By Mr. COHELAN:
H.R. 10749. A bill for the relief of Edward Wong (Woo Kok Wan); to the Committee on the Judiciary.
By Mr. FINO:
H.R. 10750. A bill for the relief of Achilefs Zavitsanos; to the Committee on the Judiciary.
By Mrs. GRANAHAN:
H.R. 10751. A bill for the relief of Robert Bertram; to the Committee on the Judiciary.
H.R. 10752. A bill for the relief of O'Brien Dieselectric Corp.; to the Committee on the Judiciary.
By Mr. HARDY:
H.R. 10753. A bill for the relief of Gerassimos N. Maratos; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

252. Mrs. ST. GEORGE presented a resolution of the Ramapough Business and Professional Women's Club of Suffern, N.Y., requesting that the Federal income tax system be reviewed as now administered, which discriminates unjustly between single taxpayers, etc., which was referred to the Committee on Ways and Means.

SENATE

WEDNESDAY, MARCH 14, 1962

The Senate met at 12 o'clock meridian, and was called to order by the Vice President.

Rev. John E. Senglar, pastor, Sacred Heart Church, Phoenixville, Pa., offered the following prayer:

Almighty God, who hast deigned to grant strength and perseverance to our leaders, that they might guide our country's destiny in accordance with Thy will, we beseech Thee to be ever helpful to our President, to our Congress, and to all officials entrusted with the charge of State and local governments, that they may lead the people of the United States of America to temporal and eternal bliss.

We beseech Thee, Heavenly Father, the light of all that is true, do Thou make us clearly see the snares which could seriously weaken our freedom and independence, and grant us the courage to avoid them.

We also pray Thee, the support of the weak and the downtrodden, to look with a merciful eye upon the 2 million ever-loyal American citizens of Slovak descent, and upon Slovakia, the land of their forefathers, which today is suffering under the tyranny of an alien, brutal regime. With hearts truly grateful to Thee, O Lord, for the blessings of America, we implore Thee to make all men acknowledge the truth that Slovakia, too, is fully deserving of the blessed fruits of freedom and independence.

On this historical day, the 23d anniversary of the proclamation of Slovak independence, we betake ourselves to Slovakia's patroness, Mary of the Seven Dolors, imploring her to intervene with her Son to shorten the days of trial and tribulation of the Communist-enslaved Slovak nation, which is now preparing to commemorate, in 1963, the 1,100th anniversary of the blessed advent of the apostles Saints Cyril and Methodius to its territory.

Heavenly Father, Lord of the universe, we beseech Thee, grant true peace and freedom to all nations of the earth.

Lord, hear our prayers, and let our cries come unto Thee. Amen.

THE JOURNAL

On request of Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Tuesday, March 13, 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.

EXECUTIVE MESSAGES REFERRED

As in executive session,

The VICE PRESIDENT laid before the Senate messages from the President of the United States submitting several nominations, which were referred to the Committee on the Judiciary.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. BARTLETT, one of its reading clerks, announced that the House had passed the bill (S. 167) to authorize the Attorney General to compel the production of documentary evidence required in civil investigations for the enforcement of the antitrust laws, and for other purposes, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had passed a bill (H.R. 10079) to amend section 104 of the Immigration and Nationality Act, and for other purposes, in which it requested the concurrence of the Senate.

LIMITATION OF DEBATE DURING MORNING HOUR

On request of Mr. MANSFIELD, and by unanimous consent, it was ordered that statements in connection with the morning hour be limited to 3 minutes.

COMMITTEE MEETING DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate Finance Committee be permitted to sit during today's session of the Senate.

The VICE PRESIDENT. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL NOON TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate concludes its business for today, it stand in recess until 12 o'clock noon tomorrow.

The VICE PRESIDENT. Without objection, it is so ordered.

EXECUTIVE COMMUNICATIONS, ETC.

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

AMENDMENT OF SECTION 204 OF AGRICULTURAL ACT OF 1956

A letter from the Acting Secretary of Commerce, transmitting a draft of proposed legislation to amend section 204 of the Agricultural Act of 1956 (with an accompanying paper); to the Committee on Agriculture and Forestry.

REPORT ON OVEROBLIGATIONS OF APPROPRIATIONS

A letter from the Secretary of Commerce, reporting, pursuant to law, on the overobligations of appropriations within that Department; to the Committee on Appropriations.

REPORT ON PROPERTY ACQUISITIONS FOR STOCKPILE PURPOSES

A letter from the Assistant Secretary of Defense, reporting, pursuant to law, on property acquisitions for stockpile purposes, for the quarter ended December 31, 1961; to the Committee on Armed Services.

REPORT ON NUMBER OF OFFICERS ON DUTY WITH HEADQUARTERS, DEPARTMENT OF THE ARMY AND ARMY GENERAL STAFF

A letter from the Secretary of the Army, transmitting, pursuant to law, a report on the number of officers on duty with Headquarters, Department of the Army, and the Army General Staff, as of December 31, 1961 (with an accompanying report); to the Committee on Armed Services.

PUBLICATION OF NOTICE OF PROPOSED DISPOSITION OF CERTAIN MAGNESIUM

A letter from the Administrator, General Services Administration, Washington, D.C., transmitting, pursuant to law, a copy of a notice to be published in the Federal Register of a proposed disposition of approximately 12,500 short tons of magnesium now held in the national stockpile (with an accompanying paper); to the Committee on Armed Services.

REPORT ON ACTIVITIES UNDER MERCHANT SHIP SALES ACT OF 1946

A letter from the Secretary of Commerce, transmitting, pursuant to law, a report of the Maritime Administration on the activities and transactions of that Administration under the Merchant Ship Sales Act of 1946, for the quarterly period ended December 31, 1961 (with an accompanying report); to the Committee on Commerce.

FOREIGN ASSISTANCE ACT OF 1962

A letter from the the Administrator, Agency for International Development, Department of State, transmitting a draft of proposed legislation to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes (with accompanying papers); to the Committee on Foreign Relations.

REPORT ON REVIEW OF SELECTED RURAL DELIVERY SERVICE ACTIVITIES, POST OFFICE DEPARTMENT

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the review of selected rural delivery service activities, Post Office Department, dated March 1962 (with an accompanying report); to the Committee on Government Operations.

AMENDMENT OF SECTION 144, TITLE 28, UNITED STATES CODE

A letter from the Director, Administrative Office of the U.S. Courts, Washington, D.C., transmitting a draft of proposed legislation to amend section 144 of title 28 of the United States Code (with an accompanying paper); to the Committee on the Judiciary.

APPROPRIATIONS FOR ATOMIC ENERGY COMMISSION

A letter from the Chairman, U.S. Atomic Energy Commission, transmitting a revised draft of proposed legislation to authorize appropriations for the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes (with an accompanying paper); to the Joint Committee on Atomic Energy.

PETITIONS AND MEMORIALS

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

By the VICE PRESIDENT:

A resolution of the Legislature of the territory of Guam; to the Committee on Interior and Insular Affairs:

"RESOLUTION NO. 378 (1–S)

"Resolution relative to respectfully requesting the President of the United States and the Congress of the United States to extend to Guam Federal financial assistance for economic development of the territory

"Whereas it should be a matter of general knowledge that the economy of the territory of Guam is to all intents and purposes totally dependent on the presence of military bases within the territory, this dependency not being a matter of choice of the people of Guam but emanating entirely from its geographic position and the fact that it is American soil; and

"Whereas this total dependency on military spending has prevented the development of an independent local civilian economy to the considerable detriment of the future prosperity of this territory thereby not only threatening the welfare of the people of Guam but undermining the present happy relationship between the military and civilian populations of the territory which happy relationship is so essential to the future usefulness of these vital bases; and

"Whereas as a result of changes in global strategies and tactics caused by rapidly improving techniques of modern warfare, the defense complex on Guam has declined in size and relative importance, thus creating a recession on Guam of some magnitude, which recession has been underway for over a year, and unlike the recession in the Continental United States is not over and no relief appears in sight; and

"Whereas the people and government of Guam desire to do all they are called upon to do to remedy this recession and rebuild a prosperous civilian economy, and to that end have made considerable sacrifices, thus greatly increasing local real estate taxes, raising other taxes, imposing new taxes, and spending large sums on capital improvements and as well giving over $3 million to the Defense Department for the construction of a powerplant in which the people of Guam will have no equity whatsoever; and

"Whereas despite the recession, the costs of the government of Guam as elsewhere in the United States have continued to grow since the tasks of government have grown greater and ever more services are necessarily provided to the people of Guam, including the large military population here, such trend of increased governmental spending being identical in spirit and method to a degree simulating the Continental United States; and

"Whereas what the people of Guam need and require in constructing a prosperous civilian economy independent of the vagaries of defense planning is temporary financial assistance to help put the territory on its feet, by developing new lines of endeavor, by training the skilled work force necessary for industrial development, by providing the facilities that would make possible a tourist industry within the territory, and in general by opening up new avenues of civilian enterprise, it being worthy of comment that the present lack of any such industrial and tourist development is in large respect due to the fact that since the acquisition of Guam in 1898, it has been a closed port in the strict sense of the word, with easy access denied by the security measures laid down by the military commands here: Now, therefore, be it

"*Resolved*, That in light of the foregoing, the Sixth Guam Legislature does hereby on behalf of the people of Guam respectfully request and memorialize the President of the United States and Congress of the United States to extend financial assistance to the territory of Guam for economic development as aforesaid; and be it further

"*Resolved*, That the purpose for seeking such assistance be and it is hereby declared for economic development alone and that such assistance is sought on a temporary basis only and with the object in mind that such funds if granted would be strictly accounted for and used only to the end of obtaining some degree of independence from military spending; and be it further

"*Resolved*, That the speaker certify to and the legislative secretary attest the adoption hereof and that copies of the same be thereafter transmitted to the Honorable John F. Kennedy, President of the United States, to the Honorable Lyndon B. Johnson, President of the Senate, to the Honorable John W. McCormack, Speaker of the U.S. House of Representatives, to the Honorable Clinton P. Anderson, chairman of the Senate Interior and Insular Affairs Committee, to the Honorable Wayne N. Aspinall, chairman of the House Interior and Insular Affairs Committee, to the Honorable Stewart Udall, Secretary of the Interior, and to the Honorable Bill Daniel, Governor of Guam.

"Duly adopted on the 27th day of February 1962.

"A. B. WON PAT,
"Speaker.
"V. B. BAMBA,
"Legislative Secretary."

A resolution adopted by the Board of Directors of The Council of Lake Erie Ports, relating to the expansion of international trade; to the Committee on Commerce.

A resolution adopted by Lloyd Grubbs Post No. 49, the American Legion, of Orange, Tex., relating to the purchase of United Nations bonds by the United States; to the Committee on Foreign Relations.

The petition of Wm. Netschert, of Daytona Beach, Fla., relating to an amendment of the Constitution of the United States to prohibit the taxing of an individual for the welfare of the individual unless the benefits therefrom accrue solely to the individual taxed; to the Committee on the Judiciary.

A resolution adopted by the Board of Supervisors of Sonoma County, Santa Rosa, Calif., opposing any amendment of the Constitution of the United States or other action of the Congress or the executive branch, to subject the income from State and local bonds to a Federal tax; to the Committee on the Judiciary.

By Mr. CLARK:

Two resolutions of the Senate of the State of Pennsylvania; to the Committee on Public Works:

"SENATE RESOLUTION 30

"President Kennedy, on February 19, 1962, sent to Congress legislation to give him power to start not in excess of $2 billion of public works projects in the early stage of any business slump. Under the bill, the President would be permitted to act when unemployment had risen in 3 out of 4, or 4 out of 6 consecutive months, by not less than 1 percentage point.

"The bill would allow use of the funds when needed and not be subject to any delay rendering the program ineffective. This, of course, would render great aid to the entire country in any time of economic recession; therefore be it

"*Resolved*, That the Senate of the Commonwealth of Pennsylvania memorialize the Congress of the United States to support and enact into legislation the bill entitled the "Standby Capital Improvements Act of 1962"; and be it further

"*Resolved*, That copies of this resolution be transmitted to the presiding officers of each House of the Congress of the United States and to each Senator and Representative from Pennsylvania in the Congress of the United States.

"PAUL C. MOOMAW,
"Secretary of the Senate of Pennsylvania."

"SENATE RESOLUTION 29

"Twenty-five percent of the employable population of Fayette County is unemployed. Thirty-five percent of the employable population of the Brownsville area, in Fayette County, is unemployed.

"Twenty-two thousand of one hundred seventy-five thousand residents of Fayette County are receiving assistance. The 3,596 cases on public assistance due to unemployment comprise 17,219 persons.

"The pilot program of the food stamp program in Pennsylvania for those receiving assistance and those whose income is below the U.S. Department of Commerce standards for the number of persons in the family, shows $3 million worth of sales in 8 months.

"Twenty-four thousand persons were employed in the coal mines of Fayette County from 1940 to 1948. Currently there are but 4,500 persons so employed.

"Unemployment in Fayette County, Pa., and in other depressed areas, is causing misery, hunger and deprivation to thousands of honest persons desiring employment: Now, therefore, be it

"*Resolved*, That the Senate of the Commonwealth of Pennsylvania memorialize the Congress of the United States to support and enact into legislation antirecession public works projects in depressed and distressed economic areas, especially those having unemployment in excess of 15 percent of the employable population and more than 10 percent of the population on public assistance; and, be it further

"*Resolved*, That copies of this resolution be transmitted to the presiding officers of each House of the Congress of the United States, and to each Senator and Representative from Pennsylvania in the Congress of the United States.

"PAUL C. MOOMAW,
"Secretary of the Senate of Pennsylvania."

ESTABLISHMENT OF GRAIN MARKETING RESEARCH CENTER AT MANHATTAN, KANSAS—RESOLUTION

Mr. CARLSON. Mr. President, last week the board of directors of the Kansas Wheat Commission unanimously adopted a resolution which reads as follows:

Whereas Kansas is located in the center of the grain-producing area;

Whereas marketing has not received proper attention in relation to production of farm commodities, especially grain; and

Whereas the accumulation of grain stocks is the most pressing problem in American agriculture: Therefore be it

Resolved, That the Kansas Wheat Commission wholeheartedly endorses the project to establish a U.S. Department of Agriculture Grain Marketing Research Center at Manhattan, Kans.

Mr. President, some weeks ago I appeared before the Agricultural Subcommittee of the Appropriations Committee. The chairman of the subcommittee was the distinguished senior Senator from Georgia [Mr. RUSSELL]. At that meeting I stressed the need for this laboratory. Those of us who live in the winter wheat producing areas realize the need for this laboratory at this time.

Kansas State University has offered the land needed for construction of the laboratory. At the present time more wheat research work is being done at the university than at any other place in the Nation.

I sincerely hope we shall have an opportunity this year to get this laboratory started, for it is very greatly needed.

WISCONSIN FARMERS UNION SUPPORTS KENNEDY FARM PROGRAM

Mr. PROXMIRE. Mr. President, I ask unanimous consent to have printed in the RECORD excerpts from resolutions adopted by the Wisconsin Farmers Union.

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

Resolved, That the Wisconsin Farmers Union go on record to ask President Kennedy and Secretary Orville L. Freeman and our Congressmen and Senators to do all within their power to establish or strengthen—

1. Enactment of a permanent feed grain law.

2. Protection of farmer cooperatives from unfair or punitive taxation.

3. An REA-type of institution for loans to strengthen farm co-ops in order to meet modern, vertical integration.

4. Credit programs, particularly directed at young farmers to provide operating and ownership loans on a rate comparable to the prime interest rate big business gets.

5. A national land policy which protects family-type farmers on the land and excludes others.

6. Present programs of food for peace, food stamp program, school milk program, milk sanitation legislation, and market order legislation.

Resolved, That the Wisconsin Farmers Union go on record in favor of the passage of the national milk sanitation bill introduced by Congressman LESTER JOHNSON and other dairy State Congressmen.

Resolved, That the Wisconsin Farmers Union go on record in favor of putting information pertaining to the contents of dairy products, such as vitamins and proteins, on their containers.

Resolved, That the Wisconsin Farmers Union go on record urging the Department of Health, Education, and Welfare and other public agencies to carry out an education program informing the public that milk and other milk products contain no more radioactive fallout materials than other foodstuffs and are safe now and will remain safe in the foreseeable future.

Resolved, That the Wisconsin Farmers Union register its opposition to proposed refund distribution legislation or any other similarly designed legislation which has no relationship to increasing tax revenue, but which has as its apparent purpose the creation of unreasonable, arbitrary and discriminatory burdens upon cooperatives, and their harassment and obstruction.

Resolved, That the Wisconsin Farmers Union go on record as supporting a good, sound, workable medical care program for the aged through social security.

Resolved, That the Wisconsin Farmers Union endorse the action of the U.S. Department of State in its endorsement of United Nations policies.

Whereas the Kennedy administration as well as other local organizations are supporting the role of increasing dairy products consumption: Now, therefore, be it

Resolved, That the Wisconsin Farmers Union go on record favoring and supporting the type of promotions being exercised not only on the National level but also on the State level.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MANSFIELD, from the Committee on Rules and Administration, without amendment:

S. 919. A bill to amend section 9(b) of the act entitled "An act to prevent pernicious political activities" (the Hatch Political Activities Act) to eliminate the requirement that the Civil Service Commission impose no penalty less than 90 days' suspension for any violation of section 9 of the act (Rept. No. 1278);

S. Res. 301. Resolution to print with illustrations a report on Latin America submitted by Senator MCCLELLAN, of Arkansas (Rept. No. 1279);

S. Res. 302. Resolution to print, with illustrations, a report on "Latin American and U.S. Policies," submitted by Senator MANSFIELD (Rept. No. 1280);

S. Res. 308. Resolution to print a survey of trade relations between the United States and the Common Market (Rept. No. 1281); and

S. Res. 310. Resolution authorizing the printing of additional copies of part 1 of its hearings entitled "Retirement Income of the Aging," for the use of the Special Committee on Aging (Rept. No. 1282).

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

H.R. 1352. An act for the relief of Giuseppe Aniello (Rept. No. 1293);

H.R. 1451. An act for the relief of Mrs. Elbriede Prischl Rogers (Rept. No. 1294);

H.R. 1671. An act for the relief of Edvige Cianciulli (Rept. No. 1295);

H.R. 2684. An act for the relief of Mohan Singh (Rept. No. 1296);

H.R. 6082. An act for the relief of Mrs. Vartanus Uzar (Rept. No. 1297);

H.R. 6276. An act for the relief of Athanasia Dekazos (Rept. No. 1298);

H.R. 6343. An act for the relief of Mrs. Izabel A. Miguel; (Rept. No. 1299);

H.R. 6740. An act for the relief of Teofilo Estoesta (Rept. No. 1300);

H.R. 7777. An act for the relief of Elisabetta Piccioni (Rept. No. 1301); and

H.R. 8422. An act for the relief of Sister M. Theophane (Jane Carroll) (Rept. No. 1302).

By Mr. EASTLAND, from the Committee on the Judiciary, with an amendment:

S. 2143. A bill for the relief of Mrs. Eva London Ritt (Rept. No. 1288);

S. 2319. A bill for the relief of Harry E. Ellison, captain, U.S. Army, retired (Rept. No. 1289);

S. 2375. A bill for the relief of Joseph Mikulich (Rept. No. 1290);

S. 2471. A bill for the relief of Maria Huszty Boros (Rept. No. 1291); and

S. 2486. A bill for the relief of Kim Carey (Timothy Mark Alt) (Rept. No. 1292).

By Mr. DIRKSEN, from the Committee on the Judiciary, without amendment:

S. Con. Res. 62. Concurrent resolution commemorating the 25th anniversary of the establishment of soil conservation districts (Rept. No. 1286).

By Mr. DIRKSEN, from the Committee on the Judiciary, with an amendment:

S. Con. Res. 61. Concurrent resolution requesting the President to designate the week of March 25, 1962, as Voluntary Overseas Aid Week (Rept. No. 1287).

By Mr. MCCLELLAN, from the Committee on the Judiciary, without amendment:

S. 2939. A bill to grant the American Numismatic Association perpetual succession (Rept. No. 1285).

By Mr. LONG of Missouri, from the Committee on the Judiciary, without amendment:

H.R. 3105. An act for the relief of Christine Fahrenbruch, a minor (Rept. No. 1284).

By Mr. ERVIN, from the Comittee on the Judiciary, without amendment:

H.R. 9612. An act relating to the elections under section 333 of the Internal Revenue Code of 1954 by the shareholders of the G. L. Bernhardt Co., Inc., of Lenoir, N.C. (Rept. No. 1283).

WINIFRED S. GUNN—REPORT OF A COMMITTEE

Mr. MANSFIELD, from the Committee on Rules and Administration, reported an original resolution (S. Res. 315) to pay a gratuity to Winifred S. Gunn, which was placed on the calendar, as follows:

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Winifred S. Gunn, widow of John O. Gunn, an employee of the Senate at the time of his death, a sum equal to 1 year's compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

REPORT ENTITLED "IMMIGRATION AND NATURALIZATION" (S. REPT. NO. 1303)

Mr. EASTLAND, from the Committee on the Judiciary, pursuant to Senate Resolution 58, 87th Congress, 1st session, as extended, submitted a report entitled "Immigration and Naturalization," which was ordered to be printed.

REPORT ON DISPOSITION OF EXECUTIVE PAPERS

Mr. JOHNSTON, from the Joint Select Committee on the Disposition of Papers in the Executive Departments, to which was referred for examination and recommendation a list of records transmitted to the Senate by the Archivist of the United States, dated February 28, 1962, that appeared to have no permanent value or historical interest, submitted a report thereon, pursuant to law.

REPORTS OF COMMITTEES RELATING TO UTILIZATION OF FOREIGN CURRENCIES AND U.S. DOLLARS

Mr. HAYDEN. Mr. President, in accordance with the Mutual Security Act of 1954, as amended, I ask unanimous consent to have printed in the RECORD

the reports of the Committees on Armed Services and Government Operations, and the Joint Economic Committee concerning the foreign currencies and U.S. dollars utilized by those committees in 1961 in connection with foreign travel.

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

Report of expenditure of foreign currencies and appropriated funds by the Committee on Armed Services, U.S. Senate, expended between Jan. 1 and Dec. 31, 1961

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Richard B. Russell:											
Mexico	Peso	1,229.00	98.32	262.50	21.00	50.00	4.00	181.60	14.53	1,723.10	137.85
United States	Dollar		30.90		22.15				3.57		56.62
Guatemala	do		42.00		6.65		1.50		3.95		54.10
Costa Rica	do		56.57		8.06				5.21		69.84
Eleuthera, British West Indies	do				10.80				3.20		14.00
Puerto Rico	do		31.36		34.24				22.45		88.05
Barbados, British West Indies	do		21.44		10.10				4.00		35.54
Cuba	do				5.28						5.28
Senator Howard W. Cannon:											
Spain	Peseta			7,900	132.33			600	10.05	8,500	142.38
Do	Dollar						374.10				374.10
France	Franc	433.30	88.42	940.00	191.85	139	28.37	187.70	38.31	1,700	346.95
Senator J. Glenn Beall:											
United States	Dollar						1,147.22				1,147.22
England	do						.70		3.10		3.80
Israel	do								4.20		4.20
Do	Pound	62.59	28.98	33.41	15.47	15.00	6.94	3.00	1.39	114.00	52.78
Jordan	Dinar			9,000	3.21			4,000	1.43	13,000	4.64
Lebanon	Dollar		21.89		1.52				1.17		24.58
Do	Pound			137	42.81					137	42.81
Turkey	Dollar		14.69		45.03				3.00		62.72
Do	Lira	56.20	6.24	133.80	14.87					190	21.11
Greece	Dollar								12.31		12.31
Do	Drachma	1,560	52.00	5,775.90	192.53	510	17.00	2,754.60	91.82	10,600.50	353.35
France	Dollar						9.23		8.49		17.72
Do	New franc	600	121.46	1,103.28	227.48	292.83	60.37	495.09	102.08	2,491.20	511.39
William H. Darden:											
United States	Dollar				6.35						6.35
Canada, Newfoundland	do		2.50		10.30				4.80		17.60
Eleuthera, British West Indies	do				10.80				3.20		14.00
Puerto Rico	do		31.36		34.24				22.45		88.05
Barbados, British West Indies	do		21.44		10.10				4.00		35.54
Cuba	do				5.28						5.28
Gordon A. Nease:											
United States	do		2.50		10.30				4.80		17.60
United States and Hawaii	do		8.00		29.15		4.05		7.30		48.50
Japan	do		10.35		9.90		2.20		12.90		35.35
Do	Yen			12,180	34.45	720	2.00	6,200	16.55	19,100	53.00
Korea	Dollar		1.50		5.00				1.50		8.00
Philippines	do		2.50		16.50		2.25		6.95		28.20
Okinawa	do		3.00		9.95				4.15		17.10
Hong Kong	Hong Kong dollar	444.6	78.00	359.39	63.05	11.69	2.05	109.33	19.18	926	162.28
Do	U.S. dollar						2.00				2.00
Alaska and United States	Dollar		3.00		15.42		3.75		4.50		26.67
Transportation	Deutsche mark					7,274.40	1,819.05			7,274.40	1,819.05
T. Edward Braswell:											
United States	Dollar				6.35						6.35
Canada, Newfoundland	do		2.50		10.30				4.80		17.60
Total			780.92		1,272.82		3,486.78		451.34		5,991.86

RECAPITULATION

	Amount
Foreign currency (U.S. dollar equivalent)	$3,640.79
Appropriated funds: Government department:	
Army	1,272.55
Navy	285.74
Air Force	792.78
Total	5,991.86

MAR. 9, 1962.

RICHARD B. RUSSELL,
Chairman, Committee on Armed Services.

Report of expenditure of foreign currencies and appropriated funds by the Committee on Armed Services, Preparedness Investigating Subcommittee, U.S. Senate, expended between Jan. 1 and Dec. 31, 1961

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Ronald Friedenberg:											
England	Dollar		21.24		34.38		2.69		33.75		92.06
Denmark	do		14.16		22.92		1.10		22.50		60.68
France	do		21.24		34.38		3.07		33.75		92.44
West Germany	do		11.00		34.38		2.70		33.75		81.83
Italy	do		14.16		22.92		70.00		22.50		129.58
Spain	do		21.25		34.38		3.90		33.75		93.28
In flight	do				11.09				13.73		24.82

Report of expenditure of foreign currencies and appropriated funds by the Committee on Armed Services, Preparedness Investigating Subcommittee, U.S. Senate, expended between Jan. 1 and Dec. 31, 1961—Continued

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Ben Gilleas:											
Manila	Dollar		19.00		12.75		2.00		4.50		38.25
Hong Kong	do		45.00		25.50		5.50		5.00		81.00
Formosa	do		12.00		5.00		1.00				18.00
Okinawa	do		1.00		7.00		1.00		3.50		12.50
Tokyo	do		55.00		36.00		7.00		14.00		112.00
Transportation	do						1,818.60				1,818.60
D. F. McGillicuddy, Jr.:											
Manila	do		19.00		12.75		2.00		4.50		38.25
Hong Kong	do		45.00		25.50		5.50		5.00		81.00
Formosa	do		12.00		5.00		1.00				18.00
Okinawa	do		1.00		7.00		1.00		3.50		12.50
Tokyo	do		55.00		36.00		7.00		14.00		112.00
Transportation	do						1,818.60				1,818.60
Total			367.05		366.95		3,753.66		247.73		4,735.39

RECAPITULATION

	Amount
Appropriated funds: Government department: Air Force	$4,735.39

MARCH 9, 1962.

RICHARD B. RUSSELL,
Chairman, Committee on Armed Services.

Report of expenditure of foreign currencies and appropriated funds by the Committee on Government Operations, U.S. Senate, expended between Jan. 1 and Dec. 31, 1961

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
J. S. Alderman:											
France	New franc	325.60	66.45	294.30	60.00	78.30	16.00	51.80	10.55	750	153.00
England	Pound	6.87	19.25	14.29	40.00	4.29	12.00	4.55	12.75	30	84.00
Norway	Kroner	157.23	22.27	155.30	22.00	55.20	8.00	17.27	2.58	385	54.85
Sweden	do	137.27	26.50	119.14	23.00	41.44	8.00	62.15	12.00	360	69.50
Denmark	do	102.65	15.00	54.50	8.00	13.82	2.00	29.03	3.94	200	28.94
Netherland	Guilder	135.1	36.00	87.4	23.00	207.50	56.64	40.1	10.63	295	126.27
Switzerland	Francs	114.83	26.50	151	35.00	52.23	12.00	106.94	24.68	425	98.18
Italy	Lire	17,700	28.14	22,691	36.00	171,875	274.94	5,347	8.40	177,200	347.48
Turkey	do	455	45.00	428	42.00	138	14.22	107	11.33	1,128	112.55
Thailand	Baht	704	35.80	963.25	45.00	417	20.00	915.75	43.08	3,000	143.88
Burma	Kyat	161	33.75	63	13.29					224	47.04
Singapore	Malayan dollar	52.80	17.60	63	21.00	18.00	6.00	11.20	3.73	145	48.33
Hong Kong	Hong Kong dollar	158.98	27.41	435	75.00	116.06	20.00	404.96	69.82	1,115	192.23
Taiwan	New Taiwan dollar	1,200	30.00	480	12.00	220	5.50	480	12.00	2,380	59.50
Japan	Yen	16,705	46.40	14,400	40.00	2,880	8.00	7,365	20.46	41,350	114.86
Germany	Deutsche mark					9,167.80	2,291.95			9,167.80	2,291.95
Subtotal			476.07		495.29		2,755.25		245.95		3,972.56
G. K. Shriver:											
Morocco	Dirham	14,100	28.20	18,220	36.44	128.95	25.79	56.30	11.26	508.45	101.69
Spain	Peseta	4,305	71.75	3,295	49.90	150	2.50	53	.85	78.03	125.00
France	New franc	103	21.05	84	17.13	56.25	11.35	7.50	1.49	250.75	51.02
Do						2,855.45	581.56			2,855.45	581.56
Subtotal			121.00		103.47		621.20		13.60		859.27
P. W. Morgan:											
France	New franc	327.28	66.25	336.46	68.17	142.52	28.85	193.45	39.16	1,000	202.43
England	Pound	7.80	21.84	8.20	22.96	4.5	12.60	5.5	15.40	26	72.80
Norway	Kroner	157.60	22.04	39.70	5.55			17.70	2.48	215	30.07
Sweden	do	119.45	23.06	169.25	32.67	35.25	6.80	46.05	8.89	370	71.42
Denmark	do	152.63	22.12	164.57	23.85	59.13	8.57	123.67	17.92	500	72.46
Italy	Lire	20,853	33.36	26,414	42.26	10,325	16.52	5908	9.45	63,510	101.59
Turkey	do	457.75	50.75	412.25	45.70	73.25	8.12	56.75	6.29	1000	110.86
Thailand	Baht	912.50	43.76	990.38	47.50	417.00	20.00	680.12	32.62	3,000	143.88
Burma	Kyat	147.56	31.00	45.44	9.55					193	40.55
Singapore	Malayan dollar	51.75	17.25	52.50	17.50	15.00	5.00	18.75	6.25	138	46.00
Hong Kong	Hong Kong dollar	269.44	48.03	348.96	62.20	132.09	23.55	299.51	53.39	1,050	187.17
Taiwan	New Taiwan dollar	1,571.40	39.29	920.75	23.02			27.85	.69	2,520	63.00
Japan	Yen	15,696	43.60	16,290	45.25	3,690	10.25	7,324	20.34	43,000	119.44
Germany	Deutsche mark					8,607.20	2,151.80			8,607.20	2,151.80
Spain	Peseta					5085	84.70			5,085	84.70
Subtotal			462.35		446.18		2,376.76		212.88		3,498.17
Grand total			1,059.42		1,044.94		5,753.21		472.43		8,330.00

RECAPITULATION

	Amount
Appropriated funds: Government department	$8,330

MAR. 7, 1962.

JOHN MCCLELLAN,
Chairman, Committee on Government Operations.

Report of expenditure of foreign currencies and appropriated funds by the Joint Economic Committee, U.S. Senate, expended between Jan. 1 and Dec. 31, 1961

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Robert Loring Allen:											
England	Pound sterling	20	56.00	6½	18.20	1½	4.20	2	5.60	30	84.00
Switzerland	Franc	400	92.80	300	69.60	60	13.90	240	55.72	1,000	232.02
Germany	Deutsche mark					2,240.78	561.60			2,240.78	561.60
Total			148.80		87.80		579.70		61.32		877.62
Hon. Prescott Bush:											
Austria	Schilling	576	144.00	480	120.00			96	24.00	1,152	288.00
Total			144.00		120.00				24.00		288.00
Charles R. Dechert:											
Italy	Lire	49,300	80.00	39,400	64.00	103,810	168.30	64,830	102.10	257,340	414.40
England	Shilling	214	30.00	171	24.00	132.5	18.20	575	80.75	1,092.5	152.95
Belgium	Franc	995	20.00	795	16.00	240	4.90			2,030	40.90
France	New franc	358	75.00	286	60.00	212.41	44.30	412	86.01	1,268.21	265.31
Total			205.00		164.00		235.70		268.86		873.56
Edna Gass:											
Austria	Schilling	2,660	106.00	2,013	80.00	1,482	60.00	345	14.00	6,500	260.00
Germany	Deutsche mark					4,152	1,038.00			4,152	1,038.00
Total			106.00		80.00		1,098.00		14.00		1,298.00
Theodore Geiger:											
Belgium	Franc	1,500	30.00	1,530	31.00	1,255	25.00	485	10.00	4,770	96.00
England	Pound	31	87.00	28	79.00	14	39.00	8	22.00	81	227.00
France	New franc	360	74.00	520	105.00	4,228	1,064.00	146	29.00	5,669	1,272.00
Switzerland	Franc	205	49.00	285	66.00	115	26.00	112	26.00	717	167.00
Total			240.00		281.00		1,154.00		87.00		1,762.00
Leon M. Herman: France	New franc	111	22.20	103	20.60	7,123	1,449.80	86	17.20	7,423	1,509.80
Hon. Henry S. Reuss:											
Germany	Deutsche mark	332	83.00	168	42.00	2,486.57	623.00			2,986.57	748.20
Austria	Schilling	4,900	196.00	5,400	216.00	1,200	48.00			11,500	460.00
Total			279.00		258.00		671.20				1,208.20
Hon. John Sparkman:											
Venezuela	Bolivar	435	100.00	31	7.12			24	5.52	490	112.64
Brazil	Cruzeiro	23,025	68.73	4,900	14.63			1,100	3.28	29,025	101.64
Uruguay	Peso	393	35.83	71	6.48			13	1.19	477	43.56
Argentina	do	2,976	35.91	861	10.39			83	1.00	3,920	47.30
Chile	Escudo	45.00	42.86	15.50	14.76			8.00	7.62	68.50	65.24
Peru	Sole			515	19.22			285	10.63	800	29.85
Germany	Duetsche mark					4,875	1,218.79			4,875	1,218.79
Total			[1] 298.39		72.60		1,218.79		29.24		1,619.02
Hon. Martha W. Griffiths:											
Venezuela	Bolivar	180	41.38	76.00	17.47			34.00	7.82	290	66.67
Brazil	Cruzeiro	13,798	41.19	5,115	15.27	1,700	5.07	1,360	4.06	21,973	65.59
Uruguay	Peso	393	35.89	85.74	7.83			27	2.47	505.74	46.19
Argentina	do	2,976	35.19	716.91	8.65			500	6.03	4,192.91	50.59
Chile	Escudo	34.50	32.86	15	14.29			6.55	6.24	56.05	53.39
Peru	Sole			426.12	15.90			306.86	11.45	732.98	27.35
Germany	Deutsche mark					5,221	1,305.22				1,305.22
Total			187.23		79.41		1,310.29		38.07		1,615.00
Hon. Thomas B. Curtis:											
Venezuela	Bolivar	209.40	48.14	30.60	7.03			10.00	2.30	250.00	57.47
Brazil	Cruzeiro	21,273	63.53	2,809	8.38			800	2.39	24,882	74.30
Uruguay	Peso	308.27	36.37	34.73	3.17			10.00	.91	443	40.45
Argentina	do	3,840.60	46.34	759.40	9.16			500.00	6.03	5,100.00	61.53
Chile	Escudo	39.39	37.52	7.00	6.66			3.00	2.86	49.39	47.04
Peru	Sole			544	20.29			320	11.94	864	32.23
Germany	Deutsche mark					5,215	1,303.79				1,303.79
Total			231.90		54.69		1,303.79		26.43		1,616.81
William H. Moore:											
Venezuela	Bolivar	302.50	69.55	190.00	43.70			34.25	7.85	526.75	121.10
Brazil	Cruzeiro	31,260	100.10	12,930	41.05	348,312	1,149.55	5,070	16.50	383,172	1,307.20
Uruguay	Peso	774	70.60	607	55.60	525	48.00	319	29.10	2,225	203.30
Argentina	do	6,850	82.70	4,600	55.55			1,490	18.00	12,940	156.25
Chile	Escudo	55	52.40	45	42.80	3	2.90	28	26.65	131	124.75
Peru	Sole	630	23.45	670	24.90	300	11.10	1,000	37.05	2,600	96.50
Germany	Deutsche mark					4,875.2	1,218.79			4,875.2	1,218.79
Total			398.80		263.60		2,430.34		135.15		3,227.89
John W. Lehman:											
Venezuela	Bolivar	300	68.98	121	27.74	590	135.63	125	28.74	1,136	261.09
Brazil	Cruzeiro	35,158	111.74	12,592	39.65	350,312	1,156.15	9,396	29.56	407,458	1,337.10
Uruguay	Peso	800	73.15	610	55.54	20.74	189.31	300	27.30	3,784	345.30
Argentina	do	7,076	85.41	4,850	58.55	21,600	260.62	3,174	38.30	36,700	442.88
Chile	Escudo	54.54	51.99	44.00	41.89	67.80	64.55	15.53	14.83	181.87	173.26
Peru	Sole	755	28.11	1,130	42.03	1,827	68.04	715	26.61	44.27	164.79
Germany	Deutsche mark					4,875.16	1,218.79			4,875.16	1,218.79
Total			419.38		265.40		[2] 3,093.09		[2] 165.34		[2] 3,943.21

[1] Includes cost of additional space used for conferences.
[2] Includes unallocated group travel and baggage expenses.

Report of expenditure of foreign currencies and appropriated funds by the Joint Economic Committee, U.S. Senate, expended between Jan. 1 and Dec. 31, 1961—Continued

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Pat Holt: Peru	Sole	410	15.30	696.64	25.99	13,675.8	510.29	557.55	20.80	15,340	572.38
Raymond F. Mikesell:											
Italy	Lira	75,400	121.25	108,375	174.53	155,858	251.00	36,089	58.24	375,715	605.02
Kenya	East African shilling.	438	61.32	324	45.36	1,015	142.10	293	42.03	2,070	290.81
United Arab Republic	Egyptian pound.	18,000	40.50	21,000	47.05	11,000	24.75	26,250	59.06	76,250	171.36
Greece	Drachma	1,080	36.00	1,240	41.34	750	25.00	880	29.33	3,950	131.67
France	New franc					9,388.30	1,912.08			9,388.30	1,912.08
Total			259.07		308.28		2,354.93		188.66		3,110.94
Argyll Campbell:											
Belgium	Franc	4,215.5	84.31	4,520	90.40	61.25	12.25	692	13.84	10,000	200.80
France	New franc	590	118.00	769.20	153.84	54	10.80	117.40	23.48	1,500	306.12
Switzerland	Franc	151.5	44.84	202.4	46.50	38	8.75	69.21	15.92	500	116.01
England	Pound sterling	48-7-9	135.49	39-8-3	110.35	6.18	19.32	5.6	14.84	100	280.00
Netherlands	Guilder					3,687.96	1,024.43			3,687.96	1,024.43
Total			382.64		401.09		1,075.55		68.08		1,927.36
Hon. Hale Boggs:											
France	New franc	726.50	145.30	639	127.80	741.38	150.99	161.50	31.28	2,241.38	457.11
Belgium	Franc	5,085	101.70	4,017.5	80.35	27,850	559.75	697	13.94	37,562	754.00
Switzerland	do	287	66.01	315.4	72.60	869.75	200.05	40.7	9.37	1,500	348.03
England	Pound sterling	48.5	135.10	39-16-7	111.50	29-13-11	83.24	5-16-6	19.30	121-2-5	349.14
Netherlands	Guilder					2,114.45	587.35			2,114.45	587.35
Total			448.11		392.25		1,581.38		73.89		2,495.63
Laura A. Moran:											
Belgium	Franc	4,821	96.42	3,519	70.38	515	10.30	1,185	23.70	10,000	200.80
France	New franc	673.55	134.71	618	123.60	87.25	17.45	151.80	30.36	1,500	306.16
Switzerland	Franc	248.5	57.16	180.4	41.50	29.3	6.80	46.3	10.60	500	116.07
England	Pound sterling	50-6-6	140.90	39-10	110.40	5-10	15.40	4-15	13.30	100	280.00
Netherlands	Guilder					3,687.96	1,024.43			3,687.96	1,024.43
Total			429.19		345.88		1,074.38		78.01		1,927.46
Hon. Paul H. Douglas:											
Germany	Deutsche mark	513.58	128.39	335	83.75	1,309.84	328.24	82.46	20.62	2,240.89	561.00
France	New franc	457.78	91.55	124.88	24.98	303.25	60.65	14.10	2.82	9,000	180.00
Belgium	Franc	1,881	37.62	405.50	8.11	371	7.43	10.35	2.06	2,761	55.22
England	Pound sterling	12-13-7	35.50	6-3-7	17.31	1-2-7	3.18	3-10-2	9.81	23-10-0	65.80
Total			293.06		134.15		399.50		35.31		862.02
Howard E. Shuman:											
Germany	Deutsche mark	513.58	128.39	335	83.75	1,309.84	328.24	82.46	20.62	2,240.89	561.00
France	New franc	457.78	91.55	124.88	24.98	303.25	60.65	14.10	2.82	9,000	180.00
Belgium	Franc	1,881	37.62	405.50	8.11	371	7.43	10.35	2.06	2,761	55.22
England	Pound sterling	12-13-7	35.50	6-3-7	17.31	1-2-7	3.18	3-10-2	9.81	23-10-0	65.80
Total			293.06		134.15		399.50		35.31		862.02
Samuel Pisar:											
France	New franc	500	100.00	500	100.00	4,307	861.40	1,940	388.00	7,247	1,449.40
Poland	Zloty	1,230	22.00	1,000	20.00			500	8.00	2,830	50.00
Total			122.00		120.00		861.40		396.00		1,499.40
Belle Notkin: France	New franc	580	120.00	483	100.00	120	25.00	118	23.00	1,301	268.00
Hon. Jacob K. Javits:											
Germany	Deutsche mark	240	60.00	232	57.75			80	20.00	552	137.75
England	Pound sterling					7-22-19	22.79			7-22-19	22.79
France	New franc	2,096.25	425.00	2,852.95	574.50	4,203.85	847.57	429.90	86.58	9,582.97	1,933.65
Poland	Zloty	724	14.48	400	8.00	1,466.61	26.67	126	2.52	2,716.61	51.67
Total			499.48		640.25		897.03		109.10		2,145.86
Grand total			5,530.04		4,349.24		23,746.15		1,884.75		35,510.18

RECAPITULATION

	Amount
Foreign currency (U.S. dollar equivalent)	$35,510.18

WRIGHT PATMAN, *Chairman.*

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. FULBRIGHT, from the Committee on Foreign Relations:

W. Michael Blumenthal, of New Jersey, to be the representative of the United States of America on the Commission on International Commodity Trade of the Economic and Social Council of the United Nations;

W. Walton Butterworth, of Louisiana, Walter C. Dowling, of Georgia, and Frances E. Willis, of California, Foreign Service officers, for promotion from the class of career minister to the class of career ambassador; and

Roger M. Blough, of Pennsylvania, and sundry other persons, to be members of the General Advisory Committee of the U.S. Arms Control and Disarmament Agency.

By Mr. MAGNUSON, from the Committee on Commerce:

Harold C. Woodward, of Illinois, to be a member of the Federal Power Commission; and

Peter Aloysius Martus, and sundry other persons, for permanent appointment in the Coast and Geodetic Survey.

By Mr. KEATING, from the Committee on Commerce:

William Ruder, of New York, to be an Assistant Secretary of Commerce.

By Mr. SMATHERS, from the Committee on Commerce:

Donald W. Alexander, of Florida, to be Maritime Administrator.

BILLS AND JOINT RESOLUTION INTRODUCED

Bills and a joint resolution were introduced, read the first time, and, by

unanimous consent, the second time, and referred as follows:

By Mr. KEATING (for himself and Mr. JAVITS):

S. 2995. A bill to provide for the establishment of the Oriskany Battlefield National Historic Site; to the Committee on Interior and Insular Affairs.

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

By Mr. FULBRIGHT (by request):

S. 2996. A bill to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes; and

S. 2997. A bill to amend the United Nations Participation Act of 1945, as amended; to the Committee on Foreign Relations.

(See the remarks of Mr. FULBRIGHT when he introduced the above bills, which appear under separate headings.)

By Mr. ELLENDER (by request):

S. 2998. A bill to repeal certain acts relating to cooperative agricultural extension work and to amend the Smith-Lever Act of May 8, 1914, as amended, to provide for cooperative agricultural extension work between the agricultural colleges in the several States, territories, and possessions receiving the benefits of an act of Congress approved July 2, 1862, and of acts supplementary thereto, and the U.S. Department of Agriculture; to the Committee on Agriculture and Forestry.

By Mr. HILL (for himself and Mr. SPARKMAN):

S.J. Res. 169. Joint resolution designating the bridge across the Tennessee River on the Natchez Trace Parkway as the John Coffee Memorial Bridge; to the Committee on Public Works.

RESOLUTION

WINIFRED S. GUNN

Mr. MANSFIELD, from the Committee on Rules and Administration, reported an original resolution (S. Res. 315) to pay a gratuity to Winifred S. Gunn, which was placed on the calendar.

(See the above resolution printed in full when reported by Mr. MANSFIELD, which appears under the heading "Report of a Committee.")

PRESERVATION OF ORISKANY BATTLEFIELD

Mr. KEATING. Mr. President, for myself and for my distinguished colleague, the senior Senator from New York [Mr. JAVITS], I introduce for appropriate reference a bill to provide full and proper recognition for a site of great historic interest in New York State. I refer to the Oriskany Battlefield, about 8 miles west of the city of Utica. This site played an important role in our history, for it was here that one of the bloodiest battles of the Revolution was fought and won.

Mr. President, the Oneida County American Legion posts and other patriotic organizations in this area have taken the lead in working for the preservation of this important site and for its proper development. They are to be commended for their patriotic efforts in promoting a deeper appreciation of our Nation's great historical heritage. The purpose of this bill is to make the area a national historic site, recognized and preserved by the Interior Department and the Federal Government.

Mr. President, I ask unanimous consent to include, following my remarks, a report upon the historic significance of this Revolutionary War battlefield and the text of the bill.

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

The bill (S. 2995) to provide for the establishment of the Oriskany Battlefield National Historic Site, introduced by Mr. KEATING (for himself and Mr. JAVITS), was received, read twice by its title, referred to the Committee on Interior and Insular Affairs, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior shall acquire on behalf of the United States, by gift, purchase, condemnation, or otherwise, the Oriskany Battlefield, consisting of 87 acres, more or less, located at Oriskany, New York, together with all improvements thereon and appurtenances thereto. When so acquired, such property shall be deisgnated as the Oriskany Battlefield National Historic Site, and shall be set aside as a public national memorial to commemorate the Battle of Oriskany, in which the American flag was first flown in combat.

SEC. 2. In order to provide for the proper development of the Oriskany Battlefield National Historic Site, the Secretary of the Interior shall erect thereon and maintain as parts thereof the following:

(1) a museum, which shall contain items of historical interest pertaining to the Battle of Oriskany, the Saratoga campaign and the Revolutionary War period;

(2) a statue of General Nicholas Herkimer, who was mortally wounded in the Battle of Oriskany; and

(3) such markers, structures, and landscaping as may in his judgment be appropriate.

SEC. 3. The Secretary of the Interior, acting through the National Park Service, shall administer, protect, develop, and maintain the Oriskany Battlefield National Historic Site subject to the provisions of this Act and in accordance with the provisions of the Act of August 25, 1916, entitled "An Act to establish a National Park Service, and for other purposes" (16 U.S.C., sec. 1 et al.), as amended and supplemented, and the provisions of the Act of August 21, 1935, entitled "An Act to provide for the preservation of historic American sites, buildings, and antiquities of national significance, and for other purposes" (16 U.S.C. 461–467), as amended.

The report presented by Mr. KEATING is as follows:

ORISKANY BATTLEFIELD

The Battle of Oriskany was fought on August 6, 1777, about 8 miles west of the present city of Utica. In proportion to the numbers engaged, it was one of the bloodiest battles of the American Revolution, more than a third of the contestants on each side being killed or wounded.

It was here that 800 of the Tryon County militia under Gen. Nicholas Herkimer, marching to the relief of the besieged Fort Stanwix, 6 miles to the westward, fell into Joseph Brant's carefully laid ambush. The battlefield is one of rolling hills which rise gently from the adjacent valley lands on the north. Between two low hills runs a small swampy ravine across which the primitive frontier corduroy road wound its way. On either side the forest pressed in closely that fateful August morning.

Under this dense cover the Indians and their allies waited until Herkimer, riding at the head of his troops, had passed the ravine. The baggage and supply train bringing up the rear were well down the narrow slope, blocking all retreat, when the trap was sprung. Indian war cries, the crack of muskets, and the cries of wounded mingled with military commands.

Wounded in the leg, General Herkimer fell from his horse at the first fire. Nevertheless, he took a position on the hillside from where he could direct the fighting. After the first surprise, the Americans took to the forest and from behind whatever natural cover was available continued the fight until the Indians, who had suffered severely in pressing the attack, retired in dismay.

Herkimer was placed on a litter and taken down the Mohawk to his home where, 10 days after the battle, he died as the result of the amputation of his wounded leg.

The battle greatly crippled the British forces of St. Leger who soon afterward, alarmed at the approach of Gen. Benedict Arnold, gave up his effort to capture Fort Stanwix and retreated into Canada. This, together with the defeat of Burgoyne at Saratoga, thwarted Britain's carefully laid strategy, and the conquest of New York for the purpose of dividing the colonies was averted.

The significance of the Battle of Oriskany and of the subsequent raising of the siege was twofold. From a military point of view, St. Leger's advance was checked, his junction with Burgoyne was prevented, and the threefold strategic plan of the British suffered its initial setback to be followed later by Burgoyne's surrender at Saratoga. For the emergency of a defeat which closed the Mohawk Valley and of a siege which held St. Leger for 3 weeks before Fort Stanwix, no calculation had been made by the British. It was this combination that was so fortunate for our young Republic. The effect of Oriskany and Stanwix on American morale was no less real than its military effect. The people of the valley sided with Congress against the King and the British heard more and more clearly the rumbling of fresh resistance. No Tory rising ever disgraced the valley. Washington said "Herkimer first reversed the gloomy scene" of the campaign. John Adams declared that "Gansevoort has proved that it is possible to hold a post."

Mr. JAVITS. Mr. President, I am pleased to be a cosponsor of the bill my colleague, Senator KEATING, has introduced today to establish the Oriskany Battlefield as a national historic site.

The Battle of Oriskany was one of the most significant engagements of the entire Revolutionary War, for it stemmed the British advance down the Mohawk and never again were the British able to mount a serious offensive threat against the critically important Hudson Valley. Gen. Nicholas Herkimer, who commanded the American forces at the battle, is one of our great figures of colonial history and stands as a symbol of the fortitude and patriotism of the Dutch people who settled in the Mohawk Valley.

One of the most thrilling chapters in American fiction is Walter Edmonds' account of the Battle of Oriskany in "Drums Along the Mohawk." I commend the book, and particularly Mr. Edmonds' description of the bloody battle, to all Americans who take pride in our rich colonial history.

New York was one of the crucial battlegrounds of the Revolutionary War, and it is my hope that Congress will

recognize the importance of Oriskany to our national heritage by taking favorable action on this bill.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961

Mr. FULBRIGHT. Mr. President, by request, I introduce, for appropriate reference, a bill to amend the Foreign Assistance Act of 1961. This is the so-called foreign aid bill which the President has asked that the Congress consider.

I have not analyzed the bill, as yet, and am therefore introducing it "by request."

The Committee on Foreign Relations expects to begin hearings on April 5. In as much as the bill this year is much simplified, it is my hope that we will be able to report a bill to the Senate late in April.

Mr. President, for the convenience of Members, there has been prepared a section-by-section analysis of the bill I am today introducing. I ask unanimous consent that the analysis be printed at this point in the RECORD.

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

The bill (S. 2996) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes, introduced by Mr. FULBRIGHT, by request, was received, read twice by its title, and referred to the Committee on Foreign Relations.

The analysis presented by Mr. FULBRIGHT is as follows:

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED FOREIGN ASSISTANCE ACT OF 1962

I. INTRODUCTION

1. Purposes of the bill

The proposed Foreign Assistance Act of 1962 ("the bill") has two main purposes. First, it authorizes new appropriations for various categories of aid, including development grants, a new Alliance for Progress category, international organizations and programs, supporting assistance, and the contingency fund. Second, it effects certain substantive amendments in the Foreign Assistance Act of 1961, as amended ("the act").

2. Authorizations

The following table shows the authorizations and appropriations requested by the executive branch:

	Authorization request	Appropriation request
Pt. I. Act for International Development of 1961:		
Ch. 2. Development assistance:		
Title I. Development Loan Fund:		
Sec. 202(a). Authorization	(1)	$1,250,000,000
Title II. Development grants technical cooperation:		
Sec. 212. Authorization	$335,000,000	335,000,000
Title III. Investment guarantees:		
Sec. 222(f). General provisions	100,000,000	100,000,000
Title IV. Investment surveys:		
Sec. 232. Authorization	5,000,000	5,000,000
Title VI. Alliance for Progress:		
Sec. 252. Authorization	[2] 3,000,000,000	600,000,000
Total, ch. 2	3,440,000,000	2,290,000,000
Ch. 3. International organizations and programs:		
Sec. 302. Authorization	148,900,000	148,900,000
Ch. 4. Supporting assistance:		
Sec. 402. Authorization	481,500,000	481,500,000
Pt. I. Act for International, etc.—Continued		
Ch. 5. Contingency fund:		
Sec. 451(a)	$400,000,000	$400,000,000
Total pt. I	4,470,400,000	3,320,400,000
Pt. II. International Peace and Security Act of 1961:		
Ch. 2. Military assistance:		
Sec. 504(a). Authorization	(1)	1,500,000,000
Total, pt. I and pt. II	4,470,400,000	4,820,400,000
Pt. III:		
Ch. 2. Administrative provisions:		
Sec. 637(a). Administrative expenses (AID)	55,000,000	55,000,000
Sec. 637(b). Administrative expenses (State)	(1)	3,100,000
Total, pt. III	55,000,000	58,100,000
Total, all parts	4,525,400,000	[2] 4,878,500,000

[1] Authorization is not contained in the act.

[2] Requested authorization provides that not to exceed $600,000,000 may be appropriated for use beginning in fiscal year 1963.

[2] This total does not include unobligated balances of prior year appropriations requested to be continued available.

In most cases the bill provides for the new authorizations by the technique of striking out the amount and the reference to fiscal year 1962 in the existing authorization and substituting the new amount and a reference to fiscal year 1963. The act now contains authorizations for appropriations for fiscal year 1963 for the Development Loan Fund (sec. 202(a)), for military assistance (sec. 504(a)), and for certain administrative expenses of the Department of State relating to functions under the act (sec. 637 (b)). Thus no new authorizations are needed for these purposes. In addition the bill provides an authorization for continuing the availability of unexpended balances of funds made available under the act.

II. PROVISIONS OF THE BILL

Part I. Act for international development of 1961

Chapter 1. Short Title and Statement of Policy

Statement of policy:

Section 101: Amends section 102 of the act, which contains a statement of policy for part I, by adding a statement that it is the sense of Congress that support for the peaceful uses of atomic energy should be continued in furtherance of the purposes of part I. Since section 102(c) of the bill strikes out section 213 of the act, which authorizes the use of development grant funds for the atoms for peace program, the new statement of policy is proposed in order that programs for the peaceful uses of atomic energy may continue to have express recognition in the act and in order to make clear that the deletion of section 213 does not imply any intention to discontinue such programs.

Chapter 2. Development Assistance

TITLE II. DEVELOPMENT GRANTS AND TECHNICAL COOPERATION

General authority:

Section 102(a): Amends section 211(a) of the act, which relates to general authority, by providing that the criteria which that section requires the President to take into account in furnishing development grant assistance, apply as a matter of law only when such assistance is furnished to countries and areas, rather than to international organizations, for development grant purposes. It is now proposed that development grant funds, as well as supporting assistance funds and the new Alliance for Progress funds (see analysis of sec. 105 of the bill) will be available for assistance to regional and other international organizations, in addition to the funds available under chapter 3 of the act, relating to international organizations and programs. The United States will make contributions to international organizations and programs from development grant funds only where it has reasonable expectations that such funds will be administered by the organizations so as to further the criteria set forth in section 211(a) of the act. It is believed, however, that it would be inappropriate for the United States, when cooperating in multilateral efforts, to attempt to impose its own unilateral judgment with regard to the application of the criteria to specific multilateral projects or activities.

Authorization:

Section 102(b): Amends section 212 of the act, which relates to authorizations, by deleting the obsolete authorization for an appropriation for development grants for use beginning in fiscal year 1962 and substituting an authorization for an appropriation for this purpose for use beginning in fiscal year 1963.

Atoms for peace:

Section 102(c): Strikes out section 213 of the act, which relates to atoms for peace. Because the use of fiscal year 1963 development grant funds for programs for the peaceful uses of atomic energy will be for the economic development purposes for which such funds are authorized and will be carried out in accordance with the criteria applicable to such funds, section 213, which is a special diversionary authority to use development grant funds for atoms for peace programs, is no longer necessary and tends to confuse the concepts underlying the development grant title. Section 101 of the bill adds a new sentence to the statement of policy in section 102 of the act, expressing the sense of Congress that programs under the act for the peaceful uses of atomic energy should be continued.

TITLE III. INVESTMENT GUARANTEES

General authority:

Section 103(a): Amends section 221(b) of the act, which relates to general authority, in two respects:

Paragraph (1) amends section 221(b), which relates to specific risk guarantees, by deleting the present $1 billion ceiling on the total face amount of such guarantees which may be outstanding at any one time and substituting a new ceiling of $1.3 billion.

Paragraph (2) amends section 221(b)(2), which relates to all risk guarantees, by deleting the present $90 million ceiling on the total face amount of such guarantees which may be outstanding at any one time and substituting a new ceiling of $180 million.

See analysis of section 103(b) below, which increases the funds available for issuance of guarantees.

General provisions:

Section 103(b): Amends section 222 of the act, which relates to general provisions, by adding a new subsection (f) which authorizes an appropriation for use beginning in 1963 as a reserve available to discharge liabilities under investment guarantees. The amendment also makes a conforming change in section 222(d) of the act.

Housing projects in Latin American countries:

Section 103(c): Amends section 224 of the act, which relates to housing projects in Latin American countries, by deleting the $10 million ceiling on the total face amount of guarantees which may be outstanding at any one time under that section and substituting a new ceiling of $60 million. The amendment also makes a conforming change in section 224 to make clear that the appropriation which would be authorized by the amendment proposed in section 103(b) of the bill, would be available to discharge liabilities under investment guarantees issued under section 224 of the act, as well as those issued under section 221 of the act.

TITLE IV. SURVEYS OF INVESTMENT OPPORTUNITIES

Authorization:

Section 104: Amends section 232 of the act, which relates to authorization, by deleting the obsolete authorization for an appropriation for surveys of investment opportunities for use beginning in fiscal year 1962 and substituting an authorization for an appropriation for use beginning in fiscal year 1963.

TITLE VI. ALLIANCE FOR PROGRESS

Alliance for Progress:

Section 105: Amends chapter 2 of part I of the act, which relates to development assistance, by adding a new title VI relating to the Alliance for Progress.

First, the amendment adds a new section 251 to the act, which relates to general authority. Subsection (a) of the new section expresses the sense of Congress as to the special significance of the relationships of the American peoples and Republics and the great hope for the advancement of the welfare of the American peoples which the Alliance for Progress offers. The section authorizes the President to furnish assistance on such terms and conditions as he may determine to promote the economic development of countries and areas (including dependent oversea territories) in Latin America, which includes the Caribbean area.

Subsection (b) of the new section 251 establishes the criteria and other conditions applicable to the furnishing of assistance under the new title VI. Since a major portion of the funds to be made available under the new title for fiscal year 1963 will be available only for dollar repayable loans, similar to development loans under the act, while a lesser portion will be available on a grant or other basis, similar to development grants (see the new sec. 252 which would be added by the amendment), the criteria and conditions contained in the new section 251(a) represent a combination of the criteria and conditions now applicable to development loans and grants under the act. First, the subsection makes clear that assistance under the new title shall be directed toward the development of both human and economic resources rather than emphasizing either the former or the latter as do development grants and development loans respectively. Next, it requires that the President, in furnishing assistance under the new title on either a loan or a grant basis to countries and areas (but not to international organizations, as explained in the analysis of sec. 102(a) of the bill) take into account four criteria: (1) the principles of the Act of Bogotá and the Charter of Punta del Este (this part of the first criterion is taken from the first portion of sec. 618 of the act, relating to economic assistance to Latin America, which is repealed by sec. 301(c) of the bill) and in particular the extent to which the country is taking self-help measures; (2) the economic and technical soundness of the activity to be financed; (3) consistency with development plans and objectives; and (4) possible effects upon the U.S. economy. Finally, certain additional requirements now applicable to development loans under the act are also applicable to loans made under the new Alliance-for-Progress title from funds required to be used on a dollar repayable basis: (1) the President must take into account whether financing could be obtained from other free world sources; (2) such loans may be made only upon a finding of reasonable prospects of repayment; and (3) such loans are subject by cross-reference to section 201(d) (interest rates for loaning and reloaning), sections 202(b) and 202(c) (long-term commitment authority and related reporting requirement); and section 204 (Development Loan Committee).

Subsection (c) of the new section 251 provides that the authority of section 614(a) of the act may not be used to waive the requirements of the new title VI with respect to funds required to be used on a dollar repayable loan basis and that the transfer authority of section 610 may be used to transfer such funds only to development loan funds. The restrictions imposed by this subsection on the use of Alliance-for-Progress funds available only for dollar repayable loans are similar to those imposed by section 201(c) of the act on development loan funds and have the effect of preventing the use of the President's special authorities to diminish the dollar repayable loan requirement.

Subsection (d) of section 251 provides that the President shall, when requested and when appropriate, assist in fostering measures of agrarian reform. This subsection is taken verbatim from the second portion of section 618 of the act, relating to economic assistance to Latin America, which would be repealed by section 301(c) of the bill.

The amendment adds a new section 252 to the act, which relates to authorization. This section authorizes a total appropriation for use beginning in any of the fiscal years 1963 through 1966 of $3 billion, but limits the amount which may be appropriated for use beginning in fiscal year 1963 to not to exceed $600 million. Funds made available pursuant to the new title VI may be supplemented by other funds available for such purposes in Latin America, notably development loans and development grants, under appropriate circumstances. The section further provides that of the funds appropriated for use beginning in fiscal year 1963, not to exceed $100 million may be used on terms other than dollar repayable loans; i.e., grants or local currency repayable loans. The remaining funds (up to $500 million) must be used for dollar repayable loans.

The amendment adds a new section 253, relating to fiscal provisions, which provides that dollar receipts from loans under the new title VI will be available for use for further dollar repayable loans in furtherance of the purposes of the new title. It also provides that receipts from loans made for the benefit of countries and areas of Latin American (including loans to private entities) under title I of chapter 2 of part I (development loans), which are now made available by section 203 of the act for use under the development loan title, shall be available for use for further dollar repayable loans under the new title. The new section further provides that all receipts and other funds made available under the new title VI shall remain available until expended.

Chapter 3. International Organizations and Programs

Authorization:

Section 106: Amends section 302 of the act, which relates to authorization, by deleting the obsolete authorization for an appropriation for international organizations and programs for fiscal year 1962 and substituting an authorization for an appropriation for fiscal year 1963. As indicated under section 102(a), assistance to regional and other international organizations may also be provided under the authority of section 211 (development grants), the new section 251 (Alliance for Progress), and section 401 (supporting assistance) of the act.

Chapter 4. Supporting Assistance

Authorization:

Section 107: Amends section 402 of the act, which relates to authorization, by deleting the obsolete authorization for an appropriation for supporting assistance for use beginning in fiscal year 1962 and substituting an authorization for an appropriation for fiscal year 1963.

Chapter 5. Contingency Fund

Contingency fund:

Section 108(a): Amends section 451(a) of the act, which relates to the contingency fund, by deleting the obsolete authorization for an appropriation for the contingency fund for fiscal year 1962 and substituting an authorization for an appropriation for fiscal year 1963.

Section 108(b): Amends section 451(b) of the act, which relates to the contingency fund, by changing the present requirement that the President keep the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Speaker of the House of Representatives currently informed of the use of contingency funds to a requirement for quarterly reports on the use of such funds.

Part II. International Peace and Security Act of 1961

Chapter 2. Military Assistance

Sales:

Section 201(a): Amends section 507(a) of the act, which relates to sales, by making a technical change which is related to the amendment made by section 303(b) of the bill to the definition of the term "value" in section 644(m) of the act. The amended definition will clarify that the term "value" applies to sales transactions, as well as grants. The purpose of this amendment to section 507(a) of the act is to make it clear that the sales price of defense articles and defense services to foreign countries and international organizations may include normal pricing elements such as overhead cost and surcharges in addition to the "value" as defined.

Special authority:

Section 201(b): Amends section 510 of the act, which relates to special authority, by deleting the obsolete references to the fiscal year 1962 and substituting references to the fiscal year 1963, thereby extending the authority provided in that section for an additional year.

Restrictions on military aid to Latin America:

Section 201(c): Amends subsection 511(b) of the act, which relates to restrictions on military aid to Latin America, by striking "military assistance programs" and substituting "grant programs of defense articles," thereby conforming the language of this subsection to the language of subsection 511(a) of the act, which fixes a ceiling on grants of defense articles to Latin American Republics.

Part III

Chapter 1. General Provisions

Patents and technical information:

Section 301(a): Amends section 606 of the act, which relates to patents and technical information, by deleting subsection (c), which prohibits expenditure of funds appropriated pursuant to the act by the U.S. Government for the acquisition of any pharmaceutical products manufactured outside the United States if the manufacture of such product in the United States would be covered by an unexpired U.S. patent, unless such manufacture has been expressly authorized by the patent owner.

Completion of plans and cost estimates:

Section 301(b): Amends section 611(a) of the act, which relates to completion of plans and cost estimates, to render the requirements of section 611 applicable to agreements and grants under the proposed new title VI of chapter 2 of part I of the act, relating to the Alliance for Progress.

Economic assistance to Latin America:

Section 301(c): Strikes out section 618 of the act, which relates to economic assistance to Latin America, and adds a new section 618, relating to use of settlement receipts.

The substance of the present section 618 is incorporated in the proposed new title VI of chapter 2 of part I, relating to the Alliance for Progress, which would be added by section 105 of the bill. The first half of section 618, which requires economic assistance to Latin America under the act to be furnished in accordance with the principles of the Act of Bogotá, is incorporated in substance in the proposed new section 251(b) of the act which requires the President, in furnishing assistance to countries and areas under the Alliance-for-Progress title, to take into account, among other things, the principles of the Act of Bogotá and the Charter of Punta del Este. The second half of section 618, relating to agrarian reform in Latin America, is set forth verbatim in the proposed new section 251(d) of the act.

The new section 618 which would be added by the amendment provides that U.S. dollars paid directly to the United States under the agreement between the United States of America and Japan regarding the settlement of postwar economic assistance to Japan may be appropriated or otherwise made available in any appropriation act to carry out the provisions of part I of the act. The use of the dollars so received for this purpose would require appropriation action by the Congress pursuant to this authority and would be within the amounts authorized to be appropriated by part I of the act.

On January 9, 1962, representatives of the Governments of the United States and Japan signed an agreement which, upon its entry into force, will constitute a final settlement for all economic assistance furnished to Japan by the U.S. Government during the period between September 2, 1945, and April 28, 1952. Under the agreement Japan would be obligated to pay the amount of $490 million, and approval of the Japanese Diet is required before the agreement can enter into force for Japan. At the request of the Government of Japan the United States recorded its intention in connection with the agreement, to employ the major portion of the funds received from the settlement, subject to appropriate legislation, for economic assistance to less developed countries. When this authorization is enacted, acts making appropriations for part I of the act could be used to appropriate or otherwise make available for this purpose dollars paid from time to time under the agreement. The amendment would not affect up to $25 million which the United States may request under the settlement agreement to be paid in yen to finance educational and cultural exchange programs, subject to availability of appropriations.

Chapter 2. Administrative Provisions

Exercise of functions:

Section 302(a): Amends section 621 of the act, which relates to exercise of functions, by deleting subsections (b), (c), (d), and (e) as obsolete. These subsections deal with the abolition of the Development Loan Fund, International Cooperation Administration, and the Office of the Inspector General and Comptroller, the transfer of their functions, and the transfer of the Cooley amendment function of the Export-Import Bank under section 104(e) of the Agricultural Trade Development and Assistance Act of 1954, as amended (Public Law 480). All the actions provided for in the deleted subsections have been completed.

Statutory officers:

Section 302(b): Amends section 624 of the act, which relates to statutory officers, in several respects:

It strikes out subsection (d) as obsolete and redesignates subsection (e) as subsection (d). The present subsection (d) provides that any persons who, on the date prior to the effective date of the act, held certain statutory positions could continue to hold such positions for not to exceed 60 days following the effective date of the act.

It amends paragraph 2(A) of redesignated subsection (d), which relates to the Inspector General, foreign assistance, to provide that the Inspector General shall have among his responsibilities, inspections and audits of programs conducted by U.S. Government agencies under Public Law 86-735 (the Latin America Development and Chile Reconstruction Act) in addition to programs under part I of the act and of the Peace Corps, which are now provided for by paragraph 2(A). This amendment together with the existing section 624(e)(6) of the act would empower the Inspector General to suspend, subject to certain limitations, all or any part of any programs under Public Law 86-735 conducted by U.S. Government agencies. The programs under Public Law 86-735 which the amendment subjects to the jurisdiction of the Inspector General are described as those conducted by U.S. Government agencies in order to avoid a retroactive application to programs now being conducted by the Inter-American Development Bank under the Social Progress Trust Fund Agreement. Programs conducted by the Bank under that agreement differ from programs conducted by international organizations financed in part from U.S. contributions to such organizations (in which case the Inspector General's jurisdiction covers the contribution of funds to the organization but not the organization's subsequent use of the funds), because the Bank's role under the agreement as a technical matter is more that of an agent carrying out bilateral U.S. assistance programs than of an international organization carrying out its own program to which the United States contributes. The trust fund agreement does not provide for audits by the Inspector General nor does it permit the Inspector General to suspend the operations of the Bank. The present amendment in effect exempts from the jurisdiction of the Inspector General only existing programs now being conducted by the Bank, since future Alliance-for-Progress funds are being sought under part I of the act, and no provision is made for exempting programs conducted by the Bank under part I of the act from the responsibilities of the Inspector General.

Finally, the amendment makes conforming changes in paragraphs (5) and (7) of redesignated subsection (d). These changes make clear that the Inspector General shall have access to all documents and other material of U.S. Government agencies administering Public Law 86-735 and that his expenses with respect to programs under that act may be charged to appropriations made to carry out such programs.

Employment of personnel:

Section 302(c): Amends section 625 of the act, which relates to employment of personnel, in two respects.

Paragraph (1) amends section 625(b), which relates to employment of personnel in the United States, by increasing (a) the ceiling on the number of such personnel employed to carry out part I or coordinate part I and part II who may be appointed or removed without regard to any law (i.e., "excepted personnel"). H.R. 1048 (the pay reform bill) now pending before the Congress, would amend section 625(b) of the act so as to remove the authority of that section to compensate specified numbers of personnel at rates, including supergrade rates, without regard to the Classification Act of 1949. While additional number of supergrades for carrying out the act is urgently needed, no provision for such authority is being proposed in the bill at this time, because the pay reform bill as proposed will meet the need. The effect of the amendment which would be made by the bill is to increase the number of excepted personnel now authorized by section 625(b), which are not affected by the pay reform bill.

Paragraph (2) amends section 625(d)(2), which authorizes use of authority under the Foreign Service Act of 1946 for the purpose of performing functions outside the United States, by authorizing initial assignment of personnel under section 625(d)(2) for duty within the United States for a period not to exceed 2 years pending assignment outside the United States. This authority is subject to a determination that it is important for the purposes of the act. It is intended that this authority will be used to provide a period of experience in operating positions in Washington for persons outside the U.S. Government who are recruited for responsible posts in aid missions abroad. This authority will permit AID to adopt a practice similar to the current practice of the State Department in assigning Foreign Service Reserve officers to initial duty in the United States.

Reports and information:

Section 302(d): Amends section 634(d) of the act, which relates to reports and information, by changing the present requirement that the report which must be made in January of each year cover actions taken during the preceding 12 months to a requirement that such reports cover actions taken during the preceding fiscal year. This requirement will be effective for the first time in January 1963, since that will be the first January following either 12 months or a fiscal year of operations under the act. The present requirement for reports on a calendar year basis is thought to be less useful than a requirement for reports on a fiscal year basis, since calendar year reports would cut across 2 fiscal years and give an incomplete picture of both.

General authorities:

Section 302(e): Amends section 635(h) of the act, which relates to general authorities, in two respects; First, it renders the 5-year contracting and agreement authority of subsection (h) applicable to the new title VI of chapter 2 of part I, relating to the Alliance for Progress. Section 635(h) now applies to title II (development grants) and V (development research) of chapter 2 of part I. The amendment also makes a technical change in the description of funds in section 635(h) from funds "made available" under the specified sections to funds "available" under those sections. This will describe more accurately funds available for development research since such funds are

not appropriated separately for that purpose but are authorized to be taken from funds otherwise available under part I of the act.

Administrative expenses:

Section 302(f): Amends section 637 of the act, which relates to administrative expenses, in two respects:

Paragraph (1) amends section 637(a), which authorizes an appropriation for the administrative expenses of the Agency primarily responsible for administering part I (the Agency for International Development) by deleting the obsolete authorization for an appropriation for such expenses for fiscal year 1962 and substituting an authorization for an appropriation for fiscal year 1963.

Paragraph (2) amends section 637(b), which authorizes appropriations for certain administrative expenses of the Department of State in connection with functions under the act, by deleting a reference to the Secretary of State, so that appropriations pursuant to the section may be made to the President in conformity with other appropriations authorized by the act.

Chapter 3. Miscellaneous Provisions

Saving provisions:

Section 303(a): Amends section 643 of the act, which relates to saving provisions, by striking out subsection (d) as obsolete. Section 643(d) provides that nothing in the act shall affect the Peace Corps pending enactment of the Peace Corps Act or adjournment of the 1st session of the 87th Congress whichever is earlier.

Definitions:

Section 303(b): Amends subsections 644 (m) (2) and (3) of the act, which relate to definitions, by deleting the words "as grant assistance" from the definition of the term "value" in order to make it clear that the amount of reimbursement from MAP funds to the military departments under section 632(d) of the act for a defense article furnished to MAP by the military departments is the same whether MAP provides the item to a country or international organization on a grant or sales basis.

Unexpended balances:

Section 303(c): Amends section 645 of the act, which relates to unexpended balances, by adding to the existing authorization to continue available unexpended balances of funds made available under the Mutual Security Act and authority to consolidate such funds with appropriations made available for the same general purposes under the act, similar authorization and authority with respect to unexpended balances of funds made available under the act.

Part IV

Section 401: Repeals part IV of the act, which relates to amendments to other acts. The repeal of part IV will not affect the amendments contained in that part.

International Health Research Act of 1960:

Section 402. Amends section 5(f) of the International Health Research Act of 1960, which relates to delegation of functions under that act, to make clear that the President may delegate his authority thereunder to the Secretary of Health, Education, and Welfare, or to any other officer of the U.S. Government.

Act of August 1, 1956 (basic authority for the Department of State):

Section 403. Amends the act of August 1, 1956, as amended (5 U.S.C. 170g), which relates to basic authority for the Department of State, by authorizing the Secretary of State to settle promptly a small number of meritorious claims which are presented diplomatically by foreign governments from time to time. At present, the Secretary of State does not have this authority and must, therefore, seek legislation each time it is determined that a meritorious claim has been presented. This can result in delay and have adverse effects upon our relations with the foreign government concerned, particularly when the claim involves injured persons who are in need of assistance. Authority has been given to the Secretaries of the military departments by the Foreign Claims Act of August 10, 1956 (70A Stat. 154; 10 U.S.C. 2734), to pay up to $15,000 in settlement of claims presented directly by inhabitants of foreign countries for losses and damages caused by military activities abroad.

The proposed amendment is expressly limited to claims which are presented diplomatically on behalf of citizens of the presenting state and which are not cognizable under other laws or international agreements of the United States, such as the Federal Tort Claims Act, the Tucker Act, and the NATO status-of-forces agreements. The amendment provides a ceiling of $15,000, or the foreign currency equivalent thereof.

Since 1947, the Secretary of State has recommended, and the Congress has enacted, three bills authorizing payment of seven claims similar to those envisaged by this amendment. The claims totaled $40,742.65, or an average of $5,820.38 for each claim. It is not anticipated that the number of claims to be settled in the future will be materially greater than those settled in the past. Appropriations to the Department of State to carry out this authority would also be authorized by the provision.

AMENDMENTS TO THE UNITED NATIONS PARTICIPATION ACT OF 1945, AS AMENDED

Mr. FULBRIGHT. Mr. President, by request, I introduce for appropriate reference a bill to amend the United Nations Participation Act of 1945, as amended.

The proposed legislation has been requested by the Secretary of State and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill may be printed in the RECORD at this point, together with the letter from the Secretary of State, dated March 3, 1962, in regard to it.

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

The bill (S. 2997) to amend the United Nations Participation Act of 1945, as amended, introduced by Mr. FULBRIGHT, by request, was received, read twice by its title, referred to the Committee on Foreign Relations, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsections (a), (b) and (d) of section 2 of the United Nations Participation Act of 1945, as amended by Public Law 341, 81st Congress, October 10, 1949, are hereby further amended to read as follows:

(a) The President, by and with the advice and consent of the Senate, shall appoint a representative of the United States to the United Nations who shall have the rank and status of Ambassador Extraordinary and Plenipotentiary and shall hold office at the pleasure of the President. Such representative shall represent the United States in the Security Council of the United Nations and may serve ex officio as representative of the United States in any organ, commission, or other body of the United Nations, other than specialized agencies of the United Nations, and shall perform such other functions in connection with the participation of the United States in the United Nations as the President may, from time to time, direct.

(b) The President, by and with the advice and consent of the Senate, shall appoint such additional persons with appropriate titles, rank, and status to represent the United States in the principal organs of the United Nations and in such organs, commissions, or other bodies as may be created by the United Nations with respect to nuclear energy or disarmament (control and limitation of armament). Such persons shall serve at the pleasure of the President and subject to the direction of the representative of the United States to the United Nations. They shall, at the direction of the representative of the United States to the United Nations, represent the United States in any organ, commission, or other body of the United Nations, including the Security Council, the Economic and Social Council, and the Trusteeship Council, and perform such other functions as the representative of the United States is authorized to perform in connection with the participation of the United States in the United Nations. Any deputy representative or any other officer holding office at the time the provisions of this Act, as amended, become effective shall not be required to be reappointed by reason of the enactment of this Act, as amended.

(d) The President may also appoint from time to time such other persons as he may deem necessary to represent the United States in organs and agencies of the United Nations. The President may, without the advice and consent of the Senate, designate any officer of the United States to act without additional compensation as the representative of the United States in either the Economic and Social Council or the Trusteeship Council (1) at any specified session thereof where the position is vacant or in the absence or disability of the regular representative or (2) in connection with a specified subject matter at any specified session of either such Council in lieu of the regular representative. The President may designate any officer of the Department of State, whose appointment is subject to confirmation by the Senate, to act, without additional compensation, for temporary periods as the representative of the United States in the Security Council of the United Nations in the absence or disability of the representatives provided for under section 2 (a) and (b) or in lieu of such representatives in connection with a specified subject matter.

SEC. 2. Section 2 of such Act is hereby further amended by redesignating subsections (e) and (f) to be subsections (f) and (g) respectively; and by adding after subsection (d) the following new subsection:

"(e) The President, by and with the advice and consent of the Senate, shall appoint a Representative of the United States to the European Office of the United Nations with appropriate rank and status who shall serve at the pleasure of the President and subject to the direction of the Secretary of State. Such person shall, at the direction of the Secretary of State, represent the United States at the European Office of the United Nations, and perform such other functions there in connection with the participation of the United States in international organizations as the Secretary of State may, from time to time, direct."

SEC. 3. Such Act as hereby amended by inserting after section 8 the following new section:

"SEC. 9. The President may, under such regulations as he shall prescribe and notwithstanding the provisions of sections 1765 and 3648 of the Revised Statutes, as amend-

ed (5 U.S.C. 70, 31 U.S.C. 529), grant certain officers having important representation responsibilities as determined by the Representative of the United States to the United Nations, an allowance adequate to defray the additional housing costs necessitated by such representational responsibilities during the period such officer is assigned for duty in the continental United States as a member of the United States mission to the United Nations."

The letter presented by Mr. FULBRIGHT is as follows:

MARCH 3, 1962.

Hon. LYNDON B. JOHNSON,
President of the Senate.

DEAR MR. VICE PRESIDENT: I submit herewith a proposed draft amendment to the United Nations Participation Act of 1945, as amended by Public Law 341, 81st Congress, October 10, 1949, to grant the President wider discretion in assignment of top-level personnel of the U.S. mission to the United Nations, including their rank and status as ambassadors or ministers, and to give the U.S. representative discretion to assign these top representatives to the various organs of the United Nations in accordance with workload and other considerations; to authorize the President to appoint a U.S. representative to the European office of the United Nations and other international organizations; and to authorize payment of housing allowances to certain officers assigned to the U.S. mission to the United Nations.

The United Nations Participation Act now authorizes a representative and a deputy representative of the United States at the United Nations, both of whom shall have the rank and status of Envoy Extraordinary and Ambassador Plenipotentiary. In addition, another deputy representative to the Security Council is authorized and the President also may appoint, from time to time, such other persons as he may deem necessary to represent the United States in the agencies of the United Nations including the Economic and Social Council and the Trusteeship Council.

Ambassador Stevenson has found this to be unnecessarily rigid and it is proposed that the provisions specifying the number and the role of the deputies and their diplomatic titles be deleted. In lieu thereof, the proposed amendment would authorize the President to appoint such additional persons with appropriate title, rank and status as he deems necessary to represent the United States in the principal organs of the United Nations. In addition, these officers would, at the direction of the U.S. representative to the United Nations, represent the United States in any organ, commission, or other body of the United Nations including the Security Council, the Economic and Social Council and the Trusteeship Council and perform such other functions as the U.S. representative is authorized to perform.

These changes will permit the U.S. representative to organize his staff and assign their duties as he deems necessary to accomplish his mission effectively. In the case of the two deputy representatives, Ambassador Stevenson has in mind that they should be alter egos of the U.S. representative and available to represent the United States in any way in which he himself is able to do so. Although the proposed amendment gives the U.S. representative greater flexibility in determining assignments, it remains appropriate for an individual who was to be appointed, for example, to spend most of his time on the Economic and Social Council, to be appointed as representative to that Council, and that the Senate in advising and consenting on his appointment would consider primarily his ability and qualifications to fulfill those duties. This, however, would be on the understanding that if the U.S. representative to the United Nations found it desirable to utilize him temporarily as representative to one of the other organs, he would be in a position to do so.

The amendment also provides that persons who would represent the United States in the principal organs of the United Nations, including bodies that may be created by the United Nations with respect to nuclear energy or disarmament would be appointed subject to the advice and consent of the Senate. Persons appointed to represent the United States in other organs, commissions, and bodies of the United Nations would not require the advice and consent of the Senate.

It is not intended that enactment of this amendment would necessitate the reappointment of any person holding office at the time of its enactment.

The United States maintains a mission to the European office of the United Nations and other international organizations at Geneva. Geneva has become increasingly important as the site of many international conferences and organizations and the responsibilities of our mission there have increased commensurately. Therefore, it is proposed in this amendment that the President by and with the advice and consent of the Senate, shall be authorized to appoint a representative of the United States to the European office of the United Nations with appropriate rank and status who shall serve at the pleasure of the President and subject to the direction of the Secretary of State. In addition to representing the United States at the European office of the United Nations, such person shall perform such other functions in connection with the participation of the United States in international organizations as the Secretary of State may direct.

The proposed amendment to provide a housing allowance for officers of the U.S. mission in New York, is to remove the anomaly resulting from the location in the United States of the United Nations. The functions performed by the U.S. mission are essentially diplomatic in nature and the representational duties performed by the officers are identical to those performed by officers in similar positions in our Foreign Service missions abroad. However, the quarters allowances authorized by law to our representatives to foreign countries and to international organizations whose headquarters are located outside the United States, are not paid to members of the U.S. mission to the United Nations.

The United States, as the host nation, can expect and must respond to the many opportunities for the effective social intercourse of representational activities. Foreign delegations look upon the U.S. mission to the United Nations as bearing a special responsibility in this area and they expect to be invited to the homes of the members of the mission. Officers assigned to the U.S. mission are expected to maintain private living quarters in the vicinity of the United Nations in order to discharge their representational responsibilities more effectively for the convenience and in the interest of the Government. Their representational duties are for the most part discharged outside office hours, this being an obligation (and an uncompensated one) not imposed on other Government employees stationed in New York.

The expansion of the United Nations to the present total of 104 countries has greatly increased our responsibilities as host government. The problem of making known our Government's policies and determining the policies of the other governments has become of paramount importance. One of the most effective means of doing this is at small social gatherings; but in the past our contacts with other delegates have tended to be largely limited to public meetings, to corridor encounters and hasty restaurant luncheons. It is my firm belief that the personal type of representation, which is least expensive in the long run, brings about a greater understanding between our officers and their colleagues. It allows for creation of a family interest and an exchange of divergent views in the relaxed surroundings of a private American home, which make a pleasant and sympathetic atmosphere for diplomacy. Such entertainment creates good will and does not leave the impression that we are only concerned with immediate and pressing problems in the United Nations. Unfortunately, most of our officers assigned to the mission in New York have not generally been able to carry out their duties in such atmosphere. The reason is that they would be subjected to considerable personal expense in maintaining quarters adequate for such representational purposes.

As you know, the U.S. representative to the United Nations is able to have representational functions at the Waldorf Towers in which a suite is rented by the Government under authorization of a previous amendment to the present act. Only a very limited number of officers, using their personal funds, have been financially able to consider the problem of maintaining apartments in Manhattan. On the other hand, most of our officers have not been able to assume the added personal expenses of high costs for representational quarters and consequently have found it necessary to live in the suburbs. Thus, they are placed at a disadvantage with respect to their opposite numbers in other delegations who are receiving allowances which are usually granted to diplomats serving abroad.

There is need for a new allowance to defray the added costs which certain officers of the U.S. mission are forced to incur if they are to obtain and maintain housing that is adequate for the proper discharge of their representational duties. The amount of this allowance would represent the difference between cost of adequate representational housing and the cost of housing which an officer concerned would have if he had no representational responsibilities. We intend to limit eligibility to those officers having more than usual representational responsibilities, and the total cost for their housing allowances would be approximately $60,000 per annum.

The submission of this proposed legislation has been approved by the Bureau of the Budget as being consistent with the administration's objectives.

Sincerely yours,

DEAN RUSK.

NOTICE CONCERNING CERTAIN NOMINATIONS BEFORE COMMITTEE ON THE JUDICIARY

Mr. McCLELLAN. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary:

Dan M. Douglas, of Arkansas, to be U.S. marshal, western district of Arkansas, term of 4 years, vice Jay Neal; and

Alfred P. Henderson, of Arkansas, to be U.S. marshal, eastern district of Arkansas, term of 4 years, vice Richard Beal Kidd, term expired.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Wednesday, March 21, 1962, any representations or objections they may wish to present concerning the above nominations, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

NOTICE OF HEARINGS ON EDUCATIONAL QUALITY ACT OF 1962

Mr. MORSE. Mr. President, I wish to announce for the information of the Senate that the Education Subcommittee of the Senate Committee on Labor and Public Welfare intends to commence hearings on S. 2826, the Improvement of Educational Quality Act of 1962, on Wednesday, March 21, 1962, in room 4232, New Senate Office Building, at 10 a.m.

It is our hope that administration witnesses may be heard on the 21st and that the hearings can be completed either March 22 or 23.

Senators having an interest in this legislation and who desire to present statements to the subcommittee are cordially invited to do so. It would be appreciated if arrangements for the appearance of Senators could be made with the staff of the committee on extension 5375.

The subcommittee will be pleased to accept requests from institutions, agencies, and individuals having an interest in this legislation at an early date in order that invitations may be extended to them. In order to facilitate the scheduling of witnesses it would be appreciated if application for time be made in writing specifying the most convenient dates in order of preference.

Mr. President, in order that Senators may refresh their memories concerning the provisions of S. 2826, I ask unanimous consent that a letter dated February 6, 1962, signed by the Secretary of Health, Education, and Welfare together with its attachments be printed at this point in my remarks.

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

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C., February 6, 1962.

Hon. JOHN W. MCCORMACK,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: I am enclosing for your consideration a proposed bill, entitled the "Improvement of Educational Quality Act of 1962," to assist institutions of higher learning, individual teachers, and State and local school systems to improve the quality of elementary and secondary education. It would authorize closely related programs designed to improve the preparation of elementary and secondary school teachers, to offer outstanding teachers an opportunity for further study in the subjects taught by them, and to encourage widespread use of improved practices in elementary and secondary school instruction. With the exception of the amendments to the Cooperative Research Act, these programs would be authorized for a period of 5 years.

This proposed legislation would carry out the President's recommendations for improving the quality of elementary and secondary education, contained in his special message on education of February 6, 1962.

The programs that would be authorized by the bill are briefly outlined and described in the following paragraphs.

A. Improvement of quality of teaching (title I):

Among our approximately 1.6 million elementary and secondary teachers there exist wide variations in professional preparation, knowledge of subjects taught, experience, and opportunity for professional improvement and advancement. Much can be done to provide opportunities for teachers to improve their knowledge of subject matter and their command of the most advanced techniques of instruction. At the same time, attention needs to be focused on the initial preparation of teachers, because any inadequacy in this respect is difficult to overcome at a later stage. Of all the professions, teaching most requires the breadth of knowledge associated with a sound, liberal education. The programs herein proposed are aimed at bringing about improvements along these lines.

1. Arrangements with colleges and universities for the operation of institutes for advanced study by elementary and secondary school teachers and supervisors in subject matter areas in which the Commissioner of Education finds there is widespread need for improved quality of instruction (sec. 101):

This authority would provide, in other basic curriculum areas, the opportunity for improvement that has been provided in mathematics, science, and modern foreign languages through institute programs administered by the National Science Foundation and the Office of Education. The existing programs have been so successful in improving instruction that the relative neglect of these subjects has been dramatically reversed in a few years.

There are other subjects in the school curriculum, however, in which better instruction is required in order to attain high educational standards. In such fields as reading and English composition, for example, we believe that short-term and regular session teacher institutes could bring about the same revitalization of instruction as has occurred in modern foreign languages. Moreover, these skills are absolutely essential to a student's progress in all fields of learning, including the physical sciences.

In arranging, through grants or contracts, for the institutes the Commissioner of Education—in addition to making a finding that improved instruction in the subject matter is needed and is not being met through institute programs already authorized—would give preference to those subjects which are generally accepted as meeting college-entrance requirements. Teachers attending such institutes would receive a stipend of $75 per week, plus $15 per week for each dependent, during the period of attendance.

2. Authorization of 2,500 annual scholarship grants to outstanding elementary and secondary teachers for 1 year of full-time study in a college or university of their choice (sec. 102):

The number of grants authorized each year by Congress would be allocated among the States (and the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands) on the basis of the number of full-time certified elementary and secondary school teachers in each State, with not less than 10 to any State. Teachers would be selected for these grants by a representative State commission appointed by the Governor. Each teacher selected would receive an amount equivalent to his or her annual salary as a teacher, but not more than $5,000, for a year of study in the subject-matter field in which they teach or are expected to teach. While the number of such grants is relatively small, the returns would be very great. The teachers selected would be those who have demonstrated special ability as scholars and aptitude for teaching, and who show promise of being able to make significant contributions to improvements in the quality of elementary and secondary education. A year of full-time study has many advantages over the "piecemeal" approach of a few summer session courses spread over a period of years. Most teachers, however, are not able financially to devote a full year to study. The existence of these grants would serve to emphasize the high value the Nation places upon excellent teachers and to encourage similar State and private programs for teachers.

In addition to the grant to the teacher, the draft bill provides for a $500 cost of education allowance to the college or university the grant recipient attends.

3. Authorization for grants to colleges and universities for projects to improve the quality of teacher education (sec. 103):

Any comprehensive effort to improve the quality of elementary and secondary education must include a concerted effort to raise the standards of teacher preparation programs and the standards for the selection of teaching candidates and their continuation in such programs. This proposal would make grants available to higher education institutions having programs for the preparation of individuals to teach in elementary and secondary schools, to pay part of the cost of projects to strengthen these programs through improvement of course content and curriculums, improvement of student teaching activities, and improvement of selection, continuation, and graduation standards in such programs. The institutions themselves would, of course, design the projects and submit them for consideration. In reviewing applications, the Commissioner would obtain the advice and recommendations of persons competent to evaluate the merits of the projects.

We believe that there is a direct relationship between the quality and intellectual content of teacher education and the quality of student attracted to a career in teaching. There is evidence that teaching as a profession is not attracting a proportionate share of our most able college students, and that many able and dedicated teachers suffer from inadequate academic preparation. While we recognize that inadequate salaries for teachers is a major factor in this situation, we believe that improvements in teacher education can significantly improve the status of the profession. This proposal would encourage and help colleges and universities to make desired improvements.

B. Broader application of improved instructional practices (title II):

The quality of our schools could be increased significantly if all that were known concerning the most effective instructional practices were put into practice on a wide scale. Moreover, a good start could be made in averting the dangerous social and economic consequences of failure to meet the educational needs of large numbers of culturally deprived and disadvantaged children. The provisions of this bill would provide the means of accelerating desirable changes in elementary and secondary education. Educational research alone is not sufficient—we must encourage the wide implementation of research findings, while giving new vigor and dimension to the continued search for better methods of instruction in our schools.

1. Grants to States for local educational agency projects to improve the quality and effectiveness of public elementary and secondary education (sec. 201).

The purpose of this program is to help achieve one of the greatest needs in education—to translate research and experimental findings into actual practice in the schools. The knowledge is available in many aspects of school organization, instructional methods, and curricula to bring about dramatic improvements in education. But the use of new techniques has been limited almost entirely to special laboratory schools and to a few schools selected for experimental projects. Not only do innovations cost money, but parents, teachers, school administrators, and students generally must experience them in practice before they are accepted and used.

Most of the grant funds would be used to pay one-half the cost of pilot, demonstration, and experimental projects submitted to the State education agency by local public school districts and approved by the State agency under criteria and procedures set forth in the State's plan. Section 201(c) of the draft bill sets forth seven types of projects as illustrations of programs in which Federal funds might be used to improve the quality and effectiveness of public elementary and secondary education. These are: Programs and curriculum adaptations for exceptionally gifted children, for children having language difficulties, and for deprived and disadvantaged children; improving the effectiveness of teachers through preservice, internship and in-service programs; the more effective utilization of new or improved instructional materials and equipment and the development of improvements in school building design; the development of new types of instruction or programing in elementary and secondary schools; and coordination of school programs and planning in deteriorated or depressed communities with planning and programs of other organizations working to improve conditions in the area. Each project would include the acquisition of library and other material and equipment needed for the educational program involved.

Up to 10 percent of a State's allotment could be used by the State education agency to expand and improve State services in developing, evaluating, and promoting the broader application of improved instructional practices in elementary and secondary schools.

All of these activities place the emphasis upon raising the standards of excellence in our schools, and upon making this excellence available to all the children attending these schools. The bill would authorize the appropriation of $50 million annually for this program, allotted among the States on the basis of their relative populations. This is the most practical and direct investment the Nation could make in an effort to improve the quality of education. Used with intelligence and imagination, this investment would be as vital to our fundamental national interest as any we could make. The necessary know-how to improve our schools is, in large measure, at hand—and this program affords the means to apply that knowledge.

2. Amendment of the Cooperative Research Act so as to provide the means to develop, evaluate, and demonstrate new instructional practices and materials in elementary and secondary schools (sec. 202):

The purpose of the proposed amendment to Public Law 531 (83d Cong.) is to give a much-needed new dimension to the program of cooperative research in education. The act now authorizes educational research, demonstrations, and surveys to be carried out by colleges and universities and State education agencies on a contract or cooperatively financed basis. The effect of the amendment would be to authorize grants for these purposes as well as contracts, to facilitate the participation of educational research and professional training organizations as well as colleges and universities and of local as well as State educational agencies, and to specifically authorize grants to universities and colleges and other research organizations to assist them in establishing and operating, whenever appropriate in cooperation with State and local educational agencies, centers for educational research and development and for the evaluation and demonstration of experimental programs in actual school settings. A few such programs are now being conducted with very excellent results, but financial support and organizational leadership has not been sufficient to do the job on a sufficient scale or to spread the benefits widely among the schools.

This strengthening of the cooperative research program would have a direct relation to the utilization of State project grants outlined in B–1 above, in that the practices developed and tested could be used by the States on a widespread basis.

C. Miscellaneous provisions (title III):

This title of the draft bill contains pertinent definitions and administrative provisions, including a specific prohibition against Federal control of education.

In conclusion, I wholeheartedly commend to you the provisions contained in the enclosed draft bill. Every program that would be authorized in the draft bill is designed to meet a basic requirement in the effort to raise standards in education and to do so in such a way that the Federal Government does not intrude upon the fundamental responsibilities of States, local school districts, and institutions of higher learning. Each program would be related and complementary to the others so as together to provide a comprehensive approach to the encouragement of quality in elementary and secondary education. The purpose to be accomplished is truly national and is basic to the security and well-being of our Nation.

The Bureau of the Budget advises that enactment of this legislation would be in accord with the program of the President.

Sincerely,

ABRAHAM RIBICOFF,
Secretary.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, OFFICE OF EDUCATION

Improvement of Educational Quality Act of 1962

[In thousands of dollars]

	1963	1964	1965	1966	1967
APPROPRIATION REQUIREMENTS					
Title I. Improvement of Teacher Education:					
Institutes for advanced training for teachers	23,850	40,000	40,000	40,000	40,000
Scholarship grants for outstanding teachers	13,750	13,750	13,710	13,750	13,750
State commissions	500	500	500	500	500
Project grants to strengthen teacher education	15,000	25,000	25,000	25,000	25,000
Title II. Broader Application of Improved Instructional Practices:					
Grants to States to strengthen instruction—Supervision and administration	5,000	5,000	5,000	5,000	5,000
Grants to States for special projects	45,000	45,000	45,000	45,000	45,000
Grants to universities and colleges, State education agencies and local school districts—Cooperative research demonstrations	16,000	20,000	25,000	30,000	30,000
Administration	900	1,300	1,500	1,500	1,500
Total	120,000	150,550	155,750	160,750	160,750
Man-years of employment	72	117	124	124	124

	1963	1964	1965	1966	1967
EXPENDITURES					
Title I. Improvement of Teacher Education:					
Institutes for advanced training for teachers	6,000	34,000	40,000	40,000	40,000
Study awards for outstanding teachers		13,750	13,750	13,750	13,750
State commissions	500	500	500	500	500
Project grants to strengthen teacher education	6,200	25,000	25,000	25,000	25,000
Title II. Broader Application of Improved Instructional Practices:					
Grants to States to strengthen instruction—Supervision and administration	3,000	3,500	4,000	4,500	5,000
Grants to States for special projects	16,000	25,000	35,000	45,000	45,000
Grants to colleges, universities, State education agencies and local school districts—Cooperative research and demonstrations	7,500	20,000	25,000	30,000	30,000
Administration	800	1,300	1,400	1,500	1,500
Total, expenditures	40,000	123,050	144,650	160,250	160,750

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. BYRD of West Virginia:

Address by him delivered before the West Virginia Horticultural Society, Martinsburg, W. Va.

By Mr. WILEY:

Article entitled "Is a Meeting of World Minds Possible?" by Senator WILEY, published in the Yale Political of recent date.

The VICE PRESIDENT. Is there further morning business? If not, morning business is closed.

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

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

INCREASE IN URBANIZATION—SIZE OF KANSAS FARMS AND KANSAS FARM INCOME

Mr. CARLSON. Mr. President, last night the television audience was privileged to view a television program by Chet Huntley and David Brinkley entitled "Land." It was a very informative program, which stressed the shift of the rural population to the urban centers of this Nation. Those of us who come from the rural sections regret very much to see this trend, but all of us must admit the shift is occurring.

In the television showing, three places in Kansas were stressed where the shift in population from rural to urban had had a very serious effect on those communities. Similar communities would be found in practically every State in the Nation. Mr. Huntley also mentioned changes in our agricultural economy that have taken place as a result of improved farming conditions, to farmers who are able to expand through mechanization and the adoption of modern farming methods. Agriculture in Kansas is modernizing rapidly. Our farms are getting larger and the investment per farm is so large that a young man can hardly enter into farming as a business.

It is interesting to note that from a total number of farms in Kansas of about 10,000 in 1860, the State's number of farms rose rapidly during the period of the western movement and rapid settlement, to reach 167,000 by 1890. Thereafter, the rise was more gradual to the alltime high of 178,000 in 1910. During the quarter century following 1910, the number dropped a little, reaching a low of 165,000 in 1929, but building back up to 175,000 in 1935.

Farms have grown greatly in size during a century of Kansas agriculture. During the first 40 years, the average farm size in Kansas fluctuated around a quarter section in size as areas of prairie were transformed into farms. By 1920 the average size had reached 272 acres, and for the next 15 years did not change greatly. From the late 1930's, average farm size increased steadily, passing 300 acres in about 1940, and 400 in the early 1950's. This year's alltime high of 477 acres per farm is 22 percent larger than a decade ago.

The Federal-State Crop and Livestock Reporting Service has just issued figures on income of farms in our State. It is interesting to note that for the fourth consecutive year Kansas farm receipts topped the $1 billion mark. It was the first time that the State had ever put four $1 billion years together. It was only the ninth time in our State's history that farm receipts had exceeded $1 billion.

Net income per farm last year was the highest since the reporting service began computing such data in 1949.

The 1961 net income of $4,400 per farm compares to $3,429 the preceding year and the 1950–59 average of $2,675.

Mr. President, I ask unanimous consent that the entire report of the Kansas Crop and Livestock Reporting Service and a news article on it be made a part of these remarks and printed in the RECORD.

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

KANSAS FARMS DECLINE IN NUMBER BUT GROW IN AVERAGE SIZE

An estimated 105,000 farms averaging 477 acres in size are in operation in Kansas in 1962, according to the Kansas Crop & Livestock Reporting Service. This is a decrease of 2,000 in number of farms from 1961 but an increase in size of 9 acres per farm. Land in farms in 1961 totaled 50,100,000 acres, having changed relatively little in recent years. Kansas ranked fourth among the 50 States for total acres of land in farms, being exceeded only by Texas, Montana, and New Mexico—in that order. About 95 percent of the State's land area is included in farms in 1962.

From about 10,000 in 1860, the State's number of farms rose rapidly during the period of the westward movement and rapid settlement to reach 167,000 by 1890. Thereafter, the rise was more gradual to the alltime high of 178,000 in 1910. During the quarter century following 1910 the number dropped a little, reaching a low of 165,000 in 1929 but building back up to 175,000 in 1935. Since 1935 the number of farms in the State has decreased steadily with the decline during the past decade averaging about 2½ percent per year.

Farms have grown greatly in size during a century of Kansas agriculture. During the first 40 years the average farm size in Kansas fluctuated around a quarter section in size as areas of prairie were transformed into farms. By 1920 the average size had reached 272 acres and for the next 15 years did not change greatly. From the late 1930's average farm size increased steadily passing 300 acres about 1940 and 400 acres in the early 1950's. This year's alltime high of 477 acres per farm is 22 percent larger than a decade ago.

KANSAS

Number of farms and land in farms, 1860–1962

	Number of farms	Average size of farm (acres)	Land in farms (acres)
1860	10,400	171	1,778,400
1870	38,202	148	5,656,879
1880	138,561	155	21,417,468
1890	166,617	181	30,214,456
1900	173,098	241	41,662,970
1910	178,000	244	43,400,000
1920	167,000	272	45,400,000
1925	167,000	264	44,100,000
1930	166,000	283	47,000,000
1931	168,000	281	47,200,000
1932	170,000	279	47,400,000
1933	172,000	277	47,600,000
1934	174,000	275	47,800,000
1935	175,000	274	48,000,000
1936	173,000	277	47,900,000
1937	165,000	288	47,500,000
1938	161,000	295	47,500,000
1939	161,000	296	47,700,000
1940	159,000	303	48,200,000
1941	157,000	308	48,400,000
1942	153,000	316	48,400,000
1943	149,000	329	49,000,000
1944	145,000	338	49,000,000
1945	143,000	345	49,300,000
1946	143,000	346	49,500,000
1947	142,000	351	49,800,000
1948	140,000	357	50,000,000
1949	137,000	366	50,200,000
1950	135,000	374	50,500,000
1951	132,000	383	50,500,000
1952	129,000	391	50,500,000
1953	126,000	401	50,500,000
1954	123,000	411	50,500,000
1955	121,000	417	50,400,000
1956	119,000	424	50,400,000
1957	117,000	430	50,300,000
1958	115,000	437	50,200,000
1959	113,000	444	50,200,000
1960	110,000	456	50,200,000
1961	107,000	468	50,100,000
1962 (preliminary)	105,000	477	50,100,000

NOTE.—Figures for 10-year periods 1860–1900 are from the U.S. Bureau of the Census reports. For the period 1910–62 the figures are estimates prepared by the Federal-State Crop Reporting Service based on information from the Annual Assessors Enumeration and the U.S. Bureau of the Census reports.

KANSAS FARM RECEIPTS AT PEAK—TOP $1 BILLION FOR FOURTH STRAIGHT YEAR

TOPEKA.—Kansas farm receipts soared to an alltime high in 1961, the Federal-State Crop and Livestock Reporting Service said today.

Cash receipts last year were $1,361,563,000. This was $114.2 million, or 9 percent higher than the 1960 record.

It was the fourth consecutive year Kansas farm receipts topped the $1 billion mark—and the first time the State had ever put 4 billion-dollar years together.

It was only the ninth time farm receipts had exceeded $1 billion.

Net income per farm last year was the highest since the reporting service began computing such data in 1949.

The 1961 net income of $4,400 per farm compares to $3,429 the preceding year and the 1950–59 average of $2,675.

In 1961 Kansas farmers received $663.9 million from marketing of crops; $614.4 million from livestock and livestock products; and $82.2 million from Government payments.

This compares to $607.7 million from crops in 1960, $611.2 million from livestock and livestock products and $28.4 million from Government payments.

Government payments, by program, included:

Conservation, $7,208,000; Sugar Act, $343,000; Wool Act, $839,000; soil bank, $17,205,000; Great Plains conservation, $390,000; 1961 feed grain program, $52,457,000; 1962 feed grain program, $122,000; 1962 wheat program, $4,696,000.

LABOR DISPUTES AT MISSILE BASES

Mr. YOUNG of Ohio. Mr. President, within the past few months there has been a sharp increase of work stoppages, strikes, and slowdowns at some of our missile and space bases. These are direct violations of the no-strike pledge given to our Government last May by unions working at Cape Canaveral and other missile bases throughout the country.

In January there were 23 work stoppages at top priority missile bases. Such conduct is unconscionable and gives aid to the Soviet Union. That nation is already ahead of us in the exploration of outer space and in the development of missiles capable of hitting targets in this country from bases within the Soviet Union.

Twenty-five hundred man-days of work were lost in January; 953 man-days were lost in 11 work stoppages in December. Responsible union leaders have been working honestly and untiringly to prevent such stoppages and slowdowns. They have a clear duty to educate union members at missile bases on the gravity of this situation and their responsibility to their unions, and much more important, to their country.

Secretary of Labor Goldberg has been doing his utmost to solve this problem without new legislation. He is to be commended on his efforts, and let us hope that they bring results. Otherwise, if they fail, it may be necessary for Congress to enact legislation which would outlaw strikes at missile and space bases and establish compulsory arbitration machinery for settlement of labor disputes when the defense and security of the Nation are involved. It is my hope that the unions involved will resolve this problem, and that such legislation will never be necessary.

In my home State of Ohio last week a top-priority Air Force project fell victim to work stoppage. At Newark, Ohio, the Air Force's Heath maintenance annex is being renovated for a missile guidance system project. The discharge of three electricians led to the setting up of a picket line which members of other craft unions refused to cross. The business agent for the International Brotherhood of Electrical

Workers said the union had no connection with the work stoppage and that he and other craft union leaders had been urging the men to return to their jobs. Situations of this kind cannot be tolerated.

Mr. President, an excellent editorial entitled "Political Education" appeared on March 13, 1962, in the Plain Dealer, one of Ohio's great newspapers. It sets forth clearly the problems and dangers involved in these work stoppages and what must be done to put an end to such revolts against our national defense and the welfare of our country. I commend this editorial to my colleagues, and ask unanimous consent that it be printed in the RECORD at this point as part of my remarks.

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

POLITICAL EDUCATION

The president of the Ohio AFL–CIO said in Cleveland the other day that "labor wants what the average citizen wants—better schools, adequate help for the unemployed and injured worker, decent housing, fair taxes." Since this was part of an address delivered at a meeting designed to further political education of union members, it wouldn't have been amiss for the leader to add something else that the well-known average citizen wants although it escapes us why the average citizen and the worker couldn't be one and the same person.

But something which the average citizen, then, wants is better demonstrations of integrity from union members. Specifically, he wants to know why local labor groups at missile bases can't settle labor disputes without harmful strike activity.

The latter has been on the increase again despite the promise of unions involved to the contrary. A special Presidential commission last year won a no-strike pledge. Now Senator JOHN L. MCCLELLAN, Democrat, of Arkansas, is on the warpath again and threatening to push for Federal legislation banning strikes at defense installations.

MCCLELLAN is the Senator who heads the investigations subcommittee which heard testimony on the issue in 1961. He is not one of organized labor's boosters. The point is that if labor cannot control its own members, MCCLELLAN's legislative ban could find support even among those legislators most sympathetic to organized labor.

Labor Secretary Arthur J. Goldberg hopes these labor disputes can be solved without new laws because experience has demonstrated such efforts in a free society, and even in totalitarian countries, seldom meet success. He said, "It seems to me we need an increased effort to educate and inform at the local union level of their responsibilities under the pledge of their leaders."

This is a type of political education which could be added to any labor curriculum in or out of the missile department although the need there obviously is most urgent.

AMENDMENT OF SECTION 104 OF THE IMMIGRATION AND NATIONALITY ACT

Mr. DIRKSEN. Mr. President, I ask unanimous consent that H.R. 10079, which came over from the House and is now on the table——

Mr. STENNIS. A point of order, Mr. President. Is the Senate in the morning hour?

Mr. DIRKSEN. Yes, it is.

I ask that the bill be advanced to a second reading and be permitted to lie on the desk.

The VICE PRESIDENT. Is there objection to the request of the Senator from Illinois?

Mr. FULBRIGHT. Mr. President, reserving the right to object——

The VICE PRESIDENT. The Senator from Arkansas reserves the right to object.

Mr. FULBRIGHT. I do not intend to object. I have discussed this with the majority leader. It concerns the question of jurisdiction as between two committees. I think we should have some time to discuss it. I have not had an opportunity to discuss it with the chairman of the committee.

I concur in the procedure proposed by the minority leader.

Mr. DIRKSEN. Mr. President, the request is made pursuant to a discussion I had with the chairman of the Committee on the Judiciary.

Mr. RUSSELL. Mr. President, reserving the right to object, may we have the caption of the bill read?

The VICE PRESIDENT. Senators will suspend and cease conversation, so that the Presiding Officer can hear.

Mr. DIRKSEN. It is H.R. 10079, to amend section 104 of the Immigration and Nationality Act, and for other purposes.

Specifically, this deals with the abolition of the Bureau of Security and Consular Affairs, carried in the original Immigration Act, the McCarran-Walter Act. The bill came from the House Committee on the Judiciary.

Mr. RUSSELL. I am satisfied. I merely wished to know what was going on.

Mr. DIRKSEN. It is a question of reference.

Mr. RUSSELL. I do not have the type of mental process which can remember the number of every bill pending in both Houses.

Mr. DIRKSEN. I cannot do so, either.

The VICE PRESIDENT. Is there objection to the request of the Senator from Illinois?

There being no objection, the bill was ordered to a second reading, and was read the second time.

The VICE PRESIDENT. Without objection the bill will be printed, and will lie on the table.

PROPOSED ANTI-POLL-TAX CONSTITUTIONAL AMENDMENT

Mr. STENNIS. Mr. President, I predict and warn that the proposal to ban the poll tax by constitutional amendment is just the opening shot of a major battle to enact Federal legislation to prohibit literacy tests and provide that a sixth grade education would qualify a person to vote. It may open the door to an all-out civil rights battle.

It is unfortunate that the net result of these efforts may bring the important business of the Senate to a standstill, possibly for many weeks, while this blast aimed at only five States is fully debated and discussed.

I do not propose to interfere with the voting qualifications of any State. Let each State continue to determine the qualifications of its voters, just as all have done since the inception of our Government, including those which have chosen to abolish the poll tax in their own States. That is a right they had. All States should continue to have the same right to decide this matter for themselves.

This is an example of continuing pressure by various voting groups. As a result of these pressures, Federal programs and Federal interference into State affairs has grown each year. As a result, during a period of relative prosperity, our national debt has grown by leaps and bounds.

Instead of lowering the debt ceiling, we are raising it. Instead of making payments on the national debt, we are increasing it.

Certainly, the Federal Government should not enact measures taking away the rights of the States to regulate voting qualifications and grab additional powers from the States when the Federal Government itself does not have its own house in order.

Our population is increasing each year. The Census Bureau tells me that by the year A.D. 2000 our population will have more than doubled from the present figure 185,186,000. By that year, it is estimated our population may be more than 383,782,000.

It is well to note in passing that throughout all recorded history, no nation with a population of 400 million people has been able to maintain representative government. I am no pessimist, but if we continue our present course, I do not believe our Nation will prove to be any exception. The pressures from voters with a direct interest in a monetary return will become too great.

Frankly, with the growing problems of our Government and the Nation itself, I am firmly convinced that instead of lowering qualifications for voting, we should be raising them.

Mr. President, I expect to enlarge upon that thought, as well as others, during the debate on this important question.

Mr. HOLLAND. Mr. President, I rise to comment briefly upon the matter discussed by the able Senator from Mississippi. I hope to comfort the Senator from Mississippi.

This is no new step. This follows the same pattern which was followed when the woman's suffrage amendment was submitted and adopted. After many States had found that women should vote and that their participation was wholesome, the Congress submitted a constitutional amendment, which appealed to the consciences of people in the States generally, and it was approved by the jury of the States in a very short period.

I think we have a somewhat similar situation now when only five States have continued the poll tax requirement for voting. Instead of breaking down generally the control over qualifications of electors by the States, I think that by proceeding through a constitutional amendment, the recognized method which has been set forth ever since our

Constitution was adopted, we are proceeding in the most wholesome, the most regular, the most cautious and conservative method possible, and we are discouraging current efforts to tamper with this field of the law and others by mere statutes, which have no proper place, in my humble judgment, in this consideration.

HEARINGS ON TROOP INFORMATION AND EDUCATION PROGRAM

Mr. STENNIS. Mr. President, because I have received inquiries about it, I wish to make a very brief observation with reference to the hearings which are going on with reference to the so-called "muzzling" and censorship in our troop information and education program. If the voting rights debate is to continue, there is only one place of duty for the Senator from Mississippi, and that is on the floor of the Senate. That is where I shall have to be.

In regard to whether the hearings will continue, I have already announced in the committee that the question rests entirely with the committee. Anything which can be worked out with reference to someone else taking responsibility of chairmanship will be entirely all right with me.

I have been doing what I could to keep the hearings moving—not hastily, but to keep them moving—and to get something accomplished toward the ends desired.

Mr. President, I appreciate the time I have been granted.

SOVIET INTERFERENCE IN ALLIED AIR CORRIDORS TO BERLIN

Mr. JAVITS. Mr. President, apparently well-authenticated reports in our press state a continuance by the U.S.S.R. of interference with air traffic from West Germany into Berlin through the corridors traditionally reserved for such traffic of United States, British, and French aircraft. Soviet planes are stated to have scattered aluminum foil—chaff—in "a new attempt to interfere with Western radar communications" and the same news dispatch in the New York Times today states:

> For the second day in a row, the Russians flew military transports in the southern Berlin air corridor at heights and times set aside for allied commercial air traffic.

We are told by the New York Herald Tribune that Russian military night flights will follow. These petty and mischievous annoyances, which can jeopardize the safety of passengers and crews of allied aircraft, are unworthy of a great power, which is the reputation the U.S.S.R. claims in the world—I know that personally, having been there at the end of last year—and in my view are equally unworthy of being tolerated by us as a great power.

We must be unequivocal about demanding that they cease. If they do not I see little use in continuing the Conference at Geneva on the theory that we are negotiating with a great power. Geneva might just as well be wound up now.

Whatever may be the differences between the Soviet Union and ourselves about Berlin, and however deeply we may feel that we must maintain our position on Berlin, certainly both we and the U.S.S.R. can agree that the issue is a great one and it should not be reduced to the petty vexation and annoyance stage which only demeans all concerned and demeans the issue itself.

Nor should the U.S.S.R. be allowed to bring it to that level. We will be losing nothing at Geneva if we go home because the Russians persist in such petty annoyance. Indeed we will be gaining something in putting into focus the issues between ourselves and the Communist bloc if we refuse to allow these issues to be demeaned in this way.

I will yield to no one in my desire to continue to negotiate with the Russians whenever they wish to negotiate on the major issues of our times even if such negotiations appear likely to be fruitless. For the channels of communication must be kept open; but I do not believe that it is conducive to ultimate success in negotiations to tolerate petty meannesses which for no substantive reason tend to make all who participate either on the giving or receiving end look ridiculous. Hence I think the Russians should be called to their senses on this point in no uncertain way. Nothing will be lost and something may well be gained for future negotiations.

I conclude upon the following note: A nation that wishes us to accept the fact that it is seriously interested in competitive but peaceful coexistence and a nation whose leader, Chairman Khrushchev, can get quite as excited as he did in Paris in 1960 about the U–2 flights, cannot seriously expect us to tolerate the nonsense or pettiness that characterizes this hit-and-run interference with the use of the Berlin air corridors. We have learned the hard way that plain speaking to the Russians is the best course if we are ever to understand each other and to come to some permanent accommodation.

I hope the report of the colloquy between Rusk and Gromyko as it appears on the front page of the New York Herald Tribune, in which the Secretary of State is said to have spoken plainly, is true. If it is not true, I hope that Secretary of State Rusk performs precisely in the way described. That is the way in which we ought to deal with a petty matter of the character reported in the article as between one power which wants to be considered great and one power—ourselves—which I am confident is great.

I ask unanimous consent to have printed at this point in the RECORD an article entitled "Soviet Again Drops Foil in Berlin Lanes," published in the New York Times, issue of March 14, and also an article entitled "Backstage Story at Geneva: Which is Real Khrushchev?—Phone Moscow About Berlin—Rusk Tells Red," by Marguerite Higgins and published in the New York Herald Tribune, issue of March 14.

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

SOVIET AGAIN DROPS FOIL IN BERLIN LANES

BERLIN, March 13.—Soviet planes scattered aluminum foil for a half hour today at two points near Berlin in what was considered to be a new attempt to interfere with Western radar communications.

For the second day in a row the Russians flew military transports in the southern Berlin air corridor at heights and times set aside for Allied commercial air travel.

Allied officials said Western military and civilian flights in the three airlanes linking the city with the West were unaffected by the Soviet actions. Pilots of Western commercial airliners said they had not sighted the Soviet planes.

According to informed Allied sources some of the flake-like aluminum substance that was scattered by the Russians came within the outer edges of the southern and the center air corridors about 50 miles from Berlin. Most of the foil, which is known as chaff, was showered at two places outside the corridors. On Friday Soviet planes scattered the chaff for 2 hours over the Berlin area.

The purpose of dropping the tiny pieces of aluminum is to cloud radar screens. Radar is used to direct Western aircraft and keep them within the limits of the 20-mile wide corridors. Western sources explained that the foil was registered on the radarscopes, but did not affect communications.

TACTIC USED DURING WAR

Officials said that the chaff was different in size and substance from the strands of aluminum dropped by Allied bombers over Germany during World War II, but that it had the same purpose.

The Soviet military training flights in the southern corridor were completed between 8 a.m. and 12:30 p.m. at altitudes of 7,000 to 10,000 feet. Civil airliners from the Pan American World Airways, the British European Airways and Air France passed along the corridor during this period at similar heights on flights between Berlin and Munich, Stuttgart and Frankfurt in West Germany.

Officials of the three Western airlines said there had been an increase in bookings for flights to and from Berlin despite the recent Soviet harassment. This increase was attributed mainly to a 20 percent cut in flight rates that went into effect March 1. "There is no nervousness as far as our crews and passengers are concerned," one airline official said. But Willy Brandt, the mayor of Berlin, said the city government viewed Soviet actions in the air corridors "with great seriousness."

CITY AID GOING TO GENEVA

Mayor Brandt, also disclosed that he planned to send a city official to Geneva to gather information about the Berlin talks being conducted there by the foreign ministers of the United States, Britain, and the Soviet Union.

The mayor indicated that he was taking this step because he felt he was not being informed sufficiently by the West German Government on developments at Geneva. Mayor Brandt, speaking at a gathering of his Social Democratic Party, warned against any Western offer for a settlement of the Berlin issue apart from related issues. "We cannot afford a weakening of the Western position here," he said.

Meanwhile, British officials said the Royal Air Force corporal who was wounded by East German border guards Saturday night, continued in serious condition at a hospital in Potsdam, East Germany.

The soldier, Cpl. Douglas F. Day, 26 years old, was wounded when East German guards near Potsdam opened fire on a British military car that he was driving. Corporal Day has undergone a stomach operation.

Soviet authorities granted permission to the corporal's father, Fred Day, of Bristol, England, to visit his son at Potsdam. Mr. Day was flown to West Berlin and was driven to the East German hospital by the British military liaison mission.

BACKSTAGE STORY AT GENEVA: "WHICH IS REAL KHRUSHCHEV?"—PHONE MOSCOW ABOUT BERLIN—RUSK TELLS RED

(By Marguerite Higgins)

WASHINGTON.—Behind the drawing room doors in Geneva the dialogue between Soviet Foreign Minister Andrei A. Gromyko and his American and British counterparts has been blunt—perhaps, to the Russian, surprisingly blunt.

Reaching Embassy Row yesterday were portions of previously unreported conversations between Secretary of State Dean Rusk and Mr. Gromyko, and between Mr. Gromyko and British Foreign Secretary Lord Home.

The talks concerned Soviet harassment of Allied planes in the Berlin air corridors and went like this:

Gromyko: (to the American Secretary of State) "I know nothing of the difficulties you mention in the air corridor."

Rusk: "May I observe, Mr. Foreign Minister, that if there is a gap in your information concerning the air corridors, it could very easily be rectified by you through one quick call to the Soviet Ministry of Defense in Moscow, which I am sure you know how to reach?"

Gromyko: (icily): "And may I be permitted to observe, Mr. Rusk, that it is improper for the American Secretary of State to tell the Soviet Foreign Minister how to conduct his business?"

Rusk (letting this remark pass): "Indeed, Mr. Gromyko, I have noted of late that Mr. Khrushchev seems to be speaking with two voices.

"One Khrushchev is the man of peace. The other Mr. Khrushchev is the one who makes the decisions that cause difficulties in the air corridors.

"It is difficult to know which Mr. Khrushchev is running the show. From now on I'm going to listen with two ears to try and establish which is the real Mr. Khruschev."

In his Geneva conversation Monday afternoon with Mr. Gromyko, Lord Home, after the usual polite exchange of greetings, also led the conversation around the Soviet harassment of allied planes.

The vigor with which Lord Home expressed himself was the talk of the diplomatic set here, because the British have sometimes been considerably milder in their response to Soviet-created troubles over Berlin than has, in Washington's view, been suitable.

RETURN TO LONDON

Lord Home (to Gromyko): "When I first heard that the Soviet Union was dropping chaff (tiny pieces of aluminum foil designed to interfere with radar) in the corridors, I was already on my plane headed for Geneva. And I want you to know that when I heard of these difficulties, I almost ordered the plane to return to London."

Gromyko: "I know nothing of the difficulties you mention in the air corridor."

Lord Home: "And furthermore, I may yet do so (go back to London). I want to make that perfectly plain."

In Geneva, Mr. Rusk spent an hour alone with Mr. Gromyko yesterday discussing the Berlin question. No progress was reported.

"It is too early for any conclusions," Mr. Gromyko said as he left Mr. Rusk's hotel.

THE ROLE OF THE SMALL NEWSPAPER

Mr. HRUSKA. Mr. President, although we sometimes take them for granted, the newspapers of America fill one of the most important roles in American life. This is as true of the smallest Nebraska weekly as it is of the New York Times.

The Senate Post Office and Civil Service Committee is now considering a bill which would increase the cost of mailing newspapers, under second-class permits. This increase could well sound the death knell for many small papers. In the past several years, there has been a discouraging drop in the number of hometown newspapers. These small operations were never great moneymakers; I never knew a rich country editor. But they served their readers as no other paper could.

Now many of these papers, already hard pressed by rising production costs, are threatened with extinction with addition of still another burden.

I have here half a dozen letters from Nebraska editors indicating the extent of this burden on their own operations.

M. A. Stull, of the Tecumseh Chieftain, estimates that his second-class postage bill would be nearly trebled, from $276 to $797. Alton Wilhelms, of the Stromsburg Headlight, figures that the 1-cent surcharge will raise his postage cost nearly 200 percent. The Grand Island Daily Independent points out that since 1952, second-class rates have increased 89 percent and that this bill would increase its postage costs by 117 percent, from $15,000 to $33,000.

Floyd Wisner, of the Scottsbluff Star-Herald, has calculated that in 2 years, his increase would go up 150 percent, from $9,784 to $24,364. Kerry Leggett of the Ord Quiz states that nearly half his mail circulation would be subject to the surcharge, raising his postal costs 126 percent, from $685 to $1,547.

The Kearney Daily Hub, protesting the rate increase, says:

A free press is necessary for an enlightened people and they must have that free press readily and economically available.

These, Mr. President, are only a few of the many letters I have received on this matter. I am sure that other Senators have received similar expressions.

Currently the revenues on second-class mail are approximately $98 million a year. The administration, through a surcharge device of 1 cent per copy, seeks to raise an additional $53 million. This will amount to confiscation for many smaller publications. Under administration policy, it makes no difference whether a publication weighs an ounce or a pound or whether it travels 10 miles or a thousand. So long as it moves out of the county in which it is mailed, a penny surcharge is exacted.

In nearly every letter from an editor or publisher which has reached my desk, there is an expression of willingness to pay a fair share; the objection is to a disproportionate amount.

The surcharge concept is a grave, illogical error and should be replaced by pound adjustments which give recognition to weight and distance. There is no question that a few large publications can withstand the impact of the administration proposals, but I, for one, do not believe in fostering a monopolized press in this fashion.

America needs its smaller papers. We must exercise great care that in our zeal to raise revenues, we do not defeat the purpose expressed in the Postal Policy Act of 1958, which recognizes the public service performed by the Nation's press.

I ask unanimous consent to have printed at this point in the RECORD several letters I have received on that subject from editors in the State of Nebraska.

The PRESIDING OFFICER (Mr. HARTKE in the chair). Is there objection?

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

THE TECUMSEH CHIEFTAIN,
Tecumseh, Nebr., March 3, 1962.

Hon. ROMAN L. HRUSKA,
U.S. Senate, Washington, D.C.

MY DEAR MR. SENATOR: I am much perturbed by the action of the House in accepting a postage rate bill which so heavily affects publishers like ourselves. I cannot be otherwise when I consider the fact that the proposed increase on our newspaper postage account would be over 188 percent of the annual cost under the present rates.

Our 1961 newspaper postage bill was $276.86. The proposed rate bill would add $521.04 to that amount annually. Our October 1, 1961, circulation was 2,345. A count reveals that 2,106 go through the mails. Of that number, 1,002 are mailed outside of the home county, thus accounting for the $521.04 estimate of postal cost increase under the House-passed legislation.

I would like to see a larger allowance for public service costs than was made by the House. I am led to believe that the public—users of first class mail, as well as subscribers to newspapers—should be given more relief than is provided by the $248 million public service allowance listed by the House. This is far from the estimate placed on public service by Senator JOHNSTON, chairman of the Senate Post Office Committee, the figure being credited to him being $300 to $350 million.

The surcharge as a basis for a postal rate increase, as it pertains to publishers, can be challenged for its inequities it causes. A weekly publisher with a small four-page edition (granted most have a minimum size of eight pages) pays the 1-cent-per-copy surcharge while a daily publisher with editions running beyond 150 pages pays only the same amount on the surcharge basis. This inequity points to the need of a return to the poundage basis.

Your attention will be appreciated when this matter comes before the Senate.

Respectfully yours,

M. A. STULL,
Co-Publisher.

THE HEADLIGHT,
Stromsburg, Nebr., February 8, 1962.

Senator ROMAN HRUSKA,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HRUSKA: My purpose in this letter is to better acquaint you with the dangers of postal rate increase bill, H.R. 7927.

The 1 cent per copy surcharge on all mail subscriptions outside the county of publication will raise my postage cost nearly 200 percent. I have just finished a complete count of all mail circulation that will be affected by this new proposed legislation and learned that 41.4 percent of my circulation will be hit.

And I stand in a better situation than many small weekly newspapers who publish near one, two, and sometimes three county line borders. Many of us will suffer badly, some possibly going down with the trail of also-beens.

Within the past 10 years my postage costs have already been raised some 60 percent. It seems rather unfair if we were to be socked another 200 percent which would be the situation for the Headlight.

I don't believe I'm asking too much when I ask for you to speak out against and vote "no" to such postal-rate increases.

Most respectfully,

ALTON WILHELMS,
Editor.

THE GRAND ISLAND DAILY INDEPENDENT,
Grand Island, Nebr., January 23, 1962.

Senator ROMAN HRUSKA,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HRUSKA: The proposed legislation on second-class postage, in my opinion, would mean an unreasonable increase in postal charges for newspapers if it is passed by the Congress.

Since 1952, second-class rates have increased 89 percent, while during the same period of time, first-class rates have increased only 33 percent.

About one-fourth of our present subscribers receive their papers by mail. The proposed postal bill would increase our second-class postage by 117 percent to $33,000 annually. The proposal now before Congress appears unfair since it imposes the same increase for small daily and weekly newspapers as well as the large magazines and newspapers which are distributed all across the country. It would seem to me that the present method of charging for second-class postage—by zone and by weight—is fair to all users of second-class mail.

It is my opinion that the Post Office Department is charging too much of the cost of the rural delivery to newspaper handling. The fact is that the second-class postage paid for newspapers helps defray the cost of rural delivery service.

If the proposed increases are approved by the Congress, we will be forced to find other methods of distributing our papers to the subscribers which in the long run will mean less revenue to the Post Office Department.

I hope that you can see your way clear to oppose this bill when you are called on to cast your vote.

Sincerely yours,

WILLIAM A. STAUFFER.

SCOTTSBLUFF DAILY STAR-HERALD,
Scottsbluff, Nebr., February 26, 1962.

Hon. ROMAN L. HRUSKA,
State Post Office,
Washington, D.C.

DEAR SIR: I haven't bothered you with an expression of opinion concerning the proposed postal rate increases, supposing that you might be covered up with letters from other Nebraska publishers. But, I believe that I should tell you my attitude on the proposal.

Although there is doubt cast upon the postal department's system of bookkeeping and allocating costs I assume that some additional revenue is justified, considering the fact that the wages of postal employees keep going up.

What should be the rate raise as it affects second-class mail? Should it be 100 percent, 200 percent, 300 percent, 400 percent? Some publishers claim this will occur. Is this exorbitant? Would private enterprise price itself out of existence if it thought in terms greater than, say 10 to 15 percent? What is reasonable and therefore justified?

According to my calculations, the proposed new rate would hike our postal bill about 75 percent the first year and an additional 75 percent the second year, making a total increase in 2 years of 150 percent.

Our postal bill in 1961 was $9,784.13, solely for second-class postage. The surcharge proposed would lift this cost to an estimated $17,079 in the first year and to an estimated $24,364 the second year.

We could not absorb this increase and we have no intention of doing so, but we might be forced to investigate the feasibility of attempting distribution by some other agency or method.

That we should make such a study is not an idle assumption when one considers the money invested every day in distribution of our papers on services which, in other circumstances, would have to be borne by the department itself.

I refer to the fact that railway post office schedules are such that we cannot use them. On the contrary, we deliver to post offices throughout our trading area, at our own cost, the vast bulk of the papers which are destined for delivery in lockboxes or by rural or city carriers.

These papers are dispatched, segregated and bundled in such a way that upon arrival at post offices via our trucks a minimum of handling is required by postal employees. We pay the full postage rate on these papers, the same as if they had been handled in bulk by the Scottsbluff post office and delivered by transportation facilities paid for by the Government.

Inconsistently enough, at the same time that the postal department is proposing excessive surcharge rates, it is also planning to maintain its policy of free in county.

This policy is not sought by daily newspapers. We do not believe that we should have any subsidy, whatsoever, but that we should pay a reasonable fee for services rendered by the Post Office Department for handling our papers, whatever their destination may be.

I have not mentioned the effects of increases in other classes of mail, which we also would bear, as I do not wish to contribute to an already overflowing file in your office.

But, despite the inflationary effects of increases, we are not opposed to some raise, times being what they are, and with the administration little disposed to control them.

We would prefer a position of moderation, and that is what we are hoping you can adopt on this question, as you have on other equally important matters in the past.

We think increases of 150 percent or more are not only immoderate and unrealistic, but are fantastically inflationary, completely unnecessary and smacking of arrogance.

Is the postal department "shooting for the moon," or is this activity still the function of the space administration?

With best regards, I am,

Yours sincerely,

FLOYD C. WISNER.

THE ORD QUIZ,
March 1, 1962.

Senator ROMAN HRUSKA,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: Thank you for your letter and telegram keeping me informed on the postal rate hearings.

Last week I mailed you a copy of a questionnaire being circulated by the National Editorial Association. This was a breakdown of how our business would be affected by the postal rate increase bill, H.R. 7927.

This legislation would increase our postal costs 126 percent.

Our total circulation of the Ord Quiz is 3,413. Of our mail circulated papers, 48 percent would be affected by this legislation.

An additional 52 cents per subscriber per year for weekly newspapers throughout the Nation would be a decisive factor in determining their ability to hold enough subscriptions for many of them to remain in business.

In view of the fact that this postal rate increase would bring in enough revenue to grant another postal workers wage hike, I can't see how the wage increase could possibly offset the unemployment necessitated by the cutting of expenses or complete closedown of many weeklies.

I am sure that weekly publishers would gladly sacrifice the present free, in-county delivery for a nominal surcharge, but adding $862.16 to our annual $685.13 postal bill is way out of proportion.

Thank you, for any help you can give us on defeating or amending this legislation.

Sincerely,

KERRY E. LEGGETT,
Advertising Manager.

KEARNEY DAILY HUB,
Kearney, Nebr., February 23, 1962.

Senator ROMAN L. HRUSKA,
Senate Office,
Washington, D.C.

DEAR SENATOR HRUSKA: Thank you for your telegram stating the date of the postal rate hearings. We are quite concerned as is every small newspaper across the country.

I am enclosing an editorial that appeared in the Kearney Hub with a few of my comments on the subject.

First, may I say that we are not opposed to a reasonable postage increase based on a sound rate structure. The surtax is not an equitable rate formula. The reason is as well known to you as it should be to your colleagues discussing this proposal. It imposes the same rate regardless of the difference in handling costs of the newspaper or magazine.

The proposed increase gives me more concern for the industry than to my own case, since we are so situated that we will experience a much lower percentage increase than most other newspapers. In our agricultural economy, our people and businessmen are already feeling the pinch of having to buy necessary goods and equipment from high economy areas such as the East and then try to operate in a much lower economy such as we have here. This condition will make it exceedingly difficult to pass on these postage increases to our subscribers, since they are forced to buy from the higher economy, but certainly they will not be forced to buy a newspaper. This will have the effect of depriving the American people of their basic news media, the newspaper. A free press is necessary for an enlightened people and they must have that free press readily and economically available.

While it is good business to stay up on operating costs, it seems strange that the present administration has asked such a crash program to try to balance the postal department when in the same breath they are talking of raising the national debt and talking of increased aid to various countries even though this aid may be used to print and mail propaganda against our country. While I agree that certain of these expenditures are necessary, should they by the same token saddle American enterprise with a crippling burden to balance the postal department which was originally designed and set up with a part of the operating cost to be charged off as public service. I read now that the adminstration is going to make an effort to raise civil service salaries to a point where some will exceed those of our legislators. If we are to economize, let's do it in all areas.

Sincerely,

ROBERT S. AYRES,
Business Manager.

PUBLIC OPINION AND REPRESENTATION

Mr. SCOTT. Mr. President, the Philadelphia Evening Bulletin of March 13, 1962, contains an editorial praising Representative RICHARD SCHWEIKER, of Pennsylvania, for a recent poll conducted by him.

As the Bulletin notes, the type of survey conducted by Representative

SCHWEIKER is "a valuable adjunct to representative government."

I ask unanimous consent to insert the editorial in the RECORD.

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

PUBLIC OPINION AND REPRESENTATION

Congressman SCHWEIKER, of Montgomery County, is setting a useful precedent with the comprehensive survey of public opinion which he is now undertaking in the county on significant issues.

He is in the process of sending questionnaires to every household in the county soliciting opinions on 33 questions which range from economic aid to the more independent Communist nations and the U.N. bond issue, to medical care for the aged under social security, aid to education, military muzzling and the proposed Department of Urban Affairs.

No signature is needed on the questionnaire, though party affiliation and recent voting record information is requested. The latter is solicited to serve as a control to determine how closely the replies represent a true cross-section of the county's actual voting characteristics. A summary of the results of the survey will be published upon its completion.

The questionnaire contains spaces for "yes," "no," and "not sure" responses. A high incidence of "not sure" answers to any question should indicate a need for further education on that particular issue. Such information could well be valuable to civic organizations.

The function of a Congressman is to represent his constituents, although the final decision on any issue must and should rest with the Congressman himself. He may possess information, for example, of which his constituents generally are unaware. If he votes counter to the majority will, he must either explain his stand to the satisfaction of his constituents or risk defeat at the polls. This is the way representative government should work.

A survey of this type, therefore, is a valuable adjunct to representative government.

ADDRESS BY JAMES B. MISKELLY AT NEW HAMPSHIRE SUNDAY SERVICE AT VALLEY FORGE SHRINE

Mr. MURPHY. Mr. President, on Sunday, March 4, 1962, the 39th Annual New Hampshire State Sunday Service was held in the Washington Memorial Chapel, the National Shrine, Valley Forge, Pa. The service was arranged by the Reverend John Robbins Hart in conjunction with the Honorable Wesley Powell, Governor of New Hampshire.

Mr. James B. Miskelly, of Keene, N.H., represented the Governor. I ask unanimous consent to have printed in the RECORD the remarks of Mr. Miskelly.

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

It is indeed a privilege and a distinct honor to have a share in the New Hampshire State Sunday Service and to be here in this beautiful Washington Memorial Chapel in Valley Forge, where, I understand, every Sunday morning the service follows that in which Washington took part in childhood, youth, and manhood.

I bring you the greetings of Gov. Wesley Powell and the people of New Hampshire. Governor Powell deeply regrets that he cannot be here with you today. While Dr. Hart's invitation was received over 2 months ago, a longstanding commitment had previously been made for the Governor to be in northern New Hampshire today. While it is my privilege and pleasure to represent Governor Powell at this traditional service, I only wish that you might have had the opportunity to meet and hear him, for in addition to being a great Governor, he is also a fine preacher and a dedicated Christian layman.

"Let me live in a house by the side of the road, where the race of men go by," wrote the New Hampshire poet, Sam Walter Foss. Nowhere could he find a finer race of men than in his native State.

New Hampshire knew the youth of Daniel Webster, of Horace Greeley, and Charles A. Dana; of our 14th President, Franklin Pierce, of Gen. Leonard Wood.

New Hampshire read the first stories of Winston Churchill and Thomas Bailey Aldrich; watched Judge Shute create the immortal "Plupy." She heard the earliest melodies of Amy M. Beach; the earliest verse of Celia Thaxter. She saw the sculptor, Daniel Chester French, try out his chisel; and the architect, Ralph Adams Cram, dream stately buildings. Chickering and Estey, Carter and Pillsbury, and many another New Hampshire name bespeak the prowess of her sons in industry.

No other State has been more beloved of genius. The sculptor Augustus St. Gaudens lived and worked here. The memory of composer Edward MacDowell is honored by the books and plays and music that pour forth from the MacDowell colony in Petersborough; the Cornish colony is noted in the world of arts and letters.

Here the philosopher William James wandered content at the foot of Mount Chocorua, and here Whittier and Robert Frost and many another poet has found inspiration for his pen.

Four great New England rivers have their source in New Hampshire. The Saco and the Merrimack, the Connecticut and the rushing Androscoggin turn the wheels of industry. New Hampshire textiles and blankets, boots and shoes, paper and wood products are known the world around. Her granite monoliths grace our buildings, her potatoes and peaches and apples and maple sugar delight our tongues.

Proud is she of Dartmouth, that college sprung from Eleasar Wheelock's determination "to spread Christian knowledge among the savages of our American Wilderness." She honors Exeter and St. Paul's and her flourishing University at Durham. She rejoices, and well she may, in the mountain ranges and cool blue lakes and the bracing healthful air that draws thousands of summer and winter visitors across her welcoming borders.

Join this joyous procession. Drive through the White Mountains, happiest of playgrounds. Ride America's oldest cogwheel railroad to the top of Mt. Washington. Linger to look upon the Great Stone Face—the Old Man of the Mountain at Franconia Notch, and to etch Echo Lake in your memory. See the Navy Yard at Portsmouth where John Paul Jones equipped the Ranger, and the wild and curious Isles of Shoals off the New Hampshire coast. Camp on the shores of Winnepesaukee or Sunapee or Ossipee—their musical Indian names a constant witness that "here lived and loved another race of beings."

Early historians record that in 1623, under the authority of an English land grant, Capt. John Mason, in conjunction with several others, sent David Thompson, a Scotchman, and Edward and Thomas Hilton, fish merchants of London, with a number of other people in two divisions to establish a fishing colony in what is now New Hampshire, at the mouth of the Piscataqua River.

One of these divisions, under Thompson, settled near the river's mouth at a place they called Little Harbor, or Pannaway, now the town of Rye, where they erected salt-drying fishracks and a factory or stonehouse. The other division under the Hilton brothers set up their fishing stages on a neck of land 8 miles above, which they called Northam, afterward named Dover. Nine years before that, Capt. John Smith, of England and later of Virginia, sailing along the New England coast and inspired by the charm of our summer shores and the solitude of our countrysides, wrote back to his countrymen:

"Here should be no landlords to rack us with high rents, or extorted fines to consume us. Here every man may be a master of his own labor and land in a short time. The sea there, is the strangest pond I ever saw. What sport doth yield a more pleasant content and less hurt or charge than angling with a hook, and crossing the sweet air from isle to isle over the silent streams of a calm sea?"

Thus the settlement of New Hampshire did not happen because those who came here were persecuted out of England. The occasion, which is one of the great events in the annals of the English people, was one planned with much care and earnestness by the English crown and the English Parliament. Here James the First began a colonization project which not only provided ships and provisions, but free land bestowed with but one important condition, that it remain always subject to English sovereignty.

So it remained until the War of the Revolution. Smith first named it North Virginia but King James later revised this into New England. To the map was added the name Portsmouth, taken from the English town where Capt. John Mason was commander of the fort, and the name New Hampshire is that of his own English county of Hampshire.

A pre-Revolution event occurring in New Hampshire, the first aggressive act of the Revolution, was the removal in 1774, by a small party of patriots at New Castle, of the powder and guns at Fort William and Mary. This act of treason, led by one of New Hampshire's true sons, John Sullivan (later Gen. John Sullivan under George Washington), took place on December 14, 1774. One hundred kegs of powder were stolen and hid in the homes of friends and in the basement of the church in Durham. This powder was later used at the Battle of Bunker Hill, at which nearly all the troops doing the actual fighting were said to have been from New Hampshire.

When war broke out, John Sullivan took to the field on June 22, 1775, as a brigadier general and reported to General Washington at Cambridge, Mass. He superintended the fortifications at Boston and at Piscataqua and saw service in Canada and Long Island.

While Washington was marching to Brunswick, N.J., Sullivan struck two British regiments at Princeton. He had a brilliant record, retiring from the army on February 9, 1779. He then went to Congress, where he made some strong friends and bitter enemies. Harvard University granted him a master of arts degree in 1780, and Dartmouth College granted him an LL.D. in 1789. General Sullivan died at his New Hampshire home in 1795.

Other Revolutionary events included the signing of the Declaration of Independence by New Hampshire's Josiah Bartlett, Matthew Thornton, and William Whipple; General Stark's victory at the Battle of Bennington; and the success of Capt. John Paul Jones at sea.

Just as it was the first to declare its independence and adopt its own constitution, New Hampshire was the ninth and deciding State in accepting the National Constitution as that of a republic, never to be known under any other form of government. New Hampshire's John Langdon was the first

Acting Vice President of the United States, and was President of the Senate when Washington was elected first President.

Many events have helped to individualize New Hampshire's unique history as the decades have followed each other down to the present time. Both Washington and Lafayette passed within our borders. Morey's Connecticut River steamboat preceded Fulton's by 17 years. An American President, Franklin Pierce, and a Vice President, Henry Wilson, were elected, both from New Hampshire. Daniel Webster won his famous Dartmouth College case before the Supreme Court. The first American public library was established at Peterborough.

The world-recognized Concord Coach was made here, as was America's first cog railroad to Mount Washington dating 1869.

Statesmen, educators, inventors, preachers, scientists, explorers, authors, industrialists, engineers, lawyers, diplomats, all are arrayed in the long list of notables New Hampshire claims as coming from her soil.

We're observing the Civil War Centennial this year. New Hampshire played an important part in the Civil War. Five thousand New Hampshire soldiers and sailors died either in actual battle or from disease resulting from the hard life of a Union soldier in the Civil War. Of equal importance is the fact that over 38,000 New Hampshire citizens served the Union cause. Twelve percent of the citizens of this State actually participated in the conflicts, and more died in the Civil War than have died in all wars since.

The first Civil War volunteers in New Hampshire, in 1861, were garrisoned at Fort Constitution in Portsmouth, N.H., the main fortification of Portsmouth Harbor. It is altogether fitting that in 1961 the atomic submarine *Abraham Lincoln* was launched at the naval yard in Portsmouth.

More than a score of vessels was built during the Civil War for the U.S. Navy at Portsmouth. The most famous of the warships built here was the *Kearsarge*, a Union ship that followed the Confederate sea raider, the *Alabama*, halfway acros the Atlantic and destroyed her, after forcing her to leave the safety of Cherbourg Harbor. The loss of this important Confederate ship had a devastating effect on the Confederate naval effort and morale. Prior to her sinking, the *Alabama* had, in 9 short months, sank or captured approximately 70 Union ships.

About 1,600 New Hampshire men reenlisted after their first term of duty. The loss of men from the 5th New Hampshire Volunteers was greater than from any other regiment in the Union Army.

New Hampshire is commonly known as the Granite State. The soil is suitable for fruits, flowers, and vegetables. The forests of pine, spruce, and hardwood add beauty to the landscape and wealth to the land. The White Mountains are the natural feature which has the widest fame. New Hampshire bodies of water cover 115,000 acres and vary from small ponds to Lake Winnipesaukee, which is 22 miles long and 8 miles wide.

Dairying is a large business and in recent years the quality of the herds has increased tenfold. There are 5,800,000 acres of land in the State, of which 1,960,000 are used for farming. But, surprisingly enough, New Hampshire is currently the second most industrialized State in the Union.

New Hampshire is situated the most northern of the Thirteen Original States. It is a small State, 180 miles long and 50 miles wide, although the extreme width is 93 miles. It is bounded on the north by Quebec Province in Canada, on the east by Maine and the Atlantic Ocean, on the south by Massachusetts, and on the west by Vermont. The Connecticut River is the western boundary. The population in 1960 was 601,000.

The State bird is the Purple Finch; the State flower is the Purple Lilac; the State tree is the White Birch tree; the State motto is "Live free or die," written by Gen. John Stark, July 31, 1809, and was his volunteer sentiment sent to be read on August 16, 1809, at the 32d anniversary of the Battle of Bennington.

The State flag has a field of blue, in the center of which is the State seal surrounded by a wreath of laurel leaves with nine stars interspersed.

Reverend Dr. Hart, it is my pleasure to present to you as president of the Valley Forge Historical Society, this State flag of New Hampshire and a framed copy of the State motto: "Live free or die." Also, I would like you to have as a gift from Governor Powell a copy of the latest "New Hampshire Manual," in which is contained much of the history I have given here today, as well as many other interesting facts about New Hampshire.

Sam Walter Foss, one of America's beloved poets, was born at Candia, N.H., in 1858; graduated at Brown University; engaged in newspaper work; was librarian of Somerville, Mass., Public Library. One of my favorite poems, authored by Sam Walter Foss was his "The House by the Side of the Road":

"There are hermit souls that live withdrawn
In the peace of their self-content;
There are souls, like stars, that dwell apart
In a fellowless firmament;
There are pioneer souls that blaze their paths
Where highways never ran;
But let me live by the side of the road
And be a friend to man.

"Let me live in a house by the side of the road
Where the race of men go by—
The men who are good and the men who are bad,
As good and as bad as I.
I would not sit in the scorner's seat,
Or hurl the cynic's ban;
Let me live in a house by the side of the road
And be a friend to man.

"I see from my house by the side of the road,
By the side of the highway of life.
The men who press with the ardor of hope,
The men who are faint with the strife.
But I turn not away from their smiles nor their tears,
Both parts of an infinite plan;
Let me live in my house by the side of the road
And be a friend to man.

"I know there are brook-gladdened meadows ahead
And mountains of wearisome height;
That the road passes on through the long afternoon
And then stretches away to the night.
But still I rejoice when the travelers rejoice,
And weep with the strangers that moan,
Nor live in my house by the side of the road
Like a man who dwells alone.

"Let me live in my house by the side of the road
Where the race of men go by;
They are good, they are bad, they are weak, they are strong
Wise, foolish—so am I.
Then why should I sit in the scorner's seat,
Or hurl the cynic's ban?
Let me live in my house by the side of the road
And be a friend to man."

MUTUAL SECURITY PROGRAM

Mr. WILEY. Mr. President, yesterday the administration presented to Congress its budgetary recommendations for the mutual security program.

Over the years, the mutual security program has served as the foundation for free world defense.

Changing world conditions, however, now require that Congress take a microscopic look at the recommendations.

I request unanimous consent to have a brief statement on the President's recommendations printed at this point in the RECORD.

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

STATEMENT BY SENATOR WILEY

The United States—as a leader of the free world—has a fundamental responsibility for preserving and protecting our way of life and attempting to establish and perpetuate a world climate for peace.

Since World War II, our Nation has engaged in realistic efforts to block the efforts of communism to conquer the world, create a climate for world peace, and carry forward a historically unique program not only to live and let live, but also to live and help live.

To accomplish this objective, our country has dedicated money (billions of dollars); material and equipment; technical know-how; and other economic, military, and political assistance to strengthen the free world.

Now, for 1963, the President is requesting approval by Congress of $4.8 billion.

In evaluating the administration's recommendations, we must take a hard look at the following factors: First, year after year, the American taxpayer has been forking over great sums of money for mutual security programs:

1. The economic status of nations—particularly the industrialized countries of Western Europe—have changed substantially; and

2. Communist aggressions, economic, military, and political—change from year to year—requiring shifts of direction and/or emphasis from time to time, in our anti-Communist programs.

The Congress then, in my judgment, has a fundamental responsibility for focusing a microscopic eye upon the proposed mutual assistance program. The objective would be to:

1. Obtain a clear understanding of its objectives (ascertaining that these are absolutely essential for security and peace);

2. Weed out unnecessary activities;

3. Assure that administrators are imbued with a deep sense of stewardship—reflecting the interests of the taxpayers, as well as of security (not become involved in foreign aid empire-building);

4. Eliminate waste, duplication, as well as unnecessary projects; and

5. Generally to assure that a program of this scope—and substantial cost is absolutely essential to security and peace.

First to best serve U.S. interests, the following factors, I believe also should be given careful consideration:

1. Encouraging industrially progressing allies to assume a proportionately larger share of the burden of strengthening anti-Communist defenses, as well as underwriting progress in lesser developed nations.

2. Place a strong emphasis on loans rather than grants.

3. Assert—more so than in the past—U.S. right to know, and evaluate how the American taxpayers' dollars are utilized in other countries.

4. Undertake a realistic study to determine the long-range impact which foreign-made commodities—produced as a result of U.S. economic assistance—will ultimately have on our domestic economy.

Despite its high costs, the mutual security program remains an essential foundation for free world defenses. Over the years, both major political parties; military experts; especially appointed extra governmental committees, including business, labor, and other segments of the economy—all of these have almost unanimously agreed that the mutual security program is essential to our national security—particularly in the face of continued great and growing threats to peace posed by communism.

The President's recommendations, however, are not in my judgment, sacrosanct; that is, immune, or impervious to modification. Rather the proposals must be analyzed carefully: to eliminate their shortcomings—and to assure insofar as humanly possible—that this is the best vehicle for serving our national security.

PRESIDENT KENNEDY'S TRADE PROPOSALS

Mr. BUSH. Mr. President, the Wall Street Journal has generally taken a favorable position toward the President's trade proposals, and has stated repeatedly that we must open wider the doors of free trade, and specifically encourage the administration to lower U.S. tariff barriers.

During my 10 years of service in the Senate, I have generally been sympathetic with that point of view, and I remain sympathetic with that point of view. However, I believe we must proceed carefully. I have always felt that we should gradually, selectively, and reciprocally lower trade barriers.

This morning's issue of the Wall Street Journal points out some of the features of the new trade bill which deserve careful scrutiny. The bill is now before the House Ways and Means Committee, and I hope that my friends in the House who are members of that committee will see my remarks in the RECORD and read the editorial in this morning's issue of the Wall Street Journal entitled "Inside the Tariff Package." It speaks of the congressional responsibility in connection with important trade agreements, and also it calls attention to the so-called assistance programs which are incorporated in the trade bill. These are subjects which deserve the most careful scrutiny.

I ask unanimous consent that the editorial be printed in the RECORD at this point in my remarks.

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

INSIDE THE TARIFF PACKAGE

We trust no reader of these columns will mistake our position on foreign trade. We have said here repeatedly that this country must open wider the doors of free trade, and we have specifically encouraged the administration's efforts to lower U.S. tariff barriers.

This may require that Congress give considerable latitude to the executive branch to carry out a defined policy, for Congress cannot negotiate every trade agreement or fix the tariff on every item of commerce.

But to recognize this is not to say that Congress should abdicate its own responsibility to define the Nation's trade policies. The plea for lower tariffs ought not to be used to open another door to all kinds of other trade barriers that make tariffs look like the inventions of amateurs. Nor is this plea an excuse for launching another vague, amorphous and almost unlimited Federal relief program.

Yet that is what is being proposed to Congress in the tariff bill introduced by Chairman MILLS, of the House Ways and Means Committee, at the administration's behest. There are indeed some startling things hidden under that bill's attractive label.

It is not simply that this bill would carry almost to its ultimate the process of allowing the President to cut or even abolish tariffs, without let or hindrance, although this it would do. The President could enter trade agreements at will and then proclaim the reduction by half of any existing tariff; if the agreement is with a Common Market nation, he could completely eliminate tariffs by the stroke of a pen.

The President is also authorized, whenever he thinks some industry needs protecting from foreign imports, "to proclaim such increase in, or imposition of, any duty or other import restriction" as he wishes. If this loose language means anything, it means that some President could raise tariffs as well as lower them, or impose brandnew ones, or—and here apparently without any limit—impose quotas or any other kind of restriction on imports.

In short, this wide grant of power to the President is for protectionism as much as for free trade. With this bill Congress would not be declaring a freer trade policy but simply authorizing the trade policy to be whatever the President of the moment declared it to be. Foreign trade could escape the annoyances of tariffs only to meet the more impenetrable barriers of direct controls.

Yet there is still more wrapped up in this bill. Under the guise of protecting people from the impact of any tariff cuts, the bill authorizes a whole new program of Government assistance to individuals, business firms, industries, and States.

For example, if the President determines that they need it, individuals may be paid an adjustment allowance by the Government, as well as retraining costs and moving expenses. No limit is set for the length of time this adjustment allowance can be paid, nor is there any clear definition of who is eligible for it.

Business firms, too, as the President may determine, would be eligible not only for technical assistance but financial assistance in the form of Government guarantees, loans, and special tax treatment. Nor are the States forgotten; in return for accepting some restrictions on their own unemployment programs, they can set up their own agencies to administer the relief, and be paid by the Federal Government.

The bill states that actions of the President, "in determining eligibility to apply for adjustment assistance, in certifying adjustment proposals, or in making determinations with respect to extraordinary relief, shall be final and conclusive and shall not be subject to review by any court." In short, a blank check for the President to distribute this largess as he will.

The administration is right, we think, in saying that the economic future of this country lies in the direction of freer trade with the world, and we hope Congress will meet its responsibility to see that we move in that direction. But what this bill grants is the power to any President to move in whatever direction he alone chooses. And buried in it also is a veritable Pandora's box of political woes about who gets what from the Nation's Treasury.

The fact that all this comes in the wrappings of free trade doesn't mean that the country ought to buy the merchandise inside the package.

Mr. BUSH. On the same subject, I should like to call attention to the article by David Lawrence to which the Senator from Wisconsin [Mr. WILEY] has just referred, and which he has had inserted in the RECORD. Here again Mr. Lawrence speaks of this trade bill as one which will tend to bypass congressional authority. I feel that the bill must be amended eventually so as to give Congress substantial and effective affirmative veto power over any trade agreements that may be made if and when the new bill becomes law.

I will not ask that the Lawrence article be included in the RECORD, but I direct attention to it through these remarks, and to the remarks of the Senator from Wisconsin.

THE NEW GOVERNMENT IN ITALY

Mr. KEATING. Mr. President, the new coalition being formed in Italy will, for the first time, bring the Socialists into a responsible position in the Italian Government. It is a significant and from the American point of view, possibly a perilous turn of events.

Why has Italy made this turn to the left? How is it possible for the Communists to poll nearly 30 percent of the vote in a country which is 99 percent Catholic? These are questions that all Americans are asking. These are questions that offer a real challenge to Italy's democratic leaders.

Mr. President, a most perceptive and illuminating article appeared in a recent issue of the Rochester, N.Y., Courier Journal. The Reverend Henry Atwell has explored the situation in detail and he warns in vivid terms that the Communists in Italy are using every means at their disposal to win support. We, ourselves, as well as Italian anti-Communists, should take this lesson to heart and ponder more effective methods to get the message of democracy across in Italy and elsewhere.

Mr. President, I ask unanimous consent to include following my remarks in the RECORD the very illuminating article by Father Atwell.

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

ITALY OPENS TO THE LEFT

(By Rev. Henry Atwell)

Italy made its long expected left turn this week—opening political doors for Socialists to hold key Cabinet positions and shape national policy according to a leftwing pattern.

Premier Amintore Fanfani and 2,000 delegates to the convention of the Christian Democratic Party voted the "opening to the left" in order to keep what slim (51 percent) control of the country they had.

The shift to the left inches Italy closer to outright communism despite years of Vatican pressure and American funds to the contrary.

Last year Communists polled 27 percent of the popular vote in Rome's municipal elections—the city of the Pope is more than a quarter dedicated to Kremlin doctrine.

How can a country 99 percent Catholic do this?

Admittedly a 2 weeks' trip as a tourist is hardly an adequate opportunity to find the full answer but two episodes on a tour in May of last year might help us to understand the paradox.

We went out to Anzio with Msgr. Paul Ciaccio, former pastor of St. Anthony's

Church, Rochester, and now back in his native Rome. On the return trip we stopped in Nettuno for lunch and ate at one of the charming sidewalk restaurants which dot every city and village of Italy. While we ate, scores of youngsters—obviously on their lunch hour too—flocked into a building opposite us on the piazza. Most of the girls wore uniforms quite like many parochial school pupils here. Next to the doorway where they flooded in was a sign marked with a red hammer and sickle, the Communist symbol.

Monsignor Ciaccio called one of the youngsters—"What is that you're going to?" "A recreation center," was the reply. "Who runs it?" "Communisti." "Where do you go to school?" "Sacred Heart," "Who teaches you?" "The Sisters."

For the whole noon hour at least a hundred children were in and out or around that recreation center and then a bell a block away rang out and they scampered back to classes.

What will be their attitude on communism in another few years—will they think of a Berlin wall or Tibet or tanks in Budapest? They'll probably remember their childhood when "the Communists were good to us like the nuns."

And this has already been going on for a good 25 years in every crossroad's hamlet and sprawling city in Italy where the Communist Party is the best organized and counts the biggest membership in any country outside the Iron Curtain.

The next episode occurred in Milan. We visited a young newspaper editor who was a "teenage diplomat" to Rochester during his senior high school year. He and his wife lived in a still-under-construction apartment building, so new the phone wasn't listed yet.

Milan was once dominated by its famous marble, all-white duomo or cathedral. Now the slender spires must compete with modern skyscrapers, including factories, offices, and apartments like the one we visited.

Milan is the center of one of the most spectacular industrial booms in the free world and the city's workers are the best paid in Italy—yet here too the Communists have an organization operating in high gear.

Who joins the party there?

Maybe the fellow we heard about from our newspaper friend. He told us this story: Southern Italy is still desperately poor. The lure of wealth in the north pulls thousands of unskilled rustic workers from the south. Away from families and confronted with the ruthless competition of industrial life, the bewildered workers look about for friendship and guidance.

One such worker was actually asleep in the apartment's cellar while we talked about this. He came north to get a job, saved only enough of his salary for food, sent the rest back each week to his family, and sleeps on rags in the buildings he works on.

The Communists have recreation centers for men like this and zealous staff members to find the fellow a low price room to replace his cellar and rags existence and, what he craves most, attention and friendship in the city where he knows nobody.

Do you have any doubt about which way his vote will go at election time?

Italy's communism—even like its Catholicism—has its own special characteristics. Its gains do not necessarily mean Italians want Kremlin control. They want what most people want—a better life than poverty.

There is, therefore, hope that Italy's growing economic strength will meet the demands of these people, but the question now is whether the demands will be met soon enough.

TWENTY-FIVE MILLION DOLLARS FOR NEW YORK WORLD'S FAIR

Mr. KEATING. Mr. President, yesterday the President sent a letter to the House Appropriations Committee requesting $25 million for a Federal exhibit at the New York World's Fair 1964–65. I am delighted that this has been done and I commend the President for his support of the New York Fair.

Sixty-six foreign countries have agreed to exhibit at the fair and are making preparations to do so. In addition to these 66 foreign countries, 30 States plan exhibits. 1964 is not such a long way off. It therefore is imperative that prompt congressional action be taken on the President's appropriation request in order that the United States can get to work right away on the design and construction of a suitable pavalion for the New York Fair.

Mr. President, one might look at all of this as a race for space at the World's Fair. The U.S. Government will have an exhibit and will occupy a prominent space at the fair. Sixty-six foreign nations, including the Soviet Union, have made plans to follow suit. The Soviet Union has already contracted for 78,000 square feet of space at the fair. This international space race is on, and has broad repercussions. An exhibit at a World's Fair is directly related to the battle of ideas between the East and West. International functions such as this give our Nation and other nations an opportunity to express the basic principles of their government and to demonstrate their progress in the fields of science, technology, industrial development, education, the arts, and a host of others.

Our exhibit at the New York World's Fair must be in keeping with the message which we seek to express to the peoples of the world. We want to tell them that freedom works, that we Americans are proud of our country.

It is important that the Congress act as soon as possible on the appropriation request which the President has submitted to us. In addition to visitors from abroad, men and women from all over the United States will visit the New York World's Fair. It is important that they take pride in the exhibit of the United States at what certainly will be an exciting and meaningful World's Fair on our shores in 1964–65.

THE FATE OF SOVIET JEWS

Mr. JAVITS. Mr. President, the Soviet Union's renewed drive against religion and the imposition of death sentences upon 12 Jews that we know of including 4 in Vilna, Lithuania, for alleged illegal exchange transactions and private speculation in goods, have sent a shudder throughout the civilized world. Our generation has good reason to be sensitive to attacks on Jews, realizing that whatever are the alleged offenses of which they are accused, they are often used as scapegoats to divert attention from internal troubles. Moreover, we have learned that such persecution in a country where the anti-Semitic tradition is so deeply rooted as the U.S.S.R., may well be the forerunner of even more widespread oppression and tyranny.

While past experience shows there may not be much hope for men and women who have been condemned, appeals should be made by religious organizations and leading citizens throughout the world for justice and mercy in an effort to halt this inhuman course of action in the U.S.S.R.—a course of action which involves cruel and inhuman punishments by our lights in the free world, even if the offense be proved and without any right of appeal.

I ask unanimous consent to print in the RECORD the exchange of correspondence I have had with the Department of State on the situation in the Soviet Union's persecution of Jews, and the appeals for clemency in the case of the Jews in Vilna and other Soviet cities by Bishop James A. Pike, of the Episcopal Diocese of California, which was made in a letter to the New York Times, March 13, 1962; a cablegram I sent to Ambassador Llewellyn Thompson on March 12, 1962, on behalf of my constituents who are blood relatives of the condemned Jews; an appeal by the Board of Deputies of British Jews, and a report entitled "Hostile Soviet Press," both in the Jewish Chronicle, London, February 23, 1962.

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

FEBRUARY 26, 1962.

Hon. DEAN RUSK,
Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: Recent reports in the press indicate an accelerating situation in the Soviet Union's actions toward its Jewish minority. Last week, on the Senate floor, I called attention to the fact that Jews are being made scapegoats by the Soviet authorities and that on February 10, the Soviet news agency Tass reported that four Jews in Vilna, Lithuania, had been sentenced to death by shooting.

In view of the experience of recent years that anti-Semitism, under whatever guise, can become a very grave danger to peace and to our civilization, the situation in the U.S.S.R. should be of very real concern to us.

I hope, therefore, that our Government will make every effort to find out what the facts really are and would appreciate any added information you can give me.

With best wishes.

Sincerely,

JACOB K. JAVITS,
U.S. Senator.

DEPARTMENT OF STATE,
Washington, March 8, 1962.

The Honorable JACOB K. JAVITS,
U.S. Senate.

DEAR SENATOR JAVITS: I have received for reply the letter which you addressed to the Secretary on February 26, 1962, and have read with interest the article which you had published in the CONGRESSIONAL RECORD of February 21 describing the situation which confronts the Jewish people in the Soviet Union. I note your desire to receive the Department's comments concerning these matters.

The Department can well appreciate your being disturbed about the recent incidents involving Jews in the Soviet Union and has

given considerable thought to this subject. Given the Soviet suppression of news, as well as the sensitivity and complexity of the subject, it is hard to interpret from the meager reports that get into the Western press the exact conditions to which the Soviet Jews are exposed. Anti-Semitic feelings have persisted in many areas of the Soviet Union, but we are unable to determine if this potential for anti-Semitism actually is being made use of by Soviet authorities for their own ends at the present time.

Dating from the Soviet currency reforms of January 1961, the Soviet Government has conducted an energetic campaign against illegal exchange transactions and private speculation in goods. It is not clear from available information whether police action against various individual Jews has its basis in anti-Semitism or whether this arises from the intensified campaign of the Soviet authorities to stamp out black marketeering and various forms of speculation, of which the majority of the arrested Jews have been accused. Because of the dearth of reliable information, it is impossible to judge whether Soviet citizens of the Jewish faith are receiving a disproportionate amount of condemnation and victimization in the anti-speculation campaign. In a number of recent trials the leading personages have had Jewish names and they have been condemned and sentenced, ostensibly not for religious activity, but for alleged involvement in speculation or other criminal offenses.

In addition to reports about police action against various Jews, there have been reports, which the Department has not been able to confirm, that synagogues have been closed in a number of cities in the Soviet Union. At the same time, however, the Soviet Government continues to endorse antireligious propaganda directed against religion generally as well as specifically against such religious groups as the Jehovah's Witnesses, Seventh-day Adventists, and the Baptists. There is no doubt that the Soviet Government is presently conducting an intensified antireligious campaign.

With respect to what has been done by the United States to ameliorate the condition of the Jews in the Soviet Union, at the time of the Khrushchev visit in September 1959, the Department asked Soviet Ambassador Menshikov to give serious and sympathetic consideration to requests by representatives of American Jewish organizations to arrange a private meeting with Mr. Khrushchev. While no such meeting was arranged, President Eisenhower did bring this matter to Mr. Khrushchev's attention during the Camp David discussions. Mr. Khrushchev indicated his awareness of the question but stated that the Jewish people in the Soviet Union are treated like everyone else. The President told Mr. Khrushchev of the concern that had been expressed to him by representatives of the Jewish people in the United States over the situation of the Jewish people in the Soviet Union. On September 26, 1959, former Secretary of State Herter, in a meeting with the Soviet Foreign Minister, said he wanted to bring to Mr. Gromyko's attention the concern which was felt in the United States with respect to the status of Jews in the U.S.S.R. Mr. Gromyko, however, replied that this was an internal matter for the Soviet Government.

A study of discrimination in the exercise of religious rights and practices has been conducted by the United Nations Subcommission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights. The United States was one of the countries favoring this study, which was authorized despite Soviet opposition. The results of the study will be considered in the meeting of the Human Rights Commission this month. It is believed that the discussion of this issue by the subcommission may have had at least some effect in reducing anti-Semitic propaganda in the Soviet Union.

The Government of the United States is deeply concerned about oppressive Soviet policies of this or any other type. U.S. support of civil rights and freedom of worship has been made unmistakably clear on many occasions.

For example, President Kennedy drew attention in his address of September 25, 1961, before the General Assembly of the United Nations to the colonialism and lack of self-determination that characterize the Soviet empire.

It is difficult for our Government to contribute to the direct solution of the problems of minorities in a territory where the Soviet Government exercises full control. The Government of the United States has endeavored through every available means to bring the inhumane actions of the Communist regime to the attention of all peoples. Our representatives in the United Nations are fully informed in this respect and they will seek, as they have in the past, appropriate occasion in the General Assembly debates to direct attention to the violations of human rights in Communist-controlled areas in the hope of bringing relief to people who are unjustly treated. In this connection, appropriate publicity in this country on the initiative of religious groups themselves, without any reference to the U.S. Government, concerning violations of the rights of their coreligionists in the Soviet Union, may also serve a useful purpose. Private appeals to the Soviet Government on humane grounds would minimize the possibility of confusing the Soviet Jewish problem with cold war issues.

I hope that the foregoing comments will assist you in your consideration of this matter. If I may be of further assistance, please let me know.

Respectfully,

FREDERICK G. DUTTON,
Assistant Secretary.

TEXT OF CABLEGRAM TO AMBASSADOR THOMPSON, MARCH 12

Hon. LLEWELLYN E. THOMPSON,
American Embassy,
Moscow, U.S.S.R.:

Behalf my constituents, American brothers and sisters of condemned Vilna Jews, I urge immediate personal appeal Soviet authorities, especially Dobrynin, for commutation sentences Aaron and Bessie Resnitzky, Theodore Kaminer and Michael Rabinovitz, of Vilna, and Samuel L. Biller, of Moscow. These people suffered terrible hardships under Nazis. In American eyes whatever may be question of guilt, punishment seems cruel and inhuman. An act of clemency would redound to best interests of United States-Soviet relations.

JACOB K. JAVITS,
U.S. Senator.

[From the New York Times, Mar. 13, 1962]

FATE OF SOVIET JEWRY: BISHOP PIKE APPEALS FOR CLEMENCY FOR CONVICTED GROUP

To the EDITOR OF THE NEW YORK TIMES:

As one who has for several years been keenly interested in the fate of Soviet Jewry I was particularly struck by Harrison Salisbury's impressive article on this subject (February 8). I should like to call attention to a recent development that has contributed significantly to the fear and trouble which Mr. Salisbury describes as closing in on the Jews of the U.S.S.R.

In the past couple of years the Soviet Government has stepped up its campaign against the widespread economic parasitism. Since July 1961 a series of trials against black marketeers, currency speculators, pilferers of state property, etc., have occurred in Moscow, Leningrad, and a half dozen major republican capitals. Among the scores tried and convicted many were given varying prison terms, and 13 were sentenced to death by shooting.

At least 10 of the 13 sentenced to death, and the majority of those given long prison terms, are Jews. And a careful examination of the Soviet press treatment of these cases, as well as of many other less grave alleged economic malfeasances, reveals a clear anti-Jewish bias, and demonstrates that the official campaign is using the Jews as a scapegoat for generalized social evils.

PORTRAYAL IN PRESS

The Soviet press consistently perpetuates and disseminates the traditional anti-Semitic stereotype, deeply rooted in Russia, of the Jew whose only God is gold. It portrays the Jews as conniving, unscrupulous villains who prey upon honest, hardworking people and who cheat them of their patrimony.

At the same time that the Government seeks to eradicate forcibly the illegal economic activities that have long flourished, it understandably desires to obviate popular resentment against legal cruelty in this campaign. What better solution than to go easy on the "true" natives, and to single out as the "educational" scapegoat such a foreign minority as the Jews?

Such stereotyping and scapegoating are offensive and ominous wherever they appear, and they clearly contradict the letter and spirit of Soviet ideology and law.

Even more unfortunate, however, is the imposition of capital punishment for economic offenses. Surely this is cruel and excessive by commonly accepted standards of law and civilization, and represents an unhappy step backward in the evolution of Soviet legal practice. Not less so is the denial of the right of appeal in such cases.

Outsiders like myself have the duty, as a matter of conscience and on purely humanitarian grounds, to appeal for clemency. We can only hope that a commutation of the sentences will follow.

JAMES A. PIKE,
Bishop of the Episcopal Diocese of California.
SAN FRANCISCO, *March 9, 1962.*

[From the London Jewish Chronicle, Feb. 23, 1962]

DEPUTIES' PLEA TO RUSSIANS

Death sentences imposed upon Jews in the Soviet Union were condemned with feelings of horror by members of the Board of Deputies when they met at Woburn House, London, on Sunday.

Through its president, Sir Barnett Janner, Member of Parliament, the board issued a special appeal to the Russians to remit the sentences and generally to reverse their present discriminatory measures against their Jewish citizens.

One member of the board, Mr. A. I. Richtiger, said that unless the problem of Soviet Jewry was discussed openly the situation would become much worse.

"Unfortunately we are practically helpless. The only hope is that the Soviet authorities will listen to world opinion, and, therefore, we have to raise our voices on this problem," he said.

Commenting on a suggestion that a Jewish delegation be sent to Russia, Sir Barnett asked: "What is the use?" He disclosed that on a number of occasions the Board's Foreign Affairs Committee had applied to the Soviet Embassy for interviews without result.

Negotiations regarding a proposed visit of Hungarian Jewish communal leaders to this country are taking place.

[From the Jewish Chronicle, Feb. 23, 1962]

HOSTILE SOVIET PRESS

Although it is nearly a fortnight since the Lithuanian Supreme Court passed death sentences on four Jews for alleged currency offenses, it is not known whether the sentences have actually been carried out.

As in all offenses against the state, including illegal dealings in foreign currency, there is no appeal against the court's verdict, and sentences are normally carried out within 48 hours. Execution in Russia is by shooting and, in the absence of any information to the contrary, it must be assumed that the sentences have already been carried out.

While the announcement of the trial and sentences were issued by the official Soviet news agency in a very brief communique and without any comment, the trial itself was given much prominence in the local press. What was particularly significant was the hostile and deliberately offensive manner in which the trials were reported. The defendants were variously described as plunderers and wicked insects. Referring to the group of Jews tried in Vilna, Sovietskaia Litva said that "this clique had for long carried on dirty machinations, and their day of reckoning has now come."

DREGS OF SOCIETY

Even before the court gave its verdict, the same paper had already condemned them as being the filthiest dregs of society who used their prayer-houses for carrying out and covering up their criminal transactions. Such transactions, said the paper, were conducted and arranged in the premises of the Vilna Synagogue. Had the paper refrained from giving the names of the "culprits," the mere allegation that the transactions were carried out in a synagogue was clearly sufficient to tell the reader that the offenders were Jews.

Deliberately chosen phraseology of the reports was another way in which the reader was informed that the accused were of the Jewish minority. One offender named Levin, the manager of a shoe store, was described as having failed to take into consideration that he was operating in surroundings hostile to him and in a sphere of honest Soviet people. Although in this case a number of non-Jews—a group of factory workers—were involved, they were described merely as being innocent, unsuspecting young girls. Thus Sovietskaia Litva of January 28, reporting the case of 84-year-old Benjamin Kabachnikas and his brother described them as plunderers and men alien to our Communist morals and actions.

Another way of pointing out in the Soviet press that offenders are Jews is the practice of enumerating their connections with relatives abroad. And to make it absolutely clear, the press does not omit to mention when some of them have either brothers or sisters in Israel, leaving no doubt as to which minority in Russia they belong.

Having reported the case of the Vilna Jews and in addition giving the names of a number of others also accused of being involved in currency offences, Trud, the official organ of the Soviet trade unions, characteristically concluded its article like this: "These people stood apart from our life. They were not interested in how the Soviet people live. The desire to make money was their only interest. The 10-ruble gold piece was their idol and they pursued it through the cities."

In some contrast to the vicious tone of the local press, the leading official Moscow dailies have, not without significance, refrained from giving the same publicity to the trial and sentences. There is obviously a feeling that the sentences have been too harsh, especially the death sentence on a woman for currency speculation, which is unprecedented even in Russia.

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

Mr. JAVITS. I yield.

Mr. SALTONSTALL. I have had an opportunity to read the correspondence that the Senator has had with the office of the Secretary of State on this subject. As one who has always tried to take an affirmative stand on freedom of religion and on freedom of opportunity in our country and throughout the world, I commend the Senator from New York on what he has done in this correspondence and what he is doing now. I should like to quote one sentence from the letter of the Assistant Secretary of State:

> Private appeals to the Soviet Government on humane grounds would minimize the possibility of confusing the Soviet Jewish problem with cold war issues.

I agree that these appeals be on humane grounds, with the hope that the Soviet Government will recognize what they are doing to human beings in connection with this matter.

Mr. JAVITS. I am grateful to the Senator from Massachusetts.

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

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

Mr. BUSH. I, like the Senator from Massachusetts, have read the Senator's correspondence with the Department of State.

I have listened with intense interest to his remarks on this subject this morning. I congratulate him heartily on bringing the matter to the attention of the Senate and to the people of the country through the forum of the Senate. The actions which have been revealed and discussed by him are shocking, indeed. I join with him and assure him of my support in any effort which may be made to persuade the State Department to take action and to express more vociferously our protest as a nation against this type of inhuman treatment.

Mr. President, it is very disheartening, indeed, to find, even in a country like Russia, for whose form of government we have so little respect—and with good reason—such inhuman treatment of individuals as the senior Senator from New York has called to our attention today. I again congratulate him upon bringing the subject to our attention.

Mr. JAVITS. I thank the Senator from Connecticut.

WHAT ARE WE DOING ABOUT ANTI-SEMITISM IN RUSSIA?

Mr. KEATING. Mr. President, I commend my colleague from New York for again calling attention to this problem. As I understand, the four Russian Jews of Vilna who have now been sentenced to death are really charged with black-marketeering.

Mr. JAVITS. Exactly.

Mr. KEATING. This is a part and parcel of the campaign which has been going on for some time. Only yesterday I received a memorandum from the Department of State relating to the situation of the Jewish people in the Soviet Union. The memorandum has been the subject of correspondence by both Senators from New York with the State Department. The memorandum was described as "the latest information the Department has" on this problem.

Imagine, then, my surprise, Mr. President, when I read this document over, to discover that it is an exact copy, nearly a word-for-word repetition of a letter which I received from the Department of State on December 20. Far from being a new and up-to-date report, it is an indication to me that the State Department has done nothing or very little about this very pressing problem for the last 3 months. We have gathered no new information; we have made no further efforts to publicize the problem; and we have made no overtures, diplomatically or otherwise, to mitigate the anti-Semitism and persecution that now exists in Russia.

I criticized this memorandum early in January because of the implication it conveyed that Soviet persecution of Jewish people might be based on efforts to cut down on black-marketing and speculation. There has apparently been no effort to expand the meager reports, the dearth of reliable information, the reports which the Department has not been able to confirm, which were referred to in the letter to me of December 20 and which are still referred to in the latest memorandum.

In short, Mr. President, I am afraid that this memorandum is a confession of inactivity, and perhaps, although I sincerely hope not, even of disinterest in the issue of Soviet anti-Semitism. Although I appreciate receiving another copy of this material, I am deeply disappointed and disturbed over the very obvious lack of progress in tackling the issue.

I ask unanimous consent to include at the end of my remarks one letter I received from the Defense Department on December 20, which is virtually identical with this latest memorandum and documents the lack of progress very clearly.

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

Mr. KEATING. These four men, and probably others, face death in the Soviet Union. Today there is a great humane interest all over the world with respect to the idea of sentencing a person to death, even if he be guilty, if he has been engaged in black-marketeering. It shocks us as a people to have that happen. I am very happy that my senior colleague has again called this situation to our attention.

DECEMBER 20, 1961.

DEAR SENATOR KEATING: I have been asked to reply to the letter which you sent to the Secretary on November 28, 1961, concerning the situation of the Jewish people in the Soviet Union and your interest in knowing what steps the U.S. Government is taking to better their condition.

The Department can well appreciate your being disturbed by the reports that have come to you about the recent treatment of the Jews in the Soviet Union and has given considerable thought to this subject. Given the Soviet censorship on outgoing news dispatches, as well as the sensitivity of this subject, it is hard to interpret from the meager reports which get into the western

press the exact conditions to which the Jews in the Soviet Union are exposed.

Dating from the Soviet currency reforms of January 1961, the Soviet Government has conducted an energetic campaign against illegal exchange transactions and private speculation in goods. It is not clear from available information whether police action against various individual Jews has its basis in anti-Semitism or whether this arises from the intensified campaign of the Soviet authorities to stamp out black-marketeering and various forms of speculation, of which the majority of the arrested Jews have been accused. Anti-Semitic feelings have persisted in many areas of the Soviet Union, but we are unable to determine if that potential for anti-Semitic action is being made use of by Soviet authorities for their own ends. Because of the dearth of reliable information, it is impossible to judge whether Soviet citizens of the Jewish faith are receiving a disproportionate amount of condemnation and victimization in the antispeculation campaign. In a number of recent trials the leading personages have had Jewish names and they have been condemned and sentenced, ostensibly not for religious activity but for alleged involvement in speculation or other criminal offenses.

In addition to reports about police action against various Jews, there have been reports which the Department has not been able to confirm that synagogues have been closed in a number of cities in the Soviet Union. At the same time, however, the Soviet Government continues to endorse antireligious propaganda directed against religion generally as well as specifically against such religious groups as the Jehovah's Witnesses, Seventh-day Adventists, and the Baptists.

With respect to what has been done by the United States to ameliorate the condition of the Jews in the Soviet Union, at the time of the Khrushchev visit in September 1959 the Department asked Soviet Ambassador Menshikov to give serious and sympathetic consideration to requests by representatives of American Jewish organizations to arrange a private meeting with Mr. Khrushchev. While no such meeting was arranged, President Eisenhower did bring this matter to Mr. Khrushchev's attention during the Camp David discussions. Mr. Khrushchev indicated his awareness of the question but stated that the Jewish people in the Soviet Union are treated like everyone else. The President told Mr. Khrushchev of the concern that had been expressed to him by representatives of the Jewish people in the United States over the situation of the Jewish people in the Soviet Union. On September 26, 1959, former Secretary of State Herter, in a meeting with the Soviet Foreign Minister, said he wanted to bring to Mr. Gromyko's attention the concern which was felt in the United States with respect to the status of Jews in the U.S.S.R. Mr. Gromyko however replied that this was an internal matter for the Soviet Government.

A study of discrimination in the exercise of religious rights and practices has been conducted by the United Nations Subcommission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights. The United States was one of the countries favoring this study, which was authorized despite Soviet opposition. The results of the study will be considered in the meeting of the Human Rights Commission next March. It is believed that the discussion of this issue by the subcommittee may have had at least some effect in reducing anti-Semitic propaganda in the Soviet Union.

The Government of the United States is deeply concerned about oppressive Soviet policies of this or any other type. U.S. support of civil rights and freedom of worship has been made unmistakably clear on many occasions. Most recently, this was the intention of President Kennedy when he drew attention in his address of September 25, 1961, before the General Assembly of the United Nations to the colonialism and lack of self-determination that characterize the Soviet empire.

While it is difficult for our Government to contribute to the direct solution of the problems of minorities in a territory where the Soviet Government exercises full control, the force of world opinion can be an important factor to such an end. With this in mind the Government of the United States has endeavored through every available means to bring the inhumane actions of the Communist regime to the attention of all peoples. Our representatives in the United Nations are fully informed in this respect and they will seek, as they have in the past, appropriate occasion in the General Assembly debates to direct attention to the violations of human rights in Communist-controlled areas in the hope of bringing relief to people who are unjustly treated. In this connection, appropriate publicity in this country on the initiative of religious groups themselves, without any reference to the U.S. Government, concerning violations of the rights of their coreligionists in the Soviet Union, may also serve a useful purpose.

As of corollary interest, it is equally difficult to assess the degree to which anti-Semitism may influence official actions in Eastern Europe outside the Soviet Union. However, manifestations of anti-Semitism in official actions are rare in Eastern Europe. Such anti-Semitic public feeling as may exist is not generally exploited by the respective regimes in carrying out policy.

If we may be of further assistance, please let me know.

Sincerely yours,

FREDERICK G. DUTTON,
Assistant Secretary.

Mr. JAVITS. Mr. President, I am very grateful to my colleague from New York for having turned up an additional fact in showing that no progress has really been made, even with respect to our own country's information. This bears out the need for our Government to take a far more affirmative stand than it has taken concerning this very serious problem.

I am pleased to state that it is my understanding that the Department of State has now transmitted my cablegram to Ambassador Thompson, who I deeply believe will consider the inquiry as one made on behalf of all who have spoken today and who have tried to do what my colleague from New York has so properly pointed out—to get more information and to record far more affirmatively the strong position of the United States.

I am grateful to my colleague from New York for his very material contribution to this discussion.

CONTROL OF NEWS FROM THE PENTAGON

Mr. THURMOND. Mr. President, whoever is responsible for the control of the news flow from the Pentagon—and I believe this responsibility belongs to the Assistant Secretary of Defense for Public Affairs, Mr. Arthur Sylvester—is permitting, either wittingly or unwittingly, distorted and inaccurate stores to be leaked to the various news media for the purpose of reflecting on me and the Special Preparedness Subcommittee, which is currently investigating the censoring of anti-Communist statements by our military and civilian leaders, and also the role of the military in educating armed services personnel and the public on the many facets of the Communist threat. I have previously told the Senate about a grossly distorted version leaked to the press by Mr. Sylvester's office on a Marine Corps questionnaire. Since that time, there has also been leaked from the Pentagon another story which has since been clarified to the subcommittee by the Marine Corps, which in both instances had nothing to do with the deleted and distorted versions presented to the press.

Another leaked story has now appeared in the newspapers, and again I have prepared a point-by-point answer to it as it was leaked to a reporter for the Evening Star yesterday from the Pentagon. I ask unanimous consent that the article and my response be printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. THURMOND. Mr. President, since preparing my response to this leaked news story, I have received through the subcommittee a copy of a memorandum to the subcommittee's chief counsel, Mr. James Kendall, from Col. Roy H. Steele, of Army Legislative Liaison. This memorandum makes the point that the Army did not authorize or have anything to do with this leaked story and that the Evening Star will print a retraction and clarification today.

This is further evidence that some other office in the Defense Department, other than the individual services involved, has leaked these stories to the press so as to divert the course of this investigation from the investigation of Defense Department policies and practices in censorship, providing information on communism and Americanism to our troops, and in permitting military participation in cold war seminars designed to educate the public on the menace of communism.

Mr. President, if Mr. Sylvester has not leaked these stories to the press, it is still his responsibility, and I serve notice on him here and now that each leaked and distorted story which appears in the news media from the rumor factory, which has evidently been created in the Pentagon to reflect adversely on the Special Preparedness Subcommittee of the Senate Committee on Armed Services, will be met and dealt with on the Senate floor and/or in the subcommittee.

Mr. President, I ask unanimous consent that the memorandum dated March 14, 1962, addressed to Jim Kendall, who is chief counsel for the subcommittee, from Colonel Steele, be printed at this point.

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

[News release from the office of U.S. Senator STROM THURMOND, of South Carolina]

MEMORANDUM

MARCH 14, 1962.

To: Jim Kendall.
From: Colonel Steele.
Re newspaper stories.

General Dodge tells me that the Army did not release this story on the one in this morning's Post.

The press has not contacted the troop information section of General Dodge's office.

The press did ask for a short biographical sketch of Specialist, Fourth Class Carter (Jack Raymond, of New York Times) of his public information section.

The Star has contacted Major Lansing, of Belvoir, by telephone asking about Carter and the TI program and sent a photographer to take the picture.

Major Lansing says he did not authorize this release or make the statements therein re Senator THURMOND or the Army position.

General Dodge is preparing a report re Specialist Carter and Belvoir as he advised the committee he would but it will not be ready today and he has told no one it would be ready today.

General Dodge will be happy to come over to discuss this further.

General Dodge just now advises me that the Star reporter who wrote the story just came to office some 30 minutes ago and he concedes the Army did not give him this release and he originated the story and will print a retraction and clarification.

ROY H. STEELE,
Colonel, Army,
Legislative Liaison.

EXHIBIT 1

[From the Washington Evening Star, Mar. 13, 1962]

ARMY TO TELL THURMOND HE ERRS ON BELVOIR

The Army plans to tell investigating Senators today that Senator THURMOND was wrong about his charges against the troop information program at Fort Belvoir.

Furthermore, the Army plans to point out politely, investigators for the special Armed Forces Subcommittee probing the censorship of military men's speeches and troop indoctrination programs knew all the facts of the situation when Senator THURMOND made his charges.

The dispute arose Friday when Maj. Gen. Charles Dodge, Army Director of Information, was asked by Senator THURMOND, Democrat, of South Carolina, why an "unqualified private" without a security clearance was teaching Fort Belvoir soldiers about communism and basing his lectures in part on material from the magazine the Nation.

General Dodge said he would investigate and report back. His written report was scheduled to reach the committee today.

PRIOR QUESTIONING

It was learned, meanwhile, that three investigators for the Senate subcommittee had questioned the soldier and his commanding officer at length and on several occasions both at Fort Belvoir and in the Senate Office Building some time before Friday's hearing. The investigators learned:

1. The "private" is a specialist fourth class, the equivalent of a corporal.

2. He has a security clearance.

3. He has three college degrees, was a textbook editor in civilian life and is the son of a former Republican Congressman.

4. He is an avid reader of magazines and books that range from the far right to the far left, and his own views—attested to by his commanding officer, are "militant anticommunism and pro-Americanism."

5. His lectures have earned him high praise from Army inspectors and would earn him another promotion if his enlistment weren't running out.

TWO WEEKLY TALKS

The soldier-lecturer is Jerome Carter, son of former Republican Representative Vincent Michael Carter, of Wyoming, who served in the House from 1929 to 1935.

Under the direction of Maj. Laurence Lansing, Fort Belvoir information officer, Specialist Carter gives two weekly talks about world affairs and the Army to 400 Fort Belvoir enlisted men.

Specialist Carter's education includes a cum laude degree from Catholic University in Washington and master degrees from Fordham University and New York University.

He has free access to all of the troop information material prepared by the Department of Defense and the Army.

At one time, Specialist Carter said in an Armed Forces interview yesterday, he told committee investigators that he did not have a security clearance. Major Lansing told the investigators, however, that Specialist Carter had one even if he did not know it.

The investigators were told, Major Lansing added, that Specialist Carter was given the security clearance required for his job by the Fort Belvoir intelligence office and that he also was given the standard security check by the Federal Bureau of Investigation, Central Intelligence Agency, and the Defense Department.

Specialist Carter has not been asked to testify before the committee, but he said that he would be happy to appear and would be pleased also if the committee came to Fort Belvoir and sat in on some of his classes.

STATEMENT BY SENATOR STROM THURMOND, OF SOUTH CAROLINA, ON FORT BELVOIR TROOP INFORMATION INSTRUCTOR, MARCH 4, 1962

There appeared yesterday, March 13, in the Evening Star an article captioned "Army To Tell THURMOND He Errs on Belvoir." The article centers around a question which I asked Maj. Gen. Charles Dodge, Army Chief of Information, during a hearing on March 9. The question I asked was preceded by the following remarks, as reported in the transcript of the hearing:

"For example, at Fort Belvoir the information officers and several members of their staff were interviewed by the staff of this subcommittee. They were dedicated and conscientious men, but men who were confused when it came to instructing the troops what were the issues that face us in the cold war with communism. A major had assigned a soldier who is a college graduate to handle his information program for him. This soldier had attended no military school, had received no orientation on military policy, had no security clearance, had been exposed to no official course on communism and the threat it poses to the military.

"This soldier was using civilian magazines and newspapers to fill in his hours of troop information lessons, which he conducted regularly for hundreds of men at Fort Belvoir.

"We were shocked to find that this man was using as one of his sources Nation magazine, which has constantly promoted pro-Communist propaganda in the United States.

"We do not challenge this man's motivation, but he was not told what to do."

The article in the Evening Star implies that the Army will state in a report to the committee that I erred in these remarks, and that the staff of the committee knew the "correct" facts when the question was asked.

I did not err, and the staff did, indeed, have all the facts when I asked the question. I deliberately did not mention the names of the individuals involved, as no purpose would have been served in doing so. The names of both individuals were on the list of prospective witnesses of the committee.

The Evening Star article is most misleading, for the "facts" reported by it were covered, except for the names, in the hearing, which was obviously not attended by the reporter who wrote this piece.

The "facts" which the Star article reports are:

"1. The 'private' is a specialist fourth class, the equivalent of a corporal."

As the transcript will show, at no point did I, or anyone else, refer to Carter as a "private." He was referred to as a "soldier" without any reference whatsoever to his grade.

The article continues:

"2. He has a security clearance."

The transcript reveals the following questions and answers, all in the March 10 hearing, at page 1886 of the transcript:

"Senator THURMOND. Will you look into this situation at Fort Belvoir?

"General DODGE. Yes, sir. The man of whom you speak has a security clearance now, sir.

"Senator THURMOND. He has gotten it since the staff members were down there?

"General DODGE. This is correct, sir."

From this it is obvious that the soldier did not have the proper security clearance when the staff investigated, but had been investigated and cleared after the matter was brought to the attention of the Army authorities by the committee staff.

The Evening Star article continued:

"3. He has three college degrees, was a textbook editor in civilian life and is the son of a former Republican Congressman."

I personally brought out in the questioning of General Dodge that the soldier "is a college graduate." I stated that he had "attended no military school," "had received no orientation on military policy," and "had been exposed to no official course on communism and the threat it poses to the military," all of which is absolutely correct.

The Evening Star article continues:

"4. He is an avid reader of magazines and books that range from the far right to the far left, and his own views—attested to by his commanding officer—are 'militant anticommunism and pro-Americanism.'"

There is no news in this, either. I stated to the committee prior to my first question to General Dodge on this matter in referring to the men in question: "They were dedicated and conscientious men * * *" and also, "We do not challenge this man's motivation, but he was not told what to do."

The Evening Star article continues:

"5. His lectures have earned him high praise from Army inspectors and would earn him another promotion if his enlistment weren't running out."

The committee has a copy of this soldier's introduction to a film which shows a basic lack of specific knowledge and understanding of the subject which he chose to discuss. The film was entitled "Communist Europe." Most of the introduction pertained to the emerging nations in Africa, and evidenced a surprising lack of insight into the development in this area.

The article also states:

"He has free access to all of the troop information material prepared by the Department of Defense and Army."

Whatever he had access to, this particular soldier relied on nonofficial sources for his lectures, according to his own lesson plans.

On December 16 and 20, 1961, Specialist Carter lectured on "Crisis in Southeast Asia." On his lesson plan, he listed as "Instructor's reference" the following: "current periodicals and standard encyclopedias."

A part of his lecture was shown in outline form as "Special Problems," under which the following list appears:

"A. Ngo Dinh Diem.
"1. Distrustful.
"2. Undemocratic (Diemocracy).
"3. Roman Catholic.
"4. Some reforms.
"5. No alternate."

Whatever this soldier's personal appraisal of Ngo Dinh Diem, the apparently derogatory references to this ally in our struggle against communism hardly seem appropriate for official Army instruction of troops who may any day be sent to Vietnam to stand side by side with Ngo Dinh Diem's people against the Communist assault.

Other topics and source materials, according to this soldier's own lesson plans are:

September 30, October 4, 6: Subject: "The Stock Market"; instructor's reference: assorted books on the market (plus the instructor's years of experience in amassing huge fortunes on Wall Street).

January 20, 24, 26: Subject: "Cold War—Economic Phase"; instructor's reference: "current newspapers and periodicals"

Subject: "U.S. Space Program," instructor's reference: current periodicals.

Subject: "Problems in Latin America"; instructor's reference: Porter and Alexander, "The Struggle for Democracy in Latin America" and various current periodicals.

Subject: "U.S. Civil Defense Program;" instructor's reference: Los Angeles Times, New York Times, U.S. News & World Report, and publications of the Office of Civil and Defense Mobilization.

If this particular soldier has access to all troop information materials, he must surely have rejected them in favor of what he considered better material, which according to his lesson plans, were all unofficial.

This newspaper article shows beyond question that both the reporter who wrote it and the official who gave him the "leak," were uninformed and obviously seeking to capitalize on sensationalism. This kind of leaking and reporting is disservice to the individuals involved, to the committee and to the country.

I will be glad to have the committee explore this matter fully, and I hope that, as originally requested, this soldier and Major Lansing will be called as witnesses, as well as many of the other military personnel in the field interviewed by the committee investigators.

WORLD MEDICAL MERGER

Mr. PELL. Mr. President, all of us have followed closely the outstanding work being performed by Care and Medico. Recently, these two fine organizations were merged and now, in addition to self-help programs, which Care has so effectively pioneered, an integral part of Care's work will be in medical assistance programs. Those who have contributed to the work of Care and Medico will, I know, welcome this merger which will result in better service and reducing fundraising and administrative costs.

Mr. President, I ask unanimous consent that an article entitled "World Medical Merger," written by Dr. Howard Rusk and published in the New York Times of January 28, 1962, be printed at this point in the RECORD. Let me also take this opportunity to pay tribute to Dr. Rusk's outstanding work on behalf of Medico and other worthwhile organizations.

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

WORLD MEDICAL MERGER—CARE AND MEDICO SEEK LOWER COSTS, INCREASED EFFICIENCY AND BETTER SERVICE

(By Howard A. Rusk, M.D.)

Each day the financial pages of this newspaper and others carry stories of corporate mergers. The reasons behind such mergers are usually the same—increased efficiency, lower administrative costs, expanded services, and greater dividends for stockholders.

Last Wednesday, two of our largest and most respected voluntary agencies concerned with international assistance, Care and Medico, announced a merger effective next month.

The reasons for this merger are the same—increased efficiency, lower administrative costs, and expanded services. The only basic difference is that the greater dividends will be shared by the millions of Americans who contribute to Care and Medico and the millions of persons in underdeveloped nations who benefit from their programs.

Care was founded in November 1945, as the Cooperative for American Remittances to Europe to meet the immediate needs of European nations shattered by war.

CHANGE IN EMPHASIS

The current name, Cooperative for American Relief Everywhere, signifies the changes in its emphasis over the last 16 years. The volume of aid it has given during this period has been around a half-billion dollars.

As its name implies, Care is a cooperative of 25 member agencies, including leading service organizations.

As conditions improved in Europe, Care terminated its services in many European nations and started programs in the developing nations of Asia, the Middle East, Latin America, and Africa. Services are now given in 32 nations.

Newest members of the Care "family of nations" are Liberia, Cyprus, and Sierra Leone, and negotiations are being conducted on the possibilities of establishing Care missions in Nigeria, Cameroon, Tanganyika, the Dominican Republic, and British Honduras.

Care is best known for its program under which thousands of tons of food and other essentials have been sent to more than 50 countries. Last year these shipments included surplus agricultural commodities, valued at $33,700,000, contributed by the U.S. Government.

GOVERNMENTS COOPERATE

Such supplies are usually used for school lunch and institutional feeding programs conducted in cooperation with the host government and for family welfare and disaster-relief feeding.

Of equal importance, however, is the second aspect of the Care program under which the tools of education, health, and self-support are provided the needy to aid them in helping themselves.

Thus, a Care package may be a steel pipe for a community self-help project on pure water in Iran or equipment for fishing boats in a cooperative economic project in Korea, Vietnam, or Hong Kong.

The range of self-help supplies vary from wheelchairs to mobile health units and from sewing machines to bullocks.

Medico, founded in 1958 by the late Dr. Tom Dooley and Dr. Peter Commanduras, was organized to establish hospitals and provide American physicians and personnel to staff them in newly developing areas. It follows the same "people to people" concept of Care, except Medico is "physicians to people."

Medico is undertaking or organizing 17 projects in remote villages in jungle and mountain areas of Laos, Kenya, Cambodia, Vietnam, Malaya, Afghanistan, and Haiti. In each instance, the projects are undertaken at the invitation of the host government.

OVER 250,000 TREATED

In the last 2 years these programs have treated 250,000 persons. In addition, Medico has shipped abroad gifts of drugs and other medical supplies valued at more than $3 million.

One of Medico's special projects is an International Eye Bank. Under this program, American ophthalmologists travel to remote places taking with them a supply of preserved human corneas contributed by American eye banks from surplus stock.

The corneas are transplanted in the eyes of the blind to restore sight. At the same time, the techniques of the operation are taught to local ophthalmologists.

Another special project, known as Orthopedics Overseas, consists of leading American orthopedic surgeons' going to a country on a rotating basis to provide surgery and teach.

This program, which started in Jordan, has been expanded to Saigon and Vietnam, and will eventually include countries in South America and Africa.

AFFILIATIONS SPREAD

The Medico program has been strengthened during the last year through affiliations with 10 of the leading American medical and surgical specialty groups, including the American College of Surgeons and the American College of Physicians.

That the American people believe in Care and Medico is shown by their consistent increased support of these voluntary organizations. Contributions to Care, for example, have doubled since 1956.

Under the new merger, Medico will continue and expand its current program, but as a service of Care. Care will gain a professional arm for the medical supplies and equipment that form part of its self-help assistance.

Food, tools, and professional skills will be combined in a joint assault on mankind's greatest enemies—hunger, poverty, and disease.

SUGAR LEGISLATION

Mr. CURTIS. Mr. President, on occasion I find myself indebted to my colleagues for alerting me to forthcoming legislation, and on occasion I try to reciprocate. A matter which has just come to my attention spurs me to sound a note of warning, and I hope every Senator will consider it seriously.

For years now, the Senate has been ignored in the framing of our sugar legislation. We have not been allowed to hold hearings or to give more than passing attention to this far-reaching problem. All we have done is to vote out the bill the House has sent during the closing hours of the session. This deliberate evasion of the traditional legislative process with its serious consequences lies squarely in the lap of the House Agriculture Committee; but the Senate remains passive and docile. It loses stature internationally, and is subject to severe criticism at home.

We voice our displeasure and complain; but we vote for the bill rammed through the House, we hold no hearings, and we fail to give full consideration to the vital provisions the bill may or may not contain. We are told that chaos will result if we do not continue the law; so we vote on the basis that any old bill is better than none.

The present law expires at the end of June of this year, and here we go again; the same old plan is shaping up.

Time is passing. There is evidence that, once again, in the closing hours, the Senate will be handed a belated and complicated sugar bill on a take-this-or-nothing basis.

This year we simply cannot allow that to happen. It is vital that we have ample time to discuss this matter fully, or else we stand to lose our present

sugar production, let alone get any new acreage.

On January 18 of this year the President said:

> The Sugar Act expires on June 30, 1962. Legislation will be proposed extending it with substantial revisions to bring this program into line with the greatly changed world sugar situation. Under this legislation the difference between the domestic and world price of sugar, which is currently received by foreign suppliers of sugar, will be retained by the United States to the extent permitted by existing international agreements, with an estimated increase in 1963 budget receipts of $180 million.

On February 15, Mr. Lawrence Myers, Director of the Sugar Division of the Department of Agriculture, stated:

> The President's statement that the difference between the domestic price and the world price of sugar will be retained by the United States clearly implies the imposition of an import fee. Let us note the possible mechanics. (a) The import fee could operate exactly as the tariff operates. Certainly that would involve no new set of mechanics for importers or refiners.

Mr. Myers then went on to indicate that the import fee could operate in the same manner as the one applied to importations of nonquota sugar from the Dominican Republic in 1960 and early in 1961.

No student needs to read between the lines in order to discover that it is the ambition of the President to get personal and dictatorial control over sugar imports and the production of cane and beets in the United States. It is elementary that if the President, by one maneuver or another, gets control over the "import fee," or whatever the new invention may be, he can gain complete control over domestic production and the prices domestic producers will get for their products.

Mr. Myers later in the same speech stated:

> Much could be said in favor of old time tariff protection from the standpoint of simplifying the work of Government. A fixed tariff, however, would not protect the domestic producers adequately when there is a major decline in world sugar prices and it would burden domestic consumers unnecessarily if there should be a major increase in world prices. It would seem preferable, therefore, to make the fee subject to adjustments.

We need not look twice to see who will make those "preferable" adjustments. We need not warn the sugar producers of the United States that if this bill contains any deliberate or loophole means whereby the President will dictate the amount of the import fee or the import regulations, they stand in jeopardy every hour.

The President has just announced, without even an apology, that in the recent horse-trading session in Geneva, when many hundreds of rates of duty were slashed, he completely ignored the peril points established by the Tariff Commission under the law which requires him to observe them or to tell Congress why he did not. His reason for ignoring them was that the other countries would not trade with us if he observed them.

Do the growers of sugarcane or do Senators who have constituents who grow cane or sugarbeets wish to delegate to that one man the power of life or death over the sugar industry of the United States? He has asked Congress to delegate to him, and to him alone, the power to cut any tariff by 50 percent and to be able to wipe out tariffs altogether on hundreds of items. He has stated plainly that some industries will have to be sacrificed, and has offered a plan to have the Federal Government act as legal guardian of those put out of work by such actions.

We who are interested in sugarcane and sugarbeets already see the handwriting on the wall. The sugar bill will be delayed and delayed, and the Senate will get the same old chance to vote it up or down on the last day of the session, without hearings, without deliberation, and without a chance to amend. It will likely have the "import fee" feature, and it will be so akin to the tariff that the President will gain absolute and autocratic power over both imports and domestic production if he gets his trade-agreement bill, H.R. 9900, now the subject of hearings before the Ways and Means Committee. What we must be on the alert against, in any suggested sugar bill, is any form of "gimmick" or "sleeper" that will delegate to the President the power to limit domestic expansion or to trade away the present sugar industry of this country. I, for one, will be watching very carefully for any deviation from the legislative process outlined by the Constitution, and will vote against any proposals which provide for such questionable procedures.

This is more power than I would want to give any President—but, then, thus far we have had none so power hungry that he would ask for anything even approaching this.

I shall withhold judgment about the strength and weakness of an import fee system with regard to imports of sugar until it is before us. If it contains any provisions which would take from Congress and give to the President the authority to control domestic prices, domestic output, or imports into this country, I shall do all in my power to block it. If it comes too late in the session for the Senate to give it adequate consideration, and if the Senate rebels as it should do, and has indicated it will do—and if chaos results, then the public will know where the responsibility lies.

I wish to warn my colleagues about one more thing: If the President is consistent, he will continue his fight against domestic production and for increased foreign production, and his bill will not provide for any new sugarbeet areas in this country. If quotas are disregarded, we can be almost sure that the proposed import fee will be such that no new mills and no new acreage will be possible.

Each time sugar legislation has been presented, the Finance Committee has been bombarded with requests, from many parts of the country, for additional acreage for sugarbeets. It does seem profoundly uneconomic to supply only a little over half of our sugar requirements from our own land and territories, when we are literally paying millions of dollars, every day of the year, to keep land idle and to pay storage bills on crops which we cannot use, cannot sell, and frequently cannot even give away. This is the last degree of being penny wise and pound foolish.

In the State of Nebraska alone, thousands of acres of wonderful soil are available. The owners of that soil constitute the real backbone of our country. Who can blame them for failing to understand why the Federal Government will pay them to leave the land idle, or will restrict the amount that can be used for current crops, and then will prohibit them from contributing to the revenues and general welfare of our economy by growing sugarbeets. They are told, "You produce only a part of our needs, and can share in the growth of our consumption only to the extent of a little over half of that growth."

This does not make economic sense; and it would appear that the least that should be done would be to give to the domestic producers at least 80 percent of our market, so that new mills and new production areas may participate in the production of sugar for use in this country. We shall watch carefully to see how the forthcoming bill answers this acute problem.

I hope my colleagues will join me in telling the President that we must have a bill in time to give it proper study, and that this body will never consent to granting to him or to any other President the sole power to regulate the imports or the production of sugar. Let us confirm that we stand solidly for an increased, permanent share in supplying our home market.

The American farmers can provide the sugar needs of our country, yet the Department of Agriculture and the administration relentlessly oppose them in their right to this home market.

In the meantime, the Nation is plagued with surpluses and a costly agricultural program.

What has happened to all of the preelection expressions of concern for American farmers?

One of the great virtues of the present Sugar Act is the quota system. It should not be abandoned for a worldwide scramble for our sugar market, with either a fixed tariff or a variable, unpredictable tariff. The basic act should be extended, and the domestic quota very materially increased.

Mr. MORSE. Mr. President, I should like to say to the Senator from Nebraska that I completely associate myself with his observations in regard to one of the very serious problems which for some time has confronted the Senate.

As the Senator from Nebraska knows, for some years I have protested on the floor of the Senate about the handling of the Sugar Act legislation. The Senator from Nebraska certainly is performing a great service today by the comments he has made, and I associate myself with them.

Mr. CURTIS. I thank the Senator from Oregon.

AMENDMENT OF THE SENATE RULES

Mr. MORSE. Mr. President, since I have been a Member of the Senate, I think no Senator has made a greater contribution to the Senate, by way of a scholarly analysis of the rules of the Senate and their many implications, than has the distinguished Senator from Pennsylvania [Mr. CLARK]. Time and time again he has pointed out that the Senate owes it to the American people to revise its rules, so that the people can have prevail in the Senate the democratic procedures to which they are entitled.

I share the point of view which the Senator from Pennsylvania [Mr. CLARK] has pointed out many times, namely, that democratic procedures do not prevail in the Senate, as Senators realize when they come to analyze the imperfections of the Senate rules; unfortunately, much the same must be said of many rules and procedures of the other body, too.

So I believe it important that the attention of the American people be called to the unanswerable fact that the rules of the Congress do not belong to the Congress; the rules of the Congress belong to the American people, and it is high time that the American people proceed to take some action on the Members of Congress because of their failure to restore a long overdue right of the American people, namely, the right to have democratic procedures maintained in the Congress.

The Senator from Pennsylvania [Mr. CLARK] has recently written an article entitled "The Hesitant Senate." The article has been published in the March issue of the Atlantic Monthly magazine, and is a scholarly, frank, and proper one for the Senator from Pennsylvania to write. I highly commend him for it, and I associate myself with the observation presented in it.

I ask unanimous consent that Senator CLARK'S article, entitled "The Hesitant Senate," be printed at this point in the RECORD.

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

THE HESITANT SENATE

(By Senator JOSEPH S. CLARK)

On January 15, 1957, LYNDON JOHNSON, then the senior Senator from Texas and majority leader, gave a lunch for the newly elected freshmen senatorial Democrats. Only six of us had successfully breasted the Eisenhower tidal wave of the preceding November: FRANK CHURCH, of Idaho, JOHN CARROLL, of Colorado, FRANK LAUSCHE, of Ohio, HERMAN TALMADGE, of Georgia, STROM THURMOND, of South Carolina, and I. As we sat down to our steaks at the long table in the office of Skeeter Johnson, the urbane and charming Mississippian who serves as Secretary of the Senate, each of us found at his place a copy of "Citadel: The Story of the U.S. Senate," autographed "with all good wishes" not only by its author, William S. White, Pulitzer Prize-winning biographer of Robert A. Taft, but by the majority leader as well.

During the course of the luncheon, Senator JOHNSON encouraged us to consider Mr. White's book as a sort of McGuffey's Reader from which we could learn much about the "greatest deliberative body in the world" and how to mold ourselves into its way of life.

I did my homework.

Mr. White, assigned from 1946 to 1956 by the New York Times to cover that "peculiar institution" in which I serve, eulogizes the post-World War II Senate much as Allen Drury did in "Advise and Consent." He writes with affection of its tone and timelessness, the concept of the Senate as a club, its ability to divorce itself almost completely from the outside world, to a part of which, nonetheless, a third of its Members must return every 2 years to seek reelection. With tender sympathy he sketches an atmosphere redolent with mint juleps and Confederate gentlemen. He speaks of its peculiar rules and its even more peculiar customs. "The Senate," he writes in conclusion, "is a place upon whose vitality and honor will at length rest the whole issue of the kind of society that we are to maintain."

Perhaps he is right; if so, we in the Senate had better change our ways. For, a legislative body conducting business as Mr. White suggests the Senate does would be totally incapable of preserving either vitality or honor anywhere.

Actually, Donald R. Matthews was closer to the truth when he referred to Mr. White's infatuation with the Senate of the fifties as "an almost embarrassing love affair." In "U.S. Senators and Their World," he wrote of the Senate as "a legislative Chamber of imposing power which sometimes finds it impossible to act; an institution heavy with tradition whose Members occasionally act like schoolboys on a spree." And schoolboys on a spree are not good enough in today's world. For the problems which confront us are getting harder, not easier. And the Senate had better be on its toes if it is to play its part in solving them.

There are two major unanswered political questions: First, how can we substitute real peace and disarmament under internationally enforced world law for the delicate balance of nuclear terror under which we have been living since Russia acquired atomic weapons in 1949? Second, how can we adjust our oasis of prosperity to that desert of despair in which a constantly increasing number of underprivileged people presently exist, a desert where two out of every three human beings go to bed hungry every night?

But there are a host of scarcely less important worries. On the international scene, to mention only a few, there are southeast Asia, south Africa, Latin America, Cuba, the Congo, Russian imperialism, the challenge of competitive coexistence, Communist China, Berlin—indeed, the whole German question—any one of which may erupt at any time into angry violence. And then there are world trade, the tariff, and the Common Market. At home there are education, unemployment, the proper utilization of manpower, housing, agriculture, the renewal of our cities, problems of the aged and aging, civil rights, tax reform, and the constant threat of inflation.

Problems as complex as these could not be resolved successfully in Mr. White's Senate. We must sharpen our obsolete senatorial tools. For, our country and the civilization of which we are a part will not survive unless we awaken from our national political lethargy and speed up the pace of intelligent governmental action. We have inherited a government of checks and balances, based on the 18th century theory that that government is best which governs least and on Lord Acton's precept that power tends to corrupt, and therefore should be grudgingly granted. Our National, State, and local governments are divided into executive, judicial, and legislative branches, thus diffusing power among nine governmental sources—each of which inhibits action. It is with the decision-making power of the Senate at the national level that this article is concerned.

The Senate was originally conceived in 1787 as a body of wise elders, chosen not by the people but by the State legislatures, and selected because they could be relied upon to defeat impetuous action by either the popularly elected House of Representatives or by a President who, if not checked, might in time become a tyrant. In a day when governmental action, if needed at all, could afford to be slow, when the memory of the tyrant George III was fresh in men's minds, this original conception, favoring inaction, made good sense.

Does it still do so? I think not.

Our first controversy when I came to Washington in 1957 was an attempt to modify the rules of the Senate so as to put reasonable limits on debate. "The Senate," said Woodrow Wilson, "is the only legislative body in the world which cannot act when its majority is ready for action." We proved him right in 1957, in 1959, and twice in 1961. In each instance, a majority of the Senate decided it did not wish to change its rules at the time and in the manner then proposed in order to pass legislation a majority favored. Yet, until the rules are changed, a small but determined minority can prevent the Senate from performing its constitutional duties by preventing any matter from being decided on its merits.

ROADBLOCKS TO ACTION IN COMMITTEE

Today, legislation proposed by the President can be bottled up in committee indefinitely by a determined and hostile chairman. Thus, no civil rights bill has ever been recommended to the Senate by the Senate Judiciary Committee, despite urgent recommendations by both President Truman and President Eisenhower. Nor, it may be safely predicted, will President Kennedy have any better luck if he ever decides to attempt to implement his campaign commitment. Senator JAMES EASTLAND and his southern colleagues, assisted by rightwing Republicans, have an unbreakable majority in the committee. The last, rather innocuous civil rights legislation debated in the Senate was tacked on as a nongermane amendment to a measure entitled "A bill to authorize the Secretary of the Army to lease a portion of Fort Crowder, Mo., to Stella Reorganized Schools, R–1, Missouri."

Even if legislation finally reaches the floor, it can be emasculated in the process by hostile chairmen who control bipartisan majorities in their committees. Thus, Senator HARRY BYRD and his conservative colleagues in the Finance Committee have successfully prevented tax-reform measures such as limitation of the business-expense "swindle sheet" deduction, the oil-depletion allowance, and withholding of the tax on dividends and interest at the source from being incorporated in the committee drafts of the annual bills extending corporation and excise taxes. In each such case, efforts had to be made on the floor, sometimes successfully, sometimes not, to amend the bill—always a difficult task when the chairman, supported by a majority of the committee, objects.

Any Member of the Senate can prevent any committee from meeting while the Senate is in session. If the measure is complicated, requiring prolonged executive sessions, this is a particularly effective method of preventing action, especially toward the end of a congressional session. All last spring and summer, Senator BARRY GOLDWATER, by exercising this right, delayed committee action on extension and revision of the National Defense Education Act. Eighteen executive sessions were held in the Labor and Public Welfare Committee and its Education Subcommittee to mark up the bill. Thirteen of these were forced to recess after an hour or

two because objection was raised formally or informally to the meeting's continuing while the Senate was in session. On the other five occasions, the Senate did not meet on the day of the committee session, but toward the end of the summer the Senate meets almost every day.

Senator MORSE, of Oregon, chairman of the Education Subcommittee and responsible for managing the administration bill, would call an executive session for 10 or 9:30 or even 9 a.m. It would be difficult to get a quorum of the committee to show up on time, particularly since several of the Republicans would always fail to appear. At last, a quorum would appear an hour or two before the Senate met, at 11 o'clock or noon, as the case might be. A controversial section of the bill would be brought up for discussion. Assisted by his colleague on the committee, Senator DIRKSEN, of Illinois, the able and distinguished junior Senator from Arizona (to lapse into Senate semantics) would criticize the proposal at some length, frequently enticing Democratic proponents into extended committee-room debate.

Senator MORSE's eyes would wander to the clock over the door in the committee room: 5 minutes, 4 minutes, 3 minutes to go before the Senate convenes. Finally, the discussion would be interrupted by the ringing of the bell, which silences talk. The Senate was in session. "I'm sorry, WAYNE, but under the rule I must object to the subcommittee's meeting further." So that was that until the next day. Senator GOLDWATER was quite within his rights under the rules. In the end, the subcommittee got the bills out of committee and on the calendar, but too late for floor action until 1962.

STALLING ON THE SENATE FLOOR

If a measure is voted out of committee and reaches the calendar, it must be brought to the floor by motion of the majority leader approved by the policy committee of the party in power. The Democratic policy committee, until recently, was controlled by the opponents of action. As a result of agitation by a number of liberal Democrats led by Senator ALBERT GORE, of Tennessee, the policy committee was reconstituted so as to give the Kennedy men a majority.

If the motion to take up is approved, debate on the merits of the measure is unlimited and need not be germane. Amendments can be offered without limit; so can amendments to amendments and substitutes for amendments. Amendments need not be germane to the bill or to the amendment to which they are offered. On each of these, debate is unlimited and need not be germane. Thus, when extension of the life of the Civil Rights Commission for 2 years was proposed last summer, 21 amendments were filed. Had any of these amendments been called up for action, any number of amendments to each amendment could have been proposed. Senator JAVITS' amendments continued a comprehensive civil rights bill. Senator ERVIN, of North Carolina, proposed an amendment which would overturn the recent Supreme Court decision ruling out confessions obtained during unreasonable periods of detention after arrest and prior to arraignment. An amendment by Senator THURMOND, of South Carolina, would have invalidated all acts of Congress impinging on State statutes unless the former specifically "preempted" the field.

The southerners began to talk. I said to Senator EASTLAND: "Jim, how long are you fellows going to keep this up?" He replied with a grin: "Until we know we have the votes to table those Javits amendments."

After a couple of days the leadership capitulated. The majority leader, MIKE MANSFIELD, of Montana, announced that he would move to table all amendments which were called up. Senator DIRKSEN, the minority leader, concurred. A majority of the Senate supported the leadership. Down the drain went not only the Javits amendments but also my own proposals to extend the Commission's life indefinitely, or, in the alternative, for 4 years. A determined minority had once again forced its will on the Senate.

Actually, MANSFIELD and DIRKSEN, under the present rules, had no alternative. It was late in the session. The calendar was crowded with must legislation sponsored by the President. Already Senators were clamoring for adjournment. The leaders knew that the southerners would permit a short extension of the Commission's life if no serious effort were made to enact important civil rights legislation, advocated in the platforms of both political parties. The sensible thing to do was to compromise. So, compromise they did. The point is that the rules give to a small minority the power to frustrate the will of a majority, which was unwilling at that time to try to break a filibuster.

Each legislative day, as debate proceeds, any Senator can require the Journal of the preceding day to be read in full. Such reading ordinarily takes about 4 hours. On August 21, 1961, I objected to a request by Senator MANSFIELD, majority leader, for unanimous consent to dispense with the reading of the Journal. The clerk began to drone out the record of the previous day's proceedings. For the better part of an hour the Senate was immobilized. Then, the point having been made, I withdrew my objections. Had I wished to exercise all of my rights under the rules, I, acting alone, could have prevented any action by the Senate for several days.

If a bill is passed and is in different form from a bill on the same subject passed by the House, the differences must be resolved in conference or the bill will not become law. In recent years, Senate conferees from some committees, notably Finance, have been selected by seniority and are often in opposition to action taken on the Senate floor which reverses recommendations of the committee. Conferees holding such views are, to put it mildly, unlikely to support for long the floor action of the Senate when it differs from their conception of what is wise. Thus, amendments adopted on the floor of the Senate, but not included in the House bill, closing tax loopholes were quietly and quickly abandoned in conference by Senate Finance Committee conferees who had opposed them in committee and on the floor.

CHANGING THE RULES

It may well be asked: "Is there no way of modernizing Senate rules and procedures so as to put an end to these stubborn roadblocks?" The answer is at best a qualified "yes."

There is a provision in the Senate rules requiring that "all changes in the rules" can be made "only in accordance with the rules." This means that each of the methods of defeating or delaying a bill is available to defeat a change in the rules. Proposed changes sponsored by me and designed to limit or abolish such delaying tactics are presently resting in the Committee on Rules and Administration. Very little money is being wagered on their surmounting the very difficulties they are aimed at eliminating. Senate rule XXII in theory permits some limitation of debate. But it takes two-thirds of those Senators present and voting to invoke it—67 for all practical purposes; and there are at present 60 Senators at the most who are willing to vote to limit debate.

Vice President Nixon, as Presiding Officer of the Senate, ruled in 1959 and again in January of 1961 that provisions in Senate rules designed to prevent the Senate, at the beginning of each new Congress, from adopting new rules or modifying existing rules by majority vote were unconstitutional. In his view, a majority of the Senate could set aside existing rules and adopt new ones in January of odd-numbered years. Debate could be terminated under general parliamentary law by "moving the previous question," a parliamentary device available in one form or another in practically every legislative body in the free world except the Senate of the United States. A ruling of the Presiding Officer thus terminating debate (or refusing to do so) could be appealed to the whole Senate. If the parliamentary situation is such in 1963 that a ruling can be obtained, there is some hope that a majority of the Senate would be willing to modify rule XXII to permit limitation of debate by a three-fifths instead of a two-thirds vote. But, for the present, one-third plus one of the Members of the Senate present and voting can prevent any measure, regardless of its nature, from ever coming to a vote.

One-third plus 1 means 34 Senators. By my count there are presently 61 Senators who, by and large, would support action programs strongly recommended by the President and intended to strengthen international understanding and the causes of world peace and disarmament. The count is about the same for moderate civil rights legislation in aid of school desegregation and fair employment practices. This leaves 39 Senators in opposition—a leeway of 5 votes for these who resist change.

My box score breakdown follows:

Democrats:			
Kennedy supporters	43	--	--
Switch hitters	11	--	--
Anti-Kennedy Democrats	--	10	--
Total	--	--	64
Republicans:			
Moderate liberals	7	--	--
Dirksen-Goldwater axis	--	29	--
Total	--	--	36
	61	39	100

This analysis varies a little, depending on the particular issue. But, barring an international or domestic crisis of the first magnitude, it is highly unlikely that in 1962 the Senate will be able to act with the alacrity it needs if a determined minority desires to prevent action.

YOUNG BLOOD

Does this mean that the President's program in a year of tension, such as 1962, will be lost? Not at all. Much of it will probably go through. Most important legislation supported by the President finally reaches the floor in one way or another, largely because no group of Senators is strongly enough against it to utilize the weapons of delay and obstruction which are available to them. Opposition in committee frequently brings watering down and compromise, which make the measure less distasteful to its enemies and thereby weaken their ardor. Some of the opposition is more political—that is, for home consumption—than ideological. It is therefore less intransigent than it seems.

The Senate usually acts on major bills by "unanimous-consent agreements," limiting debate after a reasonable opportunity has been given to those who wish to speak at length. To be sure, any one Senator has the right to withhold such consent. But those who do are frowned upon by a majority of their colleagues, who usually want to vote promptly and go home for dinner.

There is a curious and, on the whole, laudable esprit de corps in the Senate. Most politicians want to be both liked and respected. Senators are no exception. There is strong pressure not to make a nuisance of oneself, not to fight the leadership of one's party, not to appear as a mere obstructionist, not to become emotionally involved in any particular or controversy, always to be able to sit down at lunch with one's colleagues in com-

mittee or on the floor without embarrassment resulting from one's behavior of the day before.

Finally, the Senate of 1962 is quite a different body from the Senate of 1957. I can well remember the tense situation when we met in Democratic caucus the morning of January 3, 1957. There were then in the Senate 47 Republicans and 49 Democrats, including FRANK LAUSCHE, an independent just elected the junior Senator from Ohio, ostensibly as a Democrat. We were all there at the caucus but FRANK. Nobody knew where he was or what he was up to.

We chose LYNDON JOHNSON leader. He made a little speech saying he did not know whether he had been elected majority or minority leader. If Lausche voted with the Republicans, as we feared, the vote on the leadership would be a tie. Vice President Nixon would break it, and the Republicans would organize the Senate. We went to the floor. A motion was made to elect LYNDON B. JOHNSON majority leader. William Knowland was nominated by the Republicans. The roll was called in alphabetical order. When LAUSCHE'S name was reached, there was a dramatic pause. Finally he voted "Aye." I can remember the mounting tension as the rollcall began, the buzz of conversation, and the sighs of relief from both floor and galleries as doubt grew and was at length dispelled. The Democrats had organized the Senate by the skin of their teeth.

Two years later, things were quite different. The election of 1958 brought 15 new liberal Democrats to the Senate to replace as many, on the whole conservative, Republicans. The three new Republicans were all in the liberal wing of their party. Instead of a 49–47 majority, the Democrats had a 65–35 advantage. Ultimate power shifted to 15 Democratic "switch hitters," largely controlled by the leadership, men who would vote right one day and left the next, pretty much as LYNDON JOHNSON wanted.

Still, even in 1959, after the 1958 turnover in membership, there was no real sense of urgency. The White House proposed no dramatic program. There was no change in the Senate leadership's outlook.

The election of 1960 supplied the missing element. Senator Kennedy went to the White House. Senator JOHNSON, no longer majority leader, became Vice President and lost his senatorial power. Among the new Senators are four young vigorous liberals, BURDICK, of North Dakota, METCALF, of Montana, PELL, of Rhode Island, and MAURINE NEUBERGER, of Oregon, who took her highly respected late husband's seat. The average age in the Senate has dropped; the level of vitality has risen. With MIKE MANSFIELD as leader and HUBERT HUMPHREY as whip, a score of liberal measures passed the Senate last year, among them minimum-wage legislation, Federal aid to public schools, an expanded housing program, the wilderness bill, OECD, the retraining for the unemployed bill, the Peace Corps, the Arms Control and Disarmament Agency, a vastly better foreign aid bill. The votes were there to pass them. The opposition chose not to use the tools of delay which could have brought about defeat of the measures.

But there is more to the change in voting strength than mere numbers indicate. The caliber of the men in the Senate has changed drastically in the last 5 years. Gone are the Joe McCarthys, the Jenners, the Welkers. Gone, too, are Bill Knowland, Styles Bridges, and Edward Martin, earnest, sincere conservatives. Gone are fine, but elderly, liberals like Theodore Francis Green and Jim Murray. Bill Langer was the last old ex-Populist to pass from the scene just as Tom Connally wore the last string tie.

In their stead are men in their forties, and even late thirties: ED MUSKIE of Maine, EUGENE MCCARTHY, of Minnesota, FRANK CHURCH, of Idaho, PHIL HART, of Michigan, GALE MCGEE, of Wyoming, BILL PROXMIRE, of Wisconsin, RALPH YARBOROUGH, of Texas, to name only a few. These men and a dozen others, some of them older, like WAYNE MORSE, of Oregon, JACOB JAVITS, of New York, JOHN CARROLL, of Colorado, CLIFFORD CASE, of New Jersey, and PAUL DOUGLAS, of Illinois, but all of them 20th century men, are on their way to make over the Senate so as to enable it to perform its constitutional function in the modern world. They are not interested in the Senate of Mr. White's "Citadel." They understand the deadly peril in which we live. They know the need for reform at home and for security and peace abroad. They will follow aggressive leadership. Eventually they will change the rules.

CIVIL RIGHTS

Having said all this, I must conclude on a note of grave concern. There are two areas where the Senate is not yet prepared to act, where action may well be essential to survival. In the case of civil rights, only Senate procedures and rules block the way. In the area of foreign affairs, the Constitution itself sets requirements that delay action.

Civil rights legislation is necessary not only to our domestic well-being but to the success of our foreign policy. At home, an awakened and better educated Negro citizenry is just not going to put up much longer with a denial of the equal protection of the laws. Progress has, of course, been made. Strong executive action is bringing more progress. But there remain wide areas of discrimination in employment, in education, in housing which can be eliminated only with the aid of further legislation. And discrimination is actively supported by a highly vocal minority both north and south of the Mason-Dixon line and ably represented in both Houses of Congress. Meanwhile, abroad, Africa, Asia, and large areas in Latin America write off our protestations of liberty and equality as hypocrisy. The resulting endless and continuing damage to our position of world leadership is growing more serious every day.

Civil rights is a highly emotional issue. Southern Senators feel strongly enough about it to oppose legislation with every parliamentary device at their command. There are 18 of them in the Democratic Party. Half a dozen more Democrats would vote for a civil rights bill but against limitation of debate. A minimum of 10 Republicans, probably more, would join forces. There is a majority in the Senate for civil rights legislation. But at least one third of all Senators plus one would vote against limiting debate.

Thus, the Senate cannot act, though its majority is ready for action. Knowing this, and fearing reprisals in other areas of his program, the President has been hesitant to antagonize the southerners. So, a majority throughout the country cannot act. The American giant is rendered impotent in this area by procedures at variance with our American concept of majority rule. And the procedures appear impervious to change.

FOREIGN POLICY

The seemingly perpetual international crisis becomes even more serious when we consider the constitutional provision that two thirds of the Senate present and voting is required for the ratification of a treaty. Consider the areas in which delicate negotiations looking toward the establishment of permanent peace must be brought to successful conclusion through the treaty process: trade agreements, nuclear testing, strengthening the Charter of the United Nations, repeal of the Connally amendment to the ratification of our adherence to the World Court, conclusion of a meaningful disarmament agreement.

In each instance, some yielding of national sovereignty is required. In each instance, an informed executive exercising his best judgment will probably conclude that certain risks must be taken in the hope that the cause of lasting peace may be advanced. Conservative public opinion will be rallied against ratification of the treaty by the Senate. One can predict in advance the recourse to the flag, to patriotism, to the pocketbook, to the deeply felt distrust of foreigners. A test of intellectual and emotional maturity will be presented each time.

It will never be popular to vote to yield any small part of national sovereignty. A President can perhaps be excused if, realistically appraising Senate opposition, he fails to assume aggressive leadership in all of these areas. The history of Woodrow Wilson and the League of Nations is written too plainly not to be read and understood by every occupant of the White House.

Today there is a group which comprises more than one-third of the Senate plus one who would be loath indeed to move very far toward that internationalism which many believe essential to peace and well-being. And this group has at its command not only the constitutional requirements of a two-thirds vote, but all the rules and procedures of the Senate as well.

What will the role of the Senate be in the 1960's? Will it remain a hesitant supporter of that status quo so much admired by those friends of Mr. White's who resist change in a changing world? Or will it, with its new Members, under its new and vigorous leadership, spurred on by the President, take arms against the troubles which confront it, and by opposing—somehow or other—end them before it is too late?

It requires a rasher prophet than the author to hazard the answer. One can only hope for the best.

HOOD RIVER VALLEY ORCHARDISTS TAKE HONORS

Mr. MORSE. Mr. President, it gives me great pleasure to bring to the attention of the Senate a news release by the Hood River County Chamber of Commerce which sets forth the awards presented at the annual awards banquet on February 19.

Such community recognition of outstanding accomplishment on the part of farm men and women serves a most useful purpose in the community. It is particularly important, in my judgment, as an indication to the young people of our country that honor and recognition are due jobs well done. To each of the participants in this annual ceremony I extend my warm congratulations.

Mr. President, I ask unanimous consent that the news release to which I have alluded be printed at this point in the RECORD.

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

HOOD RIVER COUNTY
CHAMBER OF COMMERCE,
Hood River, Oreg., February 26, 1962.

To: Senator WAYNE MORSE, Senate Office Building, Washington, D.C.

Subject: Hood River Valley Orchardists Take Honors.

A crowd of over 450 persons watched Parkdale Orchardists Sheldon Laurance and Jerry Routson honored at the Hood River County "Orchardist of the Year" Annual Awards Banquet at Wy'east High School Monday evening, February 19th.

Laurance was named "Orchardist of the Year", Routson was named "Junior First Citizen." Also honored were Hood River

Banker Bob Flint "Senior Citizen of the Year" and Mrs. Harold McIsaac "Woman of the Year".

The capacity crowd heard Dr. James Jensen, president of Oregon State University, deliver the principal address prior to the awards announcements.

Laurance received "Orchardist of the Year" honors for the work on his 80 acre farm near Parkdale. The award goes to an individual, honoring the individual and paying recognition to the fruit industry which he represents.

When Laurance started work on his farm, he cleared many acres, and planted the ground with strawberries along with young trees. This varied from the usual procedure at the time of clearing only a few acres, planting the strawberry and tree crop, and then clearing a few more acres.

Bill Gale, who made the award, noted that since Laurance initiated the "grand scale" practice of clearing and farming many acres, and was successful, several others have followed the same practice. "Thus," said Gale, "this was a step forward in the progress of the upper valley."

In addition to successful operation of his farm, other achievements were listed for Laurance. He is a member of the Elks, Farm Bureau, American Legion and Oregon-Washington Horticulture Society. He is also a director of the Middle Fork Irrigation District.

Routson, 33, Parkdale, raises fruit in that area. He attended Willamette University for a period of time after graduating from high school, and served with the Armed Forces.

He has been chairman of the fair board, a member of the VFW and American Legion, and active in the county agriculture stabilization and conservation commission.

Numerous memberships and achievements were listed for Senior First Citizen Flint.

He is a past president of the Hood River Rotary Club, city council, and past chairman of the board of trustees of the Riverside Church. Flint has been a member of the recreation commission, a member of the Campfire Girls executive council, active in united fund, volunteer fireman, chairman of the local committee on March of Dimes, active member of the Elks Lodge youth committee, and a past president of the Columbia Bankers Association.

Among Mrs. McIsaac's accomplishments were these:

Past president of AAUW, current chairman of the county welfare committee, member of the United Church of the Upper Valley, superintendent of the Sunday school and youth leader. She has been active in the Red Cross, United Fund, cancer research, PTA, county fair, Farm Bureau, and the Republican Party. As a member and past matron of the Eastern Star, she organized and guided the Job's Daughters for 14 years.

Toastmaster for the evening was Ray T. Yasui. Yasui, in introducing the main speaker puckishly noted, "Dr. Jensen came to Oregon State University by request and I left for the same reason."

The annual banquet awards dinner featured the famous Hood River pears and apples in many ways. All Oregon products were served, which included a unique pear pie, apple and pear salads, a number of relishes, apple desserts, apple breads and candy. All this prepared by the women of Pine Grove Home Economics Club.

FORTY-FOURTH ANNIVERSARY OF THE LITHUANIAN DECLARATION OF INDEPENDENCE

Mr. SMITH of Massachusetts. Mr. President, recently, many Americans of Lithuanian descent in Massachusetts have gathered to commemorate the 44th anniversary of the Lithuanian declaration of independence. I noted this event in remarks on the floor of the Senate last month: I would now like to supplement these remarks by introducing two resolutions to commemorate this occasion which were made by Lithuanian-Americans of Norwood and Boston. I ask unanimous consent that they be printed in the RECORD.

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

RESOLUTION OF AMERICAN CITIZENS OF LITHUANIAN DESCENT OF NORWOOD, MASS.

American citizens of Lithuanian descent from Norwood, Mass., gathered in mass meeting in Norwood Lithuanian Hall on the 25th day of February in the year of 1962 to commemorate Democratic Lithuania Republic's regaining freedom and it's declaration of independence's 44th anniversary, after due deliberation and cognizant of presently existing conditions in Lithuania, unanimously adopted the following:

Whereas the Soviet Union and international communistic aggression represent danger for various nations to lose their freedom, and because the same Red terror-enforced war conditions or actual war around the globe expose our beloved country—America—to the same danger; and

Whereas in the United Nations the Soviet Union continuously puts forth alleged west hemispheric nations' colonial policies ignoring her actual colonization of East Europe; and

Whereas the Soviet Union regardless of her made agreements and pledges forcibly occupied in the year 1940 Lithuania, Latvia, and Estonia and since then practices colonization, deportation and outright killing of the people from the above-mentioned nations; and

Whereas all those actions perpetrated by the Soviet Union in Lithuania, Latvia and Estonia, as in all her occupied East European countries, constitute until now unheard of genocide; considering the above-mentioned facts: Be it

Resolved, That the U.S. representative in the United Nations in its nearest session present the fact of enslavement and colonization of Lithuania and other East European nations by the Soviet Union, urging the members of the United Nations to recognize and condemn the Soviet Union as an aggressive colonial power practicing genocide; and be it further

Resolved, That the United Nations demand that the Soviet Union withdraw all military and civilian political forces from the occupied East European countries, Lithuania and others; and be it further

Resolved, That all those nations be allowed to establish their own sovereignty and, under United Nations control, to choose their own form of self-government; and be it further

Resolved, That we are deeply grateful for your concern and help in the fight for freedom for our fathers' and forefathers' country, Lithuania; and we pledge ourselves with all power in our possession to support your policies and work to free Soviet Union enslaved countries, that there be established in the world everlasting peace, justice and freedom for all.

RESOLUTION OF THE LITHUANIAN COUNCIL OF GREATER BOSTON, MASS.

Whereas the council of Lithuania proclaimed the independence of Lithuania on February 16, 1918, and asserted its restitution as an independent state severing the ties of bondage which had enslaved it since 1795; and

Whereas by the Treaty of Moscow of 1920, Soviet Russia recognized the sovereignty and independence of Lithuania and voluntarily forever renounced all sovereign rights over the Lithuanian people and their territory; and

Whereas the guaranteed liberty of Lithuania was forcibly violated and the Soviet Union took over Lithuania, Latvia, and Estonia in 1940 notwithstanding the solemn treaties and agreements of nonaggression; and

Whereas the people of Lithuania, Latvia, and Estonia under Communist control were and still are overwhelmingly anti-Communist; and

Whereas the Government of the United States of America maintains diplomatic relations with the governments of the Baltic nations of Lithuania, Latvia, and Estonia and consistently has refused to recognize their seizure and forced incorporation into the Union of the Soviet Socialist Republics: Now, therefore, be it

Resolved, That we, and all Lithuanians throughout these United States call upon their representatives in the Senate and House of Representatives to request the President of the United States to bring up the Baltic States question before the United Nations and ask that the United Nations request the Soviets (1) to withdraw all Soviet troops, agents, colonists, and controls from Lithuania, Latvia, and Estonia; and (2) to return all Baltic exiles from Siberia, prisons and slave-labor camps; and be it further

Resolved, That the United Nations conduct free elections in Lithuania, Latvia, and Estonia under its supervision; and be it further

Resolved, That copies of these resolutions be forwarded to John F. Kennedy, President of the United States; Dean Rusk, Secretary of State; Senators Leverett Saltonstall and Benjamin A. Smith; Speaker of the House of Representatives, John W. McCormack; Hon. John A. Volpe, Governor of the Commonwealth of Massachusetts; John F. Collins, mayor of Boston, and to the press.

NEED FOR ENVIRONMENT OF EXCELLENCE IN GOVERNMENT STRESSED BY SENATOR HENRY M. JACKSON IN ADDRESS TO NATIONAL CIVIL SERVICE LEAGUE CAREER AWARDS DINNER

Mr. RANDOLPH. Mr. President, the National Civil Service League is a nonpartisan citizens' group working to improve the public service through better personnel at all levels of government—Federal, State, and local. Last evening, before a distinguished group of business, educational, and governmental leaders, the league presented its annual career service awards to 10 of our most outstanding Federal officials.

As principal speaker, Senator HENRY M. JACKSON commended the award winners on their consistent achievement of excellence in positions of public responsibility, and further, proposed a six-phase program by which the hazards to effective work in Government service might be markedly reduced. His address was a notable contribution to the subject of our Government's role in the complex society of today.

Now, when America is so actively engaged in the struggle to beat back the challenge of communism, governmental excellence is of paramount concern. We must take vigorous steps to identify, train, and utilize men and women of high potential; assign to them appropriate responsibilities and authority; and recognize publicly their efforts and achievements. Only then, when com-

petent personnel are functioning within an effective management system, can we be assured of attaining maximum national performance at all levels.

In concluding last night's program, the Honorable John M. Macy, Jr., Chairman of the U.S. Civil Service Commission, read a communication from President John F. Kennedy. The Chief Executive lauded the National Civil Service League's contributions to the progress of Government, and extended his personal congratulations to the 10 award recipients.

I ask unanimous consent that President Kennedy's message and the address by Senator HENRY M. JACKSON be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, March 12, 1962.

I am pleased to send my heartiest congratulations and warmest best wishes to the 10 winners of the 1962 Career Service Awards of the National Civil Service League.

It is most fitting that these outstanding representatives of the service receive recognition for their significant contribution to the progress of our Government in these times. The National Civil Service League has rendered important public service in reminding the American people of the high quality in the Federal career service.

The variety of occupational and professional fields represented by these awardees is compelling evidence of the many opportunities for distinguished public service which exists today throughout the Federal Government. The achievements of these career men and women provide a vivid example for career minded young people who are seeking working experiences which emphasize challenge, integrity, and dedication.

My sincere congratulations to Howard B. Andervont, David V. Auld, A. Ross Eckler, William H. Godel, Wayne C. Grover, Bertrand M. Harding, Philip S. Hughes, Abe Silverstein, Leo R. Werts, and Frances Elizabeth Willis.

JOHN F. KENNEDY.

ENVIRONMENT OF EXCELLENCE

(Address by Senator HENRY M. JACKSON to the Eighth Annual Career Service Awards dinner sponsored by the National Civil Service League, March 13, 1962, Washington, D.C.)

Mr. Chairman, I am honored to have this opportunity to participate in this award dinner and to talk to this eminent gathering.

Since 1881 the National Civil Service League has worked faithfully on behalf of up-to-date personnel management at all levels of government. Also, through the annual career service awards, it has sought to raise the prestige of the public service and to recognize outstanding effort and performance. All of us should be grateful to the league for its consistent record of noteworthy contributions to a better public life.

We are celebrating tonight the distinguished records of 10 career officers. Those whom we honor have diverse assignments. But they have one attribute in common. They know the importance of excellence, and they have achieved it.

This Nation is now engaged in the greatest competition ever undertaken by a free country. It is a competition to decide what kind of system is to prevail on this planet—a Communist world system or a peaceful world community of free states who do not threaten the freedom of others.

The Communists are determined to show that the Soviet system is superior to ours in every way—that they can outproduce, outplan, out-think and outwit us across the board.

The challenge is total. We must use all our resources and use them wisely.

The national security departments and agencies of our Government bear the heaviest responsibility. But every other area of the Federal service has a part to play. On the decisions made, and actions taken, by officials throughout the Government hangs the success of our national policies, and thus, our fate.

As never before, we have to provide a Government environment that encourages excellence.

For 2 years our Senate Subcommittee on National Policy Machinery conducted a nonpartisan study of our machinery for making and executing national security policy. This study had something of a surprise ending: we concluded that the heart problem of government is not machinery but men.

Good national policies require both good organization and good people. But people are the critical factor. Wise, experienced, hard-working, incisive government officials may win out over poor organization. But poor people will defeat the best organization.

Moreover, reforms in machinery cannot cure troubles which are really not due to defects of machinery. Organizational gimmickry is no substitute for practical measures to improve the competence and the performance of government officials.

The caliber of our career service is very high. The Nation should be thankful for the skill and dedication of those who now man the Federal Government. But there is still great room for improvement in developing and using the rich resources of talent now found among our career officials.

I am not suggesting that a major cure is in sight whereby individual officers will suddenly have the opportunity to realize their own highest possibilities. The Government's gigantic size, its multitude of activities, its built-in checks and balances, and the sheer complexity of the problems we face, guarantee that life in the Government will have a generous quota of frustration.

It is wholly unrealistic to imagine that the hazards to good work peculiarly associated with Government service can ever be eliminated. But they can be reduced and made more manageable.

I would like to speak today of six particular tasks to which I believe our Government should vigorously set itself.

First. There is more to be done in defining where we aim to go in the world, and how we propose to get there.

Men respond to leadership.

Every new administration needs time to organize its official family, establish relations with the permanent civil service, and develop its guidelines of policy. But with the shakedown period over, we should have a clear understanding of our vital national interests and an order of national priorities to support them.

Unless top officials are in agreement on what comes first, what comes second, and what comes last, there is bound to be confusion and waste of effort below. This has been so under every administration.

A clear and reasoned basic doctrine, authoritatively presented and generally understood, is the precondition of successful delegation and coordination. It is thus also a precondition of first-rate performance throughout the Government.

Second. We need to emphasize in government the ingredient of human judgment, by visible, responsible officials.

Men rise to responsibility. When they are given a job to do, the authority they need, and are held accountable for results, they are challenged to do their best.

Words spoken by Robert Lovett at the first hearing of our subcommittee in 1960 are still the right words:

"The authority of the individual executive must be restored. * * * Committees cannot effectively replace the decision making power of the individual who takes the oath of office; nor can committees provide the essential quality of leadership."

President Kennedy has made what I can only describe as a devoted effort to reshape the Government machinery on this principle: to get department heads and their subordinates into the act as responsible individuals. This is the right philosophy of operations, and we should go forward with it.

In this connection, our subcommittee made a simple but potentially useful suggestion. It was just this: to give committee chairmen the power and responsibility of decision. Other members of the committee would provide advice and counsel, but the chairman would decide. Of course there would also be a right of appeal to the next highest level of our many-layered, many-splendored Government—all the way to the President. And since this is so, I do not see the desirability or wisdom of unanimity at every lower level. This suggested change in the management of committees might make them more effective instruments of Government.

Third. We must renew the fight against overstaffing.

Like so many large private companies, our Government has too many people in it doing work that does not really need doing.

More people make for more layering, more clearances and concurrences, and more trespasses on the time of officials working on important problems.

The size of many Government offices has swelled beyond any real requirement. Some offices would operate more efficiently with one-third or one-half as many people.

I know, of course, that no attack on this problem has ever succeeded, and I do not pretend to have discovered a strategy that will work. But I think we must consider the elimination of entire functions, when these have lost their importance or make only marginal contributions. Also, by clearer delegations of authority, we must achieve a reduction of the number of people and agencies that get in on every act.

Though saving money is important, that is not the major aim. The aim is to get better decisions faster.

Fourth. We should recognize the requirement for the civilian generalist and do more to prepare career people for posts of high responsibility.

On the civilian side, we lack anything like an adequate career corps to deal with general policies and governmentwide concerns.

For example, an appointment may be made to a top career post in the Department of State, or Defense, or AID, or CIA. But no matter which it is, the job will demand an integrated understanding of military matters, modern weaponry and its capabilities, technological development, procurement, uses of intelligence services, uses and limitations of propaganda and political warfare, international relations and organizations, and the channels of international communication and negotiation, traditional and new.

No one is being trained for such jobs in an organized way. It is accidental when we find a person of first-rate ability who has been in and out of a series of Government assignments yielding such a fund of experience. And when such a person is found he is besieged to fill job after job.

For the most part, career officers are forced to focus their abilities and even their loyalties on the interests of particular bureaus or services. To get ahead, they may have to plan their careers in terms of the specialized concerns of one agency.

In this respect our civilian career services have much to learn from the training and promotion system of the Armed Forces which is designed to develop the general staff officer.

The time is overdue for a training and promotion system to develop the civilian generalist.

The course of preparation for top officials should be rigorous. It should not only screen out the less able but screen out the flabby and the less highly motivated. In the words of John Gardner, president of the Carnegie Corp.:

"The king in the fairytale who required that suitors for his daughter's hand pass through a series of heroic tests not only ended up with a brave, clever (and lucky) son-in-law. He ended up with a highly motivated son-in-law. Not bad state policy."

For promising officers there should be greater flexibility and latitude in job assignments, more movement between agencies, and more opportunities for advanced training. Top posts in the career service should be the rewards of proven capacity to deal effectively with the first rank of national problems.

Fifth. We need higher Government salaries, notably at the top of the civil service and at the sub-Cabinet level.

Today, Federal pay scales are below those that obtain in many State and local governments. The highest paid Federal employee under the classification act would draw a bigger paycheck if he worked in the State career service in Georgia, New York, or California, for example; or for such cities as St. Louis, Denver, and San Francisco.

Federal pay scales are also behind those prevailing in private life. The Federal employee's top salary—if he stays in the service to reach it—will be less than half what his counterpart in private enterprise can look forward to.

I want to commend President Kennedy for taking a strong initiative on pay reform, and particularly for his concern with top career salaries.

In his recent message to Congress, the President said:

"The gap between private industry salaries and Government salaries is the widest at the upper levels * * * these are the very levels in the career service in which our need for quality is most acute—in which keen judgment, experience, and competence are at a premium."

I could not agree with the President more. I hope that Congress can help work out adequate salary adjustments, particularly for high executive and professional positions.

Sixth. Our Government should project its personnel requirements and programs at least 5 years into the future.

There is a long lead time in providing officials for critical Government jobs. We ought to be worrying now about the talent we will need 5 or 10 years from now.

With few exceptions the Government's civilian personnel needs and programs are not looked at in long perspective. Studies have been started on future requirements for scientists—one area where dramatic shortages are expected. Studies have also been started on future Government demand for personnel in foreign operations. These studies are a good beginning, but they do not assure the comprehensive picture that is needed.

The Bureau of the Budget testifies to the value of overall 5-year budgetary projections in helping the President establish guidelines for the current budget. Thanks to its 5-year program and budgetary projections, the Department of Defense now makes its annual program and budgetary decisions in a 5-year perspective.

I believe we should have comparable 5-year projections of personnel needs and tentatively approved personnel programs on a Government-wide basis.

As Don Price, dean of the Harvard Graduate School of Public Administration, put it: "The myth of the Minute Man dies hard." In this kind of a world, personnel programs that have not been started 5 or 10 years before are too late.

In conclusion, let me say this:

The environment of Government does not make excellent work impossible. This evening's celebration testifies to that. But the present environment of Government does make excellent work too hard.

This Nation is locked in a struggle whose outcome will be as fateful to the Nation as a hot war. We confront the most prodigious problems of our history.

A century ago, the failure of Government officials to do first rate work may have meant some waste of the taxpayers money. But today, the cost of similar failure may mean our national survival.

The free world will not be kept free by the slovenly or half-hearted. We will need our best.

The PRESIDING OFFICER (Mr. HICKEY in the chair). Is there further morning business? If not, morning business is closed.

AMENDMENT OF ACT ESTABLISHING CODE OF LAW FOR THE DISTRICT OF COLUMBIA

Mr. SMATHERS. Mr. President, I ask that the Chair lay before the Senate the unfinished business.

The PRESIDING OFFICER. The Chair now lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (H.R. 5143) to amend section 801 of the act entitled "An act to establish a code of law for the District of Columbia," approved March 3, 1901.

Mr. MORSE. Mr. President, I wonder whether there may be a quorum call at this time, for I am waiting to receive a revision of my amendment.

Mr. SMATHERS. Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the time required for the quorum call not be charged to the time available to either side under the unanimous-consent agreement.

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

The absence of a quorum has been suggested, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MORSE. Mr. President, I yield myself 5 minutes, and an additional 5 minutes, if I need them.

The amendment pending before the Senate is my amendment numbered 2–15–62—A. I am modifying that amendment. I send to the desk the modified amendment. I wish to read it:

Strike out all after the enacting clause and insert in lieu thereof the following: "That no person shall, on or after the date of enactment of this act, be executed in the District of Columbia for any crime."

I wish to tell the Senate why I have made my modification and what my parliamentary procedure will be in the next few minutes. Several Senators have come to me and said they would like to have me modify my amendment so they can have a clear-cut vote on the issue of capital punishment.

This modification does it. This amendment gives to each Member of the Senate an opportunity to vote on the issue as to whether he is for or against capital punishment.

Mr. President, I shall follow that amendment with one or two other amendments, depending on the outcome of the vote on the capital punishment issue.

If the amendment abolishing capital punishment is adopted—and I pray to God it will be—then I may offer an amendment that will provide for life imprisonment without parole in case of capital offenses which heretofore have received the affliction of capital punishment.

If the amendment I intend to offer should fail, I shall offer another amendment which will provide for the choice on the part of the jury of life imprisonment without parole or life imprisonment with parole, with the further restriction that the prisoner will have to serve a minimum of 20 years, which is proposed in the pending bill.

I want to dispel the notion that still exists in the minds of some persons that the Senator from Oregon is making a new proposal which does not exist in any other State. There are at least 11 States in this Union which provide for life imprisonment without parole for certain offenses. This causes me to point out that I shall offer another amendment, depending on the votes here in the Senate this afternoon, if, for example, my abolition of capital punishment amendment is not adopted, and if my amendment providing for life imprisonment without parole is not adopted.

I shall then offer the third alternative, namely, the continuation of capital punishment, which I vigorously oppose, life imprisonment without parole, or life imprisonment with parole, leaving it up to the jury to decide which punishment the prisoner shall receive. If the jury could not agree as to the punishment then the court could determine which of the three alternatives would be imposed.

I think everyone will certainly agree that I have been exceedingly fair to the Senate in giving its Members a choice. I want them to make the choice. It is the Senate which is making the record on this subject matter this afternoon.

I wish now to speak very briefly, for perhaps 2 or 3 minutes, in regard to my amendment on the abolition of capital punishment. Heretofore I have spoken at length in the Senate on the subject. It was in 1956 that I made a very short speech here in the Senate at the time there was a bill before the Senate which proposed to impose capital punishment in a narcotics control law, to be inflicted upon any person found guilty of selling narcotics to anyone 18 years of age or under.

Of course, it is always interesting that these capital punishment proposals are added to subject matters in regard to

which we all find ourselves in general agreement that more stringent enforcement ought to take place. All of us agreed that something had to be done to tighten up the enforcement of our narcotic drug laws, but many of us disagreed that the way to tighten it up was to inflict the penalty of capital punishment.

I made a very short speech in the Senate in which I opposed capital punishment. It set forth the same point of view that I expressed in legal articles which I wrote years ago, when I was working in the field of criminal law administration in this country, and points of view I held when I was Special Attorney General from 1936 to 1938, and worked in this field in the Criminal Division of the Department of Justice.

I was quite dumbfounded at the response to that speech. It was reprinted in the Des Moines Register. Why, I will never know, but out of the Des Moines Register, it was reprinted by various religious journals and periodicals in this country. During the following 90 days my office received thousands of communications; well over 90 percent of them enthusiastically supporting the position I had taken against capital punishment.

In my judgment, there are millions of people in this country who cannot justify the death penalty when they sit down and meditate in the sanctum of sanctums—and, Mr. President, the sanctum of sanctums does not happen to be your church or mine. It does not happen to be a church or synagogue or temple, which are but the materialistic symbols of the sanctum of sanctums. The Holy of Holies happens to be our individual conscience. Mr. President, when we sit there with that, we never sit alone, but with God.

I am satisfied that there are millions of Americans who, when they sit in the Holy of Holies, cannot justify, as a matter of morality, the proposition of the death penalty for a transgression against temporal law. I only repeat today what I have been heard to say before—that, in my judgment, the taking of life is the prerogative of God, and not of men, when it comes to the matter of penalty for transgression.

I also want to point out that it is pretty well established by a great many research studies, and pretty well established in the authoritative writings of many of our criminologists and penologists, that many people labor under the misconception that capital punishment is an effective deterrent to crime. The research studies do not bear that out.

Writing in the 1958–1959 Kentucky Law Journal, an assistant professor of political science, William O. Reichert, of the University of Kentucky, aptly states that the popular notion that capital punishment is the most efficient means of deterring murder is deeply embedded in the folklore of American society and that it is rarely carefully evaluated as to its basic validity.

Professor Reichert states that studies make perfectly clear that there is no necessary correlation between the presence or absence of capital punishment and the murder rate in any particular state. A great many prominent criminologists and penologists share his point of view. This very fine article answers some of the common claims presented by the proponents of capital punishment.

Mr. President, I ask unanimous consent that Professor Reichert's article be printed at this point in my remarks.

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

CAPITAL PUNISHMENT RECONSIDERED

(By William O. Reichert, assistant professor of political science, University of Kentucky)

I

Among the many bills which failed to pass the last session of the general assembly was one (house bill 229) which called for the abolition of capital punishment in the State of Kentucky.[1] Although the bill received relatively little attention in the press, and was not enacted into law by the legislature, an unusually large number of citizens expressed hostility to the proposal through letters to their newspapers. It is not at all surprising that the public—or at least that part of it which made itself heard—should react unfavorably to the idea that capital punishment be abolished. Opinion polls taken in other States and countries that have sought to implement this reform consistently indicate that the general public in most communities holds a persistent fear that discarding the death penalty will lead to a phenomenal increase of disorder and violence and is thus opposed to any movement toward abolition. The expressed fears of the public, however, are not always synonymous with the advanced social and political attitudes of a society. This is demonstrated by the fact that the long-range legislative trend everywhere has been in the direction of abandoning capital punishment. It is to be expected, therefore, that the Kentucky General Assembly will again have to debate the question of whether the death penalty shall be continued in force for the six crimes which at present are punishable by death in this State. This essay is devoted to a consideration of some of the problems such a discussion will entail.

Much of the confusion surrounding the question of capital punishment stems from the circumstance that the average citizen rarely has occasion to fully inform himself as to the actual facts involved in the issue. The popular notion that the penalty of death is the most efficient, if not the only, means of deterring murder has become so deeply embedded in the folklore of American society that it is rarely evaluated as to its basic validity. Nor is this altogether peculiar to the United States, as witnessed by the fact that a heated controversy developed in Britain when it was recently proposed in Parliament that hanging should no longer be employed as a punishment for murder. One of the major reasons why this notion has for so long gone unchallenged is the widely held belief that those who favor the abolition of capital punishment have allowed their emotions to dominate their reason. Those who support the retention of capital punishment have thus been successful in defending their viewpoint as "realistic," as opposed to the "idealistic" but "impractical" label which has been attached to the abolitionists. A careful analysis of the facts surrounding the controversy reveals, however, that it is not true that those who would do away with the death penalty are less reasonable in their argument than their opponents. If we may rely on the testimony of Sir Ernest Gowers, chairman of the 1949 Royal Commission on Capital Punishment in Britain, it is actually not the abolitionists but the defenders of the death penalty who have allowed emotion to sway their reason.[2] This conclusion is substantiated by the viewpoint of those sociologists who maintain that "not a single assumption underlying the theory of capital punishment can be squared with the facts of human nature" as modern scientific thought conceives these facts to be.[3]

In an effort to clear away some of the confusion that surrounds the question of capital punishment, this essay will consider the death penalty in terms of its broad social and political effects. It is the writer's sincere conviction that no intelligent evaluation of capital punishment can be made so long as we continue to think of the death penalty as being unrelated to the system of values we as a society have created for ourselves. Law, on this view, is not something that is complete in itself; it is, rather, an integral part of our total social and political experience. From time to time we must examine its various parts in order to determine whether they correlate with our newest insights into human values. When we find that any part of the law fails to reflect the spirit of our moral values, which is the most precious thing we as a society possess, we must do all that we can to correct the deficiency. It would be highly imprudent in this regard were we to substitute too hastily the untried theories of the social sciences for the tested wisdom which is embodied in the law.[4] Yet we must also keep clearly in mind that there is nothing sacred about the law that should cause us to bow down before it in unquestioning obedience to its will.[5]

Capital punishment, if it is to be defended successfully, must be proven to be adequate in two particulars. Not only must it be shown that the immediate and practical effect of the death penalty is to deter the murderer from committing an isolated act of violence but it must also be demonstrated that its long-range effect is to reduce the total quantity of violence within society. This essay will consider each of these propositions in turn.

II

No responsible person in this country any longer urges the retention of the death penalty solely on the argument that the murderer should be made to suffer as retribution for his criminal act. The idea of inflicting physical pain upon an individual as just punishment for committing a crime against society has become morally repulsive to us. Capital punishment, therefore, must be justified on some grounds other than vindication. The major argument thus advanced by those who favor the retention of capital punishment is usually stated in utilitarian terms. Were the death penalty to be abandoned as a deterrent to murder and other heinous crimes, it is argued, the incidence of murder and other forms of violence would in all probability become so great that the State would be unable to provide the basic order that is essential for a well-functioning society. This argument cannot lightly be set aside. The quest for order is a primary function of every society, for no society can hope to achieve continuity unless it perfects effective techniques for

[1] The bill was introduced by Representative Vernor O. Cottongim. Although it was successfully reported out of the committee of ways and means, it did not come before the house for its final reading.

[2] Sir Ernest Growers, "A Life for a Life? The Problem of Capital Punishment," 8 (1956).

[3] See Harry Elmer Barnes and Negley K. Teeters, "New Horizons in Criminology," 350 (1955).

[4] Jerome Hall, Review of "Social Meaning of Legal Concepts—Criminal Guilt," 26 Ind. L. J. 150, 152 (1950).

[5] Margaret Wilson, "The Crime of Punishment," 15–16 (1934).

controlling the destructive forces it finds within itself. But it does not necessarily follow, as many defenders of capital punishment seem to believe, that the abolition of the death penalty must inevitably cause society to revert to the chaos and brutality of the Hobbesian state of nature.

Were the death penalty an effective means of deterring murder, an analysis of the criminal statistics of the United States could be expected to conclusively demonstrate the validity of this proposition. A recent study of the subject makes clear, however, that there is no necessary correlation between the presence or absence of the death penalty and the murder rate in any particular State.[6] Maine, which abolished capital punishment in 1870, has the lowest murder rate of any State in the Union. Wisconsin and Minnesota, which abandoned the death penalty in 1854 and 1911, respectively, have far lower homicide rates than most of the other States. Michigan, Rhode Island, and North Dakota, which have also abolished capital punishment, have somewhat higher murder rates than Wisconsin and Minnesota. A comparison of the criminal statistics of these States and those of the States which lie adjacent to them reveals, however, that murder is not more frequently committed in the States that have given up capital punishment than in those that have retained it.[7] It is highly significant, on the other hand, that Georgia, the State that executes more persons annually than any other, also has the highest murder rate.

Due to social and cultural differences which exist between the American experience and that of other nations in Europe and Asia, it is impossible to make any exact comparison between one country and another. It is interesting to note, nevertheless, that the British Select Committee on Capital Punishment heard evidence in 1930 which indicated that in no country that has abolished capital punishment has there been an increase in the murder rate.[8] Many countries, as well as States, have reintroduced the death penalty some years after it was abolished. But it appears that this action has been taken more for hysterical than for scientific reasons. Having allowed the death penalty to fall into disuse in 1936, as an example, New Zealand reintroduced it in 1950 after two bloody murders had outraged public opinion. Yet the murder rate in New Zealand was lower in the 15-year period during which capital punishment had been suspended than in the 15-year period which immediately preceded its suspension.[9] Although these fragmentary statistics do not prove that capital punishment is entirely without power to deter murder, they do indicate that the abolition of the death penalty does not inevitably lead to social chaos.

If society is to continue to defend capital punishment on the grounds that it is a successful means of deterring violence within the social order, we must clearly demonstrate that the threat of death does in fact deter would-be murderers from carrying out their violent impulses. But the utilitarian argument in support of capital punishment, when viewed in terms of its psychological effect upon the potential murderer, is seen to be almost entirely without validity.[10] Were human beings mechanical creatures whose actions are rigidly determined according to felt sensations of pain and pleasure, it would follow that no man would commit murder when the certain penalty for his act would be death. But the mechanical theory of human nature that serves as the foundation of the utilitarian theory is no longer acceptable to the social scientist. No doubt men do attempt to regulate their actions as best they can according to what they think will bring them happiness and avoid pain. But human existence is much too complex in nature to permit men any exact knowledge of where happiness actually lies, or what kind of action will ultimately lead to the greatest amount of unhappiness. The vast majority of murders, moreover, are not committed by normal persons but by socially maladjusted individuals who are incapable of grasping the logic of cause and effect which is embodied in the theory of capital punishment.[11] It might well be argued, in fact, that all murderers are affiliated with insanity in one form or another, for "a normal person in a normal state of mind just doesn't commit murder."[12] The difficulty here is that psychiatry has not yet developed an adequate definition of insanity, or at least one that is uniformly acceptable in the courts.[13]

Those who argue for the retention of the death penalty on the grounds that it is a practical means of maintaining order within society tend to overlook the fact that most murders are crimes of passion. As the name implies, the crime of passion is one which involves strong human emotions which have gotten out of control. Man, of course, is largely a creature of emotions, and it is just these forces that under normal circumstances furnish motivation for his actions. But man is also a reasonable creature, in the sense that his upbringing and education provide him with a set of values which give meaning and direction to his emotions. The individual whom we describe as normal, while potentially capable of murder, never seriously contemplates such an act because it is wholly alien to his moral character. The murderer who kills while under the influence of an abnormal sexual urge or in a moment of passionate hate, on the other hand, has obviously allowed his emotions to momentarily dominate his reason. If the moral teachings of his family, church, and community, to which he has been exposed since infancy, were so poorly learned that he was unable to keep himself from committing the most repulsive of all antisocial behavior, what hope is there that a remote threat of punishment, stated in abstract terms, will help him to maintain control of himself at the moment that highly irrational forces in his subconscious surge forward to overpower his reason?

We must realize in this connection that the popular notion that man is an absolutely free moral agent is largely without factual basis. It is true, of course, that in most ordinary social situations the average individual is generally able to determine for himself how he will behave, and to this extent it is correct to say that he possesses free will. Yet it is equally true that in many situations the course of action a given individual will follow may greatly be determined by factors that are altogether beyond his control. Being a creature of habit and routine, the average man is apt to give the appearance of being a very simple organism. Yet as the psychologist, the biographer, and the novelist have shown, the main part of human nature lies beneath the surface of appearance. All too often we lose sight of the fact that every individual has a personality that has been conditioned by inherited biological characteristics as well as a myriad of daily events and tensions experienced since infancy. We can no more explain the conduct of the individual without reference to his past than we can understand a nation or civilization that has been detached from its history. Although the individual appears to be absolutely free to choose what he will do in any given situation, his choice is always restricted by the entire past his personality has been conditioned by. It is a gross oversimplification of the problem to argue that the man who commits murder in the heat of passion has deliberately chosen to do the bad rather than the good. In point of fact, it might virtually have been impossible for him not to commit murder in the particular situation he found himself in. It requires very little effort upon the part of the normal individual to live his life in an orderly and peaceful manner. The same thing cannot be said for the unfortunate individual whose heredity and early environment are so seriously defective that he develops a wholly abnormal personality. Such a person may be tormented by so powerful a psychological tendency toward violence that the amount of will power required to refrain from murder in his particular case may well be beyond the level of human capability.[14]

It is frightening to admit that there are some individuals in society who are incapable of controlling themselves at certain times and are virtualy compelled to commit murder. The retention of capital punishment, however, is not an intelligent answer to this problem. Murder is a social phenomenon which can never be brought under control until we approach it in a scientific manner. But until the death penalty is abolished we cannot get to the important task of finding adequate techniques for the social control of the abnormal individual who might be inclined toward violence. As matters now stand, we spend an enormous amount of money and energy in maintaining a penal system that is in large measure devoted to the punishment of the convicted murderer. There is much truth in the statement that the legal profession has devoted more time and energy to the task of finding ways to punish the human race than it has to developing techniques for its improvement.[15] Yet criminologists generally agree that the number of murderers, other than the insane, who ever commit a second murder is negligible. Actually our fear of the potential murderer is greatly out of proportion to the seriousness of the problem. This is not to minimize the fact that there is on the average over 7,000 cases of murder and non-negligent manslaughter committed each year in the United States. Yet the popular notion that we must retain the death penalty as a defense against the insane murderer who suddenly strikes down the innocent bystander is wholly unreasonable. In point of fact very few people suddenly go berserk and do bodily harm to the perfect stranger.[16] Most murders are committed on the spur of the mo-

[6] George B. Vold, "The Extent and Trend of Capital Crimes in the United States," 284 Annals 4 (1952).

[7] Fred J. Cook, "Capital Punishment; Does It Prevent Crime?" 182 Nation 195–6 (1956).

[8] E. Roy Calvert, "The Death Penalty Enquiry," 109 (1931).

[9] "The Abolition of Capital Punishment," 32 Can. B. Rev. 485, 487 (1954).

[10] See E. Roy Calvert, "Capital Punishment in the Twentieth Century" (1927).

[11] Herbert L. A. Hart, "Murder and the Principles of Punishment: England and the United States," 52 Nw. U. L. Rev. 459 (1957).

[12] Arthur Koestler, "Reflections on Hanging," 149 (1957). See also John Biggs, Jr., "The Guilty Mind: Psychiatry and the Law of Homicide" (1955); Henry Weihofen, "The Urge to Punish: New Approaches to the Problem of Mental Irresponsibility for Crime" (1956). [Hereinafter cited as Weihofen.]

[13] See Roy Moreland, "Mental Responsibility and the Criminal Law—A Defense," 45 Ky. L. J. 215 (1956–57).

[14] Calvert, "Capital Punishment in the Twentieth Century," 1958 (1927).

[15] Biggs, op cit., supra, note 12, at XI.

[16] Bernard A. Cruvant and Francis N. Waldrop, "The Murderer in the Mental Institution," 284 Annals 43 (1952).

ment and are not in the least premeditated.[17] There is in almost every case of murder, however, a long history of grievance or antagonism between the murderer and his victim who is most often a friend, relative, or close acquaintance. A man may well strike down his wife or girl friend in a fit of uncontrollable rage. But a strange woman would have nothing to fear from this same man, for there would be no motive or cause for violence in the latter case. It cannot be too strongly emphasized that the death penalty is wholly useless as a deterrent to violence in either of these two situations.

Turning to the professional criminal, it is apparent that the death penalty is equally impotent in persuading him to refrain from murder. The theory of capital punishment is based on the supposition that the criminal will pause to reflect on the painful consequences he will suffer if he commits murder. But rational reflection plays little part in the life of the criminal, and this is particularly true at the moment he is actually engaged in carrying out a crime. The business of the professional criminal is a hazardous occupation. It is foolish to suppose that a remote fear of future death at the hands of the State will be more meaningful to him than the immediate fear which dominates his attention as he actually faces his victim or enemy.[18] Most men, however educated and enlightened they may be, are prone to live in the present and take little heed of the future. If this is so for the average individual, it is particularly true of the criminal whose moral sensibilities have been warped and twisted by a defective inheritance and environment.[19] The very act of choosing a life of crime rather than a socially acceptable means of making a livelihood testifies to the fact that the professional criminal is incapable of seeing what is actually to his greatest self-interest.

Much of the responsibility for the fact that the professional criminal does not take the death penalty seriously ultimately rests upon society itself. It is well known that it is not the severity of the penalty that deters crime but the consistency with which the penalty is applied. Just as the small child does not fear threats of punishment if he is seldom punished, so the professional criminal has learned that it is unlikely that he will suffer the pain of death if he commits murder. Out of an estimated 23,370 cases of murder, nonnegligent manslaughter, and rape in the year 1949, there were only 119 executions carried out in the entire United States.[20] Wide differences in the methods employed for reporting criminal statistics make it extremely difficult to compare Kentucky's rate of execution with that of other States. But one conclusion may safely be drawn; the potential murderer in Kentucky has little more to fear than potential murderers do in other parts of the country. In the fiscal years 1955 to 1957 there were a total of 369 cases of murder, voluntary manslaughter, and rape received by State penal institutions in Kentucky, whereas there were only six executions carried out during this same period.[21] Obviously the statistical probability of suffering the death penalty is so low under these circumstances that only the most timid murderer has any reason to fear for his life. To retain capital punishment in the face of this fact is an absurdity of the highest magnitude.

The utilitarian idea that capital punishment is an effective and practical deterrent to crime fails to achieve credulity because of the outmoded and inadequate theory of human nature upon which it is based. Those who argue for the retention of the death penalty assume that man's basic nature is such that he may readily be compelled to be peaceful and law-abiding through punishment and threats of punishment. Yet almost 200 years ago the Italian reformer Beccaria pointed out that punishment can never be an effective deterrent to crime of any type because human beings naturally develop a mental immunity to the threats which must accompany it. England in the 19th century adopted its famous Bloody Code according to the terms of which over 200 crimes, including picking pockets, shoplifting, poaching, stealing turnips, and associating with gypsies, became punishable by death. These executions, which were carried out in public at periodic intervals, soon became festive occasions. Enormous crowds attended them, causing the authorities much concern as a result of their boisterous conduct. Ironically, public executions had to be discontinued after a time because pickpockets were drawn to them in such large numbers that the purses of those in the crowd were not safe. England today has a very enviable record so far as public order is concerned. The police in its largest city, who do not ordinarily carry guns, have not become targets as many people at first feared they would. In 1950 there were only 122 murders reported throughout the whole of England, most of which were committed by persons who were proven to be mentally deranged. If there is any lesson to be learned from this it is that human beings cannot be intimidated into being good.

III

Probably the most meaningful criticism to be made of capital punishment is that its actual effect upon society is likely to be exactly the reverse of what its proponents claim for it. Many responsible and serious persons who defend the death penalty do so on the assumption that without its continued use, society is apt to see the forces of law and order break down, with the result that the very existence of civilization would be placed in jeopardy. It has already been shown, however, that the claims made for capital punishment as a practical deterrent to murder are much exaggerated, if not altogether without reasonable basis. We may go further than this and argue that capital punishment, rather than reducing the total level of violence within society, may actually lead to its increase.

One of the major functions of law—perhaps its highest function—is the difficult task of keeping the forces of hate and vindictiveness which are bound to arise among any large group of people under control.[22] This is not to suggest that the state has any responsibility for teaching morality to its citizens. Distinguishing the concept of state from that of society we recognize that each of these entities has distinct functions and purposes. Society is the larger entity within which the individual finds freedom for the development of his own private moral and social satisfactions. The state, on the other hand, is theoretically subordinate to society and has the limited function of maintaining a legal order which is meant to serve the interests of all the individual persons and groups who collectively comprise society.[23] It is no longer possible to hold, however, as Herbert Spencer and other early liberals did, that the state has no other function than the negative one of maintaining a bare legal order that has no relevance whatever to morality. It is true, of course, that the state has no right to directly teach morality. This is the province of the church, the family, and other spontaneous associations within society that are qualified to carry out this highly important function. But we now acknowledge the fact that the law, while it is theoretically neutral in regard to ethical matters, does have the practical effect of setting a moral example for those who are regulated by it.

This is the reasoning behind the assertion that capital punishment may actually increase the level of violence within society rather than diminish it. The state, when it carries out the execution of one of its members, unconsciously develops attitudes in the minds of the remainder of its citizens which may have dire social consequences. Just as the citizen-soldier loses his horror of killing in time of war because he is rewarded for doing it, so the average citizen is apt to be made brutal by the example set for him by the State when it takes life. As Weihofen puts it: "Official killing by the state makes killing respectable. It not merely dulls the sensibilities of people to cruelty and inhumanity but actually stimulates cruelty."[24] Civilization, as Victor Gollancz points out, cannot be preserved by conduct which is in itself barbaric.[25] Capital punishment, on this view, is itself an act of violence. Never having personally witnessed an execution, most of us are not fully aware of how brutal and out of keeping with our moral ideals an execution is. Those who have studied the subject, however, report that the typical condemned prisoner suffers a thousand deaths before his life is finally snuffed out. We may argue in return, of course, that a murderer deserves to suffer, just as the victim he killed was made to suffer. To argue in this way, however, is to confuse the idea of justice with the spirit of revenge; it is tacit admission that we actually enjoy the thought of another human being made to suffer.

Most of us, of course, are quick to deny that we derive any sadistic enjoyment from the execution of a criminal. Unfortunately, however, we are not always aware of the unconscious motives which help to determine our actions. Were we completely rational in regard to the criminal, we would experience no emotional involvement whatever when we consider his fate. But who in good conscience can claim that he has always been calm and detached upon hearing of some particularly gruesome crime? Most of us realize full well, when we are honest enough to admit it, that there is something in ourselves which is akin to that which is in the criminal. The average person, in the very act of attempting to live up to the letter of the civil law, not to mention his own personal moral code, is compelled to repress a host of natural instincts within himself which make him into a human being. Modern psychiatry suggests that most individuals at one point or another in their lives develop guilt feelings as a result of this repression. The criminal who goes to his death in the execution chamber, on this view, serves as the means by which the rest of us are able to vicariously purge our own personalities of burdensome feelings of guilt.[26] This is particularly true in the case of the criminal who has been convicted of rape. All of us

[17] A recent study of 2,700 cases of murder and non-negligent manslaughter revealed that in only 37 of them was there clear intent or material motive for the crime. Hall and Glueck, "Cases on Criminal Law and Its Enforcement," 86 (1958).

[18] Karl F. Schnessler, "The Deterrent Influence of the Death Penalty," 284 Annals 61 (1952).

[19] Robert G. Caldwell, "Why Is the Death Penalty Retained?" 284 Annals 51 (1952).

[20] Id., at 50.

[21] These figures were supplied by the division of corrections of the Kentucky Department of Welfare.

[22] Weihofen, 140.

[23] See Ernest Barker, "Principles of Social and Political Theory" (1951); R. M. MacIver, "The Modern State" (1926).

[24] Weihofen 168.

[25] "Capital Punishment: The Heart of the Matter" 8 (1955).

[26] Arnold T. Lieberman and Dawn B. Girard, "Punishment: The Reward for Guilt," 5 Buffalo L. Rev. 307 (1956).

know how powerful a force the sexual urge is within ourselves. The normal individual takes personal pride in the fact that he is able to keep his sexual desires under control. This seems to make us all the more vindictive toward the individual who lacks the inner strength to emulate our good example. The zealous way in which we punish the sex offender is stark testimony to the fact that we are ourselves fearful that we might sometime engage in the same kind of antisocial behavior.[27]

Being a relatively new branch of science, psychiatry is not yet sufficiently accepted by the general public to permit any thoroughgoing revision of the law in conformity with its findings. The above argument against capital punishment is thus apt to be rejected offhand by the majority of persons as being out of touch with reality. But as Plato argued in his Republic, the ideas the majority of us accept as valid may only be shadows of the truth. It is painful to admit that we as a society actually enjoy inflicting pain upon criminals for the personal satisfaction it affords our egos.[28] Yet if this is not so, why do we continue to subject the condemned prisoner to a torture which is as mentally painful as being broken on the wheel was physically painful? Were we as charitable as Socrate's executioners, we might permit the condemned prisoner to end his own life by taking poison in the seclusion of his cell. Not only is this method less physically painful than other forms of execution we presently employ but it would permit him to retain a semblance of his human dignity to the last possible moment.[29] Instead of choosing this more humane method of execution, we force the individual condemned to death to submit to a number of indecencies before we permit death to ease his suffering. Just as the mythical Tantalos was condemned to stand in a pool of water that ever receded from his thirsty lips, so we condemn the prisoner to what may prove to be several years of anxious waiting in death row, only to learn in the end that he must die after all. If he is to be electrocuted, he must submit to having his ankles, wrists, and head shaved. Then, having finished his last meal on earth, he must walk under his own power to the execution chamber where he will at last come face to face with his maker. All too often the condemned prisoner is unable to walk to the place of execution, with the awkward result that he must be carried there by the prison officials while a chaplain walks nearby in hope that he may be of some consolation at some point in the proceedings.

If we were certain that only the guilty are condemned to death, the brutal drama which accompanies an execution might conceivably be justifiable. But as Prof. Edwin M. Borchard has shown in his collection of case studies in mistaken identity, the courts, however careful they may be, very often convict innocent men.[30] Not only is it difficult to obtain reliable testimony in a murder trial but the very nature of the event causes farreaching psychological repercussions throughout society. From the moment a crime is first announced in the newspapers the civil authorities are deluged with false information from mentally unstable individuals. As the trial reaches its climax various persons emerge from the anonymity of the public to claim a part in the drama. "In our own time, we have been treated often to the fantastic spectacle of the innocent voluntarily confessing to murder, putting their own lives in jeopardy for a moment in the spotlight."[31] Worse than this, there is reason to believe that the wide publicity a murder trial receives leads to imitative crime. This may explain why murders follow one another in rapid succession at certain times, whereas at other times there is very little violence within society.[32]

It is shocking to realize that the "only" persons who are actually made to suffer the death penalty in this country are "unfortunates without friends or money."[33] In theory the American system of criminal law does not distinguish between persons or show favoritism toward any group or class. In actual practice, however, the law is brought to bear most heavily, and often with vengeance, on a very small percentage of the population. In every society known to history there have always been one or more minority groups that have been held suspect by the majority. In America it is the foreign born, and particularly the Negroes, who are considered strange and different and are thus largely treated as outsiders. Recognizing very little kinship or common ideals with these minority groups, we seem to derive sadistic pleasure from punishing individual persons from them who come into conflict with the law."[34]

An analysis of national criminal statistics reveals that 50 percent more Negroes are actually executed in this country than are whites.[35] While this might seem to imply that Negroes are basically more violent in temperament or nature than are whites, the facts do not bear out this conclusion. In the State of Virginia, as an example, no white man has been convicted of rape in the past 50 years. Yet in this same period 59 Negroes have been executed on conviction of this crime.[36] Obviously the law has been brought to bear more heavily on Negroes than whites.

In the light of such social injustice, the retention of capital punishment as an official policy of the state has become a matter of great concern to many thinking Americans. Among those who are disturbed by the idea of continuing to employ the death penalty as a social expedient is the sensitive Christian who feels that "society is itself indelibly corrupted when it assumes the prerogative of God and attempts to impose or even threatens to impose on anybody, whether guilty or innocent, the final and irreversible judgment of death."[37] In the mind of this type of religious person capital punishment not only rules out the possibility that the individual criminal might be reformed by society but asserts in absolute terms that he is also completely beyond the redemptive power of God. This, of course, is an assumption which no thoughtful Christian consciously cares to make.

On the secular plane, many persons are opposed to the retention of capital punishment on the grounds that it makes even greater the wide discrepancy which exists between democratic theory and practice in the United States. One of the most widely accepted principles of liberal democracy is a sincere respect for the rights of the individual. While the right to life can in no sense be defended as absolute, democracy insists that the individual should never be deprived of his life without good cause determined through due process of law. The deep reverence for human life which is fundamental to the theory of democracy is reflected in the fact that the movement toward the abolition of capital punishment has made its greatest advances in those countries which have adopted democratic forms of government. Of the Western democracies, only Britain, France, and the United States will condone the death penalty, and Britain is making rapid strides in the direction of abolition.

It is not by accident that democratic nations have generally veered away from the use of capital punishment, whereas totalitarian governments have found it compatible with their goals and have thus encouraged its use. In counterdistinction to totalitarianism, there is general agreement among the theorists of democracy that the state is not an end in itself but is merely the means by which the good of the individual is to be furthered. This means, of course, that a democracy must be extremely cautious in what it decides when its government engages in the formulation of policy in regard to the taking of human life. Democratic governments in practice have often sanctioned the taking of life when it was thought essential to the maintenance of the general welfare, as in time of war and in the preservation of domestic tranquility. But ultimately they must defend their actions in terms of what is just and fair rather than what is most expeditious. As Machiavelli so clearly saw, the most difficult problems of statecraft are easily solved when those who exercise political power are guided by no consideration other than that of expediency. In any democracy worthy of the name, however, the easy solutions Machiavelli urged upon his prince are not easily adopted. This goes a long way toward explaining why the death penalty in the United States is so seldom carried out. Even if it might conceivably be proven a highly efficacious deterrent to murder, we are still compelled to justify its use in terms of our fundamental ideals and values. And here we find that the theory of capital punishment is hopelessly out of keeping with the basic principles we as a nation profess to believe in, for in taking the life of the criminal we are actually treating him as a means to the good of others rather than as an end in himself.[38]

Totalitarianism, on the other hand, which has generally been judged guilty of retarding the advance of human standards of decency, has not been troubled with any such moral scruples. Extending the use of capital punishment to political crimes, totalitarian governments justify their actions on the argument that anything is right if it furthers the good of the whole society. This is evident in the statement by Mussolini that "the state is an absolute before which individuals and groups are relative."[39] Convinced that the end of the state is more important in value than the rights of the individual, the elimination of recalcitrant and politically unstable individuals has become an accepted means to the greater glory of every totalitarian regime we have witnessed thus far. In retaining capital punishment for its supposed qualities as a social expedient, American democracy comes dangerously close to accepting the totalitarian precept that the life of the individual has little real significance compared with the superior interest of the whole society.

IV

Any real progress we are apt to make in reducing the incidence of crime within

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[27] Weihofen, 28.

[28] For a very forceful presentation of this viewpoint, see Wilson, op. cit., supra, note 5.

[29] According to one study, electrocution, which is the prescribed method of execution in the State of Kentucky, is not, as is generally thought, entirely free of physical pain. See Barnes and Teethers, op. cit., supra, note 3, at 350.

[30] Borchard, "Convicting the Innocent," (1932).

[31] Cook, op. cit., supra, note 7, at 196.

[32] Calvert, op. cit., supra, note 14, at 112.

[33] "Britain Faces End of Death Penalty," 73 Christian Cent. 259 (1956).

[34] Austin L. Poterfield, "The 'We-They' Fallacy in Thinking About Delinquents and Criminals," 21 Fed. Prob. 46 (1957).

[35] Frank E. Hartung, "Trends in the Use of Capital Punishment," 284 Annals 15 (1952).

[36] Id., at 16.

[37] "The Death Penalty Must Go," 74 Christian Cent. 413 (1957).

[38] Viscount Ridley, "Should Crime Be Controlled by Fear or Understanding?" 18 Fed. Prob. 19 (1954).

[39] See "The Doctrine of Fascism" (1932).

American society must come about through efforts to revise our basic outlook toward crime and the criminal. We must come to realize in this regard that the idea that crime, including murder, is something the individual freely and willfully chooses to engage in is a theological doctrine and is not a logically defensible proposition.[40] This attitude is based on the highly dubious supposition that some individuals are born with defective moral characters and are therefore destined to do the evil rather than the good. While we may have no quarrel with this idea when it is presented as a theological statement, we must totally reject it when it is introduced as a possible guide for our actions in social and political matters. Not only is the self-righteous indignation which characterizes this attitude toward the criminal morally offensive when it is advanced as a practical solution to the problem of crime but it so completely distorts our social vision that we are unable to formulate any intelligent policy in the all-important area of human relations.

There is considerable evidence to suggest that a life of crime is never actually chosen by any individual but is a fate that has been arbitrarily assigned to him by his society. So far as good and evil are concerned, the average individual at birth is entirely neutral. Some few people, of course, are born with defective mentalities and are therefore practically destined to come into conflict with the law at one point or another in their lives if the circumstances of their environment also tend to lead in this direction. But this type of person belongs in a mental institution where he might be kept out of serious trouble if not rehabilitated for a normal life within society. The average individual, if provided with a fairly adequate environment, invariably attempts to attain the goals and personal satisfactions his society has taught him to value. It clearly follows from this that any large scale deviation from the socially accepted norm of behavior, such as the crime wave this country is experiencing at the present time, is symptomatic of serious deficiencies in the institutional and value arrangement of society.[41] Plato in his "Republic" makes mention of two different social types that have since the earliest times been a problem to government. The ordinary drone, according to him, is the socially deprived person who has become lazy and indifferent as a result of his life of poverty but is otherwise harmless. The drone that stings, on the other hand, is that deprived individual who has been made bitter by the thought of the social injustices he feels he has suffered and consequently becomes a threat to the stability of the social order. It is to Plato's credit that he clearly distinguishes between these two types. The first of these two classes of persons is comparable to the modern lower income group, while the second is what we generally refer to as our criminal element. There are two alternatives we may choose from in attacking the problem these classes present to government. The state, to continue the metaphor begun by Plato, might instigate a program of pest control designed to rid society of its drones that sting. But this has the unfortunate result of indirectly goading the ordinary drones to pick up the weapons of their fallen comrades in misfortune and to join the ranks of the harmful pests. The other method, although the more difficult one, is for the state to directly attack the problems of poverty and social injustice, thereby eliminating the basic cause of criminal activity. All efforts to reduce the level of crime within society are bound to fail until we realize that the reform of the criminal is inseparably connected with the general reform of our social and economic institutions.[42]

Fundamental social and economic reforms, of course, are not accomplished overnight nor are they ever complete. Yet we must not allow this fact to lead us to adopt an attitude of hopeless pessimism regarding crime and the criminal. If we can bring ourselves to clearly understand that the criminal is the product of inadequate social and economic arrangements within society, we will be capable of creating ideals against which existing arrangements can be judged. A society that can create ideals for itself is a dynamic society capable of accomplishing almost anything it sets out to do. This is the only intelligent approach to the problem of crime. It is a terribly difficult goal to set for ourselves. Yet we must recognize the fact that if we fail to solve our basic social problems, we must fall back on the easy way out, which consists of the futile method of attempting to repress crime through the vicious expedient of capital punishment.[43]

The first step we must take in an attempt to revise our perspective toward murder is to bring ourselves to clearly realize that murder is not a wholly natural act of man but one which is greatly conditioned by the mores of society. One of the most pronounced attitudes that characterizes American society at the present time is the general assumption that "wherever there is a conflict between human relations and necessity, the outcome is not only inevitable but even progressive when necessity wins."[44] This idea is clearly reflected in our attitude toward the convicted murderer. It is necessary for our peace of mind and public safety that we remove such individuals from our midst. This we do by locking them up in penitentiaries or, more rarely, by carrying out the threatened death penalty. But in either case we have clearly announced that public necessity is more important than the intrinsic value of the human beings concerned. This fact has not gone unnoticed by those who are responsible for catering to the public's entertainment desires. As a consequence, the American youth of today is raised on an enriched pap of horror and suspense. His heroes are fast-shooting cowboys, cagey detectives, and toughened combat veterans. While it may be true that he instinctively knows the difference between the "good guys" and the "bad guys," a steady entertainment diet of violence and bloodshed is bound to impress upon his mind the thought that life is cheap. How could he believe otherwise when he knows full well that the society of which he is a part "almost reaches out to encourage murder."[45] It would be strange indeed, in the light of the present cultural situation in America, if today's youth took seriously the religious injunction that life is sacred.

We cannot look forward to a reduction in the rate of homicide in this country until we undertake the extremely difficult task of revising our basic attitudes and values concerning the worth and significance of human life.[46] While the problem of changing fundamental attitudes of this kind is not one that is given to easy solutions, neither is it insoluble. Much study must be applied to this question before we can find a way out of our predicament. There are, however, two practical and immediate steps we might take that are almost certain to result in a sharp decline in the rate of homicide within the United States. First, laws pertaining to the sale and possession of guns must be tightened and more closely supervised, for "it is a well-known fact that stringent regulations * * * governing the possession of firearms will reduce the number of murders."[47] It is not enough, however, that this program be carried out by the civil authorities alone. No progress in this direction can be made so long as Americans continue to think of the privilege of owning firearms as a natural right that cannot be interfered with for any purpose. Public opinion must be educated to adopt the attitude that firearms are not playthings but extremely dangerous implements of violence. Secondly, Kentucky, along with the other States that still retain capital punishment, must immediately abolish it. This will have the effect of raising the respect felt for the sanctity of human life in the minds of all Americans. It is not in the least unrealistic to predict that if capital punishment were abolished, the rate of homicide in this State would immediately drop. Let us hope that Kentucky is not the last State to give up the death penalty as it was the last to abandon the practice of public executions.

Mr. MORSE. Mr. President, I ask also unanimous consent that an article by Daniel M. Berman which appeared in the New Jersey State Bar Journal, 1959 winter issue, be printed at this point in my remarks.

Also, an article written by Dr. Thorsten Sellin, professor of sociology, University of Pennsylvania, which was reprinted from the September 1961 issue of Federal Probation.

The articles very effectively demonstrate how capital punishment has failed to deter crime.

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

As far back as 1915, the New Jersey Senate passed a bill abolishing the death penalty in this State. But the bill was lost in the assembly. However, the following year the mandatory death penalty in murder was eliminated and the jury given the power to recommend life imprisonment. In 1919, the jury's prerogative was further clarified.

The legislature in New Jersey has again been in the process of considering whether to do away with capital punishment, without getting down to a decision. The long transcript of the well-attended, 2-day public hearing in 1958, probably constitutes the most impressive monument to citizen concern on this issue anywhere and any time in the Nation's history, according to Hugh Adam Bedau, of the Department of Philosophy of Princeton University, who has spearheaded the fight for abolition in this State. The curious fact is that, in practice, the death penalty here as elsewhere has already been curtailed almost to the point of actual abolition.

Legislatures seem to be lagging everywhere behind the courts, in this particular, and in this State it is to be wondered sometimes whether some legislators are even familiar with the opinions of the courts. In some States and in the Federal system as well, the lawmakers had actually lengthened the list of offenses which, in theory, may be punished by execution. But judges and juries show increasing reluctance to impose the ultimate penalty.

The contrast is evident in the fact that, although there are 31 separate capital offenses on the books in the United States, only 7 have been punished by death. New

[40] See Kosetler, op. cit., supra, note 12, at 93–94.

[41] For a very illuminating discussion of this problem, see Herbert Read, "Anarchy and Order: Essays in Politics" (1954).

[42] Richard B. Gregg, "The Power of Non-Violence," 165 (1934).

[43] Rusche & Kirchheimer, "Punishment and Social Structure," 207 (1939).

[44] Arthur Miller, "The Shadows of the Gods," 217 Harper's magazine 39 (1958).

[45] Ralph S. Banay, "Study in Murder," 284 Annals 26 (1952).

[46] H. C. Brearley, Homicide in the United States 142 (1932).

[47] Calvert, op. cit. supra note 14, at 164.

Jersey's case is somewhat typical. Although the State has executed criminals for only the offenses of first-degree murder and kidnaping, its statutes list two other capital crimes: treason, and, a whimsical item—attempts to assault the President, any official in the line of succession to the Presidency, a Governor, or the heir apparent or heir presumptive to the throne of a foreign state.

PRACTICE VERSUS THEORY

Paradoxically, then, there has been a steady drop in the number of executions in the United States, even as the list of capital crimes has been lengthened. In the 1930's, the average year saw 150 convicted felons pay the supreme penalty. By 1951 the number had fallen to 105, and in both 1956 and 1957, it stood at 65. In 1957, only 22 of the 42 jurisdictions retaining capital punishment actually used it—and a majority of the executions took place in four States, Georgia, Louisiana, California, and Texas. New Jersey has had no executions since August 1956; in the past 2 years, the State supreme court has ordered new trials in most first-degree murder cases it has reviewed.

A considerable number of States have been making efforts to abolish capital punishment in theory as it has already been limited in practice. In 1958 the six abolitionist States—Michigan, Rhode Island, North Dakota, Wisconsin, Minnesota, and Maine—were joined by Delaware, and the admission of Alaska to the Union adds still another State to the ranks. In a referendum in 1958, Oregon came within 10,000 votes (out of a total of more than half a million) of approving abolition. And there are strong abolitionist movements in California, Connecticut, Illinois, Massachusetts, New York, Pennsylvania, Tennessee—and, of course, New Jersey.

Thus, although theory still lags behind practice, the trend seems clear: Capital punishment is on the way out.

An important reason for its demise is the modern shift in emphasis from retribution to rehabilitation as the goal of penology. The present tendency is to attempt, first and foremost, to remove the conditions in which crime tends to breed. And, when a crime is committed, its perpetrator becomes a logical subject for study to determine whether he can be made fit for reinstatement in free society. Viewed in this light, the death penalty is an anachronistic relic of retributive justice.

THE DEATH PENALTY DOES NOT DETER

There is, however, an even more compelling reason why capital punishment has been losing ground: It has failed as a deterrent to crime.

The death penalty as a weapon against major offenses seems perfectly good commonsense; the greater the crime, the greater the threat needed to deter it. Commonsense, however, has broken down in the face of statistics. Several deserve enumeration:

1. As the number of executions has fallen, the murder rate might have been expected to increase, if the deterrent theory is valid. It has, however, gone steadily down. When proponents of capital punishment claim that the decline would have been even more rapid if there were more executions, they exchange the terra firma of provable fact for the wild blue yonder of sheer speculation.

2. States and nations which have scrapped the death penalty have generally seen no increase in the incidence of murder. A British Royal Commission, after a 4-year study of the problem, concluded: "* * * there is no clear evidence in any of the figures we have examined that abolition of capital punishment has led to an increase of the homicide rate, or that its reintroduction has led to a fall."

3. States which have eliminated capital punishment have lower murder rates than those which retain it. In 1957, for example, the abolitionist States Maine and Rhode Island had lower rates than New England as a whole, Michigan and Wisconsin fared better than the East North Central States generally, and Minnesota and North Dakota were well below the average of the West North Central States. In striking contrast, Georgia, with the largest number of executions in the Nation (14 in 1957), had the lion's share of the murders.

It is difficult to study these statistical facts without concluding that apparently capital punishment is totally ineffective as a deterrent to murder. Perhaps the explanation is simply that while fear of punishment often dissuades people from committing minor crimes, for which the motive may be trivial, it has no effect on major crimes, for which the motive is often overwhelming. Certainly knowledge of consequences does not enter into the thinking of a psychopath. Neither can it stay the hand of the man who kills in a wild fit of rage. The only class of murderers for which capital punishment could have any deterrent value is professional gunmen—and we have perversely deprived the death penalty of precisely the quality which might make it somewhat effective with this group; certainty that it will be imposed on the malefactor.

As a matter of fact, only about 1 percent of those convicted of intentional homicide are obliged to walk the last mile. With odds of almost 100-to-1 in his favor, why should the professional criminal hesitate? In addition, we have made the deterrent even less effective by painstakingly attempting to make executions more humane. Surely we are guilty of the epitome of inconsistency when, while retaining the death penalty for its deterrent value, we continue searching for swifter and more painless methods of administering it.

In any event, the professional gunman represents only a small fraction of the number executed. Of the 157 men New Jersey has put to death, for example, only 45 had ever been institutionalized—and presumably few of these could accurately be labeled "professionals."

WHO PAYS THE PENALTY?

Thus the statistics, buttressed by logic, indicate the futility of capital punishment as a deterrent. But there is an additional tragically ironical possibility to consider: Its existence may actually tend to boost the murder rate. A disturbing indication of this was furnished by the British, who began an 18-month suspension of death penalty at the end of 1955. During the moratorium, the Home Office reports, the number of murders was almost 10 percent below what it had been during the preceding year and a half. And, during the 18 months after the hangman's vacation ended, the number of murders jumped more than 25 percent. The experience of most other abolitionist countries and States also indicates the possibility that there is a contagion between executions and capital crimes.

The reasons for this are by no means clear. Perhaps capital punishment, by diminishing respect for human life, actually breaks down a most formidable barrier to murder. Or perhaps the explanation is that an execution glorifies both the killer and his deed. How else can one interpret the common phenomenon of innocent men confessing to murders? Why else does the number of murders seem to rise on the nights executions take place?

If explanations of the possible correlation between capital punishment and murder are difficult, there is nothing obscure about another fact concerning the death penalty: It has been used far more frequently against Negroes than against whites. From 1930 to 1957, with whites composing about 90 percent of the population, more than half the executions in the United States were of Negroes, according to official statistics of the Federal Bureau of Prisons. The figures are especially horrifying with regard to executions for rape: Seven Southern States which doomed 78 Negroes for the offense have never put a white man to death for it although many have been convicted.

The use of capital punishment as an instrument of race hatred is perhaps only part of a larger problem. Clarence Darrow put his finger on it when he predicted that no rich man would ever be executed. Warden Lewis E. Lawes, of Sing Sing, who led 150 men to the electric chair, testified that the forecast was accurate. "All were poor and most of them were friendless," he reported. None could afford a good lawyer.

Much of the same statement would have to be made by New Jersey's wardens, 28 percent of those who suffered the death penalty in this State were foreign born and 34 percent were Negroes. The remainder, too, were poor and uneducated. Only a few had advanced as far as high school; hardly any had been graduated. Of the 157, only 1 had had a college education.

THE PENALTY IS SELF-DEFEATING

But the class implications of capital punishment are something of a peripheral issue. There are other, even more relevant arguments which are helping the abolitionist cause.

1. The wrong man is sometimes convicted. Readers of Edwin M. Borchard's "Convicting the Innocent" and Jerome and Barbara Frank's "Not Guilty" do not have to be convinced that mistakes can be made. When the wrongfully accused is still alive, at least some sort of restitution can be made.

2. The existence of capital punishment results in the freeing of many guilty men, since juries are reluctant to convict when execution will probably—or certainly—follow.

3. In States where death is the punishment for crimes like kidnaping and armed robbery, the offender has nothing to lose by committing murder in order to liquidate the witnesses.

4. Capital punishment makes jury selection difficult, since many prospective good men and true are also disbelievers in the death penalty.

THE HAINES BILL

As knowledge of all these facts spreads, the cause of abolition advances. The question now is: Should New Jersey join the procession?

The current drive is led by C. William Haines, Republican, of Burlington. In committee hearings on his proposed bills, an array of distinguished witnesses has brought the facts about capital punishment to the attention of the legislature. Their general point of view is that New Jersey, with its streamlined court system, its progressive probation and parole methods, and its advanced institutional programs should now take the logical next step.

The next step as Mr. Haines outlines it is by no means soft on the criminal. On the contrary, the Haines measure would mean that no one convicted of first-degree murder could be paroled until he had served 30 full years of his sentence. Lifers paroled under the present law have served an average of less than 19 years. The difficult release procedure now recommended is especially deplorable, because murderers—who are seldom professional criminals—are generally considered particularly good parole risks. In New Jersey, only 10 of the 117 lifers released since the parole board was established in 1949 have violated parole. None of them committed another murder.

But although some think that life imprisonment, particularly in Assemblyman Haines' formulation, is based on the same outmoded theory as capital punishment,

abolition of the death penalty would at least advance the line of scrimmage a little closer to the goal of rational penology. In any event, some think the Haines bill is all the people will accept at the present time. Possibly, however, we give the public too little credit. One wonders what the attitude of the man in the street might be if he was informed, in addition to the arguments outlined above, of the following:

Executions are not cheaper than life terms when one counts the cost of the lengthy trials and elaborate appeals to which capital cases almost invariably lead.

Thirty-three nations have discarded the death penalty without regrets, and Britain has recently abridged its catalog of capital crimes.

The death penalty used to be imposed for the most petty crimes, but it was scrapped upon the realization that it seemed to have little deterrent power even against these.

If the case against capital punishment is as overwhelming as the statistics and sound reason seem to indicate, immediate abolition would appear called for. If not, now is a good time for the death penalty's proponents to come forward and prove their case.

[From Federal Probation, September 1961]

CAPITAL PUNISHMENT

(By Thorsten Sellin, Ph. D., professor of sociology, University of Pennsylvania)

Last year 57 men were executed in the United States. Five States—Arkansas, California, Georgia, New York, and Texas—accounted for 37 of the executions. Two of them were for kidnaping—one in California (the Chessman case) and one in Oklahoma. There was one execution in Georgia for robbery, one in California for aggravated assault by a life prisoner, and eight for rape—three in Texas, and one in each of the States of Florida, Georgia, Mississippi, South Carolina, and Tennessee. The remaining 45 executions were for murder in the first degree.[1]

Although there have been during the 31-year period 1930 to 1960 11 executions for burglary, 23 for armed robbery, and 434 for rape, all in the Southern States, as well as 5 executions in California for aggravated assault by a life prisoner, 8 for espionage, and 18 for kidnaping, it is the 3,186 executions for murder that have evoked most discussion. The literature on the death penalty in the United States can be said to deal almost exclusively with this crime. Because of the dearth of data concerning the use of capital punishment for other crimes than murder, I shall therefore focus this article on the murder problem.

It is evident from the figures given above that the death penalty is the rarest of all punishments. To an objective observer of the social scene, it is therefore amazing to note the emotional fervor that animates any discussion about it. Numerically insignificant as it is in practice, attitudes toward it are rooted deep in the sentiments of people and arouse powerful emotions whenever its justification is questioned. So long as the status quo is undisturbed nothing happens, but the moment it is attacked, either by abolitionists who want to eliminate the death penalty from the law or by retentionists who want to maintain or reinstate it, the debate begins. The antagonists bombard each other with facts. Beliefs and opinions, often based on spurious or anecdotal evidence, are offered in support of the one or the other viewpoint, the Bible is liberally quoted by both sides, and each side mocks at the views of the other. In the heat engendered by the debate, epithets are flung. The abolitionists are called maudlin or misguided do-gooders, and the retentionists backward, out of tune with the times, and at the worst, sadists. It is only fair to say that in abusive name calling the abolitionists lag far behind their opponents.

PURPOSE OF THE DEATH PENALTY

Although it is sometimes said that the death penalty serves a eugenic purpose, this argument is absurd since so few are executed and since their sterilization would just as effectively prevent them from having offspring. It has also been claimed that it is an economical way of disposing of criminals who, otherwise, would have to be supported at public expense—perhaps for the rest of their lives. Those who employ this cynical argument may be ignorant of the sometimes mountainous costs of the administration of justice in capital cases and they certainly have no knowledge of the realities of prison administration. It is no doubt true that some prisoners, including some lifers, do not make adequate returns to the state—measured in dollars and cents—for some of them are mentally or physically incapable of doing so. But most lifers work in prison. They perform domestic services, they work in prison shops, they do clerical work. If they were paid a wage commensurate with their services, they would be able to pay the costs of their maintenance, but since they are paid little or nothing, it is easy to forget that they are a source of financial profit to the institution in one way or another. Any prison warden will testify to the fact that it is from the group of lifers that he draws a considerable number of trusted inmate employees.

In the last analysis there are only two purposes of the death penalty that are worthy of attention, for the fate of this punishment hangs on them alone. One of these purposes might be called the protection of the community. Those who embrace this aim say that the death penalty is needed as a threat or warning to deter potential murderers, and that murderers are too dangerous, once they have committed the crime, to be kept alive, since they may kill fellow prisoners or prison personnel and may escape or be ultimately released on parole or pardon, in which case they would again become a menace to the community. Hence, it would be too risky to substitute life imprisonment, so called, for the death penalty.

The other purpose is of a different kind. Those who support it simply feel that someone who murders another, perhaps under certain circumstances, for certain motives, or by certain means, has forfeited his life. In such cases they see the death penalty as the only just punishment, its aim being retribution.

It would be difficult to classify retentionists into those who support the one and those who support the other purpose mentioned. Although these purposes are distinct, from a conceptual point of view, it is by no means certain that they are mutually exclusive in people's minds. I suspect—and the reading of many debates on capital punishment gives support to that suspicion—that many find it possible somehow to cherish both of them.

Are the purposes of social protection and retribution achieved by capital punishment and achieved better than by the use of some other sanction? For someone who is interested in the death penalty as a social institution and curious about its survival in the criminal law, it is natural to wonder how one might be able to find an answer to this question.

DOES THE DEATH PENALTY GIVE MAXIMUM SOCIAL PROTECTION?

I stated above that there are two separate problems that confront us in the study of this matter. First, does the existence of the death penalty instill such fear in men's hearts that the thought of it keeps them from committing murder? Second, if a murderer is not executed for his crime, does he remain a constant danger to the prison community, if he is given a prison sentence, and to the larger community, if he is granted a later release?

The problem of general deterrence

In an article published in the June 1961 issue of the FBI Law Enforcement Bulletin,[2] Mr. J. Edgar Hoover writes: "No one, unless he can probe the mind of every potential killer, can say with any authority whatsoever that capital punishment is not a deterrent. As one police officer has asked, 'How can these authorities possibly know how many people are not on death row because of the deterrent effect of executions?' " This statement contains a tacit assumption that the death penalty is a deterrent, but no one can state with any authority whatsoever that capital punishment is a deterrent. So we have reached an impasse. If no one can say either yes or no on this point, it means either that the question is unanswerable or that no one has tried to find an answer.

Now, I am not unaware of the fact that police officers, prison wardens, or judges now and then claim to know cases where a given individual refused, for instance, to carry a firearm when participating in a burglary or robbery or refused to participate at all if any member of the group was so armed, and that this is assumed to prove that fear of the death penalty dictated this conduct. It is not impossible that some of these instances may be true. But the stories as printed have never clearly indicated whether it was the fear of capital punishment rather than the fear of taking or participating in taking a human life—regardless of the consequences—that motivated the refusal. Furthermore, the information seems in many cases to have been secured or given under circumstances that would make it suspect. Even if it were accepted as fact, there is just as good evidence that the availability of instruments used to inflict the punishment of death has induced people of unbalanced mind to seek that punishment as a devious means of suicide. When we place these contradictory facts in a balance it would be rash for anyone to claim with assurance that the one outweighs the other.

Even if we recognize that the fear of punishment may have some deterrent effect and helps to prevent the commission of some crimes, there is good reason to think that it does not or cannot be operative in preventing murders. Life is generally regarded as man's most valued and even sacred possession, and the protection of life by the avoidance of doing deliberate harm to others or to ourselves is taught to us from childhood in many ways and by many means. When in spite of this general social aversion to murder, killings occur, it means that the perpetrators have either not been properly taught to respect human life or that they find themselves in a situation where hatred, desire, anger, greed, necessity, or the mores of a group to which the offender belongs acquire such dominance that all else is ignored or forgotten, including the possible punishment. The person who carefully plans his crime so as to avoid detection has no fear of consequences since he is certain he will never suffer any. Discounting war and revolution, all but very few people, even most murderers, consider the taking of life as a terrible moral wrong. It is this feeling that ultimately is the great deterrent.

If we were to take the ultracynical view that people obey the law only because they want to avoid the consequences of disobedience and not because they live according to a moral code which also finds its expression in legal prohibitions, we would have to

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[1] All data concerning executions have come from National Prisoner Statistics, No. 26, March 1961: "Executions, 1960." Washington, D.C.: Bureau of Prisons, U.S. Department of Justice.

[2] Reproduced in the Philadelphia Inquirer, June 18, 1961.

assume that potential offenders fear the consequences somewhat in proportion to the risk of suffering them. But, statistics tell us that the risk of being executed for murder is small. It is extremely small for gangsters who, according to the supporters of the death penalty, are among those who should be made to fear it most. According to the last annual report of the Chicago Crime Commission there were 947 gang murders in Chicago since 1919. I suppose it is not an overestimate to assume that at least two persons, the actual killer and the one who ordered the killing, participated in these murders. In that case, there were a minimum of 1,900 murderers involved. Of these 17 were convicted but several of them were later freed by the Supreme Court on appeal.[3] There is nothing new in this story, for it has its counterpart in all cities where organized crime is found.

If the risk of execution is regarded as the important element in deterring persons from committing murder we are therefore leaning on a mighty weak reed. That risk is so much smaller than the risk of the potential murderer being killed by his intended victim, by the police, or by some bystander during or after the crime.

"During the period 1934–54 (in Chicago), for instance, policemen killed 69, and private citizens 261 criminals or suspects involved in homicide, or a total of 331. During the same period there were 45 persons executed for murder in the Cook County jail. In other words, there were nearly eight times as many homicidal offenders killed unofficially, so to speak, as were those electrocuted. There were 5,132 murders and nonnegligent manslaughters known to the police during those years. In connection with 6.45 percent of these homicides, a criminal or suspect met his death at the hands of police or citizens, while 0.88 percent were put to death in the electric chair." [4]

Judging from the number of murders and nonnegligent manslaughters known to the police and published in "Uniform Crime Reports" for the year 1959, and taking into account a slight increase in 1960, there were a minimum of 8,400 murders and nonnegligent manslaughters last year (1960) in the States that still have the death penalty, and of these offenses the number punishable by death would probably be at least 1,260, or 15 percent of the total. This is a most conservative estimate. It would be equally conservative to say that at least 1,300 persons were guilty of these murders and that 1,250 of these will never be executed.

If fear of being executed for murder played the great deterrent role claimed by retentionists, it would be reasonable to assume that when this fear is not experienced, as in States that have abolished capital punishment, or is suddenly removed, when a State abolishes this penalty, the result would in the first case mean that murder rates would be higher than in States that have retained the punishment, and in the second case that these rates would show an increase, which could be stopped or even reduced by the simple device of reinstating the penalty. When statistics appear to give support to such assumptions, retentionists are quick to seize upon them to illustrate the soundness of their views, but when the statistics fail them they are wont to claim that statistics demonstrate nothing.

The only way of testing the correctness of the above assumptions, however, is by the use of statistics. We have to admit that the data available for use are far from perfect for the purpose of counting the exact number of capital murders that occur during any given period of time in any jurisdiction, small or large. There are no reliable statistics of capital murders. Such murders are of two types. The first includes premeditated malicious killings and especially those committed by certain methods, such as arson or ambush. The second includes killings that occur in connection with the commission of crimes, such as burglary, robbery, rape, kidnaping, etc. Although no count of capital murders has so far been made by any official agency on a statewide basis, it would probably be possible to get a rather accurate count of the so-called felony murders, i.e., the second class mentioned above, but the premeditated murders defy any accurate enumeration, since their qualification depends so greatly on the state of mind of the offender, who is often undetected or unknown. Therefore we have to use other kinds of statistics in an attempt to arrive at conclusions.

For many years we have had statewide statistics of deaths due to willful homicides. They are based on an analysis of death certificates submitted to the Bureau of Vital Statistics of the Federal Government from all the States of the Union. These certificates do not contain any information that would make it possible to segregate capital murders from other kinds of willful killings. They do make it possible to compute rates of deaths due to willful homicide and it is these death rates which are generally assumed to be usable as an index to capital murders, on the assumption that the proportion of capital murders, hidden among these homicides, remains constant from year to year. An increase or a decrease in the total homicide death rate in a State, from one year to another, is then assumed to reflect a proportionate increase or decrease in the number of capital murders in that State. Experts in various countries who have made a study of this problem have concluded that this assumption is valid. Until it has been disproved we have to accept that judgment.

Abolitionists are frequently guilty of making assertions that the States that have retained the death penalty have much higher homicide crime rates than the States that have abolished it. They arrive at that conclusion by simply comparing the rates of the two classes of States. This is a reprehensible practice. The conclusion is accurate but the inference is false. Except for Delaware and Rhode Island, the abolition States on our continent all border on Canada, and all the Northern States have fairly low rates of homicide compared with the South, where no State has dropped capital punishment. The only fair comparison is one that takes into account regional differences and therefore compares the homicide rates of an abolitionist State with that of its neighbor States.

The diagrams [not printed in the RECORD] are based on such comparisons. They show both the annual size of the homicide death rate per 100,000 population for the period 1920–58 and the general trend of the rate for each set of States compared. Diagram I compares the abolitionist State of Maine with the States of New Hampshire and Vermont. Diagram II shows rates for Rhode Island (an abolition State), Massachusetts, and Connecticut. Diagram III contains two abolition States, Minnesota and Wisconsin, compared with Iowa. Diagram IV compares Michigan, which has no death penalty for murder, with Ohio and Indiana.[5]

The striking thing about these diagrams is that within each set of States the rates are so nearly the same annually and the trends so closely alike that if the lines were not identified with each specific State, no one would dare to guess which lines represented the abolition States. Generally speaking, all the States involved showed a decline in homicide deaths during the 39 years examined. The decline was slight in New England and much more pronounced in the Middle West, but then the New England rates were also generally much lower to begin with.

It is proper to conclude that States which are similar in the character of their population, their urban and industrial development, and their mores have similar homicide rates, whether or not they have the death penalty. In other words, the presence of the death penalty for murder in a State appears to have no more influence on its homicide rates than the absence of the penalty in a comparable State has on the rates of that State. And, if our basic assumption is correct, what holds true for the homicide rates would hold true for the capital murder rates, were they obtainable.

When it once becomes generally understood that the amount and the trends of murder depend on demographic, social, economic, and political conditions, one would realize that the explanation for rises or falls in the statistics of this crime must be sought through a study of these conditions, and that through such study alone could any possible remedy be found. To hope that this remedy could be found in the application of the death penalty or in its introduction is to grasp at a straw.

We have had some experience in this country with such vain efforts.[6] Several States have temporarily abolished the death penalty and have then reintroduced it. In some of them abolition was followed by a rise in homicides, in others by a fall. And when the death penalty was introduced the rates usually rose. For the reasons already stated, the law of murder had apparently nothing to do with these variations.

The dangers of life imprisonment

But if we do not execute murderers, they will remain a menace to all within the walls of prisons, it is said; and if they are ever released the community will again be threatened by them. We should, therefore, attempt to discover how capital murderers who have been imprisoned for life—which is the usual punishment when the death penalty is not applied—behave while in prison and after release.

The experience of prison administrators is, broadly speaking, that lifers are among the best behaved prisoners in an institution. They obviously may become disciplinary problems at some time or other, as do other prisoners, but their conduct record is on the whole very good. There have been instances where such prisoners have committed a homicide in an attempt to escape or as a result of conflicts with other inmates or the prison staff, but almost all killings committed inside prisons are done by prisoners serving sentences for other crimes than homicide. Are such events more common in abolition States than in death-penalty States? No one knows, since no study has been made of this matter.

The paroled lifer has had an enviable record of good behavior so far as we can gather from available information. I have given elsewhere [7] some data which demonstrate this fact. Within the last few months the Ohio Legislative Service Commission has

[3] Virgil W. Peterson, "A Report on Chicago Crime for 1960." Chicago: Chicago Crime Commission, 1960, p. 56.

[4] Thorsten Sellin, "The Death Penalty." A report for the model penal code project of the American Law Institute. Philadelphia: The American Law Institute, 1959, p. 62.

[5] The diagrams are reproduced from "Capital Punishment." Staff Research Report No. 46. Columbus: Ohio Legislative Service Commission, January 1961, pp. 40–42. They were copied from Sellin, op. cit., and brought up to date.

[6] Cf. Sellin, op. cit., pp. 34–38; "Capital Punishment," op. cit., pp. 43–45; General Assembly of Pennsylvania, "Report of the Joint Legislative Committee on Capital Punishment." Harrisburg: The Committee, June 1961, pp. 24–26.

[7] Sellin, op. cit., pp. 76–78.

furnished additional information on this point. In a staff research report, published in January, we learn that since Ohio's present parole law became effective in 1945, there have been 169 first degree murderers paroled in that State, as of October 1, 1960. These 169 parolees "have compiled the highest parole success ratio of any offense group among the more than 6,000 paroled convicts now administered by the Ohio Bureau of Probation and Parole. Only two of the 169 have been returned to penal institutions for the commission of new felonies. One of these was returned after committing armed robbery while on parole, and the other for assault with intent to commit a felony. Eight more paroled first degree murderers have been returned to penal institutions for technical violations of parole rules and regulations or because of general failure to adjust satisfactorily to life outside the penitentiary." [8] The report suggests that the explanation may be found in the facts that a large proportion of first degree murderers are highly reformable, that those paroled—in Ohio at least—were 30 years old on the average when they were committed to serve life sentences, but 53 years old on the average when they were paroled, and finally that those who were not good parole risks serve their life sentences in full. In 1957, for instance, when one prisoner was executed in Ohio, 11 prisoners, who were serving definite life sentences, died.[9]

Police safety

Among those who wish the death penalty retained there are, of course, people from all walks of life, but certain occupational groups or professions appear to contain a particularly high or at least vocal proportion of them. This is particularly true of the police who rather consistently—except in the States that have abolished capital punishment—individually or through their professional organizations or unions make known their views, that if the fear of the death penalty is removed by the abolition of this punishment, the policeman's vocation would become more hazardous. It is assumed that persons engaging in crime would, then, be more likely to kill police officers who are pursuing, questioning, or arresting them. This belief, as well as the belief that the death penalty acts generally as a unique deterrent, has even led the Federal Bureau of Investigation to express its support of capital punishment, in spite of its avowed policy of neutrality. Last year, Mr. J. Edgar Hoover stated that policy in clear terms. "The FBI * * * is strictly a fact-gathering agency. It does not make recommendations or evaluations * * * or pass opinion relative to information gathered. * * * Certainly, it is not the function of an agency, which collects the facts in a given situation to also pass judgment on them." [10] In fairness to Mr. Hoover, I must say that he was discussing facts gathered in the investigation of crime, but the FBI also gathers facts about the state of crime in the country, publishes these facts in its annual "Uniform Crime Reports" and has no hesitation about evaluating them. In the report published in 1960, covering the year 1959, a perfectly amazing page is devoted to a defense of capital punishment. Its last two paragraphs read as follows:

"Some who propose the abolishment of capital punishment select statistics that 'prove' their point and ignore those that point the other way. Comparisons of murder rates between the 9 States which abolished the death penalty or qualified its use and the 41 States which have retained it, either individually, before or after abolition, or by group are completely inconclusive.

"The professional law-enforcement officer is convinced from experience that the hardened criminal has been and is deterred from killing based on the prospect of the death penalty. It is possible that the deterrent effect of capital punishment is greater in States with a high murder rate if the conditions which contribute to the act of murder develop more frequently in those States. For the law-enforcement officer the time-proven deterrents to crime are sure detection, swift apprehension, and proper punishment. Each is a necessary ingredient." [11]

And, in the summary that precedes the text of the report we find the sentence, "Proponents of abolition of capital punishment cannot find support for their cause in study of State murder rates, since results are inconclusive." [12]

Having read these statements, one would assume that the report contained some facts about capital punishment that might explain and justify the statements even though the fact-gathering agency is not supposed to make recommendations or evaluations. Not so. The statements are gratuitously introduced into an official governmental report that offers nothing to support them. They are mentioned here only to show the length to which police authorities are willing to go in defense of the death penalty, even though they have never been willing to make any scientific attempt to test the validity of their opinions.

The only more extensive inquiry to discover if policemen are better protected in States that have capital punishment was made in 1955 by the author for the Joint Committee of the Senate and the House of Commons on Capital Punishment of the Canadian Parliament.[13] In a recent report it is summarized as follows:

"It was based on a questionnaire sent to all police departments in cities with more than 10,000 inhabitants, according to the 1950 census, in the 6 States that had no death penalty in 1955 and the 11 States that bordered on them. Information was requested on the number of policemen killed by lethal weapons in the hands of criminals or suspects each year beginning with 1919 and ending with 1954. Full reports were returned by 266 cities, representing 55 percent of the cities in the abolition States and 41 percent of those in the capital punishment States.

"Several interesting facts appeared from an analysis of the responses to the questionnaire. First, when comparing groups of cities in the two types of States, according to the size of the cities, it was found that there was no difference in the rates of policemen killed in the cities of the capital punishment States and in those of the abolition States. Second, it was found that in both types of States in the northeast part of the country, the killing of policemen was less frequent than in the Middle West. Third, it was found that the decade of 1920–30 had been most hazardous to the police of both types of States and that the number of police killed had declined regularly, whether the States had or did not have the death penalty. * * * It is, therefore, impossible to conclude that the existence of this punishment in law or practice affords any special protection to the police that would not be afforded by the threat of life imprisonment." [14]

This conclusion can be extended. The belief that the death penalty is a unique instrument for the protection of society against murder and superior to life imprisonment in this respect is not supported by any credible evidence now available to us.

IS RETRIBUTION EFFECTIVE?

There is no denying that many persons feel that a person who takes another's life under circumstances that qualify the crime as murder in the first degree should, in all justice, forfeit his life. Some of them are quite willing to agree that so far as the protection of society is concerned life imprisonment would be just as effective, but they feel that the grievous wrong done to the family of the victim, the robbing of the victim of his chance to enjoy perhaps a long life of usefulness, and the display of recklessness and of perhaps a wicked or depraved character on the part of the murderer, fully merit his execution.

This view of justice must be reckoned with. Its nature is such that if logic prevailed those who hold it would maintain it even if it were proved that the use of the death penalty had socially undesirable byproducts. Opponents of the view are equally strong in their feelings that to take a life deliberately by the State is just as reprehensible as murder and is morally wrong.

I do not propose to enter into any debate on this issue. Its resolution lies entirely within the sphere of moral philosophy. It is in such debates that capital punishment is discussed, not from the point of view of its effectiveness in protecting society but from the point of view of its inherent rightness or wrongness. However, if I were an adherent of the view of retributive justice, I might—if my emotions did not deprive me of my reason—wish to find out if retributive justice is efficiently and properly administered.

One might begin with some basic assumptions. The first is that every person who commits first degree murder should lose his life. Since this poses a dilemma, not all such murderers being discovered, at least every person convicted of this kind of murder should be executed. A second assumption is only a logical consequence of the first, namely, that since all such persons should be executed, there could be no discrimination. All murderers would be equally dealt with.

The gap between what should happen, if these assumptions are correct, and the realities of the administration of capital justice is enormous. It begins to develop in the courtroom, where the skilled defense lawyer may stave off a first-degree murder conviction and where juries may inequitably determine a verdict or a sentence, depending on their attitudes toward a defendant or the feelings of the community rather than the strict nature of the crime. It is well known that the number of women murderers sentenced to death is disproportionately low compared with the proportion of male murderers so sentenced. In Ohio, during 1955–58, 31 percent of the males and 8 percent of the females charged with murder in the first degree were found guilty of that crime.[15] And it has been observed that in many States, racial attitudes hinder the equal application of justice.

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[8] "Capital Punishment," op. cit., pp. 81–82.

[9] Communicated by Mr. James McCafferty, Criminologist, Bureau of Prisons, Washington, D.C.

[10] J. Edgar Hoover, "The Federal Bureau of Investigation: The Protection of Civil Liberties," American Bar Association Journal, vol. 46, August 1960, pp. 836–837.

[11] "Uniform Crime Reports for the United States * * * 1959." Washington, D.C.: Federal Bureau of Investigation, Sept. 16, 1960, p. 14.

[12] Ibid., p. 3.

[13] Thorsten Sellin, "The Death Penalty and Police Safety," 2d sess., 22d Parliament, 1955: "Appendix F of the Minutes of Proceedings and Evidence No. 20 of the Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries," Ottawa: Queen's Printer, 1955, pp. 718–728.

[14] General Assembly of Pennsylvania, "Report," op. cit., pp. 28–29.

[15] "Capital Punishment," op. cit., p. 61.

But if a sentence of death is finally imposed there is still the matter of commutation by boards of pardons or Governors. Whether or not a death sentence will actually be executed depends, in the last resort, on these authorities. At times the policy of commutation depends on the particular attitude toward the death penalty held by them. One Governor, opposed to this punishment, may commute every sentence; another who holds the opposite view may commute few of them. Bias or adventitious circumstances may also exert an influence. In Ohio, of the persons under death sentence in the prisons during 1950–59, not counting seven cases yet to be disposed of by November 1960, 78 percent of the Negroes and but 51 percent of the whites were put to death. This discrepancy may in part reflect economic as well as racial inequalities, for commutations were received in 44.4 percent of the cases where the defendant was able to afford private counsel, but only in 31 percent of the cases where he was served by a court-appointed one.[16] A Pennsylvania study of 439 persons sentenced to death and placed on death row between 1914 and 1958 showed that Negro felony-murderers received commutation in only 6 percent of the cases while white felony-murderers did so in over 17 percent of the cases.[17]

There is no need to multiply these or similar data. If only about 4 percent of those who actually commit murders in the first degree, a figure based on what we conservatively estimate to be the number of capital murders committed annually in the United States and the accurate knowledge we have of the number of executions, it is obvious that, whatever the elements may be that produce the attrition, retribution is but rarely achieved and in no equitable manner. Therefore, just as the death penalty has proved to fail as a special means of social protection, so it has failed as an instrument of retributive justice. It is vain to hope for an improvement, because the spirit of the times is unfavorable to it. To prove that this is so, we need only to take a glance at history and especially at the history of abolition.

THE ABOLITION MOVEMENT

Speaking of the abolition movement there are two aspects of it that are interesting. First of all, of course, is the extent to which the death penalty, at least in peacetimes, has disappeared from the criminal law of nations and states. In Western Europe, only France, the United Kingdom, Spain, and Eire have retained it, and most countries of Central and South America, including Brazil, Argentina, and most of Mexico, have abolished it. In the United States, four States abolished it during the last century (Michigan, Wisconsin, Maine, and Rhode Island). During the present century five States have done so without restoring it again, namely, Minnesota, North Dakota, Delaware, Alaska, and Hawaii, the last three joining the others within the last half decade. It does not exist in Puerto Rico nor in the Virgin Islands.

This is, however, but a part of the story. The last century and a half has seen changes which explain the decline of the death penalty in States that have kept it in the law. We have seen a general trend toward the reduction of the number of offenses punishable by death, despite occasional minor reversals. We have gradually eliminated public executions, for while desiring to make the penalty as frightening as possible—that is, as a deterrent—we have also become more and more averse to such unesthetic and revolting spectacles. Moved by sentiment, we have sought for more and more quick and painless methods of killing murderers, as witness the spread first of the electric chair, and now of the gas chamber, in replacement of the traditional gallows. Finally, we have removed the mandatory death sentence and left in the hands of the jury or the judge, the choice of an alternative—life imprisonment.

The combined result of these policies has caused capital punishment to become an anachronism in many States. If we add the changing attitudes toward punishment in general as reflected in the establishment of juvenile courts, the introduction of parole and probation, and the rise of a correctional philosophy which stresses rehabilitation, it is not difficult to explain the rapid downward trend in the number of executions annually from a high of 199 in 1935 to 57 in 1960. And this trend is likely to continue, barring unforeseen social crises, until executions will become a much greater rarity than today and will ultimately be abandoned.

Mr. MORSE. Mr. President, I also ask unanimous consent to have printed at this point in my remarks the very fine testimony of Donal E. J. MacNamara, dean of the New York Institute of Criminology, before the Virginia Legislature on February 29, 1960, in support of legislation to abolish capital punishment.

The testimony of this very eminent criminologist on the abolition of capital punishment refutes the arguments most generally advanced by those who advocate the retention of an immoral death penalty. In my judgment, anyone seriously concerned about the matter of whether capital punishment should be retained or abolished should thoroughly familiarize himself with Dean MacNamara's excellent testimony.

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

Senators and delegates of the Virginia Legislature, I urge favorable consideration for the legislation before you outlawing the death penalty from Virginia's penal code for the following reasons:

1. Capital punishment is criminologically unsound. It violates the basic tenet of 20th century penology, i.e., the rehabilitation of offenders.

2. Capital punishment is morally wrong and violative of the ethical foundations of modern democratic States. Opponents of the death penalty readily admit the right of the State to defend itself against aggressors and through its police to protect the lives of its populace even if in so doing the killing of a criminal is necessary. But once the criminal has been disarmed and is in custody, his capacity to injure the State or its citizens has been effectively curtailed and the right of the State to take his life ceases. To execute him at this point is vengeance and retribution, not protection.

3. Capital punishment is unnecessary. It provides no more deterrence to the commission of capital crimes than do alternative, more acceptable penalties. It is a truism of penology that it is not the quantum of punishment but the certainty of punishment which deters the offender. Improving our police and investigative machinery to insure the apprehension of a larger percentage of wrongdoers and of our prosecuting apparatus to insure the conviction of the guilty would, even with much less severe penalties, reduce the incidence of crimes, capital and noncapital, more effectively.

4. That capital punishment has demonstrably failed to achieve its objectives, i.e.: the reduction or elimination of capital crimes, is evidenced by comparing the crimes history of the nine American States which have abolished the death penalty (three for more than 100 years) with the capital crimes rates in those States, with the same social and population patterns, which retain capital punishment. In every instance the capital crimes rate in the States which have abolished the death penalty is lower, oftentimes significantly so, than in those States in which the death penalty is on the statute books and is supposedly deterring capital crimes. Most recently, Delaware abolished capital punishment. Short-term results are now available. In the 12 months prior to abolition, there were 11 homicides in Wilmington; in the 12 months after abolition, there were but 2. Abolishing capital punishment will not start blood flowing in the streets of Richmond—nor will it make the people of the Old Dominion in any way less secure in their persons or property.

5. Capital punishment has been differentially and inconsistently applied. The statistics of executions since 1930 show that more than half of those executed have been persons of minority groups. Studies in other States have indicated that a disproportionately high percentage of those executed had been defended by court-appointed lawyers whose funds for legal and investigative services were severely limited. There is no showing, for example, that the 48 persons executed in the United States during 1958 were the 48 most dangerous criminals. Indeed analysis of the serious crimes during 1958 shows that the professional gangster murderer, the cold-blooded killer for hire, is unrepresented in that group—and in instance after instance was neither apprehended nor convicted of any degree of homicide.

6. Miscarriages of justice: The American system of criminal justice has many built-in protections for the innocent person accused of crime. The Chessman case is a monument to the desire of our people and our judges to take heroic measures to prevent an execution where there is the slightest doubt of guilt or of the legality of the criminal proceedings involved in determining guilt. Nonetheless there have been cases, in the United States and in other countries, in which human fallibility, coincidence, and occasionally culpable negligence on the part of the police and prosecution or public pressures on the jury and court have resulted in a miscarriage of justice and an innocent man has been sentenced to death. Fortunately for our consciences in most cases the error has been caught and corrected prior to execution; but innocent men have been executed. If we make a mistake and give an innocent man a life sentence and even after 20 years we realize our error, we can in some way, inadequate as it may be, recompense him for his sufferings; if we execute an innocent man, society can neither make good its error to him nor can it ever wipe the stain of guilt from its escutcheon.

7. Capital punishment increases the cost of administering justice. It makes for long, drawn-out trials, many appeals, and in States with the mandatory death penalty provision, often leads to a guilty man going "unwhipped of justice" due to the reluctance of the jury to be responsible for his execution. The charge is made that substituting life imprisonment for the death penalty will saddle the public with extra costs and increase taxes. I am reluctant to discuss human life in dollar-and-cents terms, but a good cost accountant can right here in the State of Virginia demonstrate clearly that it would be cheaper for Virginia in the long run to maintain its murderers in a luxurious suite of the Hotel Richmond across the street than it is to execute them.

8. Capital punishment provides no special protection to police officers. Father Donald Campion, a noted Jesuit priest and editor of America, has studied the incidence of assaults on and killings of police officers in

[16] Ibid., pp. 62–63.

[17] As yet unpublished study on a "Comparison of the Executed and the Commuted Among Admissions to Death Row," by Marvin E. Wolfgang, Arlene Kelly, and Hans C. Nolde.

death penalty as opposed to non-capital-punishment States. He finds that the incidence of police deaths in the line of their police duties is lower in those States which do not have the death penalty.

9. The purported deterrent effect of the death penalty is based on the mistaken assumption that the criminal at the time of committing murder or another capital crime is necessarily a rational being, weighing the pleasure or profit to be derived from his crime against the pain or loss to be suffered should he be caught and convicted. This is a popular restatement of the classic, but rejected, pleasure-pain theory of penology. But the murderer is seldom a rational man at the time he commits a murder—he is at that time in the words of Dr. Post "the unhappy end product of anger, frustration, jealousy, despair, alcohol, pity or sex * * *." Most homicides are committed without any consideration of the death penalty. Most murderers do not premeditate, deliberate, and intend the death of their victims. Recent studies at Vacaville (California Correctional Research Institute) and at Raiford (Florida State Penitentiary) give indisputable evidence that at least convicted murderers thought nothing of and were certainly not deterred by the prospect of the death penalty.

10. Capital punishment is then: unsound criminologically and penologically, unnecessary to protect the State and its people, demonstrably no greater a deterrent to crime than lesser, alternative penalties; it is costly to the State; it makes final and irredeemable miscarriages of justice; it has in the past been inconsistently and prejudicially applied; it is retributive rather than rehabilitative and imposes the barbaric lex talionis on a civilized, modern democracy; it brutalizes our penal system and makes impossible the reform of criminal justice administration; it provides no special protection to our police officers; again quoting Dr. Post: "* * * however you look at it, capital punishment is brutal, sordid, and savage; it is unworthy of a civilized people."

Virginia is a great State. It has contributed not only Presidents and political leaders to America but has given much in the way of culture and progress not only in science but in morals and ethics. Enact, gentlemen, this legislation and join Virginia to the roll of honor of those nations and States which by abolishing capital punishment have contributed to the march of civilization and respect for God-given human life which only the God who gave it has the power and the right and the wisdom to take away.

Mr. MORSE. Mr. President, in the very brief and inadequate hearings which were held on the bill by our subcommittee, the deterrence question came up. The distinguished Senator from New York [Mr. KEATING], was the witness. He was asked the question:

In your opinion, is the death penalty for murder a serious deterrent to murder?

The Senator from New York replied:

The statistics, I understand, do not bear out the contention that the death penalty is a deterrent. I think you could get criminologists to get into quite a debate over that.

I would be opposed to its complete elimination because I have always felt, myself, that in some instances of strongly premeditated crimes—if I may put it that way—that the death penalty probably was a deterrent, but that is simply a speculation.

The Senator from New York further said:

My understanding is the crime rate in those States which have completely done away with the death penalty is no higher than those in which they have major, or capital punishment.

If the death penalty will have the deterrent effect which the proponents of the bill allege, why do they not propose to execute the convicted person on the Washington Monument grounds and to invite attendance by the public, including all persons known to have criminal tendencies and persons previously convicted of any crime? I suppose the reason why they do not make that proposal is that under the Anglo-Saxon justice in England for a time that that was done. There used to be public hangings. The interesting thing was that frequently while the public hanging was going on a capital crime was being committed.

Mr. President, it is a myth to assume that capital punishment is in fact a deterrent to crime. I should like to think that in 1962 we have reached the level of civilization that we no longer resort to the law of the jungle, that we no longer resort to the law of a tooth for a tooth and an eye for an eye, but that we recognize that civilized man ought to leave to God the exercise of God's prerogatives.

Mr. President, if a person has committed a capital crime we ought to protect society by putting him away permanently, making it perfectly clear that he is not to be subject to parole. For the secondary murderers—those who commit murder in the second and third degree, or manslaughter—there should be discretion in respect to how long they will have to serve. We can consider that question after we take a vote on the question in regard to capital punishment.

I could argue all day, in my judgment, and say no more, in essence, than I have already said in regard to my position on capital punishment. I summarize by making these points:

First, I consider it to be immoral.

Second, I do not consider it to be an effective deterrent to crime.

Third, I think the time has come when we ought to set a good example of high civilization and make clear that we no longer will resort to the eye-for-an-eye and tooth-for-a-tooth jungle law, but that we will put these prisoners who commit capital offenses away for life without parole.

If we do that, the criminologists and penologists will tell us that will be as much of a deterrent—in fact, some say that will be feared more than capital punishment, because the criminals will know it can be enforced.

One of the interesting paradoxes in the argument of the opposition in connection with the bill is that the opposition wishes to eliminate the mandatory capital punishment because juries will not convict because of mandatory capital punishment. That is their argument. Mr. President, they catch themselves coming backward.

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

Mr. MORSE. Mr. President, I yield myself 2 more minutes.

Because juries will not convict for mandatory capital punishment, the opponents make one of the best arguments for the Morse amendment. Juries will not convict because they do not think it is right.

Furthermore in the District of Columbia, which has a population 53 percent colored, I think also from a psychological standpoint it is desirable that we rise up to the moral plea I am making on the floor of the Senate this afternoon. I do not need to tell Senators what we hear.

We should have a law which provides for life imprisonment, for a certainty, for the most heinous of capital crimes, and then we will not have trouble with juries failing to convict persons who are guilty.

Then we could take the second part of the amendment I shall offer later, and give the juries discretion as to whether these people are to get life imprisonment with parole or not.

That is my case, Mr. President. I yield back the remainder of my time.

Mr. HARTKE. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 10 minutes.

Mr. HARTKE. As I understand the amendment which is now proposed, if it were to be adopted by the Senate we would leave the jurisdiction of the District of Columbia without any penalty whatsoever for murder in the first degree. This to me would be a rather unwholesome decision, in the first instance. We should not presume that further legislation will take place.

I understand what the distinguished Senator from Oregon has said, but the legislature is a peculiar body. It does not always follow the indications as to what one person would like, nor does it always go in the direction one person would like to lead it.

I think we ought to put the problem in a proper perspective in regard to the entire question as to what is being done in the field of capital punishment. The law at the present time in the District of Columbia is very clear. If a man is convicted of murder in the first degree, if he is to be punished at all, he has to be electrocuted.

The arguments which are made by the distinguished Senator from Oregon are not of the type which should be made in this situation. The Senator should be joining us in the endeavor to change the rule, instead of joining in an effort to do what he can, by parliamentary procedure and by other amendments, to lead us off into the path which most assuredly would result in no change whatsoever.

We cannot ignore the fact—and it is a fact—that the House of Representatives has passed the bill to abolish the present rule. The bill was passed without objection.

We cannot at this time ignore the fact that the proposal to completely eliminate the death penalty was presented to the committee, and that proposal was rejected by the committee.

We cannot ignore the fact that 8 months ago this body adopted unanimously, and with the affirmative vote of

the Senator from Oregon, a death penalty. The Senator's answer is that this was a mistake. If it was a mistake, he should have initiated action to correct that mistake.

We do not want to put the District of Columbia in a special category. Every Federal jurisdiction provides for a type of punishment which is similar to that provided in the bill before us.

This is what is done in every other Federal court: There is an alternative which is presented to the jury and to the judge. That is what we propose. It would not go as far as the distinguished Senator from Oregon claims we should go, in eliminating capital punishment in its entirety, but the road down which the Senator would take us would leave us in the situation of having only one provision.

Every soul, every body, or every mind which may be destroyed as a result of electrocution if the law is not changed, will have to rest with those who in some way prohibited the change. That is where we find ourselves. Perhaps the Senator from Oregon does not wish to be put in that spot, but, if he successfully denies this change, he will have to wrestle with his conscience, if someone is convicted of murder in the first degree. Then he will have to wrestle with his conscience and with his God, as I would have to wrestle with my conscience and with my God, as to whether that death was on my soul for eternity.

I do not wish to try to judge a man's religious beliefs. I would not believe that any Senator would attempt to impose either his religious beliefs or his nonbeliefs on any other Member of this body. But there is difference of opinion. There is difference of opinion in the field of atomic testing. There is difference of opinion as to whether or not we should go to war and whether the taking of life in war is proper.

From my own State of Indiana, where my wife was born and raised and there exists the Quaker College of Earlham, are people who conscientiously, with religious conviction, believe that they should not enter armed conflict and take another's life. No one questions the desire of such people. But today we are dealing with a law which makes mandatory upon a jury and a judge to determine that, if there is a conviction of murder in the first degree, the defendant must be electrocuted. That is the situation we wish to change. All of the arguments which the distinguished Senator from Oregon has made support that thesis and do not deny it. The District of Columbia is the last remaining jurisdiction in the United States which has the type of law we would change. It is the last one.

I really cannot understand how other jurisdictions which have made a change such as that provided in the bill can be so wrong in the approach they took. One State did make a change such as that provided in the amendment, and after abolishing capital punishment, their legislators returned and reenacted a law providing an opportunity for the court, upon conviction of a defendant, to sentence with an alternative of the death penalty or imprisonment for life, with a provision for parole.

As we know, the proposed legislation applies even to interim cases, that is, cases which are before a judge for resentencing or which at this time have not yet been fully acted upon.

Over a 3-year period we heard from a great many witnesses at the hearings. The testimony is before the Senate. The distinguished Senator from Oregon complained yesterday about the inadequacy of the record on this issue. There is a doctrine of laches. There is an opportunity that is always presented to a Senator. There was no denial of that right.

Representatives of the Judicial Conference appeared and testified.

Reference has been made to prosecution-minded people. We had as witnesses lawyers who have been involved in the defense of people charged with murder. They want a change made for the very reason that they feel the present provision of the law is wrong. They feel that it does not accomplish the purpose for which it was intended.

As I said yesterday, the Department of Justice feels that the present provision of the law very definitely impedes conviction in cases of murder in the first degree. We have seen some rare decisions which have resulted as a consequence of the present law, and they will probably create law with which we must wrestle in future cases.

The National Prisoners' Statistics of March 1961 disclose that 40 States still retain legal authority for execution. Only five States have completely abolished capital punishment. Three other States have limited the death penalty to crimes of treason and murder committed by a person who is serving a life sentence.

As I said, after abolishing capital punishment some years ago, Delaware, during its past session of the legislature, legalized the death penalty in first degree murder cases. In addition to bringing the District of Columbia law into conformity with the Federal law and the State law, the overwhelming and enthusiastic support of practically every judicial body is that the course provided in the bill is the proper course to follow.

We stated the list of groups, representatives of which testified before the committee. They reported from other cases.

At the present time we have a situation which I think, whether right or wrong, or whether it is involved in this factual situation or not, presents a very difficult proposition for the District of Columbia. The case has been tried three times and reversed by the court of appeals as many times. The case was docketed for a fourth trial. The case has been in the courts for about 8 years without a final decision having been reached. Clearly such a long delay is detrimental not alone to the community itself but also to the rights of the accused. It should not be permitted to continue, since we now have an opportunity to do something about it. If we enact a law which the House has passed, or language to that effect, it will correct the delay of such cases and will make possible a reasonable approach to a case which will permit the jury and the court to temper justice with mercy whenever required.

I should like to quote from a letter from Byron R. White, Deputy Attorney General, to the chairman of the Committee on the District of Columbia, the Senator from Nevada [Mr. BIBLE], under date of February 9, 1962, speaking of the general overall proposition as originally introduced by the Senator from Oregon. I ask unanimous consent that the entire letter be printed at this point in my remarks.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY
ATTORNEY GENERAL,
Washington, D.C.

HON. ALAN BIBLE,
Chairman, Committee on the District of Columbia, U.S. Senate, Washington, D.C.

DEAR SENATOR: Senator WAYNE MORSE, on February 15, offered an amendment from the floor to H.R. 5143, a bill to eliminate the mandatory death sentence in the District of Columbia. The amendment would abolish capital punishment in the District of Columbia, substituting therefor mandatory life imprisonment.

It is the view of the Department that the adoption of the Morse amendment would lessen the possibility of passage by the Congress of legislation on this subject. It is suggested that if the Senate wishes to consider the question of whether capital punishment should be completely abolished in the District of Columbia, separate legislation would be more appropriate. Such legislation might cover all Federal jurisdictions, including the District of Columbia.

Accordingly, it is urged that the Senate limit its consideration at this time to the elimination of mandatory death sentences from the District of Columbia or reject the Morse amendment, and enact the legislation which is its pending business without amendment.

Sincerely yours,

BYRON R. WHITE,
Deputy Attorney General.

Mr. HARTKE. The method of procedure suggested in the letter is open to the distinguished Senator from Oregon. If he wishes to present the subject and offer the testimony of particular witnesses, I am sure that the Committee on the Judiciary would be more than glad to accord him that right.

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

Mr. HARTKE. I yield myself 1 additional minute.

The point I wish to make clear is that there are many people who would in their own minds say that they would never condemn a man to death. If a man is summoned for jury duty, and if the attorney for the defendant exercises the duty that he has to his client, he will predetermine whether or not that individual has a conscientious objection to capital punishment, and if a man wants to remove himself from jury duty, he certainly can do so.

But I personally am not ready to take the step suggested.

I personally feel that there are situations, and that the penalties provided in the bill are a deterrent to certain crimes. We must remember that the man who commits a felony, such as robbery or any

other type of felony, and in the process of committing such felony also commits murder, kills an individual, or occasions his death, is subject to the same provisions and penalties as if the act had been murder in the first instance.

I am not fearful of voting on the issue, any more than I am fearful to vote for provisions to defend our country. I know that there may be some question in the minds of some as to whether or not they wish to cast their vote directly upon the issue of capital punishment. It is an obligation of a Senator to make such a decision, and I am sure the Senate should make its decision to lessen rather than to strengthen the provisions in regard to capital punishment.

Mr. President, I yield 2 minutes to the distinguished Senator from New York.

Mr. KEATING. Mr. President, I recognize the complete sincerity of the distinguished Senator from Oregon and the religious scruples of which he has spoken with regard to the issue before the Senate. The taking of human life is, of course, a very serious thing. I cannot think of any more difficult problem than that presented to a judge who has discretion to determine whether to impose a penalty of death or life imprisonment, or to a Governor who has before him the problem of whether to commute such a sentence. I have talked with many who have been faced with such a problem and have been told of the sleepless nights trying to determine that issue. Such a thing may have happened to the distinguished occupant of the chair at the moment, the Senator from Wyoming [Mr. HICKEY].

However, to agree to the amendment of the Senator from Oregon would swing the pendulum all the way over to the other end. As it is now, certainly the present law of the District of Columbia, which is the only jurisdiction with a mandatory death sentence, is archaic, outmoded, heartless, cruel, and should be changed. But then to go to the view carried in only five States in the Union and completely abolish the death penalty under any circumstances goes to the other extreme. While I can understand voting for such a provision—and it is somewhat of a temptation to anyone who professes belief in God—it appears to me that there are instances of hardened, vicious criminals where the death penalty is certainly warranted.

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

Mr. HARTKE. I yield 1 more minute to the Senator from New York.

Mr. KEATING. Therefore it seems to me it would be a great mistake to go to that extreme, and it would militate, as the Senator from Indiana has said, against the enactment of any legislation at all. This legislation is very much needed in the jurisdiction of the District of Columbia. The committee has considered all the factors and has come up with a bill which in general conforms with most of the States of the Union. It seems to me that the committee is entitled to support in the position which it has taken.

Mr. MORSE. Mr. President, with the consent of the Senator from Indiana, I ask unanimous consent that I may be recognized for 2 minutes.

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

Mr. MORSE. Mr. President, I wish to make three points very quickly. First I should like to address myself to the fact that the Senator from Indiana has said that I am offering a program which is singular. I wish to point out that some of the following States have capital punishment and some do not, but that all of them have a provision in their statutes for imprisonment for life without parole. They are Georgia, Hawaii, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nevada, and Ohio.

Hawaii does not have the death penalty, but it provides for life imprisonment without parole.

Michigan provides for life imprisonment without parole. It has the death penalty for treason, but for other capital offenses it does not.

Minnesota does not have the death penalty, but it does have a provision for life imprisonment without parole.

The Senator from Oregon is not proposing any singular proposal in this matter.

Second, I reject the idea that we should not do this in the District of Columbia because in the Federal jurisdictions we do not have this provision.

We have been trying for years to get home rule in the District of Columbia and to get the District of Columbia in the position where it will be treated in most respects as a State. I see no reason why we should argue that, because in Federal jurisdictions we do not have this provision, we should not have it in the District of Columbia. It is high time that we start treating the District of Columbia not as the United States but on a municipal and State basis, with the privilege of home rule.

I am very much amused by Mr. Byron White's argument in his letter to the Senator from Indiana. I hope this is not typical of the legal scholarship of Mr. White. He argues that we should not consider this matter because it might make it more difficult to get it through Congress.

So what? What does the difficulty of getting an issue through Congress have to do with what is right? The Attorney General ought to direct his attention to that matter. He seeks to duck the issue by suggesting that perhaps we ought to take up separately the question of capital punishment, in a separate bill.

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

Mr. MORSE. I yield myself 1 minute.

I would like to give the Senate an opportunity to take up that issue now in the first amendment that we are about to vote on. I have modified my amendment. It brings squarely before the Senate the issue of voting for or against capital punishment as it applies to the District of Columbia.

Lastly, may I say to my friend from Indiana—he knows I love him—I will not let him pass the buck to me. It was not my responsibility to make the record for the subcommittee. It was his, as chairman of the subcommittee. It was the responsibility of the subcommittee, the Washington Post to the contrary notwithstanding. Once again the Washington Post is in error, which is not an uncommon journalistic practice for the Washington Post. The Washington Post said this morning that I was a member of the subcommittee. Mr. President, it was not my subcommittee. It was the responsibility of the subcommittee to make the case, not mine.

That is all there was to my argument yesterday. In my judgment a good many of the references that my friend from Indiana made this afternoon ought to have been made in committee. These people ought to have been available for cross examination. I am not interested in the Senator from Indiana quoting judges or prosecutors. Let us get them before the committee and put them under cross examination. That is the way to make the record. I am ready to make the record now. I now for the last time yield back my time.

Mr. HARTKE. Mr. President, I yield myself 2 minutes. I should like to ask the distinguished Senator from Oregon a question, if I may. As I understand, the amendment which is now before us does not deal with the proposition of having established a life sentence without parole. Is that correct?

Mr. MORSE. Oh, no. I told the Senator that we would vote on this amendment and then I would offer perhaps two other amendments. I will offer an amendment to provide life imprisonment without parole. Then I will offer another amendment, depending on how the vote comes out on the first amendment, which would provide for capital punishment, as the Senator proposed it—although I am vehemently opposed—and which would put up to the jury the right to order life imprisonment without parole or would offer the jury the right to order life imprisonment with parole, but with the provision that the convicted person would have to serve a minimum of 20 years.

The only way in which we can get the capital punishment issue before us is on the basis of the pending amendment.

Mr. HARTKE. The Senator is trying to get the record straight. Does the amendment deal with the proposition of life imprisonment without parole?

Mr. MORSE. No. It deals with whether we will continue capital punishment in the District of Columbia.

Mr. HARTKE. Then, a life sentence without parole is not involved here and does not have application to the pending amendment. Is that correct?

Mr. MORSE. That is correct. However it does have application to the subject matter of the bill that we have been discussing.

Mr. HARTKE. The truth is that if the pending amendment of the Senator from Oregon is adopted, and the amendment becomes fixed at that point, is it not true that the District of Columbia would be in the rather embarrassing position of having no punishment whatever for the crime of murder?

Mr. MORSE. I say respectfully that the Senator from Indiana knows that he is dealing with fantasy.

Mr. HARTKE. I am dealing with the factual situation.

Mr. MORSE. That is like my flapping my wings and flying to Venus.

Mr. HARTKE. I know exactly what the Senator is trying to do. He wants to have the bill defeated. I understand his purpose. However, I wish to ask, as a factual matter, if the amendment offered by the Senator from Oregon is adopted and becomes law, at that point there would be no punishment for the crime of murder in the District of Columbia. Is that correct?

Mr. MORSE. Of course if the Senate engaged in that kind of legerdemain, yes, but I have more faith in the Senate, apparently, than the Senator from Indiana has, judging by his observation. The Senator from Indiana overlooks completely a conference on the two bills. Even this bill, as amended, would have to go to conference unless the House accepts the Senate bill. If that happened, of course it would be patched up in conference. The Senator from Indiana knows what would happen in such a case. If my amendment were adopted, we know that the Senate would later adopt one or the other of my amendments with regard to life imprisonment. The Senator can take judicial notice of that fact.

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

Mr. HARTKE. I yield to the Senator from New York.

Mr. KEATING. As I understand the Senator's amendment, it strikes out all after the enacting clause and provides that under no circumstance can anyone be executed for any crime in the District of Columbia. Presently the law calls for the mandatory death sentence in the case of first degree murder. Therefore the Senator from Indiana is correct. If the pending amendment were adopted and no other amendment is adopted, there would be no punishment in the District of Columbia for first degree murder.

Mr. HARTKE. The Senator from New York is correct. I believe the Senator from Oregon agrees that that is correct.

Mr. MORSE. Certainly; if we did not adopt another punishment later. However, I do not believe in debating fantasies.

Mr. HARTKE. We are debating the amendment which the senior Senator from Oregon has proposed. I want that fact to be clear. I do not want the record to be confused. I say again, assuming the pending amendment becomes law, murder could go unpunished in the District of Columbia, assuming that the Senator is successful in defeating the bill, and then we would have the situation where, upon the conscience of those who are responsible for defeating the bill, there would rest the future execution of any man in this community.

I did not catch the significance of the fact, in relation to the bill, that 53 percent of the population of the District of Columbia is colored. I fail to appreciate that situation. I simply wish it to be understood that no implication should be read into my failure to comment on that point.

Mr. MORSE. Mr. President, if no other Senator wishes to speak, I suggest that the time on both sides be yielded back, and that there be a quorum call.

Mr. HARTKE. Mr. President, I yield back the remainder of my time.

Mr. MORSE. Mr. President, we are not bound by any understanding with the majority leader, but I have worked out this unanimous-consent arrangement with him: I shall ask for only two yea-and-nay votes this afternoon, one on this amendment and one on the final amendment, but not on any other amendments.

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Oregon.

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

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

Mr. MORSE. Mr. President, on my amendment, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oregon. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SMATHERS. I announce that the Senator from Colorado [Mr. CARROLL], the Senator from Idaho [Mr. CHURCH], the Senator from California [Mr. ENGLE], the Senator from Minnesota [Mr. HUMPHREY], the Senator from Minnesota [Mr. MCCARTHY], the Senator from Michigan [Mr. MCNAMARA], the Senator from Montana [Mr. METCALF], the Senator from Oklahoma [Mr. MONRONEY], the Senator from New Jersey [Mr. WILLIAMS], the Senator from Tennessee [Mr. GORE], and the Senator from Arizona [Mr. HAYDEN] are absent on official business.

On this vote, the Senator from Colorado [Mr. CARROLL] is paired with the Senator from Minnesota [Mr. HUMPHREY]. If present and voting, the Senator from Colorado would vote "nay" and the Senator from Minnesota would vote "yea."

I further announce that, if present and voting, the Senator from Minnesota [Mr. MCCARTHY] and the Senator from Michigan [Mr. MCNAMARA] would each vote "yea."

Mr. DIRKSEN. I announce that the Senator from Maryland [Mr. BUTLER] and the Senator from California [Mr. KUCHEL] are necessarily absent.

The Senator from South Dakota [Mr. CASE], the Senator for New Jersey [Mr. CASE], and the Senator from Hawaii [Mr. FONG] are absent on official business.

The Senator from Maryland [Mr. BEALL] is detained on official business.

The Senator from Iowa [Mr. MILLER] is absent because of death in his family.

If present and voting, the Senators from Maryland [Mr. BUTLER and Mr. BEALL], the Senator from South Dakota [Mr. CASE], the Senator from California [Mr. KUCHEL], and the Senator from Iowa [Mr. MILLER] would each vote "nay."

The result was announced—yeas 19, nays 63, as follows:

[No. 25 Leg.]

YEAS—19

Aiken	Gruening	Pell
Bartlett	Hart	Proxmire
Boggs	Long, Mo.	Smith, Maine
Burdick	Long, Hawaii	Williams, Del.
Chavez	Morse	Young, Ohio
Cotton	Muskie	
Douglas	Neuberger	

NAYS—63

Allott	Hartke	Mundt
Anderson	Hickenlooper	Murphy
Bennett	Hickey	Pastore
Bible	Hill	Pearson
Bush	Holland	Prouty
Byrd, Va.	Hruska	Randolph
Byrd, W. Va.	Jackson	Robertson
Cannon	Javits	Russell
Capehart	Johnston	Saltonstall
Carlson	Jordan	Scott
Clark	Keating	Smathers
Cooper	Kefauver	Smith, Mass.
Curtis	Kerr	Sparkman
Dirksen	Lausche	Stennis
Dodd	Long, La.	Symington
Dworshak	Magnuson	Talmadge
Eastland	Mansfield	Thurmond
Ellender	McClellan	Tower
Ervin	McGee	Wiley
Fulbright	Morton	Yarborough
Goldwater	Moss	Young, N. Dak.

NOT VOTING—18

Beall	Engle	McCarthy
Butler	Fong	McNamara
Carroll	Gore	Metcalf
Case, N.J.	Hayden	Miller
Case, S. Dak.	Humphrey	Monroney
Church	Kuchel	Williams, N.J.

So Mr. MORSE's amendment was rejected.

Mr. MORSE. Mr. President, I send to the desk several other amendments, which need not be read, but I will explain it briefly.

The PRESIDING OFFICER. The amendments offered by the Senator from Oregon will be stated.

The Chief Clerk proceeded to read the amendments offered by Mr. MORSE.

Mr. MORSE. Mr. President, I shall explain the amendments. It is not necessary to read them.

The PRESIDING OFFICER. Without objection, the reading of the amendments will be dispensed with.

The amendments offered by Mr. MORSE are as follows:

On the first page, line 9, immediately after "recommends" insert the following: "life imprisonment without eligibility for parole, or".

On page 2, line 4, strike out "or life imprisonment" and insert in lieu thereof a comma and the following: "life imprisonment without eligibility for parole, or life imprisonment".

On page 2, line 8, strike out "only after the expiration of twenty years from" and insert in lieu thereof the following: "only if the sentence provided therefor, and not earlier than twenty years after".

On page 3, line 3, immediately after "life imprisonment" insert the following: "without eligibility for parole, or life imprisonment".

On page 3, line 8, immediately after "death" insert a comma and the following: "life imprisonment without eligibility for parole".

Mr. MORSE. Mr. President, I ask for the yeas and nays on the amendments.

The yeas and nays were ordered.

Mr. MORSE. Mr. President, I allow myself 3 minutes.

In view of the vote which was just taken, I am going to eliminate all the other amendments and propose only this general amendment. I am in a very interesting, shall I say, or paradoxical position. I shall offer the amendment, but shall vote against it. I think the amendment provides a legislative service for the majority of the Senate, because the majority wants to retain capital punishment. If the majority wants to retain capital punishment, from the standpoint of legislation, this proposal is a better way to handle the problem than the pending bill. At least, I think the proposal should go to conference for consideration there.

The pending amendment retains a provision for capital punishment, as does the bill which the distinguished Senator from Indiana is presenting. It provides for life imprisonment without parole, which provision exists in at least 11 States in this country. It provides for life imprisonment with parole, keeping the requirement of a minimum of 20 years' incarceration which is provided for in the Senate bill. It leaves it up to the jury to decide.

Let me summarize the amendment again, and then I shall close. The amendment provides for a continuation of the capital punishment penalty upon recommendation of the jury. It provides for life imprisonment without parole on the basis of the recommendation of the jury. It provides for life imprisonment with parole, with the requirement that the prisoner must be kept incarcerated for 20 years, again upon the recommendation of the jury.

Again I submit that proposal is in better legal form than is the pending bill.

The amendment also provides that if the jury cannot agree, it is within the discretion of the judge to inflict whatever one of the three penalties he desires to impose.

Because the amendment contains the capital punishment provision, I cannot vote for it, but if the capital punishment provision is to be continued, I think the other two alternatives ought to be applied.

I restate them: Life imprisonment without parole. Life imprisonment with parole, with a restriction of a minimum of 20 years' imprisonment, at the discretion of the jury. If the jury cannot agree, it is to be done by the judge.

Mr. President, so far as I am concerned, I have made my case.

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

Mr. MORSE. I yield.

Mr. LAUSCHE. That is, the power would be given to the jury to make a finding of guilty, with the additional provision that there shall be life imprisonment without hope of parole?

Mr. MORSE. Or capital punishment.

Mr. LAUSCHE. Or capital punishment. Also, the jury could say, "We find the defendant guilty of first-degree murder. We recommend life imprisonment, but with hope of parole at the end of 20 years," could it?

Mr. MORSE. That is correct, or the jury could say, "We find the defendant guilty, but we cannot agree on what the punishment shall be. We leave that up to His Honor."

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

Mr. MORSE. I yield.

Mr. KEATING. The Senator from Oregon has named States that provide for such punishment. Is there any State that has these three delineations?

Mr. MORSE. I cannot tell the Senator that. I can tell the Senator that Hawaii has no death penalty, but life imprisonment without parole. I do not know whether it has provision for life imprisonment with parole.

Michigan has no death penalty except for treason. It has life imprisonment without parole.

Minnesota has no death penalty, but it has life imprisonment without parole.

Georgia has capital punishment, but also provides for life imprisonment without parole as one of the alternatives.

So have Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Nevada, and Ohio.

Mr. KEATING. If I may pursue the point, they do not leave to the jury the question of whether the life imprisonment should be with or without parole, do they?

Mr. MORSE. Nevada.

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

Mr. MORSE. I yield.

Mr. LAUSCHE. In Ohio a law was passed making mandatory a review of a life sentence at the end of 20 years. The parole board reviews the facts and recommends to the Governor what shall be done at the end of that 20-year period. The proposal of the Senator from Oregon is not identical with the Ohio situation, but it involves substantially that principle.

Mr. MORSE. All I propose to do is get this principle into the law, if I can.

Mr. LAUSCHE. I do not say this vainly, but I do not believe there is any person in the country, except probably Governor Dewey or Governor Warren, who has had greater experience with this subject than I have had. I was Governor for 10 years. Before me each year came possibly six or seven reviews of death sentences. The Governor of Ohio has the unlimited power to commute or pardon. Each year while I was Governor I had cases submitted to me of prisoners who had served 20 years and as to whom the board had recommended commutation or continuance of the imprisonment.

My own belief is that, after the hysteria which frequently surrounds a trial, and after the passing of time, when one looks back the impact of the case is completely different from what it was at the time the trial was had.

Based upon my experience, while I believe that capital punishment is necessary, there should be provided the latitude which is contemplated by the proposal made by the Senator from Oregon.

Mr. MORSE. I want to make perfectly clear to the Senate that my pending proposal does not touch pardon authority. It goes only to the question of capital punishment.

Mr. President, I yield the floor.

Mr. HARTKE. Mr. President, so the record will be clear, the difference between the amendment submitted by the Senator from Oregon and the bill which is pending before the Senate is that the Senator from Oregon has introduced a third element which is not present at this time.

The bill which is before the Senate at the present time provides that there can be a finding and an imposition of the death penalty. It provides also that in case the jury unanimously decides the punishment shall be life imprisonment, the terms shall be for at least 20 years. There is no discretionary power in the jury or the court in that respect. That prisoner must serve at least 20 years, at which time he can be considered for parole.

The distinguished Senator from Oregon has added a third element, which is that there can be a finding by the jury which imposes a life term without the right of parole. This proposal is in complete defiance of all the rules of evidence, as the distinguished Senator from Oregon knows. It is a complete change in the law, because no jury is ever given the right, in any criminal procedure that I have even heard of, to make a determination as to the right of parole. The rights of parole go to matters which are not before the court or the jury. The jury makes its determination upon the facts which are presented under the rules of evidence. Any mitigating circumstances, the refusal of the defendant to take the stand, all those things, cannot be considered in the case before the jury. Those items can be considered, as the distinguished Senator from Ohio has said, after all the emotions of the trial are gone, when all the facts can be looked upon objectively, after the conduct of the defendant in his imprisonment can be considered.

Mr. President, the amendment by the distinguished senior Senator from Oregon [Mr. MORSE] retains the existing provisions of the pending bill insofar as it allows for the imposition of the death penalty. However, in connection with alternative life-term punishment the proposed amendment would amend the pending bill so that the jury, and also the court, when the jury is unable to agree as to punishment, shall have the choice of—

First, imposing a life sentence without eligibility for parole; or

Second, imposing a life sentence with eligibility for parole after the accused has served 20 years of such sentence.

The pending bill, S. 1380, differs from the proposed amendment in that it prescribes, in lieu of the death penalty, a life sentence with no eligibility for parole until 20 years of the sentence has been served. The 20-year eligibility requirement affects all life sentences, and neither the court nor the jury has any discretion in connection with its imposition. Mr. President, I should like to

make it perfectly clear that this particular amendment was not considered by your committee. Contrarily, your committee gave careful and deliberate consideration to the punishment as now contained in the pending bill which I have just elicited.

In this matter it is indeed important to emphasize again that the Bar Association of the District of Columbia, the Law Enforcement Council for the District of Columbia, the U.S. Attorney's Office for the District of Columbia, the Justice Department, and the Judicial Conference for the District of Columbia supported the pending bill and particularly the principle of punishment as set forth in the bill, which provides that all persons sentenced to a life term shall serve 20 years of the term before being eligible for parole. It is the considered opinion of your committee that these supporters of the pending measure are the most knowledgeable persons who are experts in effective law enforcement and related activities in the District of Columbia.

One other point should be made in connection with the pending amendment.

It has long been an established principle of our criminal jurisprudence that the trial court and not the jury shall impose sentence. The proposed amendment violates this legal concept of long standing by providing for the jury to determine whether eligibility for parole should be permitted after the defendant has served 20 years of the life sentence or whether it should not be granted at all. It is well understood that the extent of the punishment is determined not only from the nature of the crime but also from the general character of an accused. However, the rules of evidence are such that many times the jury is not made fully aware that the person whose fate they are deciding may be a rogue of the worst kind. Under this proposed amendment a rogue could be treated by a jury far more kindly than a person who is more deserving.

This incongruity results from the very fact that the rules of evidence provide that if a defendant does not take the stand his past history of criminal conduct under most circumstances cannot be made known to the jury even though the prosecution would desire to make such fact known. It is obvious that such information could have a definite bearing on the jury's consideration of whether a defendant could possibly be rehabilitated and should therefore have an opportunity for parole at the end of 20 years of the life sentence in lieu of a life sentence without any eligibility for parole ever.

Such being the case it would appear to be unwise to possess a jury with the power to determine eligibility for parole particularly where the jury may not be fully informed of all the facts that are necessarily required in making a prudent and reasonable determination of the sentence to be imposed and the eligibility for parole in conjunction therewith. As a practical matter the proposed amendment could create inequities in sentencing, and it is certainly clear that this type of situation should be avoided.

Mr. President, in view of what has been set forth, I hope that the Senate will defeat the amendment of the senior Senator from Oregon.

Mr. LAUSCHE, Mr. MORSE, and Mr. KEATING addressed the Chair.

Mr. HARTKE. This is the basic difference which I think should be pointed out. I point out further that this matter was never submitted at any time to the committee. It was not considered by the committee. It was not even suggested to the committee, either by the distinguished Senator from Oregon or from any other source, when the hearings were held, during the past 3 years.

Mr. LAUSCHE, Mr. MORSE, and Mr. KEATING addressed the Chair.

Mr. HARTKE. I yield first to the Senator from Ohio.

Mr. LAUSCHE. I think it is advisable to have this midway ground upon which to act. A jury may be confronted with the problem of sending a man to his death or of recommending imprisonment for 20 years, not directly but impliedly. The jury may say, "We do not wish to send him to his death. We do not wish to see him released after 20 years, but we do wish to see him confined for life."

The provision offered by the Senator from Oregon would give this midway method of handling the situation, if the jury should so decide.

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

Mr. HARTKE. I point out to the distinguished Senator from Ohio that the jury, in the case in which a defendant refuses to take the stand, can in no way understand the background of the individual. He may be a rogue of the worst sort. He may be a person who committed an act in the heat of passion, or perhaps not, but in circumstances which perhaps would not be repeated on a normal occasion again. These things cannot be considered in the trial of a person.

I am sure the distinguished Senator from Ohio understands the situation. I feel that to make a decision of this kind would give the jury a right to make a determination as to parole.

Mr. MORSE, Mr. KEATING, and Mr. LAUSCHE addressed the Chair.

Mr. HARTKE. I am glad now to yield to the Senator from Oregon.

Mr. MORSE. I wish to clarify my position.

I say to the Senator from Indiana, he could not be more wrong than to argue that this is in violation of all the rules of evidence. It does not involve the subject matter of evidence at all, and the Senator ought to know that.

It is quite common under the law to give to juries a discretionary authority to determine whether or not an individual shall be sentenced to capital punishment or whether or not an individual shall be sentenced to life imprisonment. That authority exists in many statutes.

Mr. HARTKE. I did not say that.

Mr. MORSE. What I would do is to give the jury discretion to decide whether there shall be capital punishment, whether there shall be life imprisonment without parole, or whether there shall be life imprisonment with parole. I propose to give this discretion to the jury.

There would be no violation of any rule of evidence. There would be a statutory imposition of authority upon a jury, and the jury ought to have the authority.

I say to my friend that a jury could not possibly go through a case involving murder in the first degree without having a pretty good idea of the type of character of the defendant, and without feeling that the jurors are in a position to make recommendations; or, as my amendment provides, to make no recommendation at all. If the jurors feel that they do not have enough information on which to make a recommendation, they can leave it up to the judge. That protection is in my amendment.

Mr. KEATING. Mr. President, will the Senator yield to me?

Mr. HARTKE. I yield to the Senator from New York.

Mr. KEATING. I addressed a question to the Senator from Oregon, as to whether such a plan as this exists in any jurisdiction, and he very properly said it did not. The reason is that the question of parole is a question ordinarily not left to a jury. I can understand a mandatory provision, requiring life imprisonment without parole, or life imprisonment with the possibility of parole. Unless there is a mandatory provision in the law, there is not any jurisdiction in this country which leaves to a jury the question as to whether a prisoner should or should not be paroled. That is the inherent difficulty involved in the amendment offered by the Senator from Oregon.

The question of parole should be left to a judge, who can consider all of the facts, not only the evidence in the proceedings. The question of whether or not to grant parole some 20 or 30 years after a trial should never be left to a jury.

It is recognized that defendants sentenced to life imprisonment without the opportunity to seeing a chance for parole may become difficult disciplinary problems. The provisions of H.R. 5143 provide for the possibility of parole after 20 years imprisonment. Parole is not automatic and can only be granted after serious study of a prisoner's background and prison record. The present District of Columbia law provides that defendants imprisoned for life have an opportunity for parole. I do not see why this policy should be changed.

James V. Bennett, Director of the Bureau of Prisons, has stated:

> Nothing is more unequal than treating unequal things equally.

Some defendants sentenced to life imprisonment can be rehabilitated and returned to society as useful members. To put discretionary parole in the hands of juries would set an unwise precedent.

Mr. HOLLAND. Mr. President, will the Senator yield for a question?

Mr. HARTKE. I am glad to yield to the Senator from Florida.

Mr. HOLLAND. Is it not true, on the question of parole, that very frequently the facts which are impressive have to do with the conduct of the person after

conviction, and frequently have to do with his health after conviction, and frequently have to do with the health of others after his conviction? In other words, those facts deal with matters which not only cannot be known to the jury or the judge at the time, but also which wholly arise after the fact of conviction and sentence.

Mr. HARTKE. The Senator from Florida is exactly correct. These things not only are not known, but cannot be prejudged or predetermined.

Mr. PASTORE. Mr. President, will the Senator yield for a question?

Mr. HARTKE. I am glad to yield to the distinguished Senator from Rhode Island.

Mr. PASTORE. Under the bill as reported by the committee, would the judge have the authority to charge the jury on the various degrees of murder?

Mr. HARTKE. Yes.

Mr. PASTORE. Is the penalty for murder in the second degree different from the penalty for murder in the first degree?

Mr. HARTKE. The penalties are different.

Mr. PASTORE. I should like to direct a question to my distinguished colleague the Senator from Oregon [Mr. MORSE] on this very point.

If the judge is required under the law to charge the jury as to the various degrees with respect to homicide, and if the jury has within its authority the right to return a verdict of murder in the second degree, as to which the penalty might be 20 years imprisonment, depending upon the penalties in the District of Columbia, could the Senator give us an example of a case in which a jury would be compelled to find a defendant guilty of murder in the first degree and would be compelled to order the person imprisoned for life but would, at the same time, have within its capacity a compassion to recommend that there should be leniency, with the consideration of parole in 20 years? I cannot imagine such a case.

Mr. MORSE. I shall answer the Senator's question by saying that my amendment deals only with murder in the first degree. It would not touch upon the second degree murders, or manslaughter. The amendment deals only with the area of homicide in respect to which we have so much trouble with the juries, because the juries do not wish to find the defendants guilty, because they fear that capital punishment will be imposed.

In respect to the cases of murder in the first degree, the juries would have three alternatives by way of recommendation.

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

Mr. MORSE. While I am on this subject, I wish to comment as to what the Senator from Florida [Mr. HOLLAND] had to say.

That does not have anything to do with parole, but only with the limited number of cases in which the jury finds that the crime is so heinous, or the individual is so heinous, that the person ought to be put away for life.

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

Mr. MORSE. I yield.

Mr. PASTORE. I know that we are dealing with murder in the first degree, but there is not a case of murder in the first degree in which the jury is not authorized to come in with a verdict of murder in the second degree. In other words, if the jury thought the circumstances justified leniency, below the ceiling of life imprisonment, the jury could return a verdict of a lesser degree of a charge of homicide.

Mr. MORSE. The jury can do that under my amendment.

Mr. PASTORE. I realize that, but I cannot imagine a single case in which a jury would find a person guilty of murder in the first degree and would be so moved by compassion that at the same time it would recommend consideration of parole at the end of 20 years. If the jurors felt that way, the jury should return a verdict of murder in the second degree.

I have been a prosecutor. I have prosecuted many cases of murder in the first degree. I cannot now imagine a case in which a jury would feel impelled to find a defendant guilty of murder in the first degree and at the same time would be moved by extenuating circumstances to recommend consideration of parole, at that time, after the passage of 20 years.

Mr. MORSE. I see what is bothering the Senator.

Mr. PASTORE. It is not bothering me. I should like to know the answer. Nothing is bothering me. I am asking a question.

Mr. MORSE. The Senator's interpretation of my amendment bothers me; I will put it that way.

Mr. PASTORE. I accept that.

Mr. MORSE. My amendment does not provide for a jury to recommend parole. My amendment provides for the jury to recommend life imprisonment, and the parole laws can run their course. If, after 20 years, the parole board finds the prisoner's behavior is such that he ought to be considered eligible for parole, he will get parole.

The jury, under my amendment, would not recommend parole. The jury, under my amendment, would recommend life imprisonment, or would recommend life imprisonment under the part of the statute which would make the prisoner eligible for parole if he qualified for parole. The amendment also would give to the jury authority to recommend life imprisonment without parole. In other words, the man would have to go to prison and be kept there for life. He would never be eligible for parole.

Mr. PASTORE. There are two points involved. That same jury could recommend, after finding the accused guilty of murder in the first degree and after recommending life imprisonment at that time, according to the Senator's amendment, that the State be compelled to consider that individual for parole after 20 years. That is not used in any jurisdiction in any State in the country.

Mr. MORSE. Oh, no.

Mr. PASTORE. I should like to know the State which does so. If there is a State which has such a law I should like to know it.

The PRESIDING OFFICER (Mr. BURDICK in the chair). The time of the Senator has expired.

Mr. MORSE. Mr. President, I yield myself 2 additional minutes.

My amendment does not require the individual to be paroled. My amendment would only authorize a jury to find that such an individual shall be imprisoned for life, and the parole laws would then apply. After 20 years' imprisonment a parole board may decide that the prisoner is not entitled to parole.

But do not forget that the pending Senate bill requires a 20-year limitation. I would merely accept that provision, and the parole laws would operate.

The Senator is concerned about other jurisdictions. In Nevada the law reads as follows:

> If the jury shall find the defendant guilty of murder in the first degree, then the jury, by its verdict, shall fix the penalty at death or imprisonment in the State prison for life with or without the possibility of parole.

I call that provision to the attention of the Senator from New York [Mr. KEATING]. In Nevada there is a law, a provision of which I shall read again:

> If the jury shall find the defendant guilty of murder in the first degree, then the jury by its verdict shall fix the penalty at death or imprisonment in the State prison for life, with or without the possibility of parole.

The Nevada statute gives a jury three alternatives: First, the jury may fix the penalty at death; second, it may fix the penalty at imprisonment for life with the possibility of parole; third, it may fix the penalty at life imprisonment without possibility of parole.

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

Mr. MORSE. I yield.

Mr. KEATING. I would think that the provision of the law of Nevada is close, if not exactly the same, as the amendment offered by the Senator. But is there any other State in the Union that leaves to a jury the question of whether or not opportunity for parole will be given to the jury?

Mr. MORSE. At the present time I do not know. I would have to go to the lawbooks to doublecheck the statutes. I have not done so.

Mr. KEATING. I would say that there is none other than the one stated.

Mr. MORSE. I think it is a pretty good one.

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

Mr. MORSE. I yield to the Senator from Ohio.

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

Mr. MORSE. I yield myself 2 additional minutes.

Mr. LAUSCHE. Mr. President, I venture to say that I reviewed 50 cases in which I felt that the conviction should have been for second degree murder, but instead of being for second degree, the conviction was for first degree, which was technically correct.

In Ohio, if one deliberately and premeditatively takes the life of another, he is guilty of murder in the first degree, and unless the jury recommends mercy, the defendant is sentenced to death.

As Governor of the State of Ohio I dealt with at least 50 cases involving murder. They included triangular love affairs, the murder of a husband by a wife or a wife by a husband. All of the elements of first degree murder, including deliberation and premeditation, were present. The judge charges the jury as follows:

If you find that the defendant, with deliberation, premeditation and purposefully, took the life of the deceased, you are obliged to find him or her guilty of murder in the first degree, and unless you recommend mercy, he shall be sentenced to death.

There are cases of that type. I distinctly recall another case involving a game of dice, or craps. "A" claimed that he won the bet. "B" claimed that he won it. "A" picked up the money. "B" went out, and half an hour later returned and said, "Will you tell 'A' to come outside?" "A" went outside and "B" shot "A" dead.

Mr. MORSE. The death sentence was not much of a deterrent, was it?

Mr. LAUSCHE. The defendant was charged with first degree murder. He deliberately, premeditatively and with purpose took the life of another. The defendant was sentenced to life imprisonment. The jury was correct in its finding, but there was no ability for that jury to say, "We will recommend consideration at the end of 20 years for parole."

I know that the Senator from Rhode Island [Mr. PASTORE] was Governor of his State, but I wish to repeat that I yield to no one on the basis of experience on this subject. I spent many sleepless nights worrying about cases of that kind, and as I look back, I recall saying that if the jury only would have had some further latitude, or even if it did not have further latitude, there ought to be some definite period at which mandatory review can take place.

Mr. PASTORE. Mr. President, will the Senator yield on that very point?

Mr. LAUSCHE. I yield.

Mr. PASTORE. I have not practiced law in Ohio, but I know it is common practice throughout the United States in such cases to charge a jury also on second-degree murder. In the particular case to which the Senator from Ohio referred did not the judge charge the jury also on second-degree murder?

Mr. LAUSCHE. Yes, surely.

Mr. PASTORE. Of course he did. Could not that jury have come back with a verdict in second degree?

Mr. LAUSCHE. No, that is where we part. The jury obediently followed the instructions of the court and found that there was not second-degree murder.

In Ohio the court does not have to charge a jury on second degree murder in every such case.

So the situation is that the Senator from Rhode Island takes the position that the jury can disregard the judge's instructions and convict the defendant of second degree murder even though the elements of first degree murder have been established.

Mr. PASTORE. I said no such thing. I am saying only that if the law compels the judge in a case of homicide to charge the jury on the elements of first degree murder, second degree murder, and manslaughter, then it is up to the jury to return and say whether its verdict shall be manslaughter, second degree murder, or first degree murder. I cannot go along with the idea that a jury obediently follows the charge of the court. The court charged on all three degrees of homicide, and it followed the court on the one charge that they believed applied. Under the laws of Ohio, after 20 years the convicted man had to be considered for parole.

And I do not take my hat off to anyone on the statement I just made.

Mr. LAUSCHE. I merely wish to repeat that the vehemence of the statement made by the Senator from Rhode Island does not stamp his statement as correct. The fact still remains that the Senator from Rhode Island said that although the State proved murder in the first degree, a jury could disregard such proof and find the defendant guilty of second degree murder because it wishes to show mercy.

Mr. PASTORE. Mr. President, will the Senator from Oregon yield?

Mr. MORSE. I yield.

Mr. PASTORE. We never know what the State has proved until a jury returns. We never know what a prosecutor has proved with respect to the degree of homicide until the foreman of the jury rises and says, "Your Honor, we find the defendant guilty of murder in the first degree," "murder in the second degree," or "manslaughter." That is the only way one can know what has been proved. I have never been in on a jury discussion yet to find out how they deliberate, and I do not think my friend from Ohio has been either.

Mr. LAUSCHE. That is not so. If a jury wishes to do so, it may disregard the proof and make a finding of second-degree murder. But jurors in their deliberation say, "Was the act purposeful? Was it premeditated? Was it deliberate?" On the basis of such deliberation they may say, "The defendant is guilty of first-degree murder." They sacredly perform their duty.

My understanding is that the Senator from Rhode Island is trying to avoid that situation and give defendants a short avenue in such cases.

Mr. MORSE. Mr. President, I yield myself 1 minute.

Where I fail to follow my good friend from Rhode Island is in regard to the purpose of the instructions and what the instructions are applied to. The purpose of instructions is to instruct the jury in regard to the distinctions among the degrees of homicide. A judge instructs a jury to apply those distinctions to the evidence.

Let us assume a hypothetical case. If a jury is satisfied on the basis of the instructions on first-degree murder that the evidence in the case proved beyond a question of doubt that the defendant was guilty of first-degree murder, then such ought to be the verdict of the jury. That is their responsibility.

I quite agree with the Senator that we do not know what the jury may do in the jury room. However, we do not want to encourage them, because they think some mercy ought to be applied, even though they think the man is guilty, to make a finding contrary to the evidence and find the person guilty of second-degree murder when they feel that under the instructions of the court they ought to find him guilty of first-degree murder.

My amendment takes care of that possibility. The jury can find him guilty of first-degree murder. It can apply the doctrine of mercy, if it wishes to do so in regard to life imprisonment; making him eligible to parole.

Mr. HARTKE. Mr. President, I yield 2 minutes to the Senator from Rhode Island.

Mr. PASTORE. Mr. President, I hope the amendment will not prevail. Some of us sometimes look a little differently on how we legislate for the District of Columbia because of the fact that it does not happen to be our permanent residence. However, I would dislike to see any innovation made in the concept of our jurisprudence as it is recognized in most of our States, by inaugurating an innovation or concept in the District of Columbia which might prove to be quite tragic, a concept which, with the exception of one State that I have been told comes very close to it, is not the accepted practice in any one of our 50 States.

I say it would be a mistake to accept it at this time. After all, the bill as reported by the committee covers the situation adequately.

When a man is charged with and found guilty of murder, under the bill as reported by the committee, he may be executed, or the jury may unanimously recommend that he be imprisoned for the rest of his life. If he is imprisoned for the rest of his life, under the law in the District of Columbia, after he shall have served 20 years, he can be considered for parole. That strikes me as being adequate. I hope the bill as recommended by the committee will prevail.

Mr. HARTKE. Mr. President, I yield to the Senator from Florida.

Mr. HOLLAND. Mr. President, I agree with the Senator from Rhode Island on his points of law, but my brief remarks will not be based upon any legalistic argument.

I believe it is the feeling of the Nation as a whole, and of practically every jurisdiction of the United States, including the District of Columbia, that there should be in existence a parole system with this philosophy: When after acquired evidence is available, or when unusually good conduct on the part of the convicted person develops, or when his condition of health will doom him to an early death unless something occurs, or other circumstances of that kind develop, the parole board is there, existing, to take cognizance of these later-developing facts, and that in those circumstances it has the authority to extend some degree of mitigation, or to even go further.

I have operated under the other system, where the pardon board did the work, which was an elected, political board, and then later under the parole board.

I have been in somewhat the same position as the distinguished Senator from Ohio [Mr. LAUSCHE], as Governor of my State. I wish to say that I thoroughly approve of the idea of having a board which can take into consideration the facts which develop after conviction and after sentence. I do not believe that it is wholesome to give a group of jurors, no matter how dedicated they may be, the power to set aside the system of parole and the possibility of any sort of mercy being extended regardless of other facts which develop later, even if there is evidence which later shows innocence instead of guilt. I am not in favor of setting up a system under which juries would have authority to do more than any court now has authority to do, by withholding the possibility of the extension of mercy where facts that clearly justify and require some alleviation of the sentence exist and so show.

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

Mr. HARTKE. I yield 2 minutes to the Senator from New York.

Mr. KEATING. The Senator from Florida has well stated his point. Some of us are old enough to remember the Leopold-Loeb case. If that had been a jury case, certainly if the jury had had these three alternatives and had not voted execution, they would have voted for life imprisonment without parole. The conscience of the whole country was affected. One of the defendants died in prison, and the other, after 30 or 35 years of imprisonment—I do not remember the exact time—was paroled. When he was paroled at the end of that lengthy period, I believe most people in the country agreed with that decision. Yet, at the time of the trial few would have supported such a decision. In other words, the jury should not be the one to determine whether or not a man at any future time may be paroled.

Mr. HOLLAND. I thank the distinguished Senator from New York. I hope that those who are advocating the amendment of the Senator from Oregon will explain what would occur if later-discovered facts, after conviction and sentence, were found to change the aspect of the case largely or wholly. What would develop if it were given to 12 men and women to say that a prisoner shall be sentenced to life imprisonment and that he shall not be eligible for parole or to the extension of any mercy?

Mr. MORSE. Mr. President, I yield myself 1 minute. I wish to make these comments very quickly. I wish to say that it never bothers me if we make progress, and it is no persuasive argument with me that, because this does not exist in many other States, therefore we ought not to do it. That kind of argument is against progress. I believe that we have before us a very progressive proposal. I believe it is a sound one.

Some Senators are perfectly willing to have juries take over jurisdiction in deciding that somebody should be electrocuted or hanged. Apparently that is all right. However, when we suggest that the jury in certain instances ought also to have jurisdiction to pass judgment on whether or not someone ought to be put away for life without parole, it is all wrong. The amendment would give the jury that power. It also would give them the power to make the finding that a defendant should not be put away for life.

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

Mr. MORSE. Mr. President, I yield myself 1 more minute.

Let me tell Senators what is bothering a great many juries. I speak as one who has had some experience in law enforcement. If juries feel that an individual will be paroled, but who should not be paroled, they will order the death penalty. I believe we ought to leave this discretionary with the jury. I should like to ask my friend from Florida, who asks what will happen in cases in which a person has been imprisoned for life without any right to parole. I stated earlier that we are not touching the pardon power of the chief executive. This amendment has nothing to do with that. It would still be available to correct or prevent injustice.

We are getting down to the fact as to whether or not we want to make progress in line with what I submit is the modern trend in the matter of treating criminals, or whether we want to repeat the pattern that we have had for years, although it has not worked well, that we should continue it.

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. Do the Senators yield back the remainder of their time?

Mr. HARTKE. I yield back the remainder of my time.

Mr. MORSE. I yield back the remainder of my time.

Mr. President, may I have an understanding, in cooperation with the Senator and the majority leader, that, by unanimous consent, such material as I did not take the time to present may be printed in the RECORD at this point?

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

[From Social Action, April 1961]

THE CASE AGAINST CAPITAL PUNISHMENT

(By Donal E. J. MacNamara, dean of the New York Institute of Criminology, president of the American League to Abolish Capital Punishment, president-elect of the American Society of Criminology, editor of Excerpta Criminologica, fellow of the American Association for the Advancement of Science, and fellow of the American Academy of Criminalistics)

The infliction of the death penalty is becoming less frequent and the actual execution of the sentence of death even more rare, both in the United States and in foreign countries. Not only is the trend apparent in those nations and States which have formally repudiated the lex talionis and have eliminated capital punishment from their penal codes[1] but it is almost equally clear in many of the jurisdictions which still retain the ultimate sanction for from 1 to 14 crimes.[2] This diminished frequency is a reflection of the popular distaste for executions and of the recognition by many criminologically and psychiatrically oriented judges, juries, prosecutors, and commuting and pardoning authorities that capital punishment is as ineffective as a special capital crimes deterrent as it is ethically and morally undesirable.

The case against the death penalty is supported by many arguments—with the order of their importance or precedence dependent upon the orientation of the proponent or the composition of the audience to whom the argument is being addressed. The late Harold Laski, in opening his series of lectures to one of my graduate seminars in political theory, suggested that a lecturer or writer was under obligation to his audience to define both the articulate and inarticulate basic premises upon which his theoretical structure, and its practical application to the matters under discussion, rested. This writer, then, is a practicing criminologist with both administrative and operational experience in police and prison work over a period of more than two decades; he was brought up in a Catholic household, went to parochial schools for 12 years, and then took degrees from two nonsectarian institutions. He is a convert to abolition, for during his active police and prison career he not only accepted the death penalty pragmatically as existent, necessary, and therefore desirable but participated in one or another formal capacity in a number of executions.

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[1] Michigan, Rhode Island, Wisconsin, Maine, Minnesota, North Dakota, Delaware, Alaska, Hawaii, Puerto Rico, and the Virgin Islands in the United States. Many nations have abolished capital punishment outright; others retain it in restricted application (e.g., Israel for war criminals; Guatemala for men but not for women or children; U.S.S.R. for treason and certain atrocious murders; England for murders with firearms or explosives and for killing a police or prison officer in escaping custody); still other nations have just stopped using the death penalty (Luxembourg's last execution was in 1822 and Belgium's in 1863). Only 15 of the 43 death penalty jurisdictions in the United States actually executed anyone during 1958 and 4 States (California, Georgia, Ohio and Texas) accounted for half of the total executions. Canada, which retains the death penalty despite an aggressive campaign by the abolition forces, actually commuted 32 of its last 40 death sentences.

[2] It is frequently assumed that the death penalty is prescribed only for murder ("a life for a life"). Actually in the United States there are more than 30 different offenses punishable by death in one or more jurisdictions (Georgia has 14 capital crimes). Murder carries the death penalty in 48 jurisdictions; kidnapping in 34; treason in 25; rape in 19; dueling in 18; train wrecking in 15; lynching in 10; perjury in a capital case in 10; dynamiting in 7; armed robbery in 7; arson in 6; burglary in 4; abortion resulting in death in 4; aggravated assault by a "lifer" in 2; and 18 other offenses including espionage, selling narcotics to a minor, etc., in 1 jurisdiction each. Eight of these crimes have actually resulted in executions since 1930: 3,141 for murder; 470 for rape; 22 for armed robbery; 17 for kidnapping; 11 for burglary (all Negroes in North Carolina and Alabama); 8 for espionage; 4 for assaults by "lifers"; and 1 for desertion. Of these the Federal Government executed 31—and the U.S. Army and Air Force executed an additional 159. The U.S. Navy has executed no one since 1840. There is a bill before Congress to abolish the death penalty in Federal courts and similar bills have been introduced in more than a dozen State legislatures.

ARGUMENTS AGAINST CAPITAL PUNISHMENT

The case against capital punishment is tenfold:

1. Capital punishment is criminologically unsound. The death penalty is the antithesis of the rehabilitative nonpunitive, nonvindictive orientation of 20th century penology. It brutalizes the entire administration of criminal justice. No criminologist of stature in America or abroad gives it support. And those armchair and so-called utilitarian criminologists who plead its necessity (never its desirability or morality) do so in terms of Darwinian natural selection and/or as a eugenics-oriented, castration-sterilization race purification technique, an economical and efficient method of disposing of society's jetsam. Those who advance these arguments are probably not aware that they are rationalizing a residual lust for punishment or propagating an immoral, virtually paganistic, philosophy.

2. Capital punishment is morally and ethically unacceptable. The law of God is "Thou shalt not kill," and every system of ethics and code of morals echoes this injunction. It is well recognized that this commandment (and the laws of man based upon it) permit the killing of another human being "in the lawful defense of the slayer, or of his or her husband, wife, parent, child, brother, sister, master or servant, or of any other person in his presence or company" [3] when there is imminent danger and in actual resistance to an assault or other criminal act. It is equally well recognized that society, organized as a sovereign state, has the right to take human life in defending itself in a just war against either internal or external unjust aggression. But the individual citizen has no right in law or morals to slay as punishment for an act, no matter how vile, already committed; nor has he legal or moral justification to kill when—his resistance to an attempted criminal act having proved successful short of fatal force—the imminent danger is eliminated and the criminal attack or attempt discontinued.

Individuals in groups or societies are subject to the same moral and ethical codes which govern their conduct as individuals. The state, through its police agents, may take human life when such ultimate measure of force is necessary to protect its citizenry from the imminent danger of criminal action and in actual resistance to felonious attempts (including attempts forcibly to avoid arrest or escape custody). Once, however, the prisoner has been apprehended and either voluntarily submits to custody, or is effectively safeguarded against escape (maximum security confinement), the right of the state to take his life as punishment, retribution, revenge, or retaliation for previously committed offenses (no matter how numerous or heinous) or as an example to deter others, or as an economical expedient, does not exist in moral law.

I argue this despite the fact that it is a position which is contrary to that expounded by a number of eminent theologians, notably Thomas Aquinas. Writing in times long past and quite different, and expressing themselves in terms of conditions, logic and experiences of those times, such theologians have defended the right of the state to take human life as a punishment when the common good requires it. Moreover, they have held that, under certain conditions, the state is morally bound to take human life and that not to take it would be sinful. Although I am philosophically opposed to war whether as an extension of diplomacy or an instrument of national policy, recognize the right of a nation, through its armed forces and in accord with the rules of civilized warfare, to take human life in defense of its sovereignty, its national territory, and its citizens. Such recognition is in no way inconsistent with my views anent the death penalty, for the Geneva Convention makes it clear that the killing of one's enemy (no matter how many of one's troops he has slaughtered in battle) after he has laid down his arms, surrendered, or been taken prisoner, will not be countenanced by civilized nations.

SUPPOSED DETERRENT EFFECT

3. Capital punishment has demonstrably failed to accomplish its stated objectives. The proponents of the death penalty base their support largely on two basic propositions: (1) that the death penalty has a uniquely deterrent effect on those who contemplate committing capital crimes; and (2) that the provision of the death penalty as the mandatory or alternative penalty for stated offenses in the statute books removes for all time the danger of future similar offenses by those whose criminal acts have made them subject to its rigors.

Neither of these propositions will stand logical or statistical analysis. Proposition 1 is dependent upon acceptance of the repudiated pleasure-pain principle of past-century penology. This theory presupposes a rational man weighing the prospective profit or pleasure to be derived from the commission of some future crime against the almost certain pain or loss he will suffer in retribution should he be apprehended and convicted. That many persons who commit crimes are not rational at the time the crime is committed is beyond dispute. Avoiding the area of psychiatric controversy for the moment, let it be sufficient to report that Dr. Shaw Grigsby, of the University of Florida in his recent studies at the Raiford (Fla.) State Penitentiary found that more than 75 percent of the males and more than 90 percent of the females then in confinement were under the influence of alcohol at the time they committed the offenses for which they were serving sentence; and that Dr. Marvin Wolfgang's studies of the patterns in criminal homicide in Philadelphia in large measure lend support to Dr. Grigsby's findings.

While perhaps the theological doctrine of sufficient reflection and full consent of the will as necessary prerequisites to mortal sin is somewhat mitigated by the mandate to avoid the occasions of sin in the determination of moral responsibility, we are here discussing rationality in terms of weighing alternatives of possible prospective deterrence rather than adjudicated postmortem responsibility. Proposition 1 further presupposes knowledge by the prospective offender of the penalty provided in the penal code for the offense he is about to commit—a knowledge not always found even among lawyers. It further assumes a non-self-destructive orientation of the offender and, most importantly, a certainty in his mind that he will be identified, apprehended, indicted, convicted, sentenced to the maximum penalty, and that the ultimate sanction will indeed be executed. When one notes that of 125 persons indicted for first degree murder in the District of Columbia during the period 1953–59, only one (a Negro) was executed despite the mandatory provision of the law; [4] and further that, despite the fact that more than 3 million major felonies were known to the police in 1960, the total prison population (Federal and State) at the January 1961 prison census (including substantially all the convicted felons of 1960 and many from prior years) stood at a miniscule 190,000, the rational criminal might very well elect to play the odds.

UNCERTAIN OF EXECUTION

The second part of the proposition assumes that all or a high proportion of those who commit crimes for which the death penalty is prescribed will in fact be executed—an assumption, rebutted above, which was false even in the heyday of capital punishment when more than 200 offenses were punishable on the gallows. It shows no awareness that the mere existence of the death penalty may in itself contribute to the commission of the very crimes it is designed to deter, or to the difficulty of securing convictions in capital cases. The murderer who has killed once (or committed 1 of the more than 30 other capital crimes) and whose life is already forfeit if he is caught would find little deterrent weight in the prospect of execution for a second or third capital crime—particularly if his victim were to be a police officer attempting to take him into custody for the original capital offense. The suicidal, guilt-haunted psychotic might well kill (or confess falsely to a killing) to provoke the State into imposing upon him the punishment which in his tortured mind he merits but is unable to inflict upon himself.

Prosecutors and criminal trial lawyers have frequently testified as to the difficulty of impaneling juries in capital cases and the even greater difficulty of securing convictions on evidence which in noncapital cases would leave little room for reasonable doubt. Appeals courts scan with more analytical eye the transcripts in capital cases, and error is located and deemed prejudicial which in noncapital cases would be overlooked. The Chessman case is, from this viewpoint, a monument to the determination on the part of American justice that no man shall be executed while there is the slightest doubt either as to his guilt or as to the legality of the process by which his guilt was determined. Criminologists have pointed out repeatedly that the execution of the small number of convicts (fewer than 50 each year in the United States) has a disproportionately brutalizing effect on those of us who survive. Respect for the sanctity and inviolability of human life decreases each time human life is taken. When taken formally in the circuslike atmosphere which unfortunately characterizes 20th century trials and executions (both here and abroad), emotions, passions, impulses and hostilities are activated which may lead to the threshold of murder many who might never have incurred the mark of Cain.

INCONSISTENT APPLICATION

4. Capital punishment in the United States has been and is prejudicially and inconsistently applied. The logic of the retentionist position would be strengthened if the proponents of capital punishment could demonstrate that an even-handed justice exacted the supreme penalty without regard to race or nationality, age or sex, social, or economic condition; that all or nearly all who committed capital crimes were indeed executed; or, at least, that those pitiful few upon whom the sentence of death is carried out each year are in fact the most dangerous, the most vicious, the most incorrigible of all who could have been executed. But the record shows otherwise.

Accurate death penalty statistics for the United States are available for the 30-year period, 1930–59. Analysis of the more than 3,000 cases in which the death penalty was exacted discloses that more than half were Negroes, that a very significant proportion were defended by court-appointed lawyers, and that few of them were professional killers. Whether a man died for his offense depended, not on the gravity of his crime, not on the number of such crimes or the number of his victims, not on his present or prospective danger to society, but on such adventitious factors as the jurisdiction in which the crime was committed, the color of his skin, his financial position, whether he was male or female (we seldom execute females), and indeed oftentimes on what were the character and characteristics

[3] Sec. 1055, New York State Penal Code.

[4] Sec. 22, D.C. Code, 2404.

of his victim (apart from the justifiability of the instant homicidal act).

It may be exceedingly difficult for a rich man to enter the Kingdom of Heaven but case after case bears witness that it is virtually impossible for him to enter the execution chamber. And it is equally impossible in several States to execute a white man for a capital crime against a Negro. Professional murderers (and the directors of the criminal syndicates which employ them) are seldom caught. When they are arrested either they are defended successfully by eminent and expensive trial counsel or they eliminate or intimidate witnesses against them. Failing such advantages, they wisely bargain for a plea of guilty to some lesser degree of homicide and escape the death chamber. The homicidal maniac, who has massacred perhaps a dozen, even under our archaic MacNaghten rule, is safely outside the pale of criminal responsibility and escapes not only the death penalty but often even its alternatives.

5. The innocent have been executed. There is no system of criminal jurisprudence which has on the whole provided as many safeguards against the conviction and possible execution of an innocent man as the Anglo-American. Those of us who oppose the death penalty do not raise this argument to condemn our courts or our judiciary, but only to underline the fallibility of human judgment and human procedures. We oppose capital punishment for the guilty; no one save a monster or deluded rationalist (e.g., the captain in Herman Melville's "Billy Budd") would justify the execution of the innocent. We cannot, however, close our minds or our hearts to the greater tragedy, the more monstrous injustice, the ineradicable shame involved when the legal processes of the State, knowingly or unknowingly, have been used to take the life of an innocent man.

The American Bar Foundation, or some similar research-oriented legal society, might well address itself to an objective analysis of the factors which led to the convictions of the many men whose sentences for capital crimes have in the past few decades been set aside by appellate courts (or by executive authority after the courts had exhausted their processes), and who later were exonerated either by trial courts or by the consensus of informed opinion. Especial attention should be directed to the fortunately much smaller number of cases (e.g., the Evans-Christie case in England and the Brandon case in New Jersey) in which innocent men were actually executed. Perhaps, too, a reanalysis would be profitable of the 65 cases cited by Prof. Edwin Borchard in his "Convicting the Innocent," the 36 cases mentioned by U.S. Circuit Court of Appeals Judge Jerome Frank in "Courts on Trial," and the smaller number of miscarriages of justice outlined by Erle Stanley Gardner in "Court of Last Resort."

ALTERNATIVE PENALTIES

6. There are effective alternative penalties. One gets the impression all too frequently, both from retentionist spokesmen and, occasionally, from the statements of enthusiastic but ill-informed abolitionists, that the only alternative to capital punishment is no punishment; that, if the death penalty does not deter, then surely no lesser societal response to the violation of its laws and injury to its citizens will prove effective.

The record in abolition jurisdictions, some without the death penalty for more than 100 years, both in the United States and abroad, in which imprisonment for indeterminate or stated terms has been substituted for the penalty of death, is a clear demonstration that alternative penalties are of equal or greater protective value to society than is capital punishment.

RELATION OF DEATH PENALTY TO CAPITAL CRIMES RATE

In every instance in which a valid statistical comparison is possible between jurisdictions scientifically equated as to population and economic and social conditions, the nations and States that have abolished capital punishment have a smaller capital crimes rate than the comparable jurisdictions that have retained the death penalty. Further, the capital crimes rate in those jurisdictions which, while retaining the death penalty use it seldom or not at all is in most instances lower than the capital crimes rates in the retentionist jurisdictions which execute most frequently.

And, finally, comparing the before, during, and after capital crimes rates in those jurisdictions (nine in the United States) which abolished capital punishment and then restored it to their penal codes, we find a consistently downward trend in capital crimes unaffected by either abolition or restoration. Startling comparisons are available. The U.S. Navy has executed no one in more than 120 years; yet it has maintained a level of discipline, effectiveness, and morale certainly in no sense inferior to that of the U.S. Army which has inflicted the death penalty on more than 150 soldiers in just the last three decades.

Delaware, most recent State to abolish the death penalty, experienced a remarkable drop in its capital crimes rate during the first full year of abolition. No criminologist would argue that abolition will necessarily reduce capital crimes; nor will he attempt to demonstrate a casual connection between absence of the death penalty and low capital crimes rates. In point of fact, homicide is the one major felony which shows a consistent downward trend in both capital punishment and abolition jurisdictions—indicating to the student of human behavior that the crime of murder, particularly, is largely an irrational reaction to a concrescence of circumstances, adventitiously related, wholly independent of and neither positively nor negatively correlatable with the legal sanction provided in the jurisdiction in which the crime actually took place. Dr. Marvin Wolfgang has pointed out with some logic that our decreasing murder rate is probably in no small part due to improved communications (ambulance gets to the scene faster), improved first aid to the victim, and the antibiotics, blood banks, and similar advances in medicine which save many an assault victim from becoming a corpse—and of course his assailant from being tagged a murderer. The consistent upward trend in assaultive crimes gives support to Dr. Wolfgang's thesis.

PROTECTION OF LAW OFFICERS

7. Police and prison officers are safer in non-death penalty States. The studies of Donald Campion, S.J., associate editor of America, and others indicate (albeit with restricted samplings) that the life of a police officer or a prison guard is slightly safer in the non-death-penalty States, although the difference is so slight as to be statistically insignificant. Prison wardens overwhelmingly support abolition but large segments of the police profession support the retention of the death penalty both as a general crime deterrent (which it demonstrably is not) and as a specific safeguard to members of their own profession. Significantly, few of the police officers who serve in non-death-penalty States are active in the fight to restore capital punishment and most of those who oppose abolition in their own jurisdictions have never performed police duties in an abolition State. It is a criminological axiom that it is the certainty, not the severity, of punishment that deters. Improvements in the selections, training, discipline, supervision, and operating techniques of our police will insure a higher percentage of apprehensions and convictions of criminals and, even without the death penalty, will provide a greater general crime deterrent and far more safety both for the general public and for police officers than either enjoys at present.

8. Paroled and pardoned murderers are no threat to the public. Studies in New Jersey and California, and less extensive studies of paroled and pardoned murderers in other jurisdictions, indicate that those whose death sentences have been commuted, or who have been paroled from life or long-term sentences, or who have received executive pardons after conviction of capital crimes are by far the least likely to recidivate. Not only do they not again commit homicide, but they commit other crimes or violate their parole contracts to a much lesser extent than do paroled burglars, robbers, and the generality of the non-capital-crimes convicts on parole. My own study of nearly 150 murderers showed that not a single one had killed again and only two had committed any other crime subsequent to release. Ohio's Gov. Michael Di Salle has pointed out (as Warden Lewis Lawes and other penologists have in the past) that murderers are by and large the best and safest prisoners; and he has demonstrated his confidence by employing eight convicted murderers from the Ohio State Penitentiary in and about the excutive mansion in Columbus in daily contact with the members of his family.

9. The death penalty is more costly than its alternatives. It seems somewhat immoral to discuss the taking of even a murderer's life in terms of dollars and cents; but often the argument is raised that capital punishment is the cheapest way of handling society's outcasts and that the good members of the community should not be taxed to support killers for life (often coupled with the euthanasian argument that they are better off dead). The application of elementary cost accounting procedures to the determination of the differential in costs peculiar to capital cases will effectively demonstrate that not only is it not cheaper to hang them; but that, on the contrary, it would be cheaper for the taxpayers to maintain our prospective executees in the comparative luxury of first-rate hotels, with all the perquisites of noncriminal guests, than to pay for having them executed. The tangible costs of the death penalty in terms of long-drawn-out jury selection, extended trials and retrials, appeals, extra security, maintenance of expensive, seldom-used deathhouses, support of the felon's family, etc., are heavy.

NEED OF GENERAL PENAL REFORM

10. Capital punishment stands in the way of penal reform. Man has used the death penalty and other forms of retributive punishment throughout the centuries to control and govern the conduct of his fellows and to force conformity and compliance to laws and codes, taboos and customs.

The record of every civilization makes abundantly clear that punishment, no matter how severe or sadistic, has had little effect on crime rates. No new approach to the criminal is possible so long as the death penalty, and the discredited penology it represents, pervades our criminal justice system. Until it is stricken from the statute books, a truly rehabilitative approach to the small percentage of our fellowmen who cannot or will not adjust to society's dictates is impossible of attainment. That there is a strong positive correlation between advocacy of the death penalty and a generally punitive orientation cannot be gainsaid. Analysis of the votes for corporal punishment bills, votes against substitution of alternative for mandatory features in the few mandatory death penalty jurisdictions,[5] votes

[5] New York and the District of Columbia, notably.

against study commissions and against limited period moratoria,[6] and comparison with votes for bills increasing the penalties for rape, narcotics offenses, and other felonies discloses a pattern of simple retributive punitiveness, characterizing many of our legislators and the retentionist witnesses before legislative committees.

RESPONSIBILITY OF CHRISTIANS

Many church assemblies of America and individual churchmen of every denomination have underscored the moral and ethical nonacceptability of capital punishment. Church members have the responsibility to support the campaign to erase this stain on American society. Capital punishment is brutal, sordid, and savage. It violates the law of God and is contrary to the humane and liberal respect for human life characteristic of modern democratic states. It is unsound criminologically and unnecessary for the protection of the state or its citizens. It makes miscarriages of justice irredeemable; it makes the barbaric "lex talionis" the watchword and inhibits the reform of our prison system. It encourages disrespect for our laws, our courts, our institutions; and, in the words of Sheldon Glueck, "bedevils the administration of criminal justice and is the stumbling block in the path of general reform in the treatment of crime and criminals."

[From American Academy of Political and Social Science Annals, November 1952]

THE DETERRENT INFLUENCE OF THE DEATH PENALTY

(By Karl F. Schuessler)

(This paper was aided immensely by Prof. Thorsten Sellin who made available to the author his extensive "Memorandum on Capital Punishment" prepared in 1950 for the British Royal Commission on Capital Punishment. The author is also indebted to Prof. Clifford Kirkpatrick who read this paper critically but who is, of course, in no way responsible for its contents, and also to Mrs. Vada Gary who assisted with the statistical work.)

This article analyzes certain statistical material as it bears on the question of how much the death penalty deters people from committing murder. This material, consisting principally of U.S. homicide and execution data for the period 1925–49, has been organized around six topics expressed for the most part as questions: (1) the adequacy of U.S. statistics for purposes of measuring the deterrent influence of the death penalty; (2) the deterrence viewpoint as an explanation of murder and punishment trends in this country during the last 25 years; (3) whether fewer murders occur in places where murder is punishable by death than in places where it is not; (4) whether differences in the use of the death penalty correspond to differences in the relative occurrence of murder; (5) the consistency between the deterrence viewpoint and differentials in the murder rate by sex, race, and other population classifications; and (6) a general appraisal of the deterrent value of the death penalty.

This analysis in a sense represents a continuation of similar work done intermittently in this country during the last 35 years.[1] These previous studies have uniformly concluded that the death penalty is inconsequential as a deterrent and that the relative frequency of murder in a given population is a function of the cultural conditions under which the group lives. Deficiencies in U.S. data that handicapped earlier investigations of this kind have been remedied somewhat during the last 20 years, but many difficulties still face the analyst who wishes to generalize about murder and the death penalty. Before going to the data and their interpretation, the belief in the death penalty as a deterrent is briefly set forth.

THE DETERRENCE VIEWPOINT

In brief, people are believed to refrain from crime because they fear punishment. Since people fear death more than anything else, the death penalty is the most effective deterrent, so runs the argument. It is further alleged that the effectiveness of the death penalty as a deterrent depends both on its certain application and on knowledge of this fact in the population; hence, the argument continues, regular use of the death penalty increases its deterrent value. It was largely on grounds of this sort that the death penalty was recently (1950) restored in New Zealand after a 10-year period of abolition, demonstrating that the deterrence line of reasoning still has considerable practical force.

Involved in the deterrence argument is the assumption that men deliberately choose among rival courses of action in the light of foreseeable consequences, the criterion of choice being personal gratification. This psychological hedonism, needless to say, is not in acocrd with modern psychology and sociology, which see human behavior as largely unplanned and habitual, rather than calculated and voluntary. The belief in the deterrent value of the death penalty is thus seen not as a scientific proposition, but rather as a social conviction widely used to justify and reinforce existing ways of treatment that perhaps rest mainly on feelings of vengeance. Consequently, this study does not constitute a test of a carefully drawn sociological hypothesis that intends to explain differences in the prevalence of murder among human societies, but rather assembled factual evidence to test the validity of a popular belief. We now return to the topics posed in the introduction of this article.

U.S. HOMICIDE AND EXECUTION DATA

The homicide statistics collected by the U.S. Census Bureau[2] are ordinarily used as an index of murder, figures on murder being generally inaccessible as well as fragmentary. The use of homicide statistics for purposes of estimating the deterrent influence of the death penalty has been criticized on the grounds that (a) they include justifiable and excusable homicides and (b) they do not distinguish among differing degrees of murder. The reasoning behind this criticism is that the proportion of nonfelonious homicide and the relative amount of different kinds of murder may vary in time and space in such a way as to make unreliable regional comparisons and time trends.

Over against these reasonable objections is the fact that the homicide rate closely corresponds, both geographically and temporally, to the murder figures given in "Uniform Crime Reports,"[3] which exclude nonfelonious homicide, though they include nonnegligent manslaughter. Also, the homicide rate is closely correlated, on both a geographic and a temporal basis, with murder conviction rates given in "Judicial Criminal Statistics," and with murder commitment rates based on information in "Prisoners in State and Federal prisons and Reformatories."[4]

This consistency among four independent indexes of murder is probably due to the fact that the relative occurrence of different kinds of murder is similar among States and fairly constant during the last 25 years. If this interpretation is correct, then the homicide rate is a reliable index of murder in general and first degree murder in particular, during approximately the last 25 years.

National statistics on executions have been readily available in this country only since 1930, when they were reported in "Mortality Statistics" and also in "Prisoners in State and Federal Prisons and Reformatories." From the standpoint of measuring the temporal relation between execution and murder, these figures are of limited value because they cover such a short period of time. The fact that executions-by-offense were not published for the period 1931–36 adds to this difficulty, although for certain States it may be safely assumed that all executions during that period were for murder.

Some material on murder convictions and death sentences is available in "Federal Judicial Statistics." But for purposes of relating conviction and punishment trends to concurrent trends in murder, this source is limited as follows: (a) this series covers only a 13-year period, 1933–45; (b) the largest number of States reporting in any single year was 30; (c) only 18 States (including the District of Columbia) reported each year during the entire period; and (d) except for the first few years, the number of persons convicted of murder is not given, but rather the number of murder indictments resulting in conviction.

In spite of the forenamed shortcomings in murder statistics for the period 1925–49, they are probably more adequate than data hitherto employed as a check on the alleged deterrent influence of the death penalty. In consequence, conclusions based on this study are less vulnerable to the objection that murder data are so unreliable as to make worthless generalizations about the death penalty as a deterrent.

U.S. HOMICIDE AND CAPITAL PUNISHMENT TRENDS

The U.S. homicide rate moved steadily upward from 1900 until the middle of the thirties, dropped sharply during the next 10-year period, and then at the close of World War II started an upward swing. Although homicide statistics are not available for 1950 and 1951, national police statistics indicate that the upward trend was checked in 1951; in any case, the rate is still far below the high levels of the late 20's and early 30's.

State trends in the period 1925–49 generally correspond to the national trend, although there are several exceptions, important from the standpoint of an explanation

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[6] Massachusetts, New Jersey, Connecticut, Illinois, New York, California, Canada, and England.

[1] See, for example, Raymond T. Bye, "Capital Punishment in the United States," Philadelphia: Committee on Philanthropic Labor of Philadelphia Yearly Meeting of Friends, 1919; Edwin H. Sutherland, "Murder and the Death Penalty," Journal of the American Institute of Criminal Law and Criminology, vol. 15, 1925, pp. 522–29; Clifford Kirkpatrick, "Capital Punishment," Philadelphia: Committee on Philanthropic Labor of Philadelphia Yearly Meeting of Friends, 1925; George B. Vold, "Can the Death Penalty Prevent Crime?" Prison Journal, October 1932, pp. 3–8.

[2] Mortality Statistics, Bureau of the Census, U.S. Department of Commerce, Washington, D.C. Also, Special Reports, National Office of Vital Statistics, Public Health Service, Federal Security Agency, Washington, D.C.

[3] "Uniform Crime Reports," Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C.

[4] Both publications issued by the Bureau of the Census. The results of this correlational analysis are omitted because of lack of space, except to say that the correlation coefficients were uniformly high ($r \geqq .8$).

of murder. (1) Vermont exhibited an almost constant rate during this period. (2) By 1949, Virginia, North Carolina, and South Carolina had returned to or exceeded the high level of the depression years. (3) Michigan, Nevada, and Florida started their downward trend before 1930. (4) At least one State—Connecticut—continued to climb until 1940. The homicide rate continued to exhibit large regional differences, the highest rates persisting in the South, the lowest in New England.

Also, the homicide rate continued to display large differentials by sex, race, ecological area, and season, the effect of each classification being conditioned to a certain extent by its relation to the others. These differentials suggest at once that murder is a complex sociological event rather than a simple response controlled altogether by the deterrent influence of the death penalty.

Two somewhat contradictory capital punishment trends in the United States characterize the period 1925–49. On the one hand, a trend to extend capital punishment, starting just after World War I, continued with the restoration of the death penalty in Kansas (1935) and South Dakota (1939). The move to reestablish capital punishment in Michigan in 1951 exemplifies the persistence of this trend. On the other hand, a tendency to make the death penalty permissive rather than mandatory on conviction of first-degree murder continued. By 1951 the death penalty was mandatory in only one State, in contrast with 1924 when it was mandatory in eight States.

The speculation has been advanced that nowadays a smaller proportion of persons sentenced to death for murder are executed than formerly, the tendency to administer clemency being in line with a general trend to moderate punishment. This was not borne out by an analysis of available judicial and penal statistics, although this evidence is very scanty. Of those sentenced to death for murder in the courts of 25 States during the period 1933–39, 80 percent were executed; during the period 1940–45, 81 percent were executed—practically no change. The idea of a downward trend in the use of the death penalty is also opposed, though indirectly, by the fact that the decline in executions from 1930–39 to 1940–49 was roughly proportional to the drop in homicides. The number of executions for murder dropped from 1,507 in the period 1930–39 to 1,063 in the following decade, a 29-percent drop, while homicides dropped from 107,514 to 78,443, a 27-percent drop.

By way of summary, capital punishment policy and practice in this country was fairly stable in the period 1925–49; consequently, the movement of the homicide rate and differentials in the homicide rate by various population classifications cannot be attributed to changes in the use of the death penalty. This suggests once again that differences in the homicide rate correspond to differences in social structure and culture setting, and that murder and the death penalty are unrelated except in the circular sense that more murder involves more death penalties.

COMPARISON OF DEATH PENALTY AND ABOLITION STATES

A comparison of States that provide the death penalty for murder with those that do not shows the homicide rate to be two to three times as large in the former States as in the latter (table 1). Such a comparison is usually declared invalid because the two groupings are not uniform with respect to population composition, social structure, and culture pattern. This criticism, though methodologically sound, affirms indirectly that the relative occurrence of murder is the result of a combination of social circumstances of which punishment is only one, possibly an immaterial one.

TABLE 1.—*Homicide rates per 100,000 population in death penalty States and abolition States for 5 selected years* [1]

Year	Abolition States	Death penalty States
1928	4.2	8.8
1933	3.7	10.5
1938	2.2	7.6
1943	2.1	5.5
1949	2.2	6.0

[1] These two groupings include all States in the national registration area in any given year. All States were in the registration area after 1932.

To meet the foregoing objection, the usual practice is to compare the homicide rate in States that have abolished the death penalty with their neighbors where the death penalty is legal. This comparison is illustrated in table 2, and it will be seen that Rhode Island, an abolition State since 1852, is very similar to Connecticut, where the death penalty has been retained. Maine also, though not shown in the table, has been abolition since 1887, and is quite similar to the New England States which have the death penalty. The homicide rate in Michigan, where the death penalty was abolished in 1847 (except for treason), closely resembles Indiana and Illinois homicide rates, while Wisconsin, an abolition State for practically a hundred years, has a rate significantly below Michigan, indicating that the homicide rate is indifferent to the presence or absence of capital punishment. Homicide rates in Minnesota, where the death penalty was abandoned in 1911, and in Iowa are very nearly alike with respect to both level and trend during the last 25 years. Similarly, homicide rates in Arizona and New Mexico, both death penalty States, have been practically identical both in level and movement during the period 1930–50, although Arizona executed 27 and New Mexico but 4 in this period.

TABLE 2.—*Annual average homicide rates in 15 States selected according to contiguity*

State	1931–35	1936–40	1941–46
Rhode Island [1]	1.8	1.5	1.0
Connecticut	2.4	2.0	1.9
Michigan [1]	5.0	3.6	3.4
Indiana	6.2	4.3	3.2
Wisconsin [1]	2.4	1.7	1.5
Illinois	9.6	5.7	4.4
Minnesota [1]	3.1	1.7	1.6
Iowa	2.6	1.7	1.3
Kansas [2]	6.2	3.6	3.0
Colorado	7.5	5.5	3.7
Missouri	11.1	6.6	5.3
Nebraska	3.7	1.7	1.8
Oklahoma	11.0	7.2	5.6
Arizona	12.6	10.3	6.5
New Mexico	12.5	8.4	5.3

[1] Abolition State.
[2] Abolition between 1931 and 1935.

Kansas and South Dakota are of special interest because they make possible a before-and-after comparison, though extremely limited in scope. Kansas abolished the death penalty in 1907 and reestablished it in 1935. The annual average homicide rate in Kansas for the period 1931–35, as shown in table 2, was considerably higher than the average rate for the following 5-year period, giving plausibility to the deterrence argument. However, an identical trend characterized the States bordering on Kansas (table 2), and these States had the death penalty throughout this period. The experience of Kansas, then, when viewed in context, merely emphasizes that homicide trends are the resultant of social conditions rather than the resultant of changes in death penalty policy.

This notion is borne out by a comparison of homicide trends in South Dakota, an abolition State between 1915 and 1939, and North Dakota, where the death penalty has not been in force since 1915. The annual average homicide rate in South Dakota dropped from 1.8 for the period 1930–39 to 1.5 for the following 10-year period, while in North Dakota the rate dropped from 1.8 to 1.1. If changes in the homicide rate were due solely to differences in capital punishment policy, then North Dakota's greater proportional drop in homicides must have been due to the fact that the death penalty was not restored.

EUROPEAN DATA

Since the middle of the last century there has been a sustained though uneven movement among European countries to abolish capital punishment by legal annulment or by allowing it to fall into disuse. Certain European statistics therefore bear on the question of whether the removal of the death penalty has a perceptible effect on the incidence of murder. Several examples [3] are cited primarily to illustrate the fact that the independence between the murder rate and the death penalty is not a peculiarity of American culture.

Sweden formally abolished the death penalty in 1921; but the last execution occurred in 1910, this being the only one since 1900. During the preceding period, 1869–1900, there were 12 executions, roughly averaging 4 per decade.

TABLE 3.—*Annual average homicide rate per 100,000 population of Sweden from 1754 to 1942*

Period:	Homicide rate
1754–63	.83
1775–92	.66
1793–1806	.61
1809–30	[1] 1.09
1831–45	1.47
1846–60	1.24
1861–77	1.12
1878–98	.90
1899–1904	.96
1905–13	.86
1914–16	.72
1920–32	.52
1933–38	.46
1939–42	.47

[1] Exclusive of 1814 and 1818.

There is nothing in the Swedish homicide series (table 3) to suggest that its movement has in any way been conditioned by the abandonment of the death penalty during the 20th century.

The death penalty in the Netherlands was not used after 1860 and was formally abolished in 1870. Although there was an upward trend (table 4) in the murder and attempted murder conviction rate in the 20-year period immediately following abolition, during this period the rate never attained the level of 1860–70 when the death penalty was still legally in force. The rate reached its lowest level in the 1920's when the death penalty was, of course, not in effect. Moreover, the decade immediately following abolition, 1870–79, was the lowest but one in the approximately eight-decade period covered by this series.

TABLE 4.—*Annual average murder and attempted murder conviction rates per million inhabitants in the Netherlands, 1850–1927*

Period:	Homicide rate
1850–59	.96
1860–69	1.46
1871–80	.83
1881–90	1.17
1891–1900	1.41
1901–10	1.25
1911–20	1.32
1921–27	.60

[3] Taken from Thorsten Sellin's "Memorandum on Capital Punishment," London, 1951.

CERTAINTY AS A DETERRENT INFLUENCE

The point has often been made that it is not so much the legal existence of the death penalty that deters potential murderers, but rather the certainty of its being used. In fact, a common criticism of the death penalty is that juries do not convict readily if the punishment is death, thereby reducing the certainty of punishment, and, in consequence, its deterrent value. The problem as to whether differences in the use of the death penalty are in some way related to variations in the homicide rate may be approached by correlating execution and homicide data distributed geographically or temporally.

That the risk of execution is not uniform among the States that have a death penalty for murder is demonstrated by the lack of consistency between homicide and execution rates. The correlation coefficient of a homicide rate based on the period 1937–49 and an execution rate for the same period was .48 for 41 death penalty States.[6] The question therefore arises as to whether the relative occurrence of murder decreases regularly as the risk of execution increases, since, under deterrence theory, the value of the death penalty as a deterrent is thought to depend on its certain application.

To test this idea, though somewhat crudely, the risk of execution, operationally defined as the number of executions-for-murder per 1,000 homicides for the period 1937–49, was statistically compared with the homicide rate in 41 death penalty States. The correlation between these two indices was −.26, indicating a slight tendency for the homicide rate to diminish as the probability of execution increases. Next, as a check on consistency in this trend, the ratio of the average execution rate to the average homicide rate was computed for four groupings of States according to size of the homicide rate, as shown in column 3 of table 5. This analysis shows that the homicide rate does not consistently fall as the risk of execution increases.

TABLE 5.—*Average homicide and execution rates in 41 States grouped according to size of homicide rate*

Quartile by homicide rate	Average homicide rate (HR)	Average execution rate (ER)	$\frac{ER}{HR}$
Highest	15.4	0.32	0.21
Upper middle	7.8	.14	.18
Lower middle	4.2	.08	.19
Lowest	2.0	.05	.25

To illustrate: the average homicide rate for the 10 States having the highest homicide rates is almost twice as large as the average homicide rate for the States in the next quartile, but the risk of execution is slightly greater in the former group of States than in the latter group. This evidence, included primarily because of its suggestiveness, must be classed as negative from the standpoint of deterrence theory, since (a) the homicide rate does not drop consistently as the certainty of the death penalty increases, and (b) the geographic correlation between the risk of execution and the homicide rate is not impressive, failing to reach the 5 percent significance level and statistically accounting for only 7 percent (r^2) of the variability in the homicide rate.

To investigate further how differences in the use of the death penalty affect the homicide rate, the relationship between homicide and execution data as time series was measured within certain death penalty States. States which displayed little variability in executions for murder from year to year were not included in this analysis; also, States not having execution-for-murder figures complete for the period 1930–49 were omitted. This left a total of 11 States. On the assumption, implicit in deterrence theory, that a large number of executions relative to the frequency of murder should be followed by a reduction in the murder rate, a 1-year time lag was established, with the execution risk, defined as the number of executions for murder to 1,000 homicides per year, as the forerunner.

The most general finding is that the homicide rate and the execution risk as time series move independent of one another. None of the correlation coefficients reached .35, and the number of negative correlation coefficients, 4, was less than the number of positive coefficients, 7, but not significantly so. This evidence, like that just preceding, fails to substantiate the belief that the deterrent influence of the death penalty is enhanced by its frequent use, as changes in the homicide rate do not correspond in a systematic way to variations in the probability of its being used.

DIFFERENTIAL HOMICIDE RATES AND THE DEATH PENALTY

A final problem is whether the deterrence viewpoint is consistent with certain population classifications. First, the death penalty is hardly ever used with women in the United States, but women, in contrast with men, seldom commit murder. Very likely the conditions of life surrounding women in most human societies operate to develop and sustain lawful attitudes and habits. Lawfulness in the female population, specifically the fact that women generally refrain from committing murder, is probably due to these positive sociocultural influences rather than to fear of the death penalty.

Second, the number of Negro murderers is relatively larger than the number of white murderers; yet it is doubtful whether the death penalty is used less often with Negro murderers than with white murderers. Suggestive in this connection is the fact that white executions for murder, 166, were 1.1 percent of all white homicides, 15,494, in the period 1946–49, while Negro executions for murder, 265, constituted 1.5 percent of all Negro homicides, 18,327, during the same period. The environmental factors influencing Negroes are analogous but opposite to those influencing women. The circumstances of life surrounding large numbers of Negroes in the United States generate violence, assault, and murder,[7] and this kind of behavior, to a certain extent socially expected and socially sanctioned among Negroes, is indifferent to the use of the death penalty.

Finally, the homicide rate exhibits differentials by age, social class, ethnic background, community size, and season, but in no instance can these differences be ascribed to corresponding differences in the application of the death penalty.

DISCUSSION AND CONCLUSION

The results of the foregoing analysis are consistent with the results of previous investigations of this kind. The findings of this study, then, sustain the conclusion that the death penalty has little if anything to do with the relative occurrence of murder. Studies of this sort have been criticized on the ground that they do not prove that the death penalty is completely without deterrent value. Although logically sound in a very strict sense, this objection is unrealistic, since there is no way at present of contrasting personal and social situations so as to assure that all differences in murder behavior are due solely to differences in the use of the death penalty. As usual, inferences have to be based on evidence collected under conditions that most nearly approximate the methodological ideal. Moreover, the inference drawn from statistical data that the death penalty is inconsequential as a deterrent is borne out by case studies and expert opinion, material not surveyed in this paper but now briefly noted.

The alleged deterrent influence of the death penalty is contradicted by the following recurrent case study data, expressed as four rough generalizations: (1) In the events preceding murder, the murderer is usually preoccupied to the point that reflection over future consequences is virtually impossible. (2) The fear of death is relative to the situation; consequently, the death penalty may appear on reflection to be a necessary though unfortunate sequel to murder. (3) Certain cultural circumstances (underworld, marital, and others) often make murder imperative, thereby nullifying the supposed deterrent effect of the death penalty. (4) The relation between murderer and victim is usually primary, hence, one that is likely to be suffused with emotionality. This emotionality, probably heightened during a crisis, doubtless interferes with the objective assessment of future consequences. The indifference of the murderer to the death penalty is well illustrated by the following conversation between Lawes and a prisoner:

"Before Morris Wasser's execution, when I told him that the Governor had refused him a last-minute respite, he said bitterly: 'All right, Warden. It doesn't make much difference what I say now about this here system of burning a guy, but I want to set you straight on something.'

" 'What's that?' I asked.

" 'Well, this electrocution business is the bunk. It don't do no good, I tell you, and I know, because I never thought of the chair when I plugged that old guy. And I'd probably do it again if he had me on the wrong end of a rod.'

" 'You mean,' I said, 'that you don't feel you've done wrong in taking another man's life?'

" 'No Warden, it ain't that,' he said impatiently. 'I mean that you just don't think of the hot seat when you plug a guy. Somethin' inside you just makes you kill, 'cause you know it you don't shut him up it's curtains for you.'

" 'I see. Then you never even thought of what would happen to you at the time.'

" 'Hell, no. And lots of other guys in here, Harry and Brick and Luke, all says the same thing. I tell you the hot seat will never stop a guy from pullin' a trigger.' That was Wasser's theory, and I've heard it echoed many times since."[8]

To summarize: statistical findings and case studies converge to disprove the claim that the death penalty has any special deterrent value. The belief in the death penalty as a deterrent is repudiated by statistical studies, since they consistently demonstrate that differences in homicide rates are in no way correlated with differences in the use of the death penalty. Case studies consistently reveal that the murderer seldom considers the possible consequences of his action, and, if he does, he evidently is not deterred by the

[6] Includes States that had a death penalty for murder during the period 1937–49, except South Dakota where the death penalty was restored in 1939 and Idaho where no executions occurred during this period. The product-moment correlation method was used throughout this analysis, not because it necessarily gave the best fit in all cases, but rather because its limitations and signification are well known.

[7] Gunnar Myrdal, The American Dilemma (New York, 1944), pp. 558–60.

[8] Lewis E. Lawes, "Meet the Murderer!" (New York, 1940), pp. 178–79.

death penalty. The fact that men continue to argue in favor of the death penalty on deterrence grounds may only demonstrate man's ability to confuse tradition with proof, and his related ability to justify his established way of behaving.

[From the Annals of the American Academy of Political and Social Science, Philadelphia, November 1952]

THE DEATH PENALTY AND THE ADMINISTRATION OF JUSTICE

(By Herbert B. Ehrmann)

Armchair criminology is among the least reliable of the social sciences. It is, however, one of the most popular. To qualify as an expert on crime one needs only to be a legislator, a lawyer, a prosecutor, or a judge. Such persons may actually be authorities in the field. Generally, however, they have had no scholastic preparation and no special experience beyond a few sporadic episodes. All too often the opinions of individuals in such positions are accorded a factitious authority merely because of the office which they hold. Unfortunately, the public does not understand the meagerness of experience and inadequacy of data on which such views are so frequently based.

IRRATIONAL VIEWS

Discussions concerning the death penalty have been especially confused by the voices of unqualified authorities. For nearly a century and a half change has been delayed and the acquisition of real knowledge hampered by sonorous pronouncements of the eminent, but uninformed. When in 1810 Sir Samuel Romilly introduced a bill in Parliament to abolish capital punishment for stealing 5 shillings or more from a shop, it was unsupported by a single judge or magistrate.[1] Speaking for the unanimous opposition to the bill by his judicial colleagues in the House of Lords, Lord Ellenborough, Chief Justice of the King's Bench, predicted that the repeal of this law would lead to abolition of the death penalty for stealing 5 shillings from a dwelling house, in which case no man could trust himself for an hour without the most alarming apprehensions that, on his return, every vestige of his property will be swept away by the hardened robber.[2]

These and similar laws were eventually repealed without any increase in the number of offenders in the particular class of crime. In fact, the absolute number of such offenders diminished.[3] As lawyer and judge, Lord Ellenborough was no fool. Although inclined to be harsh in criminal cases, he did much to bring the civil law into harmony with mercantile practice. He was a profound legal scholar. He knew the value of evidence. Yet, when it came to the death penalty, he felt qualified to pronounce an authoritative judgment without the aid of any evidence whatsoever other than his own emotional reflexes. His contemporaries accorded his words the respect due his high position; but history has proved that the great Lord Ellenborough, in discussing capital punishment, was talking nonsense.

The efforts to remove or modify the death penalty for the crime of murder have run a similar course. Fortunately, there has now been enough experience with abolition and curtailment to establish as a fact that the repeal of capital punishment is not followed by an increase in the number of murders, nor does its restoration result in a diminution. Whatever other purpose the death penalty may serve, it is now obvious that, in a settled community, it is not needed to protect society from murderers.

[1] Hansard, May 1, 1810.

[2] Ibid., May 30, 1810.

[3] Second Report on the Criminal Law by His Majesty's Commissioners, 1836, p. 21.

Nevertheless, even in this narrow area where data are abundant and easy to obtain, pronouncements of the Ellenborough variety continue to confuse the public. As late as 1950, the legislative halls of Massachusetts still rang with dire predictions that the passage of a bill to give juries a chance to designate life imprisonment as a penalty for murder in the first degree would result in loosing upon the people of the Commonwealth a horde of savage murderers. This was at a time when 38 other States and the Federal Government already had some form of the alternate penalty and 6 States had abolished capital punishment.

ALTERNATE AND MANDATORY AREAS COMPARED

A similar disregard of experience frequently marks discussion of the effect of the death penalty on the administration of justice. For instance, it was claimed that the giving of the power to impose the alternate penalty of life imprisonment would result in the complete disuse of capital punishment. Those making the claim seemed to think that this would be very bad indeed. In 1948 the then Governor of Massachusetts vetoed the proposed bill granting juries the right to choose life imprisonment instead of death on conviction in murder cases, stating in his veto message that such a law would abolish capital punishment by indirection; that it pays lipservice to capital punishment and then effectively proceeds to destroy it.

Coming from the Governor, the veto message was treated with respect;[4] but it was only another example of armchair criminology. For the 10 years ending with 1946, Massachusetts, under a law making death a mandatory punishment for first degree murder, had 12 executions. For the same period, alternate-penalty States had the following record: New Jersey, with a slightly smaller population, 16 executions; Pennsylvania, with something more than twice the population, 50 executions; and New York, with about three times the population, 118 executions. For the same period, North Carolina, a mandatory State, had 118 executions, and its neighbor, Georgia, somewhat smaller in population, under the alternate penalty, had 102.

There are too many variables—such as homicide rates, population characteristics, police efficiency, prosecution standards, jury attitudes, executive clemency—for any quantitative comparison of States within these groups, but the figures indicate clearly that capital punishment continues to flourish in States which provide the alternate penalty.

On the other hand, the residents in certain areas have, in practice, virtually abolished capital punishment in both mandatory and alternative penalty jurisdictions. Vermont, a mandatory State, has had only two executions in 28 years; New Hampshire, an alternate State, has had only one execution in 28 years; South Dakota, an alternate State, has had only one in 10 years since it restored the death penalty; Nebraska, an alternate State, has had only two in 28 years.[5] In Massachusetts during a period of 50 years under the mandatory penalty, Worcester County, with a half-million population, had only two executions; Bristol, a sizable county, only one; Berkshire County, of moderate size, none; and some of the smaller counties, none. The failure to use the death penalty in certain counties of Massachusetts is dramatically shown in table 1.

[4] Not, however, by the dean of the Harvard Law School, who commented on the fact that the message ignored available data.

[5] Data from "Memorandum on Capital Punishment," prepared by Thorsten Sellin for the Royal Commission on Capital Punishment, 1951, pp. 657–60.

TABLE 1.—*Convictions on murder indictments, certain Massachusetts counties, 1925–41*

County	Indictments for murder	Convictions			Executions for murder
		1st degree	2d degree	Manslaughter	
Berkshire	11	0	5	1	0
Bristol	36	0	16	3	0
Essex	26	1	12	2	1
Hampden	27	1	12	9	1
Hampshire	8	[1] 1	1	4	0
Plymouth	21		10	4	0
Total	129	3	56	23	2

[1] Commuted.

NOTE.—Data compiled from records in State prison and reports of the attorney general by Sara R. Ehrmann, executive secretary, Massachusetts Council for the Abolition of the Death Penalty.

The counties named in the table have about one and a half million population, well over a third of the people in Massachusetts. A conviction rate of about 64 percent of murder indictments indicates an effective administration of justice, but only three of those accused were convicted of first degree murder (requiring the death penalty), and only two were executed. Here, under a mandatory law, there was a pretty effective abolition of capital punishment.

DEATH PENALTY AND ACQUITTALS

A closely related problem is presented by the claim that the mandatory sentence of death upon a finding of guilty of murder in the first degree results in more acquittals. Some of those who express this opinion are extremely well informed penologists.[6] The reason given is that the infliction of death is so repugnant to most people that juries tend to avoid a conviction if possible. Curiously enough, proponents of the death penalty seem to confirm this tendency in a backhanded sort of way. In arguing that the danger of a miscarriage of justice is slight in a capital case, they frequently urge that the evidence must be overwhelming before a jury would vote to consign a fellow being to his death.

Convincing data on this subject are not available. We may, however, accept the reasoning and observations that the reluctance of jurymen to convict, where death is the penalty, leads, in some cases, to acquittal. Nevertheless, one may well question the conclusion that the net overall result is a larger percentage of acquittals. There are complicating factors working in the opposite direction. For instance, numbers of prospective jurors are frequently excused from serving in capital cases because of opposition to the death penalty. Sometimes the numbers are so great that the judges assail the veniremen for jury dodging, and these denunciations reach the newspaper headlines.[7]

This process of weeding out jurors who will not serve because of the death penalty tends to produce an unbalanced jury. Those most likely to lean emotionally toward the defendant are eliminated. No doubt the

[6] For instance, Lewis E. Lawes, former warden of Sing Sing Prison, "Man's Judgment of Death" (New York: G. P. Putnam's Sons, 1925), p. 58; Austin H. MacCormick, formerly Commissioner of Corrections, New York City, then executive director of the Osborne Association, in Boston Sunday Herald, December 11, 1949.

[7] See for instance the quoted remarks of Chief Justice Higgins in the Boston Daily Record, November 5, 1942; those of Judge Warner in the Boston Herald, June 7, 1933; and those of District Attorney Foley in the Boston Herald, April 10, 1930.

great majority of those who remain view the death penalty with considerable distaste, but their emotional attitude is likely to be negative. Inevitably, however, on some juries there will be those who favor the use of the death penalty. These people are occasionally forcefully articulate and capable of swaying jurors with less positive attitudes. They are not counterbalanced by those most reluctant to inflict death. Thus hostility toward the death penalty may actually, in some cases, produce juries which are most likely to convict the accused.

EMOTION AND PREJUDICE

There are other factors which work for conviction rather than acquittal in a capital case. Of all crimes, murder is most likely to produce a violent emotional public reaction, a demand for vengeance, a feeling that the perpetrator deserves to be put to death. Jurymen cannot help sharing this feeling. The idea that a jury weighs the evidence in a criminal case to decide whether the accused is guilty beyond a reasonable doubt, conveys a wrong picture of the process. In many cases it is merely a question of what evidence the jury chooses to believe. If the Government's case rests largely on identification testimony and the defense is an alibi, the jury does not weigh one against the other. If it believes the identification testimony, the alibi is thrown out of the scales of justice entirely, and vice versa. Where there is conflict of testimony, people tend to believe that which they would like to believe. The emotional drive to punish someone for an atrocious murder frequently plays an important part in conditioning a jury for believing the evidence which proves the guilt of the accused.

In a recent Massachusetts case the only issue was the criminal responsibility of the defendant, who had killed his wife. According to the opinion of the supreme judicial court, the evidence portrayed "the sudden destruction, while in apparent good health, of one member of a harmonious and cultured household by the only other member, in a series of acts paradoxically done, it is confessed, solely in kindness to benefit the victim, yet revoltingly achieved in the grossest barbarity with the crudest of weapons."[8] Two eminent psychiatrists testified that the defendant was not criminally responsible at the time of the killing. There was no medical testimony that he was responsible. Nevertheless, the jury returned a verdict of guilty. The conclusion that the accused was sane beyond a reasonable doubt can be explained only on the ground of emotion aroused by the sheer horror of the deed itself. Although there was no error of law, the supreme judicial court ordered a new trial under a statute passed in 1939 for the review of capital cases.[9] The defendant was tried a second time, found insane, and committed to a mental institution.

When prejudice is added to the emotional reactions induced by a slaying, the jury finds even greater difficulty in believing evidence offered for the accused.[10] If the jury is composed of the dominant or in-group and the defendant and his witnesses belong to an out-group—as they frequently do—the defendant's evidence is often discounted to zero. The jury tends to believe that foreigners, Negroes, or members of any minority group will lie for one another and stick together under all circumstances.

The U.S. Supreme Court has recognized this human failing, in holding that the exclusion of Negroes from a jury trying a Negro is a denial of equal protection of the laws.[11] Massachusetts had a case where a Chinese, arrested and tried with others for a tong killing, was convicted of murder although no witness identified him or implicated him in the affair.[12] In Kentucky it used to be said that if a Negro killed a white man it was murder, if a white man killed a Negro it was unfortunate, but if a white man killed a white man it was self-defense, unless the affray was over a woman, in which case the cause of death was apoplexy.

PUBLIC HOSTILITY

If to a brutal killing and prejudice there is added the element of public hostility against the accused, the jury listens to the defendant's evidence with ears that are stone deaf. This is the combination which produces most of our cause célèbres subsequently believed by many to be miscarriages of justice, such as the cases of Leo Frank, Tom Mooney, and Sacco and Vanzetti. In the last-named case, the jury, after 35 days of trial, received the case in the afternoon and returned a verdict of guilty in the evening. According to one of the jurymen, his colleagues were ready to vote a guilty verdict immediately at the close of the case, but he forced an hour's discussion because he thought such precipitate action was improper.

Regardless of the eventual verdict, the jury could not possibly have considered the mass of testimony in favor of the defendants or weighed the improbabilities in the government's case in so brief a time. Even without the benefit of the subsequent revelations which threw new doubt on the defendants' guilt, a relaxed and unprejudiced jury would have debated at great length the validity of the fleeting and even silly identifications and would not have lightly assumed that a large number of reputable Italian alibi witnesses were perjures.

Strip the case of the then current anti-radical hysteria, change the defendants into Massachusetts veterans of World War I, the identifying witnesses into Italians, and the alibi witnesses into native New Englanders, and it becomes inconceivable that the weaknesses of the prosecution and the massive evidence for the defense would have received such brief consideration by the jury.

DEATH PENALTY AND SECOND DEGREE CONVICTIONS

Whether or not the mandatory death penalty results in more acquittals, there seem to be some general data indicating that it produces a smaller proportion of convictions for first degree murder and a larger proportion for second degree murder.[13] Opponents of capital punishment claim that this is due to the fact that juries shy away from the infliction of death; proponents allege that the possibility of the extreme penalty produces more pleas of guilty to murder in the second degree, for which the sentence is imprisonment. Without further and more precise research, it is impossible to draw any general conclusions. People and conditions differ. Doubtless both theories are valid, but it is not known to what extent.

How difficult it is to generalize about these questions may be seen in the contrasting experience with the death penalty of the two most populous counties in Massachusetts—Suffolk and Middlesex. The two counties are contiguous, being separated, for the most part, only by the Charles River. During the test period they were approximately the same size in population[14] (Middlesex was actually about 5 percent more populous). The criminal courts handling murder cases are presided over by judges who rotate their sittings in the various counties, so they are not indigenous to either Suffolk or Middlesex. Nevertheless, respective records of the two counties for disposing of murder cases are strangely different.

State prison records for the years 1900 to 1949 inclusive show that 23 individuals were executed for murder in Middlesex, and only 10 for the crime in Suffolk. More detailed reports of the Attorney General for the years 1925 to 1941 inclusive indicate that of 113 indictments for murder in Middlesex, 19 were convicted of first degree (of whom 17 were executed), 23 of second degree, and 30 of manslaughter; of those not guilty, 18 were insane, 10 received a verdict of not guilty, and 13 were nol-prossed, meaning that the district attorney refused to prosecute. For the same period in Suffolk, 3 were convicted of first degree (of whom 2 were executed), 16 of second degree, and 24 of manslaughter; of those not guilty, 10 were insane, 22 received a verdict of not guilty, and 4 were nol-prossed. The approximate percentages are shown in table 2.

TABLE 2.—*Disposition of capital cases, Middlesex and Suffolk Counties, Mass., 1925–41*

[By percentage of all cases]

Middlesex County:	
Convicted:	
First degree	16.8
Executed	15.0
Second degree	20.4
Manslaughter	26.4
Total	64.0
Not convicted:	
Not guilty	9.0
Nol-prossed	11.4
Not guilty and nol-prossed	20.4
Insane (not tried)	16.0
Total	36.0
Suffolk County:	
Convicted:	
First degree	3.9
Executed	2.55
Second degree	20.2
Manslaughter	30.4
Total	54.0
Not convicted:	
Not guilty	27.8
Nol-prossed	5.0
Not guilty and nol-prossed	32.8
Insane (not tried)	12.65
Total	46.0

(Compiled from data collected by Sara R. Ehrmann.)

The period covered by table 2—17 years—and the number of cases involved are sufficient to smooth out any substantial distortions due to unusual cases. From these figures it appears that one indicted for a capital offense in Middlesex stood nearly a 17-percent chance of being convicted of first degree murder and a 15-percent chance of

[8] Mr. Justice Wilkins in *Commonwealth* v. *Cox* 1951 A.S. 857; 100 NE. 2d 14.

[9] Massachusetts State 1939, Sec. 341; G.L. (Ter. Ed.) C. 278, sec. 33E. This case was an unusual one for Massachusetts, where, under the Briggs law, so-called insanity is usually determined before trial. G.L. (Ter. Ed.) C. 123, sec. 100A

[10] See Arthur Garfield Hays, "Trial by Prejudice," New York: Covici Friede, 1933.

[11] *Smith* v. *Texas*, 311 U.S. 128, 61 S. Ct. 164, 85 L. Ed. 84 (1940); *Pierre* v. *Louisiana*, 306 U.S. 354, 59 S. Ct. 536, 83 L. Ed. 760 (1939); *Strauder* v. *West Virginia*, 100 U.S. 303, 25 L. Ed. 664 (1879).

[12] Related by Wendell Murray, Esq., of the Boston Bar, called in as counsel for Wong Duck after the trial. Three of the defendants were executed, but Wong Duck was among those granted a new trial.

[13] Royal Commission on Capital Punishment, minutes of evidence taken before the Royal Commission on Capital Punishment, 30th day, Thursday, Feb. 1, 1951. Witness: Prof. Thorsten Sellin. (Pp. 647–678.) London: H. M. Stationery Office, 1951.

[14] The 1940 census gave Middlesex, 958,855; Suffolk, 912,706.

being executed; whereas if the murder was committed in Suffolk, he would stand only a 4-percent chance of being so convicted, and only a 2.5-percent chance of being executed. Those guilty of second-degree murder, whether by plea or after trial, were approximately the same in percentage in both counties, as were those guilty of manslaughter. The accused had three times the chance of being acquitted after trial in Suffolk than he would have had in Middlesex, but in the latter county the district attorneys may have nol-prossed weak cases more freely than their opposite number in Suffolk.

Explanations may be offered for these startling differences. Suffolk contains a larger percentage of more recent immigration; its racial, religious, and ethnic proportions of population vary substantially from those in Middlesex; its residents, on the whole, are on a lower economic level; they are less suburbanite; there is a tradition of hanging prosecutors in Middlesex. The very nature of these explanations, however, indicates the complexity of the problem. If citizens of the same State, living in adjoining counties, operating under the same administration of justice, differ so drastically in their attitude toward the death penalty, how is it possible to generalize for an entire State or Nation?

DEATH PENALTY AND NUMBER OF TRIALS

Again, it is claimed that fewer trials are required in abolition States because obviously guilty defendants are more likely to plead guilty where they do not have to battle for their lives. There are, indeed, some instances where this appears to be the fact. On the other hand, there are those who claim that it is harder to secure pleas of guilty in abolition States because the prosecutor has less inducement to offer the guilty defendant. The answer necessarily depends upon the attitude of prosecutors in a death penalty State. If, for instance, the prosecutor insists on first degree with death as the penalty, the accused has nothing to lose by trial; if the prosecutor is willing to trade for a plea of guilty in the second degree, the defendant has much to gain by not risking a trial. How do we know, however, what prosecutors will do?

The application of armchair psychology to forecast the conduct of prosecutors—or any other public authority—is no easier than the Ellenborough method of predicting the reaction of criminals. For instance, as early as 1900, Hosea M. Knowlton, then attorney general of Massachusetts, recommended the commutation of the death sentence of a 17-year-old murderer whose crime was particularly vicious, on the ground that Massachusetts public sentiment would not tolerate the execution of so young a boy.

In 1942, after 40 years' development in the field of handling juvenile delinquency, another Massachusetts prosecutor insisted on the death penalty for a 17-year-old offender despite the suggestion of the judge that the case was a proper one for a plea of guilty to murder in the second degree. The boy's previous record had been good, and there was a conflict of medical testimony as to whether the cause of the victim's death was the wound or a heart ailment, since the victim lived for 7 weeks and his injuries had apparently healed. Nevertheless, the lad was allowed by the Governor to be electrocuted, with the assent of the parole board acting in an advisory capacity.

A few years later, in another case involving a 17-year-old boy, another Massachusetts judge took the initiative and accepted a plea of guilty to second degree on the ground that no Massachusetts Governor would ever allow so youthful an offender to be electrocuted.

A very conscientious district attorney will sometimes secure a conviction which the facts require, in the belief that the Governor will take care of mitigation. Such a case was *Commonwealth* v. *Desatnick*,[15] where the father of an illegitimate child, plagued by accusing parents and a religious sense of guilt, murdered the infant. Instead of commuting, however, the Governor sent for clerics of the defendant's faith and asked them whether illegitimacy was a more serious offense than murder. On the basis of the obvious answer, the young man was electrocuted. Within a short time, however, another Massachusetts district attorney, regarded by many as more hard boiled than the one who prosecuted Desatnick, nol-prossed the case of a mother who had abandoned her illegitimate child to die, on the ground that, although the crime would ordinarily be murder, "society needs no penalty for this, unfortunate as it is."

These instances are sufficient to indicate the futility of generalizing on insufficient data. Research alone, in a wide area and covering a period of years, could establish what prosecutors tend to do in the death penalty States by way of accepting pleas of guilty to second degree murder.

DEGREES OF MURDER

Degrees of murder present such a confusing problem that they create a further obstacle to predictability in the administration of criminal justice. In States where capital punishment has been abolished, the situation is not too serious. An intelligent parole board may ultimately adjust any gross errors in the jury's verdict or in the pleas. But where the penalty is death, a confused jury may eternalize its mistakes.

The principal variety of "first degree" murder is generally defined as including "malice aforethought," and involves "premeditation" and "deliberation." However, judicially defined "malice" does not necessarily involve malice against the victim in the ordinary dictionary sense. Moreover, the courts have explained "deliberation" and "premeditation" in such a way that these words also have lost their usual meaning. Under judicial definition, "premeditation" and "deliberation" can both occur within a few seconds of the killing itself. In the now rather celebrated case of *Fisher* v. *United States*,[16] a Negro of low-grade intelligence, suddenly feeling that he was insulted by his victim, struck her, and then killed her to stop her from hollering. The jury by its verdict found deliberation and premeditation, essential to first degree murder.

Mr. Justice Frankfurter, in his dissenting opinion in the U.S. Supreme Court, referred to the judge's charge on the subject as the "dark emptiness of legal jargon." According to Mr. Justice Frankfurter, the insult "pulled the trigger of Fisher's emotions." We shall never know how many defendants have been hanged or electrocuted for a deliberate and premeditated killing where some unexpected incident pulled the trigger of the accused's emotions.

"Is it possible," asked Sir Ernest Gowers of Mr. Justice Frankfurter at hearings held by the Royal Commission on Capital Punishment in 1950, "to express premeditation clearly and logically without mumbo-jumbo entering into it?" Mr. Justice Frankfurter thought that it was possible, but conceded that "the charges given by trial judges in the United States are often not very helpful." The Royal Commission appeared to think this observation to be an understatement.[17]

Another type of first degree murder is usually defined as a homicide occurring in the act of committing a serious felony. Here again the situation may be far from clear. If the jury believes that the accused, at the time of the killing, had given up all intention of committing the felony, and killed the victim because of fear for his own safety, the crime is not first degree murder. In a close case, how is the jury to read the defendant's mind in order to apply the instructions of the judge?

It would be unfair, however, to blame the judges for their inability to explain clearly the different degrees of murder. The fact that so many do not succeed suggests that the real blame rests with the rather fanciful distinctions between first degree and second degree murder. Mr. Justice Cardozo himself found it difficult, if not impossible, to draw a satisfactory line:

"I think the distinction is much too vague to be continued in our law. The statute is framed along the lines of a defective and unreal psychology. The present distinction is so obscure that no jury hearing it for the first time can fairly be expected to assimilate and understand it. I am not at all sure that I understand it myself after trying to apply it for many years and after diligent study of what has been written in the books. Upon the basis of this fine distinction with its mystifying psychology, scores of men have gone to their deaths." [18]

Degrees of murder were introduced into the law originally in order to give juries an opportunity to mitigate the harshness of the death penalty. No doubt in many cases they have accomplished their purpose. Some juries find second degree despite the facts and the judge's instructions; other juries, more conscientious than merciful, find first degree where warranted; still others muddle through the mystifying psychology to a bewildered finish. In conjunction with the death penalty, these degrees of murder have created a combination which tends to produce a most haphazard application of the criminal law in capital cases. Once the death penalty has been abolished, however, the criminal law may safely drop such metaphysical distinctions and relate the period of imprisonment to modern penology for the protection of society and the rehabilitation of the convicted.

MENTAL RESPONSIBILITY

Another cause for the haphazard application of the death penalty is the submission of the issue of mental responsibility to juries under legal definitions of insanity which are completely at variance with medical science. Most jurisdictions still apply the century-old rule in M'Naghten's case; namely, did the defendant know that his act was morally and legally wrong? The rule has been somewhat qualified by such exceptions as the irresistible impulse test, but on the whole, M'Naghten still dominates judicial charges and decisions.

Under this definition of insanity, the lowest grade morons and the most disturbed psychopaths are repeatedly convicted because they knew the difference between right and wrong. It has also provided astute defense counsel with a handy means of getting guilty clients off without any penalty whatever, through a verdict of not guilty by reason of insanity, and a subsequent speedy cure of a nonexistent mental disease.

In Massachusetts, under the Briggs law, the issue of insanity in capital cases is now usually decided before trial by the report of two impartial psychiatrists. In most States, however, the juries must continue to choose between contending alienists who are paid for their opinions by the side which calls them to the stand. Since there can be no reconciliation between the legal test for insanity and a conscientious psychiatrist's ideas about mental disease, the expert testimony

[15] 262 Mass. 408 (1928).

[16] 328 U.S. 463, 66 S. Ct. 1318, 90 L. Ed. 1382 (1946).

[17] See testimony of Mr. Justice Frankfurter before the Royal Commission on Capital Punishment, 1950, pp. 580–582.

[18] Benjamin N. Cardozo, "Law and Literature" (New York: Harcourt, Brace & Co., 1931), pp. 99–101.

from the witness stand is given under conditions which often confuse rather than assist a jury in reaching a verdict.

If imprisonment or confinement were the result in any event, then a finding of either sanity or insanity would provide opportunity for further study and possible treatment. Under the present system, a mistaken finding of guilty or not guilty where insanity is pleaded may result in irrevocable error. It is the presence of the death penalty that hinders a new approach to the entire question of mental responsibility.

DEATH PENALTY AND COST OF TRIAL

Whether there is actually a larger proportion of pleas of guilty without trial where capital punishment has been abolished is also largely unexplored territory. The trial of murder cases is an expensive process. The ordinary murder trial may cost the county thousands of dollars, and some of the more bitterly contested cases may run high up in five figures. In Massachusetts, the trial of the Millen brothers and Abraham Faber in 1934 for murder in the commission of robberies ran for nearly 8 weeks at very great cost to the county. These criminals and their lawyers knew that the government's case was overwhelmingly strong and that public feeling ran high against them. Slim as their chances were, however, they went to trial because no prosecutor in a mandatory death penalty State, on the facts of their outrageous crimes, would have accepted a plea of second degree. Under the same conditions in an abolition State, would the accused have pleaded guilty? [19]

California was put to a great expense in the trial of the sensational Hickman case involving the fiendish sex killing of a child. Would the defendant have pleaded guilty in an abolition State? Shortly after the Hickman trial, Michigan had a murder case almost exactly the same in its gruesome details, apparently induced by the lurid press treatment of the California crime. The accused, one Hoteling, promptly pleaded guilty, thereby sparing the State much expense and the public a recital of the macabre details.

The money spent on the trial of capital cases would pay the salaries of a substantial number of additional parole officers, badly needed in a constructive effort to reduce crime. It might repay any State to investigate the probability of saving the cost of these expensive murder trials through repeal of the death penalty.[20]

[19] Cf. Boston Globe, Oct. 14, 1930: "Battle Creek, Mich. (an abolition State). Only a little more than 12 hours following their capture after the killing of a State policeman and the robbery of a bank, Thomas Martin and James Gallagher were sentenced to life imprisonment in Jackson Prison." The Millen-Faber cases are notable for reasons other than great expense. At the time of the arrest of these criminals, two innocent men, Beret and Molway, were being tried for one of the murders committed by the Millen gang. The trial was nearing a conclusion, and eight reputable witnesses, with good opportunity to observe, had identified Beret and Molway as the robbers, when the real criminals were apprehended, bringing confessions and ballistic evidence to the rescue. No one familiar with the Beret-Molway trial has ever doubted that these men would have been convicted—and executed—but for this timely occurrence.

[20] Commenting on the execution of Irene Schroeder by the State of Pennsylvania in 1931, Dr. Harvey M. Watkins, of Reading, a social worker, is quoted in a bulletin issued by the American League To Abolish Capital Punishment as saying: "It cost the State of Pennsylvania $23,658 to prosecute, convict, and electrocute Irene Schroeder at the Western Penitentiary. If one-twentieth of this sum had been spent 10 years ago by any social workers on that 22-year-old girl, that electrocution would have been prevented."

[21] Boston Herald, June 7, 1933.

[22] Record published by Henry Holt & Co., 1928.

[23] Minutes of faculty meeting on capital punishment, Twentieth Century Club, Jan. 18, 1936.

Whether or not capital punishment increases the expense of administering justice by forcing to trial a greater number of murder cases, there can be no doubt that the cost of cases actually tried is greatly increased because of the reluctance of jurors to serve where they may feel compelled to decree death to the accused. This is a universally observed phenomenon. Where the cases are notorious, the delay in securing a jury may be fantastic. In the trial for the murder of "King" Solomon in Boston, only one of 90 veniremen failed to disqualify himself on the ground that he was opposed to capital punishment. After 160 had been interrogated, there still were not enough to make up a jury.[21] In the case of Sacco and Vanzetti, 4 days were consumed in impaneling a jury.[22] These instances may be extreme, but they underscore a fact which should properly be considered in any evaluation of the death penalty in the administration of justice.

DEATH PENALTY AND SENSATIONALISM

Expert observers also agree that the trial of murder cases where death may be the penalty tends to be more sensational than where imprisonment is the only punishment. The spectacle of a human being fighting for his life is stirring drama inside and outside of the courtroom. Frequently, in order to sway a jury toward the fatal verdict—and possibly to reassure his own conscience—a prosecutor will inflame the jurors against the accused by playing upon every prejudice and ghastly detail. It is generally recognized that some prosecutors, because of political ambition or simple vanity, are not above deliberately seeking the headlines.

Of course, noncapital cases may also tend toward sensationalism; but where this occurs, it is because of reasons other than the penalty involved. Generally speaking, the trial of cases where the penalty may be death is surcharged with an emotional tension not present in other prosecutions. Defense counsel, witnesses, judges, and even prosecutors have been visibly affected by the strain. This atmosphere, created by invoking the specter of death to destroy the life in the dock, is hardly a help to calm consideration of the evidence.

DEATH PENALTY DISTORTS ADMINISTRATION OF JUSTICE

Indeed, the one conclusion on which practically all criminologists agree is that the death penalty tends to distort the course of the criminal law. In the phrase of Prof. Sheldon Glueck, it "bedevils the administration of justice." [23] Data may indicate that in some instances it may result in acquittals or findings not merited by the accused; in others, in convictions and executions not justified by an unemotional consideration of the evidence. In either case, the normal is deflected. The penalty is erratically inflicted at different times in different places. It retards progress in the criminal law by maintaining concepts which should have little to do with the process of ascertaining guilt, innocence, or responsibility.

Just as the death penalty is a paradoxical block in a modern system of penology, so does the fear of its finalty hinder reform in the administration of criminal justice. Prof. Sam Bass Warner, then on the faculty of the Harvard Law School, declared to the Joint Judiciary Committee of the Massachusetts Legislature in 1935 that "the existence of the death penalty for first degree murder is one of the principal reasons, if not the main reason, why it is extremely difficult to get judges and legislators to remove procedural barnacles from our law."

It may be said that all human processes are imperfect, and that those of justice are no different; but the fact of human fallibility is not a good reason for increasing it. If to err is human, then it becomes all the more important to reduce the probability of errors—especially fatal ones. On the massive evidence now available dealing with the use and disuse of the death penalty, there would seem to be no sufficient compensating advantage in retaining it. Its disappearance could only improve the administration of justice.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oregon. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SMATHERS. I announce that the Senator from Colorado [Mr. CARROLL], the Senator from Idaho [Mr. CHURCH], the Senator from California [Mr. ENGLE], the Senator from Tennessee [Mr. GORE], the Senator from Minnesota [Mr. HUMPHREY], the Senator from Minnesota [Mr. MCCARTHY], the Senator from Montana [Mr. METCALF], the Senator from Oklahoma [Mr. MONRONEY], and the Senator from New Jersey [Mr. WILLIAMS] are absent on official business.

I further announce that, if present and voting, the Senator from Minnesota [Mr. MCCARTHY] would vote "aye."

On this vote, the Senator from Colorado [Mr. CARROLL] is paired with the Senator from Minnesota [Mr. HUMPHREY]. If present and voting, the Senator from Colorado would vote "no," and the Senator from Minnesota would vote "aye."

Mr. DIRKSEN. I announce that the Senator from Maryland [Mr. BUTLER] and the Senator from California [Mr. KUCHEL] are necessarily absent.

The Senator from South Dakota [Mr. CASE], the Senator from New Jersey [Mr. CASE], and the Senator from Hawaii [Mr. FONG] are absent on official business.

The Senator from Iowa [Mr. MILLER] is absent because of death in his family.

If present and voting, the Senator from Maryland [Mr. BUTLER], the Senator from South Dakota [Mr. CASE], the Senator from California [Mr. KUCHEL], and the Senator from Iowa [Mr. MILLER] would each vote "nay."

The result was announced—yeas 16, nays 69, as follows:

[No. 26 Leg.]

YEAS—16

Burdick	Kefauver	Moss
Chavez	Lausche	Muskie
Clark	Long, Hawaii	Neuberger
Douglas	Mansfield	Young, Ohio
Gruening	McGee	
Hart	McNamara	

NAYS—69

Aiken	Cannon	Ervin
Allott	Capehart	Fulbright
Anderson	Carlson	Goldwater
Bartlett	Cooper	Hartke
Beall	Cotton	Hayden
Bennett	Curtis	Hickenlooper
Bible	Dirksen	Hickey
Boggs	Dodd	Hill
Bush	Dworshak	Holland
Byrd, Va.	Eastland	Hruska
Byrd, W. Va.	Ellender	Jackson

Javits	Murphy	Smith, Mass.
Johnston	Pastore	Smith, Maine
Jordan	Pearson	Sparkman
Keating	Pell	Stennis
Kerr	Prouty	Symington
Long, Mo.	Proxmire	Talmadge
Long, La.	Randolph	Thurmond
Magnuson	Robertson	Tower
McClellan	Russell	Wiley
Morse	Saltonstall	Williams, Del.
Morton	Scott	Yarborough
Mundt	Smathers	Young, N. Dak.

NOT VOTING—15

Butler	Engle	McCarthy
Carroll	Fong	Metcalf
Case, N.J.	Gore	Miller
Case, S. Dak.	Humphrey	Monroney
Church	Kuchel	Williams, N.J.

So Mr. MORSE's amendment was rejected.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. HARTKE. Mr. President, at this point let me say that the purpose of the pending bill is to abolish mandatory capital punishment in the District of Columbia. The bill does not do away with capital punishment absolutely, but rather amends the existing automatic and inflexible principle of law that requires death by electrocution in all first degree murder convictions.

The District of Columbia is the last remaining jurisdiction, State or Federal, which still retains the mandatory death penalty for first degree murder cases. The passage of this bill will bring the District law into conformity with most States and Federal law by making the death penalty discretionary.

Generally stated, this bill provides that punishment for murder in the first degree shall be death by electrocution, unless the jury by unanimous vote recommends life imprisonment. If the jury is unable to agree as to punishment, it shall inform the court and the court shall, thereupon, have jurisdiction to impose either a sentence of death by electrocution or life imprisonment. The bill also provides that one who is convicted of first degree murder and sentenced to life imprisonment shall not be eligible for parole until such time as he has served 20 years of his sentence.

This legislation is also made applicable in a limited sense to those interim cases tried prior to the effective date of the bill, and which are before the court for purposes of sentence or resentence.

In this connection, the judge may in his sole discretion consider circumstances in mitigation and in aggravation of punishment and make a determination as to whether the case in his opinion justifies a sentence of life imprisonment in which event he shall sentence the defendant to life imprisonment. Such sentence shall be in accordance with the provisions of this bill.

Your committee, in support of this legislation, received testimony from numerous individuals and organizations closely alined with law enforcement activities in the District of Columbia. The Judicial Conference of the District of Columbia adopted a resolution on May 11, 1961, urging enactment of legislation to abolish mandatory capital punishment. The Department of Justice has urged—in a communication to the committee—enactment of this bill. In fact, Deputy Attorney General Byron R. White referred to the present mandatory capital punishment feature as "archaic" and something which "has effectively discouraged convictions of first degree murder in the District of Columbia in view of the reluctance of judges and juries to impose the death penalty."

Mr. President, supporters of this bill are all in essential agreement that its enactment will not impair effective law enforcement even though mandatory punishment would be abolished. Actually, they have expressed themselves as believing that the passage of this bill will prove a great benefit to more effective law enforcement.

Statistics provided to the committee which support the position that the present mandatory capital punishment law has been a deterrent to effective law enforcement, show that over a 10-year period, a total of 276 persons were indicted for first degree murder under the present law. Of this total, 121 were either acquitted or obtained a directed verdict of the court. Of the remaining 155 defendants, 127 were convicted of a lesser offense and sentenced to life imprisonment; while only 28 were sentenced to death. Of these 28, 7 had their sentences commuted; 7 had their cases reversed under appeal; 4 were transferred to St. Elizabeths Hospital; and 10 were actually executed.

Mr. President, it is hoped that the Senate will act favorably on this bill and thereby end the District of Columbia's role as being the only jurisdiction, State or Federal, with mandatory capital punishment. The committee believes that enactment of this bill will prove beneficial to more effective law enforcement in the District of Columbia.

In instances where the murder occurs with an act of spontaneity, this may be largely true, but this is not necessarily the case in all murders. The District of Columbia—like other jurisdictions—has the felony murder statute which provides that a person armed with a dangerous weapon and who kills another in attempting to perpetrate or in perpetrating a robbery, housebreaking, and other enumerated crimes, is guilty of first degree murder. Indeed, we would be deluded in our thinking if we believed that persons who engage in carefully planned criminal offenses do not also weigh the penalty that attaches to the criminal offense.

We must bear in mind that an armed housebreaker and robber is a potential murderer. If fear and fear alone of capital punishment can in any way be a deterrent to a person arming himself while engaged in the commission of a crime against the person or the home, then the death penalty has served its purpose well.

It is the view of your committee that H.R. 5143 is a direct and progressive step in providing better and more effective law enforcement in the District of Columbia. I strongly urge its passage.

Mr. BEALL. Mr. President, the bill which we are considering today offers the Senate an opportunity to remove a harsh and archaic provision from the criminal law of the District of Columbia. This provision requires the automatic execution of every person convicted of murder in the first degree. The change of law which will be made by H.R. 5143 is long overdue and will conform the law of the District of Columbia more closely to that of every other jurisdiction in the United States—both State and Federal. The bill does not abolish the death penalty but gives the jury discretion to require life imprisonment or execution.

The automatic imposition of the death penalty operates to frustrate justice. It encourages juries and judges to return improper verdicts where the facts require a first degree murder conviction but mitigate against the death penalty.

It has been said that "hard cases make bad law." I am told by my lawyer friends in the District of Columbia that "hard cases" resulting from the arbitrary imposition of the death penalty required under the District of Columbia's first degree murder statute have produced an abundance of bad appellate law.

Law without reason is tyrannous; without mercy, it is barbarous. The mandatory imposition of a death penalty without regard to mitigating circumstances, is bereft of both reason and mercy.

In summary, the mandatory death penalty statute is obsolete, self-defeating, and a source of bad factual decisions and legal cavilling in the courts. This bill will correct the situation.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. HARTKE. Mr. President, I submit and send to the desk an amendment which I ask to have stated.

The PRESIDING OFFICER. The amendment will be read.

The legislative clerk proceeded to read the amendment.

Mr. HARTKE. Mr. President, I ask unanimous consent that the further reading of the amendment be dispensed with. It is a technical amendment which in no way changes the meaning of the bill.

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

The question is on agreeing to the amendment submitted by the Senator from Indiana.

The amendment was agreed to, as follows:

On page 3, line 1, after the word "may", to insert "by unanimous vote".

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 was read the third time.

Mr. HARTKE. Mr. President, I yield back the remainder of the time under my control.

Mr. MORSE. Mr. President, I yield back the remainder of the time under my control.

The PRESIDING OFFICER. All remaining time has been yielded back.

The question is, Shall the bill pass?

The bill (H.R. 5143) was passed.

Mr. HARTKE. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. ALLOTT. Mr. President, I move that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, announced that the House had disagreed to the amendment of the Senate to the amendment of the House to the bill (S. 1969) to amend the Federal Aviation Act of 1958, as amended, to provide for supplemental air carriers, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. HARRIS, Mr. WILLIAMS, Mr. STAGGERS, Mr. FRIEDEL, Mr. BENNETT of Michigan, Mr. SPRINGER, and Mr. COLLIER were appointed managers on the part of the House at the conference.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 1991) relating to manpower requirements, resources, development, and utilization, and for other purposes, and it was signed by the Vice President.

TAX ABATEMENT IN CONNECTION WITH THE ATLANTIC COAST DISASTER

Mr. WILLIAMS of Delaware. Mr. President——

Mr. MANSFIELD. Mr. President, I yield briefly to the Senator from Delaware.

Mr. WILLIAMS of Delaware. Mr. President, last week a severe storm struck the Atlantic seaboard and caused considerable damage to both life and property.

Upon the request of the Governors of the respective States, these areas have been declared disaster areas, and will thereby be eligible for Federal aid in reconstruction.

All of this aid will be of great assistance, but there is one problem which such assistance will not solve; namely, the tax liability of some of the persons so adversely affected who have lost their entire life savings through the destruction of their homes, their places of business, or the livestock on their farms.

Hundreds of thousands of chickens were lost in these flooded area.

This disaster has occurred at a time of the year after their 1961 Federal tax liability has been established but before it has been paid. In many instances these persons are now destitute, with no means of paying their taxes, which become due April 15.

Under the disaster-relief program they are eligible to borrow money from the Small Business Administration on 20-year-term loans, at 3 percent interest, to reconstruct the places of business which have been destroyed, or they can borrow the money with which to purchase equipment for their places of business. But, very properly, they cannot borrow from the Federal Government money with which to pay last year's taxes.

These persons are good citizens and good taxpayers, and they have been paying their taxes on time; but they are now caught in a very unfortunate position in that their homes, their furniture, their clothing, and their livestock or their places of business have been destroyed, and they need what little capital they have in order to commence rebuilding.

Let me cite one case: A lady who came to my place over the weekend had her tax return already prepared, and she owed $47 and some cents tax this year. She said she and her husband had a bank account of $400 or $500, but that the storm has destroyed the entire front of their home, much of their clothing, and most of their furniture, and they need what money they have in order to provide for the immediate needs of their family.

We have had disasters before, but the previous disasters mostly occurred in the latter part of the year, so that the same problem in regard to tax payments did not develop. For instance, the disaster last year in Texas occurred in late September or October, and the disaster which occurred a few years ago in New England occurred in the latter part of August or the first part of September. But in this case the storm came at a time when they owe last year's taxes, since they are not due until April 15. Now, with their possessions completely wiped out they are in trouble.

The Senator from Virginia [Mr. ROBERTSON] is well aware of this situation, particularly in the case of Chincoteague Island.

Even though they may have some resources they could still use this tax credit now and thereby have their money a year earlier to help them in their reconstruction.

Mr. ROBERTSON. Mr. President, will the Senator from Delaware yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. ROBERTSON. Mr. President, I warmly commend the Senator from Delaware for this proposal. The disaster situation at Chincoteague Island, on the Eastern Shore of Virginia, is the worst in the history of that part of the country; probably there has not been any disaster as bad as this one in that area since the massacre of the Virginia settlers by the Indians in the year 1622.

Many of the persons affected by this disaster have lost their entire means of livelihood. On the chicken farms, many of the chickens have been drowned, and many of the chicken houses and brooders have been destroyed. In fact, in entire communities, almost all the places of business have been destroyed. Oyster boats have been washed away, and great quantities of sand have been washed up, and have covered the oyster beds. The situation is most distressing.

Many of the persons thus most seriously affected will be liable, next month, for the payment of the taxes now due. As the Senator has said, if we can act promptly, it will not cost the Government a red cent, because these disasters can be written off once we have them considered, but they cannot be written off for the calendar year 1961. They will have to be written off for the next year.

I hope very much Congress will take very prompt action in providing this relief, because, as the Senator has said, we cannot borrow from any Federal agency moneys with which to pay Federal taxes. This is a relief proposal. At least, we can leave some of the money in the pockets of those who have suffered.

Mr. WILLIAMS of Delaware. I thank the Senator from Virginia. The Senator has emphasized a very important point—these losses as a result of the disaster are allowed as a deduction from the taxable income but under the present law that credit cannot be taken until the returns are filed for the year 1962. Next month many persons will be filing their 1961 tax returns, and they do not have the money with which to pay the tax. Many of these citizens will have to become tax delinquents when, in reality, they are entitled to this deduction next year anyway. All we are asking is that they be allowed to estimate their losses and to take the deduction when computing their 1961 liabilities. Final adjustments can be made on their 1962 returns.

I have discussed the matter with officials in the Treasury Department. They are very receptive to the proposal. They appreciate the problem and expressed a desire to help find a solution. They are going to see if the problem can be worked out administratively but if it cannot legislation will be introduced. Should legislation be necessary I hope that by tomorrow we shall be ready for the introduction of either a joint resolution or whatever may be necessary so that action can be taken quickly. We want to avoid the situation where, through no fault of their own, these people, who have always been good taxpayers, will become tax delinquents when, in reality, they are going to get this same tax credit next year anyway.

Under this proposal we would allow these taxpayers a choice of electing to charge their losses against their 1961 tax liabilities or they could wait and take the loss next year.

If this proposal is approved, those taxpayers who have paid their taxes already could file amended returns and get their refunds now when they need the money most.

Mr. HOLLAND, Mr. MANSFIELD, and Mr. BEALL addressed the Chair.

Mr. WILLIAMS of Delaware. I yield to the Senator from Maryland and then I will yield to the Senator from Florida.

Mr. MANSFIELD. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Montana has the floor.

Mr. WILLIAMS of Delaware. May I yield to the Senator from Maryland [Mr. BEALL]?

Mr. MANSFIELD. Provided I do not lose my right to the floor.

Mr. WILLIAMS of Delaware. With that understanding, I yield to the Senator from Maryland.

Mr. BEALL. I want to commend the Senator for his foresight in bringing this matter to the attention of the Senate. As I understand it, this is a matter of bookkeeping only. This is a proposal to allow these people cash refunds now so that they can rehabilitate themselves, rather than wait until 1963, when they would ordinarily get the money.

Mr. WILLIAMS of Delaware. That is correct.

Mr. BEALL. I think we should enable them to get their money now, so they can go back into business by using their own money and assets.

Mr. WILLIAMS of Delaware. That is right. They need the money now to rehabilitate their homes and their businesses and to provide for their families.

Mr. BEALL. And they need that money now.

Mr. WILLIAMS of Delaware. They need it now. Many of these people have lost their homes and furniture. The Senator from Virginia [Mr. ROBERTSON] has referred to Chincoteague, which has suffered even worse than many areas of my State and where they lost all of their livestock. Their livelihood is gone.

Mr. BEALL. The whole situation is very critical up and down the coast. We in Maryland have suffered greatly, and we know how it is. We are very thankful to the Senator from Delaware for bringing up the matter at this time.

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

Mr. WILLIAMS of Delaware. I yield to the Senator from Florida.

Mr. HOLLAND. Am I to understand that this applies equally to all the States along the eastern seaboard, from Florida to New England?

Mr. WILLIAMS of Delaware. Yes. According to our talks with the Secretary, it would apply to any area which is declared a disaster area by the President.

Mr. HOLLAND. May I say to the distinguished Senator from Delaware that I am glad he is offering this measure of relief. It would be inconceivable to me that a homeowner and the head of a family, under the conditions which exist, would not be able to use the money to take care of his home and family, but I think we should regularize and legalize it, at a time when it is necessary to do something.

My own State has at some times in the past suffered from great disasters, and I know something of the feeling of despair and yet of the willingness to go back and tackle things and rebuild under such situations. I think it will be cheering news and human news to many of these people affected to see such a measure passed.

May I say, with respect to the comments made by the Senator from Virginia [Mr. ROBERTSON], I think the most appalling factor in all the press treatment of the disaster was the fact that in Chincoteague, where everything was covered by water, matters were so distressing that even coffins were disinterred from the cemeteries and were floating in the streets. One cannot imagine any more terrible disaster falling to the people.

I think it will bring cheer and be a source of encouragement to the people affected to know that the Congress is willing to give this little help to them.

Mr. WILLIAMS of Delaware. I thank the Senator. I think it will do the people good to know that the Federal Government as the tax collector is not so hard boiled that it cannot show some sympathy for them in their hour of need.

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

Mr. WILLIAMS of Delaware. I yield to the Senator from Utah.

Mr. BENNETT. As a member of the Finance Committee, and as a colleague of the Senator from Delaware, I had a chance to talk with him about the matter yesterday, and suggested that perhaps one way by which this problem could be approached under these particular circumstances would be to permit a taxpayer to make a combined return for 2 years, instead of for 1, because the actual loss occurs in the period between the time the taxable year ends and the time the return is due. Under the present situation, there is no way a taxpayer can put the loss back into the year on which he is about to pay taxes.

Many of these people find themselves without the money with which to pay their current taxes, because of the damage to their homes. It would seem to me that, either administratively or by a change in the law, we might provide that in the period occurring between January 1 and April 15 the taxpayer would be permitted to make a preliminary tax return which would hold him over until he could make a return based on the 2 years, so he could take advantage of the loss without having been put in the position where he is actually to pay out money for the first year when he has no money, and then wait another year before the money comes back to him.

This is possibly only one approach, and I hope the Senator from Delaware and others who will be working on the problem, and perhaps officials of the Treasury who may be approaching it from the administrative solution, will consider this unusual situation, will permit the taxpayer to make a preliminary return and delay the final settlement until the second year.

Mr. WILLIAMS of Delaware. I thank the Senator. He and I have possible methods of solving this problem. This was one of the proposals that has been advanced to the Treasury Department. The Treasury Department and our staff are working on this and other proposals trying to determine just how this problem can best be solved. There seems to be a will to do something, and if the will is there, then a formula by which the objective can be achieved shall be found.

I think we would be negligent in our responsibilities as members of the committee and of the Congress if we did not make this effort. I certainly thank the Senator from Utah for the constructive suggestions he has made, and with his support and the support of other interested parties we will get a solution.

After all, all that we are trying to do is to make it possible for these people to have the use of what in effect is their own money to rebuild their destroyed properties.

I shall appreciate the Senator's continued assistance in the committee toward working out some final solution to help these people.

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

Mr. WILLIAMS of Delaware. I yield to the Senator from Connecticut.

Mr. BUSH. Mr. President, I thank the senior Senator from Delaware. First I wish to say that I have always regarded the Senator to be the Republican guardian of the Treasury. Therefore, I am disposed to support almost anything the Senator suggests in regard to the Treasury and taxes which may be collected by it or withheld from it.

In this particular case I could not be more sympathetic than I am with the Senator's position. In 1954 and again in 1955 my own State endured the most serious hurricane damage in the whole history of New England. I viewed with horror and with the deepest sympathy the events of the past week in the State of Delaware, in the State of Maryland——

Mr. WILLIAMS of Delaware. And the State of New Jersey and others.

Mr. BUSH. And the State of New Jersey and other States along the eastern coast. Those States have been severely hit. The damage which has been done is almost unbelievable.

I know from first-hand experience of the hardship this kind of disaster can wreak upon the lives of individuals, and I certainly commend the Senator from Delaware for his thoughtfulness in bringing up this small measure of relief for them, so that they may avoid being forced into default on their taxes and may get the credit the Senator will ask for them by law. I assure the Senator of my wholehearted support of the measure, if he can get it before the Senate.

Mr. WILLIAMS of Delaware. I thank the Senator from Connecticut.

I wish to point out that in discussing this proposal with the Treasury Department and with other committee members it was agreed that a man whose property was destroyed but who has an independent income on the side does not need this relief so much. It may be somewhat inconvenient for him to pay his tax this year, but he can claim the loss next year because he knows he will have an income against which to charge the loss. However, many of these people will not earn any money this year because they have lost their means of livelihood. It will take the full year for them to get their property reconstructed and back into operation. Therefore, there may be no 1962 tax liability. It is true that they would get the refund next year without this legislation, but they need the money now more than

they will next April. This would only give the money to them a year in advance, and they really need it at this time.

Under any national disaster relief program millions of dollars of public funds are spent to help the areas in their reconstruction problems. What I am proposing here is a formula whereby those people suffering losses in these disaster areas can use their own money to reconstruct their properties.

It should be emphasized again that we are not proposing any deductions or tax credits other than those provided under existing law. All that we are trying to do is to allow these unfortunate property owners to get these tax credits now instead of waiting until next year.

It has been said that a friend in need is a friend indeed, and never have these people needed a friend more than they do now.

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

Mr. WILLIAMS of Delaware. I yield to the Senator from New York.

Mr. JAVITS. I wish to compliment my colleague, who comes up with some very interesting ideas and some very useful ideas very frequently, for this suggestion.

We of New York have suffered enormous damage along the coast of Long Island, which I had the opportunity to survey from an Army helicopter on Saturday. The Governor computes the damage to be in excess of $20 million, and a great deal of it has been suffered by people of very modest means, with very modest homes located on the beach.

I think the Senator has put his finger on something which could be very useful and very helpful to many people, which would cost the United States practically nothing. It shows that by using one's head one can often come up with the most important ingredient in doing the right thing.

I am delighted the Senator has made his suggestion. I hope he pursues it. If such cannot be done by executive action, it may be done by legislative action. I shall be honored to join with the Senator in that effort.

Mr. WILLIAMS of Delaware. I thank the Senator from New York. I know that not only the lower part of New York but also our neighboring State of New Jersey suffered great damage.

I discussed this tax problem yesterday with our colleague from New Jersey [Mr. CASE]. He is today attending a conference with the Governor of New Jersey in Atlantic City surveying the disaster in his State. Senator CASE assured me that he was wholeheartedly in support of this idea. Property owners in New Jersey have likewise suffered heavy damage, and they are confronted with a similar problem.

Mr. JAVITS. I thank the Senator from Delaware.

Mr. WILLIAMS of Delaware. Mr. President, the senior Senator from New Jersey [Mr. CASE] is in his State today inspecting the devastation caused by the recent storm and conferring with the Governor and State officials.

I ask unanimous consent that a statement prepared by the Senator from New Jersey be printed at this point in the RECORD.

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

STATEMENT BY SENATOR CASE, REPUBLICAN, OF NEW JERSEY

The storm that wreaked such havoc on the Atlantic coast last week hit New Jersey particularly hard. In terms of dollars, damage was perhaps the greatest of all. It is currently estimated at about $80 million.

While dollars cannot, of course, measure the tragedy suffered by so many individuals, it is some indication of the extent of loss.

Many of those whose homes, whose livelihoods, were swept away now find themselves in a most difficult financial plight. It is aggravated, as Senator WILLIAMS of Delaware has pointed out, by the fact that the disaster struck at this particular time of the year. Like the rest of us, the victims find themselves approaching the deadline for payment of taxes due for calendar 1961 at the very moment when what resources, if any, they may have are urgently needed for the necessities of life, for restoring their homes and property, for rebuilding their businesses. Yet, since the disaster occurred in 1962, they cannot claim any losses due to the disaster in the returns due this April but must wait until they make their returns for calendar 1962, in April 1963.

I want to associate myself with the senior Senator from Delaware and Senators from other affected States in an effort to work out a fair and reasonable method of adjusting the situation, a method which will not deprive the Government of taxes to which it is entitled but which will take cognizance of the particularly difficult straits in which so many find themselves through no fault of their own. For example, it has been suggested that perhaps the returns for 1961 and 1962 can be combined.

I am delighted to learn that members of the Senate Finance Committee are actively concerned with the problem, and I want to work with them in any way that I can to arrive at a solution.

Mr. BOGGS. Mr. President, will my colleague yield?

Mr. WILLIAMS of Delaware. I now yield to my colleague.

Mr. BOGGS. Mr. President, I wish to join with my distinguished colleagues in supporting this proposal and in expressing the hope that executive action may be possible, because I think that would be much quicker, and time is an element.

However, if executive action is not possible I shall be happy to join with the senior Senator from Delaware and with my other colleagues in this body in favorable and immediate emergency action on the proposed legislation.

I wish to point out one thing in addition to the thoughts which have been expressed. The people it has been my opportunity to observe in the disaster area are to be complimented for immediately going about rehabilitation and recovery and cleanup. I think their spirit is an amazing spirit, and is typical of our great country.

This type of relief, at this time, not only would help those people and their families, but would also enable a more speedy rehabilitation and cleanup, and would provide employment for many people who would be needed in the area for the cleanup and reconstruction effort.

As has been pointed out by others, many of these families involved in the loss are families which have their life's savings in the facilities in the disaster area. The relief is something which is not only urgently needed for them but also will be of immediate encouragement to the economy of the whole area in the rehabilitation effort.

I certainly compliment my colleague, whom I hold in the highest of esteem as an expert in tax and financial matters, for bringing this subject to the attention of the executive department and of the Senate.

Mr. WILLIAMS of Delaware. I thank my colleague for his support. I live in this area and during the latter part of last week toured the disaster area with my colleague. We have seen the devastation. It is hard to realize the extent to which these people have been left without homes.

I happen to be one of the fortunate property owners in the area who escaped damage entirely. This proposal means nothing so far as I am concerned and means nothing so far as many others in the area are concerned, but there are many less fortunate people in the area for whom it may well mean the difference between their ability to recover or fail. Many of those people had everything they owned tied up in their homes or farms or business properties which were destroyed. Surely this is the very least we can do for them.

As I have emphasized, under the existing law these losses are deductible anyway. These people can claim the tax deductions and can get them next year. We are merely trying to work out a formula to give the people the tax credit now so that they may rebuild their homes and restock their stores.

I thank my colleague for his contribution.

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

Mr. WILLIAMS of Delaware. I yield to the Senator from Kansas.

Mr. CARLSON. I sincerely hope that either through administrative action on the part of the executive branch of the Government or through legislative action we can do something in this field with regard to taxes and deductions from taxes for losses which, of course, would be deductible in 1963, even though not deductible this year, for the group of people who are in dire straits.

In 1951 in Kansas City, in Topeka, and areas in between, we suffered one of the most disastrous floods in the Nation's history. It cost millions of dollars in damages. Thousands of people lost their homes and everything else they had. Those people needed help. They secured some help.

I can appreciate the difficulties of and can sympathize with the people in the coastal areas. I sincerely hope that we as a Congress and as a government can at least be charitable at a time when people need it the most.

This problem would be taken care of next year. Why not do it now? I hope it can be done.

Mr. WILLIAMS of Delaware. I thank the Senator, both as a member of the

Finance Committee and as a Member of the Senate, for his support.

I wish to keep reemphasizing that if we do not do something many of these people will be confronted with the almost unresolvable choice of taking care of their families or of paying their taxes. It would be most unfair to put these people, who are good citizens and who have always prided themselves on paying their taxes, in such an unfortunate predicament.

There was one other particular case called to my attention. This was a small businessman who owns property on the boardwalk. This property was valued before the storm at about $35,000. The man owes taxes on earnings for last year of nearly $4,000. He had a $10,000 mortgage. He had arranged with the bank for a line of credit up to $8,000. He had used all of his ready cash from last year's earnings to remodel his property, and to reequip his business place. He was getting ready for the coming summer season, and he planned to use the line of credit to finish paying the balance on his 1961 taxes.

All that he now has is a lot that is partly covered with water. All of his property and equipment were destroyed. He can borrow money from the Small Business Administration to rebuild property and to install new equipment, and start back in business. But unless we do something, when he does go back into business the Federal Government will move in and say, "You are delinquent on last year's taxes." He owes them about $1,400 more on last year's $4,000 tax obligation. His line of credit at the bank has been withdrawn now that his collateral has been destroyed. This man needs that money now more than he will ever need it at any other time in his life.

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

Mr. WILLIAMS of Delaware. I yield to the distinguished Senator from Nebraska.

Mr. CURTIS. Is it not true that under existing law a loss of the kind stated can be carried as a loss in an individual tax return exclusive of that portion of the loss that the taxpayer recovers in insurance?

Mr. WILLIAMS of Delaware. The Senator is correct.

Mr. CURTIS. Many losses exceed what is received in insurance.

Mr. WILLIAMS of Delaware. Yes, but unfortunately on the particular type of loss about which we are speaking, insurance is not obtainable. This is not a case of the people not trying to buy insurance. There is no insurance that a man can buy against the destruction of his property by tide or flood. Therefore there are people who are fully insured against most all other damages but who now are confronted with a loss which was not insurable. Therefore in most cases no insurance will be collected. But to the extent that their loss was insured and they have collected, certainly their allowable loss would be only on that portion which was not covered by insurance.

Mr. CURTIS. Is it not very true that even if some of the losses are attributed to wind damage, which is an insurable loss, that due to existing circumstances, including inflation costs and values, many of those affected by the storms are underinsured?

Mr. WILLIAMS of Delaware. The Senator is correct.

Mr. CURTIS. The proposal would be confined to moving up the time in which taxpayers in areas that are declared disaster areas could recover their taxes for such losses.

Mr. WILLIAMS of Delaware. Yes. There would be that limitation.

Mr. CURTIS. In other words, the proposal would now give such taxpayers what the law would give them anyway, except that they would not have to wait a year.

Mr. WILLIAMS of Delaware. The Senator accurately stated the case.

Mr. CURTIS. The proposal would not mean a great deal to those who are financially well fixed and are not short of capital, because they would carry on anyway. The people who would benefit the most by the proposal are individuals in modest circumstances. Is that not true?

Mr. WILLIAMS of Delaware. The Senator is correct. Those are the ones who are vitally affected by what we do here.

Mr. CURTIS. Considering present tax rates and the fact that the income of the affected people consists mostly of what they earn, we know they would be required to pay hundreds of dollars in taxes.

I wish to commend the distinguished Senator from Delaware for suggesting the procedure that he has stated. I am sure that if present laws do not permit the Treasury to put the proposal into effect without legislation, Congress will respond and enact the necessary legislation promptly. That would be my hope.

I should like to express the further hope that the House of Representatives, in which tax bills originate, might immediately send a bill on this subject to the Senate, if it is not possible to attach a similar measure to a bill that is now before the Senate, because time is of the essence. The longer property is allowed to deteriorate without rebuilding, the greater the loss becomes. Is that not correct?

Mr. WILLIAMS of Delaware. That is right. I understand that by Executive order the filing date for some of the affected taxpayers can be deferred, though not indefinitely. The Senator will remember a few years ago such action was taken in connection with insurance companies when Congress was late in passing a law containing the formula under which insurance companies would pay their taxes. If I remember correctly we deferred their filing dates.

Mr. CURTIS. Such action would not help the individual who has already paid his taxes or paid them through withholding measures.

Mr. WILLIAMS of Delaware. In cases where the taxpayer suffering property loss in this disaster area has already filed his return he could if this formula is approved file an amended return and collect his refund now instead of waiting until next year.

Officials of the Department with whom I have talked were very sympathetic with the problem and expressed an earnest desire to help work out a solution. If legislation is necessary it can be enacted. I am confident that our committee and the Congress can and will act quickly on such a measure. This catastrophe requires prompt action.

They can under the present law file their returns next year, and claim carryback losses for a period up to 2 years. Under my proposal we would merely give those affected an opportunity to claim this loss as a tax deduction 1 year earlier.

The reason that such action is necessary is that the storm struck at such an early date in the year; the damage occurred after the tax liability for last year had been established but before it had been paid. If the damage had occurred in October or November the taxes for the previous year would have been paid. Their accumulated earnings for that year would have been available and they could claim these losses within a couple of months.

Since the damage occurred in early March, rather than making the taxpayers wait until April of next year—13 months—let us give them the benefit of the loss now.

Mr. CURTIS. The proposal appears to be a very sound procedure. It would not be a gift to the people affected. It is not a matter of charity but one of fairness. After all, it is the income, property and loss of those people, and under existing law we would merely give to them what they are entitled to.

Mr. WILLIAMS of Delaware. We would merely give them what they are entitled to anyway but give them a right to claim the loss 1 year earlier, and at a time when they need the money more than they have ever needed it before.

If there is nothing further on this subject, I wish to thank the majority leader for his indulgence in yielding to me at this time so that I could call to the attention of the Senate this very important problem.

Mr. MANSFIELD. Mr. President, the distinguished senior Senator from Delaware has spoken in a very worthy cause which I hope will receive the full support of both the House and the Senate.

RETIREMENT OF RICHARD E. McARDLE, CHIEF OF U.S. FOREST SERVICE

Mr. AIKEN. Mr. President, at the end of this week, the U.S. Forest Service will lose its present Chief and take on a new one. Richard E. McArdle, Chief for the past 10 years will turn over the reins to Edward P. Cliff and will retire from the Department of Agriculture after 39 years of service.

Those of us fortunate enough to have worked closely with Mac McArdle know him to be a leader of outstanding ability and an effective administrator of our forest lands. Great strides and accomplishments have been made during his tenure of office.

A Department of Agriculture release outlines Mac's many accomplishments,

and I ask that it be inserted at the conclusion of my remarks, together with a letter from the Secretary of Agriculture which accompanied the release.

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

(See exhibit 1.)

Mr. AIKEN. Mr. President, I wish to commend Secretary Freeman on the good judgment he has shown choosing a new Chief of the Forest Service.

Chief McArdle has worked quietly and without fanfare. His relations with the users of the national forest and with communities, States and other agencies of Government have been of the highest character. The good he has done for the Nation is evidenced in our forests across the land. We have never had a more dedicated public servant.

Mac will be missed by his many friends, we are sorry to have him leave, but we extend to his successor Ed Cliff the same good wishes and assurances of cooperation that his predecessor has enjoyed.

EXHIBIT 1

U.S. DEPARTMENT OF AGRICULTURE,
Washington, March 8, 1962.

Secretary of Agriculture Orville L. Freeman today announced the voluntary retirement of Richard E. McArdle as Chief of the Department's Forest Service, and the appointment of Edward P. Cliff, former Assistant Chief in Charge of National Forest Resource Management, as the new Chief Forester, effective March 17.

In announcing Dr. McArdle's request for retirement, Secretary Freeman expressed genuine regret and went on to say "Your reputation for leadership and foresight has been more than borne out by your dedication. On behalf of the President and the Department I commend you for long and outstanding service to causes close to the heart of the American people. (Text of Secretary Freeman's letter is at end of this release.)

Mr. McArdle, who is 63, rounds out 10 years as Chief Forester while completing a lifetime career of 39 years in Federal service. During this time, he has served with distinction in every major geographic region in the country and his work assignments have covered the three major areas of Forest Service responsibility: Management of the national forests, forest research, and State and private relations. He served for 8 years as Assistant Chief of the Forest Service.

A native of Lexington, Ky., retiring Chief McArdle was educated at the University of Michigan, where he earned bachelor, master, and Ph. D. degrees.

During his tenure as Chief of the Forest Service, outstanding progress was made in the management of the national forests, forest research, and in encouraging better management and protection of State and private forest lands. The development program for the national forests, sent to the Congress by President Kennedy last year, set forth a well planned and coordinated program to meet the rapidly expanding needs for more and better recreation and wildlife opportunities, timber production, watershed management, and grazing on the 186-million-acre national forest system. Another natural resource milestone, the Timber Resource Review, released in 1955, was the most comprehensive study of the Nation's forest resources ever made.

In the field of international forestry Dr. McArdle gained distinction by ably representing the United States in world conferences and proceedings. He has held posts in United Nations organizations and was a founder of the North American Forestry Commission.

In 1960, he served as chairman of the organizing committee for the Fifth World Forestry Congress, which brought together at Seattle, Wash., some 2,000 delegates from 70 nations—the largest conference of its kind ever held. Appointed head of the U.S. delegation, he was elected president of the Congress.

In addition to honorary degrees conferred on him by his alma mater, the University of Michigan, and by Syracuse University, Dr. McArdle has received USDA's Distinguished Service Award, the American Forestry Association's Distinguished Service Award for Conservation, the Career Service Award of the National Civil Service League, the Award for Merit of the Public Personnel Association, the President's Gold Medal for Distinguished Federal Civilian Service, the Rockefeller Public Service Award, the Silver Buffalo of the Boy Scouts of America, from the Government of Mexico the Order of Merit for Forestry of Miguel Angel de Quevedo, and the New York State College of Forestry Gold Medal for Distinguished Service.

During the late 1930's, he was dean of the School of Forestry at the University of Idaho. A World War I veteran, he served overseas with the U.S. Army. He is a member of many professional scientific organizations and honor societies. Dr. McArdle is married, and two of his three sons are foresters.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, March 6, 1962.

Dr. RICHARD E. MCARDLE,
Chief, Forest Service,
Washington, D.C.

DEAR DR. MCARDLE: I write this letter with genuine regret. This is to acknowledge your request for retirement and to accept same.

I want you to know that it has been a privilege to serve with you and that I have enjoyed our relationship this past year. Your reputation for leadership and foresight, which I was apprised of prior to assuming my responsibilities as Secretary, has been more then borne out by your dedication this past year.

On behalf of the President and the Department I want to commend you for your outstanding service and to wish you well in the days ahead. We shall miss you.

You are well aware that it has been no easy choice to select your successor. The responsibility of making this decision is one I have felt keenly. For many months now I have given this matter careful consideration and have reviewed potential successors to carry on the great tradition of the Forest Service and to provide the kind of leadership which will be essential in making critical and difficult decisions in the days ahead. Happily, there have been a number of outstanding men qualified and willing to serve. It has been a difficult task to choose between them. In making a decision, for here as in many areas decisions must be made, it has been a real source of gratification to know that once a selection is made Forest Service will rally behind their new Chief and give the same loyalty and dedicated service that they have given you and for which they are renowned.

After long, careful thought and many consultations it is my decision to name as the new Chief of the Forest Service Mr. Edward P. Cliff.

Please communicate my respects and best regards to the regional foresters and station directors and ask them to convey my respects to their associates. I feel great pride in the Service. There is much to be done in the days ahead and I look forward to an even closer working relationship.

Sincerely yours,

ORVILLE L. FREEMAN,
Secretary.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum without losing my right to the floor.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

THE ALEXANDER HAMILTON NATIONAL MONUMENT—AMENDMENT TO THE CONSTITUTION DEALING WITH POLL TAXES

Mr. MANSFIELD. Mr. President, I call the attention of all Members of the Senate to the motion I am about to make. I am going to move that the Senate proceed to the consideration of Calendar No. 1196, Senate Joint Resolution 29, a joint resolution providing for the establishing of the former dwelling house of Alexander Hamilton as a national monument.

If the Senate agrees to the motion, it is my understanding that the Senator from Florida [Mr. HOLLAND] will move the adoption of a substitute amendment involving the payment of poll taxes as a requirement for voting.

I have been given to understand that some Senators desire to debate the motion to take up Calendar No. 1196, Senate Joint Resolution 29. I certainly want to protect their rights to do so.

Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1196, and ask for its immediate consideration.

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

The LEGISLATIVE CLERK. A joint resolution—Senate Joint Resolution 29—providing for the establishing of the former dwelling house of Alexander Hamilton as a national monument.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

Mr. RUSSELL. Mr. President, I had understood the distinguished majority leader to say that the distinguished senior Senator from Florida [Mr. HOLLAND] would offer as a substitute for the proposal embraced in Calendar No. 1196 a proposal submitting an amendment to the Constitution of the United States, for ratification by the several States, by the method prescribed in article V of the Constitution.

Yesterday, in discussing the matter with the distinguished majority leader, I understood that a claim bill would be the vehicle for the proposed constitutional amendment.

Mr. MANSFIELD. The Senator is correct. I must apologize for not notifying him of the change. I did notify other Senators. I wish to assure the

Senator it was an inadvertence on my part, and not a deliberate action, that I did not so notify him.

Mr. RUSSELL. I accept the Senator's statement fully, of course.

I intended, of course, to make the point of order that, while the rules of the Senate with respect to an amendment are very broad and sweeping, they are not broad enough to permit the submission of a constitutional amendment as a substitute for a piece of general legislation.

I believe the same point of order will be good in this case, even though the Senator from Montana has said it will be offered as a substitute for Senate Joint Resolution 29, the joint resolution which would establish the former dwelling house of Alexander Hamilton as a national monument.

We are federalizing at a very rapid rate in this country, but even at the speed at which we are proceeding I do not believe that even a joint resolution honoring Alexander Hamilton, which is legislative in its nature and which must be submitted to the President of the United States for approval, can be used as a vehicle for submitting to the States a proposed amendment to the Constitution of the United States.

All of the machinery for the amendment of the Constitution of the United States is found in article V of the Constitution, which appears at page 518 of the Senate Manual. It reads as follows:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress;

The article goes on to state that no amendment which may be made prior to 1808 shall in any manner affect the first and fourth clauses of the ninth section of the first article, and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

It so happens that the President of the United States does not have any part whatever in amending the Constitution of the United States. He has not a right of veto. He has no right of approval. The Constitution provides for no act or function on the part of the Chief Magistrate of this Republic in amending the Constitution of the United States. That is a matter between the Congress and the several States, and between them alone. Therefore, to submit a proposition of this kind, or to propose an amendment to the Constitution as an amendment to a piece of general legislation, which must be approved by the President before it can be enacted into law, or else approved by two-thirds of both Houses of Congress in overriding a veto of the President, is completely out of order.

I realize that that point of order cannot be made until the distinguished senior Senator from Florida proposes his amendment to the Constitution as an amendment to this proposition. I serve notice here and now that when it is proposed I shall make the point of order against the proposal to amend the Constitution by substituting it for a joint resolution which requires approval by the President of the United States.

I have never been able to understand how poll tax legislation can be called civil rights legislation, or how it ever got into that area at all, because we had poll taxes before we had the right of suffrage. It is the oldest tax known to mankind. However, I realize that a little matter like the Constitution is worthy of very short shrift when we become involved in one of the so-called civil rights bills.

The Constitution itself specifically prescribes the rules for amending that document. It provides for its amendment in a certain way. It does not provide that an ordinary piece of legislation that has been reported by a committee in the ordinary course of legislative work may be used as a vehicle to amend the Constitution. I believe the specific bill mentioned was reported by the Committee on Interior and Insular Affairs. I do not quarrel with that, because I believe in the very widest power of amendment in the Senate; but I submit that this kind of instrumentality cannot be used to submit to the several States an amendment to the Constitution.

One might paint a sign as large as the rear of the Senate Chamber and print on it: "This is a cow"; and then put that sign on a camel; but the animal would still be a camel.

The Constitution provides the method for its amendment. It does not provide for any such procedure as that proposed. The rules of the Senate provide ample means, methods, plans, and procedures whereby a proposed amendment to the Constitution can always be brought before this body. It does not provide that the proposal can come before this body by trying to call a cow a camel, or vice versa.

The poll tax amendment is one of the most notable fantasies that has ever found its place in the history of the Republic. It is a political fantasy which has been pursued vigorously by a number of political paladins on white horses, and carrying shields and spears and swords, since long before I ever came to this body. It has been one of the chief whipping boys in this area of legislation. If ever there has been a scarecrow that has been completely exercised by having been dragged around this Chamber and presented in different forms, by different means, in different ways, by different men, and for different purposes, it is the so-called poll tax legislation. There has been more misrepresentation about this polecat or poll tax amendment than about any other piece of proposed legislation of which I have any knowledge.

Many years ago, when I had not been a Member of this body very long, I actually heard a distinguished colleague on the radio refer to the poll tax as a tax on the poll, where a man goes to cast his vote, and he said it should not be taxed; that the polling place should be free to all citizens. I suppose people were under the illusion that that, perhaps, had something to do with the tax. But "poll tax" derives from one of the oldest Anglo-Saxon words, and is just as old as any of the other four-letter words that have become so popular in today's literature. In this case it means "head"; and the tax is a head tax; it is a capitation tax; it is the oldest of all the taxes that have ever been levied. There was a poll tax even before there was any right to vote.

Yet here we are, in this good year 1962, pushing, hauling, and shoving around the Senate a proposal to abolish the poll tax; and debating whether we shall amend that great document, the Constitution of the United States, so as to get at five States which still levy a poll tax, and make them conform.

This is a day of conformity. What made this country great was that it was not a country of conformity. It was the fact that the States were compartmentalized and did not have to conform; that there was no great figure of a king or a magistrate, having unlimited power, who could tell the States what to do. Because the States did not conform or have to conform, the Nation grew faster, built a better system of government, and developed the American way of life, a way of life that has been the envy of mankind all over the world. No other people have ever known anything like it.

But now, having developed this great country under this system, and having developed the American way of life under it, we are met by the demands of the conformists. These paladins get on their horses, and out they go to kill this great dragon—not in their own States; oh no; they go out to kill the dragon in somebody else's State, so as to make it conform. Instead of debating some issue that affects the States where they live and run for office, they raise the issue of the poll tax and seek to make five States conform.

I hold no brief for the poll tax. We do not have it in my State; we have not had it for many years. I confess that I consider it to be an outmoded method of raising revenue. I was not opposed to the repeal of the poll tax in my State. But that does not mean that I expect to rush in to assist those who seek to compel other States to conform; who say that a State cannot levy a $1 head tax, to be paid into the school fund, because, forsooth, someone somewhere said that it involves civil rights in some way, or involves the race issue. Nothing could be farther from the truth. The poll tax was levied, and has been from the beginning, on every prospective voter, and in most States whether they voted or not. From the beginning the tax was levied without regard to race, creed, belief, or faith.

Great issues confront us today. The whole world is watching Geneva, trying to decide whether there is any chance for an agreement. The prayers of mankind are ascending to Heaven from every corner of the earth, even from the countries which claim to be atheistic, in the hope that some method will be devised to outlaw the prospect of an atomic

holocaust. Other great issues are pending before us.

But those who, through the years, have capitalized on the poll tax question have now drawn their swords and have said, "The time has come when we must go through the process of conformity and compel these five States to conform."

Mr. President, if it did not involve such a great threat to our system of government; if it were not such a great blow at our Federal system of indestructible States—at least I used to hope and pray that they were indestructible States, forming an indissoluble Union—it would be utterly ridiculous for the Senate to be considering this question.

There may have been a time when the poll tax discouraged someone from voting. But what is its effect today? The levy is $1 a year on a person; and if he does not pay his poll tax, he is not entitled to vote. At least, that was true in my State under the old system.

Mr. President, the tax on a package of cigarettes in some States, when the Federal tax is included, is from 12 to 14 cents. The tax on a few gallons of gasoline is more than the amount of the poll tax for a whole year.

Mr. CHAVEZ. Mr. President, will the Senator from Georgia yield?

Mr. RUSSELL. I yield.

Mr. CHAVEZ. I know something about poll taxes in Texas. I made a campaign in behalf of the program of the present administration to allow the Latins to vote. Forty-eight thousand Texas Mexicans could not vote on account of the poll tax. At that time, I said that since that is the law in Texas, it should be obeyed; and I said to my friend, the Senator from Texas [Mr. YARBOROUGH], that all citizens, particularly those elected to government office, should obey the law, whatever it is. Certainly no one is entitled to express an opinion in that connection unless he has actually obeyed the law.

Mr. RUSSELL. Mr. President, the Senator from New Mexico feels just as I do.

I am not here defending the poll tax. It so happens that for many years my State was the only State in the Union which permitted citizens to vote when they had attained the age of 18 years. In 1953, there was submitted in the Congress a proposed constitutional amendment fixing the voting age at 18 years in every State of the Union, and it was proposed that that amendment be made a part of the U.S. Constitution. Although my State was the only one in the Union which then had an 18-year voting age, I stood on this floor and opposed that proposal to put the other States of the Union into such a straitjacket—by having the Congress tell them they had to have an 18-year voting age. On this floor I said some States may want to permit only citizens who have attained age 19 to vote; others may prefer age 20; others may prefer age 24; and I said that if they desire to have such voting requirements, I will defend their right to have such requirements under the Constitution of the United States, because that is the concept of our Government.

In Georgia, the minimum voting age is 18, and that arrangement has been satisfactory; and if other States wish to provide for 18 years as their minimum voting age, we shall welcome them into the 18-year voting age circle. But I shall not vote to impose or compel, by congressional coercion from Washington, the other States to adopt 18 years as their minimum voting age.

Mr. President, I was very proud when we managed to have that proposed constitutional amendment rejected—the one which would have put all the States into such a straitjacket. That proposal had been presented here pursuant to the mania to force conformity throughout the United States, in the almost fanatic urge to pour all men and all women into the same mold and make all of them alike, although there are differences between the laws of the various States, and although the laws and customs of all sections of the country have enabled us to enjoy the goodly life in these United States.

Mr. President, as I have stated, the pending measure enjoys an impressive and distinguished galaxy of supporters and sponsors.

I am grieved that my good friend, the Senator from Florida [Mr. HOLLAND], whose intentions are of the very purest and noblest, is spearheading the fight in favor of the adoption of this amendment. However, I believe that any man who has been a consistent supporter of constitutional government should be entitled to one aberration in the course of a long career of public service; and I regret that, from my point of view, this is the one period of aberration on the part of my good friend, the Senator from Florida. Certainly I shall not hold it against him, because I know he is proceeding in the very best of faith.

Mr. HOLLAND. Madam President, will the Senator from Georgia yield?

The PRESIDING OFFICER (Mrs. NEUBERGER in the chair). Does the Senator from Georgia yield to the Senator from Florida?

Mr. RUSSELL. I yield.

Mr. HOLLAND. Is it not true that before I submitted this amendment originally, I came to the Senator from Georgia, to obtain his advice and instructions; and he told us that it would be a very good thing for us to offer the amendment, and would put us in an affirmative position?

Mr. RUSSELL. Well, Madam President, some 15 or 16 years ago the Senator from Florida asked whether I thought the offering of this amendment would "take the heat" off other proposed statutes and amendments which then were pending; and I told him I thought it would. He asked whether I would be a cosponsor of it; but I said I could not be. And if the Senator from Florida will look back, he will find that I was among those who would not join in sponsoring his proposal.

However, Madam President, I wish to say that the scene in this country has changed considerably since the time when the Senator from Florida first offered the amendment. I believe that was 14 or 15 years ago.

Does the Senator from Florida recall the first year when he offered the amendment?

Mr. HOLLAND. This is the 14th year. I offered it first in 1949.

Mr. RUSSELL. Very well. Certainly conditions have changed greatly since then. At that time there may even have been a poll tax in Georgia, although I do not remember the exact year when Georgia repealed it. But at that time the statutory poll tax was a great issue which was being marched forward under the so-called civil-rights banner. It was one of two great issues then being pressed; the other was the antilynching bill.

Mr. HOLLAND. Madam President, will the Senator from Georgia yield again?

Mr. RUSSELL. I yield.

Mr. HOLLAND. To correct the Senator's recollection, I wish to remind him that the Georgia poll tax had then been repealed; and his then distinguished colleague, the late Senator George, told me that he felt this was the sound position to take, and he joined me as a cosponsor of this proposal.

I also wish to remind the distinguished Senator from Georgia that not only on that occasion, but also on two or three other occasions, in subsequent Congresses, I also approached the distinguished Senator in the same way, and with the same result.

Mr. RUSSELL. No, Madam President, I do not recall as to that. The Senator discussed it with me first, and once or twice since then; but he has not discussed it with me in all subsequent Congresses; and 2 or 3 years ago I told the Senator—and I told him again this year—that in my opinion if there were any idea that the adoption of such an amendment would appease the so-called champions of the civil-rights program in the United States, he was entirely mistaken, but that, on the contrary, the adoption of this amendment would be like feeding a couple of peanuts to a hungry bear: It would only whet his appetite for more—in this case, for further legislation. And I told him that again this year.

Mr. HOLLAND. The Senator from Georgia will remember, of course, that I told him that I was not interested in appeasement in any way. I told him that as recently as 2 or 3 days ago, when we were discussing that point.

In my opinion every citizen should, as a matter of right, be entitled to vote for President, Vice President, and Senators and Representatives; and that is all that is involved in this case.

I do not like to think of the fact that in the part of Alabama just across the boundary line from the State of Florida, for instance, there are citizens who cannot vote for President or Vice President unless they pay this tax, whereas directly across the boundary line, in Florida, the citizens who live there are not limited by such a requirement. I do not like to think of the fact that the citizens in our sister State, which we love so much, are confronted with that necessity.

Likewise, Madam President, I do not like to think that the same situation exists in many other parts of the country.

I have always told the Senator from Georgia, my distinguished friend and collaborator and adviser, whom I always follow, except in connection with this one matter, that I think that, as a matter of right, every citizen of the United States should be entitled to vote for President, Vice President, Senators, and Representatives on something like terms of equality with the citizens in every other State in the Union, some of which while they once had voting provisions much more stringent than the poll tax provision, have laid such provisions aside; and I said I thought it was time for us to show some awareness of the fact that that is the national thinking in connection with this matter, and that when it came to electing National Government officials, we would be standing on higher ground and on sounder ground if we took this position.

Mr. RUSSELL. Madam President, that is indeed the Senator's position. But certainly the Senator does not contend that I ever thought any serious onus was imposed by the present tax. I have always taken the position that this tax does not really prevent anyone from voting; and I am not impressed by the arguments of those who today weep because of "the great burden of this tax" on voting.

Madam President, in my own State this tax was not levied on women—women could vote without paying the tax; and it was not levied on veterans or on persons beyond age 55, as I recall. So the tax then applied only to a relatively small group of voters—those supposed to be in the prime of life and capable of earning their livelihood. Furthermore, every dollar received from the poll tax went into the school funds.

It is said that the poll tax is a very onerous burden. However, Madam President, every one of the original States had voting restrictions much more onerous than the $1 poll tax. Every one of the original States had much more onerous restrictions on voting. Indeed, up to the time when there were some 25 or 30 States, there were very rigid property-ownership requirements or restrictions in connection with voting—for instance, that one who wished to vote had to show that he had paid taxes on approximately $500 worth of property—and that was at a time when the dollar was really worth a dollar—long before the great inflation which has occurred since those days.

It was not the quarter dollar that we deal with today. He had to own real estate or be a freeholder before he could vote.

I had occasion to check into it and see just what proportion of the taxes paid in the United States today is involved in this horrendous, heavy, burdensome levy on the poor people to keep them from voting. It gets down to where one can hardly write the figure out. It is less than thirty-seven millionths of 1 percent of the total tax bill of the American people. If that is reduced to figures, one must put down a decimal, a 0, a 0, a 0, a 0, a 3, and a 7—thirty-seven millionths of 1 percent of the tax bill that the American people pay represents this crushing burden that is denying the people suffrage in the United States.

Mr. DOUGLAS. Madam President, will the Senator yield?

Mr. RUSSELL. I yield.

Mr. DOUGLAS. I do not want to stir up my very good friend from Georgia, but I should like to ask him if he is opposed to the 19th amendment of the Constitution, which provides that the right of suffrage shall not be denied because of sex. As the Senator knows, that is the amendment which prevents States from denying women the right of suffrage if they so desire.

Mr. RUSSELL. I do not recall that I was very active in politics at the time that amendment was considered. [Laughter.]

Mr. DOUGLAS. Would the Senator favor repealing it?

Mr. RUSSELL. It is rather difficult for me to go back into the past that far and remember just exactly what my attitude was with respect to that amendment.

Mr. DOUGLAS. Is the Senator in favor of repealing it?

Mr. RUSSELL. No, I am not in favor of repealing it, now that it is in the law; but I am frank to say that, since the States had the power to grant women the right to vote, if I had been a Member of the Senate at the time I might have voted against the amendment.

I think it is unfair to ask my position on something that occurred in this country before I was very active in political life, and I think even before my distinguished friend from Illinois was too active in the political life of the country.

Mr. DOUGLAS. I think that is true.

Am I to understand that the Senator looks with favor or disfavor on the 15th amendment, which provides that a citizen's right to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude?

Mr. RUSSELL. That amendment was written in the blood of the Civil War, and was inevitable after Appomattox, and the South is reconciled to it. We were not happy about it, but it was written in blood, by the bayonets of the soldiers of our friend from Illinois and other States who overpowered us in the most calamitous and fraticidal strife this Nation has ever seen.

We paid a terrific price for our idea that we could depart in peace or that one Southerner could lick four Yankees. We were not able to show the latter. We found out one could lick three. We were confronted with that fact as a practical proposition. We were faced with that advantage, and I think we have very little to be ashamed of. But the 15th amendment was written in the blood that was so grievously shed in the Civil War and was a natural concomitant of Appomattox.

Mr. DOUGLAS. I take it that the Senator from Georgia is not enthusiastic over the fact that the amendment was passed.

Mr. RUSSELL. No, I cannot say, considering the sorrow and the great losses that were inflicted on the people of my blood and of my kin, that we rejoiced in the outcome of the Civil War, but I would not repeal the 15th amendment. I would not deny to a man of color or any other race the right to vote; nor would I deny it if I had the power to do so. But I am not enthusiastic about the amendment.

Mr. DOUGLAS. Then, I take it the Senator is not opposed to section 2 of amendment 15, which says the Congress shall have power to enforce this article by appropriate legislation.

Mr. RUSSELL. That is a part of the Constitution, and I was sworn to protect that Constitution. Until the provision is repealed, I will observe it and support it. I have, of course, as a Senator, a right to object to some of the ideas that the Senator from Illinois and his cohorts have of the proper method of construing and enforcing both the 14th and 15th amendments. I disagree very violently with some of the interpretations which have been placed on the amendments. But if the Senator is going to try to get me to apologize for the Civil War at this late date or to get on my knees any further than was necessary at Appomattox, I shall not do it. I am proud of our part in it, though it was one of the greatest tragedies this country was confronted with. I am proud of the record the people of my blood made in it, and men of my clan shed their blood on battlefields from Gettysburg to Brices Cross Roads.

Mr. CHAVEZ. Madam President, will the Senator yield?

Mr. RUSSELL. I yield to the Senator from New Mexico.

Mr. CHAVEZ. I know something about the Civil War. I may have Spanish blood in my veins, but I am an American.

Mr. RUSSELL. Absolutely, and a good one.

Mr. CHAVEZ. And troops came into my State during the Civil War. The Confederates marched into my State. One reason is that some of the gold which paid for the war came from California and Nevada. The Confederates marched up the Rio Grande. The purpose was not a military one, but to stop the flow of gold. They went as far as northern New Mexico, where they were finally defeated. My grandfather and my wife's grandfather were part of the "Damn Yankees."

Mr. RUSSELL. And I am sure they were good soldiers.

Mr. CHAVEZ. They were. My grandfather and others in New Mexico helped defeat the southern soldiers.

We are trying to do what is right. We shall continue to do so. I want the interests of the United States to be first.

Mr. RUSSELL. I thank the Senator.

Madam President, the story of the Civil War is a sad and tragic one, but I have no apologies to make for the South in the Civil War. The southerners were mistaken in a great many instances, but they paid in blood for their mistakes. There is no higher coin in which payments can be made.

I wish to say further that any man of southern descent has a right to be proud of the record made by those men who wore the gray, and history does not record a more indomitable or longer drawn out fight against overwhelming odds than was made by the Confederacy. Their valor was so great that it is a part of the common heritage of every part of this Union, and every good American should appreciate it as a part of the history of his country.

Mr. HOLLAND. Madam President, will the Senator yield?

Mr. RUSSELL. I yield.

Mr. HOLLAND. First I commend the distinguished Senator for speaking with such fervor about the service and the sacrifice of the men of the South, and it would also be true to say the same of the women. It happens that both my grandfathers and my father bore to their dying day upon their bodies wounds they had suffered in various battles, and all of them on the southern side.

The reason for my rising, however, is to avert what I fear might occur as the result of the questions of my distinguished friend, the Senator from Illinois [Mr. DOUGLAS], which might indicate that the 15th amendment was the only field in which the poll tax operated.

Mr. RUSSELL. I do not think the 15th amendment touches the poll tax in any place or in any shape, form or fashion, in my own view.

Mr. HOLLAND. I agree with the Senator. The point I make is that the poll tax amendment I shall offer later, when the appropriate time comes—and I hope the Senator's point of order will not be sustained against it—will operate in favor of colored people and of white people, in favor of people of all colors, religions, and creeds.

It was shown in my own State, when we repealed the poll tax in 1937—and I had a modest part in doing that, as a member of the State senate at the time—that at the next election, in 1940, at which time the colored people were not voting in my State, there was an immense increase in participation in voting by the white people. This resulted from the fact that many people, because of penury or because of carelessness or because of a dislike of what they saw happening in some counties as a result of the poll tax, had not participated in the elections. These people came in to participate. I shall put those figures in the RECORD at a later date.

I wished to make that clear at this time. I think the Senator is correct in stating that the proposal does not come under the ordinary classification of the ordinary civil rights legislation. It applies to majorities, to minorities, and to every person of every color. It attempts to give to people who otherwise qualify the right to cast their votes for elected Federal officials. The Senator well knows that is the case. I merely wished to make the record clear.

Mr. RUSSELL. Madam President, I am happy the Senator and I agree that the 15th amendment and the clause read by the Senator from Illinois have nothing to do particularly with the proposal of the Senator from Florida.

The Senator from Florida is at least to be commended for seeking this objective through the process of amendment to the Constitution, instead of a statute. His process is consistent with the constitutional system. I think that the objective is inconsistent with the philosophy of the rights of the States. That is where my friend and I differ.

A great many of those who depend for their election year after year on the votes of minority groups within their States have tried to make it appear there was some question of imposition on colored people, or some question of rights of Negroes as contradistinguished from rights of whites, involved in the question of the poll tax. It has nothing whatever to do with it. The States which require a poll tax today apply this levy equally to all voters and to all prospective voters without regard to race, creed, or color. We all know that if that were not the case, and if the States were not doing so now, the pressure groups would have had the Supreme Court strike down these State poll tax laws a long, long time ago.

I think no one would controvert the statement that the Constitution grants to the several States the right to prescribe the qualifications of the electors of those States. The Constitution could not be more emphatic in delegating to the States the right and the authority to fix qualifications for voting for Federal as well as for State and for local officials. I have stated before that this is spelled out not once but twice in the Constitution of the United States. It appears first in section 2, article I. There we find the language creating the House of Representatives, our great sister body, on the other side of the Capitol:

> The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

We should remember that at the time the Federal Constitution was adopted the Members of the House of Representatives were the only Federal officials who were elected directly by the people. Therefore, that was the only office over which the question of voter qualifications possibly could have arisen in the constitutional convention. The Founding Fathers undoubtedly thought they were settling once and forever the rights of the several States to prescribe the qualifications of the voters of those States.

We hear much about the differences in the State laws. That is one of the great things about this country of ours. If a man does not like the laws in one State he can move to another State, if he is not able to get the laws changed. If he finds that the majority of the people in the State in which he lives are irrevocably committed to a law or to a system of law in which he does not believe, we have great interstate highways, great railway systems, extensive methods of transportation to enable the man to move to a State in which he does find laws to his liking, if he tires of trying to convince the citizens of the State in which he lives of the correctness of his position.

Madam President, when the 17th amendment, providing for the direct election of U.S. Senators, was ratified in 1912, the question of voting qualifications was again passed upon by the Congress and by the people of the several States, in ratifying that amendment. Again the question of voting qualifications was clearly and specifically delegated to the States. The framers of the 17th amendment used without change of a letter or of punctuation the same language as to qualifications of electors as appears in section 2 of article I of the Constitution, which is:

> The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

As I stated before, that is the only instance of which I have any knowledge in which the identical language appears in two specific places in our Federal Constitution.

Madam President, as I have said, this campaign, this fight to abolish the poll tax, has been raging in the Congress in one form or another for a great many years. I have little doubt that the five States in which it remains will in due season eliminate the poll tax because, as I have stated, it is outmoded as a method of raising revenue. But it has been seized upon by those who wish to centralize Government in Washington as a means of restricting the States still further and making them conform to the views of a majority here in Washington whose views differ from those of the majority within the several States affected.

In my opinion, this issue should not divert the attention of the Senate in this very critical period of our history. To my knowledge, no issue in the history of Congress has been more magnified out of proportion to its real importance. I am certain that there has not been as much misrepresentation over any one issue in many years. I do not think that a constitutional amendment, standing by itself, if it were the only part of this whole plan or this whole philosophy relating to the power of the Federal Government in Washington, would be so harmful. But I resent efforts from any source to take away and circumscribe the few rights and powers that the States have left. When we finally destroy the Federal system by making the States impotent and constituting mere geographical areas that are designated from Washington by the decrees that shall issue from our National Congress, we shall have destroyed this great system that has made our country what it is.

I am opposed to any capricious or captious amendment to the Constitution of the United States, particularly when its purpose is to coerce a minority of States in a matter as unimportant as the one before us, in which the issue involved has been a part of the life of our people in one form or another since the Republic was founded.

I hope that at the proper time, if Senators are unable to convince their colleagues that we should not proceed to the consideration of this issue at this time, Senators will listen with open ears to the point of order and will consider it on its merits without regard to the political implications that are found in this question.

Madam President, I suggest the absence of a quorum.

Mr. JAVITS. Madam President, will the Senator withhold his suggestion?

Mr. RUSSELL. Yes, if the Senator from New York wishes to speak, I will withhold my request for a quorum call.

Mr. JAVITS. Madam President, we are putting the situation in focus now, and while there are not many Senators in the Chamber, I am sure that Senators will want to understand, from all interested parties, the situation as it is before us, and as I propose, in company with others of my colleagues, to move to substitute for the constitutional amendment a statutory means for eliminating the poll tax, I think I am an interested party in the debate.

I might point out that the issue is no more new with me than it is something new with the distinguished Senator from Florida [Mr. HOLLAND]. I proposed the same course in 1960 when the subject was previously before us.

I must say that I am somewhat puzzled by the choice of the measure used for this purpose. It happens to be a measure which my colleague [Mr. KEATING] and I have introduced, and, I might say pardonably, a measure of some patriotic flavor—to save a historical establishment in New York.

I, too, understood that it would be a claims bill affecting one person that the subject would be debated on. Instead we find it attached to a measure to preserve Alexander Hamilton's home in New York City as an historical monument.

I am in a rather fortunate position in that, I might say, I am able to preserve Alexander Hamilton's home and have a statutory method to eliminate the poll tax, whereas my distinguished colleague, the Senator from Florida [Mr. HOLLAND], must—and I know it will make him very unhappy—jettison Alexander Hamilton's memorial in order to insert a constitutional amendment as a substitute in this bill.

But we all understand why this is the greatest Chamber on earth. There is a delicacy here which is reflected in the timing and method of the handling of this subject which is really quite unique and embellishes the Senate with its reputation throughout the world.

I have already explained what puzzles me about the measure chosen.

And now, the timing. Why now? We had a literacy bill before the Senate the other day that we all discussed and that we were going to move on. The bill was sent to committee, and we have assurances—and I know they will be honored—that we will be able to consider the whole question in April. Now, however, we have this question to consider. Why? I do not know the reason, but, being a lawyer, I could suspect that what is a reasonable explanation is probably the explanation. The reasonable explanation is that if the Senate would set the precedent that a matter of this character has to be done by constitutional amendment, the very same argument will be made in April when we call up the literacy question and the same point will be made that it, too, must be done by constitutional amendment.

I enjoyed very much the colloquy between my two colleagues, the Senator from Georgia [Mr. RUSSELL] and the Senator from Florida [Mr. HOLLAND]. It had all the freshness of an intimate discussion in a family. I might say that this has really worked pretty well. I know that the Senator from Florida is very sincere about this matter, but the fact is that we have ambled around here now for 14 years and the poll tax still remains in five States. Nothing has happened about it.

Mr. HOLLAND. Madam President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. HOLLAND. I think the Senator from New York would want to be set right on that. Since the amendment was presented—and I would hope partly because of it—two additional States in the South that had poll taxes have eliminated them.

Mr. JAVITS. I am grateful to my colleague for that information. I also was here when the amendment passed the Senate and it bogged down in the other body. But the point is that the poll tax still remains as an institution in most of the States which had it before, and though many of us indicated our desire to rid ourselves of this rather obsolescent imbalance, it still hangs around, and I think very largely because we have not taken the statutory route but have chosen heretofore another.

Mr. HOLLAND. Madam President, will the Senator yield again?

Mr. JAVITS. I yield.

Mr. HOLLAND. I think the Senator would want to be corrected on his latest statement, because most of the Southern States which had poll taxes have corrected the situation, six having knocked it out and five still retaining it.

Mr. JAVITS. The Senator is more than happy to accept any factual corrections, whether it is six or seven. The Senator is prepared to concede that material progress has been made. But it seems to me that in this day and age, to have an encumbrance of this character on the right to vote is so anomalous, such a strange development in our national life, that we ought to take the first and the earliest opportunity to be rid of it.

Madam President, may I also point out that not only have we, who feel strongly about this matter, not chosen the bill—as is very obvious—but we have also not chosen the time.

We did not press this thing. This has been brought up by the majority leader, I assume, at long last, as some acknowledgment of the fact that the only way to act in a substantial manner on the question of civil rights and voting is by coming to Congress.

I point out that this marks the administration's redemption, after the election of 1960, of only the second item in a kit of 27, recommended by the U.S. Civil Rights Commission.

I agree with the Senator from Georgia that this is by no means the most earth-shaking of these recommendations; they are very much in a pattern which is pretty well accepted here.

I hazard the guess—and I say this unilaterally—that the most ardent segregationist, if he could settle for these two matters, literacy tests and poll taxes, and know that that is all there would be, would probably support these measures himself. I ask no one to agree with me. I speak unilaterally. That is my opinion.

Now, where does that leave us? It seems to me that it leaves us with a duty, and my colleague from New York it leaves with not a light duty. We did not choose this bill. We did not choose the time. However, it seems to me that our duty is clear. At least, my duty is clear.

I feel very deeply, both as a lawyer and as a Senator, that this is an anomaly, an encumbrance upon the rights of the citizens, not of any State, but of the United States. Neither the Senator from Florida nor I are talking about any kind of voting except voting for Representatives and Senators and President and Vice President.

We have the right and we have the duty, when that question arises, to take the path which in good conscience will most directly and immediately lead to the desired result. That very clearly is the path of a statute. I will be prepared to argue that that path is entirely constitutional and entirely appropriate under the amendments to the Constitution as well as under the Constitution itself, and also under the decided cases of the United States Supreme Court.

Madam President, if we really want to do something to redeem our pledge in the Republican national platform, and if we want to redeem the pledge contained in the national Democratic platform, both platforms having been adopted in 1960—if we really want to do something, even in this very limited area that we are talking about—the way to do it is by statutory enactment.

If we do it that way, it will have the very happy eventuality of preserving at one and the same time the memorial to Alexander Hamilton, which is richly deserved and a highly patriotic deed.

Mr. MANSFIELD. Madam President, I am afraid the Senator from New York protests too much.

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

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, March 14, 1962, he presented to the President of the United States the enrolled bill (S. 1991) relating

to manpower requirements, resources, development, and utilization, and for other purposes.

RECESS UNTIL 12 O'CLOCK NOON TOMORROW

Mr. MANSFIELD. Madam President, if there is no further business to come before the Senate, I move that, under the order previously agreed to, the Senate stand in recess until 12 o'clock noon tomorrow. Before the Chair puts the question, I may say it is not the intention of the leadership to have a morning hour tomorrow, but to have the Senate go immediately to the consideration of the pending motion.

The motion was agreed to; and (at 4 o'clock and 44 minutes p.m.) the Senate took a recess, under the previous order, until tomorrow, Thursday, March 15, 1962, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate March 14, 1962:

U.S. MARSHALS

Dan M. Douglas, of Arkansas, to be U.S. marshal for the western district of Arkansas for the term of 4 years, vice Jay Neal.

Alfred P. Henderson, of Arkansas, to be U.S. marshal for the eastern district of Arkansas for the term of 4 years, vice Richard Beal Kidd, term expired.

EXTENSIONS OF REMARKS

The World of Silence Can Be Lonely

EXTENSION OF REMARKS
OF
HON. JOHN E. FOGARTY
OF RHODE ISLAND
IN THE HOUSE OF REPRESENTATIVES
Wednesday, March 14, 1962

Mr. FOGARTY. Mr. Speaker, under leave to extend my remarks, I include an address which I delivered at a meeting of the Rhode Island Speech and Hearing Association in Providence, R.I., on November 28, 1961:

It is a pleasure for me to be here this evening, and I appreciate your kind invitation.

Your careers are dedicated to minimizing the handicaps of impaired speech and hearing faculties. No one knows better than this organization the toll that hearing disorders and speech impairments take in the lives of those who are affected.

I doubt whether it is possible to exaggerate the importance of person-to-person communication. I am sure that I, like most persons, take the primary faculties of speech and hearing for granted. But how important they are:

I obtain information on national and international affairs from many sources, in and out of Congress. To a great extent I hear this information on the floor of the House of Representatives, in the committee rooms, in my office, in conferences, at meetings. In reporting this information to you and to Congress, and in discussing it with scientists, administrators, and experts, I am speaking. It is sobering to wonder whether I could perform my job at all if my hearing or speech were impaired.

There is no question; a world of silence can be lonely and frustrating for the one who cannot hear or speak.

I have been informed that on a nationwide basis, an estimated 8 to 9 million Americans have significant speech and hearing impairments. Of these, 2 million are schoolchildren. Preschool children under 5 years of age and individuals 18 years of age and older make up at least another 6 to 7 million persons with speech and hearing disorders. Some experts believe many more of our citizens might be found to have speech and hearing defects if they were tested for such disorders.

You must be well aware of the handicaps that all these people encounter in attempting to acquire a normal education, in achieving economic security, and in making a comfortable social adjustment. The more I think of how many aspects of day-to-day living depend on speech and hearing, the more I admire and appreciate your work to free the afflicted from the barriers against communication.

Unless I am very mistaken, I believe the average American shares with me the desire to do everything possible to assure the best medical care, treatment, and rehabilitation for all our citizens who may be physically or mentally afflicted. By so doing, we help avert some of the annual loss in human productivity as it contributes to the mainstream of our economy.

Our obligation, however, is not only to promote our Nation's economic well-being but to uphold our American heritage of humanitarian concern for the handicapped. This is a hallmark of our society.

I know that you are most concerned with the Government's programs with which you are intimately familiar. Let me ask you to consider for a moment the other disabilities with which public health planners and administrators must also be concerned so that you will visualize the enormity of the overall problem.

Multiply the disabilities that you see every day in the course of your practice by others associated with systemic diseases, with chronic and malignant diseases, with obscure genetic disorders and accidents at birth, with neurological and mental disorders. Consider the research involved in each area, bearing in mind how complex are the problems and how illusive have been the answers.

Consider the research in chemistry, the mechanical ingenuity, the adaptation of the new discoveries in electronics, radiology, and atomic energy that are marshaled in the battle for better health.

These factors represent, in part, the breadth of the health and medical problems with which we in Congress must cope. Not that we do so alone. We do our best to plan on this broad front in close cooperation with the many able physicians, scientists, educators, technicians, and administrators in the executive branch, especially those in the Department of Health, Education, and Welfare. We also have the advice of experts who are not in Government service.

In my 21 years as a Member of Congress I have had the privilege for 14 years of serving on the committee, and as chairman of the subcommittee, that plans appropriations for the administration's health programs. These have been the most satisfying years of my life. It is nothing short of thrilling to observe the programs evolve in depth and in increasing number from year to year.

While we have seen few completed medical solutions or cures, we have achieved stirring progress in many fields. Expansion in medical services and some amazing discoveries in medical research in recent decades have given a phenomenal spurt to health levels in the United States.

Scientific techniques have been improved, drugs have been made more effective, diagnostic tests are more certain. Promising leads have been uncovered in the search for cause and cure of some of man's oldest afflictions. To recall only a few: Better diagnostic tests for certain kinds of cancer have been developed, permitting early treatment and cure. Some forms of mental retardation resulting from an inborn metabolic error can now be prevented. A variety of disorders of vision, some causing blindness, including cataract and glaucoma, can be effectively treated and controlled. Retrolental fibroplasia, which once blinded newborn babies, has been almost completely stamped out. A vaccine has been found to cope with one of the oldest scourges, infantile paralysis. Anticoagulant drugs supply techniques for the control of coronary attacks and cerebrovascular accidents or strokes. Epilepsy is yielding to drugs and, in some cases, surgery.

These and many other discoveries and improvements spell progress. What was responsible for this progress? One thing primarily: the growth in research programs of the National Institutes of Health, of other health agencies, and of research and training activities supported in hundreds of institutions throughout the country. As I have noted, research already has paved the way for many conquests of chronic disorders. It remains our key to future progress. New medical knowledge of a revolutionary sort cannot be predicted. Not even the most brilliant of our scientists know when the breakthrough which they long for will occur. It could happen to any investigator, in any laboratory or hospital or clinic, at some unexpected moment. No one can say just when or how, because research progress is a slow and difficult road.

But the greater the number of competent investigators we encourage and the more funds we wisely expend for medical research, the better become our chances to find more solutions that are sorely needed for many of the major chronic ailments.

How then can we afford a slowdown in the research momentum so carefully and painstakingly built up over the years? We cannot. That is why I urge you to join me in telling the people of this State and other States how important it is that nothing interfere with the levels of medical progress already achieved.

We in Congress have been working hard to get these levels raised meaningfully. We have been grasping the opportunities and we feel we have been meeting the needs. But now, today, there is a move on in Washington to cut these funds by $60 million. From what I can determine, this will mean that at least $25 million will have to be cut from research projects and that the program to develop clinical research centers will suffer to the extent of $15 million. Over $10 million will be held back from the training of research scientists for tomorrow, and more than $7 million will be cut from the National Institutes of Health's own direct operations. This is not progress.

If the $60 million cut in the National Institutes of Health's appropriation is not restored, almost $8 million alone will be stripped from the budget of the National Institute of Neurological Diseases and Blind-