr. JAVITS. Mr. President, I yield 2 minutes to the Senator from Colorado on the bill.

Mr. CARROLL. There might be cases of cancer in which an experimental drug could be used. We felt that a doctor should not be inhibited in the use of such a drug at such a time. Also, an experimental drug might be used upon a patient in a coma or upon a child in an emergency. We wish to leave the use of such a drug to the discretion of competent physicians. It might be used by a hospital or in clinical research; it might be used by a lone doctor. What we seek to do is to call upon the ethics of the medical profession in the public interest and in the interest of the patient.

I think that what we are doing is sounding the gong of alarm to the medical profession. Many of them are just as uninformed about lax testing requirements as are lawyers, legislators, or citizens.

I commend the committee and the able Senator from Tennessee [Mr. KEFAUVER], who has been working for 3 years on this problem for persevering and for bringing it to the attention of the Senate.

Mr. PASTORE. From the explanation just given, I do not see how anyone could object to the proposal, because the fundamental reason why we are legislating is to protect patients.

Mr. JAVITS. We learned that experts are only doctors who sign certificates. We are trying to tighten up on the practice. At least, we are making our desires clear with respect to the regulationmaking power of the Secretary. I cannot even certify to Senators that this phrase is now in the proper part of the bill; but our intention is clear. I think that so long as we have a lien on the Secretary—and we do—our intention will be honored.

Mr. EASTLAND. Mr. President, will the Senator submit his amendment?

Mr. JAVITS. Mr. President, I send the amendment to the desk on behalf of myself and the Senator from Colorado [Mr. CARROLL] and ask that it be read.

The PRESIDING OFFICER. The amendment will be stated.

The CHIEF CLERK. On page 12, line 20, after "profession," it is proposed to insert "and the interests of patients."

Mr. JAVITS. Mr. President, I yield back the remainder of my time.

Mr. MANSFIELD. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from New York, offered for himself and the Senator from Colorado [Mr. CARROLL], to the committee amendment.

The amendment to the amendment was agreed to.

Mr. KEFAUVER. Mr. President, while Senators are present, I call up my amendment designated "8–21–62—A." I ask that the amendment not be read but that it be printed in the RECORD.

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

The amendment is as follows:

At the proper place in the bill insert the following:

"LICENSING OF PRESCRIPTION DRUG PATENTS

"SEC. 15. Section 282 of title 35, United States Code, is amended by adding at the end thereof the following new subsection:

"'(5) Whenever the Federal Trade Commission, upon complaint made to it by a qualified applicant for a license under a drug patent, has reason to believe as a result of an investigation that such application for a license was made and not granted after a period of three years from the date of issuance of the patent and that the price of the patented drug charged or quoted to druggists by the patentee is more than 500 per centum of the cost of production for such drug in finished form and packaged for sale, the Commission shall issue and serve upon such patentee a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of its notice and to show cause why an order as hereinafter provided should not be issued by the Commission. The patentee shall have the right to appear at the time so fixed and present evidence on the cost of production of the drug and the price charged or quoted to the druggists.

"'If, after consideration of the evidence, the Commission finds that the price charged or quoted to druggists by the patentee is more than 500 per centum of the cost of production of such drug in finished form and packaged for sale, it shall order such patentee to grant an unrestricted license to any qualified applicant to make, use, and sell such drug in finished form, provided that no such order shall be issued until more than three years after the date on which a patent is first issued for such drug. Such order shall be subject to review by the court of appeals of the United States and shall become final in the same manner as are orders of the Commission issued pursuant to section 5 of the Federal Trade Commission Act.

"'For the purpose of this section the Commission shall have all of the powers granted to it by the Federal Trade Commission Act.

"'Whenever at any time after an order of the Commission, as herein directed, shall have become final and thirty days thereafter have elapsed, the Commission shall notify the Commissioner of Patents in writing of any failure or refusal of any patentee, his heirs, or assigns to grant an unrestricted license to a qualified applicant after receipt of an application in writing. Upon receipt of such notification the Commissioner shall cause notice of the cancellation of that patent to be published in the Federal Register and endorsed upon all copies of that patent thereafter distributed by the Patent Office.

"'As used in this section—

"'(a) "Qualified applicant" means a drug manufacturer who is registered with the Secretary of Health, Education, and Welfare under section 508 of the Federal Food, Drug, and Cosmetic Act;

"'(b) "Drug" means any drug which is subject to the provisions of section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act;

"'(c) "Patentee" means the patentee, his heirs or assigns, or licensee when the patentee does not sell to druggists and such sales are made only by the patentee's licensee;

"'(d) "Cost of production" means cost of materials and labor used to produce the drug in finished form and packaged; a fair allocation of plant overhead; royalties paid, if any, for the use of any product or process patent in connection with the production of the drug; and the drug's share of the patentee's total research expense as determined by the relationship of the annual sales of that drug to the patentee's total annual sales of drugs for the last preceding annual or fiscal year;

"'(e) "Unrestricted license" means a license which (A) includes a description of the manner and process (not including a patented process) of making and using the invention in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains to make and use the same, and shall set forth the best mode contemplated by the patentee of carrying out the invention; and (B) contains no condition, limitation, or restriction upon the manufacture, use, or sale in finished form only in the United States other than the payment by the licensee of a royalty not exceeding 8 per centum of the gross selling price received by the licensee for the sale of that drug to druggists in its finished form for use and packaged.'"

Mr. KEFAUVER. Mr. President, on this amendment, I ask for the yeas and nays.

The yeas and nays were ordered.

LEGISLATIVE PROGRAM—ORDER FOR ADJOURNMENT TO 10 A.M. TOMORROW

Mr. DIRKSEN. Mr. President, I should like to direct an inquiry to the distinguished majority leader as to the plans for the rest of today, for tomorrow, and also for Saturday.

Mr. MANSFIELD. It is the intention of the leadership—and I hope it meets with the concurrence of the Senate—to remain with the pending business until it is finished; and then, if possible, to take up and dispose of Calendar No. 1763, H.R. 10743, to amend title 38, United States Code, to provide increases in rates of disability compensation, and for other purposes. That bill has been on the calendar for some time.

Tomorrow it is expected to have the Senate consider the Philippines war claims bill and other bills.

The Senate will be in session on Saturday to take up the Department of Agriculture appropriation bill and other legislative matters. This is imperative, for if we intend to adjourn at a reasonably early time this year, we must begin to hold Saturday sessions and to come in early and remain in session fairly late each day.

Mr. President, I ask unanimous consent that when the business for today has been concluded, the Senate adjourn until 10 o'clock tomorrow morning.

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

DRUG INDUSTRY ACT OF 1962

The Senate resumed the consideration of the bill (S. 1552) to amend and supplement the antitrust laws with respect to the manufacture and distribution of drugs, and for other purposes.

Mr. KEFAUVER. Mr. President, the amendment now under consideration is controversial, so I shall explain it.

The amendment provides that whenever the Federal Trade Commission finds that a patented drug sells for more than 500 percent of the production cost and the cost of research, after the drug has been on the market for 3 years, a qualified drug manufacturer may obtain a license to manufacture and market the drug upon payment of a royalty.

Under the amendment, if the drug is not selling at a price which represents a markup of more than 500 percent, the manufacturer will be entitled to retain the exclusive right for the remainder of the 17-year period.

Mr. President, this amendment will reduce the price of drugs. That is what the American people want. The amendment will not work undue hardship on the drug manufacturers; and the amendment will be in the interests of the people who use drugs.

If Senators will examine part 17 of the hearings of the Antitrust and Monopoly Subcommittee, they will find an article, based on a Gallup-type poll—the article was published in the Washington Star—stating that 65 percent of those interviewed favored Government regulation of the price of drugs, because they believed that the price of drugs was exorbitant; 22 percent of those interviewed said "No"; and 13 percent said "No opinion."

The article states, in part:

Strong words were heard by the interviewers—"Outrageous. Extortion. Murder."

Another Gallup-type poll showed that 71 percent of those interviewed thought there should be price control of prescription drugs.

Mr. President, I am not in favor of price control, and I do not advocate it. But prices must be brought down. The only alternative to price control is to have vigorous price competition.

I hope Senators who have the time to do so will read pages 46 to 50 in the Judiciary Committee report of July 19 on the drug bill. There they will see the individual views of the Senator from Michigan [Mr. HART], the Senator from Colorado [Mr. CARROLL], the Senator from Connecticut [Mr. DODD], the Senator from Missouri [Mr. LONG], and myself.

Mr. President, among the 77 nations for which information is available, only 28 grant product patents on drugs and only 3—the United States, Panama, and Belgium—do not have some special provision to protect the people against excessive prices for drugs, either limited patent protection, compulsory licensing or price control.

That drugs are unique is indicated by the fact that 74 of these 77 countries have some special provision to protect their people against monopoly in this particular field. For example, in Germany, only process patents are granted in drugs. Although the protection extends to the product, the patent protection disappears when another process of making the drug is developed. This same method has long been employed in other countries which have been prominent in drug discovery, such as Switzerland, France, Denmark, and others. In Great Britain there is both compulsory licensing and voluntary price control in drugs.

I know it is argued that if an exception is made for drugs, it might erode into other industries and then lead to a general breakdown of the patent laws. But that has not been the case in these other nations which have always treated drugs differently under their patent laws.

When a government wishes to purchase military equipment items or, for that matter, drugs, it can buy them even if a patent is violated, although of course in the United States the Government can be sued in the Court of Claims. But individual citizens cannot do that. No patents at all are granted in connection with atomic energy.

Whether one considers the profits of the companies, or the procedure followed in other countries, or the lower prices obtained by means of competitive bidding in connection with sales to States or to governments, or the costs of production—whatever criteria is used—there is no justification, for the prices of drugs are clearly excessive, high, and unreasonable.

Mr. EASTLAND. Mr. President, will the Senator from Tennessee yield?

The PRESIDING OFFICER (Mr. BURDICK in the chair). Does the Senator from Tennessee yield to the Senator from Mississippi?

Mr. KEFAUVER. I yield.

Mr. EASTLAND. Is this the amendment which would limit the patent right to 3 years?

Mr. KEFAUVER. The amendment provides that if after 3 years the Federal Trade Commission finds that the manufacturer is selling to druggists at a price which is more than 500 percent of the cost of production, plus research, then he must license qualified companies at an 8-percent royalty, thereby making it possible to have competition and thus lower prices.

Mr. EASTLAND. But if a company spends thousands of dollars on the development of an antibiotic which would save thousands of lives, how could the company get back its investment, under such a provision of law?

Mr. KEFAUVER. I am glad the Senator from Mississippi has asked that question. Usually a patent is pending for at least 2 years, and sometimes for as much as 5 years. During all that time the company could have the drug on the market. It would have the advantage of having been the first to put it on the market. It would have the advantage of having its name used first in connection with the sale of the drug. Then, after the patent was issued, the company would have 3 more years in which to continue to enjoy those advantages. The usual experience is that the largest part of the company's revenue from a drug comes during the first few years. Thus, in the average case the company would have, during the 2 years the patent was pending and for 3 years thereafter, these advantages; and thereafter the company would get a royalty from the licensee of up to 8 percent on the sales of the drug in finished form, not in bulk form, and that is a very high royalty.

In many cases the large companies now voluntarily grant licenses to other large companies for the manufacture and sale of the drug. But in only one or two cases does the company get as much as an 8-percent royalty; the usual royalty is 3 percent or 4 percent.

Mr. EASTLAND. Mr. President, will the Senator from Tennessee yield again to me?

Mr. KEFAUVER. I yield.

Mr. EASTLAND. Does not the Senator from Tennessee know that a company can invest millions of dollars on research in connection with the development of a new drug; and then, almost immediately thereafter, a better drug may come on the market? So there must be some means of making adequate research possible. The number of drugs developed in the United States exceeds the number developed in all the rest of the countries of the world, combined; and our drug companies have an incentive to spend money on research and development.

On the other hand, in Italy there has not been even one medical development in recent years, while the companies in the United States have been making this breakthrough, under the free-enterprise system of the United States. That is what is at issue here.

Mr. KEFAUVER. Mr. President, with all due respect, I must point out that the Senator could not be more mistaken about that matter.

Mr. EASTLAND. Will the Senator from Tennessee explain where I am wrong?

Mr. KEFAUVER. Yes. In the year for which we obtained records from 22 major companies, the average amount spent for research—including attorneys' fees and all other costs—was 6.3 percent of the sales dollar. In contrast, the amount spent for promotion and sales was 24 percent. The companies could very well cut down the amount spent on promotion, and undoubtedly they will; and they could very well spend more on research, if they wished to do so, and still make very satisfactory profits.

Let me explain to Senators that for quite a number of years the profits of the drug industry have been the highest in any American industry. On the left of the chart I am now pointing to are shown the 15 most profitable types of industry in America. It will be seen that the net worth after taxes for the drug industry is about 21.4 percent. The average for all manufacturing is 11 percent.

The next chart shows the rate of return after taxes on net worth, which for all manufacturing is approximately 10 percent. For drug companies in the last 3 or 4 years it has been around 20 percent.

The next chart relates to particular companies. Some companies, such as Carter Products, made enough profit in 2 years to repay their entire net worth. American Home Products is another similar case.

If we consider the return on sales, it will be seen that it runs around 10 percent, or a little higher for drugs, while for all manufacturing it runs a little more than 5 percent, just half. The return on investment and the profit rate on sales are about double in drugs what they are in all manufacturing.

Let me give the Senate specific examples why it is necessary to have compulsory licensing.

I ask unanimous consent to have printed at this point in the RECORD a table showing the costs and prices of major drug products.

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

Costs and prices of major drug products

	Factory cost		Price to MMSA	Price to druggist in foreign country	Price to druggist in United States	Price to druggist as percent of factory cost	
	Actual	Committee estimate				Actual	Committee estimate
Prednisone [1] (Meticorten, Schering)	[2] $8.99	[3] $13.61	[4] $17.97	[5] $75.30	[6] $170.00	1,891	1,249
Reserpine [7] (Serpasil, Ciba)	[2] .63	[8] 2.48	[9] .52	[10] 10.50	[6] 39.50	6,270	1,593
Meprobamate [11] (Miltown, Carter)	[12] 7.00	[12] 7.32	[14] 39.53	[15] 29.60	[6] 65.00	929	888
Tolbutamide [16] (Orinase, Upjohn)	[17]	[18] 13.11	[17]	[19] 37.00	[20] 83.40	[17]	636
Tetracycline [21]	[22] 1.67	[22] 2.88	[24] 6.07	[25] 26.90	[6] 26.01	1,557	903

[1] 5 milligrams, 1,000's.
[2] McKesson; pt. 5, p. 2664.
[3] Report, p. 16.
[4] MMSA contract N7275 (Schering).
[5] Report, p. 32 (England).
[6] Red book or blue book.
[7] 0.25 milligram, 1,000's.
[8] Estimated.
[9] MMSA contract N6813 (Ciba).
[10] Report, p. 36 (Germany).
[11] 400 milligrams, 1,000's.
[12] Carter; pt. 16, p. 9162.
[13] Report, p. 18.
[14] MMSA contract N7527 (Carter).
[15] Report, p. 35 (England).
[16] 0.5 gram, 1,000's.
[17] Not available.
[18] Report, p. 20.
[19] Report, p. 37 (Germany).
[20] Upjohn catalog.
[21] 250 milligrams, 100's.
[22] Bristol; pt. 5, p. 2408.
[23] Report, p. 23.
[24] MMSA contract N32-13175 (Pfizer).
[25] Report, p. 42 (Germany).

Mr. KEFAUVER. Let us take the drug prednisone, which is used by arthritics.

The subcommittee staff computed the cost on 1,000 tablets as $13.61. That was based on the sale of the drug in bulk powder form by a reliable company, testing it, compounding it into tablets, putting it in bottles and then into packages ready for shipment. On such bulk sales and on the tableting and bottling a profit was made. That is the reason why the factory cost estimated by the staff has proved to be a little high. The actual factory cost of making prednisone by McKesson & Robbins, which is a reliable concern, is $8.99 a thousand. Yet, prednisone is sold by Schering as Meticorten, under its tradename, to druggists for $170 a thousand.

The same company, Schering, when the Government put out bids for the purchase of prednisone for the Military Medical Supply Agency, offered a bid of $17.97 a thousand. Why should Schering charge druggists $170 a thousand when they make a bid to the Government of $17.97 a thousand?

England has fairly high prices. Yet prednisone was sold in England for $75.30 a thousand.

I hold in my hand a bottle of prednisone. It is for arthritics and aged patients. McKesson's factory cost, as I said, is $8.99. Its price to a druggist is $20.95. But the prices to retailers of Merck and Schering and others is $170.

It happened that prednisone is involved in a patent interference. It is widely believed that Schering is going to get the patent. If Schering licenses Merck and Upjohn, if any one of these large companies gets the patent, they will only license other large companies. The arthritics and old people will be denied the right to buy prednisone made by McKesson & Robbins and other companies at 2 or 3 cents a tablet. They will have to pay nearly 30 cents a tablet, as they do now when they buy prednisone under a trade name.

Mr. LAUSCHE. Mr. President, will the Senator yield on this point?

Mr. KEFAUVER. I yield.

Mr. LAUSCHE. Is there any dispute about the fact the Senator from Tennessee has just pointed out, that in selling to the Government 1,000 tablets were sold for $17.97, while in selling to druggists they were sold for $170?

Mr. KEFAUVER. That is the price at which Schering bid to the Government. The company which actually obtained the contract bid lower. The Government got it for less.

Mr. LAUSCHE. Then, there is no dispute about the claim that, in selling to druggists, it sold 1,000 tablets for $170, but in selling to the Government it offered them at $17.97?

Mr. KEFAUVER. The Senator is correct.

I see present in the Chamber the Senator from Michigan [Mr. McNAMARA] who has investigated the problem of the aged and aging and who has testified before our committee. These older people cannot take a drug only one day a week; they have to take it every day.

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

Mr. KEFAUVER. In just a minute. The price to the druggist is 17.9 cents apiece. When the druggist sells it to the patient, the patient has to pay 28 cents a tablet for it.

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

Mr. KEFAUVER. I yield.

Mr. McNAMARA. I wish to verify what the Senator from Tennessee has said. We obtained that testimony from all over the country regarding this particular drug, as well as others. It was brought out that patients had to pay 30 cents a tablet in some cases to obtain the drug.

This is no small part of the problems of retired persons.

I ask unanimous consent that I may have printed in the RECORD at this point testimony presented by Ernest Giddings, director of legislation, National Retired Teachers Association and American Association of Retired Persons, before the House Committee on Interstate and Foreign Commerce on August 23, 1962.

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

TESTIMONY OF ERNEST GIDDINGS

Mr. Chairman and members of the committee, my name is Ernest Giddings. I am director of legislation for two nonprofit organizations of older persons, the National Retired Teachers Association and the American Association of Retired Persons. I am appearing today on behalf of the 500,000 members of our associations to urge an early favorable report by your committee on H.R. 11581 in order that the bill may be taken to the floor of the House of Representatives for debate and action during the next few weeks before adjournment.

The associations I represent were organized to help older persons help themselves and to encourage them to accept a major share of the responsibility for making their later years meaningful and independent. Membership in the National Retired Teachers Association is open to any retired teacher. Membership dues are $2 a year. Membership in the American Association of Retired Persons is open to any person 55 years of age or over upon payment of the annual membership fee which is also $2. Both organizations are nonprofit and nonpartisan. The combined membership of the two organizations is approximately 500,000.

NRTA and AARP are dedicated to the purpose of serving the needs of their elderly membership. When our campaign for insurance protection was initiated there was no hospitalization or medical program exclusively for retired persons, and most programs designed to serve employed men and women arbitrarily excluded them from participation in the plan the day they reached the age of 65, or advanced the premiums with lowered benefits. To break this age barrier the officers of the two organizations worked for 7 years before convincing an insurance company to be daring enough to pioneer with us. The success of this breakthrough is attested by the fact that today more than 350,000 retired men and women are covered by a hospitalization program which was denied them until a few years ago, on no more valid grounds than that of age.

During the years 1958 and 1959 our members by the thousands protested the cost of the drugs. As a final result we established and have conducted for several years a nonprofit drug service for our membership. The major function of our drug service is to fill prescriptions and provide the vitamins ordered by our members. Several registered pharmacists are employed as well as total facilities to meet the regular standards of safety and sanitation.

Early in our experience with a drug service we invited the Food and Drug Administration to inspect our drug facilities and services as well as our labeling procedures for drug containers. We requested their comments and suggestions and their recommendations were accepted and carried out. We are not in the drug service by choice, but because our members take the position that they have no other way of securing the medicine they need at a price they can afford to pay.

Some organizations resent our entry into the drug field. As associations, we pay the same cost of drugs as they do. We ask no favors nor concessions. We pay more than the going wage to our pharmacists. We conduct an ethical pharmacy. We share our potential profits with our members to keep them self-supporting on a limited income. This sharing seems to be the point of contention of those who resent our operation in the drug field. Yet we stand shoulder to shoulder with our critics in the defense of high ethical standards, of the purity of the products and the unquestioned spirit of mission that this dispensing of drugs generates.

Our members are vitally concerned with the subject before your committee for many reasons:

1. The incomes of our people who were retired from public and private retirement systems were fixed 5, 10, 15, or 20 years ago and cannot readily be adjusted upward as our economy grows and as prices rise;

2. Their ability to purchase the needed drugs often makes the difference between sickness and health and sometimes between life and death;

3. When physicians, as is the general practice in writing prescriptions, identify the drug by its trade name instead of by its official name they leave our aged sick little or no opportunity for reducing costs. The patient must buy the prescribed brand and is left no opportunity of shopping around to buy at a price he can afford;

4. Those who exist on a bare subsistence level must often sacrifice on food or some other necessity in order to afford the prescribed drug or else deny themselves or ask for charity;

5. The opportunity to buy drugs they need at a cost they can afford, will keep them physically fit, able to work part or full time to supplement their retirement incomes and thus continue to do their part in the productivity of the Nation, and at the same time maintain their self-respect;

6. When elderly people living on a subsistence income can be saved on drug purchases as much as $100 to $300 in 1 year, this saving alone may preserve their sense of self-sufficiency, their feeling of dignity, and keep them from being placed on the relief roles of their local communities or State.

MONOPOLY

It is certainly to be expected that the work of your committee will result in a bill requiring improvement in the quality of drugs, requiring that physicians be provided with more adequate and complete information about drugs, and restricting the use of advertising matter of the overstated and misleading kind.

However, the bill makes little or no attempt to deal with the factor chiefly responsible for the high drug costs. Most sales of drug prescriptions are of patented drugs. The drug patent like patents for a door lock or firearm run for 17 years. This means that the owner of a drug patent is protected for 17 years in his exclusive monopoly regardless of the fact that this monopoly

control may be the single factor which prevents thousands of our members and millions of others of all ages from use of the drug. Cost is an extremely effective deterrent from the benefit of needed drugs in the case of older people with limited incomes. Much as we believe in the principles of free enterprise and protection of the profit motive it is our position that no person or corporation should be allowed to withhold from public use products which relieve pain and suffering and which may make the difference between life and death. Only two other nations Belgium and Panama grant so much protection as we do in the nature of product patent monopolies on drugs without limitations on the drug producer to protect the public welfare.

Drug costs are not fiction, they are very real. Some reasonable part of the high costs can be charged to research. On the other hand all the evidence indicates that drug industry profits lead all the rest by a wide margin.

Profits after taxes were 19.7 percent of investment in the drug and medicine manufacturing industries in 1961 according to reports published by the First National City Bank. This rate is almost double that of all manufacturing which was shown to be 10.1 percent in that year.

Markup on many drugs is appalling. Prednisone widely used in relieving pain from arthritis has until recently cost the patient about 28 cents a pill or close to $30 a month. Until recently the pill cost the druggist 17 cents each. After some investigations into drug costs McKesson & Robbins commenced manufacture of the Prednisone pill and found its costs to be approximately 1 cent per pill.

Our evidence is that tetracycline, an antibiotic, costs about 2 cents a pill to produce; costs the druggist about 30 cents and costs the patient about 50 cents.

We believe the interests of the drug industry can be adequately served and that the welfare of the sick and ailing at any age can be better served if your committee will write legislation to restrict the existing 17 years exclusive patent legislation now protecting the drug manufacturer at the cost of the consumer. We urge your committee to give full consideration to the licensing procedure proposed in S. 1552 in its original form.

Such a provision would require that the owner of a drug patent after a 3-year exclusive monopoly, license for production of the drug any qualified drug manufacturer, that manufacturer being permitted to agree to pay the patent owner up to an 8-percent royalty on all sales for the 14-year period.

Under such a plan competition would to a limited extent replace monopoly and drug costs to the ill and suffering of all ages should gradually become adjusted downward by a competitive marketing of the drug.

REGULATION OF LICENSE AGREEMENTS

A second factor contributing heavily to high drug costs is a practice common in the drug industry which results in price fixing by agreement. Such agreements are frequently entered into during the course of Patent Office hearings between rival applicants for a patent. The contracts thus agreed upon in these proceedings determine who shall receive the patent, who shall be licensed to produce the drug and the price, usually uniform and identical, which each producer will charge for the drug.

We urge your committee, as it writes up the bill, H.R. 11581, to include an amendment requiring that all patent interference settlements be filed with the Patent Office. Terms of the agreements would therefore be available to both the Department of Justice and the Federal Trade Commission for use of either in any investigations into possible violations of the Sherman Act. We believe such a requirement would be of immeasurable assistance to these agencies. Since the Pharmaceutical Manufacturers' Association has agreed to the desirability of such a provision it is our hope that your committee will write this requirement into H.R. 11581 before reporting out the bill. We believe such a requirement would greatly assist in lowering the excessively high prices of many drugs.

PROOF OF EFFICACY

Present law requires only that the Food and Drug Administration be satisfied that a drug is "safe" before it may be manufactured and sold to the public. Present law does not provide the Food and Drug Administration authority to require proof that the drug is effective in treating the sickness for which it is sold. In fact, and in practice therefore a drug may be legally marketed which is "safe" under current requirements but which is ineffective when taken by the patient for a specific illness. Frequently, the patient may be given the "safe" drug when he should be given one both "safe" and effective and in such a case the drug is positively injurious and harmful to the health of the patient.

Medicines are too expensive and good health is too precious to receive so little protection from either the drug industry or from our Federal Government. By Federal law we give better protection than this to the products we sell to treat plant or animal diseases. It is our plea, therefore, that your committee insist upon perfecting section 102 of H.R. 11581 not only to require proof with application for a patent that the new drug meet a rigid efficacy test, but also proof of efficacy of every claim made for the drug after the patent has been granted and the drug is on the market.

The drug budget of our members is so limited and the health of all citizens is too vital to themselves and the national welfare to permit any degree of deception, however slight, in advertising a drug for human consumption.

NEW DRUG APPLICATIONS

Our recent experience with the baby-deforming drug thalidomide is ample proof that our Food and Drug Administration needs more protection by Federal statute in its terribly important duty to refuse any and every new drug application as long as there is a shadow of a doubt about its possible dangerous side effects. A public official with less dedication to his or her tremendous responsibility than Dr. Kelsey might well have yielded to 1 of the more than 40 contacts from the new-drug applicant, the Merrill Co. In such a case deformed children would have been born by the thousands in our country.

The major impact of the thalidomide catastrophe occurred after the bill was introduced on May 3 of this year. It is to be assumed that you will greatly improve section 104 which, as it stands today, simply extends by a short time the opportunity of the Food and Drug Administration to require proof of safety of the new drug. We believe the present requirement of automatic approval, whether after 90 days following application or after any other specified number of days, places unnecessary and dangerous pressure on the Food and Drug Administration staff. Some better plan than the automatic approval procedure must be devised.

In this brief statement I have tried to emphasize to your committee the position of our membership that drug prices are excessive. The incomes of older people are static and therefore buying power diminishes with every increase in the cost of living. If drug prices are needlessly high it is our position that the Congress has a responsibility to the national welfare to seek out and apply the proper remedy. When freight rates became discriminatory decades ago the Congress provided a partial remedy in enacting the Interstate Commerce Act. When the combinations known as trusts needed regulation in the last century the U.S. Congress passed the Sherman Antitrust Act.

It seems to us that the Congress has ample evidence of the genuine need for the passing of an effective drug bill before the present Congress adjourns.

In our drug service at 1000 Vermont Avenue, here in Washington, we fill approximately 6,000 prescriptions weekly. If these could all be filled with generic drugs, rather than with the same drugs carrying trade names, the savings to our members would be tremendous. As an illustration, we have many members using a trademarked drug prescribed for heart conditions.

In a 4-month period we dispense some 335,000 tablets of this drug. Sold under the trade name, this would amount to $13,187. If they were dispensed under the generic name, they would cost only $7,662, or a savings of $5,525.

To use another illustration, a popular prescription for high blood pressure sells in the amount of 190,000 tablets per month, for a total of $10,250. This generic could be purchased for $3,945, or a saving of $6,301.

A well-known tranquilizer sells up to 120,000 per month, with a cash value of $6,840. Purchased under the generic name they would cost $3,000 or a saving of $3,840.

These three drugs alone would have saved our members a total of $15,666 if bought under their generic name.

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

Mr. KEFAUVER. I yield.

Mr. EASTLAND. The Senator's argument is beside the point. What the Senator wants to do is reduce the patent right from 17 years to 3 years. That is the point at issue.

Mr. KEFAUVER. No.

Mr. EASTLAND. If the patent right is reduced to 3 years, there will be no research. Millions of Americans are living today because of research. That is the point at issue.

Mr. KEFAUVER. Let me point out that licensing as carried on today does not prevent companies from making profits. CIBA, and its widely licensed reserpine, makes excellent profits, for example.

Mr. EASTLAND. The Senator is not going to put a noose around the drug industry's neck and still get research.

Mr. KEFAUVER. I yielded for a question, not for argument. I point out that companies that have licensed other companies voluntarily do not suffer from loss of profit. Merck is licensed, and it does not suffer from lack of profit or research.

The chart shows, for example, with reference to methyltestosterone, that there is only one producer but among the major companies there are seven sellers. It is licensed to six others by the maker.

Progesterone has one producer, but it is licensed to eight others. Reserpine is made by CIBA, and is licensed to five others. The same is true in many other cases.

The result of my proposal would be that the drug companies would not hold up the public in the manner in which they do now. They would not be selling their products at more than 500 percent of the cost of production plus research.

I emphasize this point to the Senator from Mississippi. I ask Senators to look at the definition of "cost of production"

in the amendment. Senators will see that it includes research on any particular product. I ask Senators to look at page 4:

"Cost of production" means cost of materials and labor used to produce the drug in finished form and packaged; a fair allocation of plant overhead; royalties paid, if any, for the use of any product or process patent in connection with the production of the drug; and the drug's share of the patentee's total research expense as determined by the relationship of the annual sales of that drug to the patentee's total annual sales of drugs for the last preceding annual or fiscal year;

In no industry other than the drug industry are there such markups. Even Coca-Cola has a smaller markup, and it has about the highest, outside the drug industry.

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

Mr. KEFAUVER. I will yield to the Senator in a moment.

I have a list of 14 major drug companies which have markups representing their entire operations of from 242 to 463 percent of the cost of production.

I also have a representative list of markups of large firms in other industries. The Coca-Cola Co. has the highest markup of all the others—markup is only 234 percent. They range down to as low as 104 percent, for Douglas Aircraft Co., Inc. Many, if not most of these large and well-known companies in other industries, with lower markups, are able to carry on extensive research.

I ask unanimous consent that these two lists may be printed in the RECORD at this point.

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

Company sales as percent of cost of goods sold: 15 drug companies, 1959

Norwich Pharmacal Co	463
Schering Corp	461
Bristol-Myers Co	392
The Upjohn Co	391
Smith Kline & French Laboratories	365
Carter Products, Inc	360
G. D. Searle & Co	319
United States Vitamin & Pharmaceutical Corp	292
Sterling Drug, Inc	275
Warner-Lambert Pharmaceutical Co	273
Parke, Davis & Co	272
American Home Products Corp	268
Abbott Laboratories	249
Merck & Co., Inc	243
Mead Johnson & Co	242

Computed from table 7 of report, "Administered Prices: Drugs" (S. Rept. No. 448, 87th Cong., 1st sess.). Original tables compiled from data published by Moody's Industrials.

Company sales as percent of cost of goods sold: 50 manufacturing companies in 50 3-digit industry groups, 1959

Group number:		
208X	Coca-Cola Co	234
284	Colgate-Palmolive Co	188
283	Eastman Kodak Co	167
211	R. J. Reynolds Tobacco Co	164
281	E. I. du Pont de Nemours & Co	162
324	Lehigh Portland Cement Co	160
205	National Biscuit Co	160
381	Minneapolis-Honeywell Regulator Co	158
357	Burroughs Corp	157
351	Outboard Marine Corp	153
289	Hercules Powder Co	151

Company sales as percent of cost of goods sold: 50 manufacturing companies in 50 3-digit industry groups, 1959—Continued

Group number:		
326	Johns-Manville Corp	151
398	Armstrong Cork Co	149
207	Hershey Chocolate Co	148
271	Curtis Publishing Co	146
203	General Foods Corp	143
321	Pittsburgh Plate Glass Co	142
266	Masonite Corp	140
314	International Shoe Co	139
287	Tennessee Corp	139
285	Glidden Co	137
204	Corn Products Co	137
251	Simmons Co	136
231	Cluett, Peabody & Co., Inc	136
202	National Dairy Products Corp	135
291	Socony Mobil Oil Co	134
295	Flintkote Co	134
331	United States Steel Corp	134
333	Aluminum Co. of America	133
301	Goodyear Tire & Rubber Co	130
241	Georgia-Pacific Corp	130
356	Worthington Corp	128
355	Food Machinery & Chemical Corp	127
354	Blaw-Knox Co	126
352	International Harvester Co	126
343	American Radiator & Standard Sanitary Co	125
208	Schenley Industries	125
227	Bigelow-Sanford, Inc	124
371	General Motors Corp	124
365	Radio Corp. of America	123
374	Westinghouse Air Brake Co	122
262	West Virginia Pulp & Paper Co	122
341	American Can Co	119
366	Raytheon Co	117
221	Burlington Industries, Inc	116
349	Combustion Engineering, Inc	116
206	American Sugar Refining Co	114
361	General Electric Corp	113
201	Swift & Co	110
372	Douglas Aircraft Co., Inc	104

Computed from table 8 of report, "Administered Prices: Drugs." Original tables compiled from data published by Moody's Industrials.

Mr. KEFAUVER. I now yield to my distinguished friend from Iowa [Mr. MILLER], who previously requested that I yield.

Mr. MILLER. Mr. President, the Senator made a comment a few moments ago which concerns me, when he referred to the pills in a certain bottle, and pointed out that one company was selling a bottle of those pills for $20 while another company was selling pills of the same nature for $170.

Mr. KEFAUVER. Exactly the same product.

Mr. MILLER. This does not concern me very much, because it seems to me that if the product is the same and if there is such a differential in price, people naturally will buy the $20 bottle of pills instead of the $170 bottle of pills.

What is the point the Senator was trying to make?

Mr. KEFAUVER. The detail men from Merck and Schering and Upjohn impress the trade name upon the doctors on whom they call.

Schering calls its product "Meticorten." When a prescription is written for "Meticorten," the patient is forced to pay nearly 30 cents a tablet for it. He cannot shop around. If the doctor should write down "prednisone," the patient could shop around. He might go to a druggist who sells the McKesson & Robbins product, which he can buy for 3 cents a tablet.

A patent will soon be issued on prednisone. When it does, McKesson & Robbins will, and other competitive companies, be prevented from giving the people the break they are now giving them. The patient will have no alternative but to pay the high price of 30 cents a tablet charged the trade-name product.

I should like to show Senators what has happened in regard to some of these other drugs.

I see the Senator from Florida [Mr. SMATHERS] in the Chamber. He knows of this situation. He was the first witness before our committee. He talked about the foreign prices for the same drugs made in the United States, and sold here and overseas—either by the American manufacturer or a subsidiary. There was a great difference in price.

Those drugs were selling overseas for as little as one-fifth as much as the American people had to pay for the same drugs.

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

Mr. SMATHERS. Mr. President, will the Senator yield to me, since he mentioned my name?

Mr. KEFAUVER. I yield to the Senator from Florida.

Mr. SMATHERS. The Senator is absolutely correct in what he is saying. I received some information several years ago concerning drugs which were being sold. That information is in the record. The name of the particular drug escapes me at the moment, but it is a drug which is being sold in the United States.

It was selling for a high price. The then Governor of the State of Florida happened to be traveling in Berlin. He had been a victim of a certain type of disease and needed this particular drug. He was able to get it in Europe. He is the person who first called the situation to my attention. He was able to get the drug in the foreign country at something like 80 percent less than the cost in the United States. He started a little investigation on his own, and discovered that the same company made the drug in the United States and shipped it overseas, there to sell it for some 80 percent less than it was sold to the people of the United States. I am not sure exactly what is the answer to the problem, but I think the able Senator from Tennessee has rendered a great service to all of us by bringing this situation to the attention of the Senate and to the attention of the public.

I believe in the free enterprise system. I think we must have research. On the other hand, I do not believe we need to have a private enterprise system and a free enterprise system which demands what amount to unconscionable profits, particularly when the profits come, in most cases, out of the pockets of sick people or elderly people who really are in no position to pay high prices for their drugs.

My own father suffers from arthritis. He has been taking prednisone and other drugs. He was among the first on whom the drugs were tried. I know from personal experience that he has had to pay a great deal of money for such drugs, much more than he was actually in a

position to pay. He was always grateful to get them. They have brought wonderful results for him. He was glad in one instance to become the "guinea pig" in respect to one of the drugs. Without those drugs he would be continually in pain today. He is 81 years old and still getting around well.

There is no question in regard to the fact that drug prices have been out of line compared to what they should have been. I congratulate the Senator for his fine work.

Mr. KEFAUVER. I thank the Senator from Florida. The Senator has been very helpful to the committee. He has given us much encouragement.

The record is full of testimony concerning instances in which drugs are made in the United States and sold overseas at much lower prices.

I ask Senators to refer to page 113 of the report on the study of administered prices in the drug industry—Senate Report No. 448—by the Committee on the Judiciary. I am sorry the Senator from Mississippi has left the Chamber. The table on that page is labeled: "Comparison of Prices of Inventing Company in Home Country and of American Licensee in United States."

The table lists drugs discovered abroad which have been offered to an American licensee. The first one listed is Thorazine, a tranquilizer. It was discovered by Rhone Poulenc in France. The price in France is 51 cents for 50 tablets. The licensee in the United States, Smith, Kline & French, sells the same drug in the United States at $3.03 per unit, although Smith, Kline & French did none of the research.

Reserpine, a tranquilizer, was developed by CIBA, a company in Switzerland, from rauwolfia serpentina, which is the root of a bush in India. People have been chewing it for a thousand years to calm their nerves. CIBA sells it in Germany at $1.05 per 100. In the United States their licensee, in this case their subsidiary, sells exactly the same product for $4.50 per 100. Yet it was developed in Switzerland, and no research went into it in the United States.

I refer to Orinase, which was developed in Germany by Hoechst. Orinase is an oral antidiabetic drug. All the research was done in Germany, where it is sold for $1.85 for 50 tablets. But Upjohn, their licensee in the United States, which did none of the research, sells it for $4.17. Mr. President, that is not right.

Let us now consider tetracycline, which is the largest selling drug among the broad spectrum antibiotics. The factory cost as estimated by the staff—and in all cases the staff's estimated cost was higher than the actual cost when we finally got it—was $2.88 per hundred. The actual figure of Bristol's production cost is contained in part 4, page 2408, of the hearings by the subcommittee on the bill. The actual cost of making that product is $1.67 per hundred tablets.

The bid to the Military Medical Supply Agency by Pfizer, which makes the same product, was $6.07 per 100. The price to the druggist in the United States is $26.01 which reflects a 15 percent price reduction made just as we began our antibiotic bearings.

Strangely, in that case the foreign price is higher. The reason is that there is a cartel in this broad spectrum antibiotic, there is strong evidence that all the companies have agreed to keep the price high here and abroad; and following our disclosure of cartel agreements for their product, the Department of Justice launched a grand jury investigation.

I yield to the Senator from Connecticut.

Mr. BUSH. I was about to ask the Senator when he had the prednisone chart before the Senate whether he had any testimony as to how long it takes to develop an article like that. In other words, how many years of development are behind that article before it becomes a commercial product? Did the testimony before the Senator's subcommittee bring out that point?

Mr. KEFAUVER. Yes; the story about prednisone is all in the record. It is a derivative of cortisone. Cortisone, being a product of nature, is not patentable.

There is an interesting story about the development of that drug. During the last war, the U.S. Government thought that the Germans were giving their pilots some drug that would enable them to fly in higher altitudes than could our pilots. They obtained the services of Dr. Vannevar Bush and John Connor. A great deal of research was conducted to see if we could make some drug that would permit our pilots to fly at the same heights as the German pilots. Out of that research came the beginning of cortisone.

Then a very fine physician at Mayo Clinic, Dr. Hench, continued the development of cortisone, for which he received the Nobel Prize.

Syntex, a small Mexican company, first developed prednisone. A molecular change in cortisone resulted in hydrocortisone. Then Syntex made another small molecular change and obtained prednisolone. Next came a drug called methylprednisolone. This was followed by another molecular change, triamcinolone. Merck then made still another small molecular change and obtained dexamethasone. That whole story is contained in the record of our hearings. This is an example of the "horsepower race" in drugs.

Mr. BUSH. If the Senator will excuse me, I do not quite get the answer to my question. I see there is a great deal of background before development of the commercial product. How long a period of time is required to develop one of those molecular divisions?

Mr. KEFAUVER. Different periods of time are required for different products. Some come by accident and some come after a relatively long time.

Mr. BUSH. The point I make, if the Senator will permit me, is that research is expensive, but it is charged off as an expense. Over a period of years a company might spend millions of dollars in developing a product, and yet when earnings are related to the return after taxes, the fact is overlooked that all the money, time, effort and genius, has been spent, but there are no assets to which to relate the profit. But those intangible assets still exist.

Mr. KEFAUVER. The Senator knows very well that profit is after research, as well as after taxes.

Mr. BUSH. Yes, I know it is after research, but the research has gone before on an item like that. After prednisone is placed on the market, research does not continue.

Mr. KEFAUVER. They have been making the same high profit rate for years. I should call attention to the fact that many companies, none of which approached the mark-up of any of the drug companies—such as General Motors, General Electric, International Shoe—all had a great deal of research expense.

As a demonstration of the apparent attitude of some of the big American companies, I wish the Senator would look at page 113 of Senate Report No. 448. If he will do so, he will see that in the product shown there the American companies did no research. They are only the agents in this country for a foreign inventor and producer. Yet in many cases the agent sells at prices two or three times the prices at which the inventing company sells.

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

Mr. KEFAUVER. I yield.

Mr. LAUSCHE. On the item Chlorpromazine, invented in France, selling at 51 cents a hundred tablets, I suppose, in France, but at $3.03 in the United States by the licensee, Smith, Kline & French, what explanation did Smith, Kline & French give for the disparity in price?

Mr. KEFAUVER. I refer the Senator to the chart showing the profits of Smith, Kline & French. In 1952, after taxes, it was 22.7 percent, up until 1954, when Thorazine was introduced. As the Senator knows it is a very potent tranquilizer. After taxes the net profit on investment was 37 percent. It reached up to 50 percent in 1955. In other words, that rate of profit would almost pay for the company in 2 years. Then it came down to about 35 percent in 1958. It was up to about 38 percent in 1959.

Mr. BUSH. Is not that a consolidated account for all of their products?

Mr. KEFAUVER. Oh, yes; that covers all their products, but Thorazine is their big-selling product. Thorazine was the source of their big increase in profits. The record is clear on that point.

Mrs. NEUBERGER. Mr. President, will the Senator yield?

Mr. KEFAUVER. I am happy to yield to the distinguished Senator from Oregon.

Mrs. NEUBERGER. In reference to the question about the cost of research being charged off on drugs, page 136 of the hearings is very revealing. Even the U.S. drug industry itself said that there had been a research gap. They began to pull out old drugs that had been developed long before—for example, Terramycin in 1950. I do not know what was done to it. Perhaps they put a different color in it or something. But it looks as if they had been doing a great deal of

research. So it would not be reflected in those prices, according to their own testimony.

Mr. KEFAUVER. I thank the Senator. Up to 1940 the Germans, French, and English—particularly the Germans—were leading the United States.

When the war came, during the forties, many plants in Europe were either converted to other purposes or destroyed, and their research specialists were diverted to other purposes. The same has been true during the recovery period, until recently. Therefore, in the past 20 years the rate of development in America has risen rapidly, as compared with what has happened in Germany and in other countries which were badly hurt by the war.

I do not want anyone to misunderstand me. I believe there are fine companies in the United States. They are entitled to a great deal of credit for their research and development. Also scientists in universities and hospitals have developed many drugs. Many times they have put them on the market, unpatented and without any royalty, for anyone to produce and sell.

Let me cite a very remarkable example. Reserpine is made from a root, rauwolfia serpentina found in India. It is a derivative of rauwolfia. CIBA, a fine Swiss company, got a patent on reserpine, which it markets under the trade name Serparil. Apparently its patent is not very strong, so CIBA licenses it to many other companies.

The actual factory cost of McKesson & Robbins is 63 cents for a thousand tablets of reserpine. CIBA bid on the generic name, to MMSA with its drug at 52 cents a thousand, or less than the cost to McKesson. I suppose McKesson must pay CIBA a small royalty for making the drug. Our staff had estimated that the factory cost was $2.48 a thousand. We were quite high there. In Germany CIBA's price is $10.50 a thousand, but in the United States its price to the druggist is $39.50 a thousand.

I ask how anyone can justify a bid of 52 cents a thousand to the Government and a sales price to the druggist of $39.50 a thousand. That is markup of more than 6,000 percent. The drug companies have a higher markup than that enjoyed by any other kind of business in the United States.

There is plenty of room for profits, and for generous salaries. If the manufacturers will keep their price under 500 percent of the cost of production when they sell their product to the druggist, there will be no compulsory licensing. If they want to increase the markup to 1,800 percent, they will have to license other companies, for which they will receive 8-percent royalty.

I have before me a bottle of reserpine. The factory cost of a thousand of these, from McKesson & Robbins, after paying some royalty, apparently, to CIBA, is 63 cents a thousand. McKesson & Robbins sell the same pills to the druggist for $2.75 a thousand. The patient would pay about $4.50 a thousand, if he bought the McKesson & Robbins product. The CIBA price to retailers is $39.50 a thousand, and they have suggested a fair trade minimum price of $65.83 a thousand, to the consumer. At the same time their price to MMSA was 52 cents a thousand.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point table 37 from the hearings, showing a comparison of prices of the inventing company in home country and of the licensee in the United States.

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

TABLE 37.—*Comparison of prices of inventing company in home country and of American licensee in United States*

Product	Inventing company	Home country	Price in home country	U.S. licensee	Price in United States	Price in United States as percent of home country
Chlorpromazine (Thorazine)	Rhone Poulenc	France	$0.51	Smith, Kline & French	$3.03	594.1
Prochlorperazine (Compazine)	do	do	.80	do	3.93	491.3
Promazine (Sparine)	do	do	[1] .83	American Home Products	3.00	361.4
Reserpine (Serpasil)	CIBA	Switzerland	[2] 1.05	CIBA	4.50	428.6
Prednisone	Syntex	Mexico	[3] 15.07	Schering	17.90	118.8
Insulin [4]	(University)	Canada	.46	Lilly	.84	182.6
Insulin, Protamine Zinc [4]	Nova Terapeutisk	Denmark	.49	do	.99	202.0
Tolbutamide (Orinase)	Hoechst	Germany	1.85	Upjohn	4.17	225.4
Synthetic penicillin (Syncillin)	Beecham	England	7.68	Bristol	18.00	234.4
Griseofulvin (Fulvicin)	Glaxo	do	8.52	Schering	13.00	152.6
Sulfisomidine (Elkosin)	CIBA	Switzerland	[2] 2.00	CIBA	3.30	165.0

[1] Not reported from France; this price in West Germany; $1.32 in Italy.
[2] Not reported from Switzerland; this price in West Germany.
[3] Sold by Sheremex.
[4] 10 cubic centimeters of 40 units per cubic centimeter.

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

Mr. KEFAUVER. I yield.

Mr. LAUSCHE. How does the Senator answer the analysis made by the Senator from Colorado [Mr. CARROLL] that the amendment has doubtful constitutional validity because it would change the present patent law rights fixed by the Constitution?

Mr. KEFAUVER. I say to the Senator that there is nothing in the Constitution that fixes any length of time or conditions in connection with a patent. Many bills have been passed by either the Senate or the House providing for a compulsory license on various products. Such bills were never passed by both Houses of Congress. The Commissioner of Patents testified that the length of time and the terms and the conditions upon which a patent can issue is purely a matter for Congress to decide. There are no patents on atomic energy. The Government has a right to buy anything from a competitor, and then let itself be sued in the Court of Claims by the holder of the patent. As I see it, no constitutional question is involved.

Section 8 of article I of the Constitution provides that Congress shall have the power to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Copyrights for music are for a longer time. Copyrights on books are for a longer time. They are not uniform with the 17 years for a patent.

Mr. LAUSCHE. Does the Senator have any view or any answer to the charge that by legislation we would begin fixing prices if his amendment were adopted?

Mr. KEFAUVER. I believe that by legislation maintaining competition between the various companies, for the protection of the public, we will bring about a lower cost of drugs, and we will be taking affirmative steps toward dissuading the people of the United States from demanding price control. As I showed from various polls, 65 percent of those polled in 1960 were in favor of Government price fixing for prescription drugs. In the last poll that I saw the percentage was about 70 percent. Why do the people want the Government to fix the prices of prescription drugs? Because they are outrageously high. People cannot afford to pay for them, especially our older people. If we want eventually to have Government price control, let these drugs continue to be sold at an 800-percent markup, and we shall soon have it.

If the manufacturers will be reasonable and not sell for more than 500 percent above the cost of production plus research, the people will get their drugs more reasonably priced, and there will be no agitation for price control.

Mr. EASTLAND. Mr. President, the issue is whether the great American drug industry shall be destroyed. The question of price control is now in the hands of the Subcommittee on Patents, and this very amendment is in the hands of the subcommittee of which the Senator from Arkansas [Mr. MCCLELLAN] is the chairman. The question is now under study, and the Senate is being asked to discharge that committee from its studies.

The United States has the greatest drug industry in the history of the world. Millions of Americans are alive today because of the patent system of our country. The question is not one of price; the question is, Shall a manufacturer who spends large sums of money be granted a patent for 3 years, while a man who invents a new kind of dog

collar is granted a patent for 17 years? The 17 years applies to all other industries.

Sixty new drug breakthroughs have occurred in the United States since 1940 under our present system, as against 29 in Great Britain, France, West Germany, and Switzerland combined. For 1955 and thereafter—and these figures have been taken from the records of the subcommittee headed by the Senator from Tennessee—25 are credited to the United States, and 11 to other countries.

The Senator from Tennessee would like to have the United States adopt the Italian system and destroy all incentive to make investments in research by limiting patents on drugs to 3 years. There has been no discovery in Italy since 1940. Why? Because Italy does not have a patent system. So the issue is whether we should adopt that system or not.

Of 544 new, single chemical entities made available to American physicians in the past 20 years, more than 60 percent have originated in the United States—think of that—under the American system of free enterprise, where there is an incentive for research and development of new drugs to save human life.

Of 70 percent of the prescriptions filled in 1960, more than 500 million could not have been filled in 1950 because the medicines had not then been discovered. The progress that has been made has taken place under the American system of free enterprise.

Yet, we are asked, in the face of that record, to discharge the subcommittee headed by the Senator from Arkansas, take the bill away from that committee, and pass it.

Four and one-half million Americans are alive today who would be dead if the mortality rate of 25 years ago still prevailed. Twenty-three years have been added to the life span of the average American since the turn of the century.

Under the proposed system, patent rights would be limited and a bridle placed around the throat of the drug industry. We are asked to kill the drug industry by cutting its throat. What will happen to that great American industry that is being condemned?

The death rate from influenza has dropped 90 percent. The death rate from tuberculosis has dropped 83 percent. The death rate from acute rheumatic fever has dropped 83 percent. The death rate from syphilis has dropped 79 percent. The death rate among mothers in childbirth has declined more than 90 percent.

In the face of those facts, we are asked to turn back the hands of the clock and discharge the committee headed by Senator McCLELLAN. Yet during the period since 1944 the infant mortality rate has been cut in half. During the 5 years ending in 1960, the number of patients released from mental hospitals has increased more than 51 percent. Since 1949, the U.S. pharmaceutical industry has increased its actual research and development expenditures for human medicines more than 600 percent.

I say, for God's sake let the drug industry continue. For God's sake, let us give it a vote of confidence, so that it can develop the drugs to save the lives of the people of this country.

We are being asked to destroy the patent system. That is what is at issue in this amendment. We are asked to reduce the patent life from 17 years to 3 years. In my judgment, if the Senate concurs in such a proposal, it will be committing a crime against humanity.

If I may make a personal reference, I know that because of the use of one of the wonder drugs, I am here today, as are millions of other Americans. That is what is at issue. If there is no incentive for people to make money, to experiment, or to conduct research, we shall have destroyed the greatest industry in the history of the country.

Mr. ERVIN. Mr. President, will the Senator from Mississippi yield?

Mr. EASTLAND. I yield for a question.

Mr. ERVIN. Does not the entire free enterprise system rest upon the proposition that a man should be entitled to the fruits of his own labor?

Mr. EASTLAND. Certainly.

Mr. ERVIN. Does not the amendment, in effect, undertake to provide that one man shall be robbed of the fruits of his labor, and that the fruits of his labor shall be given to others who did not labor?

Mr. EASTLAND. Of course; the Senator is exactly correct. But the main casualty would be the American public.

Mr. ERVIN. Would not a person engaged in the manufacture of drugs be foolish to spend any of his money or effort in research, if he could, after 3 years, take the benefit of the research of everybody else, without having to pay anything for it?

Mr. EASTLAND. Of course. Consider what has happened in Italy. There is now a movement in that great country today to enact patent laws based upon our own, so that Italy can have research and development.

Mr. ERVIN. Would not this amendment—which is clothed in an appealing form, and is attempted to be restricted, in this particular case, to instances in which a 500-percent profit would be made—be an entering wedge for the destruction of the American doctrine that men shall be entitled to the fruits of their own labor?

Mr. EASTLAND. Of course it would be an entering wedge.

Mr. ERVIN. In the opinion of the Senator from Mississippi, would not this amendment, instead of providing cheap drugs, made it certain that there would be no competition in drugs and that no new drugs would be developed?

Mr. EASTLAND. Certainly; there would be no competition in drugs, and no new drugs would be developed, and the death rate among Americans would be increased—if this amendment were adopted and were enacted into law, and if the American drug business were destroyed.

Mr. HRUSKA. Mr. President, will the chairman of the committee yield time to me, on this amendment?

Mr. EASTLAND. How much time?

Mr. HRUSKA. Five minutes.

Mr. EASTLAND. I yield 5 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 5 minutes.

Mr. HRUSKA. Mr. President, the subject we are now discussing was discussed for many days in the course of the hearings held by the Subcommittee on Antitrust and Monopoly. Many witnesses testified, and many pages of testimony on this subject were taken. The arguments advanced this afternoon by the chairman of the subcommittee, the Senator from Tennessee [Mr. KEFAUVER], were advanced frequently in the course of those hearings.

But, however this amendment may be described and however it may now be set up, the plain fact is that it is a price-fixing measure.

All of us know that we encounter great difficulties when we attempt to deal with price-fixing statutes, for if such a statute can be applied to one commodity, it can be applied to others. Even in times of war and national emergency, our country did not have very good luck with price-fixing statutes.

Furthermore, Mr. President, this amendment would amount to a partial repeal of the patent law, and this amendment is not the way to do that.

During our hearings, there appeared before us Dr. Vannevar Bush, an eminent and world-famous scientist. During the war he was Director of the Office of Scientific Research and Development. In 1943, he was Chairman of the President's Science Advisory Board; in 1945, he was a member of a Patent Survey Committee.

In the course of his testimony before the Antitrust and Monopoly Subcommittee, Dr. Bush stated that four main things must be kept in mind in connection with the patent system:

1. That the patent system is an essential part of our free enterprise system;

2. That it has been responsible for a significant part of the great technical and industrial advance of this country, and that in particular it has made possible the salutary advent of many small independent individual companies;

3. That the system is not perfect, and that revisions should be made which would bring it into step more fully with modern conditions;

4. That when such a revision is made, it must be done on an overall basis, by a group that fully understands the system, and also understands modern research and development, and that any attempt to do it piecemeal would inevitably result in damage to the system and to our national progress.

The fourth point made by Dr. Bush is a very telling one.

There is no question that the Subcommittee on Antitrust and Monopoly—eminent though it is, and even though it is composed of fine members and a fine staff, and even though its chairman is a very distinguished Senator—does not qualify under Dr. Bush's recommendation that the work "must be done by a group that fully understands the system, and also understands modern research and development."

Furthermore, there is no question that this amendment is a piecemeal approach to a very small segment of the patent system.

What did Dr. Bush say about an amendment of this type? He said:

> As far as patents are concerned, the central feature of the present bill is that it would require the licensing of all drug patents to all comers after a 3-year interval, and at royalties with a stated maximum.
>
> The simple fact is that, if this were the law of the land, we would soon no longer lead the world in the development of new and useful drugs. Our industrial research programs on drug development would be severely cut back.

There is no question about that, Mr. President.

Dr. Bush also said, in the course of his very excellent testimony:

> Furthermore, compulsory licenses for all comers are bound to prevent the very kind of healthy competition in discovering new products that now characterizes the industry.

Some of us who are members of the subcommittee protested against going at all into this field; we felt that we were not the subcommittee to do that, that we were not authorities, nor were we even familiar with the system; and we felt that such an attempt would be a piecemeal approach. Eventually that was also the judgment of the entire committee.

Earlier this afternoon the Senator from Arkansas [Mr. McCLELLAN] stated that when the matter was referred to his committee, it was clear that further study and probably further hearings would be required before the committee could act intelligently on patent provisions. Therefore, the committee concluded that the best course for it to follow was not to go further with that matter, but to retain its jurisdiction over the subject, pending further study and, probably, further hearings; and it was decided that such action should be deferred.

It was suggested that if such an amendment were adopted, probably it would jeopardize the passage of the bill and its enactment into law.

This bill is important, not only to those who administer the drug laws, but also to the millions of people who are entitled to have good drugs available and who are entitled to have bad drugs kept off the market.

Therefore, I hope the amendment will be decisively defeated.

I yield back the remainder of the time which has been yielded to me.

Mr. KEFAUVER. Mr. President, I shall be glad to answer any questions which Senators may wish to ask.

In reply to the charges made by the Senator from Mississippi, let me say that it is a little farfetched to take the position that a drug company could not get along with a markup of 500 percent on its production costs, including its costs of research, when no other industry has markups that high. Furthermore, an 8 percent royalty would be paid. Most of the large companies cross-license them at the present time for 2, 3, or 5 percent.

Mr. PASTORE. Mr. President, will the Senator from Tennessee yield?

Mr. KEFAUVER. I yield for a question.

Mr. PASTORE. Would any of the evidence which was adduced before the subcommittee indicate that drugs developed in the United States are sold at higher prices to Americans, but are sold at lower prices to persons who live in other countries?

Mr. KEFAUVER. Yes; there are cases where the drugs are actually manufactured in the United States, but sold abroad at lower prices. On almost all products prices are higher in the United States than in any other country, except Canada.

Mr. HRUSKA. Mr. President, will the Senator from Tennessee yield?

Mr. KEFAUVER. I yield.

Mr. HRUSKA. Is it not true that in most European countries there are price-fixing statutes which control the prices of drugs?

Mr. KEFAUVER. In Germany there are none.

Mr. HRUSKA. On the contrary, there are some in Germany, and they are in connection with the cross-licensing.

Mr. KEFAUVER. And there are none in Switzerland or Holland or some of the Scandinavian countries.

Mr. PASTORE. Mr. President, will the Senator from Tennessee yield again to me?

Mr. KEFAUVER. I yield.

Mr. PASTORE. I know that even when one purchases merchandise in the District of Columbia—and the same is true in the State of Rhode Island—if one is able to demonstrate that he can buy a given article cheaper in one store than in another, if he buys it in the store which charges the higher price, he can make a remonstrance and can have the difference paid back to him.

I think it is little justification to argue that because there are price-control laws in other countries, an article which is developed in the United States, on the basis of research work done in the United States, should be sold to American consumers at higher prices than those charged to the people of other countries. Regardless of the laws which may apply in other countries, I say it is immoral to gouge the American public. I do not care what laws other countries have. I say it is immoral to gouge the American public.

Mr. KEFAUVER. Let me say to the Senator from Rhode Island that if American companies do not feel they can make a profit in countries that fix prices, they do not have to do business there. They do not have to sell there at a lower price.

Mr. PASTORE. I say it is immoral.

Mr. KEFAUVER. It is immoral; there is no doubt about it.

Let me point to Merck on the chart. Awhile ago a Dr. Vannevar Bush was mentioned. He is a fine man, but he happens to have been chairman of the board of Merck & Co. until just recently. Merck's price for prednisone is $170. The price at which it sells in England is $75.30; in Brazil, $141.50. Many of these facts appear in the hearing record.

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

Mr. KEFAUVER. I yield.

Mr. HUMPHREY. First of all, let me ask the Senator about the language in his amendment. On page 1 it provides:

> Whenever the Federal Trade Commission, upon complaint made to it by a qualified applicant for a license under a drug patent, has reason to believe as a result of an investigation that such application for a license was made and not granted after a period of three years from the date of issuance of the patent and that the price of the patented drug charged or quoted to druggists by the patentee is more than 500 per centum of the cost of production for such drug in finished form and packaged for sale, the Commission shall issue—

And so forth. What does the Senator mean by "the cost of production"?

Mr. KEFAUVER. Production costs for drugs included are as stated on page 4 of the amendment.

Mr. HUMPHREY. So the descriptive phrase "cost of production" includes the portion of the cost of research on that particular drug?

Mr. KEFAUVER. As determined by the relationship of the sales of the product of the company's total drug sales applied to the company's total research costs. Some method of allocations such as this is necessary, since companies generally do not allocate research costs to particular products.

Mr. HUMPHREY. The language is "the price of the patented drug charged or quoted to druggists by the patentee is more than 500 per centum of the cost."

In other words, the profit is to be revealed at 500 percent of the cost of production?

Mr. KEFAUVER. That is the markup over the cost of production plus the research allowance. In other words, the 500 percent would have to cover not only profits but pay the sales and distribution costs, which in the drug industry are already excessive.

Mr. HUMPHREY. I wish to make one comment. I hope the Senator noted that these are prices charged to druggists at more than 500-percent profit. When one has a prescription filled, he does not have it filled by Merck or Eli Lilly, Wyeth, or any other drug company; it is filled by his druggist. When that person goes home he remembers the price charged him. Then prices of drugs are considered by the consumer to be high. But it is the druggist who is first of all charged the high price by the manufacturer. The retail markup is not exorbitant.

According to what the Senator from Tennessee has indicated, the evidence is that the price we are talking about is the price that the manufacturer charges to the foreign outlet and the military services of the Government and to the druggist himself, through his wholesaler, the wholesaler getting his normal markup, and selling it to the retail druggist, and the retail druggist in turn getting his markup from the individual who brings in the prescription. But, all too often, the customer blames the pharmacist for what the customer feels are high prices, when in fact, the price of the prescription is in a large measure determined by the manufacturers price.

Mr. KEFAUVER. Let me return to the charts in the rear of the Chamber. As

much as $39.50 is charged for Reserpine. The druggists ought to join with us in trying to bring the prices down. I am sure they would like to sell more drugs at lower prices to people who cannot now afford to pay for them, than to sell fewer drugs at higher prices. It is not the fault of the druggists.

Mr. HUMPHREY. I believe this has been a shortsighted policy on the part of the retail pharmacists. I think they would be better off if they would lend their efforts toward encouraging a more reasonable and constructive policy on pricing of drugs. The American public has been deeply concerned about this problem. There is no doubt, as the chairman of the committee has pointed out, that miraculous results have been brought about by American drugs. The American people have been well served by the drug industry and others who watch over their health.

Anything that can be done to bring the costs down and at the same time preserve a reasonable profit for the manufacturer, the wholesaler, and the pharmacist is in the public interest. Whether that is to be done by amending the patent laws I do not know. I do not have any expert knowledge in that subject. I shall vote for the amendment, or against any motion to table, not because I feel that the Senator's approach through a change of patent laws is the desirable or proper method, but because I do feel that the public interest needs to be given more consideration and that certain pricing patterns are without full justification. I do not want my remarks to be interpreted as condemning the pharmaceutical manufacturers. They have carried on fabulous and costly research that has produced amazing new drugs. They are entitled to a good profit, but there seems to be evidence in some instances that competition is lacking or overpricing has been the practice.

The PRESIDING OFFICER. The time of the Senator from Tennessee has expired.

Mr. KEFAUVER. I yield myself 3 minutes on the bill.

The PRESIDING OFFICER. All time on the bill has expired.

Mr. MANSFIELD. Mr. President, I wish to announce that it is my intention to move to table the pending amendment. I will withhold that motion briefly, so that the Senator from Tennessee and the Senator from Colorado may speak.

Mr. KEFAUVER. The last chart refers to drugs in the same family antibiotics, both patented and unpatented. It shows changes in price between 1951 and 1960. As to the patented antibiotics, sold by Lederle, Pfizer, Bristol, and Parke Davis; namely, Aureomycin, Terramycin, tetracycline and Chloromycetin, there have been no change in price since 1951. During our hearings they reduced prices about 15 percent.

In contrast, the old form of penicillin, which is not patented, has steadily gone down in price, as new methods of production have lowered costs. The same has been true of streptomycin, which is widely licensed by Rutgers University. Competition has transferred the benefits of lower costs to the consuming public.

The people of the United States are entitled to some consideration. This is an opportunity to give them some relief. They are not going to get a reduction in prices until there is competition or price control. I prefer the former.

Mr. ERVIN. Mr. President, this amendment is bad not merely because it would rob some men of the fruits of their labor for the benefit of other men who have not labored, but also because it would have no therapeutic quality. It would not have as much therapeutic value as a bread pill.

The amendment provides that any company which makes a 500 percent profit on a given patented drug would be subject to compulsory licensing. All any company making a 500 percent profit would have to do to nullify the bill would be to reduce the profit from 500 percent to 499.9 percent. This being true, the proposal is absolutely worthless and ought to be defeated on that ground, if not on the ground that it is absolutely inconsistent with the free enterprise system, which holds that every man is entitled to the fruits of his own labor and shall not have them taken away for the benefit of someone who has not done anything to deserve them.

Mr. MANSFIELD. Mr. President, I yield 2 minutes to the Senator from Rhode Island [Mr. PASTORE].

Mr. PASTORE. Mr. President, I shall vote for the amendment, but not because I believe this is the way to solve the problem. I believe in the free enterprise system in the United States, and that we should not do anything to put shackles on that system. However, I shall vote for the amendment merely as a protest against the actions of this industry, which should know better. The drug industry has allowed abuse to creep into its operations. We have seen that the drugs invented in France can be sold in France at a price of 51 cents and, when sold to the American public through a brokerage arrangement—and that is all it amounts to—the price is $3.03. I say that is gouging the American consumers.

I have no illusions concerning the fact that the amendment will be defeated, but this is the only way the Senator from Rhode Island can register a complaint and a remonstrance against this abuse. It is about time that the drug industry itself began to clean house.

The amendment is not in the proper form. This is not the way to solve the problem, but this is the only way we can protest this afternoon, and I shall vote for the amendment only to indicate my protest.

Mr. MANSFIELD. Mr. President, I yield 5 minutes to the Senator from Colorado [Mr. CARROLL].

Mr. CARROLL. Mr. President, I wonder if the able Senator from Tennessee [Mr. KEFAUVER] would be good enough to answer a question or two by the Senator from Colorado.

Mr. KEFAUVER. I shall be glad to try.

Mr. CARROLL. The able Senator from Tennessee knows that I expressed individual views in the Judiciary Committee report on the drug act.

Mr. KEFAUVER. I know that. I hope I can persuade the Senator that he is mistaken as to his constitutional position.

Mr. CARROLL. I wish to say for the benefit of all Senators present as well as for the record, that the able Senator from Tennessee and the other members of the Subcommittee on Antitrust and Monopoly have conducted an exhaustive inquiry into the question of pricing in the drug industry.

The able Senator from Rhode Island put his finger on the problem. There is not the slightest doubt in my mind that advantage has been taken of the American people. Profits have been unconscionable.

I wish to read a paragraph from my individual views:

> It is true that testimony during our extensive hearings seems to establish conclusively that the prices of certain ethical drugs are administered unreasonably high. The margin between factory cost and price to the retail druggists on some of these drugs has been an unconscionable 1,000 percent, including research costs. Profit rates of the drug producers, not the retail druggist, have exceeded all other industries.

Valuable work has been done in this connection. The Senator knows the work I have done in regard to the overall bill.

However, on this particular issue, there is some doubt in my mind. I am concerned about whether or not a constitutional question arises in connection with altering the patent traditions of our free economic system. I have been informed that the able Senator from Arkansas [Mr. MCCLELLAN] will hold hearings on that issue.

I should like to join the able Senator from Rhode Island in raising a protest to high drug prices by compulsory licensing, but in all good conscience I felt I had to file the individual views as expressed in the drug bill report.

Mr. KEFAUVER. I say to the Senator from Colorado that nobody has been more helpful than he has been in this whole investigation and throughout the hearings. He has been fighting the battle, and has spent long hours in so doing. He has acted as chairman at many meetings. He has been of inestimable benefit to the committee and to the public by his diligence. Regardless of the views of the Senator from Colorado concerning this amendment, I want him to know of my appreciation of what he has done.

I see no constitutional problem. There is nothing in the Constitution about all patents having to run the same length of time. The proposal requires no surrendering of a patent, only sharing it with another company if the patentholder charges unreasonable prices.

Mr. CARROLL. Mr. President, I thank the Senator from Tennessee for his gracious and generous comments about the junior Senator from Colorado.

This is the only issue in connection with this bill to which I have had even a slight degree of opposition. I speak now as a lawyer. Each lawyer has his

own point of view about the Constitution.

I hope, in the hearings which are to be held, that we can bridge what I believe to be a constitutional gap, by a different wording. As I have indicated, I think the profits of the drug manufacturers have been unconscionable, and the prices of life-preserving drugs have been too high. The conduct by some members of the industry with reference to these problems has been nearly incomprehensible. Perhaps through the McClellan hearings the problem can be straightened out.

I was hoping that the Senator from Tennessee could say to the junior Senator from Colorado that there is a difference between the measure which is now before the Senate and the one on which I dissented in my separate views on the committee drug bill.

Mr. KEFAUVER. There is a difference in the present amendment as compared to what was in the bill up to the time it was considered by the Judiciary Committee.

Mr. CARROLL. I should like to know what the difference is.

Mr. KEFAUVER. The difference is that the present amendment provides that after 3 years any company would have a right to obtain licensing upon payment of a royalty in the event the Federal Trade Commission should find that the price at which the company was selling to the druggist was more than 500 percent of the factory cost plus research; that is, that the price was unreasonably high. That is the new feature which was added.

Mr. CARROLL. I thank the able Senator from Tennessee. I still think my minority views were correct. I was concerned about the 3-year patent limitation and the royalty feature.

The idea of forcing down exorbitantly high drug profits does not worry me. But I would like further study by patent experts on this particular method of bringing into line with the rest of American industry the drug manufacturers who profiteer on the health of our Nation's families.

The PRESIDING OFFICER. The time of the Senator from Colorado has expired.

Mr. CARROLL. Will the Senator yield me 1 more minute?

Mr. MANSFIELD. I yield 1 additional minute, Mr. President.

The PRESIDING OFFICER. The Senator from Colorado may proceed for 1 minute.

Mr. CARROLL. Mr. President, I wish to close by saying that this is the only time I have not been in full agreement with the able Senator from Tennessee on this bill.

For the reasons previously stated I cannot support this amendment, however, again I commend him and the Antitrust Subcommittee staff for the wonderful work done on this proposed legislation.

Mr. KEFAUVER. I thank my colleague.

Mr. MANSFIELD. Mr. President, I move to table the amendment offered by the Senator from Tennessee [Mr. KEFAUVER], for himself and other Senators, and on this motion I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. Does the Senator yield back his remaining time?

Mr. MANSFIELD. I do.

The PRESIDING OFFICER. The question is on agreeing to the motion by the Senator from Montana to lay on the table the amendment offered by the Senator from Tennessee for himself and other Senators. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The Chief Clerk called the roll.

Mr. HUMPHREY. I announce that the Senator from Nevada [Mr. BIBLE], the Senator from Alaska [Mr. BARTLETT], the Senator from New Mexico [Mr. CHAVEZ], the Senator from Pennsylvania [Mr. CLARK], the Senator from Indiana [Mr. HARTKE], the Senator from New Jersey [Mr. WILLIAMS], the Senator from Texas [Mr. YARBOROUGH], and the Senator from West Virginia [Mr. BYRD] are absent on official business.

I also announce that the Senator from Missouri [Mr. SYMINGTON], the Senator from New Mexico [Mr. ANDERSON], the Senator from Alaska [Mr. GRUENING], the Senator from Wyoming [Mr. HICKEY], and the Senator from Missouri [Mr. LONG] are necessarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania [Mr. CLARK], the Senator from Alaska [Mr. GRUENING], and the Senator from Texas [Mr. YARBOROUGH] would each vote "nay."

On this vote, the Senator from Alaska [Mr. BARTLETT] is paired with the Senator from Nevada [Mr. BIBLE]. If present and voting, the Senator from Nevada would vote "yea," and the Senator from Alaska would vote "nay."

Mr. KUCHEL. I announce that the Senator from Utah [Mr. BENNETT], the Senator from South Dakota [Mr. BOTTUM], the Senator from Nebraska [Mr. CURTIS], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Kentucky [Mr. MORTON] are necessarily absent.

The Senator from Vermont [Mr. PROUTY] is detained on official business.

If present and voting, the Senator from Utah [Mr. BENNETT], the Senator from South Dakota [Mr. BOTTUM], the Senator from Nebraska [Mr. CURTIS], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Kentucky [Mr. MORTON] would each vote "yea."

The result was announced—yeas 53, nays 28, as follows:

[No. 215 Leg.]

YEAS—53

Aiken	Fong	Mundt
Allott	Fulbright	Murphy
Beall	Hayden	Pearson
Boggs	Hickenlooper	Pell
Bush	Hill	Robertson
Butler	Holland	Russell
Byrd, Va.	Hruska	Saltonstall
Cannon	Javits	Scott
Capehart	Johnston	Smith, Mass.
Carlson	Jordan, N.C.	Sparkman
Carroll	Jordan, Idaho	Stennis
Case	Keating	Talmadge
Cooper	Kerr	Thurmond
Cotton	Kuchel	Tower
Dirksen	Mansfield	Wiley
Eastland	McClellan	Williams, Del.
Ellender	Miller	Young, N. Dak.
Ervin	Monroney	

NAYS—28

Burdick	Lausche	Muskie
Church	Long, Hawaii	Neuberger
Dodd	Long, La.	Pastore
Douglas	Magnuson	Proxmire
Engle	McCarthy	Randolph
Gore	McGee	Smathers
Hart	McNamara	Smith, Maine
Humphrey	Metcalf	Young, Ohio
Jackson	Morse	
Kefauver	Moss	

NOT VOTING—19

Anderson	Clark	Morton
Bartlett	Curtis	Prouty
Bennett	Goldwater	Symington
Bible	Gruening	Williams, N.J.
Bottum	Hartke	Yarborough
Byrd, W. Va.	Hickey	
Chavez	Long, Mo.	

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

Mr. KEFAUVER. I have one more amendment, the purpose of which concerns a situation when patent applications involve agreements between companies. The amendment would make such agreement open for inspection by the Department of Justice and the Federal Trade Commission, so that they could determine whether there had been any violation of the antitrust laws. On August 7, the House of Representatives passed a bill which is substantially the same in purpose, relating to all patent interference proceedings in all fields. It is not limited to drugs.

The PRESIDING OFFICER. The Senator will have to offer his amendment to speak on it.

Mr. KEFAUVER. I am not going to present it. The distinguished Senator from Arkansas [Mr. MCCLELLAN] has schduled hearings on the House bill for September 4. He advises me that even though he may be engaged in the work of the Government Operations Committee at that time, he will delegate to another Senator to preside over the hearings, and he will try to secure action on the proposal.

The PRESIDING OFFICER. The Senator will have to present his amendment to speak on it.

Mr. KEFAUVER. Then I will present my amendment.

Mr. MANSFIELD. The Senator need not do that. I will yield him as much time as he desires.

Mr. KEFAUVER. I should like to have 1 minute.

Mr. MANSFIELD. I yield 5 minutes to the Senator from Tennessee.

Mr. KEFAUVER. The Senator from Arkansas will try to obtain action on the bill if possible during this session of Congress. That being the case, I am not going to present the amendment.

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

Mr. KEFAUVER. I yield.

Mr. MCCLELLAN. I have advised the Senator from Tennessee, and I also advise all my other colleagues in the Senate, that hearings have already been scheduled. They were scheduled 2 or 3 days ago. I announced that the hearings would be held. There will be no intention to delay and no dilatory tactics will be employed. I do not know anything about the merits of the bill. It must be studied. We will endeavor to hold hearings and process the bill. That is as much as anyone can promise. The

House has passed it. It has that recommendation, at least. So far as I know, the hearings will be expedited.

Mr. KEFAUVER. I will not offer the amendment.

I take this opportunity of thanking all members of the Judiciary Committee for their attention and cooperation, and also the very fine staff on both sides of the subcommittee and of the full committee.

I feel that later there will be some favorable action in connection with lowering the cost of patented drugs. I was very pleased with the vote on the issue this afternoon. In all other respects I think we have a very fine drug bill which meets the requirements of the President. It will give the American people the assurance that there will be safer and better and more accurately advertised drugs, and that the price of unpatented drugs will be less expensive.

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

Mr. KEFAUVER. I yield.

Mr. CARROLL. The able Senator from Tennessee deserves the thanks of all Members of this body for the fine work he has done in this field. We cannot commend him too highly. Many times he has fought alone on this issue. I also commend the chairman of the Judiciary Committee and the President of the United States, who, in his letter of August 3, asked for tough amendments to the bill. I say to the Senator from Tennessee that the Senate can now see with me how important this bill is. The drug thalidomide was under 2 years of clinical investigation without HEW knowing about it. As a matter of fact, thalidomide was tested by Smith, Kline & French as far back as 1956–57 without FDA knowing it. For reasons unknown Smith, Kline & French discontinued testing the drug. I have just talked with two leading officials in HEW, and I asked them, "Under the bill as amended by the Kefauver-Carroll amendment, can the thalidomide disaster happen again in America?"

They said, "Not under this bill as you amended it a few moments ago which now provides a firm statutory basis for the proposed FDA regulations announced on August 9."

This bill will be recognized as one of the outstanding achievements of this Congress and of this administration. It is an excellent drug bill.

I see in the Chamber the Senator from New York [Mr. JAVITS]. I have also discussed with HEW representatives the amendment he and I sponsored. They think this amendment will be helpful. I have been assured that this bill, as we have amended it on the floor today, gives FDA an opportunity to call upon State public health officers and to call upon local medical groups for help in protecting the public against unsafe drugs.

The PRESIDING OFFICER. The question is on agreeing to the additional committee substitute amendment, as amended.

The substitute amendment, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

Mr. MANSFIELD. I yield 2 minutes to the Senator from New York.

Mr. JAVITS. Mr. President, I should like to say to the Senator from Tennessee, with regard to the amendment which was tabled, that I am very sympathetic with his fight to do something about these outrageous prices in the drug field. I believe that American business is very unwise in taking the position it has taken.

I understand that he has served notice, as the Senator from Rhode Island did, by voting against the tabling and in favor of the amendment, in effect, on the drug industry. This matter has concerned me on many grounds, which are very understandable. They go back to the Schechter case, of NRA days, in the price-fixing field. It should be stated by Senators who, like myself, voted in favor of tabling the amendment, that if this provocation of the American people continues, far more drastic remedies than I am willing to entertain today may very well be necessary. I trust and hope that American business may have enough self-discipline to see the handwriting on the wall and that this situation is verging upon the intolerable.

Mr. KEFAUVER. I thank the Senator from New York.

Mr. MANSFIELD. I yield 1 minute to the Senator from Oregon.

Mr. MORSE. In supporting the Kefauver amendment, I believe it should be stated that there is voluminous evidence which makes it clear that profiteers cannot be stopped without putting checks upon them. The Senator from Tennessee is seeking to check the profiteers in the drug industry.

Mr. MANSFIELD. I yield 1 minute to the Senator from Connecticut.

Mr. DODD. Mr. President, I too, wish to commend the great Senator from Tennessee. I am very proud of the fact that I have stood by his side.

Mr. KEFAUVER. The Senator from Connecticut certainly has been with me all the way through.

Mr. DODD. The Senator from Tennessee has waged a valiant fight. His facts are right. He has been right all the way on this issue. He has had the courage and the integrity to make this fight. I believe I will live to see the day, whether I am in the Senate or out of it, when Congress will adopt the measures that he has proposed in the Senate this afternoon. We all owe him a great debt of gratitude. The American people do, as well.

Mr. MANSFIELD. Mr. President, I yield myself 1 minute.

I join with all Senators who have been saying worthwhile things about the Senator from Tennessee. He deserves every one of them. He has waged a good fight, a strong fight. He never gives up. The results of his work over the years will be felt in the future.

Mr. HUMPHREY. Mr. President, will the majority leader yield 1 minute to me?

Mr. MANSFIELD. I yield 1 minute to the Senator from Minnesota.

Mr. HUMPHREY. Mr. President, the bill represents hard work, considerable research, and long hearings on the part of the committee. I join with the majority leader in his commendation of the Senator from Tennessee, of the members of the committee, and of the committee chairman in reporting the bill to the Senate.

THE INGREDIENTS FOR DRUG PROGRESS: A VITAL PHARMACEUTICAL INDUSTRY, AN EFFECTIVE FEDERAL LAW, STRONG FEDERAL ADMINISTRATION, AND DYNAMIC COOPERATION IN RESEARCH

Mr. President, before final action, I should like to submit a few comments with respect to the pending bill S. 1552, as amended, the Drug Industry Act of 1962.

Since I am not a member of the Senate Committee on the Judiciary, I would not presume to attempt to comment on all of the many technical phases of the bill which have had that committee's consideration.

The distinguished senior Senator from Tennessee [Mr. KEFAUVER], who has devoted himself so intensively and fruitfully during these past 2½ years to the subject, has presented the issues very clearly to the Senate.

In addition, we have in Senate Report No. 1744, 87th Congress, parts I and II, a clear exposition of the bill, as amended.

The comments which I will make today are devoted to but a few specialized phases of the future—not merely the past—of drug research.

STUDY BY GOVERNMENT OPERATIONS SUBCOMMITTEE

These happen to be the phases on which I personally have made some study during these past several years.

I have done so in my capacity as chairman of a Government Operations Subcommittee. For several years, we have looked at the subject of Federal and non-Federal biological and medical research. In the course of this effort, we have examined the role of pharmaceutical research.

On August 1 and 9, 1962, we held hearings on the theme "Inter-Agency Coordination in Drug Research."

At that time, we explored the significance of the thalidomide tragedy. It is, of course, that sad development which has done so much to focus public attention on this subject. I am glad to observe that, during the hearings, many of the remedies proposed under the new HEW regulations were discussed at length.

For example, in the hearings, we brought out the absolute importance of thorough testing on laboratory animals, including testing on pregnant laboratory animals; prompt notification to the Food and Drug Administration by the drug companies as soon as testing starts; full recordkeeping on adverse side effects of testing; and full reporting to FDA on these side effects; in addition to many other points covered in the new regulations.

NEED FOR PERSPECTIVE AND BALANCE: THE BASIC FACTS

In the course of the hearings, I emphasized what I regard as one of the

paramount needs of the future. I refer to the need for a sense of perspective and balance on this whole issue.

With such a sense, certain facts become clear. Nine of these facts, as I see them, are:

First. The American pharmaceutical industry has contributed profoundly to the advancement of the health and well-being of our citizens and of people throughout the world.

Second. The vitality of the pharmaceutical industry is, therefore, important to the well-being of the American people.

Third. The American pharmaceutical profession, which dispenses the Nation's drugs, enjoys the highest standards of any pharmaceutical profession in the world.

Fourth. The United States has, relatively speaking, enjoyed one of the most advanced systems of drug regulation in the world, through the Food and Drug Administration.

Fifth. Nonetheless, the past several years have demonstrated an urgent need for dynamic improvement in the status quo. The undeniable fact is that there have been serious loopholes in Federal drug laws. The legislation now pending before us will close many of these loopholes.

Sixth. There have been serious weaknesses in the administrative regulations of the Food and Drug Administration. The pending regulations announced by Secretary Celebrezze will, if adopted, help to remedy some of these weaknesses.

Seventh. But, in the final analysis, good laws and good regulations require good administration.

Eighth. Excellence in administration requires excellence in the scientific decisions upon which administration is based.

Ninth. Sound scientific decisions require prompt, complete exhange of scientific information, nationally and internationally.

CONCENTRATING ON THE FUTURE

I should like to examine at length some of these points.

I am going to look, however, not at the past, not at the loopholes, not at the weaknesses, nor the flaws. The senior Senator from Tennessee has well described them both in past comments and in the report before us.

I should like instead to look ahead to the future.

The future is going to witness a tremendous expansion in the obligations of the Food and Drug Administration.

And the principal point which I am making today is that the Food and Drug Administration will not be in a position to meet these obligations unless and until certain actions are taken—within and outside the U.S. Government.

A REVOLUTION IN INFORMATION

Not the least of these suggested actions is a peaceful "revolution," so to speak, in the exchange of drug information.

Present information procedures, techniques, and systems are about as effective as "looking for a needle in a haystack while wearing smoked glasses."

Drug information exchange within the U.S. Government is weak. Information exchange between the U.S. Government and foreign governments, between the U.S. Government and the drug industry, between the U.S. Government and the medical profession—all these, too, leave much to be desired.

IMPORTANCE OF ADEQUATE RESOURCES AND STRONG ADMINISTRATION

In the final analysis, the effectiveness of the Drug Industry Act of 1962 will depend upon several essential ingredients:

First. There must be adequate resources to fulfill the new law and the new regulations.

Second. These resources must be administered with strength, efficiency, and discretion.

Third. The FDA scientists who make the decisions on which administration is based must not work in isolation. They must be able to draw upon the greatest scientific minds in the country.

Let me cover each of these points in turn.

First, FDA needs adequate resources. That means adequate money and adequate manpower. Fortunately, President Kennedy has taken the first step. A supplemental request for FDA has been sent to the Congress—amounting to the largest single increase for the agency in its history.

Even that may not be enough. But it is not just more which is needed—more money, more men and women—but the right men and women.

THE NEED FOR ADEQUATE RESOURCES

Here I wish to quote from comments which I made in our August 9 subcommitting hearing. I promised publicly at that time that I would make these very points on the floor of the Senate. Why? Because I do not want Congress or the press or the public to think that merely writing a new law and new regulations is sufficient.

As I stated on August 9, I do not want a false sense of security to develop.

The fact is that a massive workload is being dumped into FDA's lap. It is going to take a large number of workers—and the highest caliber of workers—to do justice to that workload. They must use this new information, evaluate it, and act on it, instead of merely allowing it to gather dust in file cabinets.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD excerpts from the hearings conducted by the Subcommittee on Reorganization relating to the Food and Drug Administration and other agencies of the Government.

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

COMMENTS IN AUGUST 9 HEARING

Senator HUMPHREY. Now, Mr. Commissioner, I want to interrupt to say if you are going to do all of this, and it is going to be done, you better tool your shop up to handle it, because it is quite obvious that if these regulations are to be followed, and mean something, that you have to have the professional, qualified, trained personnel to evaluate this mountain of information that is going to be coming to you.

In other words, here we are demanding that the Food and Drug Administration tighten up its regulations within existing law. You are asking that certain law be changed.

The President has sent down some legislation here. He wants laws strengthened and changed.

Every time that we impose, either legislatively or administratively, more controls or rules and regulations that relate to the manufacturing process to the investigational process, to the safety, to the efficacy, to the therapeutic effect, the clinical aspects, the side effects of drugs, it means that you have to have in this Government some place, and most likely in your own agency, the people that can interpret what this is all about. Otherwise, this is just piling up more and more reports and asking manufacturers to spend more and more time filling out reports for the Government.

Mr. LARRICK. And giving the public a false sense of security.

Senator HUMPHREY. And a false sense of security. And all of this would be exceedingly unfortunate. It would be a travesty on justice because what we are looking for is not just to ask manufacturers to fill in more reports. Some manufacturers do a very good job already. We are not asking you to collect more reports. We are asking that you have the people that can do something with it, to read them, to evaluate them, to interpret them, and to revise and to rescind and all that comes with this great administrative process, and I am hopeful that now that public opinion in a sense demands that we do more in terms of drug safety and drug efficacy, that we won't try to do it on the cheap, so to speak.

You cannot have these drugs safe and efficacious without paying for it, and let's get the marbles right out on the table so that the taxpayers will know it. If the taxpayers want to have safe drugs, and good drugs, they are going to have to pay for it.

Mr. LARRICK. I hope you will make that speech——

Senator HUMPHREY. I make it as loud as I can without driving everybody out of the hall. [Laughter.]

Mr. LARRICK. And elaborate on it when the drug bill comes up on the floor?

Senator HUMPHREY. I am. We have got an awful lot of people who believe in "economy" and at the same time believe in miracles. I have seldom found that the two went together. If you want improvement in Government you have got to pay for it.

STRONG, SOUND ADMINISTRATION

Mr. HUMPHREY. Mr. President, now, second, there must be strong effective administration of the new law and regulations.

Some of the evidence gathered by the subcommittee indicates that administration within and above the Bureau of Medicine has not been all that it should be.

Forms, practices, and procedures in the Bureau, particularly in the New Drug Division—have seemed, to some expert observers, as antiquated.

The National Bureau of Standards report on administrative systems within the agency confirms these weaknesses, although, understandably enough, in guarded, discreet terms.

FDA is going to have to get the best possible administrative procedures and systems in the Bureau of Medicine and elsewhere.

That does not mean just new workers. It means men—men with drive, with initiative, men and women who are not just "going by the book," by the letter

of the law, but by its spirit, its tone, its fundamental purpose.

Congress does not wish FDA's new law and regulations to make it a bureaucratic maze. Congress wants a vital, dynamic, strong agency which works with the medical profession and the pharmaceutical industry and profession to the greatest possible extent, while standing vigilant to protect the public safety.

SCIENTISTS MUST DRAW UPON NATION'S FULL COMPETENCE

Third, the scientists in the Bureau of Medicine must be encouraged, enabled, and trained to draw upon the fullest competence of the Nation's scientific community.

In particular, the New Drug Division must have available the "cream" of the Nation's scientific talent for consultation, regularly or irregularly.

The 12 members of the New Drug Division cannot, all by themselves, effectively analyze 365 new drug applications a year.

The entire Bureau, by itself, cannot evaluate the masses of information pouring in on drugs already on the market.

THREE THOUSAND APPLICATIONS IN 12 YEARS

Statistics compiled by our subcommittee staff show that from 1950 to 1962 applications for 3,001 drugs intended for human use have been filed. I repeat, 3,001 drugs.

Many of these drug applications and subsequent drug reports pose complex medical problems which would baffle the greatest specialists in the world, much less a dozen practitioners in the New Drug Division.

Remember, it is often fantastically difficult to "decipher" the effects of a single new drug on the human heart, or on the nervous system, or on the reproductive system, or other systems.

Teamwork to backstop these complex scientific decisions is, therefore, essential.

This does not mean that the Food and Drug Administration staff should, in the slightest, shirk its own responsibilities. It cannot shirk them. But it should base its decisions not on intuition, nor on the "letter of the law," alone, but on the best scientific judgment which is available within the agency or anywhere within our country or for that matter, abroad.

UPGRADING SCIENCE WITHIN THE AGENCY

FDA's own scientific program must be of the highest order.

FDA's scientists, particularly in the Bureau of Medicine, must be brought into the mainstream of scientific endeavor instead of being in a "backwater."

FDA science has heretofore been relatively isolated. That is not just my judgment. It is the judgment of a series of scientists who have looked at FDA science, from inside and outside.

In 1955 the first Citizens Advisory Committee on the Food and Drug Administration urged a strengthening of FDA's science program.

Five years later, in 1960, a National Academy of Sciences report urged a strengthening of FDA's scientific program.

Two years later, in 1962, the 1955 and 1960 recommendations are still relatively dead letters. Why?

FDA's in-house scientific competence must be upgraded.

In the person of Dr. Frances O. Kelsey we see a scientist of outstanding merit and diligence. But there are indications that the Food and Drug Administration could use many more individuals of the caliber of Dr. Kelsey and of a relative handful of other employees who are of outstanding scientific ability.

But even that is not enough.

FDA must use the external "avenues" which are open to it for consultation.

THREE AVENUES FOR CONSULTATION

Three great avenues are open to FDA—the U.S. Public Health Service, including the National Institutes of Health; the National Academy of Sciences-National Research Council; and American medicine's own organizations, including the American Medical Association Council on Drugs and the specialty boards of medicine.

AVENUES OF CONSULTATION NOT USED

But what do we find in the record of the past?

We find that the avenues are, by and large, not used. This is not always FDA's fault.

To be sure, it should have reached out to tap the Nation's best scientific brains.

But the latter, particularly in Federal agencies, should have eagerly offered to be of service. And the offer should have been more than a pro forma, "call me if you want me."

NIH'S ENORMOUS COMMITMENT IN DRUG RESEARCH

Let us look at these Federal relationships or lack of relationships.

The first and most important concerns the National Institutes of Health.

I shall devote some little time to the Institutes, because after 4 years of rather intensive contacts with it, I feel that our subcommittee has developed a degree of specialized knowledge about its operations.

The plain fact is that the National Institutes of Health has been called upon only sporadically by FDA and then in but a few specialized areas, such as relate to drugs against cancer.

NIH has volunteered little to FDA and FDA has asked for little from NIH.

Each has gone through enough motions to show the Congress that it has not really forgotten the other. But each has done little to make the relationship broad, two way, or vital.

Consider, however, what NIH potentially has to offer.

It can offer the greatest pool of drug research information in the world, if only it bothered to organize that pool.

NIH'S ENORMOUS COMMITMENT IN DRUG RESEARCH

NIH is deeply and rightly committed to drug research.

The National Cancer Institute has spent $117 million on research drugs to combat cancer since 1956.

The National Institute for Mental Health has spent $39 million on drug research grants since 1957.

The National Institute for Allergy and Infectious Diseases has spent $1.3 million in 3 years on its Laboratory of Parasite Chemotherapy alone.

This year, the National Institute of Neurological Diseases and Blindness is spending $4.1 million on 186 grants in phamacology and experimental therapeutics.

I have no doubt that the above sums represent money well spent.

HANDS OFF AFTER MONEY IS GIVEN OUT

But NIH has the curious notion that, in most instances, its job is done when it hands out research money.

From then on, NIH seems to ignore its responsibility. "Never mind," it seems to say, "if the drug research results get buried in thousands of journals, let the National Library of Medicine worry about that. Never mind if thousands of clinical reports are unassimilated or unevaluated, let the researcher or practitioner call a medical library or consult on his desk some outdated encyclopedia or other reference work. That is his business" it seems to say.

IMPERATIVE NEED FOR EVALUATION

In one of but two or three outstanding exceptions, the National Institute for Mental Health does fortunately evaluate drugs—through systematic reporting by 16 institutions.

And the National Cancer Institute does screen at least new and experimental compounds.

But where are the other five categorical institutes?

Have they forgotten that drug—or other—research is of little use unless it is evaluated? And unless the evaluation is placed at the disposal of every possible user within or outside a given institute?

Have they forgotten that drug research information which is of primary use to one institute may also have tremendously significant secondary value to another institute or to another agency?

Have all seven Institutes forgotten that you cannot draw an artificial line around a drug and pretend that "this drug affects but one organ system alone"?

The obvious fact is that a cardiovascular drug may have extremely significant effects on the central nervous system, or vice versa, and on other systems.

Under these circumstances, exchange of information between institutes and between agencies is indispensable.

"CHINESE WALLS" BAR EXCHANGE

Yet, so far as systematic exchange is concerned, invisible "Chinese walls" exist between Institutes. And "Chinese walls" exist between the Institutes and FDA. These "walls" are utterly incongruous.

NIH does no service to its great and deserved reputation by its sluggishness in interinstitute and "external" communication.

NIH tends to act with somewhat of a split personality on this issue.

On the one hand, NIH has not hesitated to fill the record of Senate and House Appropriations Committee hear-

ings with page after page, describing its achievements in drug research.

And there are many such achievements—brilliant achievements—which I am happy to salute.

But, when it comes to vitalizing a relationship with FDA, NIH withdraws and pretends that drug evaluation really is not its business.

No one contends that NIH should do FDA's specific work. No one contends that NIH does not have enough of its own work to do.

But, NIH is supporting drug research at the frontiers of science. And it is NIH's job to help the whole U.S. Government capitalize on that research—learn from it, draw upon it, to the greatest possible extent.

Where are the NIH–FDA seminars or symposia or conferences which one might expect?

Where are the joint articles which might be written by NIH and FDA pharmacologists?

Where are the evidences by which science itself could attest to true scientific collaboration?

Where is the systematic rotation of pharmacological personnel between agencies?

Where does the career system provide for incentives for tours of duty in one another's agency?

A SECOND RARELY USED AVENUE

Now, let us turn to another avenue which should be open to FDA—the avenue through the National Academy of Sciences and National Research Council.

The National Academy of Sciences has only rarely been called upon. Within the last decade it has been used by FDA fewer times than you could count on the fingers of one hand. Why should this be the case? What do we have a National Academy of Sciences-National Research Council for? Why should it not be used more regularly?

Why was not the Academy's recommendation of 1960 acted upon—to the effect that an advisory scientific group be established to serve FDA?

Now, as to a third avenue, the specialty boards of medicine have hardly been consulted. Through the enterprise of one scientist in FDA, a few consultative arrangements were made with a few of the American Medical Association recognized specialty boards.

Unfortunately, even these few relationships have rarely been utilized; they have tended to wither upon the vine. When our subcommittee staff asked for a list of the consultative panels, FDA seemed to have difficulty even finding the list, much less finding a record that the groups have been called upon more than once or twice.

It is not enough for FDA to state that, on occasion, some member of its scientific organization picks up the phone and calls some scientist in the National Institutes of Health, or in private practice, or in a university, or some other laboratory. There must be a system of consultative relationships established.

I am not speaking for a so-called system which consists of an empty letterhead. So-called consultative committees which do not really consult—already clutter up the landscape of Washington.

What is needed is for FDA to become a dynamic center of scientific consultation. The cream of the talent of the United States and of the international scientific community should be on tap for FDA's use.

But let us be clear on one point. It will only be on tap if FDA's own scientists are of the highest order.

Few scientists are willing to advise other scientists if they do not feel that the latter are their peers. If one scientist feels that another scientist is really "on the ball," if the other man talks the same language, if he perceives the frontier problems of science, if he is personally contributing to the mainstream of scientific thought, then consultation will be lively and frank. Otherwise, the consultation will be pro forma, dull, and useless. It will be a shadow without substance. It will be but a showy facade which might be intended to impress the Congress, but which will not really impress science itself.

I ask unanimous consent that there be printed at this point in the RECORD the text of a letter to the editor of the New York Times, which appeared in its issue of August 14, 1962.

The letter from Dr. Frederick Wolff, assistant professor of medicine, division of clinical pharmacology, the Johns Hopkins Hospital, calls a spade a spade with respect to scientific weaknesses in the Food and Drug Administration.

It points out that we need to upgrade the scientific work—to raise it to the standard of, for example, the National Institutes of Health.

It says, in effect, we dare not follow the Food and Drug Administration and scientists to become mere clerks, trying to see their way clear through a mountain of paperwork and not performing any scientific work of their own.

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

TO STRENGTHEN DRUG AGENCY—PHYSICIAN PROPOSES REFORMS FOR ADEQUATE FUNCTIONING OF FDA

To the EDITOR OF THE NEW YORK TIMES:

It is appropriate that the Government and Congress have shown appreciation of Dr. Frances Kelsey and the Food and Drug Administration's achievement to block the sale of thalidomide in this country. A disaster of the first magnitude has been avoided. This experience is being used to bolster the agency's facilities and resources by 25 percent.

The Food and Drug Administration is generally known as the Cinderella of the health agencies. It is exposed to such continuous pressures from the people's representatives, industry and others, is so underpaid, understaffed, overworked and neglected that it is constantly losing its best people to industry and the intellectually more stimulating atmosphere of the universities. It has been given a policeman's job. But whereas policemen at least have police and law schools and the science of criminology to back them up, the Food and Drug Administration works in isolation in surroundings which are a disgrace in relation to its vital functions.

LACK OF SPACE

The medical reference library has less material than that of many a minor pharmaceutical house. The laboratories have insufficient space or personnel to deal with pressing problems; the Bureau of Medicine is both physically and emotionally removed from the laboratories. Drugs are judged, but there is no research into the science of evaluating drugs. The work is done by a small band of devoted scientists and retired physicians who cope somehow.

Penury is the lot of this key agency. The health services and pharmaceutical industries of the world are watching these developments, recognizing the unique position of the FDA. Far from being a bar to properly constituted pharmaceutical business, it guides nationwide research into channels useful to the health of the people.

One cannot but doubt whether a 25-percent increase in its facilities will be more than a token of the administration's interest. The sum of the reforms required to give the Food and Drug Administration the tools to function adequately might be summarized under four headings:

The agency should be removed from partisan and lobby pressures of Congress and its entourage. Remote control and administration on the pattern of the National Institutes of Health would be preferable to the present position.

RESTRICTING FUNCTIONS

Staff and facilities are required to pursue research and studies into the many problems uncovered during their attempts to obtain compliance with the Food and Drug Act. The tendency to restrict the Administration's function to supervisory regulation only has had a deadening effect, leading to continuing loss of scientists burdened with oceans of paperwork.

Working conditions and salaries should be made to equal those of other Federal research agencies, such as the National Institutes of Health. Original scientific work and participation in national and international scientific meetings should be encouraged.

The Food and Drug Administration, once it had reached a size and standard commensurate with its responsibilities—and this might require severalfold increase of its facilities—should establish a staff of experts, as already set up in relation to the National Institutes of Health and the National Research Council.

Only a powerful and able Food and Drug Administration will command the respect and trust of other branches of the sciences and contribute to the full utilization of this Nation's limitless resources.

FREDERICK WOLFF, M.D.

LACK OF CENTRALIZED INFORMATION ON CURRENT DRUG RESEARCH

Mr. HUMPHREY. Mr. President, also, I ask unanimous consent that there be printed at this point in the RECORD a memorandum which I have prepared on centralized information on current drug research.

Included in this memorandum will be excerpts from a letter, dated August 20, 1962, from Monroe Freeman, Ph. D., director of the Science Information Exchange.

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

ABSENCE OF INFORMATION ON WHO IS NOW DOING WHAT DRUG RESEARCH AND WHERE

One of the central points which I should like to emphasize today is that nobody, either inside or outside the U.S. Government, can put his finger—reliably—on who is now doing what drug research, where and how.

No one who starts drug research can be sure that—

(a) Research he is beginning has not already been performed elsewhere with negative or positive results; or

(b) Research which he is beginning is not now being conducted elsewhere—with the same or different techniques, controls, etc.

The closest approximation to reliable, coordinated information is through the Science Information Exchange. It was reported to me in a letter, dated August 20, 1962, that the U.S. Government is now supporting $40 million in pharmacological research in selected categories, including 1,549 grants.

But, as the exchange carefully notes:

1. This does not include Federal intramural research;

2. It does not include university research, supported by local and internal university funds;

3. The estimate is based upon a classification of subjects according to exchange's standards and not necessarily according to the standards of, let us say, the National Institutes of Health.

4. A mass of information which the pharmaceutical industry might naturally regard as confidential in nature is not included.

(A release of July 17, 1962, from the Pharmaceutical Manufacturers' Association has estimated that the drug industry spent $245.3 million on research and development in 1961.)

FEW SUBJECT-TYPE INQUIRES TO EXCHANGE

Now the question might be asked: Do Federal agencies at least call upon the exchange to learn about the subjects covered under existing Federal support?

The answer, by and large, is "No."

Federal agencies tend to ask the exchange not about the subject of drug research elsewhere, but, rather, about the history of an individual applicant.

In other words, the agencies are interested to learn what research an investigator, say "John Jones," may have previously performed under Federal grant, or may now be performing under Federal grant.

The agencies do not appear to be interested in learning whether "Sam Smith," or "Dick Henry," or anybody else is doing or has done the same or related research according to subject matter.

The entire U.S. Government sends an insignificant amount of subject-type inquires to the exchange. These subject-type inquiries average less than 50 per month for all categories.

By "all categories," I mean all of the some 7,000 subjects by which the exchange indexes the over 35,000 current grants now under support by the U.S. Government.

Let no one, therefore, attempt to fool the Congress into thinking that the agencies are utilizing the exchange in order to "audit" against needless, unintended duplication of effort.

The agencies only seem interested in avoiding unintentional duplication of support for a given investigator. But they do not seem to care if several investigators are, unknowingly, duplicating each other's current or prior work.

The key descriptive term is "unknowingly."

Knowing duplication, by contrast, is absolutely essential to scientific progress. Replication of research is indispensable.

But needless, unknowing, unintentional duplication is a horse of a different color.

It is impossible to prevent such unknowing duplication if the whole U.S. Government, spending over one-half billion dollars for medical grants and in-house medical research, sends less than two subject-type inquiries to the exchange per day.

Two inquiries per day cannot possibly elicit sufficient information to avoid unknowing duplication.

There follow excerpts from the exchange's helpful and prompt reply to the subcommittee:

LETTER FROM SCIENCE INFORMATION EXCHANGE

"Attached is the table on pharmacological research as currently registered with the exchange. I hope the category selections will be useful for your purpose.

"This is a new kind of compilation for Science Information Exchange, in that the items have been counted only once; thus, the categories may be compared or totaled to give valid comparisons and correct totals. We believe this gives more realistic data and certainly lessens the danger of misinterpretation.

"There are, and always will be, inherent errors and limitations in any compilations of this kind and magnitude. These are noted below and must be considered in drawing conclusions. As you know, these data represent only the work that has been registered with the exchange. The following paragraphs try to define this general limitation a little more significantly:

"1. The real Federal total is always greater than ours because of (a) the variable timelag between the initiation of projects and receipt of notices in Science Information Exchange; (b) many 'continuing' projects are not included until Science Information Exchange has received information that they are in fact being continued and not terminated; (c) Food and Drug Administration is probably the only important gap in the pharmacology research not registered (FDA has arranged for their input, but the records have not reached Science Information Exchange in time for this computation); and (d) we objectively assign categories from a 200-word summary, which in itself may not spell out all possible applications inferred or implied.

"2. Intramural research is not included because SIE does not have the dollar value of intramural research from any agency at this task level. The number of intramural research tasks for some agencies could be furnished, if desired.

"3. This report on non-Government research is mostly that supported by major foundations at the national level. Two very important segments of this pharmacological research are missing: (a) The pharmaceutical industry, and (b) university research supported by local and internal university funds. The pharmaceutical industry is not willing to furnish research information at the task level needed by SIE. We are beginning to get good cooperation from universities on their internal programs but this part of our collection is just beginning to build up.

"In the attached table, the first 14 categories are reasonably clear and specific. Category 15 included projects that were clearly related to more than one of the selected categories above. We had no way to arbitrarily split the dollars between two categories and we felt it would be equally misleading to assign all the grant to one or the other. I seriously doubt if even the principal investigator himself could do so with any realistic accuracy. Category 16 included those projects that related to many other miscellaneous applications of pharmacological research with little, if any, commonality among them. If broken down, these would come out as 30 to 50 categories with no more than a few projects in each. We felt that lumping them in one category (category 16) would suit your purpose better than a long list of small unrelated groups.

"Pharmacology research in selected categories

	Government		Non-Government		Total	
	Number of grants	Amount	Number of grants	Amount	Number of grants	Amount
1. Cancer	564	$18,837,341	74	$1,780,196	638	$20,617,537
2. Cardiovascular system	95	1,098,811	13	107,070	108	1,205,881
3. Digestive system	11	155,928	1	8,138	12	164,066
4. Endocrine system	20	512,205	0	0	20	512,205
5. Hematologic disease	17	334,203	3	92,790	20	426,993
6. Infectious diseases	30	466,327	0	0	30	466,327
7. Metabolic and nutritional conditions	24	393,598	2	43,524	26	437,122
8. Metabolic-endocrine relationships	32	938,769	2	12,310	34	951,079
9. Nervous system and neuromuscular (central and autonomic)	129	2,354,379	4	25,066	133	2,379,445
10. Neuroendocrine relationships	13	221,567	2	5,240	15	226,807
11. Psychopharmacology	256	7,298,821	17	285,743	273	7,584,564
12. Respiratory system	7	88,216	0	0	7	88,216
13. Skin disorders	3	112,358	0	0	3	112,358
14. Toxicology	26	393,016	0	0	26	393,016
15. Research in 2 or more categories listed above	93	1,987,480	10	153,468	103	2,140,948
16. Research in areas not listed above	229	5,456,670	20	355,017	249	5,811,687
Total	1,549	40,649,689	148	2,868,562	1,697	43,518,251

"(1) Items in categories 1 to 14 are reasonably specific in their area of coverage.

"(2) Item 15 includes research which overlapped in 2 or more of the categories (1 to 14) listed in the table. It was felt impossible to attempt splitting the level of support based on information available here at the exchange.

"(3) Item 16 includes pharmacological research in all areas not included in the specific categories (1 to 14) listed in the table. They were extremely diverse in classification and so have simply been grouped together. Though they represent a fair amount of money in toto the amount of any single category grouped under this listing would be very small.

"(4) Current extramural grants tabulated Aug. 17, 1962."

There is now being printed at the Government Printing Office the hearing volume containing the transcript of the August 1 and August 9 hearings by the Senate Government Operations Subcommittee. The subject was "Interagency Coordination in Drug Research."

This volume contains a considerable number of exhibits gathered by myself and the subcommittee staff both prior and subsequent to the formal hearings.

Included among these exhibits is:

(a) Correspondence on many important aspects of interagency drug cooperation.

(b) Extracts from major articles in the medical literature on drug information.

(c) Descriptions of Federal activities in drug research, including the activities of the National Institutes of Health.

(d) A series of chronologies—the most complete, I believe, available anywhere within the public record, on the subject of

the thalidomide tragedy. These chronologies include facts from the Food and Drug Administration's files, from material furnished by the William S. Merrell Co., from the medical literature on the case, etc.

In effect, the oral hearings represented but one phase of a much broader review conducted by the subcommittee and its staff into the many ramifications of the drug problem.

REVIVE THE "MEDIPHONE" CLEARINGHOUSE

Included in the reprinted correspondence, for example, is a message, which I invited, as regards the clearinghouse project which was known as Mediphone, Inc. This private project, unfortunately, did not succeed commercially and consequently has now closed down. It had been designed to give physicians anywhere in the United States, 24-hour-a-day telephone service as regards any drug on the market—toxicity, side effects, etc.

It is my hope that the project will be revived because it can offer an invaluable service to busy American medical practitioners.

I commend its revival to the American Medical Association council on drugs and to other interested professional groups.

A KEY POINT—AND FLAW—IN THE NEW HEW REGULATIONS, FDA WOULD HAVE TO ACT VERY FAST TO AVOID HAZARDOUS CLINICAL TESTING

Our August 9 hearing brought out a key point. It did so, however, through an error by Commissioner Larrick which he subsequently acknowledged.

On page 163 of the verbatim transcript of the hearings, Commissioner Larrick stated that he believed the new HEW regulations "required a 10-day period" between (a) the date a drug company submitted its reports on animal testing and (b) the date at which it could start testing on humans.

However, on August 16, Commissioner Larrick wrote to me, stating that he was in error. The regulations do not contemplate a specific 10-day delay or any other specific hiatus. These regulations merely contemplate that FDA be notified of evidence justifying clinical tests. If FDA does not act immediately to the contrary, the manufacturer could go ahead.

In effect, FDA is going to have to process information exceedingly rapidly. Its "silence will give consent." If it allows the information in its files to gather dust, a manufacturer will have already proceeded on his clinical testing.

These facts emphasize still further the need for FDA to improve its internal handling of information.

At present, the FDA files are not in good shape. A team of the National Bureau of Standards made an intensive examination of FDA—its procedures, systems, recordkeeping, filing, etc. In its report, the National Bureau of Standards did not, for understandable reasons, comment frankly on the weaknesses of the existing system. But, reading between the lines of the team's report, one can see that FDA's files are in a sorry mess.

The new regulations, therefore, can become a farce unless there is a substantial improvement in FDA's control of the flood of incoming information.

There follows the text of Commissioner Larrick's letter and then the original, unrevised transcript.

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
FOOD AND DRUG ADMINISTRATION,
Washington, D.C., August 16, 1962.

Hon. HUBERT H. HUMPHREY,
Chairman, Subcommittee on Reorganization and International Organizations, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR SENATOR HUMPHREY: I have reviewed the transcript of the hearings on August 1 and August 9, before the Subcommittee on Reorganization and International Organization on Interagency Coordination in Drug Research Information. A number of editorial changes have been indicated on the transcripts which are enclosed.

However, on page 163, there is an error in my testimony which should be corrected. When I testified, I was under the impression that after submitting his notice of claimed exemption (which would make it possible to ship the new drug for clinical testing for safety), the manufacturer would have to wait a stated period of time before initiating the clinical tests. The regulations as proposed do not so require. All that is necessary is that he notify us of his claim for exemption, and supply the evidence justifying clinical tests. We would, however, review this material and have the opportunity to stop the tests if we did not agree with the manufacturer.

I believe this response should be substituted for the last 9 lines on page 163 and the first line of page 164 of the transcript. Since this involves a colloquy with Senator MUNDT, I am sending a copy of this letter to him.

Sincerely yours,

GEO. P. LARRICK,
Commissioner of Food and Drugs.

"Commissioner LARRICK. In other words, what I am saying is this:

"The have to send to us adequate information. Now, that means if they want to make a summary, and that summary comes in to a competent scientist like some you gentlemen have met, and the scientist says this summary is sufficient to make it appear quite safe to start your clinical work, they would not have to send in this great mass of stuff at that level.

"But if the scientist in Food and Drug says, 'Well, I am not sure; I cannot tell from this summary whether we have reached that stage or not, we need the whole thing'; then the scientists can say, 'Before you ship it out for clinical work, I want to see it all.'

"Senator MUNDT. Now, you have not stated to us yet what there is in the new regulations in terms of a reaction from Food and Drug back to the pharmaceutical company which triggers off their opportunity to proceed. So there must be something else that you have to apparently say yes or maybe or 'We have the file', or else——

"Commissioner LARRICK. They must submit this data and allow a stated period of time to elapse within which we can file or send something to them which stops them.

"If we remain silent, they may proceed.

"Senator MUNDT. How long a period of time?

"Commissioner LARRICK. Ten days, I believe.

"These are very new.

"Senator MUNDT. OK. Anyhow, you have a stipulated period of time?

"Commissioner LARRICK. Right.

"Senator HUMPHREY. Before the Senator leaves this matter of filing the statement—you used the word 'summary.' It seems to me somewhere along in your regulations you ought to indicate what you want in that summary, because otherwise it could be very general.

"Now, a good, solid, reputable drug house, one of the standard companies with a well-known name, is not going to risk its reputation by filing a phony statement. But you and I know there are many, many people that get into this business, and some of them do not last too long. And we want to make sure that their products do not shorten up the life of anyone, either.

"It seems to me that you ought to lay down some specific guidelines, as to what you mean by a summary. Otherwise, it could be very misleading. There would just be more paperwork without any real information.

"Commissioner LARRICK. Right.

"Senator HUMPHREY. Any other recommendations?

"Commissioner LARRICK. Yes. They have to send us five copies of all the informational material that they send to the clinical investigator."

Mr. HUMPHREY. Mr. President, I hope that the vote which was recently taken on the Kefauver amendment will be interpreted as a desire on the part of Congress for prompt action with respect to the pricing of drugs.

Mr. MANSFIELD. Mr. President, on the passage of the bill, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. DIRKSEN. Mr. President, I speak in behalf of the minority members of the Committee on the Judiciary: the Senator from Wisconsin [Mr. WILEY], the Senator from Nebraska [Mr. HRUSKA], the Senator from New York [Mr. KEATING], the Senator from Hawaii [Mr. FONG], and the Senator from Pennsylvania [Mr. SCOTT]. I will exclude myself. At every session there were full meetings in order to protect the bill, and I believe that on every occasion every Republican member was present at the hearings. That is an unprecedented display of fidelity to duty, and I congratulate every minority member of the committee.

The distinguished Senator from Nebraska [Mr. HRUSKA] has become, verily, an expert in this field. The bill became one of the most difficult measures, languagewise, with reference to the Food and Drug Act, in which I have ever been engaged. It required unprecedented fidelity to duty to get the work done. I salute my colleagues on the Committee on the Judiciary for the magnificent results.

Mr. MANSFIELD. Mr. President, I yield back the remainder of my time.

Mr. DIRKSEN. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered, and the clerk will call the roll.

The Chief Clerk called the roll.

Mr. HUMPHREY. I announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Nevada [Mr. BIBLE], the Senator from West Virginia [Mr. BYRD], the Senator from New Mexico [Mr. CHAVEZ], the Senator from Pennsylvania [Mr. CLARK], the Senator from Tennessee [Mr. GORE], the Senator from Indiana [Mr. HARTKE], the Senator from Arizona [Mr. HAYDEN], the Senator from Oklahoma [Mr. KERR], the Senator from New Jersey [Mr. WILLIAMS], and the Senator from Texas [Mr. YARBOROUGH] are absent on official business.

I also announce that the Senator from Missouri [Mr. SYMINGTON], the Senator from New Mexico [Mr. ANDERSON], the Senator from Alaska [Mr. GRUENING], the Senator from Wyoming [Mr. HICKEY], and the Senator from Missouri [Mr. LONG] are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska [Mr. BARTLETT], the Senator from Nevada [Mr. BIBLE], the Senator from West Virginia [Mr. BYRD], the Senator from New

Mexico [Mr. CHAVEZ], the Senator from Pennsylvania [Mr. CLARK], the Senator from Tennessee [Mr. GORE], the Senator from Indiana [Mr. HARTKE], the Senator from Arizona [Mr. HAYDEN], the Senator from Oklahoma [Mr. KERR], the Senator from New Jersey [Mr. WILLIAMS], the Senator from Texas [Mr. YARBOROUGH], the Senator from Missouri [Mr. SYMINGTON], the Senator from New Mexico [Mr. ANDERSON], the Senator from Alaska [Mr. GRUENING], the Senator from Wyoming [Mr. HICKEY], and the Senator from Missouri [Mr. LONG] would each vote "yea."

Mr. KUCHEL. I announce that the Senator from Utah [Mr. BENNETT], the Senator from South Dakota [Mr. BOTTUM], the Senator from Nebraska [Mr. CURTIS], the Senator from Arizona [Mr. GOLDWATER] and the Senator from Kentucky [Mr. MORTON] are necessarily absent.

The Senator from Vermont [Mr. PROUTY] is detained on official business.

If present and voting, the Senator from Utah [Mr. BENNETT], the Senator from South Dakota [Mr. BOTTUM], the Senator from Nebraska [Mr. CURTIS], the Senator from Arizona [Mr. GOLDWATER], the Senator from Kentucky [Mr. MORTON], and the Senator from Vermont [Mr. PROUTY] would each vote "yea."

The result was announced—yeas 78, nays 0, as follows:

[No. 216 Leg.]

YEAS—78

Aiken	Hickenlooper	Moss
Allott	Hill	Mundt
Beall	Holland	Murphy
Boggs	Hruska	Muskie
Burdick	Humphrey	Neuberger
Bush	Jackson	Pastore
Butler	Javits	Pearson
Byrd, Va.	Johnston	Pell
Cannon	Jordan, N.C.	Proxmire
Capehart	Jordan, Idaho	Randolph
Carlson	Keating	Robertson
Carroll	Kefauver	Russell
Case	Kuchel	Saltonstall
Church	Lausche	Scott
Cooper	Long, Hawaii	Smathers
Cotton	Long, La.	Smith, Mass.
Dirksen	Magnuson	Smith, Maine
Dodd	Mansfield	Sparkman
Douglas	McCarthy	Stennis
Eastland	McClellan	Talmadge
Ellender	McGee	Thurmond
Engle	McNamara	Tower
Ervin	Metcalf	Wiley
Fong	Miller	Williams, Del.
Fulbright	Monroney	Young, N. Dak.
Hart	Morse	Young, Ohio

NAYS—0

NOT VOTING—22

Anderson	Curtis	Long, Mo.
Bartlett	Goldwater	Morton
Bennett	Gore	Prouty
Bible	Gruening	Symington
Bottum	Hartke	Williams, N.J.
Byrd, W. Va.	Hayden	Yarborough
Chavez	Hickey	
Clark	Kerr	

So the bill (S. 1552) was passed.

The title was amended so as to read: "A bill to amend and supplement the laws with respect to the manufacture and distribution of drugs, and for other purposes."

Mr. DIRKSEN. Mr. President, if it is appropriate to move that the vote by which the bill was passed be reconsidered, I so move.

Mr. HUMPHREY. Mr. President, I move to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the bill as passed be printed.

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

Mr. DOUGLAS. Mr. President, the vote by which the Kefauver drug bill was passed just now—78 to 0—is quite a commentary on how time and history frequently bear out the views of some unpopular people and how what may seem to be a majority opinion at one moment in time is later proved not to be the case.

The Senator from Tennessee [Mr. KEFAUVER] has waged a long and lonely fight for an adequate drug bill. He has been attacked by the powerful drug industry, and in the press he has been derided as one of the despised band of liberals. He has not received a great deal of cooperation from some of his colleagues, although I think to their dying day the Senator from Michigan [Mr. HART], the Senator from Connecticut [Mr. DODD], the Senator from Colorado [Mr. CARROLL], and the Senator from Missouri [Mr. LONG], can take pride in the aid they gave the Senator from Tennessee at a time when, with his back to the wall, he waged his apparently hopeless battle against these powerful interests.

But now, Mr. President, because of the many terrible tragedies which have occurred in European countries from the use of the drug thalidomide and the cases which have occurred in this country, it has been proved that the Senator from Tennessee was right all the time, and that the scoffers, scorners, and bitter opponents were wrong.

Now, by its unanimous vote, the Senate has placed its generous seal of approval on what the Senator from Tennessee [Mr. KEFAUVER] and his colleagues have long fought for. Men who had openly and secretly fought him now flock to get on the bandwagon, and pretend that they were always his supporters.

As a humble American citizen, I wish to commend the Senator from Tennessee, and all those who helped him, for fighting for all these months and years for this great reform. Certainly the American people will eternally be grateful to him.

Mr. President, can we learn from this lesson; or can mankind educate itself only by disaster and tragedy?

INCREASES IN RATES OF DISABILITY COMPENSATION

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of Calendar 1763, House bill 10743.

The motion was agreed to; and the Senate proceeded to consider the bill (H.R. 10743) to amend title 38, United States Code, to provide increases in rates of disability compensation, and for other purposes.

Mr. DIRKSEN. Mr. President, I offer the amendment which I send to the desk and ask to have stated.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. On page 4, it is proposed to strike out all of lines 7, 8, and 9, and to insert in lieu thereof the following: "July 1962, and payments shall be made accordingly, regardless of the date this Act becomes law."

Mr. DIRKSEN. Mr. President, I yield myself 1 minute.

This bill was passed by the House on April 2, 1962. This act is long overdue.

As the bill now stands, it would become effective on the first day of the second calendar month which begins after the date of the enactment of the act. The amendment will merely make the act effective as of July 1962.

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

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. LONG of Louisiana. Mr. President, will the Senator from Illinois yield for a question?

Mr. DIRKSEN. I yield.

Mr. LONG of Louisiana. Does the amendment make the effective date June 1?

Mr. DIRKSEN. No, July 1.

Mr. LONG of Louisiana. July 1?

Mr. DIRKSEN. Yes.

Mr. JAVITS. Mr. President, I am deeply gratified that the majority leader has brought up this bill.

Last Monday, I addressed the national convention of the Disabled American Veterans, at Atlantic City; and I can testify to the Senate about the anxiety with which they have awaited the passage of this tiny, yet very important, increase in the compensation of only disabled veterans. They did not understand why it has taken so long. We understand, because of the parliamentary difficulties; but they did not. They regarded it as a small measure of justice much too long overdue.

I think they will hail this accomplishment, and I think all of us will take satisfaction from this accomplishment at long last.

Mr. BYRD of Virginia. Mr. President, this bill provides increases in the rates of service-connected disability compensation, to reflect the changes which have occurred in the cost of living since the last compensation increase in 1957, as well as to more adequately compensate the seriously disabled veterans. In other words, it would increase the monthly rates payable to veterans of all wars and peacetime service who have a service-connected disability rated between 10 and 100 percent or who are entitled to receive compensation at one of the higher statutory award rates, which presently run to a maximum of $450 or as much as $600 monthly if the veteran is entitled to the $450 rate, needs regular aid and attendance, and is not being cared for in a Veterans' Administration hospital.

I ask that a table showing the increase in compensation payable to each rate of disability, as well as the cost estimate, be inserted in the RECORD.

This table shows that the cost of these proposed increases would be approximately $98 million in the first year.

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

Cost estimate

Degree and paragraph	Wartime cases	Peacetime cases	Current wartime rates	H.R. 10743 as reported	H.R. 10743, percent increase over current rates	Cost of H.R. 10743 as reported
10(a)	761,000	53,700	$19	$20	5.3	$9,776,000
20(b)	281,900	16,900	36	38	5.6	6,969,000
30(c)	251,700	17,500	55	58	5.5	9,481,000
40(d)	153,800	7,600	73	77	5.5	7,747,000
50(e)	102,100	5,700	100	107	7.0	8,986,000
60(f)	79,500	4,600	120	128	6.7	7,963,000
70(g)	40,500	2,400	140	149	6.4	4,576,000
80(h)	25,300	1,100	160	170	6.3	3,142,000
90(i)	7,400	200	179	191	6.7	1,090,000
100(j)	74,700	10,400	225	250	11.1	24,906,000
(l)	3,390	330	309	340	10.0	1,360,000
(m)	2,370	270	359	390	8.6	963,000
(n)	390	30	401	440	9.7	194,000
(o)	150	60	450	525	16.7	178,000
(p)	2,570	210	450	525	16.7	2,464,000
(o)+(r)	4,240	800	150 (+450)	200 (+525)	20.8	7,320,000
(s)	3,430	500	265	290	9.4	1,149,000
Total	1,794,440	122,300				98,264,000

(k) Anatomical loss, or loss of use of a creative organ, or 1 foot, or 1 hand, or both buttocks, or blindness of 1 eye having only light perception, rates (a) to (j) increased monthly by $47 additional to basic compensation paid monthly for veteran with these disabilities (this $47 rate unchanged.)

Anatomical loss, or loss of use of a creative organ, or 1 foot, or 1 hand, or both buttocks, or blindness of 1 eye, having only light perception, in addition to requirement for any of rates in (l) to (n), rate increased monthly for each loss or loss of use by $47 additional to basic compensation paid monthly for veteran with these disabilities (this $47 rate unchanged.)

(l) Anatomical loss, or loss of use of both hands, or both feet, or 1 hand and 1 foot, or blind both eyes with 5/200 visual acuity or less, or is permanently bedridden or so helpless as to be in need of regular aid and attendance, monthly compensation.

(m) Anatomical loss, or loss of use of 2 extremities at a level, or with complications, preventing natural elbow or knee action with prosthesis in place or has suffered blindness in both eyes having only light perception, or has suffered blindness in both eyes, rendering him so helpless as to be in need of regular aid and attendance, monthly compensation.

(n) Anatomical loss of 2 extremities so near shoulder or hip as to prevent use of prosthetic appliance or suffered anatomical loss of both eyes, monthly compensation.

(o) Suffered disability under conditions which would entitle him to 2 or more rates in (l) to (n), no condition being considered twice, or suffered total deafness in combination with total blindness with 5/200 visual aduity or less, monthly compensation.

(p) In event disabled person's service-incurred disabilities exceed requirements for any of rates prescribed, Administrator, in his discretion, may allow next higher rate, or intermediate rate, but in no event in excess of $450.

(q) Minimum rate for arrested tuberculosis. (This $67 monthly rate is unchanged.)

(r) If entitled to compensation under (o), or the maximum rate under (p), and in need of regular aid and attendance, while not hospitalized at Government expense, additional monthly aid and attendance allowance.

(s) If totally disabled and (1) has additional disability independently rated at 60 per centum or more, or (2) is permanently housebound.

Mr. BYRD of Virginia. Mr. President, section 2 of the bill provides that veterans who are receiving the statutory award of $450 and also additional compensation of $150 while not in a hospital, will have their compensation continued until the first day of the second month which begins after they are hospitalized. Inasmuch as it costs the Veterans' Administration approximately $25 a day to hospitalize each patient in a general medical, and surgical hospital, and more for those veterans who are in the paraplegic class, it is obvious that the payment of this additional compensation, in lieu of furnishing hospital care, is, in effect, a saving to the Government. It seems reasonable to the committee, and also good medical practice, to permit these badly disabled service-connected cases to report to a hospital whenever they are in need of care, without suffering a financial loss. Even at these rather liberal rates, many paralyzed veterans experience difficulty in making ends meet, since some require 24-hour care in their home and must pay out sizable amounts to individuals employed to take care of them.

Section 2 of the bill provides that this allowance will be discontinued from the first day of the second calendar month which begins after the day of the veteran's admission for hospitalization. If the veteran leaves the hospital against medical advice, and thereafter is readmitted, the allowance during this period of hospitalization shall be discontinued from the date of such readmission, for so long as that hospitalization continues. Informal advice has been received from the Veterans' Administration that there would be no great cost, administrative or otherwise, as a result of the enactment of this section.

Section 3 of the bill increases the presumptive period for multiple sclerosis from 3 to 7 years. The committee took this action based on information, obtained from the National Institutes of Health, that it was the opinion of its scientific staff that 7 years was not an unreasonable period to recognize as the interval between onset and diagnosis in multiple sclerosis cases, and that the committee would be justified in recommending the enactment of legislation providing for a 7-year presumptive period for this disease. For all other chronic diseases, except multiple sclerosis, tuberculosis and Hansen's disease—which have 3-year presumptive periods—there is a limitation to a 1-year presumptive period in wartime cases.

The administration favors this bill.

Mr. President, I also ask that a table showing a history of compensation increases which have taken place since July 1, 1933, be incorporated in the RECORD.

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

Sec. 314, title 38, subparagraph	Percent	July 1, 1933	Percent increase	Jan. 19, 1934	Percent increase	Public Law 312, 78C, June 1, 1944	Percent increase	Public Law 182, 79C, Oct. 1, 1945	Percent increase	Public Law 662, 79C, Aug. 1, 1946	Percent increase	Public Law 339, 81C, Dec. 1, 1949	Percent increase	Public Law 356, 82C, July 1, 1952	Percent increase	Public Law 427, 82C, Aug. 1, 1952	Percent increase	Public Law 695, 83C, Oct. 1, 1954	Percent increase [1]	Public Law 85-168, Oct. 1, 1957	Percent increase from Jan. 19, 1934	Percent increase from Apr. 1, 1946	Percent increase from July 1, 1952	Percent increase from Oct. 1, 1954
(a)	10	9	11.1	10	15	$11.50	------	------	20	$13.80	8.7	$15	5	$15.75	------	------	7.9	$17	11.8	$19	40.0	37.7	20.6	11.8
(b)	20	18	11.1	20	15	23.00	------	------	20	27.60	8.7	30	5	31.50	------	------	4.8	33	9.1	36	80.0	30.4	14.2	9.1
(c)	30	27	11.1	30	15	34.50	------	------	20	41.40	8.7	45	5	47.25	------	------	5.8	50	10.0	55	83.3	32.9	16.4	10.0
(d)	40	36	11.1	40	15	46.00	------	------	20	55.20	8.7	60	5	63.00	------	------	4.8	66	10.6	73	82.5	32.2	15.9	10.6
(e)	50	45	11.1	50	15	57.50	------	------	20	60.00	8.7	75	15	86.25	------	------	5.5	91	9.9	100	100.0	44.9	15.9	9.9
(f)	60	54	11.1	60	15	69.00	------	------	20	82.80	8.7	90	15	103.50	------	------	5.3	109	10.1	120	100.0	44.9	15.9	10.1
(g)	70	63	11.1	70	15	80.50	------	------	20	96.60	8.7	105	15	120.75	------	------	5.2	127	10.2	140	100.0	44.9	15.9	10.2
(h)	80	72	11.1	80	15	92.00	------	------	20	110.40	8.7	120	15	138.00	------	------	5.0	145	10.3	160	100.0	44.9	15.9	10.3
(i)	90	81	11.1	90	15	103.50	------	------	20	124.20	8.7	135	15	155.25	------	------	5.0	163	9.8	179	98.9	44.1	15.3	9.8
(j)	100	90	11.1	100	15	115.00	------	------	20	138.00	8.7	150	15	172.50	------	------	4.9	181	24.3	225	125.0	63.0	30.4	24.3
(s)	Subparagraph (s) (housebound cases), Public Law 86-663, effective Sept. 1, 1960																			265	------	------	------	------
(l)	------	------	------	------	------	------	------	200	20	240.00	------	------	------	------	10.8	$266	4.9	279	[2] 10.8	309	[3] 54.5	28.8	[4] 16.2	10.8
(m)	------	------	------	------	------	------	------	235	20	282.00	------	------	------	------	11.0	313	5.1	329	[2] 9.1	359	[3] 52.8	27.3	[4] 14.7	9.1
(n)	------	------	------	------	------	------	------	265	20	318.00	------	------	------	------	11.0	353	5.1	371	[2] 8.1	401	[3] 51.3	26.1	13.6	8.1
(o)	------	------	------	------	------	------	------	300	20	360.00	------	------	------	------	11.1	400	5.0	420	[2] 7.1	450	[3] 50.0	25.0	[4] 12.5	7.1
(p)	------	------	------	------	------	------	------	300	20	360.00	------	------	------	------	11.1	400	5.0	420	[2] 7.1	450	[3] 50.0	25.0	[4] 12.5	7.1
(r)	Subparagraph (r), "A and A", nonhospitalization, Public Law 85-782, effective Oct. 1, 1958																			150	------	------	------	------

[1] Varies because of roundoff.
[2] Flat $30 increase.
[3] From Oct. 1, 1945.
[4] From Aug. 1, 1952.

Mr. KEATING. Mr. President, the purpose of this legislation is to provide long overdue and well-deserved increases in the rates of disability compensation for veterans. Disability compensation rates genuinely need a boost, from the bottom to the top.

I wonder, Mr. President, how many of us are aware that veterans who were completely disabled in the war, possibly even completely paralyzed, can only get a maximum of $600 a month. These are men who need continual close care, men who are not being taken care of in a veterans hospital. It is clear that $600 is not sufficient to provide the kind of food, shelter and constant attention that these men who were wounded in the defense of this Nation need. All of the gratitude and homage which we may show to these men who served our Nation in the past for its present and future safety must appear as pure blarney to these unfortunate veterans when we do not provide adequately for their most basic needs.

Mr. President, the last disability compensation increase was in 1957. Since then there has been a 6-percent increase in the cost of living. The bill before us now for consideration, H.R. 10743, provides for increases from 5.3 to 11.1 percent payable to veterans disabled 10 to 100 percent. Higher percentage increases in this bill, as traditionally, are provided for those with more than 50 percent disability.

As a member of the board of directors of the National Multiple Sclerosis Society, I am particularly interested to note that on the recommendation of the National Institutes of Health, the presumptive period for multiple sclerosis has been increased from 3 to 7 years. NIH has indicated that it is not unreasonable for a period of up to 7 years to elapse between the onset and diagnosis of multiple sclerosis.

Furthermore, Mr. President, this measure is in effect a savings to the Government; if the compensation is not increased, many of the most seriously disabled men may well be forced into veterans hospitals at a cost perhaps as high as $25 per day. In other words, the minimum for hospitalization per month would be $750, and it would be more than this for those who may be paralyzed. It is only fair that we provide adequate compensation so that these men who cannot even struggle to make ends meet because of their physical disability are not forced out of their homes into hospitals against their will.

Mr. President, this bill is not a boondoggle; it should rather be regarded as one of the prices of our freedom. These men have paid with their health for the freedom we enjoy today. It is not asking a great deal for us to meet their needs today and I am proud to support this legislation and urge all my colleagues to do the same.

The PRESIDING OFFICER. The bill is open to further amendment.

If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill (H.R. 10743) was read the third time and passed.

Mr. MANSFIELD. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. DIRKSEN. Mr. President, I move that the motion to reconsider be laid on the table.

The motion to lay on the table was agreed to.

BALANCE OF AWARDS MADE BY PHILIPPINE WAR DAMAGE COMMISSION

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1844, House bill 11721, the Philippine war damages bill, so that it may be laid down and made the pending business for tomorrow.

The motion was agreed to; and the Senate proceeded to consider the bill (H.R. 11721) to authorize the payment of the balance of awards for war damage compensation made by the Philippine War Damage Commission and to authorize the appropriation of $73 million for that purpose.

LEGISLATIVE PROGRAM

Mr. MANSFIELD. Mr. President, I announce, for the information of the Senate, that there will be no further consideration of business tonight.

PROGRAM FOR SATURDAY

Mr. MORSE. Mr. President, will the Senator from Montana yield for a question?

Mr. MANSFIELD. I yield.

Mr. MORSE. Will there be a session of the Senate on Saturday?

Mr. MANSFIELD. Yes. We shall have the agriculture appropriation bill on Saturday, plus some other matters.

COMMITTEE MEETINGS DURING SENATE SESSION TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Judiciary Committee be authorized to sit tomorrow morning. I make this request for the purpose of enabling that committee to consider the nomination of Judge Marshall, which is long overdue.

Mr. MORSE. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. MORSE. Will the Senator from Montana add to his request a similar request for the Education Subcommittee to meet?

Mr. MANSFIELD. That is agreeable. I add that request to the one I have already made, Mr. President.

The PRESIDING OFFICER. Is there objection? Without objection, permission is granted for both of these committees.

REVENUE ACT OF 1962—AMENDMENTS

Mr. DIRKSEN. Mr. President, let us take a moment to look around us; to appraise our standards and to determine the things that we hold dear. For many months now, nay, for many years, we in the Congress have been considering the aid which should be given to schools, to hospitals, to symphony orchestras and art museums. In some cases we have provided for Federal aid coming out of the pockets of every taxpayer, whether or not he would have it otherwise, to provide such benefits for the people of this country; and even where we have not provided for Federal aid we have provided for deductions from Federal income tax for contributions to hospitals, to schools, to universities, to art museums, symphony orchestras, and opera societies—all because it is in the public interest to have such things and to have them in as fine a state as possible.

But what is more important than art and music, and perhaps more important than even medical care and education? Mr. President, it is justice. It is our judicial system which preserves and protects the liberties of the people, which guarantees them a free and fair trial when they are accused, and which provides them with a fair and impartial forum for the settlement of their own controversies.

Now, Mr. President, we permit deductions for contributions to organizations working to improve our hospitals, churches, and schools, but Mr. President, we do not permit deductions for contributions to organizations to improve our judicial system. I, therefore, am submitting an amendment to H.R. 10650 which will place the deduction for contributions for judicial reform on the same basis as contributions to improve symphony orchestras, opera societies, hospitals, schools, and churches.

The opponents of this proposal to permit the deductibility of contributions for judicial reform have tried to stop it by saying that it permits the deduction of lobbying expenses. What could be further from the real truth? There is no personal or business gain in judicial reform. It is something which benefits all the people and it is a matter of importance in a number of States besides my own, because proposals for judicial reform are pending in at least half a dozen States. The need for this legislation in aid of judicial reform has been attested to by National, State, and local bar associations who are working actively for this reform and which are joined by the Better Government Association, the Committee on Illinois Government, the League of Women Voters, and all sorts of religious and civic groups. Let us not let the people down when they seek, through nonprofit civic organizations, to improve their judicial systems and make them equal to the demands of this century.

I ask that my amendment be printed in the RECORD.

The PRESIDING OFFICER. The amendment will be received, printed,

and, without objection, will be printed in the RECORD and lie on the table.

The amendment submitted by Mr. DIRKSEN is as follows:

On page 391, after line 21, insert the following new section:

"SEC. 27. CONTRIBUTIONS TO ORGANIZATIONS PROPOSING REORGANIZATION OF THE JUDICIARY.

"(a) INCLUSION AS CHARITABLE CONTRIBUTIONS.—Section 170(c) (relating to definition of charitable contribution) is amended by inserting after paragraph (5) thereof the following new paragraph:

"'(6) An organization—

"'(A) created or organized under the law of any State;

"'(B) organized and operated exclusively to consider proposals for the reorganization of the judicial branch of the government of any State or political subdivision thereof, to provide information, to make recommendations, and to seek public support or opposition as to such proposals; and

"'(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.'

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years ending after December 31, 1961."

Renumber section 27 of the bill as section 28.

Mr. DIRKSEN. Mr. President, I wish to turn to a different area of our standards of value; to an area which we should cherish equally with justice, and that is the welfare of those men and women who by their efforts have helped to build this country and who have reached that time of life which has been called the "golden years." Yes, they are golden years, indeed, full of golden memories, irreplaceable memories. But, unfortunately, memories have little purchasing power and, for many, those golden years have a very little gold, if all that exists to live on are social security benefits. Now, the people I represent, these magnificent people in their golden years, are not asking for more money from the bill. They are only asking that they be allowed to earn more money without losing their full retirement benefits. Mr. President, this is really a very simple proposal indeed. All it does is to permit them to earn $1,800 a year instead of $1,200 without facing a reduction in retirement benefits. Let us make their golden years a little brighter by this change.

I ask unanimous consent that the amendment may be printed in the RECORD.

The PRESIDING OFFICER. The amendment will be received, printed, and will lie on the table; and, without objection will be printed in the RECORD.

The amendment submitted by Mr. DIRKSEN is as follows:

On page 391, between lines 21 and 22, insert the following new section:

"SEC. 27. INCREASE IN AMOUNT INDIVIDUALS ARE PERMITTED TO EARN WHILE RECEIVING BENEFITS UNDER TITLE II OF THE SOCIAL SECURITY ACT.

"(a) INCREASE IN AMOUNT.—(1) Paragraphs (1), (3), and (4)(B) of subsection (f) of section 203 of the Social Security Act are each amended by striking out '$100' wherever it appears therein and inserting in lieu thereof '$150'.

"(2) The first sentence of paragraph (3) of such subsection (f) is amended by striking out ', except that of the first $500 of such excess (or all of such excess if it is less than $500), an amount equal to one-half thereof shall not be included'.

"(b) CONFORMING AMENDMENT.—Paragraph (1)(A) of subsection (h) of section 203 of such Act is amended by striking out '$100' and inserting in lieu thereof '$150'.

"(c) EFFECTIVE DATE.—The amendments made by the preceding subsections of this section shall be effective, in the case of any individual, with respect to taxable years of such individual ending after 1962."

On page 391, line 22, strike out "27" and insert in lieu thereof "28".

Mr. DIRKSEN. Mr. President, I want to turn to another problem of our citizens who have passed the age of 60. By their sacrifices they have provided the new blood to carry this country forward. Through their homes ran the feet of youngsters. Their halls were filled with the laughter of young people. But, as all things do, these children blossomed and they went out into the world as men and women to do their part. Now the halls are empty. Now the need for the rooms is gone. Now, too, retirement is near. That means a loss of income. That means living on the savings, such as there may be, of a lifetime. It means selling the old house and getting a smaller place. All that is natural.

Now, Mr. President, I come to the unnatural part—inflation and taxes. Those two terrifying forces for older people will rob them of the value of their home at the very time their income will be reduced by retirement. As all of us know, a home is really like a form of savings. We put money into a house to improve it. We regard it as a form of saving. Now, as they pass 60, people need to draw on such savings. And so, Mr. President, I propose that when people 60 years of age or more sell homes occupied by them for 5 years or more the gain that they realize, which is really the savings they have accumulated on the house, will not be taxed as income.

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

The PRESIDING OFFICER. The amendment will be received, printed, and will lie on the table; and, without objection, will be printed in the RECORD.

The amendment submitted by Mr. DIRKSEN is as follows:

On page 391, between lines 21 and 22, insert the following new section:

"SEC. 27. EXCLUSION FROM GROSS INCOME OF GAIN FROM SALE OF RESIDENCE BY INDIVIDUAL AGE 60 OR OVER.

"(a) EXCLUSION FROM GROSS INCOME.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to items specifically excluded from gross income) is amended by renumbering section 121 as 122, and by inserting after section 120 the following new section:

"'SEC. 121. GAIN FROM SALE OR EXCHANGE OF RESIDENCE OF INDIVIDUAL WHO HAS ATTAINED AGE 60.

"'(a) GENERAL RULE.—In the case of an individual, gross income does not include gain from the sale or exchange after December 31, 1961, of property used by the taxpayer as his principal residence, if—

"'(1) the taxpayer has attained the age of 60 years before such sale or exchange occurs, and

"'(2) such property has been used by the taxpayer as his principal residence for a period of not less than 5 years at the time such sale or exchange occurs.

"'(b) PROPERTY HELD JOINTLY BY HUSBAND AND WIFE.—In the case of property held by a husband and wife as joint tenants or as tenants by the entirety, the age requirement contained in subsection (a)(1) and the use requirement contained in subsection (a)(2) shall be treated as having been met by both the husband and the wife if it is met by either spouse.

"'(c) PROPERTY USED IN PART AS PRINCIPAL RESIDENCE.—In the case of property only a portion of which is used by the taxpayer as his principal residence, subsection (a) shall apply to so much of the gain from the sale or exchange of such property as is determined, under regulations prescribed by the Secretary or his delegate, to be attributable to the portion of the property used by the taxpayer as his principal residence.

"'(d) INVOLUNTARY CONVERSIONS. — For purposes of subsection (a), the destruction, seizure, requisition, or condemnation of property, occurring after December 31, 1961, shall be treated as the sale or exchange of such property.'"

(b) TABLE OF CONTENTS.—The table of sections for such part is amended by striking out

"Sec. 121. Cross references to other Acts."

and inserting in lieu thereof

"Sec. 121. Gain from sale or exchange of residence of individual who has attained age 60.

"Sec. 122. Cross references to other Acts."

(c) TECHNICAL AMENDMENTS.—(1) Section 1033(h) of the Internal Revenue Code of 1954 (relating to involuntary conversions) is amended by adding at the end thereof the following new paragraph:

"(3) For exclusion from gross income of gain from involuntary conversion occurring after December 31, 1961, of residence of taxpayer who has attained age 60, see section 121."

(2) Section 1034 of such Code (relating to sale or exchange of residence) is amended by adding at the end thereof the following new subsection:

"(k) Cross Reference.—

"For exclusion from gross income of gain from sale or exchange after December 31, 1961, of residence of taxpayer who has attained age 60, see section 121."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1961.

On page 391, line 22, strike out "27" and insert in lieu thereof "28".

Mr. DIRKSEN. Mr. President, I come to the situation to which I addressed myself some days ago—reform of the needs requirement for medical care under the Kerr-Mills bill. It has been truly said that while need is an appropriate test for aid, the determination of the need shall not be conducted in such a manner that it deters those who are in need from receiving aid. And so, Mr. President, I propose that those men and women of this country, who have met the test of age and who are in need of medical treatment under the program offered, shall be able by their own oath to declare their assets and that their statement shall be accepted as correct. We are not dealing with able-bodied people in their twenties, thirties, forties, and fifties, who are able to work, but who by false statements to welfare agencies induce and procure aid where it should not be given. We are dealing, instead, with those who have earned their

rest, who have earned their aid and who are in need of help. These people I believe we can trust.

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

The PRESIDING OFFICER. The amendment will be received, printed, and will lie on the table; and, without objection, will be printed in the RECORD.

The amendment submitted by Mr. DIRKSEN is as follows:

On page 3091, between lines 21 and 22, insert the following new section:

"SEC. 127. AMENDMENT TO TITLE I OF THE SOCIAL SECURITY ACT RELATING TO STATEMENT OF FINANCIAL STATUS OF CLAIMANTS FOR MEDICAL ASSISTANCE FOR THE AGED.

"Paragraph (11) of section 2(a) of the Social Security Act is amended (1) by striking out "and" at the end of clause (D), (2) by striking out the period at the end of clause (E), and (3) by adding after clause (E) the following new clause:

"'(F) prior to October 1, 1963, may, and on and after such date, shall, provide that any statement of a claimant for medical assistance for the aged, if made under oath or affirmation and on such form as may be prescribed by the State agency, shall, insofar as such statement relates to the financial status of such claimant, be presumed to be factually correct for purposes of determining his eligibility for such assistance'."

On page 391, line 22, strike out "27" and insert in lieu thereof "28".

Mr. DIRKSEN. Mr. President, I submit one further amendment to H.R. 10650. This is styled and is commonly known as H.R. 10 with the caption "Self-employed individuals voluntary pension plan."

This is the bill as it came from the Senate Committee on Finance, and in connection therewith I ask unanimous consent to have reprinted in the RECORD a statement that I made on September 27, 1961, and a copy of the amendment be printed in the RECORD at this point.

The PRESIDING OFFICER. The amendment will be received, printed, and will lie on the table; and, without objection, the statement and the amendment will be printed in the RECORD.

The statement submitted by Mr. DIRKSEN is as follows:

STATEMENT BY SENATOR DIRKSEN

For the past 10 years I have followed with considerable interest H.R. 10, a bill to encourage the establishment of voluntary pension plans by self-employed individuals. I have long been in favor of the principle of this legislation, but on several occasions during the course of this 10-year period I found it necessary to differ with the proponents as to the method of achieving their goal. Today I am pleased to say that I wholeheartedly endorse H.R. 10 as reported by the Senate Finance Committee. The features which I found objectionable in the past have either been eliminated or changed to the point where I can, in all good conscience, embrace this legislation.

Practically everyone who is acquainted with this subject will agree that the principle of this legislation as now proposed is sound. Certainly the Members of the House recognized this in the 85th and 86th Congresses and again in this session when they passed H.R. 10 by a practically unanimous vote. Certainly the members of the Senate Finance Committee in the 86th Congress recognized this when, after extensive hearings, they approved H.R. 10 by a 12 to 5 vote. On August 25 of this year, this committee ordered H.R. 10 favorably reported 14 to 3.

It was apparent to me, after reading the minority views in the Senate Finance Committee report, that a number of misconceptions still exist in the minds of two of my distinguished colleagues. Their proposals were heard and voted down by the committee in the 86th Congress and again this year. I am confident that the proponents of this legislation will, on the floor of this Congress meet these arguments again and in such a way as to gain the overwhelming support of this body. Rather than criticize, I wish to commend the spokesmen for the various national self-employed groups because, to the best of my knowledge, at no time have they said, "If you won't give us these benefits, then we wish to have them taken away from the corporate employees."

This is a good bill and for a number of reasons, one of which is the fact that it encourages people to help themselves. It encourages initiative, self-reliance, and the other qualities which helped to make this country great, but qualities, which I regret to say, are disappearing rapidly from the American scene. This Congress has an opportunity to resurrect these attributes which are so desperately needed by our country at this time by enacting H.R. 10 into law.

This remedial legislation is designed to correct an inequity in our tax structure which prevents this Nation's 10 million small business, farm, and professional people from receiving treatment comparable to that which is accorded corporate employees.

The impetus for the steady growth in corporate coverage was supplied in 1942 by the 77th Congress when it wisely enacted legislation which encouraged corporations to promote the economic well-being and future security of their employees. One has only to look at the increase which has occurred since 1940 to appreciate the soundness of this legislation. In that year 4.1 million were covered; in 1950, 9.8 million; and in 1960 the figure rose to 20 million. Approximately 1 million people are being added each year to private pension plans.

When we add to the 1960 total the approximately 8 million covered by State and local government plans, civil service, armed services, railroad retirement systems, etc., the total number of Americans covered by pension plans is approximately 30 million people.

H.R. 10 does not, as its few opponents would have you believe; broaden a tax loophole, and open a Pandora's box, but rather extends what has been proven over the past 19 years to be sound legislation to the point where it includes a dedicated, courageous group of Americans, the self-employed.

To accomplish this, self-employed persons are treated for retirement plan purposes as the employers of themselves. This was the fundamental concept of the House bill and it is retained in the Senate Finance Committee's substitute. As employers, self-employed individuals are permitted, like other employers, to deduct contributions (within specified limits) made to pension or profit-sharing plans for the benefit of themselves and such other employees as may be covered under the plan. Under the committee bill, a self-employed person would be permitted to contribute to a retirement plan 10 percent of his earned income or $2,500, whichever is the lesser. He would be permitted to deduct 100 percent of the first $1,000 contributed and 50 percent of the remaining $1,500, which may be contributed. The maximum deductible amount would be $1,750.

As employees, as with other employees, they are not taxed on such contributions made for their benefit, or the income thereon, until they receive the funds upon retirement or otherwise.

The committee changes have drastically reduced the size of the revenue deferral, in fact to a point where this can no longer be used as a major argument against this measure. Oh, I am not deluding myself, because there will be some who will cry economy, who will use the international situation as an excuse for opposing this bill; but these few, time and time again have, and will continue, to support domestic programs with high price tags and questionable dollar value.

The estimates for H.R. 10 range from less than $100 million to $200 million. In view of the actual experience in other countries, Great Britain, Canada, and New Zealand; and the fact that the Treasury Department generally overestimates, I am inclined to accept the lower figure.

Regardless of the exact amount, I wish to remind you that the potential revenue deferral is already made possible in the present tax law since the establishment of tax-deferred pension plans is available to any self-employed person who incorporates his business or occupation.

If we fail to act in this Congress, we will, I am certain, force a great many of this Nation's self-employed to incorporate and in most cases solely for the purpose of gaining tax treatment relative to their retirement savings similar to that which is offered their corporate brethren. Passage of H.R. 10 will encourage these fine, hard-working Americans to retain their self-employed status, defeat will be a major blow to them and an invitation to incorporate for tax advantage because of their natural desire to protect themselves in their later years. Now I don't believe we can afford the loss of too many more self-employed without jeopardizing the position of this country both on the domestic and international fronts.

H.R. 10 is a good bill, it is a just bill. I urge, my colleagues on both sides of the aisle to join with me in working for the early enactment of H.R. 10 in the 2d session of the 87th Congress.

The amendment submitted by Mr. DIRKSEN is as follows:

On page 391, after line 21, insert the following new section:

"SEC. 27. SELF-EMPLOYED INDIVIDUALS VOLUNTARY PENSION PLANS.

"Section 401 of the Internal Revenue Code of 1954 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended—

"(1) by adding at the end of paragraph (5) of subsection (a) the following new sentence: 'For purposes of this paragraph and paragraph (10), the total compensation of an individual who is an employee within the meaning of subsection (c)(1) means such individual's earned income (as defined in subsection (c)(2)), and the basic or regular rate of compensation of such an individual shall be determined, under regulations prescribed by the Secretary or his delegate, with respect to that portion of his earned income which bears the same ratio to his earned income as the basic or regular compensation of the employees under the plan bears to the total compensation of such employees.';

"(2) by adding at the end of subsection (a) the following new paragraphs:

"'(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, upon its termination or upon complete discontinuance of contributions under the plan, the rights of all employees to benefits accrued to the date of such termination or discontinuance, to the extent then funded, or the amounts credited to the employees' accounts are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the dis-

crimination prohibited by paragraph (4), may not be used for designated employees in the event of early termination of the plan.

"'(8) A trust forming part of a pension plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

"'(9) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), a trust forming part of such plan shall not constitute a qualified trust under this section unless, under the plan, the entire interest of each employee—

"'(A) either will be distributed to him not later than his taxable year in which he attains the age of 70½ years, or, in the case of an employee other than an owner-employee (as defined in subsection (c)(3)), in which he retires, whichever is the later, or

"'(B) will be distributed, commencing not later than such taxable year, (i) in accordance with regulations prescribed by the Secretary or his delegate, over the life of such employee or over the lives of such employee and his spouse, or (ii) in accordance with such regulations, over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and his spouse.

"'(10) In the case of a plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3))—

"'(A) paragraph (3) and the first and second sentences of paragraph (5) shall not apply, but—

"'(i) such plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of or on behalf of employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, and

"'(ii) such plan shall not be considered discriminatory within the meaning of paragraph (4) solely because under the plan contributions described in subsection (e)(3)(A) which are in excess of the amounts which may be deducted under section 404 (determined without regard to section 404(a)(10)) for the taxable year may be made on behalf of any owner-employee; and

"'(B) a trust forming a part of such plan shall constitute a qualified trust under this section only if the requirements in subsection (d) are also met.'; and

"(3) by redesignating subsection (c) as subsection (h) and inserting after subsection (b) the following new subsections:

"'(c) DEFINITIONS AND RULES RELATING TO SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—For purposes of this section—

"'(1) EMPLOYEE.—The term "employee" includes, for any taxable year, an individual who has earned income (as defined in paragraph (2)) for the taxable year. To the extent provided in regulations prescribed by the Secretary or his delegate, such term also includes, for any taxable year—

"'(A) an individual who would be an employee within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

"'(B) an individual who has been an employee within the meaning of the preceding sentence for any prior taxable year.

"'(2) EARNED INCOME.—

"'(A) IN GENERAL.—The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)) to the extent that such net earnings constitute earned income (as defined in section 911(b) but determined with the application of subparagraph (B)), but such net earnings shall be determined—

"'(i) without regard to paragraphs (4) and (5) of section 1402(c),

"'(ii) in the case of any individual who is treated as an employee under sections 3121(d)(3)(A), (C), or (D), without regard to paragraph (2) of section 1402(c), and

"'(iii) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items.

"For purposes of subparagraph (A), sections 911(b) and 1402, as in effect for a taxable year ending on December 31, 1961, and subparagraph (B), as in effect for a taxable year beginning on January 1, 1962, shall be treated as having been in effect for all taxable years ending before such date.

"'(B) EARNED INCOME WHEN BOTH PERSONAL SERVICES AND CAPITAL ARE MATERIAL INCOME-PRODUCING FACTORS.—In applying section 911(b) for purposes of subparagraph (A), in the case of an individual who is an employee within the meaning of paragraph (1) and who is engaged in a trade or business in which both personal services and capital are material income-producing factors and with respect to which the individual actually renders personal services on a full-time, or substantially full-time, basis, so much of his share of the net profits of such trade or business as does not exceed $2,500 shall be considered as earned income. In the case of any such individual who is engaged in more than one trade or business with respect to which he actually renders substantial personal services, if with respect to all such trades or businesses he actually renders personal services on a full-time, or substantially full-time, basis, there shall be considered as earned income with respect to the trades or businesses in which both personal services and capital are material income-producing factors—

"'(i) so much of his share of the net profits of such trades or businesses as does not exceed $2,500, reduced by

"'(ii) his share of the net profits of any trade or business in which only personal services is a material income-producing factor.

The preceding sentences shall not be construed to reduce the share of net profits of any trade or business which under the second sentence of section 911(b) would be considered as earned income of any such individual.

"'(3) OWNER-EMPLOYEE.—The term "owner-employee" means an employee who—

"'(A) owns the entire interest in an unincorporated trade or business, or

"'(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary or his delegate, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

"'(4) EMPLOYER.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

"'(5) CONSTRUCTIVE OWNERSHIP.—An individual shall be treated as owning any interest in an unincorporated trade or business which is owned, directly or indirectly, by his spouse or minor children. An individual who owns any interest in an unincorporated trade or business or is an employee of such trade or business shall be treated as owning any interest in such unincorporated trade or business which is owned, directly or indirectly, by his ancestors or lineal descendants. Any interest treated as owned by any individual by reason of the application of the preceding sentences shall not be treated as owned by him for the purpose of applying such sentences in order to make any other individual the constructive owner of such interest. For purposes of this paragraph, a legally adopted child of an individual shall be treated as a child of such individual by blood.

"'(6) CONTRIBUTIONS ON BEHALF OF OWNER-EMPLOYEES.—The term "contribution on behalf of an owner-employee" includes, except as the context otherwise requires, a contribution under a plan—

"'(A) by the employer for an owner-employee, and

"'(B) by an owner-employer as an employee.

"'(d) ADDITIONAL REQUIREMENTS FOR QUALIFICATION OF TRUSTS AND PLANS BENEFITING OWNER-EMPLOYEES.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the following requirements of this subsection are met by the trust and by the plan of which such trust is a part:

"'(1) In the case of a trust which is created on or after the date of the enactment of this subsection, or which was created before such date but is not exempt from tax under section 501(a) as an organization described in subsection (a) on the day before such date, the trustee is a bank, but a person (including the employer) other than a bank may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, and exchanges). This paragraph shall not apply to a trust created or organized outside the United States before the date of the enactment of this subsection if, under section 402(c), it is treated as exempt from tax under section 501(a) on the day before such date. For purposes of this paragraph, the term "bank" means a bank as defined in section 581, a corporation which under the laws of the State of its incorporation is subject to supervision and examination by the commissioner of banking or other officer of such State in charge of the administration of the banking laws of such State, and, in the case of a trust created or organized outside the United States, a bank or trust company, wherever incorporated, exercising fiduciary powers and subject to supervision and examination by governmental authority.

"'(2) Under the plan—

"'(A) the employees' rights to or derived from the contributions under the plan are nonforfeitable at the time the contributions are paid to or under the plan; and

"'(B) in the case of a profit-sharing plan, there is a definite formula for determining the contributions to be made by the employer on behalf of employees (other than owner-employees).

Subparagraph (A) shall not apply to contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by subsection (a)(4), may not be used to provide benefits for designated employees in the event of early termination of the plan.

"'(3) The plan benefits each employee having a period of employment of 3 years or more. For purposes of the preceding sentence, the term "employee" does not include any employee whose customary employment is for not more than 20 hours in any one

week or is for not more than 5 months in any calendar year.

"'(4) Under the plan—

"'(A) contributions or benefits are not provided for any owner-employee unless such owner-employee has consented to being included under the plan; and

"'(B) no benefits may be paid to any owner-employee, except in the case of his becoming disabled (within the meaning of section 213(g)(3)), prior to his attaining the age of 59½ years.

"'(5) The plan does not permit—

"'(A) contributions to be made by the employer on behalf of any owner-employee in excess of the amounts which may be deducted under section 404 (determined without regard to section 404(a)(10)) for the taxable year;

"'(B) in the case of a plan which provides contributions or benefits only for owner-employees, contributions to be made on behalf of any owner-employee in excess of the amounts which may be deducted under section 404 (determined without regard to section 404(a)(10)) for the taxable year; and

"'(C) if a distribution under the plan is made to any employee and if any portion of such distribution is an amount described in section 72(m)(5)(A)(i), contributions to be made on half of such employee for five taxable years succeeding the taxable year in which such distribution is made.

Subparagraphs (A) and (B) shall not apply to any contribution which is not considered to be an excess contribution (as defined in subsection (e)(1)) by reason of the application of subsection (e)(3).

"'(6) Except as provided in this paragraph, the plan meets the requirements of subsection (a)(4) without taking into account for any purpose contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, as amended, or any other Federal or State law. If—

"'(A) of the contributions deductible under section 404 (determined without regard to section 404(a)(10)), not more than one-third is deductible by reason of contributions by the employer on behalf of owner-employees, and

"'(B) taxes paid by the owner-employees under chapter 2 (relating to tax on self-employment income), and the taxes which would be payable under such chapter 2 by the owner-employees but for paragraphs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees,

then taxes paid under section 3111 (relating to tax on employers) with respect to an employee may, for purposes of subsection (a)(4), be taken into account as contributions by the employer for such employee under the plan.

"'(7) Under the plan, if an owner-employee dies before his entire interest has been distributed to him, or if distribution has been commenced in accordance with subsection (a)(9)(B) to his surviving spouse and such surviving spouse dies before his entire interest has been distributed to such surviving spouse, his entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of his surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence shall not apply if distribution of the interest of an owner-employee has commenced and such distribution is for a term certain over a period permitted under subsection (a)(9)(B)(ii).

"'(8) Under the plan—

"'(A) any contribution which is an excess contribution, together with the income attributable to such excess contribution, is (unless subsection (e)(2)(E) applies) to be repaid to the owner-employee on whose behalf such excess contribution is made;

"'(B) if for any taxable year the plan does not, by reason of subsection (e)(2)(A), meet (for purposes of section 404) the requirements of this subsection with respect to an owner-employee, the income for the taxable year attributable to the interest of such owner-employee under the plan is to be paid to such owner-employee; and

"'(C) the entire interest of an owner-employee is to be repaid to him when required by the provisions of subsection (e)(2)(E).

"'(9)(A) If the plan provides contributions or benefits for an owner-employee who controls, or for two or more owner-employees who together control, the trade or business with respect to which the plan is established, and who also control as an owner-employee or as owner-employees one or more other trades or businesses, such plan and the plans established with respect to such other trades or businesses, when coalesced, constitute a single plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection with respect to the employees of all such trades or businesses (including the trade or business with respect to which the plan intended to qualify under this section is established).

"'(B) For purposes of subparagraph (A), an owner-employee, or two or more owner-employees, shall be considered to control a trade or busines if such owner-employee, or such two or more owner-employees together—

"'(i) own the entire interest in an unincorporated trade or business, or

"'(ii) in the case of a partnership, own more than 50 percent of either the capital interest or the profits interest in such partnership.

For purposes of the preceding sentence, an owner-employee, or two or more owner-employees, shall be treated as owning any interest in a partnership which is owned, directly or indirectly, by a partnership which such owner-employee, or such two or more owner-employees, are considered to control within the meaning of the preceding sentence.

"'(10) The plan does not provide contributions or benefits for any owner-employee who controls (within the meaning of paragraph (9)(B)), or for two or more owner-employees who together control, as an owner-employee or as owner-employees, any other trade or business, unless the employees of each trade or business which such owner-employee or such owner-employees control are included under a plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection, and provides contributions and benefits for employees which are not less favorable than contributions and benefits provided for owner-employees under the plan.

"'(11) Under the plan, contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.

"'(e) EXCESS CONTRIBUTIONS ON BEHALF OF OWNER-EMPLOYEES.—

"'(1) EXCESS CONTRIBUTION DEFINED.—For purposes of this section, the term "excess contribution" means, except as provided in paragraph (3)—

"'(A) if, in the taxable year, contributions are made under the plan only on behalf of owner-employees, the amount of any contribution made on behalf of any owner-employee which (without regard to this subsection) is not deductible under section 404 (determined without regard to section 404(a)(10)) for the taxable year; or

"'(B) if, in the taxable year, contributions are made under the plan on behalf of employees other than owner-employees—

"'(i) the amount of any contribution made by the employer on behalf of any owner-employee which (without regard to this subsection) is not deductible under section 404 (determined without regard to section 404(a)(10)) for the taxable year;

"'(ii) The amount of any contribution made by any owner-employee (as an employee) at a rate which exceeds the rate of contributions permitted to be made by employees other than owner-employees;

"'(iii) the amount of any contribution made by any owner-employee (as an employee) which exceeds the lesser of $2,500 or 10 percent of the earned income for such taxable year derived by such owner-employee from the trade or business with respect to which the plan is established; and

"'(iv) in the case of any individual on whose behalf contributions are made under more than one plan as an owner-employee, the amount of any contribution made by such owner-employee (as an employee) under all such plans which exceeds $2,500; and

"'(C) the amount of any contribution made on behalf of an owner-employee in any taxable year for which, under paragraph (2)(A) or (E), the plan does not (for purposes of section 404) meet the requirements of subsection (d) with respect to such owner-employee.

For purposes of this subsection, the amount of any contribution which is allocable (determined in accordance with regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance shall not be taken into account.

"'(2) EFFECT OF EXCESS CONTRIBUTION.—

"'(A) IN GENERAL.—If an excess contribution (other than an excess contribution to which subparagraph (E) applies) is made on behalf of an owner-employee in any taxable year, the plan with respect to which such excess contribution is made shall, except as provided in subparagraphs (C) and (D), be considered, for purposes of section 404, as not meeting the requirements of subsection (d) with respect to such owner-employee for the taxable year and for all succeeding taxable years.

"'(B) INCLUSION OF AMOUNTS IN GROSS INCOME OF OWNER-EMPLOYEES.—For any taxable year for which any plan does not meet the requirements of subsection (d) with respect to an owner-employee by reason of subparagraph (A), the gross income of such owner-employee shall, for purposes of this chapter, include the amount of income for such taxable year attributable to the interest of such owner-employee under such plan.

"'(C) REPAYMENT WITHIN PRESCRIBED PERIOD.—Subparagraph (A) shall not apply to an excess contribution with respect to any taxable year, if, on or before the close of the 6-month period beginning on the day on which the Secretary or his delegate sends notice (by certified or registered mail) to the person to whom such excess contribution was paid of the amount of such excess contribution, the amount of such excess contribution, and the income attributable thereto, is repaid to the owner-employee on whose behalf such excess contribution was made. If the excess contribution is an excess contribution as defined in paragraph (1)(A) or (B)(i), or is an excess contribution as defined in paragraph (1)(C) with respect to which a deduction has been claimed under section 404, the notice re-

quired by the preceding sentence shall not be mailed prior to the time that the amount of the tax under this chapter of such owner-employee for the taxable year in which such excess contribution was made has been finally determined.

"'(D) REPAYMENT AFTER PRESCRIBED PERIOD.—If an excess contribution, together with the income attributable thereto, is not repaid within the 6-month period referred to in subparagraph (C), subparagraph (A) shall not apply to an excess contribution with respect to any taxable year beginning with the taxable year in which the person to whom such excess contribution was paid repays the amount of such excess contribution to the owner-employee on whose behalf such excess contribution was made, and pays to such owner-employee the amount of income attributable to the interest of such owner-employee which, under subparagraph (B), has been included in the gross income of such owner-employee for any prior taxable year.

"'(E) SPECIAL RULE IF EXCESS CONTRIBUTION WAS WILLFULLY MADE.—If an excess contribution made on behalf of an owner-employee is determined to have been willfully made, then—

"'(i) subparagraphs (A), (B), (C), and (D) shall not apply with respect to such excess contribution;

"'(ii) there shall be distributed to the owner-employee on whose behalf such excess contribution was willfully made his entire interest in all plans with respect to which he is an owner-employee; and

"'(iii) no plan shall, for purposes of section 404, be considered as meeting the requirements of subsection (d) with respect to such owner-employee for the taxable year in which it is determined that such excess contribution was willfully made and for the 5 taxable years following such taxable year.

"'(F) STATUTE OF LIMITATIONS.—In any case in which subparagraph (A) applies, the period for assessing any deficiency arising by reason of—

"'(i) the disallowance of any deduction under section 404 on account of a plan not meeting the requirements of subsection (d) with respect to the owner-employee on whose behalf an excess contribution was made, or

"'(ii) the inclusion, under subparagraph (B), in gross income of such owner-employee of income attributable to the interest of such owner-employee under a plan.

for the taxable year in which such excess contribution was made or for any succeeding taxable year shall not expire prior to one year after the close of the 6-month period referred to in subparagraph (C).

"'(3) CONTRIBUTIONS FOR PREMIUMS ON ANNUITY, ETC., CONTRACTS.—A contribution by the employer on behalf of an owner-employee shall not be considered to be an excess contribution within the meaning of paragraph (1), if—

"'(A) under the plan such contribution is required to be applied (directly or through a trustee) to pay premiums or other consideration for one or more annuity, endownment, or life insurance contracts on the life of such owner-employee issued under the plan,

"'(B) the amount of such contribution exceeds the amount deductible under section 404 (determined without regard to section 404(a)(10)) with respect to contributions made by the employer on behalf of such owner-employee under the plan, and

"'(C) the amount of such contribution does not exceed the average of the amounts which were deductible under section 404 (determined without regard to section 404(a)(10)) with respect to contributions made by the employer on behalf of such owner-employee under the plan (or which would have been deductible under such section if such section had been in effect) for the first 3 taxable years (1) preceding the year in which the last such annuity, endowment, or life insurance contract was issued under the plan and (ii) in which such owner-employee derived earned income from the trade or business with respect to which the plan is established, or for so many of such taxable years as such owner-employee was engaged in such trade or business and derived earned income therefrom.

In the case of any individual on whose behalf contributions described in subparagraph (A) are made under more than one plan as an owner-employee during any taxable year, the preceding sentence shall not apply if the amount of such contributions under all such plans for such taxable year exceeds $2,500. Any contribution which is not considered to be an excess contribution by reason of the application of this paragraph shall, for purposes of subparagraph (B) (ii), (iii), and (iv) of paragraph (1), be taken into account as a contribution made by such owner-employee as an employee to the extent that the amount of such contribution is not deductible under section 404 (determined without regard to section 404(a)(10) for the taxable year, but only for the purpose of applying such subparagraphs to other contributions made by such owner-employee as an employee.

"'(f) CERTAIN CUSTODIAL ACCOUNTS.—

"'(1) TREATMENT AS QUALIFIED TRUST.—For purposes of this title, a custodial account shall be treated as a qualified trust under this section, if—

"'(A) such custodial account would, except for the fact that it is not a trust, constitute a qualified trust under this section;

"'(B) the custodian is a bank (as defined in subsection (d)(1));

"'(C) the investment of the funds in such account (including all earnings) is to be made—

"'(i) solely in regulated investment company stock with respect to which an employee is the beneficial owner, or

"'(ii) solely in annuity, endowment, or life insurance contracts issued by an insurance company;

"'(D) the shareholder of record of any such stock described in subparagraph (C)(i) is the custodian or its nominee; and

"'(E) the contracts described in subparagraph (C)(ii) are held by the custodian until distributed under the plan.

For purposes of this title, in the case of a custodial account treated as a qualified trust under this section by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

"'(2) DEFINITION.—For purposes of paragraph (1), the term 'regulated investment company' means a domestic corporation which—

"'(A) is a regulated investment company within the meaning of section 851(a), and

"'(B) issues only redeemable stock.

"'(g) ANNUITY DEFINED.—For purposes of this section and sections 402, 403, and 404, the term "annuity" includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C. sec. 80a-2); but does not include any contract or certificate issued after December 31, 1961, which is transferable, if any person other than the trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.'

"SEC. 3. DEDUCTIBILITY OF CONTRIBUTIONS TO PLANS.

"(a) INCLUSION OF SELF-EMPLOYED INDIVIDUALS.—Section 404(a) of the Internal Revenue Code of 1954 (relating to the deductibility of contributions to pension, annuity, profit-sharing, or stock bonus plans or plans of deferred compensation) is amended—

"(1) by striking out in paragraph (2) 'and (6) and inserting in lieu thereof '(6), (7), and (8), and, if applicable, (9) and, in the case of a plan described in paragraph (9) of this subsection, which meets the requirements of section 401(a)(10) and of section 401(d) (other than paragraph (1)),'; and

"(2) by adding after paragraph (7) the following new paragraphs:

"'(8) SELF-EMPLOYED INDIVIDUALS.—In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), for purposes of this section—

"'(A) the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4);

"'(B) the term "earned income" has the meaning assigned to it by section 401(c)(2);

"'(C) the contributions to such plan on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall be considered to satisfy the conditions of section 162 or 212 to the extent that such contributions do not exceed the earned income of such individual derived from the trade or business with respect to which such plan is established, and to the extent that such contributions are not allocable (determined in accordance with regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance; and

"'(D) any reference to compensation shall, in the case of an individual who is an employee within the meaning of section 401(c)(1), be considered to be a reference to the earned income of such individual derived from the trade or business with respect to which the plan is established.

"'(9) PLANS BENEFITING OWNER-EMPLOYEES.—In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are owner-employees—

"'(A) the limitations provided by paragraphs (1), (2), (3), and (7) on the amounts deductible for any taxable year shall be computed, with respect to contributions on behalf of employees (other than owner-employees), as if such employees were the only employees for whom contributions and benefits are provided under the plan;

"'(B) the limitations provided by paragraphs (1), (2), (3), and (7) on the amounts deductible for any taxable year shall be computed, with respect to contributions on behalf of owner-employees—

"'(i) as if such owner-employees were the only employees for whom contributions and benefits are provided under the plan, and

"'(ii) without regard to pragraph (1)(D), the second and third sentences of paragraph (3), and the second sentence of paragraph (7); and

"'(C) the amounts deductible under paragraphs (1), (2), (3), and (7), with respect to contributions on behalf of any owner-employee, shall not exceed the applicable limitation provided in subsection (e).

For purposes of this paragraph and subsections (e) and (f), the term "owner-employee" has the meaning assigned to it by section 401(c)(3) (determined with the application of section 401(c)(5)).

"'(10) SPECIAL LIMITATION ON AMOUNT ALLOWED AS DEDUCTION FOR SELF-EMPLOYED INDIVIDUALS.—Notwithstanding any other provision of this section, the amount allowable as a deduction under paragraphs (1), (2), (3), and (7) in any taxable year with respect to contributions made on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall be an amount equal to—

"'(A) so much of the contributions made on behalf of such individual in such taxable year which are deductible under such paragraphs (determined with the application of paragraph (9) and of subsection (e) but

without regard to this paragraph) as does not exceed $1,000, plus

"'(B) one-half of the contributions made on behalf of such individual in such taxable year which are deductible under such paragraphs (as so determined) as exceeds $1,000.

For the purposes of section 401, the amount which may be deleted, or the amount deductible, under this section with respect to contributions made on behalf of such individual shall be determined without regard to the preceding sentence.'

"(b) LIMITATIONS ON DEDUCTIBLE CONTRIBUTIONS ON BEHALF OF OWNER-EMPLOYEES.—Section 404 of the Internal Revenue Code of 1954 (relating to the deductibility of contributions to pension, annuity, profit-sharing, or stock bonus plans or plans of deferred compensation) is amended by adding after subsection (d) the following new subsections:

"'(e) SPECIAL LIMITATIONS FOR OWNER-EMPLOYEES.—

"'(1) IN GENERAL.—In the case of a plan included in subsection (a) (1), (2), or (3), which provides contributions or benefits for employees some or all of whom are owner-employees, the amounts deductible under subsection (a) (determined without regard to paragraph (10) thereof) in any taxable year with respect to contributions on behalf of any owner-employee shall, subject to the provisions of paragraph (2), not exceed $2,500, or 10 percent of the earned income derived by such owner-employee from the trade or business with respect to which the plan is established, whichever is the lesser.

"'(2) CONTRIBUTIONS MADE UNDER MORE THAN ONE PLAN.—

"'(A) OVERALL LIMITATION.—In any taxable year in which amounts are deductible with respect to contributions under two or more plans on behalf of an individual who is an owner-employee with respect to such plans, the aggregate amount deductible for such taxable year under all such plans with respect to contributions on behalf of such owner-employee (determined without regard to subsection (a) (10)) shall not exceed $2,500.

"'(B) ALLOCATION OF AMOUNTS DEDUCTIBLE.—In any case in which the amounts deductible under subsection (a) (with the application of the limitations of this subsection) with respect to contributions made on behalf of an owner-employee under two or more plans are, by reason of subparagraph (A), less than the amounts deductible under such subsection determined without regard to such subparagraph, the amount deductible under subsection (a) (determined without regard to paragraph (10) thereof) with respect to such contributions under each such plan shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

"'(3) CONTRIBUTIONS ALLOCABLE TO INSURANCE PROTECTION.—For purposes of this subsection, contributions which are allocable (determined under regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance shall not be taken into account.

"'(f) CERTAIN LOAN REPAYMENTS CONSIDERED AS CONTRIBUTIONS.—For purposes of this section, any amount paid, directly or indirectly, by an owner-employee in repayment of any loan which under section 72(m)(4)(B) was treated as an amount received under a contract purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) or purchased as a part of a plan described in section 403(a) shall be treated as a contribution to which this section applies on behalf of such owner-employee to such trust or to or under such plan.'

"SEC. 4. TAXABILITY OF DISTRIBUTIONS.

"(a) EMPLOYEES' ANNUITIES. — Section 72(d)(2) of the Internal Revenue Code of 1954 (relating to employees' annuities) is amended to read as follows:

"'(2) SPECIAL RULES FOR APPLICATION OF PARAGRAPH (1).—For purposes of paragraph (1)—

"'(A) if the employee died before any amount was received as an annuity under the contract, the words "receivable by the employee" shall be read as "receivable by a beneficiary of the employee"; and

"'(B) any contribution made with respect to the contract while the employee is an employee within the meaning of section 401(c)(1) which is not allowed as a deduction under section 404 shall be treated as consideration for the contract contributed by the employee.'

"(b) SPECIAL RULES RELATING TO SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—Section 72 of the Internal Revenue Code of 1954 (relating to annuities, etc.) is amended by redesignating subsection (m) as subsection (o) and by inserting after subsection (l) the following new subsections:

"'(m) SPECIAL RULES APPLICABLE TO EMPLOYEE ANNUITIES AND DISTRIBUTIONS UNDER EMPLOYEE PLANS.—

"'(1) CERTAIN AMOUNTS RECEIVED BEFORE ANNUITY STARTING DATE.—Any amounts received under an annuity, endowment, or life insurance contract before the annuity starting date which are not received as an annuity (within the meaning of subsection (e)(2)) shall be included in the recipient's gross income for the taxable year in which received to the extent that—

"'(A) such amounts, plus all amounts theretofore received under the contract and includible in gross income under this paragraph, do not exceed

"'(B) the aggregate premiums or other consideration paid for the contract while the employee was an owner-employee which were allowed as deductions under section 404 for the taxable year and all prior taxable years.

Any such amounts so received which are not includible in gross income under this paragraph shall be subject to the provisions of subsection (e).

"'(2) COMPUTATION OF CONSIDERATION PAID BY THE EMPLOYEE.—In computing—

"'(A) the aggregate amount of premiums or other consideration paid for the contract for purposes of subsection (c)(1)(A) (relating to the investment in the contract),

"'(B) the consideration for the contract contributed by the employee for purposes of subsection (d)(1) (relating to employee's contributions recoverable in 3 years), and

"'(C) the aggregate premiums or other consideration paid for purposes of subsection (e)(1)(B) (relating to certain amounts not received as an annuity),

any amount allowed as a deduction with respect to the contract under section 404 which was paid while the employee was an employee within the meaning of section 401(c)(1) shall be treated as consideration contributed by the employer, and there shall not be taken into account any portion of the premiums or other consideration for the contract paid while the employee was an owner-employee which is properly allocable (as determined under regulations prescribed by the Secretary or his delegate) to the cost of life, accident, health, or other insurance.

"'(3) LIFE INSURANCE CONTRACTS.—

"'(A) This paragraph shall apply to any life insurance contract—

"'(i) purchased as a part of a plan described in section 403(a), or

"'(ii) purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) if the proceeds of such contract are payable directly or indirectly to a participant in such trust or to a beneficiary of such participant.

"'(B) Any contribution to a plan described in subparagraph (A)(i) or a trust described in subparagraph (A)(ii) which is allowed as a deduction under section 404, and any income of a trust described in subparagraph (A)(ii), which is determined in accordance with regulations prescribed by the Secretary or his delegate to have been applied to purchase the life insurance protection under a contract described in subparagraph (A) is includible in the gross income of the participant for the taxable year when so applied.

"'(C) In the case of the death of an individual insured under a contract described in subparagraph (A), an amount equal to the cash surrender value of the contract immediately before the death of the insured shall be treated as a payment under such plan or a distribution by such trust, and the excess of the amount payable by reason of the death of the insured over such cash surrender value shall not be includible in gross income under this section and shall be treated as provided in section 101.

"'(4) AMOUNTS CONSTRUCTIVELY RECEIVED.—

"'(A) ASSIGNMENTS OR PLEDGES.—If during any taxable year an owner-employee assigns (or agrees to assign) or pledges (or agrees to pledge) any portion of his interest in a trust described in section 401(a) which is exempt from tax under section 501(a) or any portion of the value of a contract purchased as part of a plan described in section 403(a), such portion shall be treated as having been received by such owner-employee as a distribution from such trust or as an amount received under the contract.

"'(B) LOANS ON CONTRACTS.—If during any taxable year, an owner-employee receives, directly or indirectly, any amount from any insurance company as a loan under a contract purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) or purchased as part of a plan described in section 403(a), and issued by such insurance company, such amount shall be treated as an amount received under the contract.

"'(5) PENALTIES APPLICABLE TO CERTAIN AMOUNTS RECEIVED BY OWNER-EMPLOYEES.—

"'(A) This paragraph shall apply—

"'(i) to amounts (other than any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution) which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) and which are received by an individual, who is, or has been, an owner-employee, before such individual attains the age of 59½ years, for any reason other than the individual's becoming disabled (within the meaning of section 213(g)(3)), but only to the extent that such amounts are attributable to contribution paid on behalf of such individual (whether or not paid by him) while he was an owner-employee.

"'(ii) to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by an individual who is, or has been, an owner-employee, or by the successor of such individual, but only to the extent that such amounts are determined, under regulations prescribed by the Secretary or his delegate, to exceed the benefits provided for such individual under the plan formula, and

"'(iii) to amounts which are received by an individual who is, or has been, an owner-employee, by reason of the distribution under the provisions of section 401(e)(2)(E) of his entire interest in all qualified trusts described in section 401(a) and in all plans described in section 403(a).

"'(B)(i) If the aggregate of the amounts to which this paragraph applies received by any person in his taxable year equals or exceeds $2,500, the increase in his tax for the taxable year in which such amounts are received and attributable to such amounts shall not be less than 110 percent of the

aggregate increase in taxes, for the taxable year and the 4 immediately preceding taxable years, which would have resulted if such amounts had been included in such person's gross income ratably over such taxable years.

"'(ii) If deductions have been allowed under section 404 for contributions paid on behalf of the individual while he is an owner-employee for a number of prior taxable years less than 4, clause (i) shall be applied by taking into account a number of taxable years immediately preceding the taxable year in which the amount was so received equal to such lesser number.

"'(C) If subparagraph (B) does not apply to a person for the taxable year, the increase in tax of such person for the taxable year attributable to the amounts to which this paragraph applies shall be 110 percent of such increase (computed without regard to this subparagraph).

"'(D) Subparagraph (A)(ii) of this paragraph shall not apply to any amount to which section 402(a)(2) or 403(a)(2) applies.

"'(E) For special rules for computation of taxable income for taxable years to which this paragraph applies, see subsection (n)(3).

"'(6) OWNER-EMPLOYEE DEFINED.—For purposes of this subsection, the term "owner-employee" has the meaning assigned to it by section 401(c)(3) (determined with the application of section 401(c)(5)).

"'(n) TREATMENT OF CERTAIN DISTRIBUTIONS WITH RESPECT TO CONTRIBUTIONS BY SELF-EMPLOYED INDIVIDUALS.—

"'(1) APPLICATION OF SUBSECTION.—

"'(A) DISTRIBUTIONS BY EMPLOYEES' TRUST.—Subject to the provisions of subparagraph (C), this subsection shall apply to amounts distributed to a distributee, in the case of an employees' trust described in section 401(a) which is exempt from tax under section 501(a), if the total distributions payable to the distributee with respect to an employee are paid to the distributee within one taxable year of the distributee—

"'(i) on account of the employee's death,

"'(ii) after the employee has attained the age of 59½ years, or

"'(iii) after the employee has become disabled (within the meaning of section 213(g)(3)).

"'(B) ANNUITY PLANS.—Subject to the provisions of subparagraph (C), this subsection shall apply to amounts paid to a payee, in the case of an annuity plan described in section 403(a), if the total amounts payable to the payee with respect to an employee are paid to the payee within one taxable year of the payee—

"'(i) on account of the employee's death,

"'(ii) after the employee has attained the age of 59½ years, or

"'(iii) after the employee has become disabled (within the meaning of section 213(g)(3)).

"'(C) LIMITATIONS AND EXCEPTIONS.—This subsection shall apply—

"'(i) only with respect to so much of any distribution or payment to which (without regard to this subparagraph) subparagraph (A) or (B) applies as is attributable to contributions made on behalf of an employee while he was an employee within the meaning of section 401(c)(1), and

"'(ii) if the recipient is the employee on whose behalf such contributions were made, only if contributions which were allowed as a deduction under section 404 have been made on behalf of such employee while he was an employee within the meaning of section 401(c)(1) for five or more taxable years prior to the taxable year in which the total distributions payable or total amounts payable, as the case may be, are paid.

This subsection shall not apply to amounts described in clauses (ii) and (iii) of subparagraph (A) of subsection (m)(5) (but, in the case of amounts described in clause (ii) of such subparagraph, only to the extent that subsection (m)(5) applies to such amounts).

"'(2) LIMITATION OF TAX.—In any case to which this subsection applies, the tax attributable to the amounts to which this subsection applies for the taxable year in which such amounts are received shall not exceed whichever of the following is the greater:

"'(a) 5 times the increase in tax which would result from the inclusion in gross income of the recipient of 20 percent of so much of the amount so received as is includible in gross income, or

"'(B) 5 times the increase in tax which would result if the taxable income of the recipient for such taxable year equaled 20 percent of the amount of the taxable income of the recipient for such taxable year determined under paragraph (3)(A).

"'(3) DETERMINATION OF TAXABLE INCOME.—Notwithstanding section 63 (relating to definition of taxable income), for purposes only of computing the tax under this chapter attributable to amounts to which this subsection or subsection (m)(5) applies and which are includible in gross income—

"'(A) the taxable income of the recipient for the taxable year of receipt shall be treated as being not less than the amount by which (i) the aggregate of such amounts so includible in gross income exceeds (ii) the amount of the deductions allowed for such taxable year under section 151 (relating to deductions for personal exemptions); and

"'(B) in making ratable inclusion computations under paragraph (5)(B) of subsection (m), the taxable income of the recipient for each taxable year involved in such ratable inclusion shall be treated as being not less than the amount required by such paragraph (5)(B) to be treated as includible in gross income for such taxable year.

In any case in which the preceding sentence results in an increase in taxable income for any taxable year, the resulting increase in the taxes imposed by section 1 or 3 for such taxable year shall not be reduced by any credit under part IV of subchapter A (other than section 31 thereof) which, but for this sentence, would be allowable.'

"(c) CAPITAL GAINS TREATMENT OF CERTAIN EMPLOYEES' TRUSTS DISTRIBUTIONS.—Section 402(a)(2) of the Internal Revenue Code of 1954 (relating to capital gains treatment for certain distributions) is amended by adding at the end thereof the following new sentence: 'This paragraph shall not apply to distributions paid to any distributee to the extent such distributions are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).'

"(d) CAPITAL GAINS TREATMENT OF CERTAIN EMPLOYEES' ANNUITY PAYMENTS.—Section 403(a) of the Internal Revenue Code of 1954 (relating to taxability of a beneficiary under a qualified annuity plan) is amended—

"(1) by striking out in paragraph (2)(A)(i) 'which meets the requirements of section 401(a)(3), (4), (5), and (6)' and inserting in lieu thereof 'described in paragraph (1)';

"(2) by adding at the end of paragraph (2)(A) the following new sentence: 'This subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).'; and

"(3) by adding after paragraph (2) the following new paragraph:

"'(3) SELF-EMPLOYED INDIVIDUALS.—For purposes of this subsection, the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).'"

"SEC. 5. PLANS FOR PURCHASE OF UNITED STATES BONDS.

"(a) QUALIFIED BOND PURCHASE PLANS.—Part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 (relating to deferred compensation, etc.) is amended by adding at the end thereof the following new section:

"'SEC. 405. QUALIFIED BOND PURCHASE PLANS.

"'(a) REQUIREMENTS FOR QUALIFICATION.—A plan of an employer for the purchase for and distribution to his employees or their beneficiaries of United States bonds described in subsection (b) shall constitute a qualified bond purchase plan under this section if—

"'(1) the plan meets the requirements of section 401(a)(3), (4), (5), (6), (7), and (8) and, if applicable, the requirements of section 401(a)(9) and (10) and of section 401(d) (other than paragraphs (1), (5)(B), and (8)); and

"'(2) contributions under the plan are used solely to purchase for employees or their beneficiaries United States bonds described in subsection (b).

"'(b) BONDS TO WHICH APPLICABLE.—

"'(1) CHARACTERISTICS OF BONDS.—This section shall apply only to a bond issued under the Second Liberty Bond Act, as amended, which by its terms, or by regulations prescribed by the Secretary under such Act—

"'(A) provides for payment of interest, or investment yield, only upon redemption;

"'(B) may be purchased only in the name of an individual;

"'(C) ceases to bear interest, or provide investment yield, not later than 5 years after the death of the individual in whose name it is purchased;

"'(D) may be redeemed before the death of the individual in whose name it is purchased only if such individual—

"'(i) has attained the age of 59½ years, or

"'(ii) has become disabled (within the meaning of section 213(g)(3)); and

"'(E) is nontransferable.

"'(2) MUST BE PURCHASED IN NAME OF EMPLOYEE.—This section shall apply to a bond described in paragraph (1) only if it is purchased in the name of the employee.

"'(c) DEDUCTION FOR CONTRIBUTIONS TO BOND PURCHASE PLANS.—Contributions paid by an employer to or under a qualified bond purchase plan shall be allowed as a deduction in an amount determined under section 404 in the same manner and to the same extent as if such contributions were made to a trust described in section 401(a) which is exempt from tax under section 501(a).

"'(d) TAXABILITY OF BENEFICIARY OF QUALIFIED BOND PURCHASE PLAN.—

"'(1) GROSS INCOME NOT TO INCLUDE BONDS AT TIME OF DISTRIBUTION.—For purposes of this chapter, in the case of a distributee of a bond described in subsection (b) under a qualified bond purchase plan, or from a trust described in section 401(a) which is exempt from tax under section 501(a), gross income does not include any amount attributable to the receipt of such bond. Upon redemption of such bond, the proceeds shall be subject to taxation under this chapter, but the provisions of section 72 (relating to annuities, etc.) and section 1232 (relating to bonds and other evidences of indebtedness) shall not apply.

"'(2) BASIS.—The basis of any bond received by a distributee under a qualified bond purchase plan—

"'(A) if such bond is distributed to an employee, or with respect to an employee, who at the time of purchase of the bond, was an employee other than an employee within the meaning of section 401(c)(1),

shall be the amount of the contributions by the employee which were used to purchase the bond, and

"'(B) if such bond is distributed to an employee, or with respect to an employee, who, at the time of purchase of the bond, was an employee within the meaning of section 401(c)(1), shall be the amount of the contributions used to purchase the bond which were made on behalf of such employee and were not allowed as a deduction under subsection (c).

The basis of any bond described in subsection (b) received by a distributee from a trust described in section 401(a) which is exempt from tax under section 501(a) shall be determined under regulations prescribed by the Secretary or his delegate.

"'(e) CAPITAL GAINS TREATMENT NOT TO APPLY TO BONDS DISTRIBUTED BY TRUSTS.—Section 402(a)(2) shall not apply to any bond described in subsection (b) distributed to any distributee and, for purposes of applying such section, any such bond distributed to any distributee and any such bond to the credit of any employee shall not be taken into account.

"'(f) EMPLOYEE DEFINED.—For purposes of this section, the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual shall be the person treated as his employer under section 401(c)(4).

"'(g) PROOF OF PURCHASE.—At the time of purchase of any bond to which this section applies, proof of such purchase shall be furnished in such form as will enable the purchaser, and the employee in whose name such bond is purchased, to comply with the provisions of this section.

"'(h) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section.'

"(b) CLERICAL AMENDMENT.—The table of sections for such part is amended by adding at the end thereof the following new item:

"'Sec. 405. Qualified bond purchase plans.'

"SEC. 6. PROHIBITED TRANSACTIONS

"Section 503 of the Internal Revenue Code of 1954 (relating to prohibited transactions) is amended by adding at the end thereof the following new subsection:

"'(j) TRUSTS BENEFITING CERTAIN OWNER-EMPLOYEES.—

"'(1) PROHIBITED TRANSACTIONS.—In the case of a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) who control (within the meaning of section 401(d)(9)(B), determined with the application of section 401(c)(5)) the trade or business with respect to which the plan is established, the term "prohibited transaction" also means any transaction in which such trust, directly or indirectly—

"'(A) lends any part of the corpus or income of the trust to;

"'(B) pays any compensation for personal services rendered to the trust to;

"'(C) makes any part of its services available on a preferential basis to; or

"'(D) acquires for the trust any property from, or sells any property to;

any person described in subsection (c) or to any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

"'(2) SPECIAL RULE FOR LOANS.—For purposes of the application of paragraph (1)(A), the following rules shall apply with respect to a loan made before the date of the enactment of this subsection which would be a prohibited transaction if made in a taxable year beginning after December 31, 1961:

"'(A) If any part of the loan is repayable prior to December 31, 1964, the renewal of such part of the loan for a period not extending beyond December 31, 1964, on the same terms, shall not be considered a prohibited transaction.

"'(B) If the loan is repayable on demand, the continuation of the loan beyond December 31, 1964, shall be considered a prohibited transaction.'

"SEC. 7. OTHER SPECIAL RULES, TECHNICAL CHANGES, AND ADMINISTRATIVE PROVISIONS.

"(a) RETIREMENT INCOME CREDIT.—Section 37(c)(1) of the Internal Revenue Code of 1954 (relating to definition of retirement income) is amended—

"(1) by striking out subparagraph (A) and inserting in lieu thereof the following:

"'(A) pensions and annuities (including, in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1), distributions by a trust described in section 401(a) which is exempt from tax under section 501(a)),'; and

"(2) by striking out 'and' at the end of subparagraph (C), by striking out 'or' at the end of subparagraph (D) and inserting in lieu thereof 'and', and by adding after subparagraph (D) the following new subparagraph:

"'(E) bonds described in section 405(b)(1) which are received under a qualified bond purchase plan described in section 405(a) or in a distribution from a trust described in section 401(a) which is exempt from tax under section 501(a), or'.

"(b) ADJUSTED GROSS INCOME.—Section 62 of the Internal Revenue Code of 1954 (relating to the definition of adjusted gross income) is amended by inserting after paragraph (6) the following new paragraph:

"'(7) PENSION, PROFIT-SHARING, ANNUITY, AND BOND PURCHASE PLANS OF SELF-EMPLOYED INDIVIDUALS.—In the case of an individual who is an employee within the meaning of section 401(c)(1), the deductions allowed by section 404 and section 405(c) to the extent attributable to contributions made on behalf of such individual."

"(c) DEATH BENEFITS.—Section 101(b) of the Internal Revenue Code of 1954 (relating to employees' death benefits) is amended—

"(1) by striking out clause (ii) of paragraph (2) (B) and inserting in lieu thereof the following:

"'(ii) under an annuity contact under a plan described in section 403(a), or'; and

"(2) by adding at the end thereof the following new paragraph:

"'(3) SELF-EMPLOYED INDIVIDUAL NOT CONSIDERED AN EMPLOYEE.—For purposes of this subsection, the term "employee" does not include an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals)'.

"(d) AMOUNTS RECEIVED THROUGH ACCIDENT OR HEALTH INSURANCE.—Section 104(a) of the Internal Revenue Code of 1954 (relating to compensation for injuries or sickness) is amended by adding at the end thereof the following new sentence: 'For purposes of paragraph (3), in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1) (relating to self-employed individuals), contributions made on behalf of such individual while he was such an employee to a trust described in section 401(a) which is exempt from tax under section 501(a), or under a plan described in section 403(a), shall, to the extent allowed as deductions under section 404, be treated as contributions by the employer which were not includible in the gross income of the employee.'

"(e) AMOUNTS RECEIVED UNDER ACCIDENT AND HEALTH PLANS.—Section 105 of the Internal Revenue Code of 1954 (relating to amounts received under accident and health plans) is amended by adding at the end thereof the following new subsection:

"'(g) SELF-EMPLOYED INDIVIDUAL NOT CONSIDERED AN EMPLOYEE.—For purposes of this section, the term "employee" does not include an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).'

"(f) NET OPERATING LOSS DEDUCTION.—Section 172(d)(4) of the Internal Revenue Code of 1954 (relating to nonbusiness deductions of taxpayers other than corporations) is amended—

"(1) by striking out 'and' at the end of subparagraph (B);

"(2) by striking out the period at the end of subparagraph (C) and inserting '; and'; and

"(3) by adding after subparagraph (C) the following new subparagraph:

"'(D) any deduction allowed under section 404 or section 405(c) to the extent attributable to contributions which are made on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall not be treated as attributable to the trade or business of such individual.'

"(g) CERTAIN LIFE INSURANCE RESERVES.—Section 805(d)(1) of the Internal Revenue Code of 1954 (relating to pension plan reserves) is amended—

"(1) by striking out in subparagraph (B) 'meeting the requirements of section 401(a)(3), (4), (5), and (6) or' and inserting in lieu thereof 'described in section 403(a), or plans meeting'; and

"(2) by striking out in subparagraph (C) 'and (6)' and inserting in lieu thereof '(6), (7), and (8)'.

"(h) UNINCORPORATED BUSINESSES ELECTING TO BE TAXED AS CORPORATIONS.—Section 1361(d) of the Internal Revenue Code of 1954 (relating to unincorporated business enterprises electing to be taxed as domestic corporations) is amended by inserting before the period at the end thereof the following: 'other than an employee within the meaning of section 401(c)(1) (relating to self-employed individuals), or for purposes of section 405 (relating to qualified bond purchase plans) other than an employee described in section 405(f)'.

"(i) ESTATE TAX EXEMPTION OF EMPLOYEES' ANNUITIES.—Section 2039 of the Internal Revenue Code of 1954 (relating to exemption from the gross estate of annuities under certain trusts and plans) is amended—

"(1) by striking out in subsection (c)(2) 'met the requirements of section 401(a)(3), (4), (5), and (6)' and inserting 'was a plan described in section 403(a)'; and

"(2) by adding at the end of subsection (c) the following new sentence: 'For purposes of this subsection, contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall be considered to be contributions or payments made by the decedent.'

"(j) GIFT TAX EXEMPTION OF EMPLOYEES' ANNUITIES.—Section 2517 of the Internal Revenue Code of 1954 (relating to exclusion from gift tax in case of certain annuities under qualified plans) is amended—

"(1) by striking out in subsection (a)(2) 'met the requirements of section 401(a)(3), (4), (5), and (6)' and inserting in lieu thereof 'was a plan described in section 403(a)'; and

"(2) by adding at the end of subsection (b) the following new sentence: 'For purposes of this subsection, payments or contributions on behalf of an individual while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in subsection (a)(1) or (2) shall be considered to be payments or contributions made by the employee.'

"(k) FEDERAL UNEMPLOYMENT TAX ACT.—Section 3306(b)(5) of the Internal Revenue Code of 1954 (relating to definition of wages) is amended by striking out subparagraph (B) and inserting in lieu thereof the following new subparagraphs:

"'(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a), or

"'(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a);'.

"(l) WITHHOLDING OF INCOME TAX.—Section 3401(a)(12) of the Internal Revenue Code of 1954 (relating to definition of wages) is amended by striking out subparagraph (B) and inserting in lieu thereof the following new subparagraphs:

"'(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a); or

"'(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a).'

"(m) INFORMATION REQUIREMENTS.—

"(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1954 (relating to information concerning transactions with other persons) is amended by adding at the end thereof the following new section:

"'SEC. 6047. INFORMATION RELATING TO CERTAIN TRUSTS AND ANNUITY AND BOND PURCHASE PLANS.

"'(a) TRUSTEES AND INSURANCE COMPANIES.—The trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) to which contributions have been paid under a plan on behalf of any owner-employee (as defined in section 401(c)(3)), and each insurance company or other person which is the issuer of a contract purchased by such a trust, or purchased under a plan described in section 403(a), contributions for which have been paid on behalf of any owner-employee, shall file such returns (in such form and at such times), keep such records, make such identification of contracts and funds (and accounts within such funds), and supply such information, as the Secretary or his delegate shall by forms or regulations prescribe.

"'(b) OWNER-EMPLOYEES.—Every individual on whose behalf contributions have been paid as an owner-employee (as defined in section 401(c)(3))—

"'(1) to a trust fund described in section 401(a) which is exempt from tax under section 501(a), or

"'(2) to an insurance company or other person under a plan described in section 403(a),

shall furnish the trustee, insurance company, or other person, as the case may be, such information at such times and in such form and manner as the Secretary or his delegate shall prescribe by forms or regulations.

"'(c) EMPLOYEES UNDER QUALIFIED BOND PURCHASE PLANS.—Every individual in whose name a bond described in section 405(b)(1) is purchased by his employer under a qualified bond purchase plan described in section 405(a), or by a trust described in section 401(a) which is exempt from tax under section 501(a), shall furnish—

"'(1) to his employer or to such trust, and

"'(2) to the Secretary (or to such person as the Secretary may by regulations prescribe),

such information as the Secretary or his delegate shall by forms or regulations prescribe.

"'(d) CROSS REFERENCE.—

"'For criminal penalty for furnishing fraudulent information, see section 7207.'

"(2) CLERICAL AMENDMENT.—The table of sections for such subpart B is amended by adding at the end thereof the following:

"'Sec. 6047. Information relating to certain trusts and annuity and bond purchase plans.'

"(2) PENALTY.—Section 7207 of the Internal Revenue Code of 1954 (relating to fraudulent returns, statements, or other documents) is amended by adding at the end thereof the following new sentence: 'Any person required pursuant to section 6047(b) or (c) to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.'

"SEC. 8. EFFECTIVE DATE.

"The amendments made by this Act shall apply to taxable years beginning after December 31, 1961."

On page 391, line 22, strike out "27" and insert in lieu thereof "28".

MEDICARE

Mr. MILLER. Mr. President, during the debate on the so-called medicare bill which was favored by the President and the administration, I made the observation that it seemed to me that there was a great amount of confusion in the minds of the general public regarding the nature of this proposal. I am glad to report that in the Wednesday, August 22, issue of the Washington Post, an article entitled "Public Found in Confusion on Medicare" brings out a recent survey by the Gallup Poll which shows that the number of people who are familiar with the proposal is very low and that there is a great amount of confusion and misconception over the nature of the so-called Kennedy medicare proposal, sometimes known as the King-Anderson bill, and known as the Anderson-Javits amendment during our recent debate.

I ask unanimous consent that the article be printed in the RECORD at this point.

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

PUBLIC FOUND IN CONFUSION ON MEDICARE

(By George Gallup, director, American Institute of Public Opinion)

PRINCETON, N.J., August 21.—Although medicare will be one of the hotly debated issues in the coming political campaign, the public today is confused about many of the details of the administration's plan for hospital benefits to the aged.

A great many Americans have heard or read about medicare, but a surprisingly large number do not know such details as who will be covered by it and how the plan will be financed.

In a nationwide poll, conducted after medicare's defeat in the Senate caused President Kennedy to promise that he will take the issue to the people in the approaching campaign, Gallup Poll reporters first sought to find out how much the public knows about some of medicare's basic details.

All of those who said they had heard or read about the Kennedy plan (81 percent), were asked:

"Do you happen to know how the medicare plan would be paid for?"

The results indicate that only half of those who have heard something about medicare are aware that it would be financed through social security:

How medicare paid for?

	Percent
Through social security	50
Other ways	20
Don't know	30

People who had heard about the plan were next asked:

"Who would be covered by the plan?"

Only a small minority volunteered that those covered would be persons 65 and over who have social security. Just over half said they thought it would include all older persons or everyone over 65 without referring to the social security limitation:

Who would medicare cover?

	Percent
Persons over 65 on social security	11
All older persons	53
Others	19
Don't know	17

At the heart of the complicated medicare controversy is the fundamental issue whether such aid should be financed through public funds or through private insurance such as Blue Cross or a plan like that recently proposed in New York State by a group of insurance companies.

To see how the public stands on this basic question—in the wake of medicare's defeat—all those in the survey were asked:

"Which of these two different proposals do you prefer for meeting hospital costs for older persons:

"One proposal—the medicare plan—would cover persons on social security and would be paid by increasing the social security tax deducted from everyone's pay checks.

"The other proposal would leave it up to each individual to decide whether to join Blue Cross or buy some other form of voluntary hospital insurance.

"Which of these two proposals would you prefer?"

The vote today:

	Percent
Social security	44
Private insurance	40
No opinion	16

Before the administration bill's defeat in the Senate, when a similar question was asked, indications were that the social security approach was losing some of its earlier appeal.

In April, 55 percent of the public voted for social security financing; 34 percent for private insurance handling.

On the eve of the Senate action, support for public financing had dropped to 48 percent while 41 percent preferred private insurance.

ADMINISTRATION OF OATHS BY CERTAIN EMPLOYEES

Mr. HUMPHREY. Mr. President, I ask that the Chair lay before the Senate the amendments of the House of Representatives to Senate bill 538.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 538) to amend section 205 of the Federal Property and Administrative Services Act of 1949 to empower certain officers and employees of the General Services Administration to administer oaths to witnesses, which were, to strike out all after the enacting clause and insert:

That section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486) is amended by adding at the end thereof the following new subsection:

"(i) If authorized by the Administrator, officers and employees of the General Services Administration having investigatory

functions are empowered, while engaged in the performance of their duties in conducting investigations, to administer oaths to any person."

And to amend the title so as to read: "An Act to amend section 205 of the Federal Property and Administrative Services Act of 1949 to empower certain officers and employees of the General Services Administration to administer oaths to any person."

Mr. HUMPHREY. Mr. President, on behalf of the committee that handled this legislation, it is recommended that the amendments of the House be concurred in. They are technical in nature and do not alter the purpose or intent of the legislation.

Mr. DIRKSEN. Mr. President, the matter has been cleared, and there is no objection.

Mr. HUMPHREY. I move that the Senate concur in the amendments of the House of Representatives.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Minnesota.

The motion was agreed to.

MR. KHRUSHCHEV'S DILEMMAS

Mr. HUMPHREY. Mr. President, there appeared in the Washington Post a fine article by Roscoe Drummond on Wednesday, July 25, 1962, entitled "Mr. K.'s Dilemmas: Our Worries Slight by Comparison."

Mr. Drummond, one of the most competent and famous of our political columnists, has made observations on some of the developments in the Soviet Union that are worthy of thoughtful and serious consideration of every American.

I ask unanimous consent that the excellent article be printed in the body of the RECORD.

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

MR. K.'S DILEMMAS: OUR WORRIES SLIGHT BY COMPARISON

(By Roscoe Drummond)

If you think things are not going well for the United States—uncertain peace in Laos, uncertain war in Vietnam, a sluggish economy at home—pretend you are Nikita Khrushchev and look out at the world from his vantage point—or his disadvantage point.

Mr. Khrushchev is in trouble, serious trouble. Few things are going well for the Soviet Union, many things are going badly. He faces the most distressful dilemmas nearly everywhere he turns.

Here is what is on Mr. K.'s desk when he goes to work at the Kremlin every morning and, because the solutions are so painful, they are there at the end of the day:

Soviet agriculture is faltering, failing, and falling behind. Today it is in a colossal mess for two reasons. Communist farming through collectivization doesn't work. To the extent it might work, Stalin and Khrushchev have denied it the machinery, the fertilizer, and the manpower needed. Russia pass the United States in food production? Russia isn't going to pass Poland the way things are now going.

Why can't Khrushchev allocate more resources to agriculture, at least enough to ease the grave shortages? Because he can't bring himself to let anything interfere with his concentration on heavy industry, machine tools, and the raw materials essential to heavy industry and heavy armaments—pig iron, steel, coal, and oil. Mr. K. pays lipservice to agriculture and to light consumer goods, but the apple of his eye is armament—more weapons, bigger bombs. When the choice has to be made, it is guns over butter and that continues to be the choice today.

It is an increasingly burdensome choice. Rockets, missiles, antimissile missiles, and space ships are frightfully expensive. They strain and drain the Soviet economy even more than they do the U.S. economy. They eat up the resources of raw materials and manpower and finance needed to nourish agriculture and consumer goods.

Then why not join with the United States in an agreement to cutback the arms race, end nuclear testing, and put more resources and energy and manpower into creating a balanced economy which will serve the whole Soviet people?

For Premier Khrushchev to do this would require difficult decisions. He would have to open up the Soviet Union to a degree of outside inspection which the Communists, conspiratorial by nature, resist with all their will. Secondly, he would have to admit, implicitly at least, that the military threat to the safety of the Soviet Union by Western powers—constantly proclaimed by the Kremlin leaders—has either been greatly reduced or never existed.

At this point it looks as though he prefers secrecy to arms reduction.

If Khrushchev ever really wants to reduce the burden of the arms race, ease tensions, and call off the cold war with the West in order to concentrate on his cold war with Red China, we ought to be responsive—not out of fear, nor with one-sided concessions. There is no need to appease and no good would come of it.

POLICY FOR ADAMS-MORGAN PROJECT

Mr. MILLER. Mr. President, an editorial from the Washington Post of July 17, 1962, and a letter to the editor of that same newspaper of August 20, 1962, point up the need for greater imagination in urban renewal planning and more sensitivity to the problems, not only of residents who may be displaced by the program, but the small businessman as well. While no one would underestimate the impact of family dislocation, there is far too little consideration given to the plight of the small businessman, and the places where people earn their wages. In the Adams-Morgan project in the District of Columbia, current proposals call for the elimination of 35 firms which account for about $35 million in annual sales and employ approximately 900 workers. Many of these businesses would be severely damaged by dislocation from the project area which is central to their markets; others might not survive, while others might have to leave the city entirely and seek new markets.

At a time when the pocketbook of the District of Columbia is severely strained, it would seem highly questionable whether the best path to take is possible elimination of ever-increasing numbers of business firms from the tax rolls of the District, and at the same time displacing workers from their jobs. Moreover, when Small Business Administration studies indicate that at least 150,000 businesses will be dislocated by urban renewal alone during the 1960's, it would seem appropriate to question the oversimplified policy of improvement by exclusion. The small businessman is a valuable citizen in every community. It is to be hoped that those planning the Adams-Morgan area will take a new and more imaginative look at the needs of both residents and small businessmen in the Federal City.

I ask unanimous consent to have the editorial and letter printed in the RECORD at this point.

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

[From the Washington Post, July 17, 1962]

POLICY FOR ADAMS-MORGAN

The least spectacular of Washington's experiments in urban renewal, the Adams-Morgan project is also the most heavily freighted with hope and with precedent for reconstruction of residential neighborhoods. Wholesale demolition is a confession of failure, and there will not be much more bulldozing in the manner of the Southwest project. The city is searching for the techniques of preserving the best in an area while eradicating the worst.

While most of the city's redevelopment has gone forward amidst unrelieved slums, Adams-Morgan encompasses rich and poor, Negro and white, homeowner and businessman. It will show us whether urban renewal can be used to preserve the healthy diversity that is, on a small scale, the reflection of the city itself.

The project is the first to be designed with the active cooperation and advice of the people who live in it. The residents have organized some two dozen civic associations, some of them taking in only a single block, to work with the professional planners. In a city destitute of the normal mechanisms of political expression, this street-level assumption of responsibility makes Adams-Morgan doubly significant.

Adams-Morgan must succeed. It must be steered away from one dangerous error toward which it appears to be drifting. The easy way to improve a community is to eject the land uses, and the people, offensive to the majority's sense of esthetics. This is dangerous in a city like Washington with no comprehensive plan. The excluded businesses and the slum dwellers simply leave the planned neighborhood, which is on the road up, and move into the nearest unplanned neighborhood, which is then put on the road downward.

The present Adams-Morgan plan calls for the demolition of about 970 housing units, in which some 2,500 people now live. Of the displaced families requiring public housing, more than one-fourth will not be accommodated within the project. The plan tends, then, to reduce the number of poor people in the area, sending them to other parts of Washington, while it also increases the number of prosperous families, drawing them from other parts of Washington.

The Adams-Morgan community feels very strongly that a major cause of local blight lies in the rising number of shabby and unsanitary rooming houses. The plan will exclude most of them. It does not tell us where the houses' operators, or their roomers, will next turn up.

The plan would exclude the area's light industry, and some of its heavy commerce. One of these businessmen is a printer who settled in Champlain Street after having been evicted from the southwest redevelopment project.

As a matter of principle, it ought to be firmly established that no public renewal project may strengthen and evaluate one area at the expense of its neighbors. If we are to improve the city one section at a time, then each plan must be self-contained. The Adams-Morgan project has come a long and difficult way. It now bears great prom-

ise of success. It must cap that success by rejecting the unworthy policy of improvement by exclusion.

[From the Washington Post, Aug. 20, 1962]

INDUSTRY AS A NEIGHBOR

Adams-Morgan is no ordinary urban renewal project. It is a project which authorities around the Nation are eying. It is a project which hopes to attain something as close to the ideal as is possible in urban development: renewal without wholesale demolition and dislocation.

While everyone is vitally concerned about the problem of residents dislocated by the project, it evidences little in the way of imagination and ingenuity to do as the National Capital Planning Commission and the Redevelopment Land Agency have proposed. That is, to simply pluck out all service commercial facilities from the area and drop in housing, parks, and planting where the business firms formerly stood, without regard for the impact it would have on the remainder of the District's population both economically and socially. It merely creates the sterile community context brought about in the southwest demolition approach.

The statement recently attributed to an NCPC representative that the need to eliminate these service commercial uses is "basic to making the neighborhood suitable for intown living" is highly questionable.

It should be pointed out that intown light industrial complexes not only are workable but are proposed in more than 130 projects around the Nation. It has been shown time and time again that such complexes, properly buffered from neighboring residential areas and under sound controls, not only help retain the economic stability of the city but modernized planning approaches indicate that such businesses also add to the esthetic qualities of the area as well.

As to operating to the disadvantage of the community and the city as a whole, it should be pointed out that the proposed NCPC plan has been developed without the benefit of an economic survey of these businesses, an imperative measure for the proper planning of any area. No such survey was ever conducted until the service commercial firms themselves financed it.

Among other things, the survey indicated that the 35 firms which would be displaced are responsible for more than $35 million in annual sales, employ more than 900 people, and create a direct payroll of about $5.2 million each year.

Moreover, they are, for the most part, key services of the downtown areas as well as the entire region, and this central location has been and is a key factor in their growth and survival. At least two firms, both auto dealerships, are franchised to do business only within this section of town and are not susceptible to easy relocation elsewhere.

There are any number of similar complexes right here in the Washington area operating compatibly within close proximity to residential neighborhoods.

At a time when studies indicate that more than 150,000 businesses will be displaced by urban renewal during the 1960's, there is a need for a more sensitive consideration of the small businessman's plight as well as his importance to the community.

WILSON SWITZER,
President, Adams-Morgan Light Commercial Institute.

WASHINGTON.

THE DEBATE ON TELSTAR

Mr. MILLER. Mr. President, in the Thursday, August 16, 1962, issue of the Jefferson, Iowa, Herald the lead editorial discusses the debate on the Telstar satellite communications bill. I ask unanimous consent to have it printed in the RECORD at this point.

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

THE DEBATE ON TELSTAR

In his weekly newsletter entitled "Report to the Hawkeye State," Senator JACK MILLER this week discusses the debate over the communications satellite (Telstar) bill which has been rocking the Senate during the past couple of weeks. MILLER supports the administration-sponsored bill in opposition to the handful of liberal Democrats who oppose it as a "Government giveaway" program.

The pros and cons of the legislation are difficult for the public to grasp but MILLER does an excellent job of explaining in his letter how the joint Government-private enterprise corporation would be organized and how it would operate.

"Organized under the laws of the District of Columbia," MILLER writes, "the corporation will have special restrictions on stock-ownership and composition of the board of directors. This is to prevent any single interest group from dominating the corporation's activities and to give the general public an opportunity to participate in its ownership. Stock is to be sold at a price not to exceed $100 per share. Fifty percent of the voting shares may be purchased by communications common carriers authorized by the Federal Communications Commission (such as American Telephone & Telegraph Co., International Telephone & Telegraph Co., Radio Corp. of America, and the like). The other 50 percent is reserved for purchase by the general public. Of the 15-member board of directors, 6 are to be elected by the communications common carriers, 6 by stockholders representing the general public and 3 are to be appointed by the President of the United States.

"Powers and responsibilities of the President, the National Aeronautics and Space Administration, and the FCC are carefully spelled out in the bill. Purchase of equipment to operate the system must be under competitive bids supervised by the FCC.

"Federal facilities would be used to shoot the satellites into orbit, and the corporation would pay the Government for this service. The corporation would operate the satellites and microwave terminal stations (both sending and receiving) and could authorize communications common carriers to construct and operate terminal stations—charging appropriate fees, as regulated by FCC, for these services."

Miller points out that our communications industry is now owned and operated by private industry, including our underwater transoceanic cables, and that the new addition to the industry would merely continue that type of operation. While it would be a "monopoly," it would be no different from other utilities which are franchised and subject to Government restrictions and controls.

The U.S. Chamber of Commerce this week in a news release points out that Americans must decide whether America is to operate under Government ownership or free enterprise. Says the chamber, and with complete truth, "If the attitude of the handful of Senators who want Federal ownership of the new Telstars had prevailed in history, our Government today would own telephone companies, electric utilities, gaslines, railroads, airlines, trucklines, the steel industry, the auto industry, and a host of other industries started since Independence Day 1776."

There are altogether too many Americans who always seem to favor Government over private ownership whenever the issue is raised. They would probably be fighting mad if you tried to pin a Socialist label on them—but that's what they are nevertheless. Perhaps some of their fathers once told them that "all businessmen are so-and-so's" as the elder Mr. Kennedy is reported to have advised son Jack.

A VICTORY FOR AGRICULTURE

Mr. HUMPHREY. Mr. President, the Senate this week acted on one of its major responsibilities of the legislative session by adopting a farm bill.

This legislation continues progress toward the goals that have marked every effort of the Kennedy administration in the field of food and agriculture. The objectives are: First, improvement and protection of farm income; second, reduction of farm program costs; third, reduction of excessive stocks of farm commodities; fourth, maintenance of reasonable and stable prices to consumers for farm products; fifth, maintenance of abundant supplies and reserves of foods for domestic and export needs; sixth, conservation of natural resources, and their utilization in the general welfare; and, seventh, expansion of opportunities and improvement of living standards in rural areas.

I am disappointed that some of our most competent newspaper reporters in the agricultural field apparently have not recognized the very close similarities between the bill as passed by the Senate and that originally submitted by the administration.

The farm bill adopted by the Senate this week is not a word-for-word repetition of the administration's recommendations. Yet it retains the significant goals and provisions attached to those recommendations. The action of the Senate serves the interest of farmers, of consumers, and of taxpayers.

Progress in meeting our problem of living successfully with abundance is not only written into the legislation, but is obvious in the attitudes of Members of the Congress and the country as a whole.

Senators will recall that the administration's proposals for emergency action to halt the downward trend in farm income and the upward rush of surpluses had rough going in the Congress and in many areas of the agricultural economy in 1961.

Some of the opposition was based on a sincere belief that the emergency feed grains and wheat programs were not adequate. Some of the opposition was rooted in traditional distrust of change. And some of it then, as now, was based on the theory that any farm and food legislation is bad legislation.

Yet, as the debate in the House and Senate this summer has proved, no farm programs have been as well accepted in and out of the Congress as those emergency efforts.

There is, of course, rarely a tendency among us to quarrel with success. And the emergency farm programs launched in 1961 did reverse the downward slide in farm family income—there was a billion dollar improvement in 1961 as compared with 1960. The build-up of unneeded, unwanted surpluses was halted. And the gate was opened for a reduction in the cost of acquiring and handling and storing these surpluses.

As a result, many who were negative about starting these programs in 1961

have taken the same attitude toward stopping them in 1962.

I said we seldom quarrel with success. That is particularly true in the political sector. The political courage demonstrated by the Kennedy administration in heading for permanent programs while temporary programs were at a popularity peak should not go unrecognized. It is a refreshing change from the patchwork remodeling and repair that has too often marked action on the farm legislation front.

What do we have in H.R. 12391, as passed by the Senate on August 22, in relationship to the long-term objectives of the administration?

We have a permanent wheat program which, if approved by producers of that commodity in a referendum, will establish a realistic program of supply management and distribution while protecting farm income.

We have the beginning of what can be a comprehensive effort to utilize land and water resources not needed in food production to answer the growing need of our society for outdoor recreation that enriches both physical and spiritual health.

We have expanded opportunity to utilize our food abundance for helping friends of freedom in other lands through Public Law 480.

We have a continuation of the emergency feed grains program for another year, and the opportunity to solidify the gains it has given farmers and taxpayers. This is short of the permanent program recommended by the administration, but it is not the backward step that restoration of the Benson feed grains era would have represented. I point out one parallel between the recommended permanent program and the feed grains provision adopted by the Senate. The permanent program provided for a choice, by farmers themselves, between supply management and high price supports, and unlimited production with limited price supports. The extension of the emergency program fixes a 0 to 90 percent price support formula beginning in 1964 if no new legislation is made effective.

This is done, Mr. President, because we owe it to the farmers and we owe it to the taxpayers not to return to the Benson policies of guaranteed price supports and unlimited production. The only results of these policies were the accumulation of surpluses, rising costs of the farm program, and lower prices to farmers while they were working harder and harder to produce enough to maintain themselves and their families.

Secretary of Agriculture Freeman is a friend of the farmer. He proved this as Governor of the State of Minnesota and as Secretary of Agriculture. I assure Senators, Mr. President, that just as he will not permit a return to the costly programs of the previous administration, he will not permit programs which will place our farmers in a position worse than they are in now. He stands for progress and this administration stands for progress.

The Secretary has been directed to present to the Congress next year a permanent feed grains program. This does not mean a mandatory program, but whatever it is, I assure Senators it will be thoroughly discussed and refined in the Agriculture and Forestry Committee. I am confident the Congress will accept it.

The legislation we have adopted provides an expanded credit program through Farmers Home Administration to improve opportunities for those in rural areas, streamlines Rural Electrification Administration bookkeeping, and gives added emphasis to broadening industrial uses of agricultural products.

A comparison of this 1962 farm bill with the long-term objectives for food and agriculture announced by President Kennedy early in his administration indicates quite clearly we are not sidetracked—agriculture is indeed moving ahead.

We have not done all we can and must do.

It is regrettable that the bill we have approved does not face up to the difficulties both farmers and Government are experiencing in the dairy field. Incomes of dairy farmers are far from adequate even though Government price support expenditures continue to rise and the storage of dairy surpluses is a growing problem. The chairman of our Committee on Agriculture and Forestry has made it clear, however, that he appreciates the importance of remedial action in relationship to the plight of our dairy farmers and I know the Senator from Louisiana [Mr. ELLENDER] will act with the same high, constructive purpose that consistently marks his leadership on the agricultural front.

Also, we have postponed a permanent feed grains program.

Yet the positive far outweighs the negative.

We are protecting and improving farm income. We are meeting the problem of distributing the benefits of an economy of abundance. We are reducing the waste of private and public resources that are related to unneeded, unwanted surpluses. We are demonstrating a real determination to use, rather than idle, both human and natural resources in rural areas.

Disagreement on methods has not blinded us on goals.

In summary, Mr. President, this legislation will eliminate waste of land, waste of human resources, and waste of food and fiber resources. It will continue under the successful voluntary feed grains program and the new, permanent wheat certificate program to reduce agricultural surpluses while maintaining abundant supplies and reserves of foods for domestic and export needs, and further reduce the cost of an agricultural program. It will conserve our natural resources, further increase agricultural income, and provide new opportunities and improved living standards for a growing population. It also will improve the diet of our own people and expand our food-for-peace program on the international front. It has within it the basic standards and basic principles required for a more effective agricultural policy. We can improve upon it and we will improve upon it, but we have made a good start in adopting an effective program for American agriculture.

PHILIPPINE WAR DAMAGE CLAIMS—AMENDMENT

Mr. JAVITS (for himself, Mr. KEATING, and Mr. DOUGLAS) submitted an amendment, intended to be proposed by them, jointly, to the amendment intended to be proposed by Mr. LONG of Louisiana to the bill (H.R. 11721) to authorize the payment of the balance of awards for war damage compensation made by the Philippine War Damage Commission under the terms of the Philippine Rehabilitation Act of April 30, 1946, and to authorize the appropriation of $73 million for that purpose, which was ordered to lie on the table and to be printed.

ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, August 23, 1962, he presented to the President of the United States the following enrolled bills and joint resolutions:

S. 1005. An act to amend section 10 and section 3 of the Federal Reserve Act, and for other purposes;

S. 1781. An act for the relief of the heirs of Lt. Col. James Murray Bate (deceased) and Maj. Billie Harold Lynch (deceased);

S. 1849. An act for the relief of Stephen S. Chang;

S. 2179. An act to amend section 9(d)(1) of the Reclamation Project Act of 1939 (53 Stat. 1187; U.S.C. 485), to make additional provision for irrigation blocks, and for other purposes;

S. 2256. An act to amend section 5 of the War Claims Act of 1948 to provide detention and other benefits thereunder to certain Guamanians killed or captured by Japanese at Wake Island;

S. 2574. An act for the relief of Constantina Caraiscou;

S. 2686. An act for the relief of Stepanida Losowskaja;

S. 2736. An act for the relief of Arie Abramovich;

S.2751. An act for the relief of Susan Gudera, Heinz Hugo Gudera, and Catherine Gudera;

S. 2835. An act for the relief of Sieu-Yoeh Tsai Yang;

S. 2862. An act for the relief of Mai Har Tung;

S. 2876. An act to extend for 1 year the authority to insure mortgages under sections 809 and 810 of the National Housing Act;

S. 3016. An act to amend the act of March 2, 1929, and the act of August 27, 1935, relating to load lines for oceangoing and coastwise vessels, to establish liability for surveys, to increase penalties, to permit deeper loading in coastwise trade, and for other purposes;

S. 3039. An act for the relief of Bartola Maria S. La Madrid;

S.J. Res. 132. Joint resolution extending recognition to the International Exposition for Southern California in the year 1966 and authorizing the President to issue a proclamation calling upon the several States of the Union and foreign countries to take part in the exposition; and

S.J. Res. 179. Joint resolution authorizing and requesting the President to designate

April 21, 1963, as a day for observance of the courage displayed by the uprising in the Warsaw ghetto against the Nazis.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. HUMPHREY. Mr. President, I had been given some indication that some other Senator might wish to address the Senate, but, if there is no further business, I move, pursuant to the order previously entered, that the Senate stand in adjournment until 10 o'clock tomorrow morning.

The motion was agreed to; and (at 7 o'clock and 24 minutes p.m.) the Senate adjourned, pursuant to the order previously entered, until tomorrow, Friday, August 24, 1962, at 10 o'clock a.m.

NOMINATIONS

Executive nominations received by the Senate August 23, 1962:

PUBLIC HEALTH SERVICE

The following-named persons to be members of the Board of Regents, National Library of Medicine, Public Health Service, for terms of 4 years expiring August 3, 1966:

Dr. Henry Nelson Harkins, of Washington, vice Dr. Worth Bagley Daniels, term expired.

Dr. Alfred Gellhorn, of New Jersey, vice Thomas Edward Keys, term expired.

CONFIRMATIONS

Executive nominations confirmed by the Senate August 23, 1962:

COAST AND GEODETIC SURVEY

The nomination beginning Fair J. Bryant to be captain, and ending James P. Randall to be lieutenant commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 3, 1962.

U.S. COAST GUARD

The nominations beginning Harold D. Seielstad to be captain, and ending Robert H. Thornton to be lieutenant (junior grade), which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 3, 1962.

EXTENSIONS OF REMARKS

The Trade Expansion Bill

EXTENSION OF REMARKS
OF
HON. STROM THURMOND
OF SOUTH CAROLINA
IN THE SENATE OF THE UNITED STATES
Thursday, August 23, 1962

Mr. THURMOND. Mr. President, the State of Columbia, S.C., has printed on its editorial page of August 21, 1962, an excellent editorial and also an eloquent statement by Congressman L. MENDEL RIVERS, South Carolina's distinguished Representative from the First District, on the subject of the trade expansion bill. The editorial is entitled "Deadly Threat to State" and the statement by Congressman RIVERS carries the following headline: "RIVERS Sees Socialization in Trade Act—Threat to South Carolina Payrolls, Congressman Says."

I ask unanimous consent, Mr. President, that these articles be printed in the CONGRESSIONAL RECORD because I feel they merit the attention of the Members of this body as we prepare to consider the trade expansion bill and the many amendments which are being offered to this legislation.

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

[From the Columbia (S.C.) State, Aug. 21, 1962]

DEADLY THREAT TO STATE

South Carolinians with the continuing progress of their State at heart should read the statement on this page today by Representative L. MENDEL RIVERS. And they should read also the text of the advertisement which appeared in Monday's issue of the State signed by two leading textile producers.

Both the statement of the Congressman and of the textile men are on the subject of the Trade Expansion Act, especially as it would, in their opinion, affect industry in the South and in South Carolina. Both deal with the possible fate of the jobs of thousands of Southern workers—and the stake the South has in these jobs being maintained.

II

Mr. RIVERS envisions not only a "deadly threat to the State's biggest payrolls," but fears the trade expansion plan would lead to "a world government before Americans know what is happening." He warns of excessive international agreements. He pictures the possibility that we may become so enmeshed in treaties that "we literally could not defend ourselves without the help and cooperation of our allies."

In the advertisement signed by Roger Milliken and Charles A. Cannon, two of the largest textile manufacturers, is the reminder that the administration so far has not lived up to its promise to hold down texile imports.

"We were told," their statement says, "that the Geneva agreement would hold imports at the level of 1961, but actual imports for the year to date indicate that the volume of cotton textile imports for 1962 will be up 30 percent over 1961."

The Cannon-Milliken statement included eight proposed amendments to the Trade Expansion Act which would provide safeguards for American industry. They are amendments proposed by Senator PRESCOTT BUSH, Senator STROM THURMOND, and a bipartisan group of six other Senators.

III

Messrs. MILLIKEN and CANNON support these amendments and ask that citizens telegraph or telephone Senator HARRY F. BYRD, chairman of the Senate Finance Committee which is considering the bill. They also suggest that one's own Senators be urged to support the protective changes in the bill. (It has been passed by the House of Representatives and is now in the Senate committee.)

IV

Citizens consideration of the complexities of such a matter may not come easily, but none would fail to feel the impact of the serious blows which men in a position to know say might come to South Carolina's chief industry and its value to the State if the Trade Act is not changed.

The State has sought to keep an open mind on the problems embodied in international trade. It has sought to understand the merits of maintaining the friendship of nations selling goods in the United States. But none can overlook the warnings of Messrs. RIVERS, THURMOND, MILLIKEN, CANNON and others. The matter has been brought home to South Carolina and it is grave. The protective amendments now before the Senate committee are of the utmost importance to the welfare of the entire State of South Carolina.

[From the Columbia (S.C.) State, Aug. 21, 1962]

RIVERS SEES SOCIALIZATION IN TRADE ACT—THREAT TO SOUTH CAROLINA PAYROLLS, CONGRESSMAN SAYS

(NOTE.—Congressman L. MENDEL RIVERS of the Second District, has issued a new and forceful statement in opposition to the Trade Expansion Act, now before the Senate. The text of his statement is published below.)

The Trade Expansion Act can be the fatal step in a calculated move to enmesh our Nation irretrievably in a world government before Americans know what is happening.

It has been rightly called the most important piece of legislation before the Congress this year.

Never in my 22 years in Congress have I seen a more dangerous piece of legislation designed to give the President almost unlimited authority over the life and death of our economic way of life.

I fought this measure on the House floor, voting to recommit it to Ways and Means Committee, and when this motion was defeated, I cast my vote solidly against it. The measure now awaits action in the Senate.

The drive to put the United States into an international Socialist system is being spearheaded on three broad fronts—political, military, and economic.

The political thrust plays on fear of nuclear warfare. The one-world propaganda expounds on the theory that war threatens to annihilate mankind, therefore the only way to prevent war is to subject all nations to an overriding international authority.

The one-worlders military technique is to entangle America into so many international defense treaties and agreements that we literally cannot defend ourselves without the help and cooperation of our allies.

When we reach this point of dependency, then the people would be told that we must surrender our Armed Forces to international control.

I assure you as long as I have breath in my body I'll fight this one-world philosophy which erodes at the basic concepts under which our Founding Fathers created the greatest nation on earth.

The real danger lies in the economic phase of this scheme—the trade program. The naive may think this bill will enable our industries to compete better with those of the European Common Market. But I fear it predisposes the destruction of the economy of the United States, and in particular will hurt South Carolina.

I have in mind now the deadly threat to the biggest payrolls in our State, the textile industry, which is locked in a life and death struggle with the Japanese industries.

Such a bill could destroy entirely some of our industries and cripple others by making them subject to economic and political decisions by international and foreign authorities.

Under the bill, the President has sweeping powers to eliminate tariffs on some commodities and slash others up to 50 percent,