By Mr. HALPERN:

H.R. 16714. A bill to amend title II of the Social Security Act to provide for cost-of-living increases in the benefits payable thereunder; to the Committee on Ways and Means.

By Mr. HOLLAND:

H.R. 16715. A bill to amend the Manpower Development and Training Act of 1962; to the Committee on Education and Labor.

By Mr. KUNKEL:

H.R. 16716. A bill to exclude from income certain reimbursed moving expenses, to expand the deduction for moving expenses in certain cases, and for other purposes; to the Committee on Ways and Means.

By Mr. McCULLOCH:

H.R. 16717. A bill to amend title II of the Social Security Act to provide cost-of-living increases in the benefits payable thereunder, and to provide that any such increases shall not be considered as income for purposes of determining eligibility for pension under title 38 of the United States Code (veterans' benefits); to the Committee on Ways and Means.

By Mr. McVICKER:

H.R. 16718. A bill to protect the domestic economy, to promote the general welfare, and to assist in the national defense by providing for an adequate supply of lead and zinc for consumption in the United States from domestic and foreign sources, and for other purposes; to the Committee on Ways and Means.

By Mr. SKUBITZ:

H.R. 16719. A bill to amend title II of the Social Security Act to provide cost-of-living increases in the benefits payable thereunder, and to provide that any such increases shall not be considered as income for purposes of determining eligibility for pension under title 38 of the United States Code (veterans' benefits); to the Committee on Ways and Means.

By Mr. VAN DEERLIN:

H.R. 16720. A bill to amend title 39, United States Code, to provide city delivery mail service on a door delivery service basis for postal patrons receiving curbside delivery service who qualify for door delivery service; to the Committee on Post Office and Civil Service.

By Mr. ABERNETHY:

H.J. Res. 1245. Joint resolution to establish a Commission To Investigate the Increase in Law Violation, To Determine the Causes and Fix Responsibility for the Breakdown in Law Enforcement, With the Resulting Destruction of Life and Property, to recommend corrective legislation, and for other purposes; to the Committee on the Judiciary.

By Mr. ROSTENKOWSKI:

H.J. Res. 1246. Joint resolution to authorize the President to designate the week of August 7 through August 13, 1966, as Professional Photography Week; to the Committee on the Judiciary.

By Mr. MILLER:

H.J. Res. 1247. Joint resolution designating the week of November 14, 1966, as National Measurement Standards Week; to the Committee on the Judiciary.

By Mr. BARING:

H. Con. Res. 936. Concurrent resolution expressing the sense of the Congress with respect to certain proposed regulations of the Food and Drug Administration relating to the labeling and content of diet foods and diet supplements; to the Committee on Interstate and Foreign Commerce.

By Mr. CUNNINGHAM:

H. Con. Res. 937. Concurrent resolution expressing the sense of the Congress with respect to certain proposed regulations of the Food and Drug Administration relating to the labeling and content of diet foods and diet supplements; to the Committee on Interstate and Foreign Commerce.

By Mr. FARBSTEIN:

H. Con. Res. 938. Concurrent resolution relating to U.S. military personnel held captive in Vietnam; to the Committee on Foreign Affairs.

By Mr. KEITH:

H. Con. Res. 939. Concurrent resolution relating to U.S. military personnel held captive in Vietnam; to the Committee on Foreign Affairs.

By Mr. O'HARA of Illinois:

H. Con. Res. 940. Concurrent resolution relating to U.S. military personnel held captive in Vietnam; to the Committee on Foreign Affairs.

By Mr. PUCINSKI:

H. Con. Res. 941. Concurrent resolution expressing the sense of the Congress with respect to certain proposed regulations of the Internal Revenue Service relating to elimination of tax-deductible educational expenses; to the Committee on Ways and Means.

By Mr. HAYS (by request):

H. Res. 946. Resolution authorizing the printing of additional copies of House Report No. 1568 of the 89th Congress; to the Committee on House Administration.

By Mr. O'HARA of Illinois:

H. Res. 947. Resolution expressing concern for prisoners of war in Vietnam; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. LEGGETT:

H.R. 16721. A bill for the relief of Michael Stephen Valeriote; to the Committee on the Judiciary.

By Mr. POWELL:

H.R. 16722. A bill for the relief of Salvatore Giglio; to the Committee on the Judiciary.

H.R. 16723. A bill for the relief of Carmine Pennella; to the Committee on the Judiciary.

H.R. 16724. A bill for the relief of Nino Ramunno; to the Committee on the Judiciary.

H.R. 16725. A bill for the relief of Nellie White; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

419. Mr. MOORE presented a petition of the 48th Annual Department Convention of the American Legion, Department of West Virginia, held in Parkersburg, W. Va., urging defeat of House Resolution 11934, which was referred to the Committee on Veterans' Affairs.

SENATE

FRIDAY, JULY 29, 1966

The Senate met at 12 o'clock meridian, and was called to order by the Acting President pro tempore (Mr. METCALF).

Rev. Edward B. Lewis, minister, Capitol Hill Methodist Church, Washington, D.C., offered the following prayer:

Gracious God, we are told in the Bible that by grace we are saved through faith, it is not ourselves, it is the gift of God.

We are thankful that there is that grace, the undeserved favor of God, for all men. We are unworthy in that we sin against Thee through ignoring Thee. We sin against our fellow men, and thus we have problems of race, crime, poverty, and war as we see nations rising up against nations.

Yet there is grace. It is the gift of the favor of God. Help us to receive it. We need that gift for the world's ills and darkness.

Be with this session of the U.S. Senate. Guide and protect our President. Minister to the needs of our men in uniform. Make all of us worthy citizens, we pray in Jesus' name. Amen.

THE JOURNAL

On request of Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Thursday, July 28, 1966, was dispensed with.

MESSAGE FROM THE PRESIDENT—APPROVAL OF BILL

A message in writing from the President of the United States was communicated to the Senate by Mr. Geisler, one of his secretaries, and he announced that on July 28, 1966, the President had approved and signed the act (S. 822) to authorize the Secretary of the Interior to convey certain public land in Wyoming to Clara Dozier Wire.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

H.R. 12389. An act to increase the amount authorized to be appropriated for the development of the Arkansas Post National Memorial; and

H.R. 15225. An act to amend section 15d of the Tennessee Valley Authority Act of 1933 to increase the amount of bonds which may be issued by the Tennessee Valley Authority.

EXECUTIVE COMMUNICATIONS, ETC.

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

REPORT ON EXEMPTIONS FROM THE ANTITRUST LAWS

A letter from the Attorney General, transmitting, pursuant to law, a report on exemptions from the antitrust laws to assist in safeguarding the balance-of-payments position of the United States, dated July 1, 1966 (with an accompanying report); to the Committee on the Judiciary.

AMENDMENT OF SECTIONS 281 AND 344 OF IMMIGRATION AND NATIONALITY ACT

A letter from the Attorney General, transmitting a draft of proposed legislation to amend sections 281 and 344 of the Immigration and Nationality Act to eliminate the statutory prescription of fees, and for other purposes (with accompanying papers); to the Committee on the Judiciary.

AMENDMENT OF SECTION 704 OF TITLE 18, UNITED STATES CODE

A letter from the Acting Secretary of the Army, transmitting a draft of proposed legislation to amend section 704 of title 18,

United States Code, to prohibit the manufacture, sale, wearing, or reproduction of military insignia (with an accompanying paper); to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, with amendments:

S. 3080. A bill to amend section 8 of the Revised Organic Act of the Virgin Islands to increase the special revenue bond borrowing authority, and for other purposes (Rept. No. 1421); and

H.R. 13298. An act to amend the Organic Act of Guam in order to authorize the legislature thereof to provide by law for the election of its members from election districts (Rept. No. 1420).

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

H.R. 14875. An act to amend section 1035 of title 10, United States Code, and other laws, to authorize members of the uniformed services who are on duty outside the United States or its possessions to deposit their savings with a uniformed service, and for other purposes (Rept. No. 1422).

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

H.R. 7327. An act to repeal section 7043 of title 10, United States Code (Rept. No. 1423).

BILLS INTRODUCED

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

By Mr. BREWSTER:

S. 3673. A bill to provide an equitable system for fixing and adjusting the rates of compensation of wage board employees; to the Committee on Post Office and Civil Service.

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

By Mr. MONTOYA:

S. 3674. A bill for the relief of Chun Moon Hee (Hi); to the Committee on the Judiciary.

COMMITTEE MEETINGS DURING SENATE SESSION

On request of Mr. MANSFIELD, and by unanimous consent, the Committee on Interior and Insular Affairs and the Subcommittee on Small Business of the Committee on Banking and Currency were authorized to meet during the session of the Senate today.

On request of Mr. ERVIN, and by unanimous consent, the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary was authorized to meet during the session of the Senate today.

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

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

ADJUSTMENT OF COMPENSATION OF WAGE BOARD EMPLOYEES

Mr. BREWSTER. Mr. President, one of the most neglected segments of the labor force is the Government blue-collar employees. While the white-collar workers are covered by the Civil Service Commission, the many thousands of Government janitors, construction workers, porters, and so forth, are not so fortunate.

There is an existing wage authority which is responsible for these employees. But a new wage board is urgently needed, one which would be empowered to set uniform standards and be more responsive to the workers' needs. I am introducing, for appropriate reference, a bill which would set up such a wage board.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD at the conclusion of my remarks.

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

The bill (S. 3673) to provide an equitable system for fixing and adjusting the rates of compensation of wage board employees, introduced by Mr. BREWSTER, was received, read twice by its title, referred to the Committee on Post Office and Civil Service, and ordered to be printed in the RECORD, as follows:

S. 3673

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Wage Board Rate Determination and Adjustment Act of 1966".

TITLE I—DECLARATION OF POLICY

The purpose of this Act is to establish in the Government of the United States and of the District of Columbia a uniform system of determining and adjusting the rates of basic compensation of employees in recognized trades and crafts, or other skilled mechanical crafts, or in unskilled, semiskilled, or skilled manual-labor occupations, and other employees, including foremen and supervisors, in positions having trade, craft, or labor experience and knowledge as the paramount requirement.

It is hereby declared to be the policy of Congress that the wage system herein provided shall—

(1) have for its objective the provision and maintenance of like pay for like work for all employees who are working under similar conditions of employment in all departments and agencies of the Federal Government excepting those enumerated in section 202;

(2) be so developed and maintained that it will attract and retain qualified workers by the payment of rates which are fair to employees and beneficial to the employing agency;

(3) provide relative differences in pay only where there are substantial or recognizable differences in duties, responsibilities, or qualifications among positions;

(4) permit the maintenance of a level of rates of pay in line with prevailing levels for comparable work within a survey area.

TITLE II—COVERAGE AND EXEMPTIONS

SEC. 201. (a) For the purposes of this Act, the term "department" includes (1) the executive departments, (2) the independent establishments and agencies in the Executive Branch, including corporations wholly owned by the United States and (3) the municipal government of the District of Columbia.

(b) Subject to the exemptions specified in section 202, this Act shall apply to all wage board positions in or under the departments.

SEC. 202. This Act shall not apply to—

(1) the field service of the Post Office Department;

(2) employees in the legislative branch;

(3) the Tennessee Valley Authority;

(4) the Atomic Energy Commission;

(5) the Central Intelligence Agency;

(6) the Panama Railroad Company;

(7) employees none or only part of whose compensation is paid from appropriated funds of the United States;

(8) the Alaska Railroad;

(9) to those Departments, Agencies and components thereof where the present practice of wage setting process through negotiated agreements.

TITLE III—FEDERAL DEPARTMENTAL WAGE BOARD

SEC. 301. (a) There is hereby established a board, to be known as the "Federal Departmental Wage Board" (hereinafter referred to as the "Wage Board") which shall be composed of five members appointed by the Secretary of Labor and serving for terms of three years each, two of whom shall be appointed as the representatives of bona fide employee organizations having substantial membership in the Federal civil service. The Wage Board shall report directly to the Secretary of Labor, and shall designate one of its members as chairman.

(b) Within the jurisdiction of the Federal Departmental Wage Board there shall be established wage review committees with equal representation of leading Federal departments or agencies, and leading labor organizations, not to exceed three members each. These committees will adjudicate appeals from disputes arising in the field and referred to the Wage Board for determination. These committees will make final determination of wage rates and will so instruct the appropriate department or agency head of their decision. Any appeals by departments or agencies from such decisions will be referred to the Federal Departmental Wage Board for final adjudication.

SEC. 302. There shall be established an Employee Advisory Committee, designated by the Secretary of Labor, the membership of which shall not exceed eleven and shall consist of a chairman appointed by the Secretary of Labor, three members representing the departments, three members selected from employees holding nonsupervisory wage board positions in the departments, and four members representing bona fide employee organizations.

SEC. 303. It shall be the function of the Wage Board to develop and maintain a uniform system of determining and adjusting rates of basic compensation of employees in recognized trades and crafts, or other skilled mechanical crafts, or in unskilled, semiskilled, or skilled manual-labor occupations, as well as other employees in positions having trade, craft, or labor experience and knowledge as the principal requirement, including foreman and supervisors of persons occupying such positions. The Wage Board shall be responsible for the determination of wage principles and methods and procedures in the operation of a wage rate system.

SEC. 304. The Wage Board shall be provided with a staff of wage specialists and such other technicians and clerical assistance as may be necessary to perform its duties. The staff thus provided shall assist the Wage Board in developing plans and programs necessary to the fulfillment of its functions.

TITLE VI—THE FEDERAL WAGE PLAN

Part 1.—Job analysis and evaluation

SEC. 401. For the purposes of this Act, the term—

(1) "position" means the work, consisting of the duties and responsibilities, assignable to a wage board employee;

(2) "grade" includes all positions which, although differing in kind or subject-matter of work, are sufficiently equivalent in level of difficulty and responsibilities, as well as level of qualification requirements, to warrant their inclusion within one range of rates of basic compensation as specified in title V.

SEC. 402. Each position shall be placed in its appropriate class and grade based upon an evaluation by the department or agency concerned and consistent with Wage Board classification standards prescribed by the Wage Board. In the absence of prescribed standards, a grade determination will be made based upon comparison with standards of a sufficiently similar occupation to warrant application.

SEC. 402. (b) Any employee or employees affected or any department may request at any time that the Wage Board exercise its authority to fix the class, grade, and pay rate of any position or positions. The Wage Board shall act upon such request, and the Board decision shall be final and binding upon all parties concerned.

SEC. 403. The Wage Board shall, with the advice of the departments, prepare standards for placing positions in their proper grades. The Wage Board is authorized to investigate the duties, responsibilities, and qualification requirements of positions as it deems necessary for the development and maintenance of proper standards. At the request of the Wage Board, the departments shall supply information for and cooperate in the preparation of such standards. The standards shall be published in such form as the Wage Board may determine and shall be maintained in relation to the current job content of Wage Board positions in the departments. After consultation with the departments, the Wage Board may revise, supplement, or abolish existing standards, or prepare new standards.

SEC. 404. The Wage Board shall develop a job evaluation plan for the purpose of determining the relative value of the duties, responsibilities, and qualification requirements of each Wage Board position. In developing such plan, the Wage Board shall select for nonsupervisory positions not fewer than fifty benchmark positions so selected as to afford a cross section of common jobs of varying kinds and levels of work. An appropriate group of supervisory benchmark positions also shall be selected. These benchmark positions shall be assigned to appropriate grades of the nonsupervisory or supervisory schedules provided in title V of this Act, in accordance with their relative skills, responsibility, effort, and working conditions. Other positions shall then be graded in relation to these benchmarks: *Provided*, That benchmark positions may be eliminated or increased in number; new benchmark positions may be added as needed to facilitate job evaluation, and changes in the number or type of benchmark positions shall take place only after management officials have given representatives of employees affected opportunity to express their views with respect to such changes.

SEC. 405. In the evaluation of nonsupervisory positions, the Wage Board shall take into consideration such important factors as skill, responsibility, effort, and working conditions, as shall be pertinent to a proper evaluation of the job content of each position. The Wage Board shall make known whatever weighting system be used in the job evaluation plan.

SEC. 406. Evaluation of supervisory positions shall be based on their relative duties, responsibilities, and qualification requirements to provide appropriate pay differentials over that of the workers supervised. Such differentials shall be maintained either in a separate supervisory wage schedule and a supervisory job evaluation plan or by means of the application of appropriate percentage differentials in relation to the level of rates for nonsupervisory positions. The minimum pay differential for any supervisory position shall be at least 25 per centum more than the highest pay level supervised, but not less than 25 per centum of the journeyman level rate of the crafts or trade within the wage area surveyed.

Part 2—Wage surveys and wage data processing

SEC. 407. For purposes of this Act, the term—

(1) "wage survey" means the collection of wage data for positions in the private industry identified as and limited to manufacturing, transportation, utilities industries, and construction and job shop rates. Such wage data surveys shall include at least 50 per centum of private industry organizations where rates are fixed by collective bargaining agreement as specified in section 411. Such data shall be collected for positions the duties of which are comparable to those Wage Board positions in departments in the district in which a survey shall be made;

(2) "district" means an area to be surveyed which shall be as large an area as needed to obtain adequate wage data which will be representative of large-scale industry, or of conditions which are more nearly comparable to employment in the Federal service, and shall include at least one metropolitan area as defined by the Bureau of Labor Statistics. The Wage Board shall define and prescribe the geographical limits of the district.

SEC. 408. Wage survey data shall be obtained by means of wage surveys conducted by the Wage Board and from surveys conducted by the Bureau of Labor Statistics. In requesting such data from said Bureau, the Wage Board shall specify the types of positions in particular firms or establishments for which data are required, and such positions shall be comparable to positions in Federal agencies within the Wage Board district for which the data are needed. Such positions shall be identified and surveyed in relation to appropriate supervisory and nonsupervisory job evaluation and qualification standards prepared by the Wage Board.

SEC. 409. Wage rate surveys shall be made at least every twelve months or at such additional times as shall reflect significant or substantial wage rate changes in an industry within the district that significantly affects the level of wage rates within such district.

SEC. 410. Wage surveys conducted by the Wage Board shall ordinarily be conducted by one survey team in each Wage Board district; such survey team may for practical purposes of survey operations be subdivided into groups that may be assigned to different localities or industries within a district. Each group shall include at least one member representing one or more employee organizations affected by the survey. Each group leader shall be an employee of the Wage Board; other survey team or group members shall be employees selected from agencies having offices or installations within the survey district.

SEC. 411. Wage data required for wage determinations shall be gathered by a survey group of not fewer than two persons through personal interview with one or more officials of companies having plants or other subsidiary organizational units within a survey district, who have knowledge of both wage rates and job content. In gathering the data, positions in the Federal or District of Columbia service shall be matched with positions within the firm solely on the basis of duty content. The rate paid to each individual in each position matched shall be collected. The data regularly collected shall include separately reported hourly straight time rates, bonuses, incentives, shift differentials, and overtime rates. All data collected shall be treated as confidential and shall not be revealed to unauthorized personnel. At least 50 per centum of positions surveyed shall be positions in firms having collective bargaining agreements with organizations in which employees participate and which exist for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. In compilation of wage data, the wage rates including any differentials paid by private contractors to their employees in comparable positions, and engaged in contract work on a Government installation, shall be included in determining the rate of comparable work by Federal employees.

SEC. 412. At the completion of a wage survey in any Wage Board district, the wage data shall be assembled and reviewed for accuracy and then forwarded to the office of the Wage Board in Washington where suitable analysis shall be made to determine adjustments which may be required in existing wage rate schedules.

SEC. 413. Each change in rates of basic compensation determined by the Wage Board as consistent with the public interest in accordance with prevailing rates under authority of this Act shall become effective not later than the first day of the first pay period which begins on or after the forty-fifth day, excluding Saturdays and Sundays, following the date on which such survey was ordered to be made.

SEC. 414. (a) Uniform provision shall be made in wage rate determinations by the Wage Board for hazardous duty.

(b) Any regularly scheduled work between the hours of 6 o'clock postmeridian and 6 o'clock antemeridian (including periods of absence with pay during such hours due to holidays, and any such hours within periods of leave with pay if such periods total less than eight hours during any pay period) shall be considered nightwork, and any employee to whom this Act applies performing such work shall be compensated plus premium compensation amounting to 10 per centum of such rate.

(c) The Wage Board shall authorize wage rate differentials for all hours worked where shifts begin before 6 o'clock postmeridian or end after 6 o'clock antemeridian. An employee shall be authorized to receive both a night differential or other shift differential in addition to overtime pay for which he may be eligible to receive in the same period worked.

(d) Any work required and authorized in excess of eight hours each day shall be compensated at the rate of one and one-half times the hourly rate. Any work required on a nonscheduled workday shall constitute overtime work and pay. Any work required on a designated holiday shall be compensated at the rate of two and one-half times the regular hourly rate.

SEC. 415. Comparison studies shall be made from time to time to determine the total value of Federal fringe benefits compared to prevailing practice in private industry.

TITLE V—WAGE RATE SCHEDULE

SEC. 501. There is hereby established a basic wage rate schedule which shall be divided into as many grades of difficulty and responsibility as the Wage Board shall determine. Such schedule shall be uniform in application in all departments.

SEC. 502. (a) Each grade shall be divided into ten step-rates.

(b) Each employee compensated in accordance with the Wage Board system shall be advanced in compensation successively to the next higher rate within a grade at the beginning of the next pay period following the completion of each fifty-two calendar weeks of service in wage step-rates 1 to 6

inclusive: *Provided*, (1) That he has a current performance rating of "satisfactory" or better; (2) that the benefit of successive step-increases shall be preserved, under regulations issued by the Civil Service Commission for employees whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential nongovernmental civilian employment during a period of war or national emergency.

(c) As a reward for long and faithful service, each department shall grant an additional step-rate increase (to be known as a longevity step-rate increase) beyond the seventh regularly scheduled rate of the grade in which his position is placed to each employee for each three years of continuous service completed by him at such seventh regularly scheduled rate or at a rate in excess thereof authorized by this section without change of grade or rate of basic compensation except such change as may be prescribed by determination of the Wage Board for all employees within a Wage Board district who occupy positions for which a wage rate change shall be approved by the Wage Board.

(d) No employee shall be entitled to a longevity step-rate increase unless he has a current performance rating of "satisfactory" or better.

(e) No employee shall receive more than one longevity step-rate increase for any three years of continuous service.

(f) Each longevity step-rate increase shall be equal to one step-rate increase in the grade in which the position of the employee is placed.

SEC. 503. Any employee who is promoted or transferred to a position in a higher grade shall receive basic compensation at the lowest rate of such higher grade which exceeds his existing rate of basic compensation by not less than two step increases of the grade from which he is promoted or transferred.

SEC. 504. A separate wage rate schedule shall be established by Wage Board determination for each wage survey district. Such schedule shall be revised from time to time in relation to additional wage surveys reflecting wage rate changes in private industry within the district. As circumstances may require, separate wage rate schedules shall be maintained for positions which reflect conditions peculiar to certain industries. Separate surveys shall be made of such appropriate industrial units following the procedure indicated in title IV.

SEC. 505. Each officer who is reduced in grade from any grade of a basic compensation schedule prepared pursuant to this Act, whose reduction in grade is not or was not caused by a demotion for personal cause, is not or was not at his own request, is not or was not effected in a reduction in force due to lack of funds or curtailment of work, or is not a condition of his temporary promotion to a higher grade, shall be entitled, as of the effective date of such reduction in grade or as of the first day of the first pay period which begins after the date of enactment of this Act, whichever is later, to receive the rate of basic compensation to which he was entitled immediately prior to such reduction in grade until reassigned at the same or higher rate of pay.

SEC. 506. Nothing contained in this Act shall be construed to decrease the existing rate of basic compensation of any present employee subject to its provisions.

TITLE VI—GENERAL PROVISIONS

SEC. 601. The Wage Board is hereby authorized to issue such regulations as may be necessary for the administration of this Act.

SEC. 602. The Wage Board shall prepare and submit to the Chairman of the Civil Service Commission an annual report relative to rates of compensation, number of surveys conducted, and such other information as may portray the administration of this Act.

SEC. 603. In the administration of this Act there shall be no discrimination with respect to any person or to the position held by any person subject to this Act, on account of sex, marital status, race, creed, color, or union affiliation.

SEC. 604. Nothing in this Act shall be construed to affect the application to employees to whom this Act applies of the veteran-preference provisions in the Civil Service Act, as amended, and the Veterans' Preference Act of 1944, as amended.

SEC. 605. This Act shall take effect on the first day of the first pay period which begins six months from the date of enactment.

SEC. 606. All laws or parts of laws inconsistent with this Act are hereby repealed to the extent of such inconsistency.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTION

Mr. GRIFFIN. Mr. President, I ask unanimous consent that, at the next printing of the bill (S. 3565) to amend the Internal Revenue Code of 1954 to provide for deduction of certain education expenses of teachers, the name of the Senator from Texas [Mr. TOWER] be added as a cosponsor.

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

Mr. GRIFFIN. Mr. President, I ask unanimous consent that, at the next printing of the bill (S. 3630) to mesh the combined efforts of Government at all levels with private endeavors to provide jobs and dignity for the poor, the name of the Senator from Texas [Mr. TOWER] be added as a cosponsor.

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

Mr. GRIFFIN. Mr. President, I ask unanimous consent that, at the next printing of the joint resolution (S.J. Res. 174) to create a bipartisan joint congressional committee to study and report on problems relating to regional and industrywide collective bargaining, strikes and lockouts, the names of the Senator from Utah [Mr. BENNETT], the Senators from Nebraska [Mr. CURTIS and Mr. HRUSKA], the Senator from North Carolina [Mr. ERVIN], the Senator from Arizona [Mr. FANNIN], the Senator from Iowa [Mr. HICKENLOOPER], the Senator from Ohio [Mr. LAUSCHE], the Senator from Wyoming [Mr. SIMPSON], and the Senator from Delaware [Mr. WILLIAMS], be added as cosponsors.

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

EXECUTIVE SESSION

On request of Mr. MANSFIELD, and by unanimous consent, the Senate proceeded to consider executive business.

EXECUTIVE MESSAGES REFERRED

The ACTING PRESIDENT pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Armed Services.

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

The ACTING PRESIDENT pro tempore. If there be no reports of committees, the nominations on the Executive Calendar will be stated.

U.S. AIR FORCE

The legislative clerk proceeded to read sundry nominations in the U.S. Air Force.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations will be considered and confirmed en bloc.

U.S. ARMY

The legislative clerk read the nomination of Lt. Gen. Leonard Dudley Heaton, Army of the United States (major general, Medical Corps, U.S. Army), to be lieutenant general.

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

U.S. NAVY

The legislative clerk read the nomination of Vice Adm. Paul H. Ramsey, to be vice admiral.

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

NOMINATIONS PLACED ON THE SECRETARY'S DESK

The legislative clerk proceeded to read sundry nominations in the Air Force, the Army, and the Navy, which had been placed on the Secretary's desk.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

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

LEGISLATIVE SESSION

On request of Mr. MANSFIELD, and by unanimous consent, the Senate resumed the consideration of legislative business.

TRANSCRIPT OF CLOSED-DOOR SESSION OF SENATE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the proceedings of the Senate in closed session on July 14, 1966, printed in the daily RECORD for July 27, be printed in the permanent CONGRESSIONAL RECORD at the appropriate place.

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to consideration of measures on

the Calendar, beginning with Calendar No. 1380 and the succeeding measures in sequence.

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

AUTHORIZATION FOR THE SECRETARY OF THE ARMY TO DONATE TWO OBSOLETE GERMAN WEAPONS TO THE FEDERAL REPUBLIC OF GERMANY

The bill (H.R. 11980) to authorize the Secretary of the Army to donate two obsolete German weapons to the Federal Republic of Germany was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1415), explaining the purposes of the bill.

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

PURPOSE

This bill would authorize the Secretary of the Army to donate to the Federal Republic of Germany two obsolete German weapons for display in the German Artillery School Museum.

The transfer would be without expense to the United States.

EXPLANATION

The Federal Republic of Germany desires to secure an artillery gun and a tank that became the property of the United States as trophies of war in World War II. The gun and the tank would be displayed in the German Artillery School Museum.

Section 2572 of title 10, United States Code, provides authority to donate historical items to national institutions of the United States, but not to those of foreign governments. Consequently, express authorization for this kind of transfer is required.

Similar authority was approved in 1954 for the Secretary of the Army to donate 28 German war paintings depicting Australian troops to the Australian War Memorial in Canberra, Australia.

FISCAL DATA

The estimated values of the two weapons is $1,288.

The bill provides that no expenditure of U.S. funds is authorized to defray the cost of transportation or handling.

AMENDMENT OF TITLE 10, UNITED STATES CODE, TO AUTHORIZE THE AWARD OF TROPHIES

The bill (H.R. 13374) to amend title 10, United States Code, to authorize the award of trophies for the recognition of special accomplishments related to the Armed Forces, and for other purposes was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1416), explaining the purposes of the bill.

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

PURPOSE

This bill would authorize all the Armed Forces to use appropriated funds to award medals, trophies, badges, and similar devices to members for excellence in accomplishments or competitions.

EXPLANATION

Under section 7218 of title 10, United States Code, the Secretary of the Navy has authority to use appropriated funds to establish trophies and similar suitable devices and to award them to members and units serving under his jurisdiction. There is no comparable authority applicable to the Departments of the Army and the Air Force. These departments have been using nonappropriated funds generated from sales at exchanges and receipts from theaters for the purchase of medals, trophies, and badges. The use of nonappropriated funds to recognize achievements related to performance of duty causes a reduction in the availability of those funds for morale and welfare purposes.

This bill would extend the authority the Department of the Navy now possesses to the Department of the Army and the Air Force by adding a new provision empowering the Secretary of Defense to implement the new law to assure its uniform application throughout the Department of Defense.

Under the terms of this bill a medal or trophy could be awarded for "excellence in accomplishments or competitions." The competitions covered are those related to the function of the Armed Force concerned and it is not intended that the authority of the bill would be used to purchase medals or trophies to recognize excellence in sports competitions. Such recognition would continue to be funded from nonappropriated funds.

COST

The committee was informed that enactment of this bill would result in small additional costs and that its enactment will not increase the budgetary requirements of the Department of Defense.

LAND CONVEYANCE TO THE CITY OF EL PASO, TEX.

The bill (S. 3148) to provide for the conveyance of all right, title, and interest of the United States reserved or retained in certain lands heretofore conveyed to the city of El Paso, Tex., was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 3148

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Army is authorized and directed to convey to the city of El Paso, Texas, all of the right, title, and interest of the United States reserved or retained in approximately one hundred and forty-eight acres of land described in section 2 of this Act, said land being a portion of certain lands conveyed by the United States to the city of El Paso, Texas, by quit-claim deed dated June 27, 1957, pursuant to authority contained in the Act of August 2, 1956 (70 Stat. 950, Public Law 929, Eighty-fourth Congress).

SEC. 2. The land referred to in section 1 is located in El Paso County, Texas, and is more particularly described as follows: Beginning at a point which bears north 81 degrees 10 minutes east, a distance of 872.23 feet from a point which is the intersection of the west line of section 40, block 80, Twp. 2, and the northly ROW line of United States Highway 62:

thence north 46 degrees 02 minutes west, a distance of 560.43 feet;

thence north 1 degree 01 minutes 50 seconds west, a distance of 1,249.44 feet;

thence south 86 degrees 43 minutes 15 seconds east, a distance of 6,422.58 feet;

thence south 08 degrees 50 minutes east, a distance of 336.26 feet;

thence south 81 degrees 10 minutes west along the north ROW line of United States Highway 62, a distance of 6,110.0 feet, to the point of beginning: Containing approximately 148 acres.

SEC. 3. The conveyance authorized herein shall be subject to the following conditions:

(a) That the city, in accepting the conveyance, agrees for itself, its grantees, successors, and assigns to forego (1) any use of the property which will be noxious by the emission of smoke, noise, odor, or dust, and (2) the erection on the premises of any structure exceeding 60 feet in height above the ground.

(b) That the city shall pay to the United States the fair market value, as determined by the Secretary of the Army, of the property interest conveyed under the first section of this Act.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1417), explaining the purposes of the bill.

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

PURPOSE OF THIS BILL

The bill would direct the Secretary of the Army to grant to the city of El Paso, Tex., a release of certain restrictions on approximately 148 acres of land reserved by the United States in a quitclaim deed to the city entered into under authority of the act of August 2, 1956 (70 Stat. 950; Public Law 929, 84th Cong.), thus conveying to the city clear title to the property.

BACKGROUND OF THE BILL

The act of August 2, 1956, authorized an exchange of lands between the United States and the city of El Paso, Tex., on condition that the deed provide: (1) That the city of El Paso agree to construction by the Department of the Air Force of an interconnecting taxiway between Biggs Air Force Base and El Paso International Airport, (2) the use of El Paso International Airport by military aircraft, and (3) that the property shall revert to the United States at the election of the Secretary of the Army for breach of any of the terms and conditions by the city of El Paso, its successors and assigns.

Pursuant to this act, the Secretary of the Army on June 21, 1957, executed a deed conveying to the city of El Paso 2,255.453 acres of land in El Paso County together with improvements thereon, comprising portions of the Fort Bliss and Biggs Air Force installations, subject to certain terms and conditions, including those required under the enabling act. The lands involved were in three separate areas designated as parcels A, B, and C. Parcels A and B, aggregating 2,213.523 acres of land, have been utilized by the city for expansion of the El Paso International Airport. Parcel C comprises 41.93 acres of land and is separated from the westerly area of Fort Bliss by the Southern Pacific Railway.

On June 27, 1957, the city accepted this deed and on the same date executed a quitclaim deed conveying to the United States fee title to 318.88 acres of land adjacent to Fort Bliss as its part of the exchange transaction.

The 148 acres of land referred to in this bill is a part of the original parcel A referred to above. Similar legislation has been previously passed by the Congress in regard to parcel C (Public Law 87–778, 76 Stat. 778).

NECESSITY FOR THE LEGISLATION

The Department of the Army has been advised that the city of El Paso is seeking the current legislation because it is selling or

has sold the lands involved and desires to give the new owners a title clear of the encumbrances imposed in the 1957 deed from the United States. Actually, the only point at issue is the reversionary clause contained in the original deed.

The Biggs Air Force Base will be inactivated by July 1966, and the installation will be transferred to the Department of the Army and consolidated with Fort Bliss. The Department of the Army considers that the release of its residual rights in the 148-acre parcel of land, as provided for in this measure, would not be incompatible with its planned use of Biggs Air Force Base and Fort Bliss and therefore interposes no objection to the bill.

COST DATA

Enactment of this measure will not involve the expenditure of any Federal funds. The fair market value of the residual rights involved is estimated to be worth from $7,000 to $10,000.

AMENDMENT OF TITLE 10, UNITED STATES CODE, TO PROVIDE GOLD STAR LAPEL BUTTONS

The bill (H.R. 3013) to amend title 10, United States Code, to provide gold star lapel buttons for the next of kin of members of the Armed Forces who lost their lives in war or as a result of cold war incidents, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1418), explaining the purposes of the bill.

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

PURPOSE

This bill would broaden the laws relating to the furnishing of gold star lapel buttons by authorizing these buttons for the next of kin of members of the Armed Forces who, after June 30, 1958, died or die as a result of cold war incidents.

EXPLANATION

Existing law authorizes the award of gold star lapel buttons for widows, parents, and the next of kin of members of our Armed Forces who lost their lives in World War I, or World War II, or who lose their lives in any subsequent war or period of armed hostilities in which the United States may be engaged.

Widows, parents, and next of kin may not now be furnished gold star lapel buttons if the death of the member occurred in cold-war incidents that technically do not qualify as "armed hostilities in which the United States is engaged." For those members of the Armed Forces who lose their lives after June 30, 1958, this bill would authorize the award of gold star lapel buttons to parents, widows, and the next of kin if the death of the member occurred—

(i) While engaged in an action against an enemy of the United States;

(ii) While engaged in military operations involving conflict with an opposing foreign force; or

(iii) While serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing armed force.

The bill is retroactive to July 1, 1958, in accordance with the recommendations of the Department of Defense. The committee was informed that this date is the one selected for the initial award of the Armed Forces Expeditionary Medal in recognition of actions involving foreign armed opposition or being in a position where hostile action was imminent.

Members of our Armed Forces engaged in the conflict in Vietnam in southeast Asia are acquitting themselves heroically under conditions that are sometimes as difficult as any that members of our Armed Forces have faced in formally declared wars. The committee considers that widows, parents, and next of kin of these members are as fully entitled to display of the gold star lapel button as are survivors of members who gave their lives for their country in formally declared hostilities.

COST

The committee was informed that enactment of this bill will not increase the budgetary requirements of the Department of Defense.

APPOINTMENT OF COL. WILLIAM W. WATKIN, JR. IN THE GRADE OF LIEUTENANT COLONEL ON THE REGULAR ARMY PROMOTION LIST

The bill (H.R. 12031) to authorize the appointment of Col. William W. Watkin, Jr., professor, of the U.S. Military Academy, in the grade of lieutenant colonel, Regular Army, and for other purposes was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1419), explaining the purposes of the bill.

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

PURPOSE

This bill would authorize the President to appoint Col. William W. Watkin, Jr., a professor at the U.S. Military Academy, as a lieutenant colonel on the promotion list of the Regular Army in the same position he would occupy had he not been removed from the list as a result of his appointment as a professor at the Military Academy.

EXPLANATION

The professors of the Military Academy are appointed by the President by and with the advice and consent of the Senate. An officer who is appointed as a professor is removed from the promotion list of the Regular Army and his advancements in grade are accomplished under the laws applicable to professors.

Col. William W. Watkin, Jr., has served as professor of earth, space, and graphic sciences at the Military Academy since October 1, 1961.

The Department of the Army has informed the committee that Colonel Watkin now considers that he can serve more effectively in normal line duty and that the Department concurs in the belief that his training and experience can be more advantageously used in a field assignment. Colonel Watkin cannot return to the Army promotion list without express authority of the type this bill would provide.

COST

Enactment of this bill will not cause an increase in the expenditure of Federal funds.

JUDICIAL REVIEW OF THE CONSTITUTIONALITY OF GRANTS OR LOANS UNDER CERTAIN ACTS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 1367 (S. 2097).

The ACTING PRESIDENT pro tempore. The bill will be read by title.

The LEGISLATIVE CLERK. A bill (S. 2097) to provide for judicial review of the constitutionality of grants or loans under certain acts.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause and insert:

That this Act may be cited as "An Act to enforce the first amendment to the Constitution."

SECTION 1. The approval or disapproval of an application of any public or other nonprofit agency or institution for a loan or grant under—

(1) the Higher Education Facilities Act of 1963,

(2) title VII of the Public Health Service Act,

(3) the National Defense Education Act of 1958,

(4) the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963,

(5) title II of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress),

(6) the Elementary and Secondary Education Act of 1965,

(7) the Cooperative Research Act,

(8) the Higher Education Act of 1965, or

(9) the Economic Opportunity Act of 1964,

shall be effected by an order of the Federal officer making such grant or loan which shall be conclusive except as otherwise provided in this Act. Notice of such order shall be published in the Federal Register and shall contain such information as the Federal officer issuing the order deems necessary to effectuate the purposes of this Act.

SEC. 2. Any public or other nonprofit agency or institution which is or may be prejudiced by the order of the Federal officer making a loan or grant under the authority of any of the Acts enumerated in section 1, in a particular year to another such agency or institution, by virtue of the fact that the making of such loan or grant serves to reduce the amount of funds available for loans or grants in such year to the agency or institution which is or may be prejudiced, and which deems a loan or grant to be inconsistent with the provisions relating to religion in the first amendment to the Constitution, may bring a civil action in the nature of an action for a declaratory judgment. Defendants in such action shall be the Federal officer and the agency or institution whose application has been approved. Such an action may be brought no later than sixty days after the publication of the order of the Federal officer in the Federal Register.

SEC. 3. (a) Any citizen of the United States upon whose taxable income there was imposed an income tax under section 1 of the Internal Revenue Code of 1954 for the last preceding calendar or taxable year and who has paid any part of such income tax and who deems a loan or grant made under any of the Acts enumerated in section 1 to be inconsistent with the provisions relating to religion in the first amendment to the Constitution, may bring a civil action in the nature of an action for a declaratory judgment against the Federal officer making such a loan or grant. No additional showing of direct or indirect financial or other injury, actual or prospective, on the part of the plaintiff shall be required for the maintenance of any such action. Such an action may be brought no later than sixty days after the publication of the order of the Federal officer in the Federal Register with respect to

such loan or grant. In suing under this subsection the plaintiff may sue either on behalf of himself or on behalf of all other taxpayers similarly situated.

(b) Any citizen of the United States who deems a loan or grant made under any of the Acts enumerated in section 1 to be inconsistent with the provisions relating to religion in the first amendment to the Constitution, may bring a civil action in the nature of an action for a declaratory judgment against the Federal officer making such a loan or grant. Such an action may be brought no later than sixty days after the publication of the order of the Federal officer in the Federal Register with respect to such loan or grant. In suing under this subsection, the plaintiff sues not only for himself but also in behalf of all other citizens to vindicate the public interest in the observance of the provision of the first amendment relating to religion.

(c) For the purpose of this section the term "citizen" shall include a corporation.

SEC. 4. Any public or other nonprofit institution or agency whose application for a loan or grant under any of the Acts enumerated in section 1 of this Act has been denied by the Federal officer having appropriate authority on the ground that such loan or grant would be inconsistent with the provisions relating to religion in the first amendment to the Constitution may bring an action to review the final decision of such Federal officer within sixty days after such loan or grant has been denied.

SEC. 5. (a) Any action under this Act shall be brought in the District Court of the United States for the District of Columbia, and such court shall have jurisdiction without regard to the amount in controversy. In the event two or more civil actions are brought under the provisions of this Act challenging the constitutional validity of the same loan or grant, such court may consolidate such civil actions for the purpose of trial and judgment. Any action under this Act pending before the district court or court of appeals for hearing, determination, or review shall be heard, determined, or reviewed at the earliest practicable time and shall be expedited in every practicable manner. All process, including subpenas, issued by the district court of the United States for any such district may be served in any other district. In any action under this Act the court shall have authority to determine all matters of fact or law appropriate to a decision of the case. No costs shall be assessed against the United States in any proceeding under this Act. In all litigation under this Act, the Federal officer shall be represented by the Attorney General.

(b) The judgment of the district court shall be subject to review as provided in sections 1252, 1253, 1254, and 1291 of title 28 of the United States Code.

SEC. 6. (a) An interlocutory injunction enjoining the payment of a grant or loan, or any portion thereof, made pursuant to the order which is claimed to be invalid in an action under this Act may be granted by the court at any stage of the proceedings authorized by this Act.

(b) When and if any judgment becomes final that declares invalid an order of the Federal officer under this Act, the agency or institution receiving the grant made by the Federal officer pursuant to such order shall refund the unexpended portion of the same, and if a loan has been made pursuant to such order it shall be refunded with accrued interest at the rate fixed therefor, for credit to the appropriation from which it was paid. The Federal officer may in his discretion permit deferment for a reasonable time of repayment of the grant or loan including interest thereon.

SEC. 7. If any provision of any Act referred to in the first section, or the application of such provision to any person or circumstance, shall be held invalid under this Act, the remainder of such Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be temporarily laid aside for the transaction of routine morning business.

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

DAIRY SITUATION IN BOSTON

Mr. AIKEN. Mr. President, on July 10, the Boston Globe devoted an entire page to the dairy situation in the Boston milkshed. The page was headlined: "Milk Shake-Up in New England Farms."

The pages consist of three closely related articles which explain, for the benefit of the average consumer, why the price of milk has risen in the Greater Boston area.

These articles describe the difficult times the dairy farmers are having in the present cost-price squeeze. The serious decline in milk production, and the widespread sale of dairy farms and herds have resulted from the fact that the farmer has been receiving an inadequate price for his milk.

The farmer, like his counterpart in the urban areas, must have an incentive. He must be able to make ends meet and enjoy a fair profit for his labor.

The State of Vermont supplies more than 50 percent of the milk consumed in Greater Boston. For many months we have seen 15 to 20 dairy farms go out of production each week.

City people must have an adequate supply of milk, and only two alternatives can guarantee a supply—either a direct subsidy for the dairy farmer or an increase in the retail price of milk. The latter course has been taken, and the attached articles from the Globe explain the need for this modest price increase in terms that everyone can understand.

Mr. President, I ask that the articles in the Boston Globe of July 10, 1966, be printed at this point in the RECORD.

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

[From the Boston Globe, July 10, 1966]

MILK SHAKEUP IN NEW ENGLAND FARMS

(By Joe Harrington)

Families in Greater Boston began paying a cent and a half more a quart for milk last week-end, a direct result of conditions in the milk producing areas of New England.

This increase to the consumers was exactly the price jump the dealers-milk handlers were required to pay for their raw milk.

It reflected not only the seasonal price increase of July 1, but an additional raise announced by U.S. Secretary of Agriculture Orville L. Freeman.

He had been petitioned for relief by farm producers, not only in New England but in other sections of the country. In announcing his share of the price increase Mr. Freeman said:

"I have been deeply concerned for many months about the decline in dairy production, and the implicit threat which a continuation of this trend would have to the consumer supplies of milk and dairy products.

"The U.S. milk production in May was 4.1 percent below a year ago. This was the 14th consecutive month that milk production fell below earlier yearly levels."

The secretary cited figures of increased cow slaughter and number of dairymen quitting the business and said: "If these trends continue, and the dairy supplies continue to decline, then I am fearful that unprecedented increases in consumer prices could result."

The price increase, he stated, would encourage the dairy farmers to stay in business and receive a deserved increase in what they earn.

What has caused this abandonment of the cows?

The price-cost squeeze—the difference in what it cost to run the dairy farm and what they are paid for the milk—say the farmers.

There are other factors entering this picture: the rising value of the land when the farms are near urban communities; increased cost of grain to feed the cows; difficulty securing farm labor; tempting price of cows for beef, which is at a new high, and of course, taxes.

Volume also plays a big part. So like grocery stores, dairy farms are getting fewer and bigger.

Some new efficiency methods in running the farms and feeding stock have been introduced, but this involves a heavy investment of capital.

So the younger farmers, who were brought up on the land and love the farm life and the animals, have been facing the moment of truth. All agree that the days when a farmer can get by with 10 to 20 cows are over. They've got to decide whether to get out of the business altogether or go into debt to buy new stock and more efficient machinery.

Let it be made clear that the outlook for the future production ("making milk," the farmers call it) is not all dismal. A number of younger men are going into efficient equipment and feeding, and have confidence that they will not only amortize any debts they will accrue, but continue in business and make money.

Milk production and its sale is fantastically big business. In one month, last April the producers received $14,330,000 for the milk that was sold in Massachusetts and Rhode Island. This money was in payment for a month's supply of 292,227,000 pounds of milk—or about 136 million quarts.

And with the possible exception of whiskey and other alcoholic beverages there is no consumable commodity that is so well regulated as milk.

When Mrs. Hepplewaite sends her little boy to the store for a half gallon of milk in a cardboard container or glass jug—a transaction that takes place thousands of times every day in most communities—she is getting involved in practically every branch of government.

It reaches from the city milk inspector, to county agents helping the farmers, state inspections and controls, and the Federal government at Cabinet level, the Secretary of Agriculture.

In fact, it would not be far fetched to note the amount of milk produced and drunk by families has a bearing on our foreign policy. The surplus fluid milk is diverted into manufactured dairy products, one of which is dry milk, shipped to other countries under our foreign aid program.

With the drop in the numbers of dairy farmers the question might arise as to the probability of a serious milk shortage in the local marketing area. It appears that none is likely in the immediate future. Keeping in mind the huge amount of milk that is sent here each month, the overall shrinkage for this year below 1965 was about 4 percent.

Yet Reed H. Rexford, commissioner of agriculture of Vermont, believes the decrease in production is ominous. At his office in Montpelier he told the Globe that milk production in his state held steady until October of last year when the current downward trend began. It was slight then, about a 1.5 percent drop, but by March of this year the decrease amounted to 5 percent.

There is ample reason for concern about what has been happening to milk in Vermont, because it constitutes the state's largest industry. With the exception of about 5 percent used in the state, the milk is shipped into the Boston-Massachusetts-Rhode Island area.

What has been happening in New England is a part of a national picture of dairy farmers tossing in the towel.

A survey made last month showed that in Wisconsin, which leads the nation in supplying milk and dairy products, dairymen have been quitting the business on the average of 14 a day. A state farm statistician there was quoted as saying 5000 herds have been liquidated during the last year.

New York state produces a lot of milk and a lot of it is shipped into the local marketing area; 38,806,000 pounds in April, or about 13 percent of our entire supply.

Here, too, concern is felt about the tendency of dairy farmers to wind up operations (in Vermont they call this termination, "sugaring off") and go into other occupations.

It also appeared that almost every statement made about milk—its volume, its price, its distribution, has to be qualified.

If the population of cows is going down, the amount of milk-per-cow is increasing. The introduction of pure bred cattle and better feeding practices are spreading.

Yet it is impossible to stray far away from the bald fact that people who have been in the business of taking care of cows and extracting their milk are seeking new means of making a livelihood. Here are some comments of people who recently have become former dairy farmers:

George U. Browning, 46, of Lincoln, operated the family farm which was started by his father who came to Lincoln in 1886. He sold out his farm and herd of 35 cows and took a job with a grain and farm supply store in Waltham, a part of a chain of these outlets.

"I found I was living on depreciation," he said, "Farm and dairying equipment wears out and while I was making a living, the return on the milk didn't provide the minimum of $3,500 a year I needed to keep up and replace the machinery."

Browning has six children and two of his older sons helped him run the dairy, so it wasn't necessary for him to hire outside help—if he could get it.

Today, Browning estimated, the cows and equipment needed to operate a successful dairy farm requires an investment of $60,000 to $100,000.

A lady whose husband is still running a dairy in Rowley, Mrs. William Herrick, Jr., knows all about the problems of the milk producers because she was brought up on one of these farms. Her father closed it out four years ago.

"Small farmers", she commented, "are still in business because they are stubborn, because they love it or because they are so far in debt they can't get out.

"You work your head off in this business and then the government comes along and takes any profit in taxes. Many of these small farmers have invested in expensive equipment on credit. They owe so much money they have to keep going or be wiped out."

Mrs. Herrick said her husband, who was out haying, is 44-years-old and has been farming since he was 17. She said that he gets by financially by repairing his own equipment, instead of scrapping it and investing in new machinery.

The farmer's wife also cited the high price of grain which must be fed the cows to keep up the butterfat content of the milk, which must reach a 3.5 percent standard for sale. Then, with true feminine logic, she murmured:

"How I wish our cows could be put on a diet!"

Burpee F. Steele of Boxboro, who has been "making milk" on the farm started by his father for 44 years, was darned glad to get out of it. He's 66 years old and he knows the business from way back.

Steele has been phasing out his dairy business for tax purposes, selling off a few cows every year, and, in recent months, wound it up. Said he:

"One of the basic troubles of the dairy farmer is that he sells his milk at wholesale prices and pays retail prices for the materials to run his operation: grain, equipment, and other supplies.

"Again, prices have got all out of line. When we were getting $3 a hundredweight for milk a tractor cost $735. When the price edged up to around $6, the same tractor cost between $3300 and $4000.

"And you've got to remember that taking care of cows is a seven-day-a-week job, because they have to be milked twice a day. If you have to go some place like to a wedding or a funeral, you have to make arrangements to get back home at 4:30 in the afternoon, change your clothes and do the chores.

"The price of milk cows has gone way up. Five years ago you could get a good one for $250. Now she would cost you $400."

Harold E. McNiff of Pepperell, who was brought up on a farm in Harvard, sold the last of his milk cows and has taken on another type of livestock: breeding harness race horses. He can remember when a good hired man on a farm made $60 a month and his board. Now he finds that a tractor driver demands $2 an hour. He told of one old fellow who went on Social Security and relief and was entirely healthy until he quit work on a farm. "In a year," he said, "that fellow drank himself to death."

His brother, Paul, 66, with whom he lives in Pepperell was also in the milk business and sold out a few years ago. Again it was the matter of help. "The young fellows would rather go to work in a mill today than milk cows," he commented.

It must not be considered that all the dairy farmers who supply the local marketing area are down in the mouth about the future of this venerable business.

Many of them feel that with the increase in population and the decreasing number of producers, the price they receive for their milk is bound to go up and make the business profitable.

At North Hartland, Vt., in the Connecticut Valley, Russell Dennon, 35, has installed a new system of feeding cows which could revolutionize the dairying business in this area.

It is used extensively in Wisconsin and other Midwestern states, and involves feeding cows entirely on stored fodder—no pasturing even when the grass is lush.

A dozen farms in the Middlebury section of Vermont also have installed this system or parts of it. A completely mechanical, automatic farm is operated in the Bay State, at Acton, by Dr. Seymour A. Di Mare, a Concord surgeon, who feels there is a bright future for dairymen.

This system involves chopping the hay in the field, instead of baling it, mechanically conveying it to a wagon, then blowing it into a silo that is almost a vacuum, by means of a tractor.

When the complete system is installed as it is in Acton, a conveyor screw takes the moist fodder to the feeding trough, where the cows munch as much as they please, when they please.

Dennon, the young Vermont farmer who attended the state's agricultural school at Randolph, said there were 30 dairy farms in his township five years ago and now there are 13.

He attributed the demise of these farms to two considerations: the reluctance of the owners to adopt new methods of feeding and the capital required to install them.

The fodder fed the cows under this new system is called "haylage" and its advocates say that the animals get the increased benefits of retained proteins, which are not lost by the traditional system of storing corn fodder in silos.

Dr. Di Mare has been building up the blood strain of his herd of Holsteins and this year began importing breeding stock from Scotch farmers in Ontario.

He was not prepared to come out flat-footed and advise all farmers to adopt this method, feeling it was a matter of individual decision. But he is fully satisfied that his investment in this dairying operation will be returned over a period of years and is gratified by the statistics of his first full year of operation.

The surgeon, who has made a deep study of milk productions and costs has another suggestion:

"Local real estate assessors should give the dairy farmer a break. To the dairyman, land is not just areas on which to build homes. It is a production tool and should be so classified by the assessors."

[From the Boston Globe, July 10, 1966]

OUT OF BUSINESS—AS EXPENSES MOUNT, PROFITS SLIP; FARMERS SEEK BETTER JOBS

Behind the official announcement of the rise in the price of milk to the consumer is a large mosaic made up of many segments that have been plaguing the farmers—the milk producers—with increased intensity.

They have been going out of business in large numbers.

In Vermont, there were 6030 dairy farms in March, 1965.

Last month there were 5059, a substantial drop of 971 producers in a little more than a year.

Vermont produces more than 50 percent of the milk consumed in the Federal Massachusetts-Rhode Island Milk Marketing area, which includes Boston.

A similar situation exists in the Bay State, where 16 percent of the area milk is produced.

Back in 1960 there were over 3400 dairy farms in the state. Last month there were only 1886.

Massachusetts milk farms have been falling by the wayside for some years at the rate of 200 a year, though thus far this year only 90 farmers quit the milk business.

New Hampshire produces 6.4 percent of this area's milk, mostly in Grafton and Coos Counties. In one year, between 1964 and 1965, about 100 milk producers closed up shop, leaving about 1200 still operating.

[From the Boston Globe, July 10, 1966]

MODERNIZING: IT'S EXPENSIVE, BUT ESSENTIAL

A dairyman-optimist is Stanley Christiansen of East Montpelier, Vt., operating a large farm started by his father, Andrew.

Last Fall when it became imperative to rebuild his barn requiring a considerable outlay of capital, he had to decide whether to modernize or get out of the milk business.

He chose to expand the operation. So he built a new large barn, with a feeding area 75x46, a feeding trough and an "open stall" section.

From this section the 45 cows are led into the new "milking parlor" four at a time where the milk is extracted by modern machinery and piped into a 400-gallon refrigerated holding tank to await arrival of the collector.

The feeding has been simplified and all the milk is handled by electrically-controlled machinery.

Christiansen likes the outlook for the milk producers. He says he has heard little about the surplus of milk which, for a long time, was quoted as depressing prices.

AMERICAN LABOR UNIONS AND THE INTERNATIONAL TRADE UNION CONGRESS

Mr. DOMINICK. Mr. President, in February of 1965, I had the opportunity of being a member of the Senate delegation to the district conference in Oxford. During that period, I also had the privilege and pleasure of reviewing with some members of both the Labor and Conservative Parties the aspect of the influence of the U.S. labor unions in connection with their stand in the International Trade Union Congress.

I was informed—happily so informed—that they had taken the lead in preventing the international conferences from joining with the infiltration of the Communists, which the Communists had tried again and again. I was informed that the American trade union leadership had prevented this in many instances, which delighted me.

Today I have before me the AFL Free Trade Union News, with a guest column entitled "Where We Stand," written by George Meany, on behalf of Victor Riesel.

The article is extremely interesting. It details much of the effort and the discipline which they have put into their efforts to oppose either communism or any other form of dictatorship. I believe the article is of sufficient interest and of such importance to our Nation that Senators as a whole should have the opportunity to read it.

Consequently, Mr. President, I ask unanimous consent to have printed in the RECORD at this point the article "Where We Stand," by George Meany, in the July 1966, issue of the AFL–CIO Free Trade Union News.

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

WHERE WE STAND

(By George Meany)

The AFL–CIO Executive Council realizes that, in the present world crisis, foreign policy involves the freedom and prosperity of our entire nation and the peace of the world. That is why we take an active interest in world affairs.

As American labor sees it, the overriding issue of our time is the struggle between democracy and dictatorship. In this struggle, the AFL–CIO is unreservedly on the side of democracy and against every form of dictatorship, whether it be Communist, Fascist, Falangist, Peronist or military. Democracy and totalitarianism have nothing in common and there can be no partnership or united front between them.

American labor realizes that without democracy there can be no free trade unions and that without free trade unions there can be no democracy. For us this is a basic principle and firm conviction.

Moreover, the Communists have made the ranks of labor their first and main field of activity. The Communists' strategy dictates that they must, above all, capture the trade unions before they can seize power in any country.

LABOR FIRST

Since labor is the first target of Communism, labor should be the first one to reject, resist, and defeat all Communist infiltration and subversion. This is our duty as trade unionists and citizens. History has shown that Communist infiltration at home greatly facilitates Communist attack from abroad.

Some self-styled liberals who consider Communism a progressive movement do not like this firm position of the AFL–CIO. But to American labor, Communism is a reactionary anti-labor force. It aims not to eliminate but to exploit the shortcomings and evils in our free society, with a view of making it an easier target for conquest by Communist imperialism.

We are against Communism because we are for democracy and social justice. In this constructive and positive spirit, American labor has set the pace in fighting for social justice and ever better conditions of life and labor throughout the world.

During the course of our representation in the United Nations, we took the initiative in proposing the draft of an International Bill of Human Rights which later served, in large measure, as the basis of the UN Declaration of Human Rights. American labor was the first to raise before world public opinion the menace of massive slave labor in the USSR and Communist China. It took us years to convince our government to support us in this fight which finally led to the strong UN condemnation of this evil especially in the Communist "paradise."

The AFL–CIO conducts its varied international as well as domestic activities completely independent of any government control or influence. It is the government of our country which sets and executes its foreign policy. But as citizens and trade unionists, we seek to influence the development and application of a foreign policy which will promote our nation's security, human freedom and world peace.

OUR OWN POSITION

At times, we may disagree with a particular foreign policy of our government. For instance, we have had disagreements with our government over its policy towards Franco Spain, national independence for colonial people, and dictatorships in Latin America and Africa. In our efforts to aid free trade unionists and their organizations abroad in becoming nation-builders, bulwarks of democracy and the most militant opponents of Communist subversion and aggression, we have, on sundry occasions, had differences with our government and advanced our own independent positions.

In regard to the crisis in Vietnam, we are convinced that we spoke for the overwhelming majority of the American people when our Executive Council unanimously declared, after much debate, on October 28, 1965, that:

"Freedom-loving people everywhere have the greatest stake in the democratic forces triumphing over the ranks of Communist subversion and aggression which have, for more than a decade, been trying to conquer the South Vietnamese. . . . It is the duty of every American in every walk of life to do his utmost to insure the success of our government's policy. Of course, in our democratic society, all policies should be studied and debated. But slander of our country is not synonymous with study of its policies. Cultivated rowdyism is not identical with critical inquiry and constructive criticism. Any organization or movement dedicated to breaking the law of the land (burning draft cards, stopping troop trains) can only be treated as a law-breaking body."

And after careful consideration and much discussion of the conflict in Vietnam, our Sixth Constitutional Convention (December 1965) unanimously asserted that:

"The Communists are waging a war of conquest, a war for the annexation of South Vietnam by Ho Chi Minh's regime. This war is not an isolated local conflict. It is an integral phase of the Communist drive for dominating the world. . . . In this realization . . . our convention pledges unstinting support by the AFL–CIO of all measures the Administration might deem necessary to halt Communist aggression and secure a just and lasting peace."

Again, on February 25, 1966, after a thorough-going discussion in its International Committee, the Executive Council unanimously reaffirmed that "it unreservedly endorses President Johnson's twofold program for an honorable settlement of the Vietnamese war—the policy of steadfastly aiding the South Vietnamese people to defend themselves against Communist aggression while continuing an active search for peace and freedom through negotiations."

TIMELY PROPOSALS

By seeking to influence and mold our country's foreign policy, the people can help the government pursue a consistently effective democratic course. In this realization, we of American labor have made practical and timely proposals to our government for sound positions in the international arena: towards the war in Korea, building democracy in Germany, the promulgation and execution of the Marshall Plan, the containment of Soviet and Chinese Communist aggression, the Cuban Communist threat, strengthening the Alliance for Progress, halting Communist subversion in Santo Domingo, defeating Communist aggression against the people of South Vietnam, rebuilding NATO, and supporting generously the developing nations in their efforts to build prosperous democracies.

All our plans and programs in the realm of foreign policy and in the building of the International Confederation of Free Trade Unions, of which we are an affiliate, have been adopted through the democratic process—only after discussion and consideration of different proposals. The AFL–CIO has always been mindful of the fact that in the final analysis, this fight for human freedom, decency, well-being and peace will have to be won in the factories, on the farms, in the halls of learning and science laboratories, and in wholehearted economic and political as well as appropriate military cooperation with the freedom-loving peoples of the world.

The AFL–CIO distinguishes sharply between the dictatorships and the people under their yoke. We are encouraged by the growing dissatisfaction of the people in the Communist "paradise" and by their pressure for more freedom and decent conditions of life and labor. We welcome even the smallest concessions which these people have wrung from their oppressors.

But the changes which have occurred behind the Iron Curtain have not been basic. The all-powerful dictatorship continues to exercise total power over every walk of life and is in a position to take away any concession it deems dangerous to its regime. The renewed Soviet persecution of intellectuals and its stepped-up arming for aggression at the expense of the basic needs of the people confirm this.

We should help the development of the rising democratic forces behind the Iron Curtain and strengthen the desire of the captive nations for full national freedom from Soviet and Chinese imperialist domination. But American labor cannot do this by a rapprochement with the leaders of the so-called Communist trade unions. Free world labor—with the exception of the American Federation of Labor—tried this method after World War II when they joined the Communist-controlled World Federation of Trade Unions.

This experiment was a complete failure. Its lesson is still valid.

Particularly in view of the danger of thermonuclear warfare, it is urgent for our country and all other democracies to unite in superior strength. There is no better way of convincing the Communist warlords that aggression will not be profitable for them.

In the Cuban missile crisis of October 1962, the late President Kennedy demonstrated the soundness of such a policy. At this critical hour, the American people can be fully assured that the cause of democracy, human well-being and world peace has a most devoted and determined champion in the AFL–CIO.

(*The above, reprinted by permission of the Hall Syndicate, was written as a "Guest Column" by President Meany for Victor Riesel, the internationally-known journalist who is a specialist in labor problems and president of the Overseas Press Club.*)

GIVE THE CONSUMERS THE TRUTH

Mr. McGOVERN. Mr. President, the New York Times this morning carries a front page article on milk, bread, butter, and egg price increases in New York City recently.

The article says that consumer milk prices in New York and New Jersey will be raised Monday to a level 3 cents a quart over June prices.

It then reports:

Milk distributors yesterday laid the impending price increase to an increase in Government fixed payments to farmers for milk delivered in tank trucks.

The farmers' return for milk is being increased from $5.20 per hundredweight in June to $5.77 per hundredweight in August, the Times account explains. Then, it states:

The increase amounts to almost 1-cent a quart and spokesman for several of the city's 400 distributors said it would be passed along to retailers.

"The retailers will certainly pass the increase along to the consumers," said a spokesman for Sealtest Foods, one of the largest distributors.

They certainly are passing on the farm price increase—doubled and more.

If the Times article is accurate—and I see no reason to doubt the figures it contains—the middlemen in New York and New Jersey are going to get considerably more out of the price increase to consumers than the farmers in the area.

There are about 46 quarts of milk in 100 pounds.

The Times indicates that farm return for milk has been increased 57 cents per hundredweight since June, from $5.20 to $5.77. That is slightly less than 1¼ cents per quart. But the consumer price increase is 3 cents, the Times reports. That means that the farmers will get about 1¼ cents out of the 3-cent increase to consumers, and the handlers 1¾ cents.

I shall not take the time of the Senate now to go into an analysis of the bread, butter, and egg price increases reported by the Times. Analysis will show that the farmer-consumer price spread on bread is being magnified as much as or more than in the case of milk.

The Washington Post called attention in an editorial July 27 to the current series of bread price increases around the Nation. They are also being attributed to an increase in the price of wheat. The Post points out that the cost of the wheat which goes into bread is only a tiny fraction of the retail price. The editorial notes that flour prices have gone up two-tenths of 1 percent since June 1965, while cereal and bakery product prices have gone up 3.3 percent.

The Post comments:

This should at least help to make it clear to consumers who is responsible for the rise in bread prices—

The Post deplores the fact that they were wrong a year ago when the paper said editorially:

It is simply not conceivable that the bakery industry, which vigorously and successfully fought the bread tax intended to benefit the Federal Treasury, would countenance increased bread prices amounting to a tax benefitting private industry.

I ask unanimous consent to have printed in the RECORD the Washington Post editorial on bread prices.

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

[From the Washington (D.C.) Post, July 27, 1966]

BREAD PRICES

The bakery industry, just a year ago, organized a powerful lobbying effort that helped defeat a farm bill that would have financed part of the costs of a wheat program by a tax that would have added seven-tenths of a cent to the price of bread. This scheme to shift part of the burden for the farm program from the Government to the processors was denounced by the baking industry as a "tax on bread." Congress quailed before this assault and dropped the plan.

Now the industry is raising bread prices, in many cities, up to two cents a loaf because wheat prices in the last year have advanced. The farmer of course gets only three cents out of the retail price of 20 cents for a loaf of bread, but he is being blamed for the increase.

After the industry's outcry against bread price increases a year ago, this newspaper said: "It is simply not conceivable that the bakery industry which vigorously and successfully fought the 'bread tax' intended to benefit the Federal Treasury would countenance increased bread prices amounting to a tax benefiting private industry. One must credit the industry with sincerity and consistency and look forward hopefully to stable, if not lower bread prices. That, at least, is a gratifying prospect." That turns out to have been a vain hope and expectation.

It needs to be noted that flour prices have gone up .2 per cent since June, 1965, while cereal and bakery product prices have gone up 3.3 per cent. That should at least help make it clear to consumers who is responsible for the rise in bread prices.

Mr. McGOVERN. Farmers certainly have not received all of the increases in butter and egg prices which the Times reports.

I am advised that the New York milk price pattern is typical of what is occurring across the Nation. In Denver, farm return on milk has gone up about three-fourths of 1 cent. Retail milk prices are up 2 cents a quart. In one South Dakota city a one-half of 1-cent increase in the farm price brought a 2½-cent per quart increase in retail price.

I expect to request the Committee on Agriculture and Forestry to call for a thorough, community-by-community study into the inflation of recent farm price gains as they have been passed on to consumers. Meantime, Mr. President, I hope that newspapers and consumers will insist on a thorough explanation of increasing food prices and an accurate accounting for their cause.

It is in the long-term interest of both farmers and consumers that inflated price increases are fully understood and that doubled and tripled price increases are not passed off as entirely attributable to farm returns.

If farm prices are allowed to remain inequitably low—and the decline in dairy production is an excellent current illustration of this—the production of food items will decline, supply will become short, and scarcities will cause skyrocketing food prices to the injury of everyone involved.

It is in the best interests of both farmers and consumers to permit farm price adjustments necessary to assure a fair return to farmers, and thereby assure adequate production.

But if the multipliers between farmer and consumer are not reported to consumers completely and truthfully, inflationary scarcities can result from misguided policy decisions.

I hope that Members of Congress who represent consumer constituencies will join me in attempting to see that the whole truth gets to their constituents.

I ask unanimous consent to have printed in the RECORD the New York Times article, and I ask those who read it to keep in mind one fact the Times did not state: that the rise in farm milk price, $5.20 in June to $5.77 in August, amounted to just about 1¼ cents per quart of milk.

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

[From the New York (N.Y.) Times, July 29, 1966]

MILK PRICE RISES A CENT ON MONDAY—INCREASE AFFECTS CITY AND NEW JERSEY DEALERS—GOVERNMENT BLAMED

(By Richard Reeves)

The price of a quart of milk in New York and New Jersey will go up a cent on Monday and will probably go up another cent by Nov. 1.

The increase, which is to be announced Monday by metropolitan area dealers, will raise the usual price paid by consumers in New York stores to 28 cents a quart. The price in northern New Jersey stores will be 26 cents and home delivery prices in both states will be 3 to 5 cents a quart higher than the store prices.

The new prices are about 3 cents a quart higher than milk prices at the end of June and follow recent increases in the prices of bread, butter and eggs.

City Markets Commissioner Samuel J. Kearing yesterday reported these price rises in those commodities: bread, up 2 cents a loaf last Monday; butter, up 10 cents a pound in the last month; eggs, up 16 cents a dozen in the last month.

Milk distributors yesterday laid the impending price increase to an increase in Government fixed payments to farmers for milk delivered in tank trucks. The New York-New Jersey Milk Marketing Administration, a

division of the Federal Department of Agriculture, has ordered distributors in the two states to pay farmers $5.77 per hundred pounds of milk in August, compared to $5.50 in July and $5.20 in June.

The increase amounts to almost 1 cent a quart, and spokesmen for several of the city's 400 distributors said the increase would be passed along to retailers.

"The retailers will certainly pass the increase along to the consumers," said a spokesman for Sealtest Foods, one of the largest distributors. "Milk prices are in a vicious circle that is spiraling upward."

JERSEY BOUNDED BY MINIMUM

New York retailers are free to sell milk at any price, but New Jersey retailers are bound by minimum prices set by the state Office of Milk Industry. The office announced yesterday that northern New Jersey minimums would be raised Monday from 25 to 26 cents a quart for milk purchased in stores and from 28 to 29 cents for delivered milk.

A spokesman for the New York-New Jersey Marketing Administration said the farmers' price for milk had been raised by orders of Secretary of Agriculture Orville L. Freeman "because of the decline in milk production caused by a rather precipitous drop in the number of cows and dairy farmers."

The administration spokesman and dairy officials agreed that the price of a quart of milk was likely to increase at least another cent because of normal seasonal production declines before Nov. 1.

The marketing administration is the agency that, in effect, subsidizes dairy farmers by regulating the price that distributors must pay for milk the farmers produce.

FREE TO FIX OWN PRICES

The distributors and retailers in New York, however, are free to sell milk at any price they feel is competitive. In New Jersey, the Office of Milk Industry sets minimum prices, which are one-half cent per quart higher in southern New Jersey than in the northern part of the state.

The increase in the prices of other basic commodities was revealed in a survey conducted in the city by Commissioner Kearing.

The Commissioner reported that major bakers in the city raised the price of a loaf of bread from 28 to 30 cents last Monday and blamed the increase on higher costs because of a national drop in wheat production. The price of a loaf of bread in the city jumped from 27 to 28 cents last November.

The Commissioner said that wholesale butter prices in the New York area have increased 23 per cent since he took office last Jan. 1. He said a survey by his staff indicated that butter is presently selling for 81 to 87 cents a pound, compared to a range of 71 to 79 cents only two weeks ago.

The price of a dozen large, white, Grade A eggs was 50 to 53 cents on July 1, he said, and is now 67 to 69 cents.

City Council President Frank D. O'Connor and three councilmen—John J. Santucci, Matthew Troy and Aileen Ryan—introduced a council resolution yesterday calling for an investigation of rising food prices in the city.

Mr. McGOVERN. Mr. President, I call on urban newspapers to report to their readers in detail where their milk, butter, and bread payments are going, including the fact that in New York and New Jersey, with farm milk at $5.77 per hundredweight, the producers are getting only 12½ cents per quart out of the 28-cent retail price—substantially less than half—and that the wheat farmers are getting about 3 of the 20 to 30 cents currently being charged at retail for a pound loaf of bread.

THE ELECTRIC ENERGY INDUSTRY OF KANSAS

Mr. CARLSON. Mr. President, at a time when many States and many areas of our Nation suffered from a shortage of electric energy, Kansas was fortunate, because of the foresight and planning of our electric industry, to have had no difficulty during this period of extreme hot weather.

The private power companies and the REA's have future plans that will greatly expand the electric systems of our State.

The citizens of Kansas are most fortunate to have had capable and responsible leadership in the electric energy field. We are indebted to those responsible for this outstanding achievement and I personally want to commend them.

Recently the Honorable Lee C. White, Chairman of the Federal Power Commission, wired the State corporation commission at Topeka, Kans., for information in regard to the availability of electric energy in our State.

Chairman William L. Mitchell of the State corporation commission wrote Chairman White under date of July 20. I ask unanimous consent that the letter be printed in the RECORD.

I also ask unanimous consent to have printed in the RECORD a letter that was written by Gordon W. Evans, president of the Kansas Gas & Electric Co. at Wichita, Kans., to the Honorable Lee C. White, Chairman of the Federal Power Commission, on this same subject.

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

STATE CORPORATION COMMISSION,
Topeka, Kans., July 20, 1966.

HON. LEE C. WHITE,
Chairman, Federal Power Commission, Washington, D.C.

DEAR CHAIRMAN WHITE: While this Commission did not receive your telegram asking utilities under our jurisdiction to marshal their resources to minimize the possibility of widespread outages due to the heat wave, this Commission had been working with our Kansas utilities for several years concerning this problem. We particularly had been working with them the past month because of the widespread lack of moisture and excessive heat in the area assigned to Charles Ross. At the present time we have no problem in Kansas. During the week of July 10–16, the Kansas Power and Light Company delivered power and energy outside its own system requirements as follows:

1. To Kansas Gas and Electric Company, 35,000 KW, 3,015,000 KWHR.

2. To Western Power & Gas Company, 5,000 KW, 185,000 KWHR.

3. To Missouri Public Service Company, 44,000 KW, 5,999,000 KWHR.

4. To Kansas City Power & Light Co.,* 2,177,000 KWHR.

5. To Omaha Public Power District,** 878,000 KWHR.

During this period, Kansas Power and Light's integrated system registered three new peaks, with the highest at 864,100 KW gross hour. Even with this peak, Kansas Power and Light still maintained reserve capacity at not less than 14.4% over the peaks. On July 18, 1966, Kansas Power and Light experienced a new integrated system peak of 879,900 KW gross hour and 825,000 KW net hour.

You have previously received a report from Gordon Evans, President of Kansas Gas and Electric Company. We have experienced no difficulty whatsoever with Kansas Gas and Electric Company's ability to meet its summer peak load.

We have been in constant contact with Western Power and Gas Company and they have just recently interconnected with Kansas Power and Light Company near Hutchinson, Kansas. Their summer peak loads are in order and we anticipate no difficulty in the western half of the state. Western Power and Gas Company is presently constructing two additions to their system: one in the vicinity of Dodge City which represents a plant in the neighborhood of 150,000 KW and a small addition to their Liberal, Kansas, station in the vicinity of 20,000 KW.

The Kansas City Power and Light Company, whose operations are not too extensive in the State of Kansas, reports that their reserves are in order with respect to the peaks they are experiencing during this time. Our field checks confirm this.

The Kansas Commission is more than happy to assist the State of Nebraska during its troublesome time, and the State of Missouri during its shortages. Do you know of any other states who need assistance? Please advise and we will be happy to help them in any way possible.

Future plans in Kansas call for additions to the systems of Kansas Power and Light Company, Kansas Gas and Electric Company, and the R.E.A.'s. These new plans are on the drawing boards pursuant to urgings of this Commission and we anticipate that future loads will be more than adequately met by these additions.

It is also interesting to note that the Kansas Power and Light Company has managed to meet the problems associated with new peak loads while at the same time they have coped with the problem of the disastrous tornado of June 8, 1966, which struck the Topeka area causing extensive damage of about $1-million to their facilities. The management and crew of Kansas Power and Light not only did an excellent job with respect to restoration of service, but held the cost and damages to an absolute minimum. Power service was curtailed in the tornado area for three days. Not one person was injured as a result of the curtailment.

If we can be of any further service to you, please advise.

Very truly yours,

WILLIAM L. MITCHELL,
Chairman.

*Deliveries to KCP&L were of emergency and economy energy at varying volumes of delivery from 70,000 KW down to 10,000 KW at different hours. Most of these deliveries were for redelivery to Union Electric Company at St. Louis to aid its shorter situation.

**Deliveries to Omaha Public Power District were of emergency energy at varying volumes of delivery from 20,000 KW down to 5,000 KW at different hours. We understand this power went to aid the Nebraska shortage and also some to relieve an emergency shortage in Iowa.

Ten thousand kilowatts (1,015,000 KWHR) delivered to KG&E were for the account of Empire District Electric Company.

KANSAS GAS & ELECTRIC CO.,
Wichita, Kans., July 14, 1966.

MR. LEE C. WHITE,
Chairman, Federal Power Commission,
Washington, D.C.

DEAR MR. WHITE: We have your telegram of July 12 about meeting the power requirements of our customers.

Kansas Gas and Electric Company has a history of furnishing adequate and dependable electric service. This is due to the established procedure of the company to make advance plans to meet the load requirements of our customers at all times. However, the continuing heat wave has caused the use of electric power to exceed our estimates and to reduce the available reserves to about 7.5%. This is lower than we usually try to maintain.

Our summer load is directly dependent on hot weather. The difference between our winter peak, 520,600 kv, and our summer peak load, 745,500 kw, in 1965 was 224,900 kw, or 43.1%. The increase in the summer peak load in 1965, 745,500 kw, over the summer peak load of 1964, 730,300 kw, was 15,200 kw, or 2.8%. This small increase was due to the cool summer experienced in 1965.

The increase in the summer peak load in 1966, 822,400 kw, over 1965, 745,500 kw, so far to date is 76,900 kw, or 10.3%. The difference in our peak load on a cool summer day and a hot summer day, within a 24-hour period, can and does vary as much as 160,000 kv, or 24%. I mention these unusually large fluctuations in load to point up the difficulty in estimating accurately the summer load; i.e., variation of increase in peak load from one year to the next from 2.8% to 10.1%, and a variation in *daily* summer peak load of as much as 24%.

In order to protect our system, for a number of years we have had installed thereon frequency relays for "automatic load reduction." Our load will be automatically reduced approximately 24.5% if the system frequency falls as low as 58.5 cycles.

We have frequency relays on our transmission interconnections with other electric utility companies which give us "automatic controlled-system separation" in the event of low frequency on the interconnected system. With these two automatic programs we feel we can meet almost any emergency without a total breakdown of electric service to our customers.

Even though our load, due to the extreme, extended hot weather, has increased more than our estimate, as mentioned above, we still have an available reserve of about 7.5% with a reserve in the MOKAN pool of about 8%. While this is lower than we prefer, it represents 125% of the largest liability in the MOKAN pool. New power plant additions and additional 345 kv volt transmission lines now under construction will be in operation before next summer and will adequately meet the future load requirements.

Our dedicated staff and group of employees will continue as they have in the past, to make every practicable effort to see that our customers receive adequate and dependable electric service at all times. The company will continue to install additional facilities in advance of the customers' load requirements consistent with prudent business judgment.

We are in constant contact with all the neighboring utility companies and keep each other advised about company problems as well as keeping up-to-date on interconnected situations and will continue the present close cooperation with them.

Very truly yours,

GORDON W. EVANS.

NEW BRITISH AUSTERITY PROGRAM—VISIT BY PRIME MINISTER WILSON

Mr. JAVITS. Mr. President, the visit by the Prime Minister of the United Kingdom is most portentous and important so far as the United States is concerned, because it concerns a nation which, notwithstanding all of its vicissitudes, to this very day represents as much support as any one nation can give to the fundamental objectives of American policy in the world, which is to seek peace, justice, self-determination, and economic and social development in freedom for all mankind.

Mr. President, the new austerity program announced by Prime Minister Wilson's government has a good chance to bring about the desired end, which is toward deflation in the British economy.

But these measures will not bring about the necessary changes in the modernization of the British economy, which is the basic reason for Britain's recurrent economic crises. Without such modernization Britain will be unable to continue to play a vital role in international affairs, economic or diplomatic, and that would have grave consequences for the free world.

The Prime Minister, for whom we have great respect, will be meeting with our President today to discuss the new British austerity program. I respectfully suggest that these negotiations should be broadened and deepened so that they deal with Britain's basic economic ills and the assistance needed from the United States and other industrialized countries to deal effectively with these problems.

There is no question that Britain belongs in the European Economic Community. She needs the stimulus of the larger and more efficient market of the European economic community. We have a right to hope that she is making a sincere and determined effort to join the Common Market and will be willing to pay the price of membership. But her application was rejected once, and it may be again. So I hope that the President will talk with Prime Minister Wilson about an alternative. The alternative could be some trade arrangement in the North Atlantic between the United States, Canada, and the United Kingdom, and any other nations—especially those in the European Free Trade Association, in which Britain is the principal factor—which would be willing to adhere to a new trade arrangement, the principal aim being to work out substantially free trade among the members, perhaps over a long-term period of as much as 20 years.

The PRESIDING OFFICER (Mr. HARRIS in the chair). The time of the Senator has expired.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may proceed for 2 additional minutes.

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

Mr. JAVITS. A relationship between such a group of industrialized nations and developing countries would have to be established. What remains of the Commonwealth with which Britain is allied could be accommodated in that kind of trade deal. I hope that they will discuss this possibility as well.

As I have suggested before, OECD nations could finance an arrangement over a period of time—say, 10 years—and, further, to help modernize Britain's economic plant with contributions from the United States and other OECD nations which can afford it. Without modernization of key sectors of the British economy, management, and labor practices, Britain will continue to face major competitive problems.

International monetary reform is closely related to the problems of the pound sterling, which, together with the U.S. dollar, finances two-thirds of the world's trade. Britain needs some form of international monetary reform to take us off the international cross of gold, to which we are pinned. It is to our interest that there should be more than two currencies, carrying the load of international trade.

These are practical matters. I hope very much that the President will make it clear to Prime Minister Wilson that we have an interest in our British ally, and that we intend to help her, not by forcing help upon her but by responding to the kind of help she feels that she needs.

I suggest these subjects today as proper subjects in which to broaden the discussion between President Johnson and Prime Minister Wilson.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point the text of a telecast made by Prime Minister Harold Wilson in London, on July 20, 1966; an article entitled "Laborites Abandon Goal of 25 Percent Gain in Economy"; an article entitled "Britain and Europe: Some Fear London May Have Missed Its Big Chance for Economic Salvation," written by Anthony Lewis in the New York Times of July 28, 1966; and an editorial entitled "Survival of Britain," published in the New York Times of July 29, 1966.

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

THE ECONOMIC SITUATION

(Text of a telecast by the Prime Minister, The Right Honorable Harold Wilson, O.B.E., M.P., London, July 20, 1966)

Today I have announced in the House of Commons tough measures which will affect all of us. I want to talk to you about these measures and why it has been necessary to introduce them. I have called them tough and they are. They will affect every one of us because we are determined to take action which will show that the people of Britain are ready once and for all to play their full part in putting right the economic weakness which has held up this country's progress for twenty years and more.

Since the last time I spoke to you about the economic situation we have made, at any rate, some good progress. Exports have been improving thanks to some pretty hard efforts by hundreds of thousands of people in the factories, the design teams, the engineers and the salesmen. In the first five

months of this year, before the Seamen's Strike affected the situation, the value of our exports was nine per cent above the figures for the same month a year ago, and if it was a question only of exports we would be well on the way now to complete recovery. But import prices are rising because there has been a run on many of the raw materials the world needs, partly as a result of the Vietnam war. And there has been another thing: our people have started buying more and more goods abroad again, especially machinery and equipment for our factories, and it's a serious reflection on some of our industries that we are not making these goods for ourselves.

Up to two or three weeks ago everything suggested that the progress we were making meant that we would be paying our way by the end of this year, or at any rate not too late next year. But imports, as I say, have been rising and we have to use up too much of what we earn from our exports to pay for these imports. And then, suddenly, we seem to have been driven off course; one thing, of course, that's hit us has been the Seamen's Strike. When I spoke to you two months ago, the day after the strike began, I warned that this was bound to have a very serious effect on our trade and on our economic position, and because of that strike we lost right away many millions of pounds abroad, and then when the figures showing these losses were published there was a shock which affected confidence in sterling and in our ability to get into balance.

But that wasn't all. We are not only a trading nation, we are the second greatest of the world's bankers and thousands of millions of pounds worth of trade that never sees our shores, [which] is financed in sterling and the other major world currency, the dollar, has been having a difficult time. The American Government have had to take some pretty tough defensive measures and these measures have had their effect on us. All over Europe today there's a shortage of dollars and in the unsettled and stormy conditions of the last two or three weeks, people abroad who needed dollars were only too ready to sell sterling to get them, and this process fed on itself and so there have been growing doubts day by day over this past week about our ability to get back on to an even keel: doubts about the future of our currency; doubts about whether we, whether all of us, not only the British Government but the British people, had the resolve and the determination and the purpose to take the measures and to make the efforts to show the restraint and the discipline that were needed to get our trade and payments into balance.

Today I announced in the House the further measures that are absolutely essential if we are to have a robust and sturdy economy, capable of getting us away from the recurrent crises of these past years and capable, too, of making us independent and able to stand on our own feet and to look the world in the face. One thing we've had to do is to make a swinging cut in the amount of money that we are actually spending abroad, not to our trade but in direct spending as a nation and as individuals. We are cutting Government spending, military expenditure, aid programs, and these cuts in our overseas expenditure add up to £100 million a year, most of it on military expenditure. But we are also cutting private spending abroad by cutting down the travel allowance for holiday makers who go abroad, and that will save us another £50 million a year.

But at home there are deeper problems. Our exporters are not able to do the job they need to do as long as they're short of labor, as long as their order books are so long that delivery dates stretch out further and further into the future. Our essential domestic program too, housing, school buildings, hospital building, the building of new factories, especially in the development areas—these programs are held up by shortages of skilled labor and all this is because we are trying to do too many things all at once. This means cutting down by the Government and by local councils and it means cutting down spending by private individuals because this high level of spending, public and private, is one reason why we are drawing in so many imports from abroad. And too high a level of spending means something else, it means the production of less essential goods that draw labor and other resources away from the production of goods for export. So public spending: this is why we have announced today reductions in public spending by local councils, nationalized industries, in all £150 million. And private spending: this is why we have cut down severely on Hire Purchase spending. You know, we are carrying too heavy a burden of production which is financed by Hire Purchase. This means that too high a proportion of what we are producing today is being paid for by mortgaging tomorrow's earnings. This is why too, we are having to reduce power by increasing taxes on petrol, on drink, why we are increasing the Purchase Tax. Surtax too on higher incomes is going to be increased. And then there's private building, office blocks for example. Less essential building is being cut back, now it's to be cut back further. We have to concentrate the building industry's resources much more on the priority programs, factories, house building, school building, hospital building. These will go on; indeed one purpose of our measures is to ensure that they will go ahead faster and more economically by having more labor and other resources to do the job.

Now all we are doing, all this is tough and it is meant to be tough. We have got to show the world that all of us mean business, that anyone who wants to write us off entirely underrates the resolve and the determination of which we are capable. But there's one further, one absolutely central demand that must be made; we cannot imperil our export drive by rising costs and rising prices, so the Government have today called for a standstill on increases in incomes and in prices. Last year we paid ourselves increased money incomes, wages and salaries and profits and dividends and landlords' rents, increased incomes of about £1,800 million. £1,800 million over the previous year, and £1,300 million of this was in increased wages and salaries. And over the same period we earned only £600 million through our increased production. We have got ahead of ourselves and the time has come to get the situation under control before we can go forward again.

I believe that what we have done today is what the country wants. I believe all of us are ready to show that we mean business, that when Britain is up against it we are at our best. I have said it before and I will say it again tonight: all our history proclaims that in the British people there are deep reserves of strength and power which are brought out to the full when the people of this country are told the facts and when they are told what has got to be done. Nobody owes us a living, we have got to work for it and earn it. Today's measures create the conditions for success but that success is only going to come by work; by harder work; by a full day's work for a full day's pay, whatever your job in industry; by less concern with private profit and private gain; less concern with dodging the column when it's a question of going out in tough conditions to increase exports—like those exporters I saw sweating it out with their products, magnificent products, in the Moscow Trade Fair last Sunday—or scrimshanking when it's a question of getting a job finished faster and cheaper so that we can sell more abroad. It means less willingness to accept the second best or to rest content with an inferior product on the ground that we can always buy what we want from abroad. You know one thing this crisis has done: it has focused the eyes of the world on us. All right, this is our chance to show them what we are made of. We will show them that a time of crisis is a time for greatness; we are under attack, this is your country and our country, we must work for it.

[From the New York (N.Y.) Times, July 28, 1966]

LABORITES ABANDON GOAL OF 25 PERCENT GAIN IN ECONOMY

LONDON, July 27.—The Labor Government abandoned tonight its cherished goal of achieving a 25 per cent increase in the gross national product by 1970. George Brown, the Deputy Prime Minister, conceded that the figure would have to be lowered because of a disappointing economic performance. In particular, productivity has risen less than 1 per cent instead of the 3.4 per cent charted in the national plan.

Mr. Brown spoke at the close of a two-day House of Commons debate on the economic crisis. A Conservative motion to censure the Government's handling of economic affairs was then routinely defeated, 345 to 246.

Despite the vote, the Government may have been embarrassed by the ending of the debate, which became remarkably rowdy. Mr. Brown was subjected to merciless jeering and then brought further trouble on himself by what he said.

"The opposition chief whip assured me," Mr. Brown said at one point, "that I would get a hearing tonight."

There were shouts of "get on with it." Then came more uproar over a slip by Mr. Brown.

"We have tried," he said, "to manage the economy in a way no other economy has been managed before."

That just convulsed the Conservatives. They guffawed, slapped their knees and waved papers in the air. Finally the Speaker, Dr. Horace King, had to restore order.

"I am trying to develop an argument," Mr. Brown said. "If the Opposition does not want to hear it, I am not fighting. We have made up our minds. It is no secret from anyone, inside or outside this House, that I had a lot of trouble."

TENDERED RESIGNATION

Laughter again brought him to a stop. Everyone knew that Mr. Brown had briefly offered his resignation last week because of disagreement with Prime Minister Wilson's decision to raise taxes and controls in a massive deflation.

"I had a lot of trouble," Mr. Brown continued, "deciding whether the Government was right."

The high spirits of the Conservatives resulted from a speech by their shadow Chancellor of the Exchequer, Iain N. MacLeod. After a series of Tory efforts that did not seem to get off the ground, Mr. MacLeod injected the right amount of excitement and malice into the debate.

Mr. MacLeod had unkind words for Mr. Brown and Chancellor of the Exchequer James Callaghan. But he reserved his final sally for Mr. Wilson.

"The charge we bring against the Prime Minister is a simpler and graver one," Mr. MacLeod said, "As long as he sits on this House—on whatever side—we on this side don't feel we will ever be able to trust him again."

By the phrase "on whatever side," Mr. MacLeod was suggesting that Mr. Wilson and Labor would be on the opposition side sometime. With their present majority of

95, that cannot happen soon unless there is a split within the Labor Party.

BACKED BY LABOR CONGRESS

Mr. Wilson got some moderately good news today from organized labor. The executive council of the Trades Union Congress voted to "acquiesce" in his proposal for a six-month standstill on wages.

The Congress made clear that its agreement was given with extreme reluctance. It attached a rider calling for special treatment of low-paid workers and for approval of wage rises paid for by productivity increases.

Moreover, the council vote is not binding on constituent unions. The real test for the Government will come when a union resists the freeze and strikes to enforce its demands.

Frank Cousins, head of the huge Transport and General Workers Union who resigned from the Government over the issue of wage-restraint, commented acidly: "I don't have to change my mind because the T.U.C. have had a meeting."

The Government intends to rely initially on voluntary cooperation from the unions. If that does not work then the Government would invoke legislative powers that it hopes to have shortly.

PROPOSALS DUE SOON

The exact form of legislation to cover the wage freeze was still not ready tonight, a week after Mr. Wilson announced his crisis program and called for the "standstill." Detailed proposals are expected in the next two days.

Mr. MacLeod raised in the debate some of the tough questions still plaguing the drafters of the bill.

What happens to employes with wages tied to the retail price index? he asked. What about those due for increases under productivity agreements signed in the past? What about doctors and others who might retire during the freeze and whose pension would be reduced because their final salaries would be lower?

Such questions as these are still tormenting officials. They emphasize that the task of writing wage restraint into law in a peacetime setting is extraordinarily difficult.

[From the New York (N.Y.) Times, July 28, 1966]

BRITAIN AND EUROPE—SOME FEAR LONDON MAY HAVE MISSED ITS BIG CHANCE FOR ECONOMIC SALVATION

(By Anthony Lewis)

LONDON, July 27.—Underneath the shrill debate over Prime Minister Wilson's emergency economic program, a more fundamental concern is being expressed by qualified observers. It is that the Labor Government may have missed, in the crisis over sterling, a vital opportunity to recast Britain's world in terms of the needs of her long-range economic salvation. The concern is strongest among those, American as well as British, who believe that membership in the European Economic Community should be Britain's most urgent goal. In their view the Government's reaction to the crisis has, if anything, moved Britain further away from Europe.

The central argument of the pro-Europeans has always been that British industry needs the stimulus of the larger market. This argument has been gaining strength here, and the emergency measures announced last week do not affect it.

The overwhelmingly deflationary effect of the measures is likely, in fact, to discourage the investment that British industry needs. They buy time but do not pretend to bring about the necessary changes in the economic structure—modernization of plant and above all, as Mr. Wilson said today, a shift in the depression-born attitude that it is a kind of treason for workers to cooperate in any plan to get more production from fewer employees.

WEAKENING A MAJOR LINK

In looking for cuts in overseas expenditure, the Government seems to have turned first to the British Army of the Rhine. It says the army strength will be reduced to the point where West Germany covers the $263-million annual cost to Britain in foreign exchange.

The result is to downgrade one of the most important remaining British links with the Continent. The reduction would also be in ironic contrast to what now seems the likelihood that French troops will remain in West Germany on President de Gaulle's terms.

Those unhappy about the immediate move to trim the Rhine Army are not saying that its strength should be immutable. They believe, rather, that cuts should come as part of a general rearrangement in the Atlantic alliance, or even between East and West, so that they could have positive effects. Cuts forced by the sterling crisis are viewed as demonstrating British weakness and unreliability.

British officials have said that they aim at a reduction of forces in the Far East, too. But these, it is said, still depend on formal action by Indonesia to end her undeclared war on Malaysia.

There has been no change in the plan that defines the future British defense role east of Suez—the proposal to buy 50 American F–111 attack planes at a cost in excess of $780-million. The F–111's matter so much not only because of their intrinsic cost but because they mortgage the future for Britain, committing her to new military hardware and new bases.

The supersonic plane has a tremendous range, making it especially useful for distant reconnaissance operations. It can also be adapted to carry nuclear weapons.

Fewer and fewer people here believed, however, that Britain can really carry on a role of the kind implied by the F–111's after 1970, when the planes are to be delivered. Reginald Paget, a right-wing Labor Member of Parliament, spoke for many when he said yesterday that the plane order should be trimmed to help end "the pretense of being a world power."

The United States bears heavy responsibility for the inviolability of the F–111's so far. Secretary of Defense Robert S. McNamara, especially, is reported to feel that there must be no reduction in planned British strength in the middle and Far East except to reflect reduced tension involving Indonesia.

The American desire for a British presence in the Far East is understood here, especially in the context of the Vietnamese war. Moreover, Mr. Wilson has made the point that Britain may have a moderating influence, keeping the United States from either escalating excessively or withdrawing.

Those troubled by the Labor Government's moves think the desire for British participation in the Far East could be met without the physical and financial commitment implied by the F–111's.

The argument of these critics is that the effort of Britain to remain a world power, staying everywhere on a shoestring, can only weaken her further. They say the United States should recognize this and cooperate in a British move in the right direction—across the English Channel.

DE GAULLE'S OPPOSITION

Nor are these observers floored by the undoubted fact that General de Gaulle continues to oppose British membership in the Common Market.

Why make it easy for the general, they ask, by showing that he is right when he says Britain depends too much on the United States and is not really European? They argue that Britain must act dramatically to show that she is willing to pay the price of membership—undoubtedly painful, but less so than the remorselss decay of her economic and political strength.

Some might say that Prime Minister Wilson is a captive of Washington on these issues, that he dare not risk offending President Johnson while American support for the pound is so essential. But the best-informed people do not share that view. They make the point that the President is a realist and that he needs Mr. Wilson's Far Eastern support on whatever basis is available. That gives Britain more, not less, bargaining power.

Mr. Wilson could raise all these questions when he goes tomorrow to see Mr. Johnson, but the expectation here is that he will not do so in really fundamental terms because he shies away from radical decisions and prefers to temporize.

The Prime Minister likes to say that he is "keeping all the options open." What worries some people is that, unless radical choices are made for Britain, he or someone else will have to say one day: "All the options are closed."

[From the New York (N.Y.) Times, July 29, 1966]

SURVIVAL OF BRITAIN

Prime Minister Wilson's visit with President Johnson was originally set up to discuss the troubling problems of the war in Vietnam and the future of NATO in Europe. But the main topic on the agenda almost surely will be the even more troubled state of Britain's economy and Mr. Wilson's desperate efforts to save the pound.

Mr. Wilson needs American sympathy and support in his battle to curb domestic inflation and rebuild foreign confidence. Since the pound is the first line of defense for the dollar and the United States and Britain have a common interest in a more peaceful world, he will undoubtedly get both. But the main burden, the really painful burden, falls on Britain.

If this new battle of Britain were simply a matter of economic belt tightening, there is no question that victory could be won. Mr. Wilson is finally doing all the things that Britain's foreign creditors have asked him to do and that he had hoped to avoid. It has been a humiliating and humbling experience. The man who had scorned the Conservatives for their "stop and go" policies has been forced to put on the brakes harder than they have ever been applied before. The man who had confidently drawn up a five-year plan for rapid growth has now deliberately invited recession.

These steps should suffice. Yet Britain's situation remains critical because Mr. Wilson waited so long before announcing them. He has permitted a deep and widespread distrust to take hold—in his own party, among the opposition, in Europe. All recognize that he has drawn up an effective battle plan, but they question his will to carry it out.

The key to victory lies in winning the cooperation of labor in freezing wages. Despite the opposition of many individual unions, the executive council of the powerful Trades Union Congress has now lined up in support of the wage freeze. Its backing will not be enough to assure universal compliance, but it is an indication that Britain's labor leaders are at last recognizing what is at stake.

Put bluntly, it is the survival of Britain as a competitive economy, the survival of the British pound as international trading currency, the survival of British influence in the world. Things are dark, psychologically and economically. But the British are always at their best when alone with their backs to the

wall. If British labor and management adhere to Mr. Wilson's policies, inflation in Britain can be stemmed and the psychological tide reversed.

THE CURRENT AIRLINES STRIKE

Mr. HOLLAND. Mr. President, yesterday, Thursday, July 28, the Tampa Tribune, a highly influential and very fair newspaper, published an editorial which is a strong expression relative to the need to bring the current airlines strike to an immediate end. The title of the editorial is "Fetch the Paddle." I ask unanimous consent to have it printed in the RECORD.

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

[From the Tampa (Fla.) Tribune, July 28, 1966]

FETCH THE PADDLE

A strike which grounds airlines carrying 60 per cent of the air passenger traffic, inconveniences hundred of thousands of travelers, delays the mails and seriously damages the economy of Florida and other tourist states is not worth special attention from President Johnson or Congress.

This is what Secretary of Labor Willard Wirtz told a Senate committee considering legislation to end the 20-day strike of the machinists' union.

The consequences of the strike do not threaten the national health, safety or defense, Mr. Wirtz said. They are not serious enough to deserve personal intervention by President Johnson. They do not warrant an act of Congress taking away the sacred right of airline workers to strike.

It might be all right, suggested Secretary Wirtz, for Congress to tell negotiators to go "back to the woodshed" and bargain some more, on the threat that if no agreement were reached by a specified time Congress would apply "the paddle"—some form of compulsion.

The Labor Secretary said his recommendation reflected the views of President Johnson.

It reflects more than that.

It reflects the extreme reluctance of Mr. Johnson and other politicians, in this election year, to make any move that might alienate labor support.

It reflects the power which organized labor has gained, through political activity, to disrupt a public service in total disregard of the injury done to thousands of innocent citizens dependent on that service.

It reflects a submissiveness on the part of the people to a wrongful deprivation of services which a responsible government ought to assure them.

The people who ought to be sent to Mr. Wirtz' "woodshed" are the Secretary of Labor and the President. If an angered public applied the paddle, in expressions of resentment which could be translated into votes in November, there would be a change of attitude in Washington.

Mr. HOLLAND. I invite attention to the fact that this normally Democratic newspaper ends with this paragraph:

The people who ought to be sent to Mr. Wirtz "woodshed" are the Secretary of Labor and the President. If an angered public applied the paddle, in expressions of resentment which could be translated into votes in November, there would be a change of attitude in Washington.

Mr. President, I insert this strong editorial in the RECORD only to make it clear what the public of my State are thinking about on this matter. It is clear to me that the general public in Florida feel that they are being woefully mistreated in this matter and that the responsible Government in Washington should have long since turned its attention to a means to make the airlines resume service.

Mr. President, I hope that those in official position are taking heed of such warnings, which are coming in not just from newspapers such as the Tampa Tribune, but also from many other responsible media of communication in the State of Florida and elsewhere.

PRESIDENT JOHNSON TALKS OF THE GOOD LIFE TO MAMMOTH CROWD IN INDIANA

Mr. YARBOROUGH. Mr. President, last Saturday President Johnson made a strenuous flying tour of several Midwestern States. He made speeches in Indiana, Kentucky, and Illinois. The President went to get contact with the people of the Midwest, to rub shoulders with them and to "press the flesh," as we know he loves to do and does so well.

During that busy and productive tour, the President made a number of speeches. The most moving was the one at Jeffersonville, Ind., in which President Johnson talked about the strengths of our country, and of this Government's "concern for the care of human life and happiness." He stressed the Government's willingness to negotiate instead of bomb in Vietnam, "to reason instead of resort to force." He talked about the education bills and medicare legislation that this Congress has passed and is considering—"more creative legislation for the care of human life and happiness, for the benefit of human beings."

And, most of all, he talked about Thomas Jefferson, and how pleased Jefferson would be with what this Government, this Congress, this country is doing to make life better for its citizens.

Fifty thousand people waited 3 hours for the President's cavalcade, delayed by large crowds and rains, to cheer the President to the echo time after time.

This fine speech should be read by all of us and by the entire country, so that they may see where we stand and what we are doing in the area of social legislation.

Mr. President, I ask unanimous consent that the President's speech be printed at this point in the RECORD.

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

REMARKS OF THE PRESIDENT AT THE POST OFFICE, JEFFERSONVILLE, IND., JULY 23, 1966

Governor Branigan, Mayor Vissing, Senator HARTKE, Senator and Mrs. Bayh, Congressman and Mrs. Hamilton and their three lovely children, distinguished Members of the United States Senate, Governors, Members of the Congress, Postmaster James Stamford, Ladies and Gentlemen, Boys and Girls, I came here to Jeffersonville for two reasons: to please my wife and to please myself. Postmaster General Larry O'Brien has been telling Lady Bird that the Jeffersonville Post Office has been in the forefront of the beautification program.

Your own very able, progressive, fine leader, your Congressman LEE HAMILTON, has been telling me that Jeffersonville has some of the finest people in the United States.

If you haven't already guessed it, I think I should let you in on a secret. I value Postmaster General Larry O'Brien's judgment. I value Lady Bird's judgment. I value LEE HAMILTON'S judgment. Here I am.

Without indicating any preference, I will deal with Mrs. Johnson's project first.

About a year ago we had 16 Postmasters at the White House to receive an award. Mrs. Johnson presented each one of them with a citation for their outstanding efforts to make their post offices a beautiful addition to their community.

Your own Postmaster James Stamforth was not there. The post office here was so new that he and his staff did not have a chance to prove themselves. Since then, in record time, they have become one of the less than 300 out of some 34,000 possible candidates to deserve this citation. So tonight we are going to present it to them and to you wonderful people in this community.

The inscription reads: "President Lyndon B. Johnson's natural beauty program citation of merit to the community of Jeffersonville, Indiana, and all of its postal employees for maintaining the grounds and the postal unit in such a manner as to reflect upon the community and the Post Office Department.

I think if Thomas Jefferson, for whom I assume your community was named, could be here tonight he would like what I see.

You know Thomas Jefferson was a father of the Democratic Party. Thomas Jefferson felt that the judgment of the many was much to be preferred to the decision of the few.

I am so happy that we can come in here this late in the evening. It is 9:00 o'clock by a watch that was set in some State that we appeared in today. I am happy to see hundreds or thousands of people who think enough of their community, their State, and their country to come here and give us this welcome, and to participate in this civic affair.

Thomas Jefferson said that the care of human life and happiness is the first and only legitimate job of government. That is what we have been doing today. We have been trying to show our concern for the care of human life and happiness. We have been trying to make it evident that it was the first and legitimate objective of this Administration and of this Government.

We believe that we must be strong in order to protect the things that we have that other people would like to take away from us. After seeing the headquarters of the 101st Airborne Division this afternoon, we have no doubt about our strength.

We do not want to be strong in order to be able to wage war or win wars. We want to be strong so we can prevent war and bring peace.

Your Government and your Administration is ready at this hour, as it has been every hour since I have been President, to talk instead of fight, to negotiate instead of bomb, to reason instead of resort to force.

This is not a one-way street. It takes two to enter into an agreement. You can't have a unilateral treaty. You can't stop everything you are doing unless the other fellow will stop some of the things he is doing.

So we continue to hope and work and try to hold our hand out, but keep our guard up. We want to be strong so that we can have the better things of life, better education for our children.

We have 24 new education bills that we have enacted and putting into effect that will make this year the greatest year for education in the history of this Nation.

We want to be strong so we can have good health, health for our older people with medical care. For the first time in their lives they will not have to depend on their son or

son-in-law, daughter or daughter-in-law, to administer to their needs. With dignity and respect they can take this admission card, go to a home or a hospital and receive a doctor's care, nursing care, and medicine.

We not only are proud of what we have done for medical care for our older people. But we are glad of what we are doing in the field of medical research for our younger people, how we are detecting the deficiencies that appear and try to correct them before a life is ruined or a soul is lost.

This will be the greatest year for health in this country in the history of the American Government. You read all about the prophets of gloom and doom. You heard all about the protests. You had all the warnings of what was going to happen when we put medical care in. But July 1st came and went.

The program was put in with a minimum of inconvenience and a maximum of efficiency. While every hospital didn't qualify, 90-odd percent of them did. The most revolutionary medical program in the history of our Nation is now in effect and it is going to serve our country long and well.

It is here because of people like you—men, women and children like you—that Jefferson believed in, people who would come here and participate in the affairs of their government, people who believe that the care of human life and happiness is the first and only legitimate object of government.

I think that Jefferson would have been pleased to know what we have done in education, what we have done in health, what we have done in beautification, what we have done to conserve our resources, what we have done to develop our recreation areas, what we have done to try to wage a war on poverty, what we have done to improve our skills, what we have done to train additional manpower, what we have done to reduce unemployment, what we have done to increase wages, and what we have done to improve minimum wages and hours.

All of these things involve the care of human life and happiness. That is the first and only legitimate object of government.

Here, tonight, in Jeffersonville, I salute Thomas Jefferson and his followers. I also salute LEE HAMILTON because that is the second reason that I wanted to come here. I wanted to meet personally you people that he has been talking to me so much about.

LEE HAMILTON has been one of the outstanding freshmen Congressmen ever since the first day he appeared in Washington. He has always voted his conscience. He hasn't always voted for me. The people of Indiana have done the same.

Even when we disagree, it is easy to respect people who stand up and look like he looks, who stand up and state what they believe with the sincerity and the conviction that he does. This Congressman, and his new generation which he represents, has joined with other Congressmen from both parties to help us pass more creative legislation for the care of human life and happiness, for the benefit of human beings, than any Congress has ever passed in all the history of the United States.

I have made no secret of the fact that in my opinion there has never been a better Congress. There have been few times in American history when a President of the United States would ever make a statement like that, though. I am not sure that all of you would want to make a statement like that if you would pick up a paper and see what the Congress says about me sometimes. George Washington, our first President, once warned that his Congress was about "to form the worst government on earth."

Another great President, Theodore Roosevelt, said that he would like to turn 16 lions loose on his Congress. When someone pointed out that the lions might make a mistake, he replied, "Not if they stay there long enough."

I spent almost 24 years in the Congress as a Member and about five years as a servant, four years as Majority Leader and two years as Minority Leader. So it is with some humility that I say tonight that this present 89th Congress, as Luci would say, is the greatest.

How do you confirm that? Why do you say that? What proof do you have?

First of all, they passed legislation to fulfill a promise made more than a century ago, a promise of emancipation. Abraham Lincoln, more than 100 years ago, signed the Emancipation Proclamation. But it was a proclamation and not a fact.

Today, where once some people were afraid to vote, they now proudly walk into the polling place with their chin up and their chest out.

This Congress passed legislation to ease the burden of sickness. Today, although everyone must face old age, they are no longer dependent on their kinfolks for their medical care.

They passed legislation that should brighten every classroom in America. This year we will spend in appropriations $10 billion more on education and health than we were spending on those subjects when I became President less than three years ago. That is progress.

That does show that the Congress, as well as the Cabinet and the President, are concerned with what Jefferson said was the object of government: the care of human life and happiness.

Once the children of poverty began life on a hopeless road toward despair. Tonight they at least have some new hope. They are at least receiving some new training. We are at least making taxpayers out of tax eaters of a few weeks ago.

We passed a poverty program for $750 million for one year and then $1 billion 500 milion for the next year, more than double. For the third year, notwithstanding the fact that we have 400,000 men in the Vietnam area fighting to protect our security, our liberty and our freedom, we will pass a program of $1 billion 750 million this year in order to provide for the needs of the underprivileged and try to prepare them and train them to make their own way in life.

This Congress told our cities and our industries that they had to stop polluting our water and poisoning our air.

This Congress passed legislation to dam our rivers to prevent floods, to produce power, to provide breaches, to build playgrounds for our children, and to add more parks to the national domain than any other similar period in history.

They gave us the blueprints for a rapid rail system to carry out commuters of tomorrow. We have designed and will shortly let a contract on a supersonic airplane that will fly more than 2,000 miles an hour and transport hundreds of passengers around the globe.

They passed a farm bill that puts more income in the farmer's pocket and at the same time allows him to compete at home and abroad. They have reduced farm surpluses that one time hung heavy over every farmer's head to the lowest minimum that we have had in a dozen years.

Finally, with some help, some pleasant persuading, they served notice that we will battle with all we have to preserve the bounty of the land and the beauty of the countryside.

Thanks to Senator YARBOROUGH, they passed a new GI bill to help our veterans get an education after they have fought for our liberty.

And lest LEE HAMILTON, Senator YARBOROUGH, and the other Congressmen and Senators think we say, "Well done," this is the end of the day and there is nothing for tomorrow, I might add quickly, "The job is not yet finished."

Democracy's work is never finished. There is no doubt in my mind of the road that we are going to take. We are going to continue to plow the furrow and go full steam straight ahead.

We will give new meaning to the American promise of justice and equality.

We will honor our commitments abroad. We will do it without neglecting our duties at home.

While we are doing all that I told you we are doing, we have been maintaining 400,000 men—and they have been giving a good account of themselves—in Vietnam, and we have the lowest deficit this year that we have had since 1960.

I am not sure you have read about that. I have announced it. If you haven't read about it, you have heard about it, and you are going to hear more about it between now and the time I leave my present office.

We are going to do all of this, and we are going to do more of it. We know that it can be done. Men like your Congressmen have proved for us that this job can be done during the last two years and we are going to do it the next two years.

We have proved that there is enough room at the table for all of us. We don't have to fight like cats—the businessman, the worker, the farmer, the Democrat and the Republican. I am here to tell you that notwithstanding any rumor you might have heard, that big table is growing bigger every day.

Two years ago, in the heat of a Presidential election campaign, I came to Indiana. I told your neighbors in Evansville that I was not mad at anybody. I said that I had not come to Indiana to say anything bad about anybody. I said that I did not want to fight with anybody; that all I wanted was to try to do my best to put my Nation's best foot forward, to try to find an area of agreement for my fellowmen and try to help unite my country instead of divide my country. It may be old-fashioned, but I still believe that my country does most things right.

I know there are some that like to keep it a secret, but I take great pride in talking about what we are doing to educate little children, what we are doing to help older people when they are sick, what we are doing to try to increase the freedom of the farmer and increase his income at the same time, and what we have done in five years to get 7 million more people jobs at an average factory wage in this country of $112 a week, the highest ever realized by any industrial nation. I am proud of those things.

I am sorry that we had difficulties in the Dominican Republic. But I am glad that it is not a Communist government today.

I am sorry that we have our men in Vietnam. But I would rather have them there with honor, doing their duty, keeping their commitment, carrying that flag with pride and honor, than to tuck their tail and come running home and break their word. If I know anything about those men, they would rather be there doing it, too.

When they talk to you about all these horrors, you ask them whether it is from the men who are there or the men who don't want to be there, or who it is that feels that this Nation should not act with honor. I get about 100 letters a week from those men. I have yet to get one letter from a man that says to me that he wants to get out and come home; that he does not want to stay there and do his job.

They are my single greatest source of strength, the men on the front lines. I saw them in the hospitals the first of the week. I saw them on the boat, the ones that are now being treated. I saw them at the 101st Airborne this afternoon. I take great pride in how our men feel about their country.

I think the time has come in America for us to find some of the good things that America is doing instead of spending all of

their time complaining about the faults we have.

I remember that great man who served 50 years in Washington and heard a lot of speeches made. He served with over 3,000 Congressmen and Senators. He served with six or seven Presidents. He used to say he served "with" them, not "under" them. He was Speaker Sam Rayburn.

He always said, when he finished the day's work and he had come down and heard about the complaints, errors, and mistakes and criticism, "It is mighty easy to make a point about anything and anybody." He never could forget what his father of 11 children said to him one time: that any donkey can kick a barn down, but it takes an awful good carpenter to build one.

I want to try to unite this country, to bring peace to it and to bring progress to it. I believe all my fellowmen want to do the same. We may have different views and different routes to follow, but as your President tonight I want to say that is what I am trying to do. I am trying it with all the energy and whatever ability I possess.

I am trying to use whatever experience I gained in the House, in the Senate and in the Government to make progress for our people.

My short visit to four States today tells me that we have reason to raise our hopes. For "if," as Abraham Lincoln said, "the end comes out all right, it will not be the President who does it, it will not be the Congress which does it, but it will really be the good sense of the American people."

I have seen that good sense today. As I leave here after my seventh or eighth appearance, I want to say that you have helped to refill the wells of my hopes for my country. I never have any doubt about it. But now and then we have some writers that go out on the countryside and make their private reports. I read those reports and wonder. But today I came and I saw.

I don't want to put my judgment up against theirs. I don't want to speak with any finality. But before I conclude I just want to say that whatever little experience I have had in understanding human nature and knowing and loving people, somehow or other I get the general impression that the people of this country are ready and willing to follow a constructive course instead of a destructive course. They want one who builds instead of one who tears down. They would rather have a carpenter handling matters than a donkey handling them.

I don't have any particular sample polls to give you here tonight. But somehow or other I think that in the good old American tradition, in the City Hall, the County Seat, the State House, and finally in the Congress, that the American people are going to vote for the men that try to unite them instead of the men that try to divide them.

They are going to support the men that they think refuse to play on the bigotry and the prejudice and spend their time complaining. They are going to vote for people who spend their time building and speaking constructively.

It gives me a lot of pleasure to come here to this beautiful site and look at what you have done with your post office, and most of all look at what you have done with yourselves.

I owe LEE HAMILTON a debt for really making me come. We have a lot of pickets that like to set themsives up around the White House. This is a day when people like to march. LEE has really been picketing the White House. I thought it would be easier to come over here tonight than to spend next month explaining to him why I couldn't.

You have done more for me than I have done for you. But in the days ahead, let's enter a little compact. Let's do something for each other and thus do something for the men that are perfecting our freedom and our liberties and thus doing something for our country.

We have the very best system of government in all the world. We have the very best country in all the world. We have more prosperity than any other people in all the world.

Instead of feeling sorry for yourselves and developing a martyr complex, I would like to express this hope; that you get home tonight and think about how many blessings you have.

As I walked down that line today and saw those seriously wounded men, I thought of the men that had died for me in order that I could be free, not only my generation, but several before mine.

I think we ought to count our blessings once in a while. We have a lot to be thankful for. So when you leave here, go home and thank Him who is responsible for it all. Thank the good Lord Almighty.

A MINIMUM OF $105 MILLION ESSENTIAL FOR SCHOOL MILK PROGRAM

Mr. PROXMIRE. Mr. President, soon the House-Senate conferees should be meeting on the agriculture appropriations bill. The Senate version of this legislation provides $105 million for the special milk program for schoolchildren while the House version allows only $103 million.

It is essential that the Senate figure is retained. Even this figure, in my estimation is inadequate. However, it is a beginning. It would permit a restoration of half of the 10 percent in the Federal reimbursement rate under the school milk program. On the other hand, if the House figure of $103 million were allowed, only 30 percent of the cut would be restored.

This $105 million minimum is all the more convincing in view of the fact that the milk program people within the Department of Agriculture originally requested that $105 million be appropriated for fiscal 1967. This request, as we know, was slashed to $21 million subsequently when it was proposed that the program be directed to the needy alone.

I hope the conferees will meet in the very near future. And I am very hopeful that the House conferees will accede to the Senate figure for the school milk program of $105 million. This is the minimum amount necessary for the continued health of the program.

DEMAND FOR RESIGNATION OF CIA DIRECTOR RICHARD HELMS

Mr. MORSE. Mr. President, this morning I issued a statement expressing the view that Richard Helms should resign as Director of the Central Intelligence Agency.

I ask unanimous consent that the text of my statement be set forth at this point in my remarks.

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

STATEMENT BY SENATOR WAYNE MORSE WITH RESPECT TO CIA DIRECTOR RICHARD HELMS

Mr. Richard Helms can best serve his country today by resigning his position as Director of the Central Intelligence Agency. Until he does, the American people cannot rest secure in the belief that the Agency is living up to its legal mandate not to operate within the United States or influence or participate in affairs within the United States.

Mr. Helms could hardly wait for confirmation before he twice intruded himself and the CIA in domestic politics and the business of the United States Senate. Taken alone, his letter of public praised to a newspaper for its editorial abuse of the Chairman of the Senate Foreign Relations Committee concerning an issue that is the business of the Senate disqualifies him for further useful service in his present capacity.

Aside from the damage he has done to the relationship of the CIA with the Senate, he has served notice upon the American people that they must be on constant guard against the possibility and even the likelihood that the covert activities of the CIA have now been extended to the domestic affairs of our own country. If Mr. Helms has learned anything from this episode, he may be more careful to keep his name out of the papers. But the American people must be aware that the CIA is undertaking increasing activity within American education and the influencing of opinion through planted press stories and articles. We must assume that the letter signed by Mr. Helms to the St. Louis Globe-Democrat is only a small segment of what is going on that is unsigned or unrevealed as to its CIA source.

Not only must our Committee renew its insistence that it be represented in the surveillance of the Agency abroad; some arm of the Congress must determine what else CIA is doing within the United States to affect public opinion, public policy, and the outcome of elections.

Mr. MORSE. Mr. President, the statement speaks for itself and I stand on every word of it.

OCEANOGRAPHY

Mr. PELL. Mr. President, in light of the urgency that this Nation now is beginning to show in oceanology, I invite attention to the excellent article on this subject published in last week's Sunday New York Times business section. The title is "Oceanography: The Profit Potential is as Big as the Sea," by William D. Smith, July 17, 1966.

As the author of S. 2439, the sea grant college bill, designed to develop the Nation's marine resources through applied research, training, and information services, I applaud the article and commend it to Members of Congress who want to know more about this vital new area for human endeavor.

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

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

OCEANOGRAPHY: THE PROFIT POTENTIAL IS AS BIG AS THE SEA—SEARCH YIELDS CHEMICALS, OIL—AND EVEN DIAMONDS

(By William D. Smith)

The sea, man's first frontier, has become his last major earth-bound challenge. It has also become an important goal in the search for investment opportunity and profit.

The oceans are capable of feeding the world's hungry, providing vast quantities of oil and supplying needed minerals, chemicals and drugs, according to even the most pessimistic exponents of oceanography.

"Within 50 years, man will move onto and into the sea—occupying it and exploiting it

as an integral part of his use of this planet for recreation, minerals, food, waste disposal, military and transportation operations, and as populations grow, for actual living space," says Dr. F. N. Spiess, head of the Marine Physical Laboratory of the University of California's Scripps Institution of Oceanography.

Many oceanographers would say that Dr. Spiess was being far too conservative.

The challenge of extracting the sea's wealth is a mighty one but the potential rewards for both Government and private enterprise are monumental.

RETURN ESTIMATED

The National Research Council of the National Academy of Sciences, in a deliberately conservative study, concluded that the direct return on a 20-year investment in oceanographic research will be more than three times larger during those 20 years alone than if the same money had been invested at 10 per cent compound interest.

The opportunities have not been lost on industry. John H. Clotworthy, vice president of the Westinghouse Electric Corporation's Defense and Space Center and general manager of the company's underseas division, recently told a congressional subcommittee:

"A major thrust into the ocean could be expected to become a recognizable element in our gross national product and help satisfy the future need for new employment opportunities in both the professional and labor markets."

American industry and Government already have a substantial stake in the oceans. Current spending on all things connected with the seas has been estimated at nearly $10 billion a year. This figure includes about $4-billion for military projects, $2-billion for off-shore oil and gas, $2-billion for marine recreation and $400-million for commercial fishing.

Underseas mining and extraction of chemicals from sea water is a $250-million business. Nonmilitary research accounts for another $250-million, with $141-million of this total coming from the Government and the remainder from industry and the universities.

Unfortunately, the bulk of this huge stake in ocean activities is contributing very little toward increasing our knowledge of the seas. With the major exception of the Navy's antisubmarine warfare studies and Deep Submarine Systems Project, much of the military spending is along rather prosaic lines.

VACUUM VERSUS OCEAN

In terms of actual funding for research purposes, national expenditures are on the frugal side. According to Senator WARREN G. MAGNUSON, Democrat of Washington, the Federal Government "is spending 36 times more on vacuum (space) than it is on the ocean."

The Government's interest would seem to be picking up, however. President Johnson, speaking at the commissioning of an oceanographic research vessel in Washington last week, called for greater efforts to extract the riches from the world's oceans.

At the same time, the President's Science Advisory Committee issued a report on "Effective Uses of the Sea" that recommended a doubling of Federal support for marine science and technology over the next four years.

Spending by private industry is contributing comparatively far more to solving the problems of the ocean than it has to space. In terms of actual money spent, however, it is still no great sum by today's standards.

As with all frontiers, there are pioneers trying to get in on the ground floor, or in this case the ocean floor. There are at present more than 600 companies involved in one way or another in probing for the ocean's riches.

They range in size from such corporate giants as the Standard Oil Company (N.J.), the General Dynamics Corporation and Litton Industries to a host of small specialty concerns such as Alpine Geophysical Associates, Inc., and Ocean Resources, Inc.

Money is already being made both by companies extracting the sea's riches and by concerns making the equipment needed to get at these riches.

More than a billion dollars in oil, seafood and minerals was taken from the sea by American companies in 1964, according to the latest Bureau of Mines, Minerals Yearbook. This is just the trickle before the flood according to every informed source.

MUCH RESEARCH NEEDED

To increase the flow, a great deal of basic research is needed in materials, undersea vehicles, instruments, communications and tools as well as looking into the physiological and psychological problems man will face under the sea.

The oil and gas industry has reaped the greatest harvest from the sea, but it has also put in the most money and energy. The United States oil industry has invested about $2 billion in offshore leases, exploration, drilling and production facilities last year alone.

The oil industry recognized the value of the minerals below the ocean floor about 30 years ago. Although considerable oil was recovered from below the ocean floor in the late nineteen-fifties, it was not until this decade that major recoveries were made.

In 1960, some 8 per cent of the free world's oil supply was pumped from beneath the ocean. Last year, offshore oil wells pumped 16 per cent of the free world's supply. Informed industry sources predict that this figure may increase to 40 per cent by 1975.

ALL OIL FROM SHELF

All of the oil from the sea so far has come from that area called the Continental Shelf. This is the area, contiguous to all major land masses, that formerly was dry land itself. It varies in width and depth of water but in many ways still resembles dry land.

Before the oil companies push into deeper waters and begin trying to tap the ocean's depths for petroleum and gas, whole new families of equipment must be developed.

Oilmen from all the major companies are presently devising ways to eliminate the familiar platform drilling rig and locate the wellhead and possibly the production equipment on the ocean bottom.

TRICKY TECHNOLOGY

Drilling of wells on the ocean floor has been tried on an experimental basis under very special conditions. Lowering and installing of equipment on the ocean bottom requires sophisticated techniques, including underwater television to guide the operators. This is just the beginning, though, for once the well has been installed it must be controlled through remote devices.

Lack of the proper tools is also holding back the mining of the ocean, although there are some notable exceptions. An exotic one is off the coast of South Africa where an enterprising Texan dredges more than 700 tons of diamond gravel daily from the ocean floor. Yields average five carats a ton, compared with one carat a ton from land ore, and most of the stones from the ocean are gem quality.

Closer to home, all of the United States supply of manganese and 75 per cent of the nation's bromine now come from the ocean.

TREASURE IN THE DEEP

This again is just a prologue of what is to follow. As with oil, most of the minerals now being wrested from the sea come from the Continental Shelf. The real treasures, however, lie beyond on the continental slope and in the ocean deep.

Oceanographers have estimated that the sea holds some 50 million million metric tons of minerals. Included in this total are two million million tons of magnesium, 100,000 million tons of bromine, 700,000 million tons of boron, 20 billion tons of uranium, 15 billion tons of copper, 15 billion tons of manganese, 10 billion tons of gold and 500 million tons of silver.

The question of when man goes after this treasure is primarily one of when does the cost of getting these metals from land sources exceed the cost of obtaining them from the sea.

Dr. John Mero, vice president of Ocean Resources, Inc., and a leading authority on undersea mining, said recently, "It would be profitable to mine materials such as phosphate, nickel, copper, cobalt and even manganese from the sea at today's cost and prices.

"And I firmly believe that within the next generation, the sea will be a major source not only of those metals but molybdenum, vanadium, lead, zinc, titanium, zirconium and several other metals."

The corporate pioneers are already at work. Lockheed is working in a joint venture with the International Minerals and Chemicals Corporation and the Bureau of Mines to study ocean mining methods.

The Reynolds Metals Company has an all-aluminum submarine to study the depths. It is also considering private development of a whole system of underwater work capabilities, including underseas barges for mining.

USING THE DESALTING PROCESS

W. R. Grace & Co. is actively studying methods of recovering a variety of minerals from sea water in conjunction with the operation of desalting plants.

Union Carbide is employing Ocean Systems, Inc., in which it owns a 65 per cent interest, in a substantial study of the sea's opportunities.

Although lack of proper equipment is retarding underwater oil and mining activities, it is not because there is any lack of thought being given to the matter.

One of the most active areas is submersibles. The General Dynamics Corporation has for years been a leader in this field. This spring it launched two small research submarines. The first, the Star II, is equipped with an ultra-high-strength hull for operations to a depth of 1,200 feet. The other, the Star III, can descend to 2,000 feet and has an external mechanical arm that can cut wire, close its grip, pick up a pencil or a 200 pound weight and manipulate valves.

General Dynamics is now working on the first nuclear-powered research submarine. The vessel which is being built for the Navy, is expected to become operational by 1968.

Westinghouse, which also has a long history in underwater activity, operates a charter service that hires out a submersible, a surface support ship, oceanographic equipment and technical personnel, including divers.

BUILT BY COUSTEAU

The Diving Saucer, designed and built by Jacques-Yves Cousteau, is now operated by Westinghouse and is the forerunner of the company's Deepstar family of submersibles. The Deepstars, each capable of holding two or three men, will be able to submerge to hoped-for depths of 20,000 feet.

North American Aviation is designing an underwater vessel called the Beaver, which will be equipped with manipulators capable of using a number of tools.

Possibly the most famous of the research submarines operating is the Alvin, which located the hydrogen bomb that fell into the Mediterraneon Sea off the coast of Spain. It

was built by Litton Industries for the Woods Hole Oceanographic Institute.

While man is learning about the sea by moving about in submarines, he is also trying to develop stationary submerged shelters suitable for human habitation. The Navy's program, called Sealab, got under way in the summer of 1964, when a four-man crew spent 10 days in a large cylindrical chamber submerged 192 feet deep off the coast of Bermuda.

This was followed by Sealab II, in which teams of 10 men each spent 15 days under water. Astronaut Scott Carpenter was one of the men and he stayed down for 30 days. Plans for Sealab III are well under way.

In addition, the Navy is looking ahead to the construction of an advanced underwater facility for work at a depth of more than 600 feet. It is tentatively called the Seafloor Habitat Complex. The complex will consist of a combination of modular units, including living quarters, a research laboratory and power sources.

The applications of such shelters to undersea drilling and mining are obvious. Their success will also make the day of the underwater city considerably closer.

FIGHT FOR THE MARKET

Producers of titanium, glass-reinforced plastic, higher-strength steels, aluminum and nickel are fighting it out for the market for underseas materials. The Republic Steel Corporation and the United States Steel Corporation have both developed special high-strength steels for the underseas market.

Besides pressure, the sea presents the problem of corrosion. Several of the chemical companies are working on protective coatings at present and it is likely that more will join the study.

Several companies, such as the Goodyear Tire and Rubber Company, are presently involved in a research program to develop anti-corrosion compounds.

Another major tether on man's thrust into the sea is the lack of proper instrumentation. Instruments of all sorts are needed to test, explore and control the ocean environment.

Many of the instruments presently being used in oceanographic research have been transferred directly from space and other uses. They are doing the job, but far from perfectly.

Companies such as Honeywell, Inc., Beckman Instruments and Sylvania Electric Products, Inc. are working on devices specifically designed for the water environment, but a great deal more effort is needed in this direction.

It is not just coincidental that many of the companies participating in oceanography are also active in aerospace. The race in space and the challenge of the ocean are similar in many ways.

"Aerospace research has much in common with ocean research. Materials, propulsion, auxiliary power units, guidance and communications system are as vital to marine vehicles as they are to aerospace vehicles and pose many of the same problems. It is logical, then, that the aerospace industry should turn its research attention to the fields of the ocean," according to Daniel J. Haughton, president of Lockheed.

ANTI-SUBMARINE WARFARE

The best example of aerospace companies participating in "inner space" operations is the Navy's antisubmarine warfare program. Since 1961, the percentage of the Navy's research, development, testing and evaluation budget that is devoted to antisubmarine warfare has climbed from 18 per cent to more than 28 per cent at the present. By the end of the decade, it will account for at least a third of the total budget.

The names participating in this all-important program read like a roster of the aerospace industry. Not only is most of the technology being put together by aerospace concerns, but the Navy has picked TRW, Inc., an aerospace company, to coordinate and do the systems work on the entire program.

In the Deep Submergence Systems Project (DSSP), another aerospace company, the Northrup Corporation, has been given the job of assisting the Navy in management and systems integration. The program was created in reaction to the Thresher disaster.

DSSP has been planned to give the Navy four major capabilities: the ability to locate stricken submarines and their crews; to recover small objects down to 20,000 feet; to salvage large objects, including submarines and ships, downed on the Continental Shelf; and to expand man's capability to work in the sea.

Commercial interest in this program is perhaps greater than in any program of similar dollar size to emanate from Washington in recent years. More than 400 companies have sought information on business possibilities in the operation.

The hostile environments of space and the hostile environment of the sea have many technical requirements in common, but the transfer of technology from one to the other is neither easy or automatic.

As far as business is concerned, ocean and space are even more unalike. In space there is only one customer, the Government. Prime contracts are let in huge sums.

PACIFIC POWER

Mr. HARRIS. Mr. President, I have before me two newspaper comments in support of President Johnson's speech asserting our responsibilities in Asia. They are taken from the Hartford Times and the Philadelphia Evening Bulletin.

In these editorials there is approval of the clarity with which the President stated our desire for peace. And there is the observation that we have common interests with the people of Asia.

Our commitment is more than temporary. We have a stake in Asia.

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

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

[From the Hartford Times, July 14, 1966]

PATIENCE AND REITERATION

The bombings at Haiphong and Hanoi clarify, in terms of military might, the unshakeable intention of the United States to withstand Communist aggression and to make it unproductive.

President Johnson, in his address to the American Alumni Council, reiterated in terms of policy the often-stated will and purpose of this nation in Viet Nam. It was both a desirable and an effective supplement to the use of the leverage of raw power.

Patiently, once again, the President expounded our hopes for peace, our strong desire to aid in the development of the Asian people, and the fact that, as a Pacific power, we are involved in, and cannot separate ourselves from the future and fortunes of Asia.

It is that fact that so often escapes the critics of our policy and presence in the Far East. We are not mere adventurers on the scene, different in culture and traditions though we may be. We are not invaders, looking for booty or territory.

Rather, the United States has an interest in common with free Asia. As the President pointed out, there are no longer any remote or unrelated continents.

He asserted again the sincere wish of the United States to negotiate for peace, rather than to war toward exhaustion. Yet, it is necessary for the President to admonish, as well as try to reason with, the Hanoi government.

For still that leadership is obsessed with its subversive designs and the delusion that it is only dealing with another France and that eventually all will go the way of Dienbienphu.

The President checked that idea sharply. He told Hanoi, "Victory for your armies is impossible." He means it, and the nation supports him.

North Viet Nam still holds in its own hands the initiative for its happiness and safety. It can halt the war at any moment it ceases to aid and abet the incursions on its South Vietnamese neighbor. Certainly, as the President made clear, the United States has not vowed the destruction of North Viet Nam, nor has it any wish to see that destruction happen.

Our purpose could not have been put more understandably than the President stated it, with more charity for our opponents, or with more logic and integrity.

[From the Philadelphia Evening Bulletin, July 18, 1966]

A PACIFIC POWER

In enunciating the determination the United States to accept both the risks and the responsibilities of "a Pacific power," President Johnson very wisely filled what has been a serious void in the dialog of world affairs.

For too long our friends as well as our enemies throughout the world have held the belief that any involvement, any commitment by the United States in the Pacific and in Asia is temporary; that we are a nation standing with our back to Asia and with our eyes and thoughts on the Atlantic and on Europe.

What Mr. Johnson said in his address last week was that the United States is no longer a nation with a foreign policy oriented chiefly to Europe and to the North Atlantic Treaty Organization. During his address, and in subsequent White House discussions, the President has made it clear that the United States will be looking just as much and even more to Asia, its problems and its people.

This is not a new concept nor a new role for the United States. Rather, it is public recognition of the facts of international life. Economically and politically, Europe is in good condition. NATO's troubles, are, in fact, proof of this. NATO has become the victim of its own success. The need for NATO still exists, of course, but no longer does most of Europe stand in mortal fear of Russia and the Communist bloc nations.

As Mr. Johnson noted, "Asia is now the crucial area of man's striving for independence and order."

In discarding the old arguments that the United States has no stake in Asia, Mr. Johnson emphasized that the Pacific Ocean is as crossable as the Atlantic. He rejected the semi-isolationist theory that what some people describe as "the land mass of Asia" is even more remote than Mars or Jupiter.

Mr. Johnson's statements were needed at home as well as abroad. They were, in fact, overdue.

CHARLES MURPHY, DEDICATED PUBLIC SERVANT

Mr. SYMINGTON. Mr. President, on July 31 the Chairman of the Civil Aeronautics Board, Charles S. Murphy, an able and dedicated public official, will have completed 30 years of service in the Federal Government, including high appointments by Presidents Truman, Kennedy, and Johnson.

Mr. Murphy has been well and favorably known to Members of the Senate

for many years. In fact, he had already served in the Office of the Legislative Counsel of the Senate for 13 years when he was appointed as administrative assistant by President Truman in 1947. In 1950, Mr. Truman advanced him to the position of Special Counsel to the President.

Over the years, Mr. Murphy has had an unusual breadth of Federal service. Following graduation from Duke University's School of Law in 1934, he received an appointment as law assistant in the Office of the Senate Legislative Counsel. He served in this post 2 years when he was elected as assistant legislative counsel to the Senate, a position held 11 years.

As a legislative draftsman he worked with Members of both the Senate and House of Representatives in writing numerous pieces of legislation, including the Civil Aeronautics Act of 1938. Many of its provisions have been carried forward into the Federal Aviation Act which today governs aviation in the United States and which Mr. Murphy, as CAB Chairman, now helps administer.

It was while on the Senate staff that Mr. Murphy was selected in 1947 by President Truman to serve as administrative assistant and later special counsel in the White House.

From 1953 to 1961, Mr. Murphy practiced law as a member of the Washington, D.C., firm of Morison, Murphy, Clapp & Abrams. From 1957 to 1960, he was counsel to the Democratic National Advisory Council.

President Kennedy, immediately after his inauguration January 20, 1961, selected Mr. Murphy as Under Secretary of Agriculture.

As Under Secretary of Agriculture from 1961 to 1965, a period when the Department made great strides in efficiency and effectiveness, Mr. Murphy had general supervisory responsibility for all USDA agencies and for the administration of its many widespread programs. He coordinated and reviewed the Department's staff work on many pieces of major legislation. The measures enacted stamp this half decade in the Agriculture Department as one of the most progressive in American history.

As President of the Commodity Credit Corporation, Mr. Murphy has special responsibility for supervising the commodity programs that broke the back of the mountainous feed grain and wheat surpluses. He successfully represented the United States in international discussions on foreign agricultural trade. These discussions played an important part in raising U.S. farm exports to record highs.

Mr. Murphy was sworn in by President Johnson as a CAB member and Board Chairman June 1, 1965. The term ends December 31, 1968.

From 1956 to 1958 Mr. Murphy was president of the National Capital Democratic Club. He belongs to the Order of the Coif, Delta Sigma Phi, Pi Gamma Mu, and Omicron Delta Kappa. He was admitted to the North Carolina bar in 1934, the Supreme Court bar in 1944, and the District of Columbia bar in 1947.

On this occasion it is a pleasure to join with many other friends of Charles Murphy in extending him congratulations on his 30 years of outstanding public service and best wishes for continued success.

CIRCUMVENTION OF LAW IN THE IMPORTATION OF WRENCHES

Mr. LAUSCHE. Mr. President, my attention has been called to a circuitous operation being practiced by an American tool company wherein socket wrench sets made in Japan are entering this country without bearing the stamp or label of the country of origin and are being sold here as a product of the U.S. firm. Senators from States which have handtool manufacturing plants should be interested in this matter of circumventing the law and join in protesting to the Bureau of Customs.

Mr. President, the clever method used by the U.S. firm to circumvent the law is as follows:

The imported socket wrench sets manufactured in Japan are marked in Japan with the name of the American firm and the size of the item. Each item is satin finished and coated with a protective substance in Japan. No marking of "Japan" or "Made in Japan" is stamped on these wrenches in Japan.

These wrenches and accessories are shipped from Japan to the free trade zone of Mayaguez, P.R., and, there, in an area assigned to the American tool company, the protective coating is removed, the socket wrenches are polished and nickel chrome plated, following which the ratchets, drives and socket wrenches are placed in boxes for shipment to the United States.

The plated socket wrench sets are then withdrawn from Mayaguez, duty is paid to the U.S. customs at Mayaguez, and the plated wrench sets shipped to the American tool company.

It is contended that plating merely changes the appearance of the socket wrenches and accesories, and does not in any way change their configuration or form or convert them to any other type of tool or product. In the opinion of most tool maufacturers, plating merely makes the tool more attractive to the buyer. The item is just as usable as a tool either plated or unplated.

No marking of country of origin appears on the socket wrench set components imported by the American tool company when they reach Mayaguez, P.R., and the marking of the name of the American company and the size on each of the components, which is done in Japan, is deeply imprinted and is not obliterated by the plating done in Mayaguez. Moreover, if the word "Japan," or the words "Made in Japan," were imprinted on the wrenches in Japan in the same manner as the name of the American tool company and the size of each component, such marking of country of origin would not be obliterated by the plating of the components.

I respectfully submit that the manner in which the socket wrench sets are imported to Mayaguez, P.R., and there cleaned, polished, and plated, is merely a subterfuge used to enable the American concern to import the Japanese socket wrench sets into the United States without the marking thereon of the country of origin as required by section 304 of the Tariff Act of 1930.

Mr. President, I have expressed my interest in this matter to Mr. Robert V. McIntyre, Assistant Commissioner of Customs, Bureau of Customs, because of the fact that in Ohio we have a considerable number of handtool manufactories. It is difficult for me to understand how public officials will tolerate circumvention of this law by adroit practices of skillful manipulators.

TRIBUTE TO DAVID BELL

Mr. KENNEDY of New York. Mr. President, it is with great regret on the part of all who know him that Mr. David Bell will leave the Agency for International Development this month.

David Bell, at only the midpoint of his career, has already carved out an outstanding record. After World War II, in which he served as a Marine Corps officer, he returned to Washington to work in the Bureau of the Budget. There, he played a major role in transforming the Bureau into the sharp and penetrating instrument of Presidential administration that it is today. He also served at the White House, including 2 years as administrative assistant to President Truman.

He then began his long involvement with the processes of economic growth and development as an adviser to the Government of Pakistan for 3 years. This experience led to writing on economic development, and to teaching on the Harvard faculty.

From the campus he was called by President Kennedy in 1961, to head the Bureau of the Budget. As Budget Director, he played a great part not only in Government finance, but in the preparation and coordination of all domestic policy. His contributions were various; all were excellent.

Then, in 1962, he was asked to head the Agency for International Development. In the normal sense, this was not a promotion; he was being asked to leave a more prestigious post, one unaffected by the political bickering which surrounds the foreign aid bill each year. But in another sense, this was the highest honor that could have been paid him. For it reflected President Kennedy's judgment that alone of all the men in the Federal establishment, or elsewhere in the country, David Bell could take the foreign aid program in hand—to make it the effective instrument of American policy which it must be, an instrument with the confidence of the Congress and the country, of people here at home and in dozens of countries around the world.

This confidence was justified. I worked closely with David Bell for several years; and he was, in my judgment, the best Administrator AID has ever had. His duties, and more, he carried out with brilliance, dedication, and good humor.

Now he returns to private life, with the Ford Foundation. But wherever he is, in whatever capacity, he will continue to serve the great national interests of the United States and the larger purposes of humanity.

A PROPOSED CONSTITUTIONAL AMENDMENT TO PROTECT SOCIETY AGAINST CRIMINALS

Mr. ERVIN. Mr. President, I have been disturbed during recent times by two lines of decisions of the Supreme Court of the United States.

The first line of decisions is that which permits the accused in a criminal case to litigate and relitigate, without apparent end, the same questions. The State can prosecute a person for a crime only once, and if he comes clear, the matter is ended forever. This is as it ought to be, for no man should be put twice in jeopardy for the same offense.

Under recent decisions of the Supreme Court of the United States, it is quite otherwise with respect to the accused. After he is tried for a crime and found guilty of its commission, he can then come into court in an independent postconviction hearing proceeding and relitigate his case under circumstances which amount to the defendant trying the court which tried him. If the State court rules against him in the postconviction hearing proceeding, the accused is then permitted by the decisions of the Supreme Court to relitigate the same things which have been determined twice or which could have been litigated and determined twice in habeas corpus proceedings apparently without end. And this is true even in cases where the accused attempts to appeal his first conviction from the State court to the Supreme Court of the United States and the Supreme Court of the United States refuses to grant him a review.

As a result of this line of decisions, persons who are convicted of the most serious crimes have their convictionns in State courts set aside by the U.S. Supreme Court and other Federal courts, in some cases years after they are first tried and the witnesses against them have died or removed to parts unknown or have become the victims of failing memories.

In the hope that I might put an end to such endless procedures, I have introduced a proposed constitutional amendment which would provide in section No. 1 that the judgment of a State court upon a plea or a verdict of guilty shall be conclusive as to all matters actually determined or which could be determined in the case until it is reversed according to law, and that the Supreme Court cannot reverse such judgment of a state court except upon a direct appeal from the highest court of the State having appellate jurisdiction in the case.

Since the Supreme Court has held that the State must furnish the accused in all serious cases with a lawyer and must bear the cost of his appeal if he is unable to bear such costs himself. this proposed amendment seems to me to be just to the accused and necessary to protect society against interminable litigation.

My proposed constitutional amendment contains a second section which deals with the admissibility of confessions of guilt in criminal cases in both Federal and State courts.

As a result of the line of decisions which began with the McNabb and Mallory cases and has just ended with the Escobedo and Miranda cases, the Supreme Court has erected some artificial rules which have the effect of excluding confessions of guilt in criminal cases no matter how voluntarily such confessions may be. Many of us have been concerned for years with decisions of the Supreme Court on this aspect of criminal law because such decisions have resulted in freeing those who commit serious offenses, thus enabling them to repeat their offenses.

The fundamental purpose of the criminal law is to protect society against criminals. The law desires, however, to avoid the conviction of any innocent man. To this end, it erects in favor of any person charged with crime a presumption of innocence, requires the prosecution to establish every essential element of his guilt beyond a reasonable doubt, secures to him the services of a lawyer, gives him compulsory process to obtain the attendance of witnesses in his behalf, and secures to him the right to cross-examine through the agency of his lawyer the witnesses against him. These things are as they should be.

The recent decisions of the Supreme Court of the United States upon the subject of confessions seem to be based upon the theory that society needs little protection from criminals, but criminals need much protection from law-enforcement officers. This theory is most unjust to law-enforcement officers who frequently jeopardize and sometimes lose their lives in efforts to protect society from those who prey upon it.

Be this as it may, the recent decisions certainly tilt the scales of justice unduly in favor of those accused of crime and against the prosecution. They lose sight of the fact that the accuser and society are just as much entitled to justice as the accused.

To me, there is neither rhyme nor reason nor commonsense in excluding voluntary confessions of guilt by artificial legal rules. The sole test for the admission in evidence of a confession should be whether or not it was voluntarily made. The truth is that there is no stronger evidence against any man than his voluntary confession that he committed a crime which the law requires to be established by other testimony independent of his confession. Innocent men do not go around confessing crimes they did not commit. Moreover, it is a psychological fact, which those of us who have had experience with the administration of criminal law know to be true, that persons who commit serious crimes continue to think about such crimes and that people talk about the things which they think about. It is also a truth known to us that many innocent parties are freed without trial by law-enforcement officers who check their statements of innocence and find them to be true.

The second section of my proposed constitutional amendment provides in substance that the only test of the admissibility of a confession of guilt in a criminal case is its voluntary character, and the decision of the trial judge that a particular confession is voluntary shall not be reversed by the U.S. Supreme Court or any other Federal court if it is supported by any competent testimony in the case.

The trial judge sees the witnesses who give testimony concerning the circumstances under which a confession is made. He has an opportunity to observe the demeanor of these witnesses and to tell which of them is telling the truth. This is not true of the appellate judges such as those who sit on the Supreme Court of the United States. They do not see the witnesses. All they see is the printed record; and on the printed record it is virtually impossible for anyone to tell the difference between the testimony of an Ananias and a George Washington. I am prompted to introduce my amendment by the rising crime rate in the United States and by the fact that the recent decisions of the Supreme Court of the United States place unjustified handicaps upon law enforcement officers and trial courts and result in the freeing of multitudes of criminals of undoubted guilt.

VOCATIONAL AGRICULTURE

Mr. LAUSCHE. Mr. President, the May 1966, issue of the U.S. Department of Agriculture's Statistical Reporting Service Bulletin, contains an article entitled "Vo-Ag for Your Boy? Think It Over Together," written by James D. Cowhig, Welfare Administration, Department of Health, Education, and Welfare, and Calvin L. Beale, Economic Research Service. The accuracy of the article has been challenged, and rightly so, in my opinion, by Mr. Warren G. Weiler, State supervisor of vocational agriculture, Ohio Department of Education.

Mr. Cowhig's article paints a bleak picture for Vo-Ag students. Mr. Weiler's letter of rebuttal points out errors in conclusions because Mr. Cowhig did not take into consideration the entire picture.

I ask unanimous consent that the letter from Mr. Weiler be printed in the RECORD.

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

STATE OF OHIO,
DEPARTMENT OF EDUCATION,
Columbus, July 22, 1966.

FRANK LAUSCHE,
U.S. Senator,
U.S. Senate Building,
Washington, D.C.

DEAR SENATOR LAUSCHE: I am writing you in connection with the article found on page 13 of the enclosed booklet "Agricultural Situation." When you read the article, you would get the impression that there is little future in agriculture.

I am enclosing a copy of a report of a study made by Dr. Brum in Ohio regarding agricultural opportunities in our state, and you will note that there are approximately one and a half off-farm occupations that need education in agriculture for each on-farm opportunity.

Mr. Cowhig's article is off in two respects. First, he confines agricultural occupations only to farming. Second, you will note in the fifth paragraph it speaks of 449 vocational agriculture students for every 100 opportunities in farming. I know that you are familiar with vocational agriculture and that it is a four-year program and that normally graduates about 20% of the total enrollment each year. This would mean that there would be less than 85 vocational agriculture seniors for every 100 opportunities to replace farmers 55 years of age or over instead of 449.

We feel that students, parents, guidance counselors, teachers, and school administrators should have full information in regard to opportunities in agriculture. Furthermore, our agricultural industries, our grain and feed dealers, machinery dealers, and other agricultural businesses need trained people, and frankly we are not graduating enough to fill the positions as shown by Dr. Brum's study.

It is to be regretted that an agency as important as the U.S. Department of Agriculture does not give out full information. I have written Secretary Freeman and asked whether they would prepare a follow up article so that those interested would be more correctly informed.

Mr. Cowhig, in answer to my letter, says, "Beale (co-author) and I would certainly agree with you for the need that a complete picture of occupational opportunities be provided to persons entering the labor market."

If you can help to correct this incomplete picture for those interested in adequate agricultural education, we will certainly appreciate it.

Sincerely yours,

WARREN G. WEILER,
State Supervisor, Vocational Agriculture.

THE FAIR HOUSING SECTION OF THE CIVIL RIGHTS ACT OF 1966

Mr. HART. Mr. President, as all of us know, title IV, the fair housing section, is the most controversial provision of the civil rights bill for 1966. As primary sponsor of this proposal in the Senate, I have received many letters, both pro and con, with respect to this section.

The opponents of this provision have been vocal, as is their right, but I have the impression there are those in this country who may not be as vocal and dramatic in expressing their views, but who nevertheless, unequivocably, support and approve the proposal.

This is not to question the right of either side to express its views. In fact it is imperative that both sides of questions be thoroughly debated and analyzed if legislation is to be developed with understanding and appreciation of the issues involved.

Nevertheless in view of the extensive efforts of those who seek to prevent the enactment of the housing provision, it has been encouraging to me to receive so many thoughtful letters in support of this provision.

Mr. President, I feel that the letters should be read by the American people, not only because of the views and opinions which they contain, but also because they represent a good cross section of Americans who are interested in seeing the ideals of our democracy become a reality.

I ask unanimous consent that a number of letters I have received on the subject be printed at this point in the RECORD.

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

ARCHDIOCESE OF DETROIT,
Detroit, Mich., July 18, 1966.

Senator PHILIP HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: I am very pleased that you have given your complete support to the Civil Rights Act of 1966, especially to Title IV on Housing.

I certainly wish to commend you for your Christian sense of justice in trying to support legally the rights of all citizens to equal opportunity in housing. I am confident that you will continue your outstanding work in this regard. You can be sure of my support and that of many of my associates and friends who feel very strongly with you that we must work to bring justice to all of our citizens.

Sincerely yours,

Very Rev. Msgr. T. J. GUMBLETON,
Vice Chancellor.

ST. FRANCIS OF ASSISI PARISH,
Ann Arbor, Mich., July 16, 1966.

Senator PHILIP HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: As a registered voter of the State of Michigan, I wish to commend you for your support of the 1966 Civil Rights Act.

By this letter I wish to encourage you to continue your support of this Act, especially title IV on housing.

Thanking you for your continual efforts to achieve equal human dignity for all Americans, I am

Sincerely yours,

Rev. THEODORE R. ZERWIN.

SACRED HEART CHURCH,
Saginaw, Mich., July 15, 1966.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: Just a note to thank you and commend you for your stand on the Civil Rights Act of 1966. I have lived for ten years in Northeast Saginaw, and know from first-hand living the problems of discrimination. To be opposed to the Civil Rights Act, to foster slow movement in this area, is suicide.

We are most happy to have you as our Senator. Would that there were more men of your principles and calibre in government.

With kindest personal regards, I am,

Fraternally,

Rev. ROBERT A. KELLER.

CHURCH OF ST. BARNABAS,
East Detroit, Mich., July 15, 1966.

DEAR SENATOR HART: I am writing to commend you for supporting the 1966 Civil Rights act. Especially for Title IV on housing. I think your support of it is more commendable due to the fact that you received so many letters against it, and you still did what was right in supporting this act.

I certainly wish you God's blessing in your work as our senator. God bless your family and you.

Sincerely yours in Christ,

Rev. JOHN F. O'CALLAGHAN.

ST. ANSELM'S CHURCH,
Dearborn, Mich., July 7, 1966.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: I understand the Detroit Real Estate Board has been opposing your efforts to enact Title IV of the 1966 Civil Rights Act.

I have lived too long with neighborhood segregation to think that the Detroit and other Real Estate Boards are not largely responsible for the patterns of segregation we have in the metropolitan Detroit area. Their advertisements protest that they are genuinely concerned with legitimate civil rights and the improvement of race relations. In this they are hypocrites. Their double listings and screening of clients, their "difficulties" in obtaining mortgages, and open cooperation with other persons in the community who oppose integration belie their fine words.

There is a fundamental error involved, too, in the argument of the Detroit Real Estate Board. They insist that every person has absolute freedom of choice in selecting a buyer or tenant. To accept such a position would mean to reject the principle that property has a social purpose and that personal rights over it are limited by the social welfare. The individual is obliged to use his property in a way which promotes the common good. It is the work of the State to regulate private property when the danger of abuse is present. Such a case is at hand with this Title IV of the Civil Rights Act of 1966. Exclusion by discrimination of Negroes from white neighborhoods works great harm to our society. The State has the duty to correct this abuse.

Be assured of at least one white vote in the next election—and from Dearborn at that.

Sincerely yours in Christ,

Father JOSEPH A. GAGNON.

CHURCH OF THE HOLY INNOCENTS,
Roseville, Mich., July 18, 1966.

DEAR SENATOR HART: I would like to extend to you my wholehearted support to your courageous efforts and work on the 1966 Civil Rights Act, particularly its housing section.

Another voice may be of no consequence by itself, but added to the others it can be of some help in reassuring you that many do stand behind you in your work of justice and charity. Add my voice to the cries of the others.

I am sure, though, that you have not been looking for and have not been listening primarily to the outspoken. Expediency could not have motivated you in the face of such opposition. The cries that have come to your ears have been silent ones: the cries of those suffering discrimination in housing; those suffering injustice at the hands of others. Suffering and shame cry out more clearly than the voice of the fearful and unjust realtor and homeowner.

The lot of a prophet is never easy, but continue to speak as you have—in the name of every true Christian and American.

Very truly yours,

Rev. GERALD CHOJNACKI.

HURON VALLEY CHAPTER,
NATIONAL ASSOCIATION
OF SOCIAL WORKERS,
July 6, 1966.

Hon. PHILIP HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: We urge your support for the 1966 Civil Rights Bills (H.R. 14765 and S. 3296). These bills represent urgently needed reforms in our society's treatment of minority groups. Of special import is the anti-discrimination in housing section. This section, although not a panacea to the problems Negroes encounter in their efforts to obtain decent housing, will at least move in the right direction.

Again, let us urge you to vote for these bills to include the anti-discrimination in housing section.

Sincerely,

RICHARD BECKER,
Chairman, Social Policy and Action Committee.

COLOMBIERE COLLEGE,
Clarkston, Mich., July 12, 1966.

DEAR SENATOR HART: I support the passage of the 1966 Civil Rights Bill, especially Title IV which deals with fair housing practices, in as strong a form as is possible.

I agree with the Detroit News editorial of June 16, 1966 which refutes quite well the realtors' call for voluntary efforts concerning fair housing and race relations. This editorial places the blame for the existing situation right at their feet. The call for voluntary effort is great as an ideal but it hasn't worked in practice in the past and I don't think it will work in the future.

The realtors' approach seems to be very democratic and patriotic—the cry for freedom of choice. But they seem to have forgotten the other half of the buying-selling situation. The prospective buyer should also have the *freedom to choose* any house that he can reasonably afford. In their attempt to secure the "rights" of some people, they trample on the rights of others. Freedom involves responsibility. If the home owners have the freedom of choice, they also have the responsibility to see that all buyers have the freedom of choice, too.

I commend you for your efforts to get this bill passed.

Sincerely yours,

RICHARD THEIS.

SUBURBAN MARYLAND FAIR HOUSING,
Bethesda, Md., July 21, 1966.

Hon. PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: Suburban Maryland Fair Housing is a community organization in Montgomery County, Maryland, with a membership representing more than a thousand families. For more than three and one-half years we have been working actively toward the elimination of discrimination in housing on our County, placing primary reliance on voluntary efforts of sellers and brokers. While some progress has been made by these voluntary efforts, and while the community's response to new Negro neighbors has been excellent, discrimination in housing is nevertheless still widespread in the County, and builders of new homes, apartment owners and managers and real estate brokers remain for the most part unwilling to participate in sales or rentals without discrimination.

Our experience in this work led us to conclude that fair housing legislation is a most effective and fair way to achieve the goal of elimination of discrimination in housing, though even with legislation there will continue, we believe, to be a need for fair housing groups such as ours, particularly in connection with efforts to ease tensions and assist in an ordinary and peaceful transition to an integrated community.

This letter is to congratulate you on the forthright position which you have taken in support of Title 4, the fair housing provision, of the pending Civil Rights Bill. While we would have preferred passage of the legislation as originally proposed by the Administration, nevertheless we believe that the bill as approved by the House Judiciary Committee will aid in solving the problem of discrimination in housing and should be passed.

Sincerely,

THOMAS J. SCHWAB,
President.

UNIVERSITY OF DETROIT HIGH SCHOOL,
Detroit, Mich., July 13, 1966.

Senator PHILIP HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: I have been following with no little interest the progress of the Civil Rights Bill of 1966. My personal study of the bill, especially title IV, has renewed my confidence in the vision of some of our legislators. It is a tribute to your commitment to work toward the realization of the goals of the Constitution, toward the goals of human brotherhood, and toward the goals of Christian charity.

You certainly have my support in your campaign for this bill.

If I can be of more active service in supporting you in this, I will be more than anxious to do so.

Sincerely,

DANIEL P. LIDERBACH, S.J.

COUNCIL FOR CIVIC UNITY OF THE
SAN FRANCISCO BAY AREA,
San Francisco, July 15, 1966.

Hon. PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: I have read of your support of Title IV of the Civil Rights Bill of 1966. Congratulations on your stand on open housing!

I know that your mail supporting Title IV has been disappointing, but just let me say that those of us who support you and the other Senators and Representatives in voting for Title IV just can't find the time like the real estate people. It is easy and takes no time for them to say no to a Negro who is looking for an apartment or house. For us it takes hours, days and weeks to assist just one person to find the apartment or house he wants—even in a state like California that has fair housing laws.

We support you and your efforts to make open housing a reality for all Americans.

Sincerely,

DREW PRIDDY,
Housing Coordinator.

OKEMOS, MICH.,
July 21, 1966.

Senator PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: I am strongly in favor of the Title on Housing in the proposed Civil Rights Bill. It's a shame that we have to protect our underprivileged groups with legislation like this, but waiting for an improvement in the public conscience takes too many decades. There is no reason why people in a free country need to wait decades for freedom and justice.

I don't believe this Title violates the freedom of choice of the homeowner nearly as much as it violates others from the more basic rights of home, education, and human dignity. To me it is a question of which will accomplish the greater good.

It is important for people to be able to live wherever they can afford to and wherever they want to.

Yours truly,

J. B. TURNBULL,
Doctor of Dental Surgery.

GROSSE POINTE, MICH.,
July 14, 1966.

Senator PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: As one of your constituents, and particularly as a resident of Grosse Pointe I wish to register my *support* of the 1966 Civil Rights Bill, especially Title IV on housing. As a member of the Grosse Pointe Human Relations Council and as an American who believes that human rights come before property "rights", I want you to know that *I deplore* the action of the Grosse Pointe Real Estate Board which placed ads in local papers urging citizens to protest the proposed section on housing.

My congratulations to you for your unflinching support of the 1966 Civil Rights Bill. I realize that you must be inclined to respect the volume of mail you receive from individuals who have various "axes to grind", but I only hope you will continue to support such legislation which the majority of concerned and dedicated Americans truly desire.

Do not succumb to the pressure of a few influential and vocal opponents.

The majority of conscience-bound Americans are with you.

Sincerely yours,

ARMIN GRAMS.

CENTER LINE, MICH.,
July 17, 1966.

DEAR SENATOR HART: It is not too late to commend and thank you for your support of the 1966 Civil Rights Bill. We were sorry to learn of the changing which so badly crippled the Open Housing Title.

I am a teacher in a closed housing suburb area. During spare time I have done some volunteer work in inner city Detroit, where thousands of dollars of tax money are being poured from Federal money to alleviate the very problems that closed housing is propagating. These funds are doing very much good, to be sure, but so very much of the help seems to be a superficial solution for problems that can only be successfully attacked at the roots. Basically this will come through job opportunity and training and integrated neighborhoods.

Thank you for your efforts and do please continue work in this direction.

Sincerely yours,

DOROTHY LAWINGER.

OAK PARK, MICH.,
July 11, 1966.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: I want to take this opportunity to commend you for your strong support of the 1966 Civil Rights Act. In my opinion it is a most necessary piece of legislation.

In particular I would like to see passage of Title IV and hope that proponents of the legislation do not "compromise this section out" as has been suggested in some quarters. Equal opportunity in housing is key to so many aspects of current urban problems. Clearly if adequate housing were available to all persons we would not have the segregated schools which dot our States. And it would be a long step forward in the struggle to eliminate all the undesirable aspects of ghetto living.

Sincerely yours,

ELINOR WATERS.

JULY 2, 1966.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: I herewith offer my heartfelt appreciation for your support of the 1966 Civil Rights Act especially Title IV.

I also wish to encourage you to do all within your power to prevent the emasculation of the Title IV section by the compromise proposal that excludes coverage of resident owner property.

May God give you the strength and courage to continue your great work.

Yours very truly,

JACK YORKE.

MILFORD, MICH.,
June 25, 1966.

Hon. PHILIP HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: At the urging of literature distributed by the National Associa-

tion of Real Estate Boards I am writing in regard to the proposed Title IV of the Civil Rights Bill, H.R. 14765 and S. 3296.

The Association urges protest because Title IV is "destructive to rights of all Americans".

I believe, to the contrary, that selling a suburban house to a Negro purchaser is one way of effectively doing justice to fellow Americans who happen to be Negroes and passage of Title IV appears necessary to accomplish this end.

Yours very truly,

MARTIN L. BOYLE.

FLINT, MICH.,
July 23, 1966.

Senator PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: I am taking this opportunity to thank you for your support of the fair housing section, Title IV. Because in these times it takes compassion and courage to do so.

I am also well aware of the sorry record of real estate boards who talk about freedom, but use their talents to deny it. Let us hope that their words will not fool the majority of the people in the United States into thinking that this is good for us.

Sincerely yours,

LOUIS E. ALLEVA.

JULY 24, 1966.

DEAR SENATOR: A vote of thanks from a long supporter of you and your views for your sponsorship of Bill S. 3296. The newspaper ads of the Detroit Real Estate Board have sickened me to the point that I write this letter.

We live in a small development of new and integrated housing, and have never had such congenial environment.

I am former precinct delegate, precinct 11, Birmingham.

Sincerely,

ANN R. KLEIN.

JULY 25, 1966.

DEAR SENATOR HART: I believe in equality for all. You have my full support in Bill H.R. 14765, S. 3296 Title IV.

We have lived here for 8 years, the last 3 or 4 years integrated, so we are living our belief.

Mrs. VIRGINIA N. POSTULA.

Detroit, Mich.

PS—May "God Bless" you especially in your difficult opposition at this time.

GROSSE POINTE, MICH.,
July 24, 1966.

Senator PHILIP A. HART,
U.S. Senate, Washington, D.C.

DEAR SENATOR HART: Please accept my commendation for supporting Title IV of the Civil Rights Bill. Until we have equality in Housing most of the other civil rights cannot really be effective.

I feel that we in Grosse Pointe are denying ourselves and our children, as well as Negroes, the opportunity to know people as individuals, rather than as a group or a race.

Yours truly,

Mrs. CAROL B. HAMMOND.

JULY 19, 1966.

DEAR SENATOR HART: I wish to congratulate you on your voting record in general but especially on the current Civil Rights Act of '66. I live in an all white suburb but I am not proud of the fact that it is all white. Now is the time to raise everyones standard of living as much as possible—at least the Negro should be given the opportunity, in jobs, education & housing.

Sincerely,

Mrs. LINUS MURPHY.

DETROIT, MICH.,
July 25, 1966.

Senator PHILIP HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: I urge you to support the fair housing section of the proposed 1966 Civil Rights act.

Since I am a housewife living in an all Negro neighborhood where we seldom see a white person outside of a bill collector or missionary, my main exposure to candid white opinion is listening to Detroit's "talk" station WTAK. It is angering to hear a steady barrage of anti-Negro expressions coming from white people who seem to feel that "open" housing is somehow un-American. Much advice has been volunteered on what Negro leaders should do about the race problem. Is it not time for white leaders to begin to educate white people on how to get along with Negroes with their increasing awareness of their strategic position in a world where they are NOT a minority, but a part of a two-thirds majority?

The press with its unwarranted hysteria over Black Power and the smug suburbanites who take every opportunity to "talk" their prejudices over the airwaves do more to impel us in the direction of Black nationalism than any speech by Stokely Carmichael who we never hear except via a critical news media.

We urge you not only to support Title IV on housing, but we would like to see you counteract some of the anti-Negro diatribe around here so that we will know there is any white good will left for us to cultivate.

Yours very truly,

Mrs. JESSIE WALLACE.

DETROIT,
July 19, 1966.

DEAR SENATOR HART: May I offer my sincere congratulations to you. I am deeply grateful for all your effort to obtain fair housing rights for all citizens.

Please continue to do all you can to get the whole Civil Rights Act of 1966 passed, especially Title IV.

As a teacher of Negro children I will appreciate any effort you make in this regard.

Sincerely yours,

ANNE LARIN.

WYANDOTTE, MICH.,
July 18, 1966.

DEAR SENATOR PHILIP A. HART: Congratulations on your stand of Title IV of the Civil Rights Act of 1966. Keep pushing we are behind you—you are doing a wonderful job. Keep lighting the candles.

De Colores—
We love you—

RAY and CECIL MIX.

GROSSE POINTE, MICH.,
July 17, 1966.

Senator PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: We are so grateful for your support of the civil rights legislation. We commend you for standing firm on Title IV.

Any few individual difficulties in rendering justice under that legislation could not compare to the injustice of the current situation.

It is in the best interests of all Americans that the ghetto be humanely dispersed. Please continue to speak out about this as eloquently as possible.

Yours truly,

SUZANNE OLSON.
JOHN and SUZANNE OLSON.
Dr. JOHN P. OLSON.

THE MICHIGAN CANCER FOUNDATION,
Detroit, Mich., July 18, 1966.

Hon. PHILIP A. HART,
U.S. Senator from Michigan,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: I am writing to express my support to you for your decision relative to the Housing Section of the 1966 Civil Rights Act.

I am a member of the Planning Commission in Grosse Pointe Park and I have advocated open occupancy practices in our community for several years. I am well aware of the strong opposition which many people have towards the tearing down of segregated patterns of housing and have felt the brunt of that opposition to some degree in my own affairs.

Nevertheless, I feel that all of us who adhere to the principles of this nation regarding the equality and dignity of our fellows must stand up and be counted as favoring necessary corrective laws and regulations aimed at overcoming the injustices caused by racial prejudice.

I do not know how I can help your effort by expressing my support for your position, but in my office as a member of the Public Affairs Committee of the Wayne County Medical Society, as Professor of Medicine at Wayne State University Medical School, as President of the Michigan Cancer Foundation, and as a member of the Planning Commission in my own community, I will do my very best to bear witness to your courage and loyalty to principle in this matter.

Very sincerely yours,

MICHAEL J. BRENNAN, M.D.,
President.

GROSSE POINTE, MICH.,
July 14, 1966.

Senator PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: We wish to thank you for your courageous stand in favor of the fair housing provision of the 1966 Civil Rights Bill in the face of so much opposition. We think that national fair housing legislation is needed to counteract the concerted efforts of organized realtors and others to keep neighborhoods racially segregated, and it is needed to support local efforts to combat segregation.

We feel strongly that segregated suburbs and inner city ghettos are a great social evil boding an ominous future of our country, and that intensive efforts must be made to break up this unhealthy and anti-democratic pattern.

HOWARD W. BACON.
ELIZABETH BACON.

DETROIT, MICH.,
July 15, 1966.

Senator PHILIP HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: As a citizen of Detroit, I wish to commend you for your action in going before the Senate Judiciary Subcommittee and testifying in favor of fair housing, stated in Title IV of the Civil Rights Act of 1966.

I am proud that you as a Michigan Senator had the courage to stand up for principle. It is my hope that you will continue the courageous stand you have taken. We need more men of your caliber.

Congratulations on your action.

Sincerely,

MARGUERITE SCOFIELD.

DEDUCTIBILITY OF TEACHERS' EXPENSES

Mr. HARTKE. Mr. President, I am glad for the expressions of concern which

have been made in the Senate, by a number of my colleagues about the proposed Treasury regulation on educational expenses of teachers. The proposal was published in the Federal Register of July 7, and the full text of the intended regulations appearing there may be found in the CONGRESSIONAL RECORD for July 22, on pages 16716 to 16720.

Mr. President, this question is not new to me nor to other Members of the Senate. I first introduced a bill to remedy the inequities inflicted by current regulations on March 6, 1964, with S. 2609 of the 88th Congress. At the beginning of the 89th Congress I again introduced the same bill, with full backing of the National Education Association and other organizations concerned with education. That bill, S. 1203, was referred to the Finance Committee on February 18, 1965, and has the cosponsorship of 28 other Senators.

There is no State untouched by the problem with which the bill is designed to deal. The bill was offered as a means of clarifying what the regulations of 1958 had not succeeded in doing, namely, the question of deductibility for the continuing education of teachers. The 1958 regulations specified deductibility of education expenses whose primary aim was to maintain or improve skills "required by the taxpayer in his employment," or "meeting the express requirements of a taxpayer's employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the taxpayer of his salary, status, or employment."

Over the years there was great contention between teachers, their organizations, and the Internal Revenue Service as to the proper interpretation of the regulations, particularly in the determination of who is a teacher, and most particularly those holding temporary certificates. The Treasury held to a narrow view, but court cases overturned its position in a number of jurisdictions. Thereafter, in those jurisdictions, the IRS tended to allow the more liberal court interpretation while continuing the harsher interpretation in other regions of the country. The result, understandably, was confusion and inequity.

It was to bring order out of chaos that I introduced the bills of 1964 and 1965. Had my measure been passed, it would have put into law the kind of position which the courts have upheld in the decisions I mentioned. Now, instead, the proposed regulations are even harsher than the narrow IRS interpretation of the 1958 regulations. For example, they would deny deductibility of a teacher's continuing educational expense even when she is required by State law to take summer courses to maintain her job—if she applies the credits earned toward a degree.

At this point, Mr. President, I ask unanimous consent that there may appear in the CONGRESSIONAL RECORD a summary of the proposed regulations prepared by the National Education Association.

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

SUMMARY OF PROPOSED REGULATION ON EXPENSES FOR EDUCATION

Educational expenses are not deductible if they are "personal or capital expenditures, or elements of both." Such expenses are not deductible even though they may maintain and improve skills or are required by the employer, law, or regulation.

Personal or capital, nondeductible expenses are:

1. Those qualifying an individual for a trade, business, position, or specialty, if, when incurred, he did not meet minimum requirements, even though in taking the courses it was not his intent to so qualify.

2. Those qualifying the individual for substantial advancement in salary or position, even though in taking the courses it was not his intent to obtain substantial advancement.

3. Those incurred in meeting new minimum requirements imposed on an employee subsequent to his employment.

4. Those incurred by a teacher who does not have a continuing or permanent certificate.

5. Those incurred by a teacher in taking courses, which, in combination with courses already taken or to be taken, will qualify the teacher for a degree, diploma, or similar certificate.

If the expenses are not disqualified under any of the provisions just summarized, they are deductible if incurred to maintain and improve skills, or if they are incurred to meet the express requirements of the employer, or law, or regulation.

TRAVEL

The ruling states that, "in general," expenses for educational travel, including travel while on sabbatical leave, are personal in nature and therefore not deductible.

Also, when travel expenses are incurred to take courses, the expenses for which are otherwise deductible, the ruling states that personal expenses must be excluded and, if the travel is considered primarily personal, no travel expenses are deductible. For example, if the teacher goes from New York to California to take a three-hour course, the expenses for which are deductible, and the regular summer session is 12 hours, the travel is considered primarily personal so that none of the travel expense is deductible. One-fourth of expenses incurred for meals and lodging while in California would be deductible.

Mr. HARTKE. A reading of this summary will show just how restrictive and unfair the proposal is, particularly in its application to States such as my own where there are requirements that teachers must, to hold their positions, do a certain specified amount of continuing academic study on a specified basis.

Mr. President, I have not previously sought to secure enactment of my bill for one specific reason. Last fall my staff met with representatives of the teachers and representatives of the Internal Revenue Service. My bill was discussed in considerable detail, at a meeting in which a member of the office of legislative counsel of the Senate was also present. The Internal Revenue Service people said they were already in the process of revising the regulations governing deductibility of business expense, including teacher expense. They seemed sympathetic to at least some of the suggestions for change which were discussed. They asked that we withhold action until the proposal, now announced, could be prepared. They indicated that this should be accomplished by February of this year.

To this, the reaction of the teachers' organization representatives, despite a skepticism born of 6 or 7 years of efforts to resolve the very same problems by altered regulations, was acquiescence. Late this year there was an opportunity, which we considered, to offer this bill as an amendment to a House-passed bill being considered in the Finance Committee. But our attitude was still, "Wait and see."

Well, now we have waited and now we see. The regulations proposed have not taken into account the adverse rulings against the 1958 regulations and in favor of deductibility. It is true that a representative of IRS has told me that it is their unannounced intention, during the period in which the old regulations remain in effect, to give the liberal interpretation and allow the claims of teachers who have claims pending, claims which in the past have so often been refused.

But this palliative for some does not alter the need for a realistic, beneficial approach to the problem on a long-term basis. It is completely nullified by the terms of the proposal announced in the Federal Register.

Mr. President, I have discussed this situation with several concerned persons. I believe there is sympathy for corrective legislation in the Finance Committee, in the Senate, in the Ways and Means Committee, and in the Senate. There is an understanding of the problem, because we have all heard from our teachers about it.

Consequently it is my intention in the near future to present, probably with some suitable changes, the substance of S. 1203 as an amendment to an appropriate House-passed measure as it comes before us in the Finance Committee. When I do so, I will hope for the firm support of other Senators both there and on the floor of the Senate.

In concluding, I should like to note the names of those Senators who are the cosponsors of S. 1203. They are as follows: Senators BENNETT, BREWSTER, BURDICK, CARLSON, CHURCH, DODD, FANNIN, FONG, INOUYE, JACKSON, LONG of Missouri, MCINTYRE, MILLER, MONDALE, MONTOYA, MOSS, PELL, RANDOLPH, SIMPSON, SMATHERS, TOWER, TYDINGS, WILLIAMS of New Jersey, YARBOROUGH, CLARK, KENNEDY of Massachusetts, MUNDT, and NELSON.

CONGRESS TAKES HISTORIC ACTION CREATING NATIONAL POLICY OF PRESERVING PARKS AND HISTORIC SITES FROM DESTRUCTION BY HIGHWAYS

Mr. YARBOROUGH. Mr. President, while I was not in the Senate yesterday when this body passed S. 3155, the Federal Highway Act of 1966, it is a matter of great interest to me. Section 13 of the

Senate-passed bill is an amendment which I had the honor to introduce and which the Committee on Public Works accepted and made part of the bill which they reported to the Senate. The amendment reads as follows:

It is hereby declared to be the national policy that in carrying out the provisions of this title, the Secretary shall use maximum effort to preserve Federal, State, and local government parklands and historic sites and the beauty and historic value of such lands and sites. The Secretary shall cooperate with the States in developing highway plans and programs which carry out such policy. After July 1, 1968, the Secretary shall not approve under section 105 of this title any program for a project which requires the use for such project of any land from a Federal, State, or local government park or historic site unless (1) there is no feasible alternative to the use of such land, (2) such program includes all possible planning to minimize any harm to such park or site resulting from such use.

The Federal Highway Act was passed 10 years ago. Since that time a total of $27.234 billion has been spent from the highway trust fund pursuant to the act. A total of 21,377 miles of the Interstate System and over 190,000 miles of the A–B–C program of primary, secondary, and urban highways was completed and open to traffic on March 31, 1966. In 1965 approximately two-thirds of the mileage compiled by America's 100 million licensed drivers was over the 900,000 miles of Federal-aid highways.

This recital of statistics is intended to give some idea of the magnitude of the highway program. It is immense. It affects the lives of every American. It has given America by far the best highway system in the world.

Yet this has not been an unmixed blessing. In our haste to build highways we have sometimes been careless about where we have put them. This has been especially true in cities, where land is scarce. It is important that we plan our cities to be places not only where people can exist with maximum efficiency in transportation and in the distribution of goods and services, but to be places where people can live, and live well. We must be careful lest we suddenly wake up and find ourselves in a world of cities which are fine for automobiles but unfit for people.

A noted landscape architect, Lawrence Halprin, has stated the problem very well. In his book "Cities," 1964, he writes:

The real problem is how to integrate freeways into the fabric of the city without destroying important civic values. It is the fragmentation of outlook, the inadequate attention to integrated overall environmental planning, rather than the architectural design of the structures, that has resulted in serious errors. It is impossible to think that the sole concern of freeways is to bring automobiles quickly into cities with no concern for esthetics, environmental impact or scale. In the process of a singleminded approach to mobility, every other aspect of environmental design has been sacrificed, as though speed and mobility were the only and ultimate justification, with an overriding virtue of their own. As a result, freeways have cut great swaths through urban communities, whole neighborhoods have been sliced in half, parks have been segmented, waterfronts have been cut off from the body of the city, and the intricate closely woven texture of the city's tapestry has been demolished. The visual impact of the concrete ribbons, often beautiful and well designed in themselves, has been responsible over and over again, for the destruction of every other urban value except speed. It is a sacrifice hardly worth the cost.

Just how great is the toll? It is impossible to determine. Yet a short cataloging of a few representative cases will give some idea of the nature of the problem.

In 1958 an 1840 seawall in St. Augustine, Fla., was obliterated for the construction of a four-lane highway.

An expressway, six traffic lanes wide, 35 to 40 feet above street level, is proposed for construction along the Mississippi River directly in front of the historic and architecturally significant Vieux Carre in New Orleans.

An expressway has been proposed which would cut through Brackenridge Park and adjacent open space areas in San Antonio, Tex. In the words of a distinguished architect, Mr. Sam Zisman, in his article, "Open Spaces in Urban Growth," which appeared in the December 1965 issue of the American Institute of Architects Journal:

The proposed expressway curves and winds through this open space system, crossing an Audubon bird sanctuary and Olmos Creek, a tributary in its natural state; it moves along a picnic ground and recreation area, obliterating a Girl Scout camp and nature trail; it stretches across the Olmos Flood Basin and rises to enormous height to go over the Olmos Dam; it severs the campus of the College of the Incarnate Word; it cuts through the lands of the San Antonio Zoo; it blocks off the half-built public school gymnasium; it slides along the rim of the sunken garden; it hovers over the edge of the outdoor theater, squeezing itself between the latter and the school stadium and blocking a major entrance; and it slashes through residential areas, along the golf course and across a wooded portion of the San Antonio River's natural water course.

In Philadelphia the proposed route for the Delaware Expressway calls for the destruction of more than 150 structures certified by the National Trust for Historic Preservation, including many built before 1800.

In San Francisco the elevated double decker Embarcadero freeway blocks the Ferry Building Tower and the view of the waterfront.

In California there have been repeated controversies over various proposals to build highways through redwood forests.

More examples could be given, but the above should suffice as an illustration of what has been and is being done. It is time to put a stop to it.

Section 13 of S. 3155 is intended to be that stop. I want to serve notice right now on the Secretary of Commerce and the Director of the Bureau of Public Roads that the Senator from Texas is one Senator who is going to be watching what is done under this new policy.

Nothing less than a vigorous, enthusiastic enforcement of this policy will be sufficient.

In closing I wish to thank the members of the Committee on Public Works for accepting this amendment. I believe that they have the gratitude of the American people for their wise action.

As the governmental body vested with the power to authorize a program which will bring about a great transformation of our physical environment, we have the responsibility to formulate guidelines indicating that there are priorities in our system of values. There are some things which are sacred, some things which must be preserved. The highway builders must not be allowed to act as though they have carte blanche to construct their highways where they will, at the expense of whatever gets in their way.

Congress has given voice to the aspirations of the people, and will now watch to see that its instructions are carried out.

Mr. President, I ask unanimous consent that the following supporting materials be printed at the conclusion of my remarks:

First. Historic Preservation, July–August 1965, pages 128–131, 139–157, "The Headless Horseman Rides Again."

Second. Cry California, the Journal of California Tomorrow, winter 1965–66, pages 2–7, "A Grisly Case of Terracide."

Third. Dallas Morning News, July 4, 1966, "Preserve Beauty."

Fourth. Letter from Mr. Perry Rowan Smith, San Antonio, Tex., July 5, 1966.

Fifth. Letter from Mr. Mark P. Lowrey, president, Vieux Carre Property Owners and Associates, New Orleans, La., July 5, 1966.

Sixth. Letter from Mr. Trueman O'Quinn, attorney, Austin, Tex., July 5, 1966.

Seventh. Resolution from American Institute of Architects, New Orleans, La., July 12, 1966.

Eighth. AIA Journal, December 1965, "Open Spaces in Urban Growth," Sam B. Zisman.

Ninth. Assorted newspaper articles.

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

[From Historic Preservation, July–August 1965]

PRESERVATION FEATURES: THE HEADLESS HORSEMAN RIDES AGAIN

"Chiefs! Our road is not built to last a thousand years, yet in a sense it is. When a road is once built, it is a strange thing how it collects traffic, how every year as it goes on, more and more people are found to walk thereon, and others are raised up to repair and perpetuate it, and keep it alive"—so Robert Louis Stevenson prophesied in his address to the Chiefs on the Opening of the Road of Gratitude, October 1894. His biographer Michael Fairless names her volume *The Roadmender* and means it as a sincere tribute: "Robert Louis Stevenson was a roadmender. . . . Ay, and with more than his pen. . . . I wonder was he ever so truly great, so entirely the man we know and love, as when he inspired the chiefs to make a highway in the wilderness. Surely no more fitting monument could exist to his memory than the Road of Gratitude, cut, laid, and kept by the pureblood tribe kings of Samoa."

Less than 75 years later the naming of another highway through an urban wilderness

after a great man was considered an insult. It was Mayor Wagner's belief that renaming First Avenue after Adlai E. Stevenson would be a suitable mode of commemoration for the honored statesman. The move seems to have died. In addition to the inappropriateness and pointlessness of changing old and familiar places out of emotional considerations, many believed that Ambassador Stevenson deserved better of New York City than to have a thoroughfare, jammed much of the time with trucks and buses emitting noxious fumes, called after him—some more dignified tribute could and should be paid to a man of his lofty spirit.

What has happened; why the difference? In an undeveloped area perhaps any road can be a good road, but in an overdeveloped area any road can be a bad road. Today one must be a road planner of great vision; it is impossible to be a roadmender for damage done can never be undone.

The eight-lane Embarcadero Freeway cuts across the Bay skyline in San Francisco as it continues on to Sacramento, blotting out the once magnificent view and the Ferry Building landmark. It is said that San Francisco now has only a truck and trailer route for through north-south traffic and that the freeway creates traffic jams, rather than alleviates them. Too late, San Francisco has come to realize that there are other community values besides freeways, and that it was a mistake to have consented to the construction of the elevated structure across its waterfront. San Franciscans became so incensed that there is hope that the elevated freeway will be torn down or relocated, regardless of the expense involved.

Why must New Orleans have an elevated expressway across Jackson Square's view of the Mississippi River? Why must 150 certified houses built before 1800 be destroyed in Philadelphia's Southwark district for the Delaware Expressway? Why must the new U.S. 101 superhighway be built over the last mile of beach in California where the most ancient of forests in the world touches the sea? Why must U.S. 281N through San Antonio cut across park and zoo, cliffs and gardens? All of these are federal-aid projects, being constructed with 90 percent federal funds and 10 percent state funds.

Planning and legislation should be the answer, but the best of plans can be ineffectual, having been compromised by conflict of interests—and values continue to be lost. After years of study New York City passed preservation legislation, hailed as a great step in the preservation of the rapidly changing city. One of the first areas planned for designation as a historic district by the city's Landmarks Preservation Commission is in the path of the Lower Manhattan Expressway. Whether the expressway is constructed above or below ground, the buildings seem slated for certain demolition. In the words of the Commission, "this section contains the best cast-iron architecture still preserved in the United States." Ironically, executive director of the Commission, James Grote Van Derpool explains that their hands are tied. Under the new landmarks law the Commission is only an advisory body. It must wait to be asked by other city departments and nobody has requested anything. When it was a temporary agency, before the law went into effect, the Commission's certification, that there were no buildings warranting preservation on a site to be cleared by the city, was obligatory. Now landmark review is optional. Furthermore when a city department requests a landmark review, it is not bound by the Commission's report.

Plans can be abandoned or given new interpretation. In New York State officials of eight towns and villages along the east bank of the Hudson River have expressed varying degrees of concern, vexation and outrage over the State's proposal to run a six-lane expressway through their waterfronts. Equally devastating is the proposed re-routing of Route 117 which runs northeast from North Tarrytown through what has been called "the bucolic heart of Sleepy Hollow" by Charles T. Post, chairman of the Planning Board of the Town of Mount Pleasant. Quoting from a report of the Governor's Hudson River Valley Commission—which noted that "the Headless Horseman may still ride in Sleepy Hollow, Rip Van Winkle could return at any time and elves still live in the roots of old trees"—Mr. Post read the Commission's promise that "no neglect or misuse can be disastrous enough to drive them away." Elevated on the air-rights of the railroad, the expressway will separate National Trust-owned *Lyndhurst* and Washington Irving's *Sunnyside* from the Hudson.

Whether the bulldozer of Expressways Unlimited is personified as the Headless Horseman or animated as the fire-breathing dragon, it continues across the country at the cost of countless community assets despite the fact that every newspaper and every magazine exposes it, and the President has a White House Conference on Natural Beauty. And there will be no roadmenders—for all the king's horses and all the king's men cannot put the country together again.

HELEN DUPREY BULLOCK.

ST. AUGUSTINE'S LOST SEAWALL

Between December 1958 and July 1959 an 1840 seawall at St. Augustine, Fla., was obliterated for the construction of a four-lane highway. This was accomplished despite protests of local and national preservation groups, including the National Trust. The National Park Service, whose grounds of Castillo de San Marcos were threatened with encroachment, also supported the opposition. The widening for the traffic lanes and parking strips was made possible by an extension into the bay over the existing seawall. Ironically, it has been learned that some of the same individuals and forces that successfully pushed through the bay front project, irrespective of historic values, are today working with the St. Augustine Historical Restoration and Preservation Commission. The restoration of the southwest glacis of the Castillo which was destroyed by road construction will be underway shortly.

NEW ORLEANS RIVERFRONT ELEVATED EXPRESSWAY

Will the 30-foot high expressway, with its ugliness, noise and fumes be allowed to ruin historic Vieux Carré's Jackson Square or will the local citizenry achieve a compromise which would cause the expressway to be depressed?

The Citizens Committee for the New Canal Street Plan urge speedy and visionary reconsideration not only of this important portion of the expressway but of the entire plan. Incensed by the proposal, the Citizens Committee Plan has been published stating that the "ideas for the proposed riverfront expressway predate to 1927.

". . . At no time prior to 1965 have these ideas undergone public reconsideration by means of discussion or alternate routings; nor have these ideas undergone published reconsideration, inquiry or testing by the City Planning Commission of New Orleans, or by any independent planning group, nor has the Vieux Carré Commission, the regulatory authority of the Vieux Carré, ever been consulted as to location and design of the expressway which falls within its boundaries.

". . . An alternate route has never been publicly announced, published or significantly researched; nor has the proposed route been exposed to proper design or traffic engineering inquiry. . . . The experiences of Boston and New York, with their riverfront expressways and modified, incomplete inner and outer loops have been unheeded. The failure of their systems has not been recognized by New Orleans, and doubtless the proposed expressway for New Orleans is of the same conceptual design, and would, if built, suffer the same errors and inadequacies of design. . . ."

In its two-part study the Citizens Committee continues its charge: the proposed riverfront expressway will not effectively serve as a by-pass to interstate 10; will not sufficiently relieve congestion in the Vieux Carré or downtown areas; will be congested by 1980, if not sooner, without hope of expansion; will render hopeless the further development of the waterfront; will set the stage for the continuation of the roadway along the riverfront to the Orleans-Jefferson Parish Line, the extension of elevated roadways along the major avenues of the uptown area and the subsequent destruction and rebuilding of major uptown areas.

Cautioning that it is not perfect, the Citizens Committee has put forth its own plan, a sceme chosen from seven alternatives—"it is far and above the proposed riverfront expressway in terms of efficiency, and it is more visionary and realistic, to say nothing of its aesthetic delights. . . ."

AUTOMOBILES AND FREEWAYS

(*From* Cities *by Lawrence Halprin, Reinhold Publishing Corporation, 1964.* Mr. Halprin is a landscape architect and a member of the National Trust)

The automobile has introduced another, more compulsive dimension of speed into the city than the pedestrian, and mobility is even more with us. The visual experience of viewing a city skyline from platforms strung high over the streets, at the speed of 65 miles an hour, adds a whole new quality of experience in viewing the city, and opens up a whole new series of relationships for the city dweller. The skyline becomes more important to the motorist than for the pedestrian, not as a static image, but as a mobile, ever-changing series of overlapping images, superimposed one next to another, almost like a moving picture. Close-in detail gives way to large-scale impressions, telescoped in time and space, and different in impact. The great scale of the city as a gigantic functioning organism becomes more apparent; detail is lost and the strength of large scale landmarks and geographic forms becomes significant.

While driving a car, the mobile viewpoint actually becomes physically essential. Here, the ever-shifting relationship to surroundings is more frenetic; adjustment to shifts in speed and position in relation to other moving objects is more demanding and more dangerous. As a result, design for movement becomes a function of safety, and not only a matter of aesthetics. In high speed freeway design, motion is the most compelling requirement, and engineers have learned well the close relation between alignments, curve radii and transitions, and the impact they have on safe design speeds. Our engineering standards on roads are excellent. What highway designers have yet to take adequately into consideration is the relation of road design to the environment, the visual images seen and felt beyond the road, the road's impact on the surroundings through which it moves.

The problem in handsome freeway design has been thought to be primarily one of the design of structures, but this has been overemphasized. Most freeways, no matter how beautifully structured, cannot overcome the enormous damage and destruction which these vast and complex arteries cause in the heart of a city by their very presence and, more importantly, by the fact of their dumping cars into the downtown core. The

real problem is how to integrate freeways into the fabric of the city without destroying important civic values. It is the fragmentation of outlook, the inadequate attention to integrated overall environmental planning, rather than the architectural design of the structures, that has resulted in serious errors. It is impossible to think that the sole concern of freeways is to bring automobiles quickly into cities with no concern for aesthetics, environmental impact or scale. In the process of a singleminded approach to mobility, every other aspect of environmental design has been sacrificed, as though speed and mobility were the only and ultimate justification, with an overriding virtue of their own. As a result, freeways have cut great swaths through urban communities whole neighborhoods have been sliced in half, parks have been segmented, waterfronts have been cut off from the body of the city, and the intricate, closely woven texture of the city's tapestry has been demolished. The visual impact of the concrete ribbons, often beautiful and well designed in themselves, has been responsible, over and over again, for the destruction of every other urban value except speed. It is a sacrifice hardly worth the cost.

The complexity of integrating freeway design and other modes of travel into the whole urban environment must take many different solutions. The most obvious and hopeful is to completely bar the automobile from the city core. Ultimately, I believe, we will have to come to grips with the notion that cars cannot come into the city, or by sheer numbers they will destroy the very essence of downtown.

We could, I am sure, apply by analogy the Malthusian theory of over-population to the automobile. Instead, we will have to develop comfortable, high-speed rapid transit systems, which move more people more quickly in and about the city and cause less destruction to its fabric, as has been begun in Sweden at Vallingby. But this does not answer all needs nor provide all choices. Some freeways will be necessary, but they need not necessarily be destructive if they are meshed into the fabric of cities in sensitive ways, with an understanding that other values must have priority.

The design of urban freeways, on the whole, must follow a design approach which is diametrically opposite to rules laid down for scenic highways out in the country. The scenic highway should be gently winding. It should follow the contours in a continuously unfolding sinuous series of interwoven horizontal curves, and constantly rise and fall with the natural configurations of the countryside. Normally, to be aesthetically pleasing, a very wide right-of-way is desirable out in the country, with wide median strips, gently rounded slopes on embankments and easy transitions on the verges. If these criteria are applied in the heart of cities, they result in havoc. The long, sinuous curve destroys innumerable houses, the wide right of way creates barriers of incredible width between neighborhoods, and the continuous curves are completely unsympathetic and visually destructive to the predominant linear qualities of the cities. The scenic highway in the city is antiurban and destructive of urban values. Urban freeways must be designed as part of the urban environment, with narrower rights of way, linear qualities, and multiple levels; they must employ structural and urban qualities, not rural or romantic ones.

Freeways can, in places, become part of the structural systems of cities by making the man integral part of buildings, or by actually building structures over them. They can run under and over parks, even at great heights, in the same way that bridges leap across rivers, high enough so that the blight implicit in their shadows is removed. Ultimately, too, they can, in cities at all events, be designed for slower speed standards, so that the long, sweeping curve, which takes up great spaces, can give way to the sharper curve, which forces slower speeds easier to integrate into civic design. If freeways are elevated, what happens underneath them becomes paramount. Instead of the present offal of parking lots and corporation yards, bus depots and cyclone fences, the ground underneath should be devoted to parks, greenways, and pedestrian open spaces, so that the freeway becomes a generator of amenity, rather than a blight. Parking can be done in special structures designed for this purpose, in designated locations on the fringes of the core, so that automobiles do not penetrate into the heart of the city. The essential point is that amenities in a city must *have* priority over the automobile at whatever the cost to mobility.

It is important to make a difference between qualities of speed of movement through space. Our problems in cities begin when streets for pedestrians and those designed for automobiles—the one designed for small-scale, very detailed and close-in and leisurely experiences, and the other for high speed transit—interfere with each other and are used at cross purposes. The square and plaza where leisurely activities occur—sidewalk cafes, theatrical and musical events, sculpture exhibits and meetings—is no place for high speed throughways bearing automobiles. One needs to differentiate in cities, just as in private living quarters, between functions and speeds and their hierarchy of importance.

The simplest differentiation in speed can occur through differences in level, and the most obvious device to separate pedestrians and automobiles is to put them at different heights in a city. The new local street, choreographically designed, will be multileveled—the machines at ground level, rapid transit at a still lower level, and pedestrians raised above both, on upper decks and bridges closer to the sky and free from the dangers and impediments of high speed vehicles.

SAN ANTONIO TO LOSE PARKS IN EXPRESSWAY PLAN

Two words "and parks" added to the end of Article 6674w of the Texas Legislative Code would bring to an end the six-year battle over the proposed route of the North Expressway (U.S. Highway 281 N) in San Antonio, Tex. This Article presently reads "The Highway Commission can build a highway through any private or public land or building, even though already dedicated and used for another purpose, except only a cemetery."

Since 1959 the San Antonio Conservation Society (NT member) has supported area residents in a long legal battle to keep the expressway out of college campuses and parks such as Brackenridge Park, but with no success. The final hope for winning this battle lies with the Sisters of Charity of the Incarnate Word, across whose green campus the expressway is routed. However, the Sisters are being heavily pressured to relinquish their land and the latest word is that agreement has been reached and the Sisters will receive payment of $1.2 million. The proposed highway would also cut across the natural park area of Olmos Basin, the buffalo pasture of the zoo and then proceed through a narrow way between the walls of the Alamo Stadium and the cliffs of the sunken gardens of Brackenridge Park. Trees and houses along the San Antonio River would also be lost as would part of the Brackenridge golf course.

PHILADELPHIA BATTLES EXPRESSWAY THROUGH SOUTHWARK

While federal highway authorities have agreed to revise plans and will now depress the portion of the Delaware Expressway that once called for a Chinese Wall effect through Society Hill, Philadelphia, Pa., citizens in the Southwark area of the city are still fighting their expressway battle.

Leading the campaign to have this area of the expressway depressed and altered for about a quarter of a mile are the Queen Village Neighborhood Association, the Philadelphia Historical Commission and the Old Swedes Church congregation. This committee wants the expressway to veer slightly east along Swanson Street rather than going straight down Front Street, and the portion in front of the Old Swedes Church to be depressed and covered over.

The present plans call for the destruction of more than 150 certified structures including many built before 1800. These buildings could be rehabilitated for less than $10,000 each thus helping this oldest part of Philadelphia to grow as a residential community. Ironically, the present route along the waterfront would spare a blighted area of deserted railroad tracks and warehouses.

COOPERATION IN PRESERVATION IN MASSACHUSETTS

(Richard W. Hale, Jr., Acting Chairman, Massachusetts Historical Commission)

The recent certification of Trinity Church, Copley Square, Boston, as a Massachusetts Historic Landmark may prove a precedent-setting example of how preservationists, highway builders, and urban planners can work together. Here three governmental agencies with three different problems met them jointly. The Massachusetts Historical Commission wanted to bring Trinity Church H. H. Richardson's architectural masterpiece, into its certification program. The Boston Redevelopment Authority wanted to work out a unified and beautiful plan for Copley Square. The Boston Public Works Department wanted to lay out the most suitable roadways through Copley Square to handle traffic, now intensified since one corner of the Square is both an entrance to and an exit from the Massachusetts Turnpike. All three were brought together by the operation of the Massachusetts Historical Commission Act.

The first step was discussion between the staff of the Commission and the Wardens and Vestry of Trinity Church. This was required by law, since certification as a Massachusetts Landmark requires the consent of the owners of the property to be certified. The Wardens and Vestry provided the Commission's staff with a vote of consent, and information as to their title to the property, which naturally included a plan of the plot of land on which Trinity Church sits. Armed with this information, the staff then got in touch with both the Boston Redevelopment Authority and the Boston Department of Public Works. To do this was essential, for any property that is certified as a Massachusetts Landmark cannot be taken by eminent domain unless by a special act of the legislature. It would be improper obviously for the Commission to block carefully laid plans for improvements by certifying property as a landmark without giving advance notice of its intentions. Discussions with the Boston Redevelopment Authority brought out the fact that certification would not in any way alter the B.R.A.'s proposal for an open competition for the best plan for redevelopment of Copley Square, confidential drafts of which proposal were shown to the Commission staff. Similar discussions with the City of Boston Public Works Department showed that the City had already taken by eminent domain two strips of sidewalk that might be needed for road widening, and that a third small corner might have to be taken to ease a curve from one street to another.

The Commission therefore drafted the instrument of certification in such a way as

to exempt that last small corner from certification, while preserving the rest of the plot in which the Church stands as a Landmark. In all of these discussions, of course, the Wardens and Vestry of Trinity Church took part. The role of the Historical Commission was that of being a catalyst. Then, when the Commission at a public meeting certified Trinity Church as a Landmark, and recorded the certification instrument at the Suffolk Registry of Deeds, there was set up and recorded an area of land around the Church which would never be encroached on, while the rest of the Square was left for development.

This cooperation is the first but by no means the only case of such cooperation between planners and the preservation work of the Massachusetts Historical Commission. Another example is that of Shaker Community, Inc., at Hancock, Mass. Here is a complete community of the Shakers, preserved by transfer to Shaker Community, Inc., at the moment when the United Society of Believers were forced to abandon it. At present U.S. and Massachusetts Route 20 runs through it, as a winding two-lane road. At some time in the future Route 20 must be widened or moved to a more suitable location in order to cope with today's traffic problems. Therefore, when the Commission declared Shaker Community eligible for certification, the next step was to get in touch with the Massachusetts Department of Public Works. Conferences in Boston took place, at which the road-building information of the Department of Public Works and the historical information of the Commission were pooled, and a possible boundary laid out on the map between the historic grounds of the Shaker Community and logical potential routes for the relocation of Route 20. After that had been done, Public Works staff went on to the actual ground, consulted with Shaker Community, Inc., and by actual inspection on the site satisfied themselves that the suggested boundary for the area to be certified would not block any future road.

In another case the Historical Commission of the Town of Ipswich voted to ask the Massachusetts Historical Commission to certify as a Historic Landmark the Choate Bridge, built by the town in 1764. Here again there were consultations with Public Works, since the present U.S. and Massachusetts Route 1A goes over the Choate Bridge. Clearance was obtained, since any new version of 1A would not run through the town.

The Massachusetts Historical Commission is able to take a share in planning at various levels because it has something to offer. Because the Commission can draw boundary lines beyond which development cannot go, it can secure attention. Because a majority of its membership is drawn from seven major independent historical organizations, a statement by it that a site or structure is, in the words of the Historical Commission Act, of "substantial historical significance to the Commonwealth" is accepted without question. Because the staff of the Commission is part of the Office of the Secretary of the Commonwealth, the Commission's work can be within the framework of government, and not from outside. As a result, the Commission is in a position to work through cooperation and not through opposition. This fact is most important. As everyone with experience in government knows, far more can be accomplished, and accomplished far more rapidly, if there is easy communication between both sides at the outset. How often have matters of historic preservation been snarled up because government and the preservationists didn't understand what the other side was talking about.

Yet, though the staff of the Commission is part of government, the Commission's membership is such as to guarantee, as said before, its independence of judgment. The operations of the Commission may be divided into two parts—administrative and executive, on the one hand, decision making and representative on the other. The Chairman of the Commission, by law, is Secretary of the Commonwealth Kevin H. White, an elected "constitutional officer." Its executive, under him, is an "officer from his department," whom he has designated in accordance with the law to act for him as Chairman in case of need. At present this Acting Chairman is Dr. Richard Hale, Archivist of the Commonwealth. Thus, the Secretary and the Office perform the executive functions. But the decisions as to whether or not a site is eligible for certification, and if so, whether all the site or only part of it should be included in the certification, are made by the total twelve-man commission. Seven Commissioners, though appointed by the Secretary, are appointed by him on nominations from these organizations: Thomas B. Adams, Massachusetts Historical Society; John Otis Brew, the Trustees of Reservations; Robert F. Needham, Bay State Historical League; William H. Pierson, Jr., Society for the Preservation of New England Antiquities; Maurice Robbins, Massachusetts Archaeological Society; Judge Carl E. Wahlstrom, American Antiquarian Society; Walter Muir Whitehill, New England Historic Genealogical Society. Two Commissioners are appointed at large by the Governor. These are Albert B. Wolfe, also Chairman of the Cambridge Historical Commission, and Monsignor Edward Murray, a Trustee of the Boston Public Library. Two Commissioners sit ex-officio, the Commissioner of Commerce and Development, the Hon. Theodore Schulenberg, who is concerned with the impact of historical interest on tourism, and the Commissioner of Natural Resources, the Hon. C. H. W. Foster, who is concerned with an allied branch of conservation. Here is brought together a combination of historical knowledge and administrative realism that can help make the decision of the Commission fit the needs of preservation.

More than that, the Commission has other duties that go hand in hand with certification. The Commission must—(this is a duty that by law staff and Commissioners share)—compile and maintain an inventory of the historic assets of the Commonwealth. Here is a second line of defense in preservation. The information in the inventory is available to planners. Already there is a regular interchange of information between the Commission's staff and the Department of Public Works. Public Works notifies the Commission of all hearings on road widening and extension, so that the Commission may warn it if historic sites or structures are endangered. When the Commission acquires significant information in its inventory, it passes it on to Public Works. Similar contacts are being set up with other state and local agencies. The Massachusetts Department of Commerce and Development, for example, is asking all Urban Renewal Authorities to make use of the inventory in their planning. Thus, even if a site is not deemed worthy of certification, but is important historically, planners can secure knowledge of that importance at an early stage of their work.

Another duty of the Commission is that, by law, the Secretary *may* provide technical and other assistance. Such assistance is usually referral work, such as reminding people that the Society for the Preservation of New England Antiquities exists to help other organizations as well as to keep up the 52 houses it owns. Sometimes it can be direct advice, as when the Pilgrim Society was told how to protect the Pierce Patent (the original land grant of Plymouth) from damage by direct rays of sunlight from a skylight. But whether the advice be direct or referral, the ability to give help to the limit of staff time and opportunity enables the Commission to keep its fingers on the pulse of historic preservation.

Likewise, the Commission may publish. In the press, and published by the time this article will appear are a list of Massachusetts Landmarks that by law the Secretary must publish every year; and a working tool for the preservationist—a list, compiled with the assistance of the National Park Service, Historic American Buildings Survey (thanks to a special grant from the Legislature), of all buildings in Massachusetts measured or photographed by the HABS. Both of these should draw attention to the needs of historic preservation.

Finally, the Commission is, by law, in contact with the growing number of local Historical Commissions, which are springing up throughout the Commonwealth. These Commissions, created under the newly enacted Section 8D of Chapter 40 of the General Laws, should be distinguished from the Historic District Commissions already existing and set up either under Chapter 40C of the General Laws or by special acts. The latter, of which the Nantucket, Beacon Hill and Cambridge Commissions are perhaps the best known, are historic zoning authorities. The Historical Commissions are town and city agencies for historical work. Among them are those of the cities of Chicopee and Newburyport, and of the Town of Ipswich, the last of which has already employed, as has been said above, its power to recommend a site for certification.

To sum up, then, the Massachusetts Historical Commission may be opening a new path in historical preservation by being a body that is one and the same time administratively part of the government structure and yet, in its representative and decision-making functions, an independent body. Here is a linkage that may serve to unite preservationists and planners instead of putting them into opposition.

FREDERICKSBURG'S BYPASS AND ITS TOURIST BUSINESS

Interstate Route 95 has in the last year put Fredericksburg, Va., within an hour's drive of Washington and Richmond, but at the same time bypassing it, threatening this small town's $10 million tourist business. Fredericksburg was chartered in 1727 and prospered from trade with Europe and the West Indies. It was there that George Washington was raised and James Monroe practiced law. The Civil War destroyed much of the city, and growth was slow after that until 1929 when new industry was introduced. The city prospered and the population soared but again remained static from 1940–60. Now with the completion of Route 95 the tempo has changed yet again. Transportation problems have been alleviated and the area is attracting industry; long-range planners envision the area as a part of the Eastern Seaboard's megalopolis.

The highway construction began in 1960 and since then shopping centers, motels, and apartment buildings have developed profusely. Adjacent counties have also had their share of new homesites to accommodate Washington's suburban spread. Fredericksburg, with Civil War battlefields, the home of George Washington's mother and the Kenmore Mansion, feared that its important tourist trade would diminish. However, these fears have now been somewhat arrested for officials this year won state approval for a municipally operated information center at one of the rest stops on Route 95.

Efforts have also been stepped up to preserve one of Fredericksburg's chief assets, the original 18th- and early 19th-century buildings. Historic Fredericksburg, Inc. (NT member) has purchased several buildings which are either to be restored by them or by resale to new owners with a deed provision requiring exterior restorations in line with the organization's general plan. It is ex-

pected that this project will encourage others to improve and restore exteriors of worthwhile old buildings or to remove undesirable ones—and restored Fredericksburg will continue to draw tourists in even greater numbers from Interstate 95.

[From Cry California, the Journal of California Tomorrow, Winter 1965–66]

ELYSIAN PARK: A GRISLY CASE OF TERRACIDE

(By Harrison M. King)

This is the story of how the City of Los Angeles is implacably destroying a priceless and irreplaceable asset. The target of destruction: Elysian Park—nearly a square mile of open land scarcely a mile from civic center.

The destruction started unnoticed about 30 years ago. By 1965 it had achieved such momentum that the city's own administration could, without batting an eye, make the astonishing assertion: "Parks can be most effective when they are settings for public buildings."

The story of how this state of official mind could come about in mid-twentieth century in the most park-impoverished of the nation's ten major cities should serve as a warning and a lesson to every California community. *All* city park land is vulnerable.

The warning that emerges from Elysian Park's history reads like a law that paraphrases Machiavelli: not only *divide and conquer,* but *neglect and dismember.*

A park that once comprised 650 acres is now down to 548 acres accessible to the public—less perhaps 30 acres in nonpark roads. Current dismemberment plans will remove 63 more acres for a convention and tradeshow hall and parking, two acres in the cutting of a six-lane nonpark road, another acre or so for oil drilling. In sum, a tragedy.

Elysian Park was born a stepchild. It came into being only because it was left-over land, too far from town to find a buyer when the infant City of Los Angeles was auctioning off its Pueblo lands in 1849. In the words of historian W. W. Robinson, "This auction set the pace—and Los Angeles never stopped trading its patrimony for cash until it had left, out of its four square leagues, (only) the park spaces now called Pershing, Elysian, and Plaza . . ."

The city continued to trade its birthright for cash even after Elysian Park achieved a measure of distinction through the reforestation of its hills, the planting of the first arboretum in Southern California, and the creation of a park drive that once offered one of the city's pleasantest outdoor experiences.

Most of the erosions are the work of agencies which view park land solely as land that does not have to be bought or condemned. (The city long ago found a way around its charter clause requiring park lands to be held "forever inviolate" by means of the long-term lease.) Even though the park commission and department are required to justify such encroachments, none of the following instances can justifiably be called an improvement to the park.

EROSION NUMBER 1: POWER LINES

Three high-tension power lines cross the northern slopes of the park, detracting from one of the city's most spectacular views, damaging the otherwise park-like northern entrance, marring one of the few forested slopes in the city.

The city seems little inclined to recognize the skyline blight created by its own Department of Water and Power (DWP), undoubtedly because this particular power line routing "saved money"—at the expense of the environment. This blight could be removed.

EROSIONS 2 AND 3: RESERVOIRS

Few people deny a city's need to store water in hilly land. Water can even be the most agreeable of open space. Yet in Elysian Park a city single-purpose agency (again the DWP) has installed a body of water behind a forbidding barrier of brutal concrete and wire fence. What might have been a visual amenity is instead blight.

The barren former reservoir cavity, east of the freeway, demonstrates that once you have taken a bulldozer to the land, you don't get it back. The land use was theoretically long-term; the earth-moving was irreversible.

EROSIONS 4 AND 5: PASADENA FREEWAY

When the Figueroa Street tunnels were first pushed through the hills, the road took only about three acres from the park, leaving at least the hilltops.

The second road depredation was bolder and more brutal. Figueroa became the outbound lanes of the Pasadena Freeway in 1941, and the inbound lanes were placed in an enormous cut-and-fill slice through the park—costing perhaps 14 more acres. This slice isolated several sections of the park, dooming one of them and still threatening others. The single-purpose agency here was the State Division of Highways, not noted for its concern for the esthetic and other values it obliterates under concrete. To its credit, however, the state landscaped its right-of-way, in contrast with the city's brutal road cuts within the park.

EROSIONS 6 AND 7: RADIO ANTENNAS

Even more prominent skyline disfigurements than the power lines are the radio transmission towers, serving police and fire departments, that dominate Radio Hill and a promontory above Solano Canyon. They are the most prominent landmarks of the park as seen from the downtown approach. Again, the expediency of "free" land for two non-park agencies was allowed to blight the landscape. The antennas could be removed easily.

EROSION NUMBER 8: POLICE ACADEMY

At the time it was established, the academy was seen as a tampering influence on delinquent and criminal activity in the park. These problems have since diminished, but the academy remains and likely will be there for a long time to come. The question, again, is not the desirability of having a police academy, but the economics and propriety of taking 16 acres of park land for a purely non-park function. Even though the property is leased, can this be considered to be holding park lands forever inviolate? Hardly. The Police Academy should either be torn down or converted to public use.

EROSION NUMBER 9: STADIUM PARKING LOT

What was once 27 acres of park land now lies under bulldozing and blacktop. To illustrate how one erosion can lead to another, the city's justification for this cession of land was that the freeway had isolated it and made it difficult to reach. The city acquired another, lesser piece of property elsewhere as part of the transaction, but Elysian Park became that much smaller, and that much more of the city's vanishing original terrain was irreversibly leveled.

EROSION NUMBER 10: STADIUM WAY EXPRESSWAY

A sordid six-lane non-park road designed solely to serve Dodger Stadium traffic now penetrates the park. That it is not a park road is made abundantly clear by the No Stopping signs along its entire length and its 35 MPH speed limit. It has no pedestrian facilities. It interrupts Elysian Park Drive, the park's main road, in a way that makes it hazardous for cars, cyclists or pedestrians to cross when there is any ballpark traffic—so it is often more effective a slicing mechanism than the freeway, which at least has a bridge. It obliterated a section of the city's (and Southern California's) first arboretum—an arrogant disregard for the city's history as well as its environment.

EROSION NUMBER 11: STADIUM WAY EXTENSION

Further evidence of how one erosion leads to another is the currently budgeted project to extend Stadium Way through the park. Reasoning that the first six-lane section has brought short-cut traffic and congestion into the park, the Departments of Recreation and Parks and Public Works propose to make it a through route. This cannot but increase traffic, for it will be a straight-shot bypass of the bottleneck intersection of the inbound lanes of the Golden State and Pasadena Freeways.

This "improvement" will not only be costly, it will require further deep road cuts and the destruction of a stand of 80-year-old eucalyptus trees that now serve as forest background to the park, and will further reduce the precious quality of seclusion the park has had.

EROSION NUMBER 12: OIL DRILLING LEASE

Again, for the sake of a pittance, the city has granted a lessee the right to explore for oil on 77 acres of the park, with right of drilling for a 35-year period. Hopefully a minor erosion, if the drilling is carefully screened and contained, but it nevertheless indicates a lack of understanding of what a park is all about.

EROSION NUMBER 13: CONVENTION CENTER

The purpose here is to detail the process of park destruction, so I will not go into a comparison of other sites more accessible to existing downtown hotel and other facilities. The chief virtue of the Elysian Park site, according to the project's backers, is the availability of "free" land.

But upon examination this land proves to be anything but free. To begin with, in a report to the Board of Public Works, the city engineer estimated that site grading for the building and parking area would involve the haulaway and disposal of approximately 2,400,000 cubic yards of earth, at an estimated cost of $3.2 million.

Proponents of the plan did not dwell on this figure, but the magnitude of the grading job is impressive. It means the obliteration of the canyon that now contains Recreation Lodge, the leveling of the ridge that secludes that canyon from Chavez Ravine, and the cutting, benching and black-topping of the largest nearly level area of the park—not to mention the destruction of a portion of the historic and beautiful arboretum plantings it contains. Moreover, the city's total cost for road widening, storm drains and other improvements will come to $7.8 million.

If this were not enough to destroy the "free land" fiction, consider the negative costs that will be incurred by the destruction of 63 acres of established park land. Before a bulldozer blade is turned, the city will sacrifice, conservatively, $7.65 million. This is a simple loss to the city in land and development; it does not measure the intangible loss of open space or 80 years of tree growth. Here are the economics:

First, it costs $10,000 to develop an acre of raw land for park use—or a total of $650,000 down the drain, with no replacement, even of raw land, in sight.

Second, the city's plans for a convention hall threw such doubt on the park's future that the state this summer turned down an allocation of $500,000 in bond funds for development of 50 acres of the park—another real, measurable loss to the city.

Third, if you take the potential value of the land to be similar to that of the adjacent 350-acre Dodger Stadium, allowing a very conservative $100,000 per acre, you come up with the whopping value of $6,500,000 for land that is supposed to be free. Central city area land is in fact so expensive that

Recreation and Parks Department General Manager William G. Frederickson, Jr., stated earlier this year it should not even be considered for city park acquisition.

The moral of the $7.65 million loss is multiple. One lesson is that the first erosion to a park, however practical the reason may seem at the moment, sets a dangerous precedent. Another is that every city harbors a series of single-purpose agencies that can and do invade park land—each doing its single-minded job with no regard for, and usually in ignorance of, the purpose of a park.

After erosions accumulate for a while, a vicious circle of diminishing use each time the environment is further blighted sets in. Then a city administration can more easily dismember a park on the excuse that it is no longer heavily used (Elysian Park had "only" 843,000 visitors during the last fiscal year).

Los Angeles is cursed with a playground-oriented Recreation and Parks Commission and Department which have tried to promote with semantic subterfuge the idea that the convention center is a legitimate park use by calling it a municipal auditorium—an afterthought for which one detects no groundswell of public demand. They maintain, ". . . a municipal auditorium . . . will actually enhance the recreational value of the remaining 512 acres . . ." (read 485 acres actually in park use, less all the space taken by non-park road and freeway). They do not allude to the 5,000 car parking lot the convention center plans call for, nor to the 1,000 truck-per-day loading facilities the plans also include, nor to the traffic load the new expressway will generate. For the $300,000 the convention center backer has offered to relocate displaced facilities, they would trade $7.65 million worth of land that is in fact priceless because it is relatively untouched.

They are merely continuing the long Los Angeles tradition of trading "patrimony for cash," a tradition of raping the land for building sites that will end only when there is no more land to rape—and that day is in sight.

And few are the voices raised to throw the rascals out. The Los Angeles Chamber of Commerce, which almost single-handedly created Los Angeles by promoting its natural beauty and bounty has unaccountably betrayed its tradition. Mayor Sam Yorty, who on other occasions has expressed concern for a deteriorating environment in a city already renowned for monotonous urban blight, has unaccountably pushed Elysian Park for the convention center. The political decision was made before Calvin Hamilton, the city's new planning director, had a chance to affect City Hall's thinking. The city council approved the project once, with later reservations based mainly on the fear it might exceed the original cost estimate.

It would be trivial to dismiss all this by saying a city gets the environment (or government) it deserves. The climate of public awareness changes but slowly, and slowest of all in a horizontally-oriented, low-density city such as Los Angeles, spoiled from the outset by the luxury of land to spare. It is changing now. A few voices have been raised and perhaps more will be raised.

The final decision on the convention center is expected to be made by the city council in January. It is possible but not likely that the commitment will be reversed. If the council should vote to save Elysian Park, the decision will stand as a great milestone in the field of urban conservation. But if it votes to take the 63 acres for parking and merchandising it will have added merely another grim precedent to the Law of Neglect (or Exploit) and Dismember.

The councilmen who vote in favor of the convention center should be prepared to answer the question tomorrow's children will ask—"Why?" Mark down the answer: "It seemed cheaper at the time."

[From the Dallas Morning News, July 4, 1966]

PRESERVE BEAUTY

The destruction of natural and historical beauty frequently is so gradual that nobody realizes it is gone until too late. Much attention has been focused on the fight to save California's giant Sequoyahs, New Orleans' Vieux Carre and, more recently, the Grand Canyon's unspoiled ruggedness. But these are just a few of many instances where the rats of progress are nibbling away at what remains of a beautiful and bountiful heritage.

Highways, residental and commercial developments and other accommodations for the moving and growing populace sometimes fall into the culprit category. A multilane superhighway gouged through the exhilarating green hill country is a gash cut at the expense of rapidly disappearing natural beauty. A landmark razed for new development is irreplaceable.

Senator RALPH YARBOROUGH proposes that the Federal Highway Act be amended to minimize its possible ill effects on state and federal parks. The measure would order the secretary of commerce not to approve use of any new land for federal interstate highways which would damage parks or historic sites, except under three special circumstances spelled out in the amendment.

The senator's proposal is meritorious. It is of particular value to his home state whose vast areas of unspoiled natural beauty are the envy of many Easteners, for whom the amendment itself comes too late.

GLOSSERMAN, ALTER, SMITH & ROSENHEIM,
San Antonio, Tex., July 5, 1966.

Senator RALPH YARBOROUGH,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: I have observed recently in the newspapers that you have offered an Amendment to one of the Federal Highway Acts which would, in great measure, protect our parks and historical sites from the heedless onslaught of the Highway Engineer. I can't tell you how gratified I am that you have come to the forefront in this fight to protect our parks, recreational areas, and national shrines.

I have been professionally involved in two matters of litigation, one successfuly and the other unsuccessfully, to preserve park areas of San Antonio. When I was Assistant City Attorney of San Antonio, I gave an opinion over the objection of the then City Attorney that a contract which the City had made with the Zachry enterprises to demolish Travis Park and erect in its place a parking garage, was void and illegal. I tried this case through the Trial Court, Court of Civil Appeals, and Supreme Court against several law firms and we were successful in all three Courts, holding the contract to be void. Needless to say, I have never been very popular in certain elements of the community since that litigation.

A few years ago I was employed by the San Antonio Conservation Society, along with Trueman O'Quin, of Austin, to try to prevent the routing of the so-called North Expressway of San Antonio through Brackenridge Park. I briefed the law in Texas and concluded that we should be successful in our suit. We joined with the Sisters of Charity of Incarnate Word, represented by Mr. Pat Maloney, and filed suit in District Court of San Antonio, seeking an injunction against the construction of the Expressway over any part of Brackenridge Park. Judge Solomon Casseb, in the Trial Court, held for the Plaintiffs but the Waco Court of Civil Appeals reversed and rendered its judgment and the Supreme Court nre'd the action of the Civil Appeals Court. Our principal contention was that the well-settled rule in Texas is that once land is dedicated to a particular use, that it may not be appropriated under the power of eminent domain by any other entity unless, one, the new use is more paramount to the existing use, and, two, there is a necessity.

The City of San Antonio and the Texas Highway Department base their sole contention on Article 6674w-3 VACS, which simply authorizes the State Highway Department to condemn land for highway purposes. The Waco Court bought the argument of the State and City that this Statute gave the Highway Department paramount authority to condemn land for highway purposes even though the land was burdened by previously dedicated use. The very interpretation given by the Waco Court to this Statute was deleted by the Legislature before it would pass the Bill, and it is obvious that the Legislature, being mindful of the general rule that a general grant of condemnation authority does not include power to condemn previously dedicated property, considered that the effect of their general grant to the Highway Department would be subject to this general rule. As the Bill was originally introduced, it contained a provision that this grant of authority of eminent domain to the Highway Department would be "paramount and superior" to preexisting uses of public lands. This clause was stricken by the Legislature, in both the House and the Senate, leaving the provision of the Act specifying no more than a geneal grant of power. The effect of the Waco decision was to write back into the Bill language which the Legislature had deleted. I am sure that you will recall that such a ruling is contrary to the long-established rules of statutory construction; but, be that as it may, that ended the lawsuit.

I am burdening you with the history of this litigation because I think you may find it helpful to you in your endeavors to enact your Amendment to the Highway Bill. I noted in the papers that your Amendment had the qualifications in effect of necessity and paramount use. In the event you may not have been aware of it, the effect of your Amendment is not revolutionary and in effect subjects the Highway program to the same limitations of paramount use and necessity in taking previously dedicated property that the railroads, utility companies, and all other parties exercising the power of eminent domain have operated under since the history of this country.

I have always acknowledged that a rule that no Expressway could be put through a dedicated park is too harsh. However, I believe there should be a factual determination of necessity and paramount use which should be the subject of determination by the Courts with a justiciable interest and right of enforcement in affected citizens.

Again, let me encourage you in your efforts to protect the parks, recreation areas and historical shrines of this country, and if I can be of service in any way, please call on me.

Very truly yours,

PERRY ROWAN SMITH.

P.S. I enclose herewith copies of our Briefs in the Court of Civil Appeals and in the Supreme Court, which you may wish to review.

VIEUX CARRE PROPERTY OWNERS AND ASSOCIATES, INC.,
New Orleans, La., July 5, 1966.

Senator RALPH YARBOROUGH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: We in New Orleans read with pleasure of your attempt to place congressional curbs on highway encroachments on park properties.

For many months, the Vieux Carre Property Owners and Associates (all private investors in mostly residential property in the famous French Quarter) have battled along with San Antonio Conservation Society in a combined effort to reach the ears of those people in Washington who distribute the tax dollars so freely in desecrating our cities and spots of historical and natural values to the nation. As yet . . . a total blank, until your amendment to the Highway Act.

The Bureau of Public Roads, hand in glove with the Louisiana Department of Highways and a minority of "big business promoters" of our Central Business District, are at this moment designing (at great expense) Interstate I–310, a six lane, elevated monstrosity that is to destroy all property values along its route on potentially beautiful and well-maintained Elysian Fields Avenue (the most direct eastern approach to our central city), and then add the final "coup de grace" to all civic and human values in New Orleans (as well as historical) by turning itself broadside along our historic riverfront and overpowering the unique scale and character of the Vieux Carre from boundary to boundary.

It will be some forty feet higher than the parallel level of Decatur Street (old Levee Street) and blank the open end of Jackson Square (scene of the Louisiana Purchase transfer, the founding of New Orleans, etc. etc. etc.) from the Mississippi.

Jackson Square and the Cabildo (our ancient seat of Spanish government) which constitute one of the finest architectural ensembles in this hemisphere, are both National Historic Landmarks (Department of Interior), and as recently as last December 20, 1965, Secretary Udall designated the entire Vieux Carre as a National Historic Landmark District.

This area, well-beloved by millions of tourists and natives who visit it annually, is on the very brink of desecration by a pushy urge to squander highway funds with no regard for anything beyond traffic movement and civil engineering. The big race for the 1972 federal interstate highway deadline funds is definitely on in every city in America, with few places about to lose so much as San Antonio and New Orleans.

Many thousands of people from the city, state, and nation (plus many from abroad) have diligently tried to seek a better route and design, and five years of utter political frustrations have made no significant dent in our critical situations.

San Antonio is filing legal action, and so will the outraged citizens of New Orleans.

Our suit to declare the law (state constitutional amendment of 1936) that set up the legal state protection of the Vieux Carre from any factor that would harm its "quaint and unique" character. If the law has been broken by certain action of politicians and others, we can all celebrate while whatever has been done to date is undone (at more expense) later!

The suit will be carried to the U.S. Supreme Court if necessary, along with several civil suits, in a last ditch stand.

Mr. Morris Ketchum, Jr., national president of the American Institute of Architects, recently resigned from John Conner's Federal Advisory Board on Highway Beautification. His cited reason was the type of destruction being wrought by just such examples as the Vieux Carre Expressway. So far, it seems, the theory has been all talk, and no action! The local brushfires are fast becoming a national inferno.

Fast action by the senate on your amendment is desired and a public necessity. We know the charms and power of the great lobbies on Capitol Hill (steel, concrete, rubber tires and automobiles). We are well aware, too, that something smells not only in Denmark and the halls of local and state legislators.

We know, too, that the real fate of the nation, and this includes the environmental values of public beautification, slum clearance, and recognition of our cultural and historical heritage, is in the balance.

If you have any questions about our plight, I suggest you contact Secretary Udall at once. 1968 is too late to effect salvation for New Orleans and San Antonio. Something must be done to halt these insidious destroyers at once.

Please accept our deepest appreciation for your efforts. We will stand behind you like a solid wall of public opinion.

Very sincerely yours,

MARK P. LOWREY, AIA,
President.

AUSTIN, TEX.,
July 5, 1966.

Senator RALPH W. YARBOROUGH,
Senate Office Building,
Washington, D.C.

DEAR RALPH: Your amendment to the Federal Highway Act I hope will stop local and State officials from destroying our public parks in order to get "free" right-of-way for expressways.

I have not seen the proposed legislation but I most heartily agree with your views on the subject reported in the San Antonio Express for June 24. (Attachment "A".)

The editorial that followed (Attachment "B") is neither fair nor accurate. The people did not approve the route for the North Expressway. They voted only on a bond issue. The State highway district engineer, in a deposition taken after the route through Brackenridge Park was announced, admitted that the route was not the most feasible, but was the one the city officials wanted (because it was "free"). Hal Dewar and Peggy Tobin (President of San Antonio Conservation Society), Bob Briggs, and dozens of other San Antonio citizens know more of the details than I do but all know this editorial is slanted and inaccurate.

The whole trouble started when the Texas Legislature passed a highway act in 1957 (Art. 6674w) with a provision on acquisition of property (Art. 6674w–3) empowering the highway department to acquire any land, however already used or dedicated, except "property which is used and dedicated for cemetery purposes . . ." Thus the legislature was induced to protect the dead but left the living to the mercy of the highway people and their bulldozers. The Supreme Court, in Zachry v. City of San Antonio (157 Tex. 551, 305 SW 2d 558), held that Travis Park, a dedicated public park, could not be diverted, but after the highway act of 1957 the Waco Court of Civil Appeals held in 1962 that the highway department could acquire by purchase or condemnation any land in the State, in or out of a city, just so it was not land "used and dedicated for cemetery purposes." (City of San Antonio v. The Congregation of the Sisters of Charity of the Incarnate Word, 360 SW 2d 580, error refused, NRE.)

In San Antonio, the city officials and the highway department seem determined to ram an 8-lane highway (designed to carry 100,000 cars daily) not only through Brackenridge Park, but through the middle of the campus of The Incarnate Word and through the full length of Olmos Basin Park and Franklin Field. In these last named parks they will destroy a forest of trees that it took 100 to 150 years to grow. If only a small cemetery, with a few moldering bones of foregotten, nameless souls of the past, could have been in Olmos Basin or Brackenridge Park across the path of the highway department giant dozers! Instead there were only Girl Scouts, school children, the devoted nuns of Incarnate Word, families on picnics, people attending the outdoor theater or visiting the sunken garden, and thousands upon thousands of other live human beings, resting, going to school, or enjoying the beauty, the quiet, and the recreation afforded by these park areas and school grounds dedicated and long used by these people. There was not a dead body or a grave stone in the whole sector!

You may recall that Franklin Field was carved out of Olmos Basin and specially dedicated by the San Antonio City Council when Maury Maverick was mayor. This park was named for President Franklin D. Roosevelt and the dedicatory resolution made it clear that the land was meant for enjoyment of the people for recreation and not as a highway. (Attachment "C".)

It is not as if there were no other place to put the highway. The district engineer, as mentioned above, admitted he knew of at least one other route that was more feasible. No study was ever made by the highway department or the city of an obvious route along a railroad, bordered by sub-standard properties and having only four or five crossings requiring grade separations.

So often those of us who believe in preserving the parks and other beauties of the land are sneeringly referred to as "green belters" or "bird watchers." I admit I am both, and proud to be identified as such and with the hundreds of thousand civilized men and women who respect and love nature. Those who want to shove the highways through the parks also have no regard for our heritage in the landmarks of the country and the cultural heritage these represent. I was impressed by an editorial in Saturday Review June 25 calling for a landmark preservation program. (See attachment "D.")

With all that is to be said in behalf of preserving landmarks and beauty and in behalf of peace and quiet and our refuges for birds, people, and small animals, there is another aspect that concerns and alarms me. I am not sure we know how really dangerous it is to lose the green belts and increase the air pollution strips. It could be a step along the highway to destruction of all life on earth dependent upon oxygen.

On May 7 Saturday Review devoted 40 to 50 pages to "The Fragile Breath of Life," with one section on "The Role of Oxygen." An over-simplification of the conclusion is that "life evolved explosively with oxygen as fuel." The significant thing to me is that plant life was necessary to the creation, in the beginning, of oxygen, and equally essential to the continued generation of oxygen. It was oxygen that made possible respiration, which "has always been recognized as a major evolutionary development." (Attachment "E".)

I think we know too little about the origin of life, and what is necessary to continue life, for us to pass laws that actually encourage the destruction of nature's bounty of trees, shrubs, and grasses. It is that simple. Your amendment is an attack upon legal vandalism of our parks and points the way for further legislation to halt the dozers in their destructive drive upon our heritage of natural resources and of significant man-made marks in our culture.

I am sure you have the support of many, many thousands of Texans, and of Americans over the nation, who welcome and need the help and protection you seek to provide by your amendment.

Sincerely yours,

TRUEMAN O'QUINN,
Attorney at Law.

RESOLUTION OF THE AMERICAN INSTITUTE OF ARCHITECTS, NEW ORLEANS CHAPTER, NEW ORLEANS, LA., JULY 12, 1966

Whereas the New Orleans Chapter of The American Institute of Architects has repeatedly affirmed its opposition to an elevated

expressway, within the Vieux Carre, along the river directly in front of our historic and architecturally significant Vieux Carre; and

Whereas we have given further study to this matter in the light of recent developments, particularly the recent resolution of our City Council; and

Whereas we still feel that the proposed expressway, 6-traffic lanes or 89 feet wide, built at a height 35 to 40 feet above street level and blocking the heart of the French Quarter from the river, will form for all time a barrier to logical and properly planned development for this priceless area; Therefore be it

Resolved, that the New Orleans Chapter, The American Institute of Architects, reiterates it opposition to this unfortunately conceived and inadequately studied solution to this planning problem; and be it further

Resolved, That our Chapter continue its insistence on further study by competent city and area planning experts of this problem, including such possibilities as alternate routes and underground construction; and be it further

Resolved, That our Chapter join wholeheartedly with other organizations such as the Louisiana Council for the Vieux Carre and The Louisiana Landmarks Society in continuing this fight by every possible means; and be it further

Resolved, That we appeal to the conscience and the common sense of other citizens and organizations to join with us in saving for posterity a priceless and irreplaceable national and civic asset; and be it further

Resolved, That copies of this Resolution be sent to the Governor of Louisiana, the Mayor of New Orleans and all members of the City Council, all governmental agencies involved, the National Headquarters of The American Institute of Architects and other organizations interested in civic beautification and improvement, and to the Press, Television and Radio Stations.

Open Spaces in Urban Growth

(By S. B. Zisman, AIA)

(Note.—This examination of open space establishes its importance as a prime element in the urban form and, when properly treated, as one of the most useful tools in the shaping of cities. The author uses his own town of San Antonio for illustration.)

The principal urban issue is not where to build but where not to build.

The decades ahead will see a vast, accelerated construction activity. Cities will expand and rebuild, and new towns will rise. Wider and longer highways will ribbon the country and push remorselessly through neighborhood and nature. Metropolises will continue their consumption of the countryside.

Past building reflected the feeling of the old frontier. To escape crowding, we simply built farther out. By and large, the concern has always been where to build, space being almost always unlimited—the wide open space of a "continent so huge in its resources of land and forests, so unbounded that though men chopped away at them with only their own interests in mind, the great bulk of things remained unspoiled." [1] We built everywhere, sometimes wisely, but far more often indiscriminately.

The emphasis in planning was on land use, reflected in planning maps by colored patches to show where residential, commercial or industrial development was or could go, and by bits of color for schools or parks. Open spaces were generally left as vacant white patches, presumably unused space to be colored in if and when the urbanized area would exceed sober predictions.

The urban scene was regarded as a fairly comprehensible cityscape of finite shape and size, in which buildings, pavements and other man-made forms so predominated that the matter of open spaces hardly reached the realm of consciousness.

New views of the urban scene

The urban problem is so dominant in our time and the changes in the urban environment so pervasive that a wealth of attention surrounds issues of growth, space and form.

There is the view of extreme dispersion: "The spatial patterns of American urban settlements are going to be considerably more dispersed, varied and space consuming." [2] Another concept is that: "The future use of urban space will tend toward a more dense, more nucleated, more clustered pattern than we are now building in our urban areas. Accompanying the tighter development and stronger centers will be less private open space (that is, we will have smaller lots) and, at every scale of development, substantial continuous open space, commonly enjoyed and publicly or commonly owned." [3]

Or it is suggested that a series of alternative patterns may need to be considered: present-trend projection; general dispersion; a concentrated supercity; or a constellation of relatively diversified and integrated cities.[4]

The future view has been projected further by the Greek planner Doxiades to "Ecumenopolis—the Universal City," involving huge regional, even continental, areas with populations in the hundreds of millions.

Throughout all these projections arise questions involving not merely the *quantity* of open space but its *location, deployment* and *use* as essential factors of spatial organization.

Open space in urban development

In "Cities and Space," a series of essays on the future use of urban land, editor Lowden Wingo [5] notes: "The open land problem . . . presents us with a major issue"; law professor Charles Haar [6] says, "Today, the most disputed subject is open space, whether park, playground, recreation or simply undeveloped land"; and planner Stanley Tankel observes: "Open space has become the subject of a remarkable new interest. The words are echoing even in the halls of Congress and state legislatures. . . . This is no faddist movement. It is a tense expression of concern about the present and future use of urban space." [7]

Functions of open space

The nature and functions of open space in urban terms are now being stated, defined and classified. Tankel [7] directs attention to Charles Eliot's distinction between open space for *service* and open space for *structure,* and to Tunnard-Jushkarev's four functions of open space—*productive, protective, ornamental* and *recreational.*

Tankel offers his own interpretation as to the kinds of open space of which people are personally aware: "It is *used*—for the wide range of active and passive recreation activities, for circulation; it is *viewed*—from the home, the road or other vantage points, and it is *felt*—it gives privacy, insulation or sense of spaciousness and scale"; and the open space of which people may be unaware but which nevertheless affects their daily lives: "Open space which *does urban work*—protects water supply and prevents floods by soaking up runoff, acts as a safety zone in the path of aircraft takeoff and landings; and open space which *helps shape the development pattern*—as space between buildings or communities, as space which channels development, as a land reserve for the future."

Marion Clawson [8] catalogs major open areas as being for (1) surrounding public buildings, (2) recreation, (3) ecological protection or the preservation of certain desirable natural characteristics, (4) urban structural and esthetic purposes. (5) as provision for future urban growth.

These statements underscore the significance of free areas as an urban element with a positive function to perform. Open space is becoming a major competitor for the use of urban land. It may be a key determinant of city growth and form.

Types of open space

All urban space has utility in the urban context. It is neither leftover rural land nor sentimental remnants of the countryside. It may be seen as of three major functional types:

(1) *Utility spaces*—these are the surface areas needed for water supply, drainage and flood control; the air spaces for aircraft movement; and the space for production.

(2) *Green spaces*—the lands and areas used for parks and recreation, greenbelts and greenways, building entourage and for natural and scenic protection.

(3) *Corridor spaces*—for rights-of-way for movement, transportation and passage.

Within these broad categories is a multitude of open area forms and uses ranging from large land reserves, regional parks, water reservoirs, natural life preserves, wetlands, riverways and creekways, local parks, playgrounds, plazas and expressway routes to the very street itself.

In the broader aspects, even such areas as campuses, cemeteries, zoos and airfields take on some of the free space characteristics in an open space system.

The catalog of open spaces and the analysis of types and uses can help toward a fuller understanding of the role each can play in urban spatial design and clarify planning issues such as those raised in the classic case of the North Expressway in San Antonio.

A bitter controversy of more than five years has attended the proposed location of an expressway through San Antonio's famed Brackenridge Park and related open spaces.

This park is part of a system of open spaces reaching from the northern parts of the city to its very center by way of the San Antonio River. It includes not only undeveloped land, a major flood control facility and parkland but recreational and sports areas, picnic grounds, a zoo, a college campus, a renowned sunken garden, an outdoor theater, a city school stadium, a municipal golf course and stretches of the natural water course that is the beginning of the river.

The proposed expressway curves and winds through this open space system, crossing an Audubon bird sanctuary and Olmos Creek, a tributary in its natural state; it moves along a picnic ground and recreation area obliterating a Girl Scout camp and nature trail; it stretches across the Olmos Flood Basin and rises to enormous height to go over the Olmos Dam; it severs the campus of the College of the Incarnate Word; it cuts

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[1] August Heckscher, "The Public Happiness," New York: Anthenian Press, 1962.

[2] Melvin M. Webber, "Order in Diversity" *in* "Cities and Space," Baltimore: Johns Hopkins Press, 1963.

[3] Stanley B. Tankel, "The Importance of Open Space in the Urban Pattern" *in* "Cities and Space" *supra.*

[4] Catherine Bauer Wurster, "The Form and Structure of the Future Urban Complex" *in* "Cities and Space" *supra.*

[5] Lowden Wingo Jr., "Urban Space in a Policy Perspective" *in* "Cities and Space" *supra.*

[6] Charles M. Haar, "The Social Control of Urban Space" *in* "Cities and Space" *supra.*

[7] Tankel, *op. cit.*

[8] Marion Clawson, "A Positive Approach to Open Space Preservation," *AIP Journal,* May 1962.

through the lands of the San Antonio Zoo; it blocks off the half-built public school gymnasium; it slides along the rim of the sunken garden; it hovers over the edge of the outdoor theater, squeezing itself between the latter and the school stadium and blocking a major entrance; and it slashes through residential areas, along the golf course and across a wooded portion of the San Antonio River's natural water course.

How many irreplaceable trees of magnificent size, how much spoilage of adjacent area and how much space to be given interchanges and other highway structures?—the answers are yet to be fully calculated.

It has been observed that in many similar cases of expressway controversies the fight has been centered on the despoliation of a park or the disruption of a neighborhood or the severing of a campus or the loss of trees and landmarks or the bisecting of a zoo or some other single problem. But in the case of the North Expressway, practically all of these points of concern are involved.

Two bond issues, the second powerhoused through after the defeat of the first; a divided community in which deep scars and enmities remain; legislative challenges and legal action still pending—all this has resulted from a lack of understanding of the nature and function of urban open space.

The Brackenridge Park complex serves specific needs both as a utility and a green, open area. Not only a major greenway leading into the central city, it is also, in the Olmos Basin, a major flood protection. It accommodates a host of space needs of a great part of the urban population and San Antonio's many thousands of visitors—in recreation and sports. It serves as setting for institutional development and cultural activities.

The park system also is a great urban gathering place. Easter Sunday yields the great spectacle of tens of thousands of people who come to this green space for observance and holiday. Almost every square inch is taken up with family gatherings, picnicking, meeting and play, many people coming the day or evening before to claim a spot for the holy day.

All through the years, this has been the great play area for the military—from recruit to general—of San Antonio's numerous military bases.

An expressway route is a corridor space, not for stopping or gathering but for moving. It was argued that the expressway would give easier access to the park areas, but this is belied in the highway proposal itself. In fact, at least two key access streets would be closed off and the proposed interchanges would not only diminish access but would be likely to create additional nonpark traffic loads. In one instance, a proposed interchange at the doorstep of the college would, besides causing congestion and greater difficulty of access, create but a major safety problem.

The Brackenridge system is not corridor space. The very route of the proposed expressway, twisting and turning and roller-coastering over a high dam, reveals dramatically how inappropriate its imposition on the land. It reveals how much distortion develops in converting one series of open space functions to another unintended and ill-suited set.

Why was the North Expressway proposed? It was assumed that all open space is "free," not cost alone (although the loss of just the trees is estimated in the millions) but more so in functions; that any open green space can and should be used for corridor purposes. It so happens that there is a corridor space, long used to meet the problem of transportation, running along the railroad from the north into the city and linking with the highway system.

The dramatic failure of highway engineers, from the local district office to the Bureau of Public Roads, and of interested promoters and local planners to understand the nature of urban open space and to know how to deal with it to meet all urban needs is etched in the case of the North Expressway. It highlights a basic issue in city growth and raises questions of the highest order in relating major transportation needs to open space needs everywhere.

THE OPEN SPACE SYSTEM

The classic case of the North Expressway points up other open space problems, particularly those of multiple functions. Open areas can serve green space, utility and corridor functions, if so planned and developed and they may change in function.

What is essential is not the separation of function but the creation of a system of open spaces. This related or planned arrangement not only provides the open spaces to meet urban needs but the structural framework for urban development.

It is at this point that the design of the urban area—community, metropolitan or regional—must find a new approach not by highlighting areas for building but areas *not for building.*

It is interesting to note that where nature has provided an open space system, there is a universal response to it. San Francisco, beloved by resident and visitor alike, is in great part defined by a magnificent open space system—the surrounding ocean and bay. No matter what mistakes may be made in building, the city itself is a magnificent urban form.

The New York metropolitan area has in its own way another open space system—over 30 percent of the regional area is taken up by river, sound, harbor and ocean—to provide a framework for whatever building and rebuilding time, money and men may produce. Many urban situations have basic natural features on which open space systems—grand or small—can be based.

The essential point is that an open space framework, once articulated, organized, developed and kept, yields a great range of opportunities for urban design. Given such a framework, the urban builder can develop as his ingenuity and means permit.

In the long perspective, the test will not be whether man can build anywhere, or whether the market controls, or whether mistakes in building occur, for building is man-made and can be man-changed. But open space cannot be replaced. It is, in the design and planning sense, the "fixed" element; the building areas are the "free." Heretofore the general notion was that the building areas were the fixed elements of urban growth while the open spaces—the leftover spaces—were left free for building or whatever use.

The shift in viewpoint continues. Nationally we are in hot pursuit to hold or recapture critical areas such as the seashore and other water sites. It is a pursuit not without roots in our national history. Just over 100 years ago the great urban park reservation came into being with Central Park in New York, followed 50 years later by such other historic examples as the Cook County Forest Preserve, the Cleveland Park System, the Westchester Park System, the Ohio Conservancy District and the Boston Metropolitan Park System.

One of the great examples is the system laid out for Boston by Frederick Law Olmsted in the plan which ties the Arnold Arboretum, Franklin Park, Jamaica Way and Jamaica Pond, the Fenway, Commonwealth Avenue and the Charles River. Whatever building changes have happened in Boston, this glorious concept remains. Its lessons can be applied today.

San Antonio offers an example: By incorporating the threatened Brackenridge Park system, large metropolitan or regional reserves to the north could be linked with the Olmos Flood Basin, the park complex and the space along the river, running into and through the heart of the city and to the south along a proposed Mission Parkway which follows the river and includes the historic missions, in themselves another form of open space, and on to other major water and open spaces. The tributary creeks and the different kinds of open spaces provided by encircling military bases and airfields, all forming a grand open space system together with the great north-south backbone of free areas, could in turn link with such spaces at the heart of the city.

The central area of San Antonio is characterized physically by the downtown riverloop and a series of parks and plazas: Main Plaza, Military Plaza, Alamo Plaza, Travis Park, Milam Square, Romana Plaza, Maverick, Columbus and Madison Parks. Together with streets and highways, this series of spaces can be considered as a great structural framework of open space for San Antonio's growth, development and renewal.

The Downtown River Loop, one of San Antonio's great physical features, is in itself an important lesson of the role of open space. In the 1920's, it was proposed to cover the river, converting it into a storm sewer. Among the chief arguments was that this would help traffic and parking and thus represent "progress."

Public opinion held otherwise, and with the organization of the San Antonio Conservation Society arousing the city, the river as open space was saved. During the late 1930's it was landscaped and developed as a river greenway. Today the value of the river is being seen anew and there is a new surge of development taking place along the river—old shops done over, new buildings designed. Whatever hope there is for the rebuilding of San Antonio's central area must inevitably relate to the river.

The hierarchy of open spaces

The example of San Antonio illustrates not only the nature of an open space system but also the hierarchy of open spaces—from the large-scale metropolitan or regional space to the small, intimate place, from the great public park to the family yard or patio, from the great regional trunkline and express routes through major arteries, boulevards, parkways and feeder streets to the residential street.

Within the hierarchy of *scale* lies a hierarchy of *use.* Open areas do not mean sterilized land, although an open space system should provide for wilderness and untroubled land even at small scale and at close-in locations. The range of use includes multiple uses as well as campus areas and other man-made facilities.

The essential point is that *open space needs to be identified as open and not building space, and when building use is involved, it is not as encroachment but as support of the primary open space.* A recreational building does not of itself disaffect a recreational area, nor do properly handled park roads change the primary use of the park.

The treatment of open space is not for the purpose of destroying it. As in the treatment of building areas, it calls for judgment, intelligence and the skills and arts of those who understand landscape and the land.

POLICIES AND PROGRAMS

Up to now, open space has been largely a negative concept—simply the areas for nonbuilding. It is now coming to be recognized as a positive element for urban growth.

In the decades ahead, open space as a system can become the means of control in development. If it is to achieve this role, a new text of planning policies and programs must be written and put into practice. The issues are not for planners alone; they will

be fought in the political arena, and out of a public consensus may come new tools and new means, both public and private.

Existing legislative and regulatory tools are inadequate. The oldest tool of all is acquisition of lands for open space purposes. While the trend may be toward public, governmental action—as in the current Federal open space program and such state programs as those in New York or New Jersey, or in metropolitan or city programs throughout the country—there is still room for private action. And there is much precedent in history for this.

Zoning seems to be a weak tool. William H. Whyte [9] cites the example of Santa Clara County in California where, to preserve rich farm and orchard land, an exclusive agricultural zone was established, only to find that highway engineers were planning to put a new highway—right through its middle.

Special conservancy districts, open space dedication, open space easements, development rights compensations,[10] compensable regulations,[11] reservation in advance of acquisition, tax concessions, the guaranteed value scheme, the official map principle [12]—all these in various terms have been suggested and are the subject of increasing attention and in some cases of legislative action.[13]

Lawrence Levine [14] points out that "the very breadth and diversity of open space objectives pose difficult problems in developing a soundly conceived open space program." And, it can be added, in finding the legal and political means to bring it into being.

President Johnson has said: "Open land is vanishing and old landmarks are violated. Worst of all, expansion is eroding the precious and time-honored values of community with neighbors and communion with nature. . . . We have always prided ourselves on being not only America the strong and America the free but America the beautiful.

"Today that beauty is in danger. The water we drink, the food we eat, the very air we breathe are threatened with pollution. Our parks are overcrowded and our seashore overburdened. Green fields and dense forests are disappearing. A few years ago we were concerned about the Ugly American; today we must act to prevent the Ugly America. For once our national splendor is destroyed, it can never be recaptured. Once man can no longer walk with beauty or wonder at nature, his spirit will wither and his sustenance be wasted."

If understanding can be reached of the role and function of open space in all its multiple uses and objectives—from the living space of home and street to the far reaches of the region—and if political skill can be brought to bear, we may be able to take a major step in fashioning a new urban environment with sense and sensitivity.

[From the New York Times, July 25, 1961]

TREES GIVE WAY TO QUEENS ROAD

Woodcutters leveling a path for the final 1.3-mile segment of the Clearview Expressway in Queens were nearing the end of their job yesterday in Cunningham Park between Seventy-third and Hillside Avenues.

Hundreds of dogwood, wild cherry and maple trees have been doomed by the state Department of Public Works to make way for the expressway across Queens. The section from the Throgs Neck Bridge to the Horace Harding Interchange with the Long Island Expressway and to a service road to Seventy-third Avenue was opened six months ago.

Sensitive to criticism that old shade trees had to be sacrificed to highway progress, engineers on the project stressed that the contract called for new landscaping and recreational benefits, which, they said, will mean a net gain to park users.

Landscaping the roadside and providing for restoration of adjacent areas will cost $234,856. Construction of the final section of the Clearview Expressway is budgeted at $9,546,403. The work is to be finished by the summer of 1963.

[From the Salt Lake City (Utah) Tribune, September 13, 1963]

NOW TO BUILD THE ROAD

The top administrators of the U.S. Forest Service and the federal Bureau of Public Roads have met in Washington and at last agreed on a compromise to break the deadlock over the reconstruction of 4.2 miles of U.S. highway through the narrowest part of Logan Canyon.

Widening and straightening the highway in the canyon, one of the loveliest in all America, entails encroachment on about 8,000 feet of the streambed of Logan River, famous for trout fishing. Negotiations broke down in 1961 when state and federal highway officials concluded that requirements of the Forest Service for protecting the stream were too expensive. A Forest Service permit is necessary before such a project can be undertaken inside Cache National Forest.

This second leg of reconstructing the highway link from Utah through the Bear Lake country to Grand Teton and Yellowstone would have cost $500,000 more than initial road commission estimates if the Forest Service had held rigidly to its original requirements for protecting the river and other natural conditions in the canyon. The difference in cost figures between the opposing agencies was finally whittled down to about a third of the original estimated increase.

The recent compromise in which the Bureau of Public Roads agreed to an additional $125,000 expenditure to protect the stream leaves the matter up to the Utah State Road Commission. On primary highways the federal bureau pays 77 per cent of construction costs. Thus the state's share of the added expense would be about $35,000.

Die-hards on both sides may not be pleased over a compromise in which both sides gave a little. Yet it is clear that no road project can take place in the canyon "bottleneck" without compromise. The State Road Commission should find it possible to raise its share of the necessary added expenses to get this controversy off dead center.

[From the New York Times, July 26, 1964]

FREEWAY PERILS REDWOODS PARK—CALIFORNIA OFFICIAL VOWS TO FIGHT "DESECRATION"

(By Lawrence E. Davies)

SAN FRANCISCO, July 25.—A court battle is forecast if the California Division of Highways attempts to build a four-lane freeway through Prairie Creek Redwoods State Park in the northwest corner of the state.

The court test seemed assured after park officials, highway commission spokesmen, conservationists and commercial interests squared off yesterday before an Assembly interim committee at Humboldt State College in Arcata.

The hearing was the latest in a continuing controversy over the location of a freeway to replace the present two-lane Redwood Highway—U.S. 101—which twists through picturesque stands of stately redwood trees in Humboldt County.

THE 1937 LAW NEVER TESTED

The promise of a court test if the highway commission chose a freeway route along the present route or one near the beach came from Charles A. DeTurk, director of the Department of Parks and Recreation.

"It is not inconceivable," he said, "that a law written in 1937 and yet to be tested in the courts insofar as state parks are concerned will resolve in the favor of parks."

Mr. DeTurk told the committee he had no intention of trying "to out-engineer the engineers" and added:

"I will say that I do not feel they have any business telling us how to run a park, how to design a park, or what is a park. That is our business. And that is why I state that if the sacred groves of Prairie Creek are trespassed or if its adjoining Gold Beach is desecrated, or if specific portions of a score of other state parks are violated, there no longer truly exists a park—in theory, by legislative definitions, or in fact."

He asserted that "when a rollicking, ill-conceived freeway is constructed through the heart of a park, the whole purpose of the park is destroyed, as well as the reason for anyone visiting it."

MAY URGE AMENDMENT

Mr. DeTurk said he had given much thought to recommending to Gov. Edmund G. Brown that is and when the Division of Highways "exercises its alleged legal authority to condemn the magnificence of California and construct a freeway through Prairie Creek, or any other great state park—which time I trust will never come," then that area should be abandoned for park purposes.

The next step would be sale of the properties and reinvestment of the moneys, even though, the park director said, the subsequent purchase would be of less quality.

A statement of policy for the state highway commission, presented by its administrative officer, John Erreca, the State Director of Public Works, concluded with these remarks:

"The highway commission does not consider that northwest California must have either adequate transportation or protected virgin redwoods. It is the highway commission's conviction that these two objectives are not mutually exclusive but can both be achieved, and this is our goal."

Mr. Erreca noted that none of the commission's planners had yet come up with a way to modernize the Redwood Highway without cutting some virgin redwoods.

PRIMARY OBJECTIVE

"I think it is fair to say," he went on, "that the highway commission's primary objective is to preserve the maximum number of virgin redwood trees.

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[9] William H. Whyte Jr., "Urban Sprawl" *in* "The Exploding Metropolis," Garden City, N.Y.: Doubleday & Co., Inc., 1958.

[10] William H. Whyte Jr., "Securing Open Space for Urban America: Conservation Easements," Urban Land Institute Technical Bulletin, No. 36, 1959.

[11] Jan Krasnowiecki and Ann Louise Strong, "Compensable Regulations for Open Space," *AIP Journal*, May 1963.

[12] Daniel L. Mandelker, "What Open Space? Where? How?" *in* "Planning 1963," Chicago: American Society of Planning Officials, 1963.

[13] California Government Code § 6950 (enacted 1959); Maryland Annotated Code. Article 66(c) § 357 (A) (1960); New Jersey Statutes Annotated 13:8A–1 (1961). New York Municipal Law § 247 (1961); New York Conservation Law § 875 (1961); West Virginia Code, Chapter 20, § 2215 (1961). See also Shivley Adelson Siegal, "The Law of Open Space," New York: Regional Plan Association, 1960.

[14] Lawrence Levine, "Land Conservation in Metropolitan Areas," *AIP Journal*, August 1964.

(The foregoing references may be helpful in legal determinations or actions. See also:

("Securing Open Space for Urban America: Conservation Easements," Washington, D.C.: Urban Land Institute, Technical Bulletin No. 36, December 1959.

("Open Space Land, Planning and Taxation, A Selected Bibliography," Rickert and Pickard, Washington, D.C.: Urban Land Institute and the Urban Renewal Administration, 1965.)

"Of course, the commission also accepts Governor Brown's admonition that if virgin redwood trees, or any other redwood trees for that matter, have to be taken from the mantle of protection given by the state park system, there should be a replacement in kind where this is considered practical by the state park people."

At least four routes have been under consideration for the proposed freeway, which has been termed a necessity by residents of Humboldt County not only to meet traffic demands but to save the economy of the area.

One route would follow the wild, picturesque beach along the edge of Prairie Creek park at the base of Gold Bluffs. Another would run along the top of the bluffs, but this has been discarded by some of the engineers.

And, as long ago as last December, John A. Legarre, deputy state highway engineer, asserted that there was "no intention of recommending the existing highway route to the commission for a freeway."

A fourth route—and the costliest—which has the support of conservationist groups such as the Save the Redwoods League, would follow a ridge mostly just outside and to the east of the park boundary.

There was no indication that choice of a route was imminent. Preparation of a master plan for the redwood region is under way within the State Resources Agency, headed by Hugo Fisher, and it has been announced that the state highway commission will take no final action toward route selection until completion of the plan.

[From the Arkansas Democrat, July 29, 1964]

CALIFORNIA PARK, HIGHWAY OFFICIALS DISPUTE ROAD PLAN

SACRAMENTO, CALIF.—A primeval beach and nearby redwood trees which were living before Christ have touched off a rebellion among state park officials against California's powerful freeway builders.

Tossing protocol aside, members of the State Park Commission and other state officials have publicly criticized the California Highway Commission and demanded a limit on its power to condemn park land for freeways.

"We have almost established in modern life a divine attitude toward the automobile," said Charles A. DeTurk, director of the State Department of Parks and Recreation.

He says Prairie Creek Redwoods State Park, on the Northern California coast, is threatened by a proposal by highway engineers to build a freeway through it.

"We love redwoods as well as they do, or better," replied Robert A. Bradford, administrator of the Highway Transportation Agency and chairman of the Highway Commission.

The 1965 legislature likely will be asked to settle the fight.

The battleground is about 300 miles north of San Francisco along a narrow, two-lane road through the redwood forests. Officially known as U.S. 101, it's famed throughout the world as the redwood highway.

The highway also is the lifeline of California's north coastal area. Every day, it is jammed with big trucks carrying newly cut timber to big cities and bringing food, clothing and other supplies to small communities.

At Prairie Creek, the two-lane road cuts through a frest with trees so tall that tourists have developed sore necks from looking at them.

The State Park Commission, admitting the need for widening the road, opposes two of three alternates being considered by the Division of Highways.

One would follow the present 101, and would mean destruction of some of the park's most popular redwood groves. Another would slice across Gold Bluff Beach and, park officials say, ruin one of the nation's last undeveloped beaches and destroy a memorial redwood grove.

Park men back a third alternative, on a rugged ridge seven miles east of the beach. It, too, would mean the loss of redwoods, but the park commission contends the beach, soon to be acquired by the state, should be left unspoiled.

Local interests, saying the ridge route is $6 million more expensive, favor the beach freeway.

The State Highway Commission, making further studies at the request of Gov. Edmund G. Brown, hasn't decided on a route. But Sam Helwer, Division of Highways district engineer here, has indicated he favors a beach freeway.

[From the San Francisco Chronicle, Feb. 26, 1965]

CURBING THE HIGHWAY COMMISSION

SACRAMENTO.—A package of 14 bills aimed at altering the State Highway Commission's "shortest point between two points" policy of freeway planning was introduced in the Assembly yesterday.

The bills would make the commission less dependent on the State Division of Highways, insure partial hearing officers to preside over freeway disputes and give the public more voice in selecting routes.

The legislation also would give the State Park Commission power to vote freeway routings through State parks.

REPORT

The bills grew out of a report by the Assembly Committee on Natural Resources, Planning and Public Works. The program was explained by Committee Chairman Edwin L. Z'berg, (Dem-Sacto.) at a news conference.

Z'berg said the bills are designed "to make the highway commission consider other factors in planning freeways than just the shortest distance between two points."

Under the legislation, the commission would be provided with its own research staff rather than being dependent on that of the State Highway Division.

The administrator of highway transportation would be dropped as chairman of the commission. The chairman would instead be elected by the commission from its appointed members.

And the commission would be empowered to employ an administrative officer of its own choosing. That post currently is filled by the director of public works.

"We're trying to give the commission more independence in the planning state," said Z'berg.

The bills also require reports on all proposed freeway routes—with comparative analyses—from the State Office of Planning and the Resources Agency. These reports would have to be published 60 days in advance of the hearings.

"I think this will give the public a chance to be better informed—a better chance to weigh all the alternatives," said Z'berg.

[From the New York Times, May 19, 1965]

GOVERNOR STOPS PARKWAY WORK

Governor Rockefeller directed the State Department of Public Works tonight to halt all work on the Cross County Parkway until Monday to permit a reconsideration of construction plans for the highway.

The move came 10 hours after 16 persons had been arrested in a protest against the East Hudson Parkway Authority's rebuilding of the outmoded parkway into a superhighway.

Governor Rockefeller said in Albany that Lieut. Gov. Malcolm Wilson had recommended the stoppage because of a meeting scheduled Friday night at the offices of the Parkway authority in Pleasantville. The authority operates the parkway and the State Department of Public Works is its agent in the construction work.

"Lieutenant Governor Wilson has arranged the meeting for a full discussion of rebuilding the parkway with the least disturbance to residential and wooded areas," Mr. Rockefeller said. Both the Governor and Mr. Wilson have homes in Westchester.

Dozens of residents, angry that age-old trees are to be torn down in the project, have taken direct action in recent days to stop the construction work.

Among the sixteen arrested today were a rabbi, two pregnant women and the wife of a Westchester County Supervisor. Fifteen were carried bodily through the debris of fallen trees in Hunts Woods to waiting police cars when they refused to let bulldozers and power shovels pass. Children in tears ran behind their screaming mothers in the arms of policemen.

A New York Transit Police captain who objects to the parkway widening was arrested for punching a policeman and for disorderly conduct.

On the parkway itself, 25 housewives and business men caused slowdowns of traffic intermittently by driving cars two abreast at 5 to 10 miles an hour and sometimes stopping the parkway, which carries 40,000 cars a day, has two lanes on each side of a center barrier. In the slowdowns, traffic backed up for miles into Pelham on the east and Yonkers on the west.

Parkway patrolmen failed to overtake the offending cars owing to congestion, but finally conceived of stepping in front of them as they approached. Summonses for impeding traffic were issued to three drivers and warnings to a dozen others.

"This is only the beginning," said Arnold W. Bensew, a corporation lawyer who is chairman of a new citizens' committee that opposes excessive modernization of the parkway. "Tomorrow there will be a complete stoppage of traffic."

To prevent the rebuilt parkway from flooding, the authority is constructing a storm drain through Hunts Woods two blocks north of the parkway. And where Central Parkway crosses the Cross County Parkway, a bridge is being razed to make room for a bigger one.

Residents tried this afternoon to block the tearing up of a strip of Central Parkway pavement on the south end of the bridge over the Cross County Parkway. Adam Petrillo, president of the Mount Vernon Contracting Corporation, assured them that his men were only working a sewer line and would not destroy the bridge before next week.

Soon after dawn, residents stationed themselves in front of heavy machinery used in building the drain in Hunts Woods. At 8:30 A.M., 28 residents were there when Chief Marvin Ericson of the Westchester Parkway Police led 24 patrolmen into the woods and demanded that the residents depart. Workmen started a bulldozer roaring toward the residents, who linked arms and refused to budge.

The patrolmen pulled the line apart, twisting arms and legs. Men in business suits fell to the ground and women's handbags flew open to spew contents through the underbrush. A man dropped his eyeglasses and a woman lost a locket from a chain around her neck.

Fifteen residents made themsleves dead weight on the ground and finally were picked up by patrolmen and carried from the woods. At Police Headquarters they were booked on charges of refusing to obey policemen, of trespassing and of illegally interfering with construction machinery.

City Judge John P. Griffith released them without bail pending hearings June 3.

Among the defendants were Rabbi Leon A. Jick of the Free Synagogue of Westchester,

who lives at 550 North Columbus Avenue; Mrs. Emma Cerchiara of 215 Central Parkway, wife of a Supervisor Robert Cerchiara, and Mr. Bensew of 212 Central Parkway.

Others arrested were Mrs. Lauren Resnick of 228 Central Parkway, who expects a child momentarily, and Mrs. Petria Muller of 21 Wilson block, who is seven months pregnant; Albert Girolano of 245 Westchester Avenue, Mrs. Judith Belsky of 168 Central Parkway, Mrs. Ruth Lumbeck of 15 Burkewood Road, Mrs. Beverely Martin of 11 Central Parkway, Mrs. Sylvia Ackerman of 125 Douglas Place, Mrs. Eleanor Schwartz, of 27 Pondfield Parkway, Mrs. Edith Bluestone of 12 Forester Parkway, Mrs. Margarite Kosof of 223 Central Parkway, Richard Beneson of 313 Central Parkway and Richard Morris of 151 Ridgeway Street, a professor at Columbia.

[From the New York Times, May 20, 1965]

QUIET IS THE WORD FOR PARKWAY JOB—WOMEN ALERT AS GOVERNOR'S TRUCE ON THE CROSS COUNTY WIDENING IS OBSERVED—NEED FOR WORK IS CITED—OFFICIAL CALLS OVERLOADED ROAD VITAL EAST-WEST WORK IN LOWER WESTCHESTER

(By Merrill Folsom)

MOUNT VERNON, N.Y., May 19.—Not a wheel was turning today in the development of the old Cross County Parkway here into a superhighway.

But housewives kept a vigil at their windows to make certain that bulldozers and power shovels were not violating Governor Rockefeller's order of last night for a truce, with complete stoppage of work until Monday to allow time to determine whether less damage might be done to homes and woodlands.

Four hundred residents agreed to resume demonstrations if any violation accurred. Adam Petrillo, president of the Mount Vernon Contracting Corporation, caused a flurry when he sent workmen to the Central Parkway bridge over the Cross County. But they were merely removing barricades and paving a trench dug yesterday.

The Committee for Citizens Rights, organized to fight the parkway job, announced today that it would demand a Westchester County grand jury investigation if full answers were not forthcoming about the East Hudson Parkway Authority's "arbitrary decision to construct the expressway."

Westchester officials and the authority provided answers to many of the questions from residents as to why an eight-lane superhighway was needed and how the planning had evolved.

The five-mile parkway was started in 1926 and conforms to the standards of that era, they said. Westchester has rocky ridges from north to south, with most rivers and main highways in the north-south valleys. Few natural corridors exist from east to west, and the Cross County was built through one of them.

STILL CARRIES CAPACITY LOAD

Ernest T. Perkins, executive director of the authority, noted that the Cross County was the only main east-west highway in the area between the Cross Bronx Expressway, 6.5 miles to the south, and the Cross Westchester Expressway, 8.5 miles to the north.

The Cross County connects with the Hutchinson River Parkway on the east and the Saw Mill River Parkway on the west, with intermediate links to the Thomas E. Dewey Thruway, the Bronx River Parkway and lesser north-south roads.

The result is use of the Cross County for travel between Manhattan and Connecticut, the Hudson Valley and Long Island, and virtually all parts of Southern Westchester.

The residents here contend Cross County traffic has diminished and improvement of the present four-lane road with two extra lanes and some kinks removed is all that is necessary.

Mr. Perkins said the Cross County still carries the capacity traffic of 40,000 to 45,000 cars a day that it has for many years. Westchester officials said they had contemplated redevelopment of the parkway 15 years ago because the road was overloaded and many motorists called it the most dangerous death trap in the East.

Use of the Hutchinson River and Saw Mill River Parkways, with 25-cent tolls, diminished when new Thruways were opened. Because of financial difficulties in rebuilding all the parkways, among them the Cross County, Westchester gave them to the state authority four years ago.

Mr. Perkins said that an origin-and-destination survey in 1962 by Parsons, Brinckerhoff, Quade & Douglas, New York engineers, showed conclusively the Cross County was overloaded.

He asserted that 8 to 12 per cent of the traffic was in any busy hour, and generally it was divided 60 percent in one direction. Thus, 2,400 cars an hour now were jamming the lanes in one direction, while the origin-and-destination survey showed a need to handle 3,200 now and considerably more in future years.

"Some people are afraid to drive on the Cross County but the heavy use of it has definitely not diminished," Mr. Perkins declared.

The Citizens Committee demanded to know what good would be accomplished by rebuilding only a mile in the center of the five-mile parkway, as required by the $5.5 million Petrillo contract.

Mr. Perkins said redevelopment of the entire parkway would cost $45 million and the authority had hoped to issue contracts in fast sequence for each section and have completion in two years, which he said "now is obviously impossible."

HAS TO PROTECT WORKMEN

Answering some of the questions from the Committee for Citizens Rights, officials said the Petrillo contract had been awarded after competitive bidding, and a 100-foot swath had to be cut through scenic Hunts Woods for a drain only four feet in diameter because it would be down 30 feet and trench walls had to be angular if workmen were not to be accidentally buried.

"I'm sick, who needs all this trouble?" exclaimed Mayor Joseph P. Vaccarella at his desk in City Hall.

City engineers drafted plans for a six-lane parkway using present bridges and the Mayor will submit this at the Friday night conference with state officials at the authority's headquarters in Pleasantville.

William Macy, special counsel for the city in the parkway dispute, asked the Appellate Division of the State Supreme Court in Brooklyn today for permission to take an appeal to the State Court of Appeals in Mount Vernon's suit to block plans of the East Hudson Parkway Authority.

Last year a justice at White Plains rejected Mount Vernon's contention that the authority's plan would illegally sever the city into two parts and needlessly destroy homes. Last month the Appellate Division sustained the dismissal of the suit. Mayor Vaccarella said the suit would be carried to the United States Supreme Court, if possible.

Meanwhile, Dr. Richard B. Morris, a professor of history at Columbia University who was one of the 16 residents here arrested yesterday in demonstrations against the parkway job, drafted a green-belt plea that the Committee for Citizens Rights unanimously sent to Secretary of the Interior Stewart L. Udall and Governor Rockefeller.

"Hunts Woods is not just a few acres," the plea said. "It is a precious heritage carefully guarded from pillage. Its magnificent stand of 150-year-old beech trees symbolize the good things that make life in a suburban community meaningful—peace, quiet, beauty."

[From the San Francisco (Calif.) Chronicle, July 21, 1965]

OUTSMARTING THE SPREAD OF FREEWAYS

SACRAMENTO.—It is not true that California will be just one big freeway in 15 years, the administrator of the State Highway Transportation Agency said yesterday.

But so much of the land in cities will be occupied by freeways and streets by 1980, said Robert B. Bradford, that plans must be made now to build under and over the concrete monsters.

Bradford predicted that from 1 to 3 per cent of California's urban land will be devoted to freeways and one-fourth to one-third of it to city streets and county roads.

PROBLEMS

Land will be so scarce, in fact, that building on the freeways will become inevitable, the State's leading transportation officer said.

"This is going to happen whether we begin planning for it now or not," Bradford said at a meeting of Federal, State and municipal officials on freeway problems.

But, he added, "we want this to happen by design and not by accident. We had better get about deciding what we want and how to go about getting it."

SELECTIVE

Bradford said he was not talking about "wholesale use of every inch of space above or under freeways."

He proposed "selective uses that will be compatible in every way." He used pictures and models to show how large apartment houses can straddle freeways and how restaurants can be suspended on concrete arms above freeway lanes.

As long ago as 1959, Bradford said, the Department of Public Works was asked about the multiple use of freeway space. One developer had proposed building a restaurant and cocktail lounge above the Hollywood freeway, he said. But he was frustrated by existing legislation.

REVENUE

Bradford said that now both the State and Federal governments have acted to make such developments possible. He added that intelligent use of the freeways for construction would help return tax revenue to the local governments.

This last suggestion was greeted enthusiastically by Richard Carpenter, executive director of the League of California Cities, who attended the meeting here.

"A freeway takes a large chunk of land off the tax roll," Carpenter said. "If this (Bradford plan) can recover even a portion of it, it will be to our advantage."

[From the Washington (D.C.) Post, July 25, 1965]

NEW ORLEANS HIGHWAY

NEW ORLEANS.

The civilized citizens of New Orleans, who happen to know something of classic urban traditions elsewhere and who appreciate the value of the historic old French Quarter, are focusing their attention with great interest at the moment upon the Nation's Capital, where the President, the First Lady and the Secretary of the Interior have recently made eloquent declarations of concern about a physical American environment worthy of something called a Great Society.

Local babbitts and political entrepreneurs have called upon the Federal Government to support (to the tune of some $30 million) an elevated expressway along the Mississippi

River which will shamefully desecrate the French Quarter and which will effectively terminate plans for a scenic riverside plaza. The matter is now in the hands of the Secretary of Commerce. His signature can create and perpetuate a monumental national disgrace.

These fearful New Orleanians hope that their friends in Boston, San Francisco and elsewhere will take careful note of the outcome. They hope that civilized citizens everywhere will join them in their vigil. Does Uncle Sam's right hand know what his careless left hand is doing? Does he really have the sincerity to care?

WALTER B. LOWREY.

[From the San Francisco (Calif.) Chronicle, Nov. 18, 1965]

FREEWAYS TURNED FROM REDWOOD PARK

SACRAMENTO.—The State Highway Commission backed away completely yesterday from any plans to build a freeway through Prairie Creek State Park in Humboldt county.

The Commission also ordered its engineers to reconsider an adopted route through Jedediah Smith State Park in Del Norte county—and called for alternate routes, possibly including tunnel construction to preserve natural beauty.

Both freeway plans have stirred mounds of controversy over the years, with the state park Commission and conservationists insisting that no freeway should go through either of the famed redwood parks.

DESIRABILITY

A resolution presented to the commission by member Roger Wooley of San Diego started out by recognizing the "desirability of conserving beauty of the state's natural resources as well as the need to provide safe, modern transportation."

"To accomplish this end of conservation it may be necessary, where economically proper, to route freeways away from some state parks and the natural attractions they shelter."

The resolution, approved unanimously, then flatly directed that none of three heretofore suggested routes invading Prairie Creek be given any further consideration and instead staff engineers "find and study a route that would avoid the boundaries of the park altogether."

BROWN

The action regarding Jedediah Smith was not as far reaching, since it retained the possibility of going into the park if no alternative, including tunneling, can be found.

It was understood that Governor Edmund G. Brown, whose administration has been under fire for various proposals to build freeways through parklands, took a direct hand in yesterday's commission action.

State highway engineer J. C. Womack noted with a smile:

"This gives us a good long time to make out new studies—about a year I would say."

This means any such issue should be quieted, at least until after next year's gubernatorial election.

TAHOE

However, commissioner Joseph C. Houghteling of Atherton was successful in an effort to tack on to Wolley's resolution additional clauses calling for construction of a parkway on the west side of Lake Tahoe. The other commissioners said this would be studied in the natural course of things, and no resolution was needed.

Houghteling said the Lake Tahoe area like the redwood country, is threatened by freeway invasion and he thought the commission should endorse a scenic parkway plan now although he conceded its possible construction would be years away.

Incensed by his inability to gain even a second to his motion, Houghteling then asked that his colleagues endorse the idea of giving up the $15 per meeting they now receive over and above actual expenses.

"I've talked to the other commissioners about that and they're all against you," member Franklin S. Payne declared.

So Houghteling lost another one. His parting shot: "I'll contribute my $15 to the Sierra Club."

[From the San Francisco (Calif.) Chronicle, July 15, 1965]

MENLO PARK'S NEW ASSAULT ON FREEWAY

City Attorney John D. Jorgenson asked the San Mateo county Superior Court to prevent the State Division of Highways from acquiring any more property for the route, which is planned to run from the Dumbarton Bridge to Santa Cruz avenue in Menlo Park.

The request for an injunction against the State said the freeway would disrupt the community, take too much property off the tax rolls and impose a route that is "too complex." The freeway would cross over the same creek three times in the space of two miles, the suit said, as well as pass under three other highways and a railroad route.

The city previously was unsuccessful in an attempt to stop the freeway by appealing to the State Legislature.

San Mateo Superior Judge J. A. Branson set a hearing for 10 a.m. August 2.

The public will get a chance to get back at the "concrete invasion" of super highways August 10–13, when Senator LEE METCALF (Dem.-Mont.), crusader for conservation, conducts hearings regarding the question of super highways vs. parks, wildlife and conservation.

There has been a growing protest on the part of conservationists against the march of vast concrete freeways which have knocked out historic mansions and would penetrate such wildlife preserves as Chestnut Ridge in Westchester county, N.Y.

The National Garden Clubs of America, the Wilderness Society and other groups will be heard. Secretary of Interior Stewart Udall will be invited, as will Rex M. Whitton, boss of Bureau of Public Roads. Udall and Whitton have been at loggerheads for some time on the expressway program.

Udall doesn't want it to mar scenic environs. Whitton, on the other hand, wants to push ahead with the ribbons of concrete at the least possible cost to taxpayers, even if they endanger natural beauty of recreation areas.

[From the San Francisco (Calif.) Chronicle, Nov. 19, 1965]

HISTORIC VICTORY IN THE REDWOODS

With abruptness and unanimity that elude explanation, the State Highway Commission has surrendered a position that it held resolutely through the years and seemed ready to defend to the death.

It vetoed in toto three recommendations of highway engineers for alternate routes through the redwoods of Prairie Creek State Park in Humboldt county and sent them back to the drawing board with orders to find a route that will spare the park entirely.

It further ordered reconsideration of a route already adopted for a freeway through the redwoods of Jedediah Smith State Park in Del Norte county, and departing from previous stubborn refusals, called for alternate routes.

It would appear that the commission is at last listening to the angry voice of protest from the citizenry, the Sierra Club, the Save the Redwoods League, the State Division of Beaches and Parks, the State Assembly, and numerous other groups who have bitterly denounced the proposed mutilation of irreplaceable redwood groves. Briefly, Governor Brown himself was heard in this chorus, having emotionally declared after a visit to the groves: "As long as I am Governor of California, not a single, solitary redwood will be cut down for a freeway." Five weeks later, he tossed up a scheme for buying private redwood lands to replace public redwoods that the roadbuilders wanted to bulldoze out of their way.

Nevertheless, it was being suggested in Sacramento that the commissioners' active and unaccustomed solicitude for redwoods and public parks was influenced by the man who appointed them, who was in turn influenced by local, State and national outcries against the proposed destruction of virgin redwoods. This suggestion referred to a State election one year hence.

The commission accomplished its sudden about-face through a resolution remarkable for embracing a policy long ignored by State highway builders. It recognized "the desirability of conserving the beauty of the State's natural resources as well as the need to provide safe, modern transportation."

Commissioners hinted broadly that this was not so much a change of heart as a change of law. They observed that the recently enacted Z'berg bill removed a binding requirement to build all roads on "the most direct, most practicable route," so that now they are free to run highways around a park or redwood grove instead of through it.

Nevertheless, and regardless of motivation, the Highway Commission has performed a public service by granting the two State Parks a reprieve.

[From the San Francisco (Calif.) Chronicle, Jan. 18, 1966]

GREENBELTS AND OUR FREEWAYS

STANFORD UNIVERSITY.—"We must find the best—not the cheapest—ways to route freeways," Professor Wallace Stegner of Stanford University told interviewers yesterday.

Professor Stegner, author and director of Stanford's Creative Writing Center, had just returned from the Governors' Conference on Conservation in Los Angeles, and concluded that:

"The main thing is to protect recreation areas from all depredation. We need intelligent greenbelting with tax relief attached, we need compulsory open space in every subdivision, and a new look at property taxes to avoid confiscation and at the same time prevent forced speculation."

Professor Stegner endorsed and urged public support for a pending bill that would eliminate the Division of Highways' right of eminent domain through State parks.

As to Highway Commission members, he said, "we need to stimulate their appreciation of human values. They build wonderful highways but they sometimes overlook the resultant damage to the surroundings.

"The Highway Commission already has the power to do this, and I wish they'd start using their power to help preserve our diminishing recreational areas."

He cited San Francisco Mayor John F. Shelley's trip to Washington to preserve the Crystal Springs reservoir area from an encroaching freeway, and Palo Alto's objection to the proposed Bayside Freeway which will destroy bird sanctuaries and recreation areas, as examples of the great need for preventive legislation.

[From the San Antonio (Tex.) Express, Feb. 9, 1966]

LETTERS

NEW ORLEANS BATTLE

VIEUX CARRE PROPERTY OWNERS ASSOCIATES.

DEAR SIR: On Jan. 24, just two days before the formative meeting of the advisory board to the Bureau of Public Roads in Washington, Rex Whitton, federal highway

administrator, stamped his well-known approval to the interstate highway increment that will desecrate the Vieux Carre of New Orleans and relegate an important urban avenue to the status of a degraded slum.

In spite of requests that this advisory group of architects, landscape architects, engineers and urban planners of national reputation be allowed to review this superb example of urban mal-planning, the forces of politics and power prevailed over reason and imagination. The board, having been formed to evaluate both route and design of federall subsidized urban expressways in view of their destruction to urban and historic values, must feel the slap in the face to their potential contribution to a more orderly and beautiful America.

The French Quarter, or Vieux Carre, with its handsome and world famous collection of 18th and 19th century buildings, has recently been declared a national historic landmark district by Secretary of the Interior Stewart Udall. With a 35-foot-high six-lane high altar to the great god auto snaking its way across the open Mississippi River side of Jackson Square (with its priceless ensemble of St. Louis Cathedral, the Cabildo and Presbytere, and the Pontalba Buildings), one could hardly conceive of it as a boost to the historic integrity of the famous district.

The battle to preserve these urban treasures has been long and vociferous, with many articulate organizations and groups opposed to the project approved by the Louisiana Department of Highways and the New Orleans Chamber of Commerce. Much has been said, and much remains to be said, about the shuddering implications of this approved route and design.

If this could happen in New Orleans, a city that held many famous trump cards, it can and will happen again and again to transform many cities into federally imposed replicas of Los Angeles.

Such cities as San Antonio might well see what hope they have to win their expressway battles sinking into political quicksand.

MARK P. LOWREY, AIA,
President.

BALBOA PARK'S DOWNFALL

DEAR SIR: A letter in the Express written by a Marvin Burkett of San Diego, Calif., was read with interest. Mr. Burkett stated that Balboa Park used to be the finest park in the country, but now Brackenridge Park is the finest.

I wonder if Mr. Burkett can put his finger on the cause of decline? An expressway cuts Balboa Park from top to bottom and side to side. Could this be the cause? The answer is obvious.

LOIS GRAVES.

[From the San Francisco (Calif.) Chronicle, Feb. 24, 1966]

OUR HORRIBLE EXAMPLE—MISTAKES MAY HELP SAVE A CITY

Two alert young civic leaders from historic old New Orleans were here yesterday, photographing The Embarcadero and other local freeway projects, in the hope that San Francisco's "horrible example" could stave off such developments in their city.

Herbert J. Harvey Jr., New Orleans attorney, is president of a new organization there known as HELP (Help Encourage Logical Planning). With him in San Francisco this week is Ronald F. Katz, a New Orleans urban planner, who is secretary of HELP.

"We got the idea for HELP from San Francisco's SPUR (San Francisco Planning and Urban Renewal Association)." Harvey said. "We hope it's not too late to prevent, in New Orleans, what has been happening in San Francisco."

HORRIBLE

"We do regard San Francisco as a horrible example of what unwise freeway planning can do to a beautiful old city," said Katz.

"We hope when we take back pictures of what has happened here—particularly The Embarcadero—we will be able to stop what's happening in our city."

In New Orleans, Harvey said, a three-story-high freeway or expressway is now proposed on the Mississippi river waterfront—cutting across historic Jackson Square, the real birthplace of the city.

It would cross in front of New Orleans' St. Louis Cathedral, now the St. Louis Basilica, much as The Embarcadero Freeway crosses the face of the Ferry Building here.

HEIGHT

Said Katz, plaintively, "The thing would be 40 feet above the square!"

Said Harvey, "You're six years ahead of us in building freeways—we have only one, the Pontchartrain—and if our people understand what you've been through, we believe it will help New Orleans greatly."

As Harvey and Katz explained the situation, it is not yet too late to stop their Jackson Square elevated freeway, but the Louisiana Highway Department has already approved it, the U.S. Bureau of Public Roads has blessed it, and civic leaders have their backs against the wall.

TEST CASE

One powerful assist has come from the Catholic Archdiocese, which declared editorially in its publication The Clarion Herald that the project "has all the elements of a test case to make preservation of historical sites compatible with progress."

The editorial noted that for months Rex M. Whitton, Federal highway administrator, has been organizing a top-level, eight-member advisory committee to "prevent highways from doing violence to areas they are supposed to serve . . ."

On the committee, the editorial acknowledged, are such men as "world famous landscape architect Lawrence Halprin of San Francisco, architect Matthew Rockwell, area planning director for Chicago, and nationally recognized Connecticut architect Kevin Roche."

[From the Washington (D.C.) Post, May 25, 1966]

BEALLS ISLAND

Chief Highway Engineer William F. Adams has given a typical answer to the plea of conservationists to keep the second Washington Beltline away from the choice natural area at River Bend and Bealls Island. Land for the Bealls Island route has long been in reservation, he said, and the alternatives would be longer and more costly. This is why the ultimate decision ought to be made by others who have a greater interest in esthetic values.

The interim report of the Potomac River Task Force recommended that the proposed second circumferential be located upstream from the highway engineers' site. Suitable crossing of the Potomac could be made at Atkins Island, thus leaving undisturbed the attractive woods and wildlife refuge on the Virginia side of River Bend. While plans for this area have not yet taken definite shape, it has aroused keen interest in the National Park Service. Maybe some of it ought to be added to Great Falls Park. Or perhaps it should be left as the alluring and semiwild region that it is now. In any event, it would be a pity to cut through it with a major expressway that could just as conveniently be located in a less scenic spot.

The courts have recently spanked the Federal Power Commission for not adequately considering esthetic values in granting a license for a power plant. It is about time for the planners and higher authorities to begin overruling the highway engineers for the same reason. Indeed, we think they should be definitely instructed that the preservation of natural beauty should be one of their first imperatives. Bealls Island is a good place to begin to assert the dominant public interest in keeping expressways in their place.

CONCLUSION OF MORNING BUSINESS

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

PROVISION FOR JUDICIAL REVIEW OF THE CONSTITUTIONALITY OF GRANTS OR LOANS UNDER CERTAIN ACTS

The PRESIDING OFFICER. Pursuant to the previous unanimous-consent agreement, the Chair lays before the Senate the pending business.

The Senate resumed the consideration of the bill (S. 2097) to provide for judicial review of the constitutionality of grants or loans under certain acts.

PRIVILEGE OF THE FLOOR

Mr. ERVIN. Mr. President, I ask unanimous consent that H. Houston Groome, Jr., of the staff of the Subcommittee on Constitutional Rights, which considered the pending business in committee, be permitted the privilege of the Senate floor to assist me in debate.

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

Mr. ERVIN. Mr. President, S. 2097, introduced by Senator MORSE and cosponsored by myself, Senators CLARK, YARBOROUGH, SMATHERS, COOPER, and FONG, represents the culmination of many years of time-consuming and, to the taxpayers of this country, costly debate on the question of Federal aid to church-related institutions. More importantly, it is legislation which, for the first time, will provide effective procedures for the enforcement of the establishment and free exercise clauses of the First Amendment to the Constitution of the United States.

For far too long the issue of State aid to church-related organizations has been a divisive force in our society. It has created communication barriers among our religions and fostered intolerance. This is a natural consequence when the courts are prevented from carrying out their function of deciding a great constitutional issue.

Some of us who are sponsors of this bill feel there are serious doubts as to the constitutionality of many recent education and poverty programs. Others are confident that these programs meet the test of the first amendment. But one thing on which we all agree: The courts must be given the opportunity to decide. Only then will this century-long controversy end.

Mr. President, up to the present moment, Congress has been compelled to legislate on these and other subjects in an atmosphere of constitutional darkness. It may be said that the primary

function of the pending bill, and its only immediate effect, would be to enable Congress hereafter to legislate on the subject in constitutional light.

On March 8, 9, 10, 15, 16, and 17, 1966, the Subcommittee on Constitutional Rights conducted extensive hearings on this measure. The subcommittee received the testimony of numerous professors of constitutional and administrative law whose experience and knowledge of judicial review and of the first amendment were of great value. Almost unanimously, these gentlemen advocated some form of judicial review. The subcommittee, in redrafting the bill, adopted many of the suggestions received from these eminent scholars.

The subcommittee also sought the views of most of the major religious denominations of this Nation. Of those responding to the subcommittee's inquiry, again, all but a very few endorsed enactment of legislation to insure that the provisions relating to religion in the first amendment be enforced.

Aware that many educators had a vital interest in this measure, the subcommittee invited educational organizations to appear or submit views on S. 2097. I was extremely impressed by the vigorous support of many of these groups for this bill and their statement that judicial review would not in any way retard the educational progress that is being made in this country today.

Finally, the subcommittee extended an invitation to various civil liberties organizations, all of which urged passage of this bill without reservation.

The product of these hearings, Mr. President, is a bill which may be cited as "An act to enforce the first amendment to the Constitution." The title has been amended so as to read:

> A bill to provide effective procedures for the enforcement of the establishment and free exercise clauses of the First Amendment to the Constitution.

The committee took advantage of the wise suggestions made from many sources both as to the legal aspects of the bill as well as to its practical aspects. As a consequence of these suggestions, the committee has prepared and is submitting to the Senate an amendment in the nature of a substitute, and I ask unanimous consent at this time that the amendment in the nature of a substitute be agreed to and that the bill as thus amended be considered and deemed to be a clean bill for purposes of amendment.

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

Mr. ERVIN. It is important to remember, Mr. President, that judicial review is available for every aspect of the Bill of Rights except the establishment clause of the first amendment. James Madison, when defending the Bill of Rights, specifically stated that he expected the courts would make themselves the special guardian of the Bill of Rights, which they have done except for a technical barrier in establishment cases.

Thus, we come to an increasing need for legislation to enforce the first amendment to the Constitution.

The States and the Federal Government are each year enacting more legislation which permits the expenditure of tax funds for education, health, and welfare in ways which may be violative of constitutional proscriptions against religious establishment. Just a few weeks ago, the Maryland Court of Appeals decided that a State law authorizing funds to three church-related institutions violated the establishment clause of the first amendment to the U.S. Constitution. This case has been cited as a panacea to the problems we are discussing today. But I remind the Senate that these were State taxpayers challenging a State law. The Supreme Court has heard several cases of this nature, but none has given Congress the guidelines it needs for Federal legislation. I submit that the Maryland case emphasizes the need for judicial review of Federal aid programs.

As noted by the eminent professor of administrative law at Harvard Law School, Prof. Louis L. Jaffe:

> The law appears to be that a taxpayer suit to test the constitutionality of such expenditures by State and locality can be brought in some jurisdictions and not in others, and—somewhat of a crowning paradox—that the constitutionality of State and local expenditures can be adjudicated by the Supreme Court but not the constitutionality of Federal expenditures.

The doubt as to whether one of our most precious freedoms can be enforced exists because of the decision in *Frothingham* v. *Mellon*, 262 U.S. 447 (1923). There, Mrs. Frothingham sued to enjoin the execution of an appropriation of Federal funds. The Court held that under existing laws a taxpayer's interest in the moneys of the Treasury "is shared with millions of others; is comparatively minute and indeterminable; the effect upon future taxation is so remote that no basis is afforded for an appeal to the preventive powers of the Court."

This decision was an exercise of judicial restraint and was decided as a matter of public policy during a period of our history in which judicial attacks upon social welfare legislation were frequent. As Prof. Paul A. Freund of Harvard Law School stated in a statement submitted to the subcommittee:

> The defect in Federal taxpayers' suits does not rise to the level of an article III infringement . . . the present situation is not beyond repair through provision by Congress for a straightforward Federal taxpayer's suit.

It is undoubtedly true that a controversy betwen a taxpayer and a Federal department or agency concerning the constitutionality of a proposed grant or loan being made by such an agency presents a case or controversy within the meaning of article III of the Constitution. This is true because the decision of such controversy requires an interpretation of a provision of the Constitution.

The fact that such controversies do come within the meaning of article III of the Constitution of the United States is illustrated by many decisions of the U.S. Supreme Court in cases of this nature, such as the following cases:

Everson v. *Board of Education*, 330 U.S. 1—1947—*McCollum* v. *Board of Education*, 333 U.S. 203—1948—*Zorach* v. *Clauson*, 343 U.S. 306—1952—the recent school case of *Engel* v. *Vitale*, 370 U.S. 421—1962—and *School District of Abington Township* v. *Schempp*, 374 U.S. 203—1963.

If controversies over the use of State funds or properties for religious purposes did not present a case or controversy within the meaning of article III of the Constitution of the United States, the Supreme Court of the United States could not have considered any of these decisions or a number of other decisions which I might cite on this point.

This bill affords the requisite "standing to sue" to three classes of plaintiffs to challenge the constitutionality of those Acts enumerated in section 1 of the bill—individual and corporate taxpayers, or groups thereof; any public or other nonprofit institution or agency which has made application for a Federal grant or loan; and citizens of the United States. These plaintiffs are afforded the judicial machinery necessary for instituting an equitable action for declaratory judgment to obtain judicial review of the constitutionality of grants or loans made under the enumerated acts in section 1 of the bill.

The bill as originally drafted has been amended to meet all the legitimate objections expressed in hearings. By far, the most frequent objections were directed at section 6(a), the automatic stay provision. Under this section, once an order executing a Federal grant or loan was challenged, the program would be suspended until a final adjudication could be made as to the constitutionality of the order. This subsection has been deleted in the substitute bill. Instead, the Federal court hearing the case is given discretionary authority to grant an interlocutory injunction when it deems it necessary.

Another major improvement in the bill is the deletion of the requirement of refunding a grant which has been held unconstitutionally awarded. The bill now provides that only the unexpended portion of such grant is to be refunded for credit to the appropriation from which it was paid.

It has been suggested that the original bill would create a host of lawsuits which could overload our already overcrowded courts. This suggestion is not supported by the evidence. Nevertheless, the committee has amended the bill by adding language which would require the consolidation of suits when two or more actions are instituted challenging the constitutional validity of the same loan or grant. Furthermore, provisions are included which allow for direct and expeditious appeal to the Supreme Court.

S. 2097 would subject to judicial review the following acts:

First, the Higher Education Facilities Act of 1963.

Second, title VII of the Public Health Service Act.

Third, the National Defense Education Act of 1958.

Fourth, the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963.

Fifth, title II of the Act of September 30, 1950—Public Law 874, 81st Congress.

Sixth, the Elementary and Secondary Education Act of 1965.

Seventh, the Cooperative Research Act.

Eighth, the Higher Education Act of 1965.

Ninth, the Economic Opportunity Act of 1964.

These acts are not intended to be inclusive although review is expressly limited to those acts. As the committee report states:

> They are representative of legislation which affords substantial and direct financial aid to denominationally controlled and denominationally "related" institutions.

The bill does not deal directly with the principle of separation of church and state nor with the constitutionality of any of the acts subject to review. That is for the courts to decide. The important thing is that the first amendment will be taken out of the arena of politics and put in the courts.

If enacted, Mr. President, it will remove the cloud which hovers over all these acts and eliminate the Senate's annual debate on this issue.

Mr. President, we must answer the compelling question of Mr. Justice Douglas by passing S. 2097. He asked:

> What are courts for, if not for removing clouds on title, as well as adjudicating the rights of those against whom the law is aimed, though not immediately applied?

In the weeks following the hearings on S. 2097, the Christian Science Monitor reported a series of articles by its staff correspondent, Mr. William C. Selover, on this subject. I ask unanimous consent that these articles entitled "Federal Funds Test Church-State Boundary," reported April 27, 1966; "Church-Tied Schools Get U.S. Funds," reported May 20, 1966; "Senators Question Church Aid," dated May 27, 1966; and "Church-State Issue Squeezes Congress," dated June 6, 1966; be printed in full in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it so ordered.

(See exhibit 1.)

Mr. ERVIN. Additionally, Mr. President, I invite the attention of the Senate to a recent editorial published in the Washington Post. In reference to the bill, the Post endorsed its consideration and stated "Judicial review represents the traditional, and most authoritative way to determine the constitutional validity of laws affecting church-state relations." I ask unanimous consent that this editorial, entitled "Measuring the Wall," published in July 5, 1966, edition of the Washington Post, be printed in full in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. ERVIN. Finally, Mr. President, I ask unanimous consent that an excerpt from the June 20, 1966, bulletin of the American Civil Liberties Union, Feature Press Service, entitled "ACLU Supports Judicial Review of Federal Assistance to Church-Related Institutions," be printed in full in the RECORD at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. ERVIN. Mr. President, we must not further delay enactment of a judicial review provision in our law. It is particularly important that we favorably consider this bill before existing laws are implemented and new ones put to a vote. We should act now to provide effective procedures for the enforcement of the first amendment to the Constitution.

EXHIBIT 1

[From the Christian Science Monitor, April 27, 1966]

FEDERAL FUNDS TEST CHURCH-STATE BOUNDARY

(By William C. Selover)

WASHINGTON.—If you signed over a lump of income tax to the Internal Revenue Service April 15, you may have helped violate the church-state separation principle of the United States Constitution.

There's no way of knowing for sure, however.

Here's why:

United States taxes made available to private, church-related groups some 5½ billion government dollars this year to operate various parts of more than 60 federal programs.

These are mainly in the areas of education, health, housing and antipoverty.

Yet, there is absolutely no way for the private citizen who believes a certain program violates the church-state separation principle to challenge its constitutionality in a federal court of law. (Ironically, in most states such cases can be brought in state courts where state funds have been spent. But this doesn't apply to federal courts and funds.)

HARVARD REFUSES FUNDS

Administration officials vigorously deny that there is any constitutional violation in their programs. They say a court ruling is totally unnecessary.

Others argue that violations have become so widespread that a ruling is essential.

A senate judiciary subcommittee in recent hearings found growing sentiment for enactment of laws to allow taxpayers to test these laws.

The Subcommittee on Constitutional Rights heard debate on a bill which would give individual "standing" to sue for discontinuance of programs which allegedly violate church-state separation principles.

The hearings turned up impressive evidence to show that violations of this fundamental principle may be growing.

Among the findings.

Some 35 divinity schools around the country are accepting funds from the National Defense Education Act (NDEA) to train theology students—Harvard Divinity School has conspicuously refused to accept this aid on grounds that it violates the First Amendment to the Constitution.

Books are being given to parochial schools under the legal fiction of "loans." Administration officials admit the return of these loans is highly unlikely.

Hundreds of programs in the "war on poverty" are being administered by church groups. The constitutionality of these programs is in "some question," admits the general counsel for the Office of Economic Opportunity.

The Christian Science Monitor has learned that in Chicago public funds are being used by local antipoverty groups to prevent foreclosure by mortgage companies on financially defunct church properties.

In programs administered by the Department of Health, Education, and Welfare (HEW), there are no records of any kind kept to show specifically whether or not a recipient of federal funds has any church connections—"unless we can tell from the name of an institution," according to a HEW lawyer. "We do not inquire . . . into this aspect."

Also, in most HEW-administered programs there is no assurance that public funds would not "replace expenditures of funds" otherwise made by a private institution.

This means that public funds spent on a nonreligious education program in a parochial school could free other funds in the institution's budget for religious instruction.

CONSTITUTIONAL TEST OPPOSED

The Attorney General's Office opposes a constitutional test of these programs on grounds that it would "seriously disrupt the federal programs."

Administration officials indicate they would rather continue operating possibly unconstitutional programs, than take the chance of hindering extensive programs of education, health, housing, and antipoverty.

The Justice Department contends such court tests are unnecessary—that guidelines written into the laws assure the constitutionality of the programs.

"The Congress is honor-bound . . . not to take action which would in any way violate the Constitution," argues Assistant Attorney General John W. Douglas. He says that Congress, therefore, in passing the law, must have done so constitutionally. Subcommittee lawyers regard this argument as exceedingly peculiar.

But this newspaper has learned from HEW sources that the department guidelines are generally inadequate, that they are being overlooked or ignored, and that there is no established machinery for enforcing them.

Asked whether spot checks are made on the various programs being administered by HEW to guarantee that funds are not used in violation of church-state separation guidelines, a department official said: "We're not going to stand over them like a policeman. We'll take steps if something should come to light in normal auditing procedures." He admitted the audit check would take, roughly, two years.

SEVEN ACTS MENTIONED

But even if the guidelines were adequate and scupulously observed, there is still no way to tell for sure whether the laws themselves are constitutional.

Sen. WAYNE MORSE (D) of Oregon, SAM J. ERVIN (D) of North Carolina, Sen. JOSEPH S. CLARK (D) of Pennsylvania and Sen. RALPH W. YARBOROUGH (D) of Texas want to know what the courts would say.

Together they sponsored a bill S. 2097, introduced by Senator MORSE, which would give the taxpayer standing to challenge the constitutionality of any one of several programs now supplying public funds to church-affiliated groups.

The bill makes specific reference to seven acts: (1) the Higher Education Facilities Act of 1963, (2) Title VII of the Public Health Service Act, (3) the National Defense Education Act of 1958, (4) the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, (5) Title II of the act of Sept. 30, 1950 (Public Law 874, 81st Congress), (6) the Elementary and Secondary Education Act of 1965, and (7) the Cooperative Research Act.

It also includes any other act which is administered by the Department of HEW and was enacted after Jan. 1, 1965.

Senators MORSE and ERVIN, though in complete agreement on the need for such legislation, do so from opposing corners.

Mr. MORSE argues that the acts cited in the bill represent "a proper exercise of the constitutional authority given to Congress." He says a court ruling to that effect will allow Congress to go farther to "meeting the full needs" of our people.

CONSIDERED POORLY DRAFTED

Mr. ERVIN, a former justice of the Supreme Court of North Carolina, argues that the acts may be unconstitutional and that the court should be allowed to rule on them. Mr. ERVIN'S aides point out that the Senator does not oppose the basic intent of the acts. "In fact, he voted against only one of the seven specifically mentioned. He just wants them tested."

The bill, as originally introduced was considered poorly drafted in many respects. Even Senator ERVIN, who, as Constitutional Rights Subcommittee chairman, presided over hearings on the bill and co-sponsored it, felt the drafting was faulty. "There are many provisions, I am frank to state, in this bill that I don't like myself," he told the hearing.

Senate lawyers did not seriously think it could pass in its original form. The subcommittee sought doggedly for ways to improve upon the bill during the six days of hearings in March. Chances for passage are now considered much improved. Some 20 representatives of church groups, educational and legal professions, and administration spokesmen testified.

There was almost unanimous opposition among witnesses to Section 6(A) which provided that all funds would be cut off from a program when it was challenged legally, even before a judgment was made.

And if a program was ruled invalid the bill provided that all the funds would have to be returned.

"Isn't that unusual . . . in any kind of a statute?" asked subcommittee member Sen. JACOB K. JAVITS (R) of New York in questioning this provision.

Theodore Ellenbogen, assistant general counsel of HEW, replied that in the face of such a risk. "We cannot believe that there would be many applicants" for HEW programs.

Other objections were raised on the contention that the courts would be flooded with suits. But it was argued that the cost of a court contest would likely run to $25,000, thus, allowing only a few to raise the issue. Also, the bill provides that all suits would be brought to the District of Columbia district court, and similar cases could be consolidated.

On this point, however, Senator ERVIN said: "It seems to me that if it takes 10,000 suits to keep Congress from passing unconstitutional laws, the finest thing to be done for the American people . . . would be to have these suits brought."

OTHER PROGRAMS INVOLVED

Many of the witnesses urged the inclusion of more of the numerous programs which involve church-state separation.

"At the very least, the programs and acts administered by the OEO [Office of Economic Opportunity] should be included," said James Luther Adams, Harvard Divinity School professor.

But political realities discouraged urging too broad coverage.

"I think it should at present be limited to the enumerated acts, with the addition of OEO," said John Adams, legal counsel of Americans United for Separation of Church and State.

"I am glad to hear you say that," replied Senator ERVIN. "Just as a pragmatic matter, to getting the legislation enacted, you could sometimes get more support from a narrower bill than you can from a broader bill."

But the knottiest legal question raised by the legislation is the question of "standing."

For years, courts have held that an individual taxpayer did not have sufficient monetary interest in the spending of his tax money to have "standing" in a court to sue for improper use of his tax money. This ruling, based on the "de minimus rule," has governed procedure since the 1923 case of Frothingham vs. Mellon.

Prof. Leo Pfeffer, testifying for the American Jewish Congress contended, however, that de minimus is irrelevant and has no applicability "if you are not suing to indicate a monetary or proprietary concern . . . the Supreme Court has simply ignored completely the de minimus rule where rights are concerned."

Put another way, American Civil Liberties Union director, Lawrence Speiser, said: "When government action violates [the citizen's] conscience, the amount of his financial burden is irrelevant."

These lawyers believe that the individual has standing to sue already where the case involves a breach of "rights" or "conscience." But many would disagree.

John T. Fey, speaking for the American Council on Education, was asked by subcommittee counsel whether there was any way a federal taxpayer could test legislation on the basis of a First Amendment violation.

"Not only is there no way, but my contention is that there is no justification for it, philosophically or morally," he replied.

Whether it's possible or not, it is procedurally unlikely.

Thus, the authors of the bill decided the answer would be to grant "standing" by law.

Assistant Attorney General Douglas said there are "serious doubts" about the constitutionality of conferring standing—where there is no justifiable controversy.

Here again, Senator ERVIN views church-state issues as creating sufficient interest to be considered a justiciable controversy. "Church-state provisions of our Constitution are a fundamental covenant of government, so fundamental that every citizen has an interest in their enforcement."

Marvin Braiterman, speaking for the Union of American Hebrew Congregations, reminded the subcommittee that "Congress is constantly conferring standing to sue on plaintiffs in all kinds of legislation it passes. Every time it passes labor legislation, it gives somebody a right to sue, like the Fair Labor Standards Act."

The question of conferring standing is one which won't be resolved easily or soon. It remains, however, to the authors of the legislation, as the only obvious expedient to correct, in Senator ERVIN'S words," a serious defect in our system of justice, which brags there is no wrong without a remedy."

Other objections were more easily solved by the subcommittee.

Instead of amending Senator MORSE'S original bill, the chairman is drafting a new bill—which incorporates some technical changes, improving earlier oversights, as well as removing the automatic cutoff of funds provision.

Senate legal experts say privately that the new bill has considerably improved chances of passage.

STORMY PATH SINCE 1961

In fact, some subcommittee sources feel that the time for this legislation is overdue.

It has had a stormy path, ever since its essentials were drafted in 1961 by Senator MORSE together with the Attorney General of the United States, and the Solicitor General.

Senator ERVIN proposed a judicial-review amendment to the Higher Education Facilities Act in 1963. It was passed by the Senate, but was dropped in conference.

Then, a similar Ervin amendment to the Elementary and Secondary Education Act failed to pass the Senate in 1965. At that time Senator MORSE expressed fear that such an amendment might hold up passage of the Education Act.

But Senator MORSE gave his pledge to introduce an independent judicial review bill—a further modification of the one he'd worked on since 1961.

He was faithful to his commitment. And Mr. ERVIN was reportedly delighted at Mr. MORSE'S strong testimony in support of the legislation.

If the bill doesn't pass this time, it certainly served to stir up some basic questions for further debate.

But one thing is for sure.

It managed to shake the big, gray, impersonal, monolithic department of HEW down to its legal and statistical boots.

Its spokesmen tried everything they could think of to put off testifying.

And after they testified, they waited until after the transcript of the hearings went to press before supplying the subcommittee with statistics and information requested for the record.

LIST OF NAMES SUPPLIED

It was probably just as well—they couldn't answer the questions asked, such as, how much money and which programs are administered by religious affiliated groups.

They could merely supply a list of names—perhaps to identify a few ecclesiastical sounding institutions. But as one HEW subdivision—the Vocational Rehabilitation Administration—noted in a terse and candid memo to the legal adviser in response to his request to identify religious affiliated groups it spends money on: "We are forced to conclude that a name check of 1,000 institutions would be misleading."

But it's little wonder HEW was shaken. It was Senator ERVIN himself who left them with this final thought:

"We have the Department of Health, Education, and Welfare, which is administering billions of dollars of money for educational purposes, and for other purposes, which many Americans think is in violation of the First Amendment.

"And this great department of the American Government, whose officers are sworn to support the Constitution of the United States, is opposed to the passage of any law which could make it clear that the constitutionality of the programs it administers can be brought into question. All I have to say is that if the health of religious liberty in America is going to be dependent on the attitude of the Department of Health, Education, and Welfare, it is going to be in a very unhealthy state."

[From the Christian Science Monitor, May 20, 1966]

PRACTICE DISPUTED: CHURCH-TIED SCHOOLS GET U.S. FUNDS

(By William C. Selover)

WASHINGTON.—The federal government is building hundreds of classrooms for church-related educational institutions all across the country under the 1963 Higher Education Facilities Act.

Under another federal program, public-school teachers, in some states, teaching in parochial schools, are paid with United States funds.

These practices could occur in any church-related school, regardless of the religious denomination.

And in the administration's "war on poverty," the story is the same.

As director of the program Robert Sargent Shriver, Jr., said last December: "Three or four years ago it was practically impossible for a federal agency to give a direct grant to a religious group. Today, we have given hundreds without violating the principle of separation of church and state."

This is due in large measure to the fact that the Office of Economic Opportunity spreads the funds around to dozens of different religious denominations, according to an inside source. "Who can complain?" they ask. "Everybody gets a cut of the cake."

ASSESSMENTS VARY

What does all this add up to?

Some say it represents a facing up to the realistic education and welfare needs of this age. They argue that the complexity of today's society demands it.

Others charge it is a very serious violation of constitutional guarantees. Some constitutional lawyers refer to this as "the trend toward multiple establishment." They say the framers of the First Amendment specifically inveighed against such a drift.

Here's what they mean by "multiple establishment":

Not many people today are afraid the federal government will establish a single state church. There is lessening concern that tax revenues will be diverted to one religious denomination.

But, there is considerable and growing fear among some constitutional lawyers, reflected in recent Senate hearings, that it is just as unconstitutional for the federal government to support a wide cross section of religions through grants to run government programs.

These lawyers argue that the government, in effect, is contributing to the establishment of many church groups. Thus, the term "multiple establishment."

AMENDMENT TRACED

"If there is anything to be settled in the Constitution today," says Prof. Leo Pfeffer, a specialist in the First Amendment, "I believe is the principle that the First Amendment forbids aid to all religions, no less than it forbids aid to particular religions."

Prof. Pfeffer was testifying at hearings of the subcommittee on constitutional rights of the Senate Judiciary Committee.

Sen. SAM J. ERVIN (D) of North Carolina, subcommittee chairman, repeatedly referred to the history of the First Amendment during the course of the six days of hearings: ". . . The history out of which the First Amendment arises, namely, the struggle in Virginia for the adoption of the Virginia statute of religious freedom, show(s) that what was involved there was a question of whether Virginia would have a multiple establishment."

That is, he explained, "a law under which all recognized religions or denominations would share in the taxes levied for religious purposes, rather than any attempt to establish one church. . . . So the very history of the First Amendment grows out of a struggle to prevent what you might call the multiple establishment of religion.

The administrators of today's education and welfare programs are losing sight of this history, according to the Senator.

PROBLEMS COMPARED

"The executive and legislative branches are moving toward multiple establishment," said a subcommittee lawyer.

Franklin C. Salisbury, attorney for the National Association of Evangelicals, put it this way, regarding the government health, housing, antipoverty, and education programs: "Problems of today have gone right back to the problems that we had in Virginia at that time."

The federal classroom building program, open to all religiously affiliated institutions which qualify, can be viewed as symptomatic of this problem.

For 20 years the buildings must not be used for religious instruction. Then the United States Government turns them over completely to the institutions, free.

Its directors can use them for whatever they want—prayers, religious instruction, even convert them to theological seminaries.

The Department of Health, Education, and Welfare argues that the government will have received its full value out of the buildings in 20 years.

POINT OF PROTEST

Senator ERVIN, however, points out that the Internal Revenue Service sets 50 years as the life of a building. He protests that ". . . the institution has got a building at the expense of the taxpayers through this grant that it might conceivably use for a hundred years, and it has a fee simple title to it."

This, says the Senator, is a considerable contribution toward support for the religion—raising serious questions about violations of the establishment provision of the First Amendment. But nobody complains because all religions benefit.

Senator ERVIN points out that at his alma mater, "the university is still using its oldest building." It was built in 1795.

The antipoverty program for migratory workers is another example:

Recently this newspaper reported that some 12 percent of all grants under the aid to migratory workers program, administered by the Office of Economic Opportunity, went to religious groups. This amounted to at least 14 percent of the funds spent in the program. This is considered a conservative estimate.

Donald M. Baker, Office of Economic Opportunity general counsel, told the Ervin subcommittee that it was impossible to operate its migratory program without funding church groups.

"The only groups you can get who are interested in doing this are church-related organizations," he said. "And if you do not use them, you just wipe that particular migrant community off the map, so to speak, in that state."

Noel H. Klores, director of the migratory workers program, says there have been virtually no complaints about violation of church-state separation.

One knowledgeable source within the Office of Economic Opportunity says that the lack of complaints is easy to explain: the program is careful to fund a wide cross section of religious denominations. Everybody is kept happy.

Senator ERVIN's subcommittee hearings, held in March to consider possible needed legislation in this area, may not have solved the question of whether or not today's education, housing, antipoverty, and health programs run by church groups constitute a reappearance of "multiple establishment."

But the Senator, himself, has made it abundantly clear how he feels.

And it is clear that he has put the various departments of the federal government on notice that they must thoroughly justify before Congress all programs administered through religious groups.

Recently, Senator ERVIN, a former Supreme Court justice of North Carolina, told an audience in Nashville, Tenn.:

"Time and again, the Supreme Court has said that neither a state nor the federal government can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . The present policy of making federal aid available to all non-secular institutions is in reality a reappearance of an earlier threat to our religious freedom: the principle of multiple establishment so wisely discarded years ago."

And he concluded: ". . . Those seeking to pervert the principle of separation by affording financial assistance to denominational institutions have apparently forgotten this meaning of multiple establishment. . . . They have filed away in the halls of bureaucracy the great truths discovered by those early men. . . . They have overlooked an event in history which presented a clear opportunity for decision on the issue of establishment. This decision laid the foundation of religious liberty in America."

[From the Christian Science Monitor, May 27, 1966]

SENATORS QUESTION CHURCH AID

(By William C. Selover)

WASHINGTON.—The Senate is concerned about what happens to a church which depends upon government for support.

The findings of a Senate subcommittee point up some ominous dangers.

"When a church becomes dependent on outside funds for its existence it loses the sincerity and services of its own adherents," explained a Senate subcommittee lawyer.

The subcommittee on constitutional rights recently held hearings to assess the effect of laws which presently make available some $5½ billion to church-related organizations through more than 60 federal programs.

"Dependence destroys the vitality," says a legal counsel for the subcommittee, in explaining committee findings.

It may seem unusual that lawyers are concerned with religious "vitality" of a church.

OPINION REPRESENTED

But in this case, they represent a growing body of legal opinion that feels some federal programs are violating the establishment clause of the First Amendment. They are going to great length to point out the historical danger implicit in state-supported churches.

Another lawyer, Prof. Leo Pfeffer, chairman of the department of political science of Long Island University, says: "I do not believe . . . that religious liberty can long last when the government undertakes to finance religious institutions."

Sen. SAM J. ERVIN (D) of North Carolina, subcommittee chairman, at the hearings asked Professor Pfeffer: "Don't you agree with me that the whole of history teaches that the worst thing that can ever happen to religion is for religion to be subsidized by public taxes?"

"I could not agree more," replied Professor Pfeffer.

Thirteen years earlier, Professor Pfeffer wrote in his book, "Church, State and Freedom": "Wherever the church or state seeks to use the other as engine for its own purpose—that is, wherever a state or church pierces the wall of separation between them—religious freedom inevitably suffers."

He cited Italy under Mussolini, the Soviet Union, and Spain as areas where state-supported freedom has been the inevitable victim.

Lawyers, obviously, have no exclusive proprietorship over concern for state-supported religion.

Rabbi Edward E. Klein told the Ervin subcommittee that ". . . it has been this separation which has enabled religion, really, to grow and develop in America free of political control, and the state to flourish free of ecclesiastical control."

The principle of voluntarism was most eloquently defended at the hearings by James Luther Adams, professor of Christian ethics at Harvard Divinity School.

"Religious institutions should derive their support from private, free-will giving," he said. "For us the collection plate in the Protestant Sunday service is an unmistakable symbol of the voluntary and independent character of authentic religion. We pay our own—any compromise of this voluntarism is a reversion toward the tethered 'civic religion' of ancient, pagan Rome, where government and religion were favored."

WHAT CONSTITUTES BREACH?

What constitutes breach?

While most Americans might agree to the virtue of voluntarism—there is little agreement over what constitutes a breach of this ethic.

Mr. Adams feels that acceptance of any funds, for whatever purpose, religious or secular, by a church-related institution, is a contravention of this ideal.

Thus, he views the administration's programs run by church groups as being on very dubious moral grounds.

In some of these programs it is very easy to identify the danger of which Mr. Adams speaks.

For example, one poverty program in Chicago is helping pay off high-rate mortgages on churches to keep them going—to house some of the programs.

In some other programs, it is less easy to identify the direct benefits.

ESTABLISHMENT DEFINED

But in his defintion of establishment, William O. Douglas, Associate Justice of the Supreme Court of the United States, says: "An institution is strengthened in proselytizing when it is strengthened in any department by contributions from other than its own members."

Senate lawyers point out the emphasis here is on "any department."

Senator ERVIN is afraid that many new government programs are operating at the direct expense of voluntarism.

"Our centralized government is endeavoring to relieve the church membership of the right and responsibility for its own support." he says ". . . despite 180 years of continual remonstrances against establishment."

And the Senator told the 18th national conference on church and state in Nashville last Feb. 22:

"I agree with Mr. Justice Frankfurter [the late Associate Justice Felix Frankfurter] that Elihu Root's phrase bears repetition. He said: '. . . We have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion.' It is my firm conviction that this course is not tantamount to a decision against God, as some suggest, but rather a decision supporting the faith and intelligence of all free men."

[From the Christian Science Monitor, June 6, 1966]

BALLOT-BOX PRESSURE: CHURCH-STATE ISSUE SQUEEZES CONGRESS

(By William C. Selover)

WASHINGTON.—Congress is still tossing around the church-state separation issue like a hot potato.

Nobody, it seems, wants to get burned.

For a congressman, any strong position—on either side—invites a scorching at the ballot box in the fall.

Among the 60 or so federal programs now being administered by church-related groups, many lawmakers privately see the need to raise serious constitutional questions.

The problem for the politician is: How do you raise these questions without appearing to be against education, or housing, or welfare, or health?

Many of the present programs were passed by what Sen. WAYNE MORSE (D) of Oregon calls "trying to slip through the backdoors and the side doors."

THEORY RESURRECTED

For many of the current programs, an earlier-discarded "child-benefit" theory was resurrected.

This is the argument that the programs in question are not designed to help church-related institutions but only the child.

This theory allowed congressmen to hand over billions of dollars to church-related groups on the grounds that everybody's children need help in education and welfare programs—regardless of their religion. "We don't want to discriminate against some children just because they chose to go to parochial schools," they told one another.

Following this line of argument, Edwin H. Palmer, chairman of Citizens for Educational Freedom, told a Senate hearing: ". . . in returning the tax dollar to the citizen, the government should not ask . . . what is a college's religion but rather, what are its educational qualifications?"

However, in the implementation of some of these programs, the constitutional questions have become hotter and hotter.

MIXED FEELINGS

Dean M. Kelley, spokesman for the National Council of the Churches of Christ in the U.S.A., recently raised serious doubts about the administration of the Elementary and Secondary Education Act of 1965.

His group originally supported the program—rationalizing their support on the "child-benefit" theory.

But now he finds that original safeguards have been dropped, those that remain are not enforced, and the "child-benefit" concept is being distorted.

In March, he told the House General Subcommittee on Education: "Having accepted the 'child-benefit' concept, we expect it to be applied fairly and fully whichever way it cuts . . . But we do not want the concept to be distorted or misapplied in ways which help schools more than children."

Congressmen began to take notice. Still very few spoke out. And not many outside groups joined the dissidents.

Sen. SAM J. ERVIN (D) of North Carolina reminded the Senate that the courts had several times rejected the "child-benefit" theory altogether.

The basic political dilemma was summed up candidly by the general counsel to the antipoverty program, Donald M. Baker.

CONGRESSMAN ON SPOT

"Frankly," he said, ". . . I think a lot of people who are very much concerned about the constitutional issues are in basic sympathy with the war on poverty and are concerned with appearing to be attacking it. I think that is a real factor in making some groups hesitant."

James Luther Adams, Harvard Divinity School professor, went directly to the heart of the political issue when he projected himself into the thinking of a typical congressman. Many feel his description was painfully accurate.

"This is rather a delicate matter," he conceded.

"I feel that if I were a man in Congress, or in a state legislature, and issues of separation of church and state came up, I would want to dodge them. I would not want to take a position that would just automatically cut off a whole bloc of votes from me among people who in all other respects favor my program and the program of my party."

"I think it is expecting too much of a man who is directly related to the electorate as a congressman—it is expecting too much of him to take a stand in terms of conviction on a matter of separation of church and state, unless you are in a situation in which the congressman can appeal to widespread consensus. And therefore it seems to me that the court itself has to serve this function."

Senator MORSE has come up with what he thinks could solve this problem—as well as save the Congress from the "backdoor" approach to the church-state issue.

He has proposed legislation which, simply stated, would allow taxpayer suits to challenge the constitutionality of certain programs. In effect, this would relieve the Congress of the political necessity of making a decision on this delicate issue.

Since the history of judicial rulings on the establishment clause of the Constitution is so sketchy, Senator MORSE feels this would help settle the question once and for all.

BILL WINS SUPPORT

Characteristically, he told a Senate hearing on his proposal: "I always like to go through the front door, where everybody knows about my entrance."

The Morse bill has won the support of Sens. ERVIN, JOSEPH S. CLARK (D) of Pennsylvania, and RALPH W. YARBOROUGH (D) of Texas.

The legislation is still in the Senate Subcommittee on Constitutional Rights—under the chairmanship of Senator ERVIN.

Strong support for the legislation comes from advocates of the public-school system.

Mrs. Fred L. Paul, president of the National School Boards Association, has strongly urged the committee to favorably report the legislation. "We firmly believe that the public school must continue to be strengthened so as to preserve the democratic way of life as we know it," she said.

The executive director of the school-boards organization put it more strongly:

"We should support the right of any group to establish and operate schools . . . but . . . we believe that it is the responsibility of those groups and those individuals supporting those schools to support those schools, and that public funds, gathered with the power of the government behind it, should be administrated by public officials, not officials of private or special-interest groups."

But opposition to the Morse proposal is strong. And congressmen are feeling the pull in both directions.

Opposition centers on two theses: that education and other programs are in such need that private groups must be called in to help, and, that, with the programs now underway, why disrupt them and the "harmony" which has been created between public and private school administrators.

"It would seem to be to the advantage of our great country not to harass the independent institutions nor to disturb the present religious harmony by needlessly suggesting a judicial review of health, education, and welfare measures," says Mr. Palmer, of the Citizens for Educational Freedom.

A similar position is argued by the National Catholic Welfare Conference.

CONSTITUTIONAL RELUCTANCE

John T. Fey, speaking for the American Council on Education, explains: "The need for aid to education at this time is critical . . . to the defense of the country, and to the economic development of the country."

He added that education is "secular in nature, it is not a sectarian venture."

But the biggest opposition comes from the administration itself.

In a revealing colloquy, Senator ERVIN asked Prof. Leo Pfeffer, spokesman for the American Jewish Congress, to speculate on the reasons for the administration's opposition.

Professor Pfeffer: I can think of no other justification, no other explanation but a fear that perhaps what is being done would not comply with the constitutional requirements, else it would seem to me that the administration would welcome a judicial enforcement of that position, if they are confident that their position is not in violation of the First Amendment.

Senator ERVIN: In other words, it would indicate that the government is in the position of a boy who is afraid of getting caught in wrongdoing, isn't that a reasonable inference to draw?

Professor Pfeffer: I think so.

(Last of four articles on church-state issues.)

EXHIBIT 2

[From the Washington Post, July 5, 1966]

MEASURING THE WALL

Church and state have been brought into unprecedented contact through a number of recently established Federal programs in the fields of education and poverty. The aid to education measures enacted by Congress authorize benefits for nonreligious purposes to church-related institutions of higher learning and to children attending private elementary and secondary schools; and the Office of Economic Opportunity is authorized to work through certain church facilities in implementing its programs. Do any of these authorizations breach the constitutional wall of separation between church and state?

In the United States with its written fundamental charter, this kind of question is customarily answered by asking the Federal courts to pass judgment on specific applications of the law as they affect individual plaintiffs. The law may be implemented in one way in Boise, in another in Houston. By examining these varying situations, the courts will, ordinarily, tell the country what is constitutionally permissible and what is impermissible.

A difficulty arises, however, from a judicial rule that lawsuits testing the constitutionality of a law may be brought only by persons who have a substantial interest involved in it or who are adversely affected by its operation. The Supreme Court, moreover, is empowered to pass judgment only in actual cases and controversies, not on abstract issues. An individual citizen cannot test the law simply because he believes that his tax payments are being put to an unconstitutional use.

When the 1965 school aid act was under debate in the Senate, Senator ERVIN proposed a judicial review amendment designed to authorize Supreme Court judgment respecting the church-state aspects of the act. The amendment was opposed on several grounds: by some, this newspaper among them, because of a feeling that Congress could not instruct the Supreme Court to take particular cases; by others, because of a belief that the amendment would upset the delicate compromise on which passage of the act depended.

Senator MORSE, the floor leader for the bill, opposed the amendment but promised that after the bill's enactment he would introduce a separate bill authorizing judicial review. He did so. But his bill has never come to the Senate floor We think it deserves consideration While we remain doubtful that Congress can convert an issue into a "case or controversy" or that it can confer standing to sue where none previously existed, we think there might be real merit in a congressional indication of desire for a judicial determination of the problem. The Court's past ruling which limited standing to sue was based on considerations of public policy, not on any constitutional restriction on the jurisdiction of the Federal courts. Perhaps the Court would modify the ruling in the light of a congressional request.

Senator MORSE's bill needs amplification, however, in two respects. It would apply, as he introduced it, only to the Federal aid to education acts; it ought to be made applicable to the poverty program as well. And, as drafted, it would hold up payments to any challenged Federal program until the suit was settled; there is no need for so obstructive an arrangement; interruption of the particular project would suffice. Judicial review represents the traditional, and most authoritative, way to determine the constitutional validity of laws affecting church-state relations.

EXHIBIT 3

[From the American Civil Liberties Union Feature Press Service, June 20, 1966]

ACLU SUPPORTS JUDICIAL REVIEW OF FEDERAL ASSISTANCE TO CHURCH-RELATED INSTITUTIONS

The constitutionality of a number of federal laws enacted by Congress which permit federal assistance to church-related institutions has never been tested in the courts because of the "standing to sue" problem. According to U.S. Supreme Court decisions, if an individual bringing a federal court suit has not sustained or is not in immediate danger of sustaining some direct and substantial injury, he is not considered to be involved in a case and thus have standing to sue.

Expressing the American Civil Liberties Union's concern "that if the constitutionality of such legislation remains in doubt, division and hostility between religious groups will arise—the very thing that the First Amendment of the Constitution's establishment clause was designed to prevent," the ACLU's Washington Director, Lawrence Speiser, recently testified before the Senate Judiciary Committee's Subcommitee on Constitutional Rights. Mr. Speiser appeared in support of a bill before this subcommittee, S. 2097, which would "authorize certain plaintiffs to sue in the U.S. District Court for the District of Columbia in order to determine the constitutionality of seven listed Acts of Congress, as well as any other Acts administered by the Department of Health, Education and Welfare and enacted after January 1, 1965."

The Congressionally enacted aid and programs in question, such as the Economic Opportunity Act of 1964, the Elementary and Secondary Education Act of 1965 and the Higher Education Act of 1965, now permit the utilization of religiously connected facilities and offer grants to these institutions. In most cases, the various kinds of aids and programs are spelled out with only the most general guidelines.

The three classes of plaintiffs who would be entitled to sue under the proposed legislation would include: "(1) any public or other non-profit institutional agency which is, or may be, prejudiced through reduction in the amount of funds made available to it by virtue of a grant or loan being made to another institution or agency under any of the enumerated Acts; (2) Any citizen who has paid his federal income tax during the preceding year; and (3) Any public or other non-profit institution or agency denied a grant or loan under any of the enumerated Acts. In all of the classes of plaintiffs, challenges are limited solely to grounds under the First Amendment."

Touching on the "standing to sue" precedents, Mr. Speiser stated the Union's belief "that the decisions in prior cases denying standing in Federal courts to a federal taxpayer to attack the validity of a federal expenditure is merely a rule of procedure—not intended to rest on constitutional grounds; and that, if Congress authorized a taxpayer to raise a constitutional issue respecting the federal statutes of the importance of those we are discussing in the federal courts, that the courts would take jurisdiction and decide the matter on the merits."

In the past the Justice Department and the Department of Health, Education and Welfare have generally argued against provisions permitting federal taxpayer actions as a matter of policy. While acknowledging that the size and complexity of the federal operation may well require this policy when applied to ordinary federal expenditures, the Union held that "the constitutional claim which is here involved—that the citizen has been taxed to support the religious activities of a faith other than his own—stands on a different footing."

The Union further asserted that "(t)he right not to be so taxed has been central to the American concept of religious freedom nurtured since Jefferson and Madison. To deny it a remedy is to leave a constitutionally protected right naked and defenseless, as though it were but a pious intention. The citizen may well have suffered no injury when an asserted misappropriation has no more effect upon him than to increase his taxes by a minute and essentially immeasurable amount. But when government action violates his conscience, the amount of his financial burden is irrelevant. The fact, not the size of his investment in another faith's institutions is the operative condition."

Mr. ERVIN. Mr. President, in order that a full explanation of the provisions of the bill may be made available to all Americans, I ask unanimous consent that an excerpt from the committee report, beginning with page 1 and ending with page 25, be printed at this point in the RECORD.

There being no objection, the excerpt from the report (No. 1403) was ordered to be printed in the RECORD, as follows:

The Committee on the Judiciary, to which was referred the bill (S. 2097) to provide judicial review of the constitutionality of grants or loans under certain acts having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

AMENDMENT

Strike out all after the enacting clause and insert in lieu thereof the following:

"That this Act may be cited as 'An Act to Enforce the First Amendment to the Constitution.'

"SECTION 1. The approval or disapproval of an application of any public or other nonprofit agency or institution for a loan or grant under—

"(1) the Higher Education Facilities Act of 1963,

"(2) title VII of the Public Health Service Act,

"(3) the National Defense Education Act of 1958,

"(4) the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963,

"(5) title II of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress),

"(6) the Elementary and Secondary Education Act of 1965,

"(7) the Cooperative Research Act,

"(8) the Higher Education Act of 1965, or

"(9) the Economic Opportunity Act of 1964,

shall be effected by an order of the Federal officer making such grant or loan which shall be conclusive except as otherwise provided in this Act. Notice of such order shall be published in the Federal Register and shall contain such information as the Federal officer issuing the order deems necessary to effectuate the purposes of this Act.

"SEC. 2. Any public or other nonprofit agency or institution which is or may be prejudiced by the order of the Federal officer making a loan or grant under the authority of any of the Acts enumerated in section 1, in a particular year to another such agency or institution, by virtue of the fact that the making of such loan or grant serves to reduce the amount of funds available for loans or grants in such year to the agency or institution which is or may be prejudiced, and which deems a loan or grant to be inconsistent with the provisions relating to religion in the first amendment to the Constitution

may bring a civil action in the nature of an action for a declaratory judgment. Defendants in such action shall be the Federal officer and the agency or institution whose application has been approved. Such an action may be brought no later than sixty days after the publication of the order of the Federal officer in the Federal Register.

"SEC. 3. (a) Any citizen of the United States upon whose taxable income there was imposed an income tax under section 1 of the Internal Revenue Code of 1954 for the last preceding calendar or taxable year and who has paid any part of such income tax and who deems a loan or grant made under any of the Acts enumerated in section 1 to be inconsistent with the provisions relating to religion in the first amendment to the Constitution, may bring a civil action in the nature of an action for a declaratory judgment against the Federal officer making such a loan or grant. No additional showing of direct or indirect financial or other injury, actual or prospective, on the part of the plaintiff shall be required for the maintenance of any such action. Such an action may be brought no later than sixty days after the publication of the order of the Federal officer in the Federal Register with respect to such loan or grant. In suing under this subsection, the plaintiff may sue either on behalf of himself or on behalf of all other taxpayers similarly situated.

"(b) Any citizen of the United States who deems a loan or grant made under any of the Act enumerated in section 1 to be inconsistent with the provisions relating to religion in the first amendment to the Constitution, may bring a civil action in the nature of an action for a declaratory judgment against the Federal officer making such a loan or grant. Such an action may be brought no later than sixty days after the publication of the order of the Federal officer in the Federal Register with respect to such loan or grant. In suing under this subsection, the plaintiff sues not only for himself but also in behalf of all other citizens to vindicate the public interest in the observance of the provisions of the first amendment relating to religion.

"(c) For the purpose of this section the term 'citizen' shall include a corporation.

"SEC. 4. Any public or other nonprofit institution or agency whose application for a loan or grant under any of the Acts enumerated in section 1 of this Act has been denied by the Federal officer having appropriate authority on the ground that such loan or grant would be inconsistent with the provisions relating to religion in the first amendment to the Constitution may bring an action to review the final decision of such Federal officer within sixty days after such loan or grant has been denied.

"SEC. 5. (a) Any action under this Act shall be brought in the District Court of the United States for the District of Columbia, and such court shall have jurisdiction without regard to the amount in controversy. In the event two or more civil actions are brought under the provisions of this Act challenging the constitutional validity of the same loan or grant, such court may consolidate such civil actions for the purpose of trial and judgment. Any action under this Act pending before the district court or court of appeals for hearing, determination, or review shall be heard, determined, or reviewed at the earliest practicable time and shall be expedited in every practicable manner. All process, including subpenas, issued by the district court of the United States for any such district may be served in any other district. In any action under this Act the court shall have authority to determine all matters of fact or law appropriate to a decision of the case. No costs shall be assessed against the United States in any proceeding under this Act. In all litigation under this Act, the Federal officer shall be represented by the Attorney General.

"(b) The judgment of the district court shall be subject to review as provided in sections 1252, 1253, 1254, and 1291 of title 28 of the United States Code.

"SEC. 6. (a) An interlocutory injunction enjoining the payment of a grant or loan, or any portion thereof, made pursuant to the order which is claimed to be invalid in an action under this Act may be granted by the court at any stage of the proceedings authorized by this Act.

"(b) When and if any judgment becomes final that declares invalid an order of the Federal officer under this Act, the agency or institution receiving the grant made by the Federal officer pursuant to such order shall refund the unexpended portion of the same, and if a loan has been made pursuant to such order it shall be refunded with accrued interest at the rate fixed therefor, for credit to the appropriation from which it was paid. The Federal officer may in his discretion permit deferment for a reasonable time of repayment of the grant or loan including interest thereon.

"SEC. 7. If any provision of any Act referred to in the first section, or the application of such provision to any person or circumstance, shall be held invalid under this Act, the remainder of such Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

Amend the title so as to read:

"A bill to provide effective procedures for the enforcement of the establishment and free exercise clauses of the first amendment to the Constitution."

Purpose of amendment

The amendment is in the nature of a substitute bill, the provisions of which are explained in the analysis of the legislation following in this report. The substitute bill differs from the original bill in the procedural aspects of the litigation contemplated by the proposed legislation. The causes of action are made more uniform, and the jurisdiction of each rests in the U.S. District Court for the District of Columbia. Additionally, the operations of all programs administered under the acts which will be subject to review will continue unless restrained by an order of the court hearing the case. Section 3 is expanded to include two additional classes of plaintiffs—the corporate taxpayer and the individual citizen. The remaining substantive change is the addition of a provision requiring the consolidation of suits in the event two or more challenges occur to the same disbursement of funds. There is no departure from the main purpose and thrust of the original bill.

The title of the bill is changed to bring it more in line with the purposes of this legislation.

PURPOSE OF S. 2097

The purpose of S. 2097 is to provide effective procedures for the enforcement of the establishment and free exercise clauses of the first amendment to the Constitution of the United States. The bill achieves this ambition by affording the judicial machinery necessary for instituting an equitable action for declaratory judgment to obtain judicial review of the constitutionality of grants or loans made under certain enumerated acts of Congress.

It is envisaged that the classes of plaintiffs participating in litigation under this act shall include the following: (1) individual and corporate Federal taxpayers, or groups thereof; (2) any public or other nonprofit institution or agency which has made application for a Federal grant or loan; and (3) citizens of the United States.

It is intended that the classes of plaintiffs identified in sections 2, 3, and 4 be given the requisite "standing to sue" in litigation which qualifies as a "case or controversy" within the meaning of article III of the Constitution of the United States. Furthermore, this bill in no way defines a case or controversy but merely grants standing to the parties involved in any case or controversy which may arise under the establishment and free exercise clauses of the first amendment to the Constitution. Since an interpretation of the provisions of the first amendment relating to religion is indispensable to the decision in the actions to be brought under the bill, a case or controversy within the meaning of article III necessarily exists.

The acts enumerated in section 1 are not intended to be inclusive although review is expressly limited to those acts. Instead, they are representative of legislation which affords substantial and direct financial aid to denominationally controlled and denominationally "related" institutions. Such aid, it has been asserted, is of doubtful constitutionality.

The bill is not intended to deal directly with the problem of the principle of separation of church and state nor with the constitutionality of any of the enumerated acts. It is designed, however, to remove any of the existing doubt as to the power of taxpayers, citizens, and institutions to obtain judicial review of the validity of Federal grants or loans under the provisions relating to religion in the first amendment.

Legislative history

During the course of the 88th Congress, the subcommittee received numerous requests for an investigation of the expenditure of Federal funds to aid sectarian institutions. The subcommittee began preliminary research in this area of constitutional law at that time. As the subcommittee continued its background study, there was increased interest and concern by taxpayers and nonprofit organizations because of the passage of the Elementary and Secondary Education Act of 1965 and the Higher Education Act of 1965, both of which authorize extensive allocations of Federal funds to nonsecular schools.

When the Senate deliberated the Elementary and Secondary Education Act, Chairman ERVIN offered an amendment to that act to provide for judicial review of the act, to determine whether disbursement under that act would be consistent with the first amendment to the Constitution. Discussion on his amendment elicited concern, expressed by Senator MORSE and others, that such an amendment might jeopardize the passage of the Education Act. A similar amendment, which he proposed to the Higher Education Facilities Act, was passed by the Senate in 1963, although later deleted in conference. The more recent amendment, however, failed to pass the Senate in 1965. At that time, Senator MORSE showed his willingness to support an independent judicial review bill and subsequently introduced S. 2097. In introducing S. 2097, Senator MORSE said that he, the Attorney General of the United States and the Solicitor General of the United States, drafted the measure. Senator MORSE pointed out that the bill, drafted in 1961, was reworked in 1963. In the CONGRESSIONAL RECORD, volume 111, part 6, page 7595, he also said:

"I took the same position then which I take tonight, that if we are going to have a judicial review provision in our law, we should have it as a separate and independent bill. It should cover not only education legislation, but also all other Federal programs involving Federal grants and loans. I am satisfied that the bill would meet all the constitutional tests. I am satisfied that the bill, if enacted into law, would bring the first amendment under a review by the U.S. Supreme Court. I would end up by giving

us, as we lawyers say, 'a decision on the nose.' "

In a memorandum originally submitted in 1961 by the Secretary of Health, Education, and Welfare to Senator MORSE as chairman of the Senate Subcommittee on Education and endorsed again in 1965, the Department stated, with regard to judicial review of Federal aid to sectarian institutions:

"If Congress wishes to make possible a constitutional test of Federal aid to sectarian schools, it might authorize judicial review in the context of an actual case or controversy between the Federal Government and an institution seeking some form of assistance * * *. In the absence of some statutory provisions, there appears to be no realistic likelihood that Federal legislation raising the constitutional issues discussed in this memorandum will be resolved by judicial decision.[1] "

NEED FOR LEGISLATION TO ENFORCE THE FIRST AMENDMENT TO THE CONSTITUTION

The principle of separation of church and state as emanating from the proscriptions of the first amendment is not under examination in this report. Suffice it to say, that in reaching the aproximately 50 decisions handed down by the Supreme Court relating to the establishment and free exercise clauses of the first amendment, and more particularly in the five or six most recent and significant cases, the Court has agreed to this conclusion: *neither a State nor the Federal Government may pass laws nor levy taxes which support religious activities either directly or indirectly.* [Emphasis added.]

The reason this legislation was introduced was well stated by Prof. Louis L. Jaffe, Byrne professor of administrative law, Harvard Law School:

"* * * many of the States, and perhaps even the Federal Government, are or soon will be undertaking expenditures for education which allegedly violate constitutional prohibitions against aid to religious establishments. The law appears to be that a taxpayer suit to test the constitutionality of such expenditures by State and locality can be brought in some jurisdictions and not in others, and—somewhat of a crowning paradox—that the constitutionality of State and local expenditures can be adjudicated by the Supreme Court but not the constitutionality of Federal expenditures." [2]

Senator ERVIN, in his opening statement, noted that:

"Many Americans share the conviction that the making of grants and loans of tax-raised moneys to religious institutions violates the first amendment to the Constitution. Unfortunately, there is grave doubt whether these Americans can obtain a judicial determination of this question. The doubt exists because of the decision of an old case, *Frothingham* v. *Mellon*, 262 U.S. 447 1923) * * *. The point in this case most relevant to our inquiry is that portion of the decision which involves the claim set forth by Mrs. Frothingham, an individual plaintiff. She sued to enjoin the execution of an appropriation of Federal funds for grants to the States for maternal benefits. The Court held that under existing laws, applicable to a plaintiff seeking equitable relief in the form of an injunction, she failed to make a case in her complaint.

"In the only portion of the opinion which is not obiter dicta, the Court said, at page 487, that a taxpayer's interest in the moneys of the Treasury 'is shared with millions of others; is comparatively minute and indeterminable; the effect upon future taxation * * * is so remote * * * that no basis is afforded for an appeal to the preventive powers of the Court.' " [3]

This is the obstacle sought to be hurdled by S. 2097.

The question was posed by Prof. Paul A. Freund of Harvard Law School, in a statement submitted to the subcommittee, "[I]s the defect in a Federal taxpayer's suit, under the *Frothingham* rule, one of lack of standing in the lesser sense, or is it so fundamental that article III prevents any change in the prevailing Federal rule?" [4] A major purpose of the recent hearings conducted on S. 2097 was to answer that question; for if it were determined that the *Frothingham* decision was grounded on constitutional considerations, this legislation would be legally impermissible. It is unlikely that this bill would be given force and effect by the Supreme Court. Testimony at the hearings and the statements submitted to the subcommittee point out that the *Frothingham* decision was founded on grounds other than purely constitutional ones. Indeed, Professor Freund answered his own question.

"The defect in Federal taxpayers' suits does not rise to the level of an article III infringement * * * the present situation is not beyond repair through provision by Congress for a straightforward Federal taxpayer's suit * * *." [5]

Accordingly, Mr. William J. Butler of the New York Bar and counsel for the petitioner in *Engel* v. *Vitale*, 370 U.S. 421 (1962), stated:

"Of all the interpretations of *Frothingham* v. *Mellon* that have been offered, it would seem to me that the only one that is still viable is that the Constitution itself does not authorize a taxpayer suit to review the constitutionality of Federal expenditures. However, I suggest that it is certain that Congress has the right, by appropriate legislation, to grant a remedy for violations of the first amendment * * *." [6]

Addressing himself to the question of whether citizens should be allowed to sue to challenge the constitutionality of Federal expenditures under the first amendment, Prof. Leo Pfeffer said, "I think the initial question should be 'why not?' The burden of proof, it seems to me, would be upon those who assert that there should be no such right." [7] Professor Pfeffer went further. In reference to the *Frothingham* case, he said:

"It was decided in 1923 at the time when judicial attacks upon social welfare legislation, child labor laws, maximum hour laws, minimum wage laws, and so on, were frequent. The Court, while it invalidated a number of these laws, sought to exercise some degree of judicial restraint. And one of the means it applied for the exercise of this judicial restraint was to assert that a taxpayer, suing to invalidate such a law, must show that he has suffered some special damage or injury not shared by the common public or by all taxpayers. This was a decision based upon judicial discretion, upon the Court's interpretation of judicial policy. It was not based upon any constitutional limitation on the Court's power to act * * *". [8]

It has been suggested by various constitutional authorities, particularly Professors Jaffe and Kenneth Culp Davis, that the Supreme Court would even now hear a taxpayer's suit challenging a Federal appropriation which, in the words of the *Frothingham* case, is a "matter which admits of the exercise of the judicial power." And, in his statement submitted to the subcommittee, Professor Jaffe added, "But we know from *Everson* [9] that the questions which would be adjudicated under the proposed statute, are matters which admit of the exercise of the judicial power." [10] In such cases, the Court may still refuse to take jurisdiction of such a suit not for constitutional reasons but on grounds of public policy. In his testimony before the subcommittee, Professor Jaffe stated, however, that if "Congress mandates jurisdiction the Court may well be prepared to accept the congressional action as a definitive expression of a policy favoring the assumption of jurisdiction." [11]

It is important to remember that the constitutionality of none of the acts enumerated in section 1 has been ascertained by the Supreme Court of the United States nor has there been an attempt to challenge them in any judicial proceeding. Furthermore, Prof. Leo Pfeffer pointed out in his testimony before the subcommittee that judicial review is available for every aspect of the Bill of Rights except the establishment clause of the first amendment. He stated: " * * * ironically, even though the first amendment says 'Congress shall make no law respecting the establishment of religion,' and does not say 'no State shall make a law respecting the establishment,' the Court accepted jurisdiction of a suit against a State law alleged to violate that provision of the first amendment." [12]

In reference to the desirability of filling the procedural gap between the first amendment's guarantees regarding the freedom of religion and the enjoyment of that freedom, Professor Pfeffer noted that—

"* * * James Madison, when defending the Bill of Rights specifically stated that he expected that the courts would make themselves the special guardian of the Bill of Rights, which in fact they have done. They have done it except for this technical obstacle in establishment cases involving Federal expenditures. * * * And James Madison * * * did have that foresight and that intelligence to realize that the Bill of Rights without judicial enforcement would be what he called a parchment barrier." [13]

Interpretation of the religion clauses of the first amendment has remained fairly constant throughout its existence. This is apparent, at least, from an observation of the decisions of the Supreme Court and more particularly of the Court's repeated references to history as they are called upon to interpret and apply the first amendment. In spite of the precautionary rule adhered to by the Court, that no act of legislation will be declared void unless the act is unconstitutional beyond all reasonable doubt, recently, presumptions of invalidity have appeared to prevail against statutes alleged to interfere with the freedom of religion. This freedom has been said to occupy a preferred position in the Constitution.[14]

In this regard, Professor Pfeffer explained:

"* * * Of all the guarantees of the Bill of Rights none is more important, according to the thinking and decisions of the U.S. Supreme Court, than the first amendment. It was no accident that the Bill of Rights started with the first amendment, nor that the first amendment started with the words, "Congress shall make no law respecting an establishment of religion." This, as the Supreme Court pointed out recently, was put first in the Bill of Rights because it was first in the minds of the Constitutional Fathers." [15]

There have been times in the history of the United States that the Supreme Court has declared that certain issues brought before it

[1] "Constitutionality of Federal Aid to Education in its Various Aspects," S. Doc. No. 29, 87th Cong., 1st sess., p. 27.

[2] Jaffe, Louis L., "Judicial Control of Administrative Action," pp. 459–460 (1965).

[3] Hearings, 1966.

[4] Id.

[5] Freund, hearings, 1966.

[6] Hearings, 1966.

[7] Id.

[8] Id.

[9] *Everson* v. *Board of Education*, 330 U.S. 1 (1947).

[10] Hearings, 1966.

[11] Id.

[12] Id.

[13] Id.

[14] See the opinion of Mr. Justice Reed in *Kovacs* v. *Cooper*, 336 U.S. 77, 88 (1949).

[15] Hearings, 1966.

were of a political nature and that it would not enter this "political thicket." The Department of Health, Education, and Welfare, through its representative spokesman, suggested that since the President and the Congress have decided that the legislation to be subjected to review by this bill is constitutional, there was no need nor desirability of having the judicial branch of the Government lend its approval or disapproval to the question. The subcommittee submits, however, that the case of *Marbury* v. *Madison*, 1 Cr. 137 (1803), is still good law and applicable to the problem now confronting the Congress. In S. 2097, Congress has not abdicated its responsibility for determining the constitutionality of its actions to the Supreme Court. To the contrary, it carefully deliberated upon the constitutional issues posed by the acts enumerated in section I of the bill. But, "the controversy over them is not stilled." [16] As Professor Freund submitted:

"The authority of government to aid religious groups is an area of dispute that does not lend itself to political settlement. In fact, it was precisely to keep religious differences out of the arena of politics that the first amendment was adopted." [17]

The initial sponsor of this legislation, Senator WAYNE MORSE, declared in his testimony before the subcommittee "I think we will greatly strengthen our whole system of three coordinate and coequal branches of government if we provide in a broad bill a jurisdictional basis for judicial review." [18] The bill recognizes that the final power to adjudicate controveries arising under the Constitution rests in the courts rather than the Congress.

ANALYSIS OF PROVISIONS OF AMENDED S. 2097

Title

Section I states the title of the bill as:

"A bill to provide effective procedures for the enforcement of the establishment and free exercise clauses of the first amendment to the Constitution of the United States."

Acts subject to review under S. 2097

The following is an outline of the existing laws which may be affected by this act:

These nine acts include, by application, church-related institutions among their beneficiaries. The extent of this inclusion is not, according to Department officials, accurately definable. In some cases the acts have not been in operation long enough to make a determination but the legislative history portends broad utilization of such institutions in these new Federal education programs.

The Higher Education Facilities Act of 1963

The Higher Education Facilities Act of 1963 (Public Law 88–204), approved December 16, 1963, authorized—

(1) Federal matching grants for construction, rehabilitation, or improvement of undergraduate academic facilities;

(2) Federal matching grants for the establishment of improvement of graduate schools or of cooperative graduate centers created by two or more higher education institutions; and

(3) Loans to higher education institutions for construction, rehabilitation, or improvement of academic facilities. Funds for this program for fiscal year 1965 are as follows: Undergraduate academic facilities, $230 million; Graduate facilities, $60 million; Loans to higher education institutions, $169 million.

Amendments to this act are noted below under the section entitled "Higher Education Act of 1965".

[16] See Freund, hearings, 1966.
[17] Hearings, 1966.
[18] Id.

Title VII of the Public Health Service Act

The purpose of part A of this act is to assist in the construction of facilities for the conduct of research in the sciences relating to health by providing grants-in-aid on a matching basis to public and nonprofit institutions.

It also established a National Advisory Council on Health Research Facilities.

There is authorization for the appropriation for fiscal year ending June 30, 1957, and a maximum of $50 million for each of the 9 succeeding years and for fiscal 1967 and the 2 succeeding fiscal years, an aggregate of not to exceed $280 million, for making grants in aid for the construction of facilities for research or research and related purposes, in the sciences related to health.

Part B, added by Public Law 88–129, provides for grants for the construction of teaching facilities for medical, dental, and other related personnel.

Part C authorizes the Secretary of Health, Education, and Welfare to enter into an agreement for the establishment and operation of a student loan fund with any public or other nonprofit school of medicine, osteopathy, dentistry, or optometry which is located in a State and is accredited as provided under this act.

Part D was added by section 101 of Public Law 88–164 and is discussed in another section of this outline.

Part E was added by Public Law 89–290 which authorizes to be appropriated $20 million for fiscal year ending June 30, 1966, $40 million for fiscal year ending June 30, 1967, $60 million for fiscal year ending June 30, 1968, and $80 million for fiscal year ending June 30, 1969, for grants under this part to assist schools of medicine, dentistry, osteopathy, optometry, and podiatry and to improve the quality of other educational programs.

Part F was also added by Public Law 89–290. Under this part the Surgeon General is directed to make grants to each public or other nonprofit school of medicine, osteopathy, dentistry, optometry, podiatry, or pharmacy which is accredited under this act for scholarships to be awarded annually by such school to students thereof.

The National Defense Education Act of 1958

This act authorizes the following Federal programs to encourage and assist in the expansion and improvement of certain aspects of education to meet critical national needs:

(1) Federal participation in college and university student loan funds;

(2) Grants to States and loans to nonprofit private schools for purchase of laboratory and other special equipment and improvement of State services to strengthen elementary and secondary school instruction in science, mathematics, modern foreign languages, history, civics, geography, English, or reading;

(3) Fellowships for graduate study;

(4) Grants to States to strengthen guidance counseling and testing in secondary schools;

(5) Modern foreign language institutes;

(6) Research and experimentation in more effective use of modern communications media for educational purposes;

(7) Grants to States for development of area vocational educational programs; and

(8) Grants to States to improve statistical service of State educational agencies.

For fiscal year 1966, $412,608,000 were appropriated.

The Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963

This act, Public Law 88–164, approved October 31, 1963, authorizes the following: (1) project grants for the construction of mental retardation research centers; (2) project grants for the mentally retarded for construction of clinical facilities to be associated with a college or university; (3) formula grants for the construction of community facilities for the care of the mentally retarded; and (4) formula grants for the construction of public and private nonprofit community mental health centers for the mentally ill.

Public Law 89–105 was enacted to assist in meeting the cost of the establishment and initial operation of community health centers and provides grants to pay part of the cost of professional and technical personnel serving in these centers.

The total appropriation for this act for fiscal year 1966 is $98 million.

Title II of the Act of September 30, 1960, Public Law 874, 81st Congress

Title II of the act of September 30, 1950 (Public Law 874) is a portion of the Elementary and Secondary Education Act of 1965 and is discussed generally in the next section.

The Elementary and Secondary Education Act of 1965

Title I

The main thrust of this legislation is a 3-year program of Federal grants to the States for allocation to school districts to improve the education of children in families with incomes below $2,000 and other children and families receiving aid to families with dependent children. The grants are to be used to encourage and support the establishment of special programs including the construction of school facilities. Under this title $1.06 billion is authorized for fiscal year 1966.

Title II

A 5-year program of grants is authorized with $100 million provided for the first year, to provide school library resources and other instructional materials, including textbooks. These materials are available in private schools and public schools.

Title III

A 5-year program of grants with $100 million authorized for the first year is provided to establish supplementary educational centers and provide other education services not now available to public schools or private schools.

Title IV

Title IV amends Cooperative Research Act and is discussed in the next section.

Title V

This title established a 5-year grant program with $25 million earmarked for the first year to stimulate and assist States in strengthening State educational agencies and their role in identifying and meeting educational needs.

Title VI

Under this title Federal control of educational programs, curriculum administration, personnel, or selection of textbooks or other teaching tools is prohibited. In addition title VI specifies that no payments under the act may be used for religious worship or instruction.

The Cooperative Research Act

This act, Public Law 83–531, was amended by Public Law 89–10 and was expanded to broaden Federal support of research and development programs aimed at improving the quality of education.

Under this act the Commissioner of Education is authorized to make grants to universities and colleges and other public or private agencies, institutions, and organizations and to individuals, for research, surveys, and demonstrations in the field of education for the dissemination of information derived from educational research. Availability for these research funds was extended by Public

Law 89–10 to private nonuniversity research organizations and professional associations.

A total of $100 million over a 5-year period has been budgeted for construction grants and $22.5 million for expanded research activities in the first year of operation.

The Higher Education Act of 1965 (Public Law 89–329)

Title I

This title provides for grants to strengthen resources of colleges and universities to aid them in providing community service programs, such as continuing education, consultants, seminars, and research designed to assist in the solution of community problems. Funds are authorized over 5 fiscal years, 1966–70—$25 million for 1966, $50 million each for 1967 and 1968, and such sums as may be appropriated for the next 2 years.

Title II

Aid to college and university libraries through grants for books and supplies, training of personnel, and research and demonstration projects are provided for under this title—$70 million is authorized to be appropriated in fiscal 1966.

Title III

Title III provides for grants to upgrade academic standards of developing colleges through faculty and student exchanges, visiting scholars, and joint use of facilities as well as a national teaching fellowship program. The act authorizes $55 million to be appropriated for fiscal 1966 under this title. In the last session of the 89th Congress, $5 million was appropriated.

Title IV

This title of the act creates new student assistance programs, including scholarships, a subsidized low-interest insured loan program, expanding the work study program, and improvements in the NDEA loan program. The 89th Congress appropriated $110 million for title IV for fiscal 1966, $60 million for scholarship grants, $10 million for Federal loan insurance, and $40 million for strengthening the work study programs.

Title V

Commonly referred to as "Improved teacher preparation programs," this title creates a National Teachers Corps, graduate fellowships to train elementary and secondary teachers, and grants to improve college undergraduate and graduate teacher training programs. The 89th Congress appropriated $20 million for fellowship programs in fiscal 1966, but no funds for the National Teachers Corps.

Title VI

Title VI authorized a 5-year grant program to improve undergraduate instruction by providing funds for teaching equipment, including closed-circuit television, and for minor remodeling of facilities—$35 million is authorized for fiscal 1966, $50 million for 1967, and $60 million for 1968. Also authorized for the purchase of TV equipment and for minor remodeling are $2.5 million in fiscal 1966 and $10 million anually in 1967 and 1968.

Title VII

This title amends the Higher Education Facilities Act of 1963 with a doubling of funds authorized for 1966 for construction grants. Although authorization for the expansion of the higher education facilities program is authorized under this title, the 89th Congress did not approve additional funds for this purpose. It did appropriate $520 million for grants under the Higher Education Facilities Act.

Economic Opportunity Act—Public Law 88–452 as Amended by Public Law 89–253

The following is a summary of the relevant portions of this act.

Title I establishes residential conservation camps and training centers in rural and urban areas to provide work experience and training for disadvantaged young men and women ages 16 through 21. Provisions are also made for the development of programs in local communities to provide employment and training for young men and women ages 16 through 21 who live at home: $412.5 million were appropriated for fiscal year ending June 30, 1965; $700 million for fiscal year ending June 30, 1966; and such sums as Congress may appropriate for the succeeding 2 fiscal years.

Title II authorizes general community action programs and adult basic education programs. Both public and private resources are to be mobilized to combat poverty through community action programs. Grants may be made to meet the costs of developing programs, for technical assistance, for research, training and demonstration, and for special programs aimed at the chronically unemployed poor.

Under this title grants to States may be made for the purpose of initiating basic education programs for those 18 years of age and over whose inability to read and write seriously impairs their ability to get or retain employment.

For fiscal year ending June 30, 1965, $340 million are appropriated for this title; $850 million are appropriated for fiscal year ending June 30, 1966.

Title III established special programs to combat poverty in rural areas, including assistance for migrant and seasonally employed agricultural employees, and authorizes loans with 15 years maximum maturity in amounts not exceeding $2,500 to low-income families: $35 million are appropriated for fiscal year ending June 30, 1965, and $55 million for fiscal year ending June 30, 1966, are appropriated under this title.

The Office of Economic Opportunity has stated that in respect to title II, it has often found that church-related institutions are the most viable resource in a community for perfecting the purposes of this title. In this regard Mr. Sargent Shriver stated:

"Three or four years ago it was practically impossible for a Federal agency to give a direct grant to a religious group. Today we have given hundreds without violating the principle of separation of church and state."

Testimony elicited from agency representatives indicates that approximately 6 percent of the community action programs are operated or coordinated by church-affiliated organizations.

All these acts pose the problem of the extent to which the first amendment proscribes church-state interaction. Recent Supreme Court cases have engendered serious doubts as to the constitutionality of the type of public assistance which is offered by these acts to denominational institutions. Furthermore, witnesses asserted that any distinction between limited and general aid would be specious. Likewise, to achieve direct aid, which is undoubtedly unconstitutional, by categorizing the funds or justifying such allocations in the interest of national defense or public welfare may also be fallacious.

In reference to the constitutionality of certain acts affected by this legislation and of his efforts to have them enacted by the Senate, Senator WAYNE MORSE made the following statement in his testimony before the subcommittee:

"* * * I could not speak with finality, no one could, until the court rules. I do not think that as Senators we ought to be put in a position where we have to move in legislatively by the back door. That is the way I described it.

"I said to the Senate, 'I am asking for this through the back door because I cannot walk through the front door for a general Federal aid-to-education bill, because I feel existing court decisions bar my entrance there.'

"So what did we do? Let us be frank about it. It is not a very nice term but it is a frank and accurate description of some of our legislation, to say we used what amounts to a subterfuge approach on this constitutional question. We had no other choice. We used the national defense education approach, we used the contract approach, we used the categorical approach. Why did we use those approaches? Because we were afraid, let us be frank about it, that we could have been beaten on the constitutional argument on a general aid bill." [19]

The basic purpose for this legislation can be seen in section 1. It is a twofold purpose. Primarily, the bill is designed to provide a feasible and practical test of the constitutionality of acts of Congress. As noted later in this report, all sections of the Constitution may be, and generally have been, tested or enforced by the courts with one exception—the establishment clause of the first amendment. Thus, we see a second reason for S. 2097—the enumerated acts in section 1 of the bill.

This bill is couched in terms of "the provisions relating to religion" although it is the establishment clause of the first amendment which is the particular right to be enforced. It is understood, however, that both the establishment clause and the free exercise clause can be read together. In fact, it is the free exercise of religion that is ultimately sought to be protected by a proscription against establishment. This interpretation of the first amendment has been endorsed on numerous occasions by the Supreme Court. Mr. Justice Goldberg, concurring in *Abington School District* v. *Schempp*, 374 U.S. 203, 305 (1963), said:

"These two proscriptions are to be read together, and in light of the single end which they are designed to serve. The basic purpose of the religion clause of the first amendment is to promote and assure the fullest possible scope of religious liberty and tolerance for all and to nurture the conditions which secure the best hope of attainment of that end."

The distinction is recognized here because the infringement on religious liberty in general occurs, if at all, by virtue of the fact that the Federal Government may be approaching through various acts the "establishment of religion" which is proscribed in the establishment clause of the first amendment.

The establishment clause is not confined to the protection of particular religious exercises. As Mr. Justice Douglas stated in the *Abington* case, at page 229:

"[I]t also forbids the State to employ its facilities or funds in a way that gives any church, or all churches, greater strength in our society than it would have by relying on its members alone."

The scope of this bill is focused more readily on the establishment clause for two additional reasons. All of the legislation enumerated in this section involves education in some way and *"the most effective way to establish any institution is to finance it; and this truth is reflected in the appeals by church groups for public funds to finance their religious schools."* [20] [Emphasis added.]

Mr. Justice Douglas continued—

"But the institution is an inseparable whole, a living organism, which is strengthened in proselytizing when it is strengthened in any department by contributions from other than its own members.

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[19] Hearings, 1966.

[20] *Abington School District* v. *Schempp* at 229, concurring opinion of Justice Douglas citing II Stokes, *Church and State in the U.S.* (1950).

"Such contributions may not be made by the State even in a minor degree without violating the establishment clause * * *. What may not be done directly may not be done indirectly lest the establishment clause become a mockery."

The *Abington* case is particularly helpful in an understanding of the constitutional significance of S. 2097. It explains another reason for placing this legislation in the framework of the establishment clause. In footnote 9 in the opinion of the court, Mr. Justice Clark explains "*[B]ut the requirements for standing to challenge State action under the establishment clause, unlike those relating to the free exercise clause do not include proof that particular religious freedoms are infringed.*" [Emphasis added.]

Publication of the order of the Federal officer approving or disapproving a grant or loan under any of the acts enumerated in this section shall be a condition precedent to the effectuation of such order. Furthermore, this publication will constitute official notice to any party or parties wishing to challenge such order as violative of the establishment clause of the first amendment to the Constitution and the limitation on the bringing of an action shall commence on the date of such publication.

Section 2 of the bill is an authorization granting standing to "any public or other nonprofit agency or institution which is or may be prejudiced by the order of the Federal officer making a loan or grant under the authority of any of the Acts enumerated in section 1." Prejudice occurs to the complaining party when the making of such grant or loan serves to reduce the amount of funds available in a given year for a grant or loan under any of these acts to such complaining agency or institution and when such grant or loan is deemed inconsistent with the establishment clause of the first amendment. The complaining party may bring an action for declaratory judgment within 60 days after the publication of the order of the Federal officer in the Federal Register. The defendants will be the Federal officer and the agency or institution whose application has been approved.

It is understood that no potential beneficiary of Federal appropriations has a constitutional right to receive financial benefits from the Federal Government. Nevertheless, a potential nondenominational beneficiary has an interest in these appropriations because but for the allegedly unconstitutional aid to church-related institutions the plaintiff institution would have received Federal aid for its own needs. It would, therefore, be prejudiced to such an extent that equitable relief should be made available. Additionally, the injury is "direct" enough to support standing.

Section 3(a) authorizes corporate and individual taxpayers to bring an action for declaratory judgment against the Federal officer making a grant or loan under any of the acts enumerated in section 1. The action shall be based on allegations that such grant or loan is inconsistent with the establishment clause of the first amendment of the Constitution. In order to maintain an action under this section a plaintiff need only show that it has paid any part of such income tax imposed upon its taxable income under section 1 of the Internal Revenue Code of 1954 for the last preceding calendar or taxable year. A 60-day limitation on the bringing of an action is also provided in this section. This subsection also provides that "[N]o additional showing of direct or indirect financial or other injury, actual or prospective, on the part of the plaintiff shall be required for the maintenance of any such action."

The type of action contemplated here is, of course, couched in terms of the first amendment and is essentially different from that in the *Frothingham* case. Professor Freund, in a statement submitted to the subcommittee, states that this action—

"* * * does not rest on a quantitative comparison of the financial stake of various classes of taxpayers. The object of the challenge in that case (*Frothingham* v. *Mellon*) was an expenditure asserted not to fall within the national power to tax and spend for the general welfare but to fall within the realm of State authority." [21]

The following additional statement by Professor Freund is of critical importance to an understanding of this legislation.

"Under this bill, however, the litigation would be brought to vindicate rights secured by the first amendment, a right to be free of a Federal religious establishment, a right closely allied to the right of free exercise of religion and one that traditionally took the form of freedom from enforced contribution to support religious activities. In this view, the quantum of the financial stake is not central to the right; any such use of a citizen's tax payments would constitute the heart of the offense to his autonomy in the religious sphere." [22]

Subsection (b) represents the addition of a new class of plaintiffs under this act, suggested for inclusion by numerous witnesses at the hearings. Here, all citizens are afforded identical relief to that of the taxpayer in subsection (a). The right which is sought to be protected is not one of monetary concern at all but is one of citizenship under the first amendment. The challenge is to an expenditure which allegedly constitutes a forbidden law respecting the establishment of religion. The plaintiff sues not only for himself but also in behalf of all other citizens to vindicate the public interest in the observance of the provisions relating to religion in the first amendment.

William J. Butler, testifying before the subcommittee, asserted that "Congress has the right, duty, and power to provide a procedure whereby citizens of the United States may control the unlawful acts of public officials through the courts * * *. It is his interest as a citizen of the United States that would motivate him to initiate a lawsuit under this act." [23] The actions of the public officials which are challenged as being unlawful under this bill are those which are unlawful only because the acts authorizing their action may be unconstitutional.

Mr. Butler also noted—

"Moreover, over a period of a substantial number of years and in a number of leading cases, apparently because of the importance of the first clause of the first amendment, the U.S. Supreme Court has recognized standing to sue where there is no financial basis at all. Thus, in *Everson, McCollum, Zorach, Engel, Murray,* and *Schempp,* the Court has recognized parenthood of a child in the school affected as sufficient basis for standing to sue. *Everson* v. *Board of Education,* 330 U.S. 1 (1947); *McCollum* v. *Board of Education,* 333 U.S. 203 (1948); *Zorach* v. *Clauson,* 343 U.S. 306 (1952); *Engel* v. *Vitale, supra; School District of Abington Township, Pa.* v. *Schempp,* 374 U.S. 203 (1963)." [24]

Finally, Prof. Louis Jaffe concluded that—

"It seems to me clear that the procedural conditions relevant to case or controversy do not differ in the slightest as between a State and a Federal taxpayer suit. In both cases there is a plaintiff prepared to carry the burden of persuasion and a defendant ready to defend. There is little risk that the Court will not be adequately briefed.

"A citizen or taxpayer sufficiently concerned to bring a lawsuit in which he does not have a monetary concern is for that very reason likely to take seriously the presentation of the lawsuit. The judgment will be definitive; it will determine either that the defendant does or does not have a duty to enforce the law in question. There need be nothing contingent or speculative about the question to be decided and if there is, jurisdiction can be refused on that ground." [25]

Finally, it should be noted that Congress has in the past authorized defined classes of persons to seek review of administrative orders where they qualify as "aggrieved persons." The most common form of relief has been obtained through an injunction or action for declaratory judgment. Typically, Federal courts have recognized standing in consumers, licensees, and television viewers. In *Associated Industries* v. *Ickes,* 134 F. 2d 694 (1943), the Court of Appeals, Second Circuit, held that an association of industrial firms, including consumers, had standing to review an order by the Secretary of the Interior purporting to increase the minimum price of coal. After reviewing a series of cases dealing with standing to challenge official action, Judge Frank declared:

"While Congress can constitutionally authorize no one, in the absence of an actual justiciable controversy, to bring a suit for the judicial determination either of the constitutionality of a statute or the scope of powers conferred by a statute upon Government officers, it can constitutionally authorize one of its own officials, such as the Attorney General to bring a proceeding to prevent another official from acting in violation of his statutory powers; for then an actual controversy exists, and the Attorney General can properly be vested with authority in such a controversy, to vindicate the interest of the public or the Government. Instead of designating the Attorney General, or some public officer, to bring such proceedings, Congress can constitutionally enact a statute conferring on any nonofficial person, or on a designated group of nonofficial persons, authority to bring a suit to prevent action by an officer in violation of his statutory powers; for then, in like manner, there is an actual controversy, and there is nothing constitutionally prohibiting Congress from empowering any person, official or not, to institute a proceeding involving such a controversy, even if the sole purpose is to vindicate the public interest. Such persons, so authorized, are, so to speak, private attorney generals." 135 F. 2d at 704.

Prof. Kenneth Culp Davis in his "Administrative Law Treatise," volume 3, section 22.05, points out that "the basic idea of the private attorney general who can sue to vindicate the public interest is a very old one." The action by citizens under subsection (b) may be brought in behalf of the individual plaintiff and all others in similar circumstances. This principle has never been repudiated by any Federal court and thus affords an additional ground on which a plaintiff may base his claim.

Section 4 authorizes any public or other nonprofit institution or agency to bring a civil action to review the final decision of a Federal officer which denies a loan or grant applied for under any act enumerated in section 1. The denial must have been on the ground that such grant or loan would be inconsistent with the establishment clause of the first amendment to the Constitution. The challenge to such denial must be instituted within 60 days after the order of disapproval appears in the Federal Register.

Section 5 contains the procedural and jurisdictional provisions for the operation of this proposed act. All actions would be brought in the District Court of the United States for the District of Columbia which would have jurisdiction without regard to the amount in controversy. The District of Columbia is the obvious jurisdiction since

[21] Hearings, 1966.
[22] Id.
[23] Id.
[24] Id.
[25] Hearings, 1966.

the defendant in all three types of actions under this act includes the Federal officer issuing the order which is to be challenged, and, with the exception of section 2 actions, the Federal officer is the only defendant.

Much concern was expressed during the course of the hearings over the possibility of increasing the workload of the Federal courts if this bill were enacted in its original form. The amended version of section 5 provides that "in the event two or more civil actions are brought under the provisions of this Act challenging the constitutional validity of the same loan or grant, such court may consolidate such civil actions for the purpose of trial and judgment." It is felt that this addition to section 5 will eliminate many of the objections regarding the multiplicity of suits. Furthermore, since jurisdiction is limited to the District of Columbia, there is a geographical barrier to the prosecution of frivolous suits. It should be noted also that litigation such as that contemplated by this act will be a substantial financial undertaking and must be undertaken within 60 days after publication of the order approving or disapproving the grant or loan.

The provision in section 5 which calls for expediting review and appeal should guarantee speedy and orderly processing of cases under this act.

The remaining portions of subsection (a) of section 5 include the following:

"All process, including subpenas, issued by the district court of the United States for any such district may be served in any other district. In any action under this Act the court shall have authority to determine all matters of fact or law appropriate to a decision of the case. No costs shall be assessed against the United States in any proceeding under this Act. In all litigation under this Act, the Federal officer shall be represented by the Attorney General."

Subsection (b) of section 5 provides "the judgment of the district court shall be subject to review as provided in sections 1252, 1253, 1254, and 1291 of title 28 of the United States Code" which read as follows:

"§ 1252. Direct appeals from decisions invalidating Acts of Congress.

"Any party may appeal to the Supreme Court from an interlocutory or final judgment decree or order of any court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands and any court of record of Puerto Rico, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party.

"A party who has received notice of appeal under this section shall take any subsequent appeal or cross appeal to the Supreme Court. All appeals or cross appeals taken to other courts prior to such notice shall be treated as taken directly to the Supreme Court.

"§ 1253. Direct appeals from decisions of three-judge courts.

"Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

"§ 1254. Courts of appeals; certiorari; appeal; certified questions.

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

"(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

"(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

"(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

"§ 1291. Final decisions of district courts.

"The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

Section 6(a) originally provided that—

"After receipt of notice of the agency or institution of an action under this Act, the Federal officer shall, pending final determination of such action, make no payment on a grant or loan pursuant to the order which is claimed to be invalid in such action."

By far the most vociferous objections to S. 2097 generally were focused on section 6(a). Accordingly, those witnesses agreeing with the purpose of this legislation were also concerned with the impact this section may have on a number of programs administered by the Department of Health, Education, and Welfare and the Office of Economic Opportunity. Indeed, the Department of Health, Education, and Welfare expressed fears that "a major part of the programs Congress has authorized by the acts in question would be brought to a halt. * * *" Another objection expressed by the Department to this legislation was "that it would cast a cloud upon all the programs involved. * * *"

These results were not intended by the sponsors of S. 2097, nor would they be a necessary consequence of its enactment. Nevertheless, section 6(a) has been deleted in its entirety and a new subsection has been inserted in lieu thereof. To avoid interrupting important education and welfare programs already in operation, none of these programs will be subject to attack through the procedures provided by this legislation. Furthermore, a grant or loan once perfected may not be refunded under the provisions of this bill. The intent is to bring under review those orders authorizing a grant or loan under any of the acts enumerated in section 1 which occur after enactment of this bill. To provide otherwise would be to create grave and obvious hardships. Thus, it is anticipated that refunding shall only occur in those instances wherein a specific order, effected by this act, is successfully challenged as being inconsistent with the establishment clause of the first amendment.

A related objection to the bill particularly aimed at section 6(a) concerns the possibility of a multitude of lawsuits which may impede the administration's program for health, education, and welfare. This objection is not, however, supported by the evidence. In the recent case of *Office of Communication of the United Church of Christ* v. *F.C.C.*, 359 F. 2d 994 (C.A. D.C. Cir. 1966), the Court met these fears in the following manner:

"The fears of regulatory agencies that their processes will be inundated by expansion of standing criteria are rarely borne out. Always a restraining factor is the expense of participation in the administrative process, an economic reality which will operate to limit the number of those who will seek participation; legal and related expenses of administrative proceedings are such that even those with large economic interests find the costs burdensome."

The bill is amended, therefore, to insure that no Federal programs will be suspended until a final judgment by the court declaring the particular grant or loan to be unconstitutional. The court, however, may in its discretion, grant an interlocutory injunction enjoining the payment of a grant or loan which is claimed to be invalid in an action under this act.

The amended subsection reads as follows:

"(a) An interlocutory injunction enjoining the payment of a grant or loan, or any portion thereof, made pursuant to the order which is claimed to be invalid in an action under this Act may be granted by the court at any stage of the proceedings authorized by this Act."

It should be remembered that actions arising under this proposed legislation would be heard by a three-judge Federal court: 28 U.S.C. 2282 provides:

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title." [Emphasis added.]

The main thrust of the bill is, of course, section 6 subsection (b) which is left intact in the amended version. Upon a final determination by the court that the order of the Federal officer which is challenged is invalid, the agency or institution receiving the grant or loan shall refund the unexpended portion of the same. In the case of a loan it shall be repaid with accrued interest at the rate fixed therefor. Deferred payment is permitted for a reasonable length of time.

Subsection (c) has been deleted entirely. Any refunding after final judgment would be applied to the current appropriation from which it was paid and may be reallotted in accordance with existing law. Typically, in most of the programs which may be affected by this act there is a standard reallotment provision in each act. An example is section 203(c) in the Economic Opportunity Act of 1964. It reads in part—

"(c) The portion of any State's allotment * * * for a fiscal year which the Director determines will not be required for such fiscal year for carrying out this part shall be available for reallotment from time to time, on such dates during such year as the Director may fix, to other States in proportion to their original allotments for such year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum which the Director estimates such State needs and will be able to use for such year for carrying out this part; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts are not so reduced. Any amount reallotted to a State under this subsection during a year shall be deemed part of its allotment * * *."

Section 7 is a standard separability provision.

The committee feels it is likely there will be only a few and important cases arising under this bill, most of which will be sponsored by organizations representing the views of large numbers of citizens or taxpayers. The committee is also mindful of the statements and attitudes of the Supreme Court in this respect and toward litigation in general.

The Supreme Court in *N.A.A.C.P.* v. *Button* stated as follows:

"* * * under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances * * *. For

such a group, association for litigation may be the most effective form of political association." [26]

Mr. Justice Harlan further elaborated:

"Freedom of expression embraces more than the right of an individual to speak his mind. It includes also his right to join with his fellows in an effort to make that advocacy effective * * * so it must include the right to join together for the purposes of obtaining judicial redress. We have passed the point where litigation is regarded as an evil that must be avoided if some accommodation short of a lawsuit can possibly be worked out. Litigation is often the desirable and orderly way of resolving disputes of broad public significance, and of obtaining vindication of fundamental rights." [27]

This legislation is a partial answer to the demanding question of Justice Douglas:

"What are courts for, if not for removing clouds on title, as well as adjudicating the rights of those against whom the law is aimed, though not immediately applied?" [28]

[Emphasis added.]

The subcommittee conducted extensive hearings on this legislation in this Congress. On July 13, 1966, the subcommittee reported S. 2097 to the full Committee.

The Committee has concluded that this legislation is meritorious, and having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that it be considered favorably.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

That this Act may be cited as "An Act to enforce the first amendment to the Constitution."

Section 1. The approval or disapproval of an application of any public or other nonprofit agency or institution for a loan or grant under—

(1) the Higher Education Facilities Act of 1963,

(2) title VII of the Public Health Service Act,

(3) the National Defense Education Act of 1958,

(4) the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963,

(5) title II of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress),

(6) the Elementary and Secondary Education Act of 1965,

(7) the Cooperative Research Act,

(8) the Higher Education Act of 1965, or

(9) the Economic Opportunity Act of 1964, shall be effected by an order of the Federal officer making such grant or loan which shall be conclusive except as otherwise provided in this Act. Notice of such order shall be published in the Federal Register and shall contain such information as the Federal officer issuing the order deems necessary to effectuate the purposes of this Act.

Sec. 2. Any public or other nonprofit agency or institution which is or may be prejudiced by the order of the Federal officer making a loan or grant under the authority of any of the Acts enumerated in section 1, in a particular year to another such agency or institution, by virtue of the fact that the making of such loan or grant serves to reduce the amount of funds available for loans or grants in such year to the agency or institution which is or may be prejudiced, and which deems a loan or grant to be inconsistent with the provisions relating to religion in the first amendment to the Constitution, may bring a civil action in the nature of an action for a declaratory judgment. Defendants in such action shall be the Federal officer and the agency or institution whose application has been approved. Such an action may be brought no later than sixty days after the publication of the order of the Federal officer in the Federal Register.

Sec. 3. (a) Any citizen of the United States upon whose taxable income there was imposed an income tax under section 1 of the Internal Revenue Code of 1954 for the last preceding calendar or taxable year and who has paid any part of such income tax and who deems a loan or grant made under any of the Acts enumerated in section 1 to be inconsistent with the provisions relating to religion in the first amendment to the Constitution, may bring a civil action in the nature of an action for a declaratory judgment against the Federal officer making such a loan or grant. No additional showing of direct or indirect financial or other injury, actual or prospective, on the part of the plaintiff shall be required for the maintenance of any such action. Such an action may be brought no later than sixty days after the publication of the order of the Federal officer in the Federal Register with respect to such loan or grant. In suing under this subsection, the plaintiff may sue either on behalf of himself or on behalf of all other taxpayers similarly situated.

(b) Any citizen of the United States who deems a loan or grant made under any of the Acts enumerated in section 1 to be inconsistent with the provisions relating to religion in the first amendment to the Constitution may bring a civil action in the nature of an action for a declaratory judgment against the Federal officer making such a loan or grant. Such an action may be brought no later than sixty days after the publication of the order of the Federal officer in the Federal Register with respect to such loan or grant. In suing under this subsection, the plaintiff sues not only for himself but also in behalf of all other citizens to vindicate the public interest in the observance of the provisions of the first amendment relating to religion.

(c) For the purpose of this section the term "citizen" shall include a corporation.

Sec. 4. Any public or other nonprofit institution or agency whose application for a loan or grant under any of the Acts enumerated in section 1 of this Act has been denied by the Federal officer having appropriate authority on the ground that such loan or grant would be inconsistent with the provisions relating to religion in the first amendment to the Constitution may bring an action to review the final decision of such Federal officer within sixty days after such loan or grant has been denied.

Sec. 5. (a) Any action under this Act shall be brought in the District Court of the United States for the District of Columbia, and such court shall have jurisdiction without regard to the amount in controversy. In the event two or more civil actions are brought under the provisions of this Act challenging the constitutional validity of the same loan or grant, such court may consolidate such civil actions for the purpose of trial and judgment. Any action under this Act pending before the district court or court of appeals for hearing, determination, or review shall be heard, determined, or reviewed at the earliest practicable time and shall be expedited in every practicable manner. All process, including subpenas, issued by the district court of the United States for any such district may be served in any other district. In any action under this Act the court shall have authority to determine all matters of fact or law appropriate to a decision of the case. No costs shall be assessed against the United States in any proceeding under this Act. In all litigation under this Act, the Federal officer shall be represented by the Attorney General.

(b) The judgment of the district court shall be subject to review as provided in sections 1252, 1253, 1254, and 1291 of title 28 of the United States code.

Sec. 6. (a) An interlocutory injunction enjoining the payment of a grant or loan, or any portion thereof, made pursuant to the order which is claimed to be invalid in an action under this Act may be granted by the court at any stage of the proceedings authorized by this Act.

(b) When and if any judgment becomes final that declares invalid an order of the Federal officer under this Act, the agency or institution receiving the grant made by the Federal officer pursuant to such order shall refund the unexpended portion of the same, and if a loan has been made pursuant to such order it shall be refunded with accrued interest at the rate fixed therefor, for credit to the appropriation from which it was paid. The Fedeal officer may in his discretion permit deferment for a reasonable time of repayment of the grant or loan including interest thereon.

Sec. 7. If any provision of any Act referred to in the first section, or the application of such provision to any person or circumstance, shall be held invalid under this Act, the remainder of such Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Amend the title so as to read: "A bill to provide effective procedures for the enforcement of the establishment and free exercise clauses of the first amendment to the Constitution."

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

Mr. JAVITS. Mr. President, I oppose the pending bill, and I shall state the reasons for my opposition. I do not know to what extent there is opposition elsewhere in the Senate. However, it would appear that the opposition is not too great, and I can understand why.

First, I shall state the grounds for my opposition. I oppose this measure because it comes at a time when it is unnecessary in order to accomplish its purpose; and, in addition, when the proliferation of suits which would result from enacting it would inhibit activities which could otherwise reasonably be tested, thereby unnecessarily encumbering those activities and the institutions that carry them on. Those are the bases for my opposition.

The proposed legislation has a very long history. Such proposals have recurred almost continuously as Congress has enacted new Federal programs which have involved Federal aid to some form of church-related institution. Throughout my speech, when I use the word "church," it is intended to include all religious institutions—Catholic, Protestant, and Jewish.

Mr. President, such efforts were most signally marked when we moved into the field of Federal aid to education, because that is where it was really a hot issue as to whether we should give Federal aid—in any form, for any reason—to the tremendous network of parochial school

[26] *N.A.A.C.P.* v. *Button*, 371 U.S. 415, pp. 430, 331, 337 (1963).

[27] Ibid 371 U.S. 452.

[28] *Public Affairs Associates, Inc.* v. *Rickover*, 369 U.S. 111, 116 (1966). See testimony of Franklin C. Salisbury, hearings, 1966.

children—again Catholic, Protestant, and Jewish—throughout the country, who in many areas constitute a major part of the school population. In the city of New York, for example, about one-third of the elementary and secondary school population attends some form of church-related school of the categories I have mentioned, or private school; and most of the schools involved are church related.

So this became a real issue, Mr. President; and the reason that it involved enormous opposition is that this bill as first presented had very serious adverse effects upon all these programs. It called for an automatic stay on the suit of any taxpayer, whether that person had a direct interest because he was trying to obtain a grant which would be diminished if there were more participants than would be the case if the grants related only to public institutions, or was merely a taxpayer, individual or corporate, who decided that he wished to challenge the giving of the grant on the ground that it contributed to an establishment of religion.

Certainly to have stayed every grant in that way—which was the original proposition put forward by the author of the bill—would have been most unjust and very damaging to all the programs; and there was great opposition at the time. Understandably there was no scarcity of opposition under such circumstances, and the proposed bill never got anywhere.

So the author of the bill gradually whittled it down until it is before the Senate today in a relatively innocuous form, but a form which nonetheless will result in a tremendous proliferation of litigation. Though the litigation, essentially, must be filed in the District of Columbia, it may be filed as against any and every grant made by the Federal Government under the enumerated acts the only limitation being that it costs a little something to start a suit—although that does not seem to inhibit many people from starting suits. It is an absolutely wide open invitation for a proliferation of this type of litigation. As stated at page 16 of the report:

> Section 3(a) authorizes corporate and individual taxpayers to bring an action for declaratory judgment against the Federal officer making a grant or loan under any of the acts enumerated in section 1.

Those, again, are the nine acts to which the Senator from North Carolina [Mr. ERVIN] properly referred, and include the broadest and most importantly financed—aside from the highway program—Federal programs which could involve institutions which have some church relation: higher education; certain aspects of health research; the National Defense Education Act—including the student loan and other provisions; the Mental Retardation and Community Health Centers Act; the Elementary and Secondary Education Act—a landmark act on the part of the United States; the Cooperative Research Act; the Higher Education Act; and the antipoverty program, with its enormous range of grants to all kinds of institutions, large and small, all over the country—many of them so small that the mere institution of a suit, dealing with some modest grant from the Antipoverty Administration, would be a calamity to the particular institution.

So, Mr. President, the first question that we must answer is whether the enactment of the bill would untowardly proliferate litigation. In my opinion, that question must clearly be answered in the affirmative. It would involve an enormous number of suits, many of them of a strictly harassing character. Any taxpayer, no matter who he may be, without the remotest interest except that peripheral interest that he pays taxes to the United States, could start litigation in the District of Columbia to test any one of these grants or loans.

The second point, Mr. President, which to me is critically important, is whether such legislation is necessary. Often we have to endure necessary things. It is like the experience of the Senators from the South, who often have complained about such activity in connection with civil rights legislation. We have always answered that in the aid of the higher justice, such things have to be endured. If it is necessary, so be it.

But in my judgment, Mr. President, it is not necessary in this case, for this reason: The courts have now made it clear that suits from State courts have a hard, fast track to the U.S. Supreme Court, where the constitutionality may be tested. The Supreme Court does not necessarily have to take the case, but denial of certiorari is in itself an indication of the court's attitude as to the validity of a particular case.

Only last month, the Maryland Court of Appeals decided the case of the Horace Mann League against Board of Public Works of Maryland, holding that a State program of grants to church-related colleges was violative of the Federal Constitution. Attorneys for the defendants have advised my office that they will file a petition for certiorari with the Supreme Court next month.

In all probability, the Court will, at its next term, have an opportunity to decide the entire first amendment question. In addition, undoubtedly if the Court refuses to grant certiorari in the Horace Mann case, it may want to explore this question on some other occasion, again on appeal from a State court.

I point out that there was no problem in getting the so-called prayer cases before the Supreme Court. They were cases which came from the State courts. The Horace Mann League against Board of Public Works case is an indication of another area into which the Federal courts can reach in order to develop the question of constitutionality.

In my judgment, the balance of convenience or the balance of public interest weighs in favor of not having the proliferation of suits which the proposed statute, if it becomes law, will engender on the question of whether to extend this right even more broadly than it is now available, as against the fact that the Supreme Court has been able to reach major decisions in the cases involving these questions largely on appeals from State courts, and it seems to be in a position to continue to do so.

A provision in section 2 of the bill states that any public or nonprofit agency or institution which is or may be prejudiced by the order of the Federal officer making the loan or grant under authority of any of the acts enumerated in the section has the right to sue. That is perfectly sound. If an amount which an institution might otherwise receive is reduced by virtue of the fact that some other unconstitutional loan or grant is being made, the damaged institution has the status to sue. However, it is my strong view that it has the status to sue now, certainly in cases coming from the State courts, where the status to sue is premised exactly on this provision.

This bill would make possible an open-sesame field day to take advantage of every amendment to sue, to harass, and to disturb programs which, if there is any serious problem about their constitutionality, will be tested generically in that regard on appeal from State courts, courts which have not had any major problem in reaching these cases and testing these issues on account of the disqualifications of the parties to the suit.

For these reasons, and because I consider the bill unnecessary and only a way of bedeviling all these programs in a kind of an open season for shooting at them, I oppose the measure and shall vote against it, whatever the ultimate vote may be.

Mr. ERVIN. Mr. President, I wish I could claim credit for all of the provisions of the bill, because I think it is a most meritorious bill and it is a bill which would give the taxpayers the right of enforcing one of the most precious civil rights that taxpayers have.

As the late Justice Robert H. Jackson noted in his dissenting opinion in the Everson case, every American taxpayer has a constitutional right not to be taxed for a violation of the first amendment to the Constitution.

Certainly the taxpayers have a peculiar interest in not being taxed for the support of the propagation of any religious doctrine which they disbelieve.

Thomas Jefferson said that laws of that kind were both sinful and tyrannical. This bill gives taxpayers the right to bring a suit not for a nefarious purpose, but for the sacred purpose of determining whether a particular grant or loan violates the first amendment to the Constitution of the United States.

The bill recognizes every citizen's right to be interested in the observance of constitutional principles. The bill takes that into account and provides that a citizen may sue in behalf of himself or other citizens to vindicate the observance of the first amendment to the Constitution.

Finally, it authorizes applicants for grants and loans to bring similar suits under the provisions of the act.

I wish I could claim credit for all of the provisions of the bill, but the bill was drawn by the able and distinguished senior Senator from Oregon [Mr. MORSE], who has undoubtedly done more for the cause of education and has in-

duced Congress to pass more laws to promote the cause of education than has any other Senator.

As the distinguished senior Senator from Oregon will recall, when my amendment was originally proposed, to provide a judicial review of grants and loans under the Higher Education Facilities Act, he took the position that we ought to have independent legislation in this area. He suggested that it ought not be incorporated in that act. He also advanced the additional reason that it ought not be incorporated in that act because it might jeopardize the passage of that act.

At that time, the Senator from Oregon said he would support independent legislation. The bill which is presently before the Senate is essentially his bill.

I have cosponsored this bill along with Senators CLARK, YARBOROUGH, SMATHERS, COOPER, and FONG. Some of the present sponsors voted against my original amendment because they shared the views of the distinguished Senator from Oregon that there should be general legislation on the subject rather than legislation which was restricted to granting judicial review in respect to only a single piece of legislation.

I take issue with my good friend, the Senator from New York, in his position that the passage of this bill would provoke many vexacious lawsuits. Lawsuits cost a great deal of money. Lawyers do not work for nothing. In addition to legal fees, other expenses are involved in procuring evidence and producing witnesses at the trial.

The substitute bill would make it impossible for many vexatious suits concerning a single grant or loan to occur. It provides that all suits must be brought in the District Court of the District of Columbia, and that when two or more suits are brought to contest the constitutionality, under the first amendment, of a particular grant or loan, those suits may be consolidated by the court for the purpose of trial.

The bill does not work a grave hardship on beneficiaries of a Federal loan or a grant. This is true because there is no automatic denial of the loan or grant. Even though suit is brought, the loan or grant can be made and will be made, unless, in the exercise of its discretion, the court in which a suit contesting its validity is brought issues an interlocutory injunction.

The bill protects those institutions which procure a grant or loan and expend that grant or loan, or portions of that grant or loan, before an adjudication is made that it is unconstitutional. It provides that they would only be liable to refund the unexpended portion of a grant. Of course, they are already obligated to repay loans. The bill provides that the loans shall be repaid according to the original contract. The Federal agency administering the Federal grant or loan program is also authorized to extend the time for the repayment of the unexpended portion of the grant or for the unpaid portion of the loan.

The Senator from New York has said that the passage of the bill is not necessary because many States have laws which allow taxpayers of the States to contest the validity of their State laws, not only under the State constitution but also under the first amendment to the U.S. Constitution. That is true. Most State courts accept this jurisdiction, but the Federal courts do not.

The Maryland cases involved the question of the validity of certain acts of the Legislature of Maryland, but an adjudication of the validity of the laws of Maryland under the first amendment will not settle our problems. The Maryland cases will not settle the question whether the nine acts enumerated in this bill violate the first amendment to the Constitution of the United States. If the Maryland cases are reviewed by the Supreme Court of the United States the most the Court could decide is that grants or loans to three church-related institutions of learning in the State of Maryland are violative of the first amendment. It would not settle the question of the validity of acts of Congress.

The States have seen fit to grant to their citizens and to their taxpayers the right to contest the validity of State laws, either under their constitutions or under the Constitution of the United States. Why should not Congress be equally as considerate of the citizens and taxpayers of the United States?

The bill is necessary to make certain that the Federal courts shall have jurisdiction to determine the constitutionality, under the first amendment, of specific grants or loans made under acts of Congress, not under acts of State legislatures. For this reason, it should be passed.

Certainly, a body, all of whose Members have taken an oath or made a solemn affirmation to support the Constitution of the United States, ought to support congressional legislation which does nothing whatever except to enable the country to determine by judicial review whether the acts of the body, of which they are a constituent part, are in compliance with or in violation of the first amendment to the Constitution.

I stated earlier that the bill is supported by many institutions of a religious nature and many institutions of an educational character. For example, among the supporters of the proposed legislation, whose representatives appeared before the subcommittee at the hearings, are the following: The Unitarian Universalist Association, Americans United for Separation of Church and State, Seventh Day Adventists, American Jewish Committee, Council of Chief State School Officers, Union of American Hebrew Congregations, National School Boards Association, National Association of Evangelicals, American Civil Liberties Union, American Association of University Professors, Anti-Defamation League of B'nai B'rith, Association of State Colleges and Universities, American Jewish Congress, Central Conference of American Rabbis, National Council of Jewish Women, Jewish Labor Committee, Jewish Rabbinical Assembly, Jewish War Veterans of the U.S.A., United Synagogues of America, and many others.

This is necessary legislation. It is reasonable legislation. Its only object and its only purpose is to enable Congress to legislate in constitutional light rather than in constitutional darkness. I urge its adoption by the Senate.

Mr. JAVITS. Mr. President, I do not wish to be pictured as being violently opposed to the proposed legislation. I have expressed my views, as pointed out before; but, on balance, I thought that my views were against it rather than for it.

I stated before, and I state again, now that my distinguished and beloved friend, the Senator from Oregon, is here, that I believe the bill infinitely improved, and especially in that phase which deals with injunctions, both pendente lite and permanent.

I am still deeply concerned about the two points which I have mentioned—the proliferation of suits and the belief that the bill is unnecessary at this time. The Senator from North Carolina, one of the most distinguished and gifted lawyers in the Senate, says that law suits cost money. It also costs money to defend one. Especially for a voluntary organization with a small grant, this can become pretty harrying.

Second, the Senator points out that the States allow taxpayer suits. I realize that one of the virtues of concentrating all of this litigation in the District of Columbia is to somewhat discourage it, but also it does mean the filing of a suit in a jurisdiction which can be extremely remote from the jurisdiction where the particular parties are located. It has that disadvantage as against the fact that the taxpayers' suits are located in the States, in many cases where there is a local opportunity to deliberate and decide.

As I have said before, and on balance at this time, considering the fact that it has been possible to review so much Federal legislation in the Supreme Court, I do not believe this legislation is needed. Therefore, I shall vote "No."

I do not wish in any way to make the argument against this measure that I made against the original bills.

There the blocking of the operation of these programs was really a serious matter, and I think an important reason why the amendments which were sought to be added to the education bills and other bills, were opposed so strongly and not accepted by the Senate.

Whatever may be the form of the vote, and I shall not seek a rollcall vote because I do not see any great support in the Senate for this position, I shall vote "no."

Mr. ERVIN. Mr. President, I agree with my good friend from New York. The original amendment which was proposed by myself as an amendment to the Higher Education Facilities Act was rather drastic in nature. The drastic provisions have been removed from the present bill.

The bill expressly provides that in all litigation under this act the Federal officer shall be represented by the Attorney General. The defendant in all of the suits is the Federal officer authorizing the loan or grant. To be sure, there

may be individuals or institutions who have an interest in the matter and retain counsel to present their point of view to the court at the trial. However, the Federal officer would be well represented by the Attorney General of the United States, who has about as vast a legal organization as can be found.

Mr. HART. Mr. President, as is not a rarity here, I find myself in something of a dilemma as the bill reaches the point of a yea-and-nay vote.

I have supported and shall continue to support the broadest possible application of Federal support for education programs, health programs, and welfare programs of the type and character enumerated in section 1 of the bill.

I shall do so in the conviction that the national strength is advanced. When we say we support these programs to the broadest extent possible, we are saying we support Federal assistance to the extent that the Constitution permits.

I would find great difficulty in taking a position which would make it difficult for a determination to be made where that constitutional reach stops.

Many of us here recall vividly the intensity of the debate in connection with the primary and secondary education bill and the key factor that was played in achieving an affirmative vote on that bill, by at least the tacit understanding that we would resolve the problem of how to test the constitutionality of the bill by separate action. This afternoon we find ourselves presented with the question as to how we shall enable the constitutional test to be made.

If I could be persuaded that the bill was not necessary in order that this test be had, I would support the position of the Senator from New York [Mr. JAVITS], because I think it an undesirable practice to encourage or suggest that there is a good reason and a proper role for Congress periodically to hang on explicit authorization to taxpayers to test Federal appropriations.

It is not only the first amendment issue with which taxpayers and concerned members of the public find difficulty in connection with having a day in court.

If this practice is adopted, sooner or later we shall find a serious proposal being made in connection with the military appropriation bill; namely, that we should have hung on a device to enable somebody to test the constitutionality of a war.

There has been grave concern in the Senate about an unconstitutional war. Is a taxpayer to be less concerned about an unconstitutional war than about a grant of $7 million to assist a religiously affiliated hospital?

It is this kind of precedent that I would not like to see the Senate adopt. And yet, I am not speaking strongly against the bill, any more than is the Senator from New York [Mr. JAVITS]. I am speaking less strongly than the Senator from New York because I am less persuaded about the test which I desire to see applied to each of these programs; not how far we may go and where we shall stop constitutionally.

I am as much concerned about that as any other Senator. I am not thoroughly convinced that in this enabling legislation—if that is the way to describe it—there will be such an opportunity. I say that only in extraordinary circumstances should we open the gates of the country to a test by any and all taxpayers as to the constitutionality of a Federal appropriation.

I say again that many people would argue and have fear about appropriating money to support an unconstitutional war. I am not one of them.

Mr. ERVIN. Mr. President, will the Senator yield so that I may reply?

Mr. HART. I yield.

Mr. ERVIN. As I construe the bill, the only contest that can be raised under it would be whether a grant or a loan is unconstitutional under the provisions of the first amendment. The bill does not undertake to authorize a challenge to an appropriation on the ground that it is unconstitutional, even under the first amendment. Rather, it authorizes challenges to an order of a particular Federal officer. It is directed only to specific grants or specific loans, and cases contesting these must be brought in a period not exceeding 60 days after the Federal officer administering the grant or loan gives notice of his intention to make it.

So far as the armed services are concerned, the only possible challenge would be to an allotment of funds to pay the salary of the chaplain. I do not believe that would be an infringement on the Constitution. There is nothing compulsory about a soldier going to the chaplain. I would not think that it would be unconstitutional under the first amendment because instead of establishing religion, it permits the free exercise of religion.

Mr. HART. I thank the Senator from North Carolina, and I read the bill as he has described it. The point I make is that if Congress responds to the proposition that a taxpayer should be permitted to challenge an appropriation on a first amendment issue, how can we resist the pressures down the road to provide a means to challenge any other appropriation or any other matter of constitutionality, such as, Are we constitutionally at war in Vietnam? Probably many people are more jumpy about that question than about a $50,000 grant to the Salvation Army.

Mr. ERVIN. If the Senator from Michigan will permit me to volunteer some information in response to his question, I would say that one of the most learned men to appear before the subcommittee was Prof. Leo Pfeffer. As I recall, he stated that judicial review is available to a citizen or taxpayer for every aspect of the Bill of Rights except the establishment clause of the first amendment.

Mr. HART. Since I do not share the concern I have heard voiced on the floor of the Senate that we are in an unconstitutional war, it becomes a question whether I can do more than just make a speech about it, but I would be curious to hear from some of those who have this concern as to whether all they could do is to make a speech or go to court.

Mr. JAVITS. Mr. President, will the Senator from Michigan yield?

Mr. HART. I yield.

Mr. JAVITS. The Senator has put his finger very ably on the basic point which troubles me, and that is the lack of selectivity in the bill. Of course, the Frothingham decision, which is the basic decision in this whole field of law, was based on the question of interest: What interest did the individual have in the suit? It was held that the taxpayer's interest was not adequate, because if that were allowed, it would result in litigation for every conceivable aspect of the operations of the Government, including defense appropriations.

The Senator from North Carolina [Mr. ERVIN] and the Senator from Oregon [Mr. MORSE] have realized this. They have confined the operation of the bill to nine specific acts. However, I am still opposed to the bill because I think it opens up opportunities for suits too broadly for the needs of the situation. That is what it comes to. If we had a frame of reference in which we had a hotly contested piece of legislation, we probably would try to amend it or cut it down. But really it is not that critical, and there is not that much opposition. Therefore, I have decided that the best thing to do is to vote "nay" on the whole thing as representing my reservations.

But the distinguished Senator from Michigan certainly has put his finger on the basic point; that is, that when we act in this manner we always have to worry about opening up a vast number of units. We are initiating something which has not happened before—a taxpayer's suit to test constitutionality Naturally, we confine it to the first amendment, as indicated. We confine it to a list of measures which are clear to all of us.

But it would be impossible to argue that it could not be used as precedent by those who would seek the right, as a taxpayer, to test every other form of activity or appropriation of government by the same set of standards: Is it constitutional? So why should not I, as a taxpayer, have the right to challenge it?

If the Senate passes the bill, as it undoubtedly will, it may very well have to pass the next one, if 18, 23, or 42 other acts are involved. I suppose it is a perfectly valid argument. But to say that we do not open the door to that situation is, in my judgment, not so. We do. We would be recognizing the right of the taxpayer, which has heretofore not been a right under Supreme Court decisions, to proceed against a particular piece of Federal legislation which does not directly affect him—except the fact that he is a taxpayer—in order to test its constitutionality under any aspect of the Constitution. We may confine the jurisdiction to the courts of the District of Columbia, but we are certainly opening a door which has never been opened before.

Mr. ERVIN. Let me allay the fears of my good friend the Senator from New York. I think the most knowledgeable

man in the United States in this field is a practicing lawyer and a law professor of New York State, Leo Pfeffer. In his testimony before the committee, he stated:

James Madison, when defending the Bill of Rights specifically stated that he expected that the courts would make themselves the special guardian of the Bill of Rights, which in fact they have done. They have done it except for this technical obstacle in establishment cases involving Federal expenditures. * * * And James Madison * * * did have the foresight and that intelligence to realize that the Bill of Rights without judicial enforcement would be what he called a parchment barrier.

As I have already stated, every other provision in the Bill of Rights is protected except for what Professor Pfeffer calls a "technical obstacle" in establishment cases involving Federal expenditures.

Mr. HART. I realize that the bill is restricted to nine authorization and appropriation bills or, in a sense, to nine programs. It aims to give a taxpayer his day in court on the first amendment. Leo Pfeffer, I am sure, has examined the laws and is correct in saying what he told the subcommittee headed by the Senator from North Carolina: that this is the only instance in which a right under the Bill of Rights cannot be tested by an individual's action.

There are other provisions in the Constitution from which we derive rights, and I am not at all sure that each can be tested by a taxpayer. I refer to the question of the legitimacy of the constitutionality of our action in Asia. That is not a first amendment issue, but it is much more sensitive to many people than the first amendment is, whether it should or should not be is some other question. We bandy the business of no wrong without a right. If we provide an act to safeguard the rights involved in the nine programs enumerated in the bill, my caution is that we shall be setting Congress in a direction which will make it very difficult, in the months and years ahead, to resist the argument in some other field that a certain action is improper under the Constitution, and that I should be allowed to seek relief in court, whether the action relates to an authorization to pay an army engaged in an action which we believe to be unconstitutionally undertaken, or to an aspect of eminent domain.

It is for this reason that, with the Senator from New York, in the Judiciary Committee I reserved a right to speak a word of caution, as I do now. With the Senator from New York, I do not feel so deeply about it that I feel an obligation to go beyond this. I do not go as far as does the Senator from New York, because I am not as confident as he that there are means currently available to test the constitutionality of the nine acts enacted. Because I supported these acts and participated directly in the primary school act, in which there was a clear understanding that we would respond to this question in separate legislation, I do not urge my colleagues to join me in voting "nay," but it is for those reasons that I shall do so.

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 and reading of the bill.

Mr. MORSE. Mr. President, I want to make a few comments on another subject. I do not think what I shall have to say before the third reading of the bill will cause any amendment to be offered. However, I think before we proceed to a third reading, I should make a brief statement.

THE AIRLINES STRIKE

Mr. MORSE. Mr. President, I ask unanimous consent to have inserted in the RECORD at this point an editorial from the New York Times of today, entitled "Buckpassing on Strikes," with which I find myself in general agreement.

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

[From the New York Times, July 29, 1966]

BUCKPASSING ON STRIKES

While the strike that has kept 60 per cent of the country's airliners on the ground goes into its fourth week, Congress and the White House are up in the air about who should accept responsibility for ending the break in the nation's transportation lifeline.

The Senate Labor Committee has rightly tossed into the wastebasket the Administration's recommendation that it scrap plans for an immediate back-to-work law. But, in defiance of its own logic, the committee has now tentatively decided to urge Congress to pass the responsibility for an actual no-strike order back to President Johnson. Under its plan, the President would be given authority to impose three new cooling-off periods, each sixty days long, during which negotiators for the airlines and the machinists' union would make fresh tries for an agreement.

The committee's approach, initiated by Republican Senators JAVITS of New York and GRIFFIN of Michigan, makes sense only as a device for embarrassing the President. In that sense, it is perfectly consistent with the kind of politics the White House itself has been playing out of subservience to its allies in organized labor. But the needs of the country for prompt restoration of air travel will be better met by adoption of a compulsory arbitration law or of Senator MORSE's proposal for a 180-day strike ban ordered by Congress itself.

Mr. MORSE. Mr. President, I also ask unanimous consent to have printed at this point in the RECORD an editorial from the Washington Post, entitled "Struggle Behind the Strike," with which I find myself in complete agreement.

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

[From the Washington (D.C.) Post, July 29, 1966]

STRUGGLE BEHIND THE STRIKE

As Congress wrestles with the airline strike, a fourth dimension has come into clearer focus. Senator MORSE, author of the most hopeful congressional maneuver to end the walkout, told his colleagues that "there is practically no hope of a settlement unless that settlement goes far beyond inflationary bounds." Secretary Wirtz had previously indicated that the underlying collision is between the union's demand for higher pay and the Administration's stabilization policy.

Here are the Secretary's precise words to the Senate Labor Committee:

"President Johnson has insisted publicly, and the Government mediators have urged publicly and privately, that this case be settled within the framework of the recommendation of the Presidential Emergency Board."

The five struck airlines agreed not only to the emergency board's $76 million proposal; they also offered to go above the Administration's "guidelines" with an $81 million settlement. The union clings to its inflationary demand for a 53-cents-an-hour increase and other benefits, and P. L. Seimiller of the striking machinists repeatedly told the Labor Committee that his union would not accept any settlement within the Administration's stabilization guidelines.

The walkout assumes the posture, therefore, of a revolt against a White House policy. In effect the country is suffering an acute dislocation of its air transportation (Mr. Wirtz estimated that 150,000 passengers a day are grounded) because the union is continuing a struggle that the Government will not permit it to win.

This situation gives a strange twist to Secretary Wirtz's plea that the freedom of the union to strike be left unimpaired. The freedom to strike readily becomes an empty shell if the chance of winning the strike has in fact been denied. And the hardships that have been imposed on the public become especially indefensible if they are the result of an exercise in futility.

Contrary to Mr. Wirtz's view, this would seem to be a point at which Congress ought to be intervening. It can properly halt the strike and put another presidential emergency board to work trying to devise a noninflationary settlement that will satisfy the parties. If no such formula is to be found, it is far better to keep essential public services operating, with wages and working conditions that a presidential board deems to be fair, than to allow the present disruptions to continue or to force a settlement on the union by "woodshed" methods. It appears from the action of the Senate Labor Committee yesterday that Congress is determined to act on the problem.

Mr. MORSE. Mr. President, I also ask unanimous consent to have printed in the RECORD at this point an editorial from today's Washington Star entitled "Strike Law Still Needed." Likewise, in connection with this editorial, as well as the editorials published in the New York Times and Washington Post, I find myself in agreement with the major thesis of the editorial.

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

[From the Washington (D.C.) Star, July 29, 1966]

STRIKE LAW STILL NEEDED

The President's long-delayed decision to move in on the costly and inexcusable airline strike probably means that a settlement soon will be forthcoming. For it is unlikely that Mr. Johnson would have taken this action unless he had reason to believe it would produce the desired result.

Presumably the striking machinists union would prefer an agreement engineered by the President to one imposed under legislation, which certainly will be enacted if the strike goes on indefinitely. This, at least, was true when the President intervened in the threatened railroad strike in 1964 and last year's impending steel strike.

In our view, however, this is not the right way to deal with labor disputes which cut

deeply across the public interest. When the President puts his prestige and the prestige of his office on the line in a labor dispute, the pressure for a settlement is apt to be effective. It remains to be seen whether in this instance a presidentially-sponsored settlement will blow the administration's guidelines out of the water. An emergency board headed by Senator MORSE has recommended a settlement which would cost the airlines about $76 million, and this has been sweetened a bit by the carriers. Even if an agreement should stay within this framework, however, the President ought not to be in the strike-settling business.

A dispute of this kind, or any strike which has a significant adverse effect on the public interest, should be settled through machinery provided by statute, assuming that the ordinary processes of collective bargaining break down. Senator MORSE has said, and he is right, that in this airline strike "Congress has a clear duty to act, not to ask somebody else to act." It is our belief that Congress eventually will have to measure up to its responsibilities. For an outraged public will not tolerate indefinitely such tactics as those employed by the machinists union, tactics which Labor Secretary Wirtz says make a "farce" of collective bargaining.

Furthermore, when legislative relief eventually comes it ought to be designed to bring about lasting and, if necessary, compulsory settlements. The legislation pending in the Senate is of the stopgap variety. If passed, it probably would serve to bring a settlement of this one strike. But for the long haul it simply is not good enough. The people of this country have every right to expect from their national legislature action which in this day and age will put an end to the public-be-damned attitude, whether it crops up on the labor or management side of the bargaining table.

Mr. MORSE. The Labor Committee has recessed until 2:30 this afternoon to give full opportunity to members to perfect a resolution which they substituted yesterday for the Morse-Javits resolution. We did this so that, if the committee decides to send any resolution to the floor of the Senate—and I hope none will be sent—the resolution will be in perfected form, and reports will be prepared, so it can be taken up on the floor immediately.

As I said yesterday, if that resolution comes to the floor, I shall move to substitute my resolution for it. I believe it is a better resolution, just as the proponents of the other feel that is a better one.

What I am encouraged about, and why I am so pleased to make a report at this time, is that last evening a break occurred in the stalemate between the parties to this dispute. Conscientious collective bargaining took place again, and the parties, far into the night—in fact, into the early hours of the morning—were doing what they could to work out a compromise of their differences that would be workable.

I hope they do. I do not know specifically what agreements they have reached on any particular issues, but I know that for the first time, they are trying to work out agreements.

Mr. President, that is collective bargaining. That is mediation. That is the way labor disputes should be settled. It is much better than by way of legislation.

I was in conference with leaders of Government in the wee hours of the morning. I repeat what I have said heretofore. There has never been a time during the course of this strike that the President has not been carrying out his executive duties with respect to it. He has not carried out his executive duties in accordance with what some of my colleagues would want him to do, but not one of them is President of the United States. May I say, kindly and respectfully, not one of them knows the many ways in which the President has worked to end the dispute. So how can they make suggestions as to what the President should do when they do not know what they are talking about? But that has characterized much of the discussion on the part of people, and the press also, as to what the President should have done in this dispute.

The President has been involved in the dispute since August 9, 1965. It has been raging and waging for practically a year. The President followed his statutory responsibilities, including his appointment of an Emergency Board to make recommendations, which the Board did, which he publicly approved, and the President said the dispute should be settled within the framework of that report.

That does not mean literally. The Railway Labor Act provides that the report of an emergency board is subject to negotiation within 30 days if the parties want to mediate and negotiate with respect to it.

I am not going to repeat the statements I made as to what happened to the Emergency Board report, which, in my judgment, led to no real collective-bargaining negotiations with respect to it until late yesterday afternoon and last night. But that is behind us.

Reports in the press and the CONGRESSIONAL RECORD disclose that the head of the AFL–CIO and the senior Senator from Oregon have not been exchanging compliments in the last few days. I stand on everything I said in regard to my reply to the head of the AFL–CIO, Mr. Meany, for it was Mr. Meany who issued the press statement the other day which called for my reply. I stand on my reply. There is no doubt that I am not one of the most favored people of the head of the AFL–CIO. That is all right with me. It can remain that way as long as Mr. Meany wants it to remain that way. On the other hand, I am not going to cease to be appreciative or fail to be fair in my comments even about one who does not like me.

One of the reasons why there is great promise of settlement of the dispute is that Mr. Meany has exercised in the last few hours that industrial statesmanship of which he is capable of exercising. I happen to know that Mr. Meany, the head of the AFL–CIO, as he should have, has been doing what he can to try to bring the parties to a fair settlement of the dispute.

I want to express my appreciation of that. I am sure all will appreciate it. However, I want Mr. Meany to know that if there is a breakdown in the negotiations, and the American public continues to be denied essential transportation service in many sections of the country, which the Railway Labor Act is designed to prevent, the senior Senator from Oregon will continue to press for legislation which, by legislative mandate, will bring the strike to an end, and put these men back to work with a full guarantee that they will receive fair wages. Those wages will be retroactive to January 1, 1966, as my resolution proposed.

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

Mr. MORSE. Yes; I yield.

Mr. JAVITS. Mr. President, I have sat in these deliberations—not always too happily. I am the ranking minority member of the Committee on Labor and Public Welfare. However, I should like to testify now before the Senate that notwithstanding any feeling the Senator has about what the committee did or is doing, and his very deep convictions as to the strength of his own position—many of which I share—if this thing is settled, no matter how it is settled, whether it is settled because the men go back to work through a statute, or whether they settle it, as they may, and as we all pray that they will, by negotiation, the Senator from Oregon will have been one of the major architects of that settlement. He does not have to say yea or nay to that. I say it, and I say it before rather than after the event has taken place.

Mr. MORSE. The Senator from New York is very kind, but I do say nay, because I shall not have been an architect to its settlement. I am hopeful that the Emergency Board report will prove, in the long run, to be helpful to the parties. But the President of the United States, the Secretary of Labor, Mr. Wirtz, and the Assistant Secretary of Labor, Mr. Reynolds—who have lived with this matter in very close quarters for a long time—and the Labor Department, together with the National Mediation Board, which has assigned one of its members, Mr. Gamser, to help in the mediation in this case, have done much more at the mediation level. They are the ones who, I think, have put up the arrow directors on the roadway to a settlement of this dispute. They have pointed the way to a fair mediation settlement.

But be that as it may, Mr. President, the only thing I wish to say this afternoon is that I want the Senate and the country to know that I shall continue to press for legislation the moment there is any evidence submitted to me that there is any breakdown in the progress that is now taking place in the direction of a mediated settlement of the case.

That is why I moved that the committee recess until 2:30 this afternoon, after the members of the committee who are supporting a resolution to which I am unalterably opposed have had time to perfect the language of their amendment, so that they can get it in printed form and have time, over the weekend, to prepare their reports in support of their proposal.

Mr. President, I am hopeful that by Monday the case will be settled by medi-

ation. If it is settled that way, it really will save time when compared with the time that would be consumed in the passage of legislation. It is very important to obtain a settlement, so that the union can get the terms of the settlement to its membership for approval. We have been assured that that will not take any such period of time as was suggested at one point in our Emergency Board hearings, but that an expeditious method for speeding up the ratification of a settlement has been developed by the union. I have reason to believe that they could obtain a final answer from the union, at the local level, within 24 to 36 hours. That appears to be one of the realities of confirmation and ratification of labor settlements.

But I wish to say, Mr. President, that every word of criticism that I have uttered, on the floor of the Senate and elsewhere, in connection with the failure of the union to keep its men at work, and not impose this great loss upon the American public, I repeat by reference here and now.

On the other hand, I do wish to express my appreciation for the turn of events, and to say to the Senate that I hope my optimism proves to be justified.

My final point is that this Congress has the duty to pass permanent legislation on emergency dispute problems before it goes home.

NEED FOR GENERAL LEGISLATION

I have already cited examples of the cases that are waiting in the wings to be settled, involving major industries in this country. We are in a state of national crisis. We are at war. Although it is an undeclared war, and although I do not think we ought to be in it, we are in it. If in World War II it was important that we have procedures for the settlement of labor disputes, so that strikes and lockouts could not occur in those industries affecting the public interests, we need it now also, for we are at war. American boys are not dying in Europe, as they were in World War II, but they are dying in Asia. We here at home, sitting in our security and comfort—yes, in our luxury—had better recognize the fact that though we are not in the jungles of South Vietnam spilling our blood, we have a duty to those boys we have over there to adopt legislation for the emergency settlement of disputes that can threaten our economy. Otherwise, we must expect the inflation ceiling to be pierced, the dollar cheapened, and great hardship worked upon the greatest security weapon those boys and all of us here at home have—the security weapon of a sound dollar. Destroy that soundness, and I do not care what they receive in a labor dispute settlement; if the dollars they receive are cheap dollars, then labor is deceiving itself if it thinks that kind of a settlement is in the longtime best interests of labor. Immediately, it is not in the best interests of the American people.

I shall press, at an early date following the settlement of this dispute, for permanent legislation dealing with emergency settlement of labor disputes. There are others who have already introduced such legislation. Since I opposed the emergency dispute provisions of Taft-Hartley in 1947, I got out that debate the other night and re-read what I said at that time. I would not change a word of it, because the predictions I made in those speeches in opposition to the emergency dispute section of Taft-Hartley have proven true over and over again.

I said in that debate:

It will not accomplish its objective. It is not workable as far as really guaranteeing to the American people that the public interests will be protected in a true national emergency dispute.

I shall offer some time next week a modification—though not in any basic principle—of the legislation I have offered from time to time in the intervening years. I have always described it as "keep the parties in the dark" legislation. We must have legislation so worded that neither side to a labor dispute can sit down and figure out if it would be to their advantage to have the procedures provided for in the law run their course. Both sides must be kept in doubt as to whether it would be to their advantage or disadvantage. That would be a greater inducement to collective bargaining, so that we would be less likely to get into a national emergency dispute situation by way of a strike or a lockout. If we spell it out so that they know exactly what is going to happen to them, and they think they will lose less than the other side, they will stop their bargaining and let the law run its course.

I shall offer that legislation.

Let me express my commendation to the parties in this dispute for the progress they are presently making. I wish them well and hope that they reach a final settlement not very many hours hence.

Mr. President, I ask unanimous consent that there be printed in the RECORD the testimony that I gave as a witness before the Committee on Labor and Public Welfare yesterday morning in support of my resolution. In it I discussed certain questions that my colleagues on the committee directed to me, and also pointed out what the Emergency Dispute Board did in respect to certain issues that were of great concern to the Committee on Labor and Public Welfare.

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

EXECUTIVE SESSION, THURSDAY, JULY 28, 1966, U.S. SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

The committee met in executive session at 10:15 a.m., pursuant to call, in room 4232, Senate Office Building, Senator LISTER HILL (chairman of the committee) presiding.

Present: Senators HILL, MORSE, CLARK, RANDOLPH, WILLIAMS, PELL, KENNEDY of Massachusetts, NELSON, KENNEDY of New York, JAVITS, PROUTY, DOMINICK, MURPHY, FANNIN, and GRIFFIN.

Committee staff members present: Stewart E. McClure, chief clerk; John S. Forsythe, general counsel; John Bruff, counsel, Subcommittee on Labor; and Stephen Kurzman, minority counsel.

The CHAIRMAN. The committee will go into executive session.

All right, Senator.

Senator MORSE said last night he wanted to elucidate some, I believe.

STATEMENT OF HON. WAYNE MORSE, A U.S. SENATOR FROM THE STATE OF OREGON

Senator MORSE. Mr. Chairman, I will follow whatever procedure the committee wants. My suggestion is that I make a very brief statement and then a couple of points which ought to be placed into the record. Then the committee can ask me whatever questions they care to. That would include Senator CLARK's questions.

Senator CLARK. I am sorry, I didn't hear what the Senator said, Mr. Chairman.

Senator MORSE. My suggestion was that as a witness, I make a brief statement, certain things that I think ought to be raised, and then subject myself to the questions of the committee.

Senator CLARK. Surely.

Senator MORSE. Mr. Chairman, I have with me the transcript of the record that the Emergency Board made. It is eight days of formal hearings. I have the exhibits. I have the Board's analysis, the work book analysis, issue by issue.

I would like permission to insert into the record at this point, so we have it as a matter of record, the report to the President by the Emergency Board No. 166, which is the report that has been under discussion.

The CHAIRMAN. Without objection, it is so ordered.

(The report referred to follows:)

"REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD NO. 166

"(Appointed by Executive Order 11276, dated April 21, 1966, pursuant to section 10 of the Railway Labor Act, as amended, to investigate and report its findings to the President of unadjusted disputes between Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Trans World Airlines, Inc., and United Air Lines, Inc., and certain of their employees represented by the International Association of Machinists, AFL-CIO, a labor organization.)

"(NMB Case No. A-7655)

"Letter of transmittal

"WASHINGTON, D.C., *June 5, 1966.*

"DEAR MR. PRESIDENT: The Emergency Board which you appointed by Executive Order 11276, pursuant to Section 10 of the Railway Labor Act, as amended, has the honor to report herewith.

"You charged this Board to investigate the labor dispute between five major airlines and the International Association of Machinists. We have done so. In the course of our inquiry we held hearings for 8 days to take testimony from these parties. Througout our hearings the conduct of the parties was exemplary. Both Carriers and Union cooperated fully with the Board and with each other to provide us expeditiously an explanation of all issues in dispute. We acknowledge their cooperation gratefully.

"During our hearings and subsequently in executive sessions we had unstinting service from an able staff. We take this opportunity to thank our counsel, John Bruff, and his staff associates, Beatrice Burgoon and Lily Mary David, for their contributions to our work during this period.

"Your charge to us included the requirement that we report our findings to you. These are enclosed. They include our recommendations for a settlement of the dispute, on terms which we believe will serve

the interests of the public and the parties alike.

"Respectfully,

WAYNE MORSE, *Chairman.*
DAVID GINSBURG, *Member.*
RICHARD E. NEUSTADT, *Member.*

"THE PRESIDENT, *The White House.*
"Executive Order No. 11276

"Creating an Emergency Board To Investigate Disputes Between the Carriers Represented by the Five Carriers Negotiating Committee and Certain of Their Employees

"Whereas disputes exist between the air carriers represented by the Five Carriers Negotiating Committee, designated in List A, attached hereto and made a part hereof, and certain of their employees represented by the International Association of Machinists and Aerospace Workers, AFL–CIO, a labor organization; and

"Whereas these disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

"Whereas these disputes, in the judgment of the National Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive the country of essential transportation service:

"Now, therefore, by virtue of the authority vested in me by Section 10 of the Railway Labor Act, as amended (45 U.S.C. 160), I hereby create a board of three members, to be appointed by me, to investigate these disputes. No member of the board shall be pecuniarily or otherwise interested in any organization of airline employees or in any air carrier.

"The board shall report its findings to the President with respect to the disputes within 30 days from the date of this order.

"As provided by Section 10 of the Railway Labor Act, as amended, from this date and for 30 days after the board has made its report to the President, no change, except by agreement, shall be made by the carriers represented by the Five Carriers Negotiating Committee, or by their employees, in the conditions out of which the disputes arose.

LYNDON B. JOHNSON.

"THE WHITE HOUSE, *April 21, 1966.*

"List A:

"Eastern Air Lines, Inc.
"National Airlines, Inc.
"Northwest Airlines, Inc.
"Trans World Airlines, Inc.
"United Air Lines, Inc.

"I. History of the Emergency Board

"This Emergency Board, designated by the National Mediation Board as Emergency Board No. 166, was created by Executive Order 11276 of the President issued April 21, 1966, pursuant to Section 10, or the Railway Labor Act, as amended, to investigate and report its findings of unadjusted disputes between Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Trans World Airlines, Inc., and United Air Lines, Inc., and certain of their employees represented by the International Association of Machinists and Aerospace Workers, AFL–CIO, a labor organization.

"The President appointed the following as members of the Board: WAYNE MORSE, U.S. Senator from Oregon, Chairman; David Ginsburg, an Attorney from Washington, D.C., Member; and Richard E. Neustadt, Professor of Government at Harvard University, Member. The Board met for organizational purposes on April 26, 1966, in Washington, D.C. Public hearings were held for 8 days between May 6 and May 27 at Washington, D.C. During these hearings the parties to the dispute were given full and adequate opportunity to present evidence and argument before the Board. The Board also made itself available for any informal meetings requested by the parties; in the event, none was requested.

"The parties to these proceedings were identified to the Board as follows: The International Association of Machinists and Aerospace Workers by

"P. L. Siemiller, International President
"Joseph W. Ramsey, General Vice President
"Frank Heisler, Airlines Coordinator
"Robert E. Stenzinger, Grand Lodge Representative
"William Schenck, Grand Lodge Representative
"Elton Barstad, General Chairman (Dist. 143)
"John Burch, General Chairman (Dist. 145)
"Julius B. Wilhelm, General Chairman (Dist. 100)
"Fred Spencer, General Chairman (Dist. 142)
"Robert T. Quick, General Chairman (Dist. 141)

"The five Carriers by—

"William J. Curtin, Chairman, Five Carriers' Negotiating Committee, Morgan, Lewis & Bockius
"Charles M. Mason, Sr., Vice President-Personnel, United Air Lines, Inc.
"Paul Berthoud, Manager, Industrial Relations, United Air Lines, Inc.
"J. M. Rosenthal, Vice President-Industrial Relations, National Airlines Inc.
"Robert A. Ebert, Vice-President-Personnel, Northwest Airlines, Inc.
"Ralph H. Skinner, Jr., Vice President-Industrial Relations, Eastern Air Lines, Inc.
"John P. Mead, Staff Vice President-Industrial Relations, Eastern Air Lines, Inc.
"David J. Crombie, Vice-President-Industrial Relations, Trans World Airlines Inc.

"The record of the proceedings consists of 1,968 pages of testimony and exhibits and 9 separate appendices of exhibits primarily relating to local issues. During the proceedings, the Board made it clear to the parties that its report to the President would be based upon the record established by the parties to this dispute.

"Since the creation of the Board, the parties by stipulation, approved by the President, have agreed to extend the time within which the Board must report its findings to the President until June 5, 1966.

"II. Background of the dispute

"The airline carriers in this dispute are 5 of the 11 domestic trunk airlines operating in the United States. They represent over 60 percent of the domestic trunkline industry as measured by passenger miles. The IAM represents 35,399 (March 1966) of their employees involved in this dispute. These employees are primarily employed in mechanic, ramp and store, flight kitchen, dining service, plant protection and related classifications.

"The Carriers and Union entered into an agreement dated August 9, 1965, establishing a procedure for joint negotiation of the dispute between the parties. This agreement provided that each Carrier and the Union should be limited to 15 proposals for changes in the existing agreements between each Carrier and the IAM, and that the following 8 items, which are identical to all Carriers, should be the subject of joint bargaining:

"(a) Rates of pay and progression steps
"(b) Vacation allowance
"(c) Holiday provisions
"(d) Health and welfare (insurance programs)
"(e) Overtime rules
"(f) Pension plans
"(g) Hours of service
"(h) License requirements and premiums

"On October 1, 1965, the Carriers and the Union served upon each other the notices required by their August Agreement and by Section 6 of the Railway Labor Act. The Union chose to submit seven notices for each individual Carrier, and the eight items common to all Carriers. The Carriers served over 70 notices, all on local issues. The parties then entered into individual and joint negotiation on these notices. Negotiations proceeded for 2 months.

"Thereafter, on January 11, 1966, the parties jointly applied to the National Mediation Board for mediation service. The case was docketed by the NMB and referred to Board Member Howard G. Gamser for handling. He began his efforts on February 1, 1966, and continued until March 10. His mediation led to the exchange of proposals and counterproposals, but the parties failed to reach a final agreement.

"On March 18, 1966, the NMB proffered arbitration, which the Carriers accepted and the Union declined. Under the provisions of the Railway Labor Act, the NMB then formally terminated its services. However, on April 14 it made a final effort to mediate the dispute. This effort was unsuccessful and the Union set a strike deadline for 12:01 a.m., local time, April 23, 1966. The NMB then notified the President that in its judgment this dispute threatened to substantially interrupt interstate commerce so as to deprive the country of essential transportation service. The President promptly created this Emergency Board. The Union then withdrew its strike notice.

"The August 9 agreement provided among other things that none of the parties should execute an agreement until all of the parties had reached agreement in final settlement of all issues.

"III. The issues

"The original notices required by Section 6 of the Railway Labor Act and by the August 9 Agreement included eight issues common to the Union and all Carriers. These are called "national issues." The notices also included over 100 other issues, each relating to an individual Carrier. These are called "local issues." None of the eight national issues was resolved by negotiation or mediation. Of the local issues, 40 remained unresolved at the time of our hearings. The Board took testimony and heard cross-examination on all 48 outstanding issues. Each has been subjected by the Board to careful inquiry.

"IV. The national issues: Findings and recommendations

"A. General Wage Rates and Related Issues

"The Union has proposed substantial percentage increases in the rates of pay over a 3-year period beginning January 1, 1966, coupled with the elimination of all but one progression step and the introduction of a cost-of-living adjustment allowance. The Carriers have offered hourly rate increases in three groups of classifications over a 3-year period, have sought to justify all rate progression schedules now in effect and have rejected the concept of a cost-of-living adjustment allowance. In addition, instead of January 1, 1966, the Carriers would delay any pay increases until the pay period next commencing after the date upon which they receive written notice from the Union of the ratification of the new agreement.

"1. Effective date and duration of the contract

"The most recent agreement between these parties was due to expire at midnight on December 31, 1965. During the last 5 months of 1965 the five Carriers and the Union established a procedure for joint negotiations of the disputes between the parties; identified and defined both national and local issues; served on each other the Section 6 notices required by the Railway Labor Act and began individual and joint negotiations. The bargaining progress thus begun continued throughout the first quarter of this year, with the services of the National Mediation Board, and although final agreements were not reached a large number of local issues were disposed of, and the remaining issues were sharpened and in some instances modified.

Since August 1965, therefore, the parties have been seeking to resolve their differences and reach agreement for purposes of a successor contract.

"The Board considers that the maintenance of close contact and communication between Union and Carriers and the utilization in good faith of the procedures of the Railway Labor Act and the services of the National Mediation Board furthers the interests both of the parties and the public and recommends, as in the 1963 settlement, retroactivity to the expiration date of the last settlement.

"The Board must also consider how long the new contract should continue. The parties themselves have suggested a 3-year period. As a consequence of Section 10 of the Railway Labor Act, unless the parties otherwise agree, the provisions of the old agreement will have governed the rights of the parties through the first half of 1966. In these circumstances the Board recommends that the new agreement run prospectively for 3 years from July 1, 1966, so that the agreement will be effective for a period of 42 months, from January 1, 1966, through June 30, 1969.

"2. Safeguarding real wages

"The Union is concerned that increases in the cost-of-living may erode the gains employees have made in real wages and has proposed an escalator clause as its preferred way of safeguarding those gains. The particular clause would provide that quarterly, throughout the term of the agreement, all hourly rates should be increased by 1 cent per hour for each 0.3 increase in the consumer price index (1957–1959 base).

"The Carriers point to a trend away from the use of escalator clauses and oppose them on various grounds ranging from the added difficulties under such clauses of cost calculations to the added dangers of perpetuating a price-wage spiral.

"The Board has given extensive consideration to this question. The trend away from escalator clauses is marked although increases in the cost-of-living have revived interest in them. In our view the danger they present to the economy in this case is real. In the past, moreover, many of these clauses have operated two ways so that when the cost-of-living goes up wages are increased, but when the cost-of-living turns down, wages are reduced. Here the Union has proposed a one-way clause.

"Although we recommend against the use of an escalator clause we believe that the effort of the Union to devise a means to safeguard the economic position of the employees particularly in respect to the protection of their real wages is warranted. We therefore recommend that the Union be given the right to re-open the wage rate provisions of the contract if, by December 1967, the cost-of-living since December 1966 has increased 1 percent or more over the average annual increase in the consumer price index during the 5-year period, 1962 through 1966. The re-opener right would be limited to the basic wage rates of the new agreement.

"The Board wishes to stress that the basic wage re-opener right would be triggered only in case of a sharp or persistent increase in the consumer price index of not less than 1 percent over the average annual increase during the 5-year period from December 1961 through December 1966.

"The procedure to be followed would be simple and completed within a maximum of 6 weeks.

"On February 1, 1968, the Union, if it so decides, would serve on the Carrier its notice of intention to re-open the wage rate issue; the necessary statistical data regarding cost-of-living changes in December 1967 should be available to the Union about January 20. Thereafter, the parties would have 30 days within which to arrive at an agreement. If they cannot agree on wage adjustments the issue would be submitted to final and binding arbitration under procedures determined by the parties themselves. If the parties cannot agree on such procedures the Secretary of Labor shall determine them and, within 1 week after the 30-day period, submit to the parties a list of seven arbitrators from which the Union and the Carriers in joint conference shall each strike alternately two names. The remaining three arbitrators shall then determine the issue and make their award within 2 weeks.

"In arriving at their decision the arbitrators shall consider, as did this Board, the public interest in the maintenance of a stable economy as well as increases in living costs and all other relevant factors including comparative wages, competitive conditions, labor shortages, ability to pay, job content, and overall and specific increases in productivity.

"3. Wage progression schedules

"The Union contends that progression schedules merely provide a means to permit the Carriers to pay less than the job rate; that lengthy progression steps for each classification are unnecessary because very little training is required and no additional responsibilities or duties are assumed at each step in the classification. The Union emphasizes that the number of progression steps has been reduced in past bargaining and that single rates have been achieved in lead classifications but that further reductions are needed.

"The Carriers argue that progression is the standard method of wage payment on domestic trunk carriers and that progression steps have always existed. They say that they are hiring rapidly and that new employees are not fully productive immediately; that training is required for the equipment of each carrier and that the progression scale fairly reflects growth in efficiency during training.

"The Board has examined the wage progression schedules for each Carrier and recommends that the entry rate in each classification be eliminated as of January 1, 1967, and that the rate just before the final rate be eliminated as of January 1, 1968. There is merit in the contention that some on job training is needed, but it is apparent to the Board that in many classifications the number of progression steps is excessive.

"The Board's recommendation is designed to permit a reduction in the number of progression steps in any new contract, returning to the parties for their joint study and determination in future negotiations the more basic question of the means by which the Carriers shall organize and finance on job training.

"4. Wage rates

"Under previous agreements, employees represented by the IAM have been paid hourly rates established under two categories, Groups A and B, which broadly distinguished higher from less skilled classifications. In the most recent contract, the mechanic rate (at the top of regular progression steps) has been $3.52 per hour, and this figure has been used in testimony by both parties to the dispute as the basic rate for discussion purposes.

"The Board follows this practice of the parties, using the mechanic rate illustratively. It is the standard practice in wage cases to use as the frame of reference a key rate, which in this instance is the mechanic rate. We wish to note, however, that the average job rate for all job classifications covered by both groups has been estimated at $3.25. We use the mechanic rate for purposes of clarity, but emphasize that it is not an average for all employees. That average will, in every case, be lower.

"The testimony before us shows that both parties have proposed substantial increases in pay rates for the new contract period.

"The Carriers have offered annual increases in hourly rates for each year of a proposed 3-year contract, the amounts ranging through three rather than two groups of skill classification as follows:

"Group I:	Cents
1st year	12
2d year	12
3d year	12
Group II:	
1st year	8
2d year	8
3d year	8
Group III:	
1st year	7
2d year	7
3d year	7

"For the mechanic rate this offer has the following effect:

"Past	$3.52
1st year	3.64
2d year	3.76
3d year	3.88

"The Union, by contrast, has proposed percentage increases across the board to all skills amounting to 5 percent the first year, 5 percent the second year, and 4 percent the third year. For the mechanic rate this proposal has the following effect:

"Past	$3.52
1st year	3.70
2d year	3.88
3d year	4.04

"The differences between the two proposals are narrow. In reviewing them and the records made before us, we are struck by the fact that neither party accepts the other's view of the appropriate method for reflecting skill differentials in the application of general increases. Thus the Union rejects the three-group classification offered by the Carriers, while the Carriers suggest that a percentage increase applied across-the-board would deepen alleged inequities in present classifications.

"Faced by disagreement between the parties on this point, we have concluded that in equity we should use the last classification scheme on which they have in fact agreed; namely, the two-group classification of earlier contracts, and should recommend for each group a fixed amount of wage increase.

"After careful review of the record before us, considering the evidence submitted on conditions in the national economy and in the air transport industry, on labor market prospects, comparative wage rates, company earnings, productivity increases, trends in the cost of living, and other relevant matters, we conclude that both parties to this dispute, and national policy as well, would be served by a settlement which incorporated the following wage increases in our proposed 42-month contract:

"Group A:	Cents
1st 18 months	18
Next 12 months	15
Last 12 months	15
Group B:	
1st 18 months	14
Next 12 months	10
Last 12 months	10

"For the top mechanic rate this recommendation would have the following effect:

"Past	$3.52
1st 18 months	3.70
Next 12 months	3.85
Last 12 months	4.00

"From the standpoint of the Carriers, the evidence before us suggests that over the life of the contract prospective productivity gains make these wage increases supportable without net addition to costs.

"From the standpoint of the users of the airlines, the evidence before us suggests that over the life of the contract, if company earnings continue at anything like their present rate, these wage increases would be no bar to continued reduction in transportation charges to the public, if other criteria warrant.

"From the standpoint of the employees, the evidence before us suggests that over the life of the contract these wage increases would continue the past trend wage gains made by workers in this industry, and would maintain the competitive position of the industry in bidding for increasingly scarce skills.

"From the standpoint of the general public, the evidence before us suggests that wage increases in the amount we have proposed, combined with the additional fringe benefits we recommend, constitute a genuinely noninflationary settlement of this dispute—a settlement which will contribute to the twin objectives that the President has put before the country: Stability and growth.

"In this industry, as applied to these workers at the present time, the average cost of labor, taking wages and fringes together, is estimated by the best available sources at about $4.50 per hour. When this estimate of present cost is compared with the incremental cost of all our recommendations, the outcome, in our judgment, is distinctly noninflationary. This remains the case even after the wage increases are reflected in fringe benefits accruing once new wage rates take effect.

"Moreover, in our recommendations to the parties for settlement of their outstanding local issues, we at once have proposed elimination of numerous, costly practices and have withheld approval from numerous demands which would create new elements of cost. Thus, our disposition of the local issues buttresses the noninflationary cost of the whole settlement, with results which vary somewhat from carrier to carrier.

"In conclusion, we offer the considered judgment that our proposed terms of settlement, taken together, protect the interest of all parties in this dispute, the Carriers, the Union, and the public.

"B. Vacation Allowances

"Under the most recent contract, the Carriers have provided paid vacations to these employees on the following formula: 2 weeks of vacation after 1 year of employment; 3 weeks after 10 years; and 4 weeks after 20 years. The Union currently seeks a modification of this formula to provide 3 weeks of vacation after 8 years on the job, and 4 weeks after 15 years.

"Weighing this request against the evidence presented to us on prevailing practice elsewhere, we have come to the conclusion that a good case can be made for liberalizing vacation pay accruing to long-service employees. We find that there has been a trend in this direction throughout American industry. While relatively few contracts in this country now provide 4 weeks of vacation after 15 years, the Board thinks that liberalization is justified in an industry which needs stability of service from the skilled men represented by this Union and which requires from the men a special devotion to duty in the interest of the traveling public.

"Accordingly, we recommend 4 weeks of paid vacation after 15 years of service.

"C. Health and Welfare Programs

"In this area the Union proposed that the entire cost of the individual Carrier Health and Welfare plans shall be borne by the Carrier and that all plans shall be liberalized to provide full coverage for employees and dependents. The Union emphasized that Eastern has already assumed the full cost of these programs and that the Union recommendation is supported by the prevailing practice in industry generally.

"The Carriers contended that current benefits under their plans exceed those typical of industry generally but nevertheless offered to make an additional contribution of 3 cents per hour in the second year of the contract against premiums for dependents coverage under presently existing group insurance plans. The Carriers stated that with this addition the average cost to the Carriers of current plans would be 17.4 cents per hour compared with an average employee contribution of 2.6 cents per hour.

"The Board has taken note of these facts and others in the record and recommends against any increase in Carrier contributions at this time. The Union has not proposed and the Carriers have not offered an improved plan or additional benefits. Since the scope and coverage of the plans would remain unchanged an additional Carrier contribution of 3 cents per hour beginning the second year would simply result in an increase in employee compensation by this amount. The Board believes it is in the interests of both parties at this time to deal with increased cash compensation in connection with wage rate adjustments and has done so under paragraph 4 of Section A, above.

"D. Pension Plans

"The pension plan of National Airlines is already noncontributory and the Union requested that the other four Carriers assume the full cost of their plans.

"The Carriers rejected the request emphasizing that although a majority of pension plans in industry generally are noncontributory, they usually provide a lower level of benefits. They point out that the Carriers' plans provide an average earned benefit of $8.68 per month as compared with a median industrial benefit earned of $2.75 per month; and which exceed average earned benefits under noncontributory plans in the automobile industry ($4.25), the aerospace industry ($4.24 to $4.75), and the steel industry ($5).

"Here, as in the case of Health and Welfare benefits, the Board has studied the competing considerations stressed by the parties, but directs attention to the fact that the issue as presented does not relate to employee benefits under the plan but solely to the means of financing them. The Union proposal to transfer the cost of four plans to the Carriers is thus a request for additional compensation equal to the cost of the plan. Since we have already responded to the request for higher wage rates we recommend that this request be withdrawn.

"E. Overtime Rules

"The Union has proposed a sharp upward adjustment of pay for overtime work. Where existing rules call for time-and-a-half, the Union now would substitute double time. Similarly, where double time applies, the Union now proposes triple time.

"The record before us offers no specific reasons for these changes except references to trends in other industries and general allegations of the need for severe penalties to minimize the use of overtime. We find it hard to square the stress on penalties with several of the local issues put before us, where the interest of employees in working overtime was demonstrated. We find it harder still to follow the comparisons with other industries.

"The evidence available to us suggests that in this industry, above most others, overtime work is necessarily an adjunct of regular operations. Variations in weather, equipment changes, enforced delays in service, rescheduling of flights, are common features of airline operations in the present stage of technological development. Overtime work for service employees is an inevitable and frequent result. While we accept the notion that the Carriers, like other employers, should be discouraged from misuse of overtime, we cannot accept the contention that they should be penalized severely for resorting to this means of meeting their undoubted obligation to the public.

"Accordingly we recommend that the overtime proposals by the Union be withdrawn.

"F. Holiday Provisions

"The Union has proposed an increase in the number of holidays from seven to eight, the eighth to be Good Friday. In addition, for work on holidays the Union requests holiday pay plus double time for all hours worked, with a minimum of 8 hours' pay; if more than 8 hours are worked on holidays, the excess is to be paid for at triple time rate.

"The Union introduced several foreign flag carrier agreements to show that they provide for more than eight paid holidays. Northeast Airlines, the railroad companies, and many other major industries already have eight paid holidays.

"The Carriers rejected an eighth holiday and, in particular, rejected Good Friday because on this day there is no significant decrease in airline traffic and in most instances employees would be required to work. The Board notes, in passing, that one of the existing paid holidays, Washington's Birthday, has even less of a decrease in traffic than Good Friday. The Carriers further argue that seven paid holidays is in accord with domestic trunk airline practice.

"The existing contracts require that the Carriers compensate employees who work overtime on holidays at double time rates. The Union position is that employees should not be required to work overtime on holidays and that the double time provision is not a sufficient deterrent to prevent the Carriers from deliberately scheduling such overtime.

"The Carriers reply that there is no scheduled overtime on holidays; that overtime is required only because of scheduling difficulties; that a heavier penalty would only increase airline costs without reducing overtime requirements.

"The record clearly supports the existence of a trend to more liberal holiday provisions; Good Friday is observed as a religious day by many employees; Good Friday is accepted in other agreements as a suitable vacation day. The Board is unable to endorse the Union proposal for penalty holiday overtime first, because this a round-the-clock industry with 24-hour commitments to its customers; second, because this underlies the contract between the parties; and third, because this fact is well known to and accepted by all airline employees.

"The Board recommends that an eighth holiday, Good Friday, be granted by the Carriers and that the Union proposals for penalty holiday overtime be withdrawn.

"G. Hours of Service

"The Union has proposed that the 30-minute meal period now taken without pay as a break in each 8-hour working day, be compensated and treated henceforth as a portion of the hours worked.

"The effect of this proposal would be to reduce the time of each shift from 8½ hours (including an uncompensated half hour) to 8 hours (fully compensated). The further effect would be to eliminate the overlaps between incoming and outgoing shifts which now occur during the last half hour each outgoing shift spends on the job.

"The Union has contended in the hearings that elemination of shift overlaps would aid efficiency. The Carriers disagree. They argue that the overlaps are vital to assure effective personnel transmission of job information, tools, and work directives between shifts. It is the view of the Board that the Carriers' position was the sounder one on this issue.

"Beyond this issue we perceive another which becomes decisive in our view; namely, that a growing and regulated industry, faced by increasing competition for skilled personnel should not be asked to put into effect a shorter workweek. We recommend, therefore, that this proposal by the Union be withdrawn.

"H. License Premiums

"The Union originally proposed that any employee required to have or use—later modified to any "mechanic" and "have and use"—any license issued by the FCC or FAA should receive additional compensation in the amount of 10 cents per hour for each license required.

"This proposal was based primarily upon the alleged additional responsibility of the license holder in releasing aircraft or signing for aircraft work.

"The carriers rejected the Union proposal both because of its cost and because there is little or no additional responsibility for the license holder. The Carriers argued that a mechanic who signs maintenance releases does not vouch for airworthiness; that a mechanic may be fined by the Federal Aviation Agency for personal failures whether or not he holds a license; that no domestic trunk carrier currently pays such a license premium.

"In treating the wage issue this Board provided substantial pay differentials for mechanics and higher classifications; the license holders are all within this group. Since the added exposure to disciplinary action relied on by the Union is neither diminished nor remedied by a pay premium requirement, we recommend that the Union's proposal for license premiums be withdrawn.

"V. Local issues[1]

"A. Eastern Airlines and District 100

"1. Carrier proposals

"(*a*) *Eastern Proposal No. 1*

"The Carrier has proposed a change in the overtime provision, Article 14(c), to provide system overtime to replace local rules. It also proposes to eliminate the present bypass penalty pay provision in the agreement.

"The 1963 collective bargaining agreement between Eastern Airlines and District 100 provided that the parties should meet to agree on system overtime rules. The Carrier contends that since that time agreement in principle has been reached on a series of system overtime rules but the final language has not been settled. The principal point still in contention between the parties is the Carrier's request for elimination of bypass penalty pay.

"The Carrier contends that the current rules foster a great number of grievances; it has introduced evidence that overtime grievances have increased from 8 percent to 26 percent of all grievances between 1960 and 1965. The Carrier urges that system rules be agreed upon to permit standard administration of overtime. It is the Carrier's position that, under the present system, errors are difficult to avoid, particularly in emergency situations, and that the proposed system rules would decrease the likelihood of mistakes and disputes.

"The Union's primary objection is to the elimination of the bypass penalty. The penalty has been in the collective bargaining agreement since 1961. The Union contends that problems arise under it because supervisors fail to offer work to the right man. The Union agrees that there are many grievances on overtime issues but contends that the fault lies with management.

"The record is clear that the existing overtime provision on Eastern Airlines gives rise to an excessive number of grievances. The Board believes that this situation necessarily tends to strain the grievance machinery and constitutes a handicap to good relations between the parties. The Carrier's proposal retains the principal of equalization of overtime and has not had a negative response from the Union except for the matter of bypass pay. The Board notes that bypass penalty pay has been a part of this collective bargaining agreement during the past two contract periods. The Board is reluctant to disturb conditions arrived at through collective bargaining without compelling reasons. The new rules proposed by the Carrier are designed to correct the source of past problems. It is to be expected, therefore, that the number of grievances will be reduced and the number of instances in which bypass penalty pay is required will drop substantially.

"Recommendation: That the system overtime rules proposed by Eastern Airlines be adopted but that the present provision for bypass pay not be disturbed.

"(*b*) *Eastern Proposal No. 2*

"The Company proposes to add a new paragraph to Article 20 of the agreement in order to permit the employment of part-time workers in the classifications of cleaner, ramp-servicemen, and stock clerk. The Carrier argues that fluctuations in peak workloads in the airline industry justify the employment of part-time workers for 3 or 4 hour periods in order to utilize employees effectively. Eastern contends that the jobs of present employees would not be jeopardized because, under its proposal, no employee would be displaced by part-time workers.

"The Union points out that the Eastern Airlines-IAM agreement once provided for part-time employees but, through earlier negotiations, this provision was removed from the contract. The Union argues that, during negotiations, the Carrier offered no proof of a need for workers for 3 or 4 hours a day.

"It is inherent in the transportation industry that accommodation to the needs of the traveling public will result in peaks and valleys of activity at airline stations. The Carrier now has considerable flexibility in scheduling the shifts of its regular employees. The Board believes that the existing flexibility in shift arrangements should be adequate to permit management to resolve its problems within the framework of its regular work force. Moreover, the Board notes that two of the classifications for which the Carrier seeks part-time employees are those for which management testified, on the national issues, that relatively long progression training periods are required.

"Recommendation: The Board recommends that the proposal of the Carrier be withdrawn.

"(*c*) *Eastern Proposal No. 3*

"The Carrier proposes to eliminate the present option in Article 10 which permits an employee scheduled to work on a holiday to elect either to receive double time pay or to receive straight time and add 1 day to his vacation. In addition, the Carrier would require an employee to work the day before and the day after a holiday to be eligible for holiday pay, if he is scheduled to work on those days.

"The present option was made a part of the agreement when Eastern's operations had marked seasonal differences. Now operations are spread more evenly over the year. The existing provision thus causes a problem in vacation scheduling, along with an increasing economic effect. To require that employees work the day before and after a holiday is warranted, according to the Carrier, because these days usually are peak travel days and scheduled employees are needed for efficient operations.

"The Union made no comment on the Carrier's proposal to remove the option of an added vacation day or premium pay for holidays. It argued, however, that requiring employees to work the days before and after a holiday was unnecessary because the Union knew of no abuses of this nature.

"The Board recognizes that conditions may change over a period of years and that such changes may require adjustments in earlier contract provisions. In this case no economic loss to an employee would result from the Carrier's proposal since he would continue to receive premium pay for holidays worked. Moreover, improvement in the vacation provision for long-service employees has been recommended by the Board.

"A provision requiring that all employees who are scheduled to work on the days before and after a holiday must report as scheduled in order to be eligible for holiday pay, is in accord with general industry practice. Further, such a provision is consistent with the needs of this industry in view of the service it must provide on peak travel days. The Board concludes, therefore, that the Carrier's proposal for changes in Article 10 are reasonable.

"Recommendation: That the proposal be adopted.

"(*d*) *Eastern Proposal No. 4*

"The Carrier proposes to eliminate the classification, Ground Communications Technician, which includes about 20 employees. Formerly, Eastern maintained its own radio system to communicate with its pilots in flight, while all of the other carriers were with Arinc, which provided a joint service for them. Since the last negotiations, Eastern has sold its facilities and joined Arinc. The Carrier now wishes to eliminate this classification and restore the 20 employees to the general mechanic category from which they originally came. In the mechanic category, the Carrier indicated, the employees could be better utilized and would gain more employment opportunity.

"It is clear from the record that the work formerly performed by Ground Communication Technicians no longer exists on Eastern. Formerly, these employees were included in the general category of mechanics; their pay rates are the same as those of mechanics. There appears to be no reason to continue to maintain a separate classification for them.

"Recommendation: That the proposal be adopted.

"(*e*) *Eastern Proposal No. 5*

The Carrier proposes that the procedure for bidding shifts and days off be changed to require an employee to submit his written preference 7 calendar days after the supervisor issues the bid sheet. At the present time, both the bidding process and the assignment of shifts are conducted in order of seniority. This slows the bidding process so that a period of 2 or 3 weeks may elapse before assignments can be made. The proposed procedure would mean that all bids would be submitted simultaneously; the shifts would then be assigned according to seniority preference.

"The Union raised no objection to this proposal in the course of the hearing.

"On the basis of the testimony submitted, the Board finds the Carrier proposal reasonable.

"Recommendation: That the proposal be adopted.

"(*f*) *Eastern Proposal No. 6*

"The Carrier proposed to add to Article 24—Sick Leave, the qualification that sick leave provisions will not apply to a day upon which an employee is not scheduled or required to work a regular shift.

"The Carrier points out that all of its employees except those covered by the IAM

[1] For convenience the Board has numbered each of the Carrier and Union proposals consecutively. The substance of each proposal will enable the parties to relate this numbering system to the numbering and lettering system by the parties in the transcript of the hearing.

contract receive pay for sick leave only when they are unable to work on scheduled work days due to sickness or injury. Until an arbitration award in 1963, the IAM sick leave provision was administered in the same manner. As a result of this award the employees under the contract receive sick leave pay even though they would not have worked on the particular day. Thus, according to the Carrier, IAM employees receive this benefit under circumstances in which no other Eastern employees would receive such pay. The purpose of this proposal is to restore uniform administration of sick leave for all of Eastern's employees.

"The Union pointed out that a sick leave provision had been in the contract for many years, but did not question the facts cited by the Carrier with respect to the change in interpretation of the clause since the last negotiations. No reason was shown for an administration of sick leave different for IAM employees from other employees.

"Sick leave pay is provided in labor agreements to protect employees from loss of income when they are unable to work because of sickness or injury. The purpose is to make the employee whole, not to pay him more than he would have earned had he been able to work. This purpose governs practice in industry generally, on other airlines, and for all Eastern employees except those organized by IAM. The Board believes that uniformity in the administration of sick leave pay should be restored at Eastern.

"Recommendation: That the proposal be adopted.

"*(g) Eastern Proposal No. 7*

"The Carrier proposes a modification of the active service provision in Article 20(g) to incorporate current practice into the contract. The Carrier alleged that this proposal is largely a technical adjustment which had not been settled primarily because the same contract article was being held open by the Union on a different issue.

"The Union made no comment on the Carrier proposed change in the active service clause except to express opposition. The Union stood on the language of the present agreement.

"The Board notes that the language provided by the Carrier for a new Article 20(g) is substantially different from the language in the present Article 20(g), as shown by Carrier Exhibit 34. For instance, the proposed language of the Carrier for a new Article 20(g) eliminates the language of the present article referring to "periods of illness or injury not in excess of ninety (90) days" in connection with the definition of active service.

"Recommendation: It is the opinion of the Board that the Carrier failed on the record to sustain its burden of proof on this issue. Therefore, the Board recommends that the proposal be withdrawn.

"*(h) Eastern Proposal No. 8*

"Eastern proposes certain changes in Article 19, System Board of Adjustment, in order to streamline the grievance procedure. The parties have agreed on an expedited procedure using a five-man panel of arbitrators. They have been unable to agree, however, upon a procedure to select the members of the panel.

"Recommendation: That, if the parties have not agreed on the 5 members of the panel by the time the contract is signed, the National Mediation Board be asked to supply a list of 15 arbitrators and to outline a procedure by which the parties will select 5 names from the list.

"2. Union proposals

"*(a) District 100 (Eastern) Proposal No. 1*

"District 100 proposes an amendment to Article 2(B) defining the scope of the agreement. The Union contends that the Carrier has been contracting out work which properly comes under the jurisdiction of its IAM employees and that a change in the scope statement is required to protect the job security of the employees it represents. It points out that in the arbitration of grievances on this issue, arbitrators have held that such contracting out by unilateral company action does not violate the terms of the present scope statement. In support of its position, the Union presented substantial evidence of work currently being performed by employees of other companies.

"The Carrier argues that acceptance of the Union proposal would force major changes in its operations. It would create problems in handling specialized work for which Eastern lacks the facilities; it would require assignment of employees to perform maintenance work at stations where there is insufficient work to justify their full-time employment. Further, the Carrier points out that there is a shortage of skilled employees at the present time and that there has been a steady increase in the employment by Eastern of workers in categories represented by the IAM. The Carrier also cites the fact that it performs a great deal of work on contract for other companies, work which is performed by employees in District 100. The Carrier asserts that greatly increased costs would result from the Union proposal in terms of unneeded capital and unnecessary employees.

"Federal regulation of the Carriers is directed toward the welfare and convenience of the traveling public. In fulfilling that obligation a Carrier sometimes must maintain at least limited service at certain points. At such stations it may be more efficient to utilize some of the services of other Carriers, if there is insufficient work to maintain full-time employees in all categories.

"In the opinion of the Board, the Union proposal in its present form would lead to a decline in the efficiency of operations and would not enhance the job security of IAM-represented employees. Moreover, there is clear evidence that both parties to these proceedings desire to achieve more nearly uniform conditions throughout the industry. They have negotiated in the past toward an equalization of rates of pay. They have agreed to bargain economic issues jointly in this case. The Board desires to support the parties in their efforts in this direction. Evidence has been presented that one of the five Carriers in this proceeding has negotiated a settlement of this issue, with another District of the IAM, which modifies the current contract language to meet the Union's objections. It appears in the interest of both parties generally to confirm the settlement of this issue on Eastern with the agreement reached by National.

"Recommendation: That the parties adopt in principle the settlement between National Airlines and IAM, District 145, modified as necessary to take account of differences under their respective agreements.

"*(b) District 100 (Eastern) Proposal No. 2*

"District 100 proposes that leads in the various classifications shall make all work assignments to the employees assigned to their lead crews. The Union contends that historically assignments have been made by the leads but that Eastern recently changed its procedure so that the planner or foreman makes assignments, bypassing the lead. This practice, in the Union's view, is an infringement on its work jurisdiction.

"The Carrier contends that the Union proposal would prevent any supervisor other than the lead from assigning work and thus would limit the production planning procedures of the Carrier, would require a lead on all assignments including temporary relief, and would interfere with management's right to control assignments. It is the position of the Carrier that the function of the lead to direct performance, not to determine assignments.

"The record does not show any recent decrease in the number of lead jobs or that the function of directing work has changed.

"Evidence presented does show that Eastern has developed production planning procedures through which a planner decides assignments in accordance with the overall needs of production. Clearly it is an exercise of management prerogative to establish the flow of work and to allocate responsibility for its direction. The Union proposal could limit the effectiveness of management planning for efficiency in operations.

"Recommendations: That the proposal be withdrawn.

"*(c) District 100 (Eastern) Proposal No. 3*

"District 100 proposes an amendment to Article 20(G) to provide that an employee will not lose active service benefits as long as there is an employer-employee relationship or the employee remains on the seniority list. By this amendment the Union seeks to restore active service credits that employees lost during the strike of another union in 1962.

"The Carrier points out that the IAM International did not support the strike and that the employees who lost active service credits could have retained them by reporting to work in accordance with the position of the International.

"It is clear from the evidence that the active service credits here involved were lost because the employees participated in an unauthorized strike. The Board finds no basis for accepting the proposal.

"Recommendation: That the proposal be withdrawn.

"*(d) District 100 (Eastern) Proposal No. 4*

"District 100 proposes an amendment in Article 24 to provide that absences due to legitimate use of injury and/or sick leave not to be charged against the employee's attendance record or used by the Carrier in support of discipline or discharge for absenteeism.

"The Union protests the present Carrier policy of using sick leave or injury leave absences to build up a record of unsatisfactory attendance leading to disciplinary action. There are safeguards in the contract, the Union points out, against abuse of sick leave. The Union urges that neither sick nor injury leave, nor other absence authorized by management, should be made part of an employee's attendance record.

"It is the Carrier's position that an unsatisfactory attendance record increases its costs of production, whatever the cause, and that the employee is protected by his right of recourse to arbitration. The Carrier contends that its attendance control program is fairly administered.

"The Board recognized the Carrier's need to maintain control of the attendance of employees. Further, it is an accepted principle of industrial relations that persistent absenteeism is cause for discipline, including discharge, and that such determinations usually are based on cumulative records. On the other hand, Eastern's attendance control program appears to consist solely of demerits, with no counterbalancing credit given for periods of good attendance records. It is the opinion of the Board that the counterproposals made by the Carrier on this issue move in the direction of accomplishing such a balance. The Board suggests that they go one step further by providing for redress of the employee's record when such action is supported by review of his record.

"Recommendation: That the counterproposals of the Carriers be adopted with an additional provision for redress of the employee's record when warranted by review.

"B. Northwest Airlines, Inc., and District 143

"1. Carrier proposals

"*(a) Northwest Proposal No. 1*

"The Carrier has proposed elimination of the 20-minute paid lunch period provided

for flight kitchen employees under the agreement.

"The Carrier states that this amendment would make the flight kitchen personnel provision consistent with mechanic and plant protection agreements. Further, among the four domestic airline trunk carriers which operate flight kitchens, Northwest is the only carrier currently providing a paid lunch period. The Carrier maintains that the overlap available with an unpaid lunch period provides better continuity of work programing and reduces overtime requirements.

"The Union claims that the paid lunch period actually benefits the company because it is scheduled during slack times, whereas the 30-minute unpaid lunch must be regularly scheduled. The Union denied that there would be any saving on overtime. The Carrier admitted that much of the overtime would be due to illnesses, weather, flight scheduling, et cetera.

"This 20-minute paid lunch period for fight kitchen personnel is a provision of long standing on Northwest. At one time it was of benefit to the Carrier and, according to the Union, still is a convenience to the Carrier.

"It is the view of the Board that contractual rights which exist in the present agreement, and which are the result of previous collective bargaining negotiations, should not be modified by the Board in the absence of a clear justification by the proponents. The 20-minute paid lunch period provided for flight kitchen employees under the present agreement is a longstanding contractual provision. It is the view of the Board that the Carrier, on the record, failed to sustain its burden of proof on this issue.

"Recommendation: That the proposal be withdrawn.

"(b) Northwest Proposal No. 2

"The Carrier proposed to revise the fixed starting time rule at line stations under Mechanic and Related Personnel agreements to permit the establishment of times which meet the needs of the service.

"The Carrier claims that the purpose of this proposed change is to eliminate arbitrary and costly shift starting times at line stations. These times are presently unrelated to the workload generated by flight schedules. The Carrier's witnesses and exhibits established the fluctuation in the demands of service. These demands do not correspond to standard mandatory shift schedules now set in the contract. Further, the majority of domestic airline trunk carriers have rules which permit starting times limited only by the needs of the service. Of the remaining carriers in this case, only TWA has a rule as restrictive as Northwest.

"The National Airlines Agreement on this issue provides that the starting times of shifts should be established in accordance with the needs of the service at each base.

"The Eastern Air Line Agreement provides that the starting times of shifts shall be established in accordance with the needs of the service at each station provided that there shall be no more than 6 shifts each with a single starting time within a 24-hour period for any classification of employees involved.

"The United Air Lines Agreement provides for not more than 5 starting times within a 24-hour period.

"Only Northwest and TWA have detailed restrictive clauses in their agreements as to starting times on these two carriers which have given rise to the dispute over this issue.

"The Board was impressed by the showing of the Carriers that some reasonable control of shift starting times should be within the prerogatives of management. It is the view of the Board, moreover, that some reasonable modification of Article VI, Section C, of the Northwest Agreement, would result in more efficient operation which in the long run would be of benefit to the Carrier, consumers and employees.

"Recommendation: That the parties modify their present agreement so as to include a provision, "That there shall not be more than five (5) starting times within a twenty-four (24) hour period for any classification of employees for a work area of a line station."

"(c) Northwest Proposal No. 3

"The Carrier proposes to amend the hours of service rule to provide that employees will not be required to report for work on a scheduled day off for less than 4 hours work or pay.

"The Carrier testified that the purpose of this proposal is to modify the present 8-hour guarantee, providing what management considers a reasonable minimum of 4 hours of work or pay for an employee called to work or to train on a day off. Northwest is the only trunk carrier under contract with IAM which is required to pay a minimum of 8 hours.

"The present provision in the contract providing for an 8-hour guarantee is one of long standing. As noted by the Board previously in this report, it is the view of the Board that contractual rights established through prior collective bargaining should not be modified by the Board in the absence of justifying proof from the proponents. The 8-hour guarantee, as it stands, presumably was considered a fair settlement by the Carrier when it accepted the provision in the first place. Acceptance at the time undoubtedly was considered favorably in light of other provisions agreed to by the parties in the give-and-take which produced the present agreement.

"The Board believes, on the basis of the record before it, that the carrier controlling the scheduling of work should continue the negotiated provision in the present contract.

"Recommendation: That the proposal be withdrawn.

"(d) Northwest Proposal No. 4

"The Carrier proposes a limited seasonal student employment program at locations where no regular employees are laid off.

"The purpose of this proposal is to enable the Carrier to expand its program for seasonal student employment. The proposed rule would be subject to these qualifications: First, that no regular employee be displaced; second, that no student be employed at any location when regular employees in the classification are laid off; third, that preference for seasonal student employment be given to children of regular employees; fourth, that student employees present evidence of their intent to continue their education at an institution of advanced study; fifth, that seasonal positions will not exceed 90 days duration, will not be subject to the bulletin procedure, and will not establish seniority.

"The Union favored the program but raised several objections. The Union felt that there were not sufficient regular employees in the classifications open to seasonal student employees. The Union also desired to continue the bulletin provisions for positions to be filled by such students.

"The Board believes the company should be encouraged in continuing this program.

"The students who would benefit from seasonal employment are children of the employees. The employees and the Carrier have a mutual obligation to resolve any problems created by the program. The primary objection of the Union is that all the students normally are assigned to the day shift while employees with substantial seniority must work on less desirable shifts.

"The Board recognizes that the Carrier can use the students most effectively in groups and that in some instances the type of work they can perform may not be available except on the day shift. The Board believes, however, that the Union's objection could be overcome substantially if the Carrier would, to the extent practical distribute student employees throughout all shifts.

"Recommendation: That the proposal be adopted with a proviso that, where suitable work is available, the students be assigned to all shifts.

"(e) Northwest Proposal No. 5

"The Carrier proposes that standard work clothing required by the Carrier shall be sold at cost to the employees but shall be maintained by them.

"The present agreements provide that all standard uniforms, caps and coveralls, which mechanics are required to wear, shall be furnished by the Carrier without cost to the employee, including the expense of laundering and cleaning. The Carrier does not require uniforms for plant protection employees. The Carrier points out that in the bargaining prior to the appointment of the Emergency Board the Union had a proposal on this same issue which would have required the company to provide and maintain standard work clothing for all employees at no cost to them. The Carrier offered its proposal as a reasonable compromise.

"In the hearing before the Emergency Board the Union withdrew its request that the Carrier provide and maintain standard work clothing for all employees.

"It is the opinion of the Board that the Carrier failed to sustain its burden of proof in support of its proposal for a change in the present agreement.

"Recommendation: That the Carrier withdraw its proposal.

"(f) Northwest Proposal No. 6

"The Carrier proposes to eliminate the foreign service bonus, foreign vacation accrual, and the Anchorage housing, effective January 1, 1967, for approximately 11 employees hired in the States and stationed in Alaska before Alaska attained statehood.

"In June 1946 Northwest was first certified to operate over the North Pacific route to the Orient. Because of the shortage of foodstuffs, household goods, and housing at Anchorage, the Carrier had difficulty staffing these stations. The so-called "foreign service addendum provision" was then negotiated into the contract to provide employees represented by the Union with certain additional benefits and/or compensation to offset the then existing hardships and undesirable living conditions. The Carrier is proposing to eliminate certain of these items; all other compensations provided for in the addendum would still be paid to the 11 employees.

"The Union emphasized that employees hired in Alaska receive many additional benefits in overtime, holidays and vacations, as well as in hourly rates of pay.

"It is the view of the Board that the contractual commitment made by the Carrier in the first instance to these 11 employees should be recognized as continuing for the length of their employment in Alaska. The Board believes that with regard to any new employees, the proposal of the Carrier is reasonable.

"Recommendation: That the proposal be withdrawn as to the 11 employees and accepted as to new employees.

"2. Union proposals

"(a) District 143 (Northwest) Proposal No. 1

"The Union proposes that the Carrier furnish two positive annual passes for use over the Carrier's system during the term of office of the Union's president/general chairman and the general chairman. Use would be limited to flights in connection with Union business.

"The Union now receives one positive annual pass which is used by the president/general chairman. Other Union representatives receive space-available passes, including the general chairman.

"The Carrier argues that a space-available pass is sufficient. The Union's position is that reduced fares are given to certain youths, families, servicemen, et cetera, all of which have preference over space-available passengers.

"Athough the second positive annual pass would be an additional expense to the Carrier, the Board believes the poposal of the Union is justified.

"A great amount of travel is required in order to conduct necessary Union business for airline employees stationed at widely separated points. It is not unreasonable that two officials of the Union should be provided with transportation on the Carrier's planes to conduct that business.

"In view of the uncertainty which now so often intends travel on a space-available basis, the Board believes that positive transportation should be provided for the general chairman as well as the president/general chairman.

"Recommendation: That the proposal be adopted.

"(b) *District 143 (Northwest) Proposal No. 2*

"The Union proposes that newer and more efficient foul weather equipment and lightweight winter clothing for ramp personnel be furnished by the Carrier, laundering and cleaning costs to be borne by the Carrier.

"The Union originally proposed that the Carriers provide and maintain standard work clothing for all employees at no cost to them. This proposal was withdrawn prior to the appointment of the Emergency Board and, therefore, was not before the Board for decision.

"The final proposal of the Union involved issues similar to the proposal of the Carrier regarding standard work clothing. The Board understands that the Union and Carrier have discussed this matter and that the Carrier is aware of the type of foul weather equipment and lightweight winter clothing desired by the Union.

"Although the Board feels that the selection and requirement of standard clothing is primarily a decision for the Carrier, the request of the Union is reasonable.

"Recommendation: That the Carrier furnish newer and more efficient foul weather equipment and lightweight winter clothing as the Carrier's present stock of such clothing requires replacement, with laundering and cleaning costs to be borne by the Carrier.

"C. Trans World Airlines, Inc., and District 142

"1. Carrier proposals

"(a) *TWA Proposal No. 1*

"The Carrier proposes that the Union enter into a letter of agreement which would insure that the IAM-covered employees continue to render their services to flights operated by the Carrier for U.S. military-establishments even though the Carrier and the Union are involved in a strike or withdrawal of services by the Union in commercial operations.

"TWA believes this proposal is in the national interest. The Department of Defense desires such an agreement between the Carrier and the Union. Lack of this agreement would have an impact on the Carrier's ability to obtain military contracts in which the employees also have a vital economic interest.

"The Carrier submitted exhibits showing that the Union has entered into such agreements with United Air Lines, Northwest Airlines, Braniff Airlines, Continental Airlines. TWA has such agreements with other employee groups. Since military contract revenues represent only 1 to 2 percent of the Carrier's total system revenues, this proposal would not substantially reduce the Union's right to self-help.

"The Union stated that flight engineers were not included in the letter of agreement on this issue. However, the Carrier claimed that the Flight Engineer's Union president had verbally agreed to this proposal.

"The Board finds the provision requested by the Carrier clearly in the interest of national security.

"Recommendation: That the proposal be adopted.

"(b) *TWA Proposal No. 2*

"The Carrier proposes that the scope clauses in the three agreements be amended to eliminate any ambiguity as to the Carrier's right to subcontract work not directly performed by the Carrier on its property.

"The Carrier's position is that it presently possesses the right to subcontract work not directly performed on its property. It desires specific language because of the large number of allegedly unwarranted grievances filed by employees under the present agreement. The Union has an agreement including such language with Braniff Airways, Continental Airlines, and United Airlines. Similar language is contained in agreements between the Transport Worker's Union and American Airlines, and Pan American World Airways.

"The Union's position is that this proposal would give the Carrier the unilateral right to contract out work not performed on the property.

"The Carrier's proposal is not designed to reduce any present work opportunities available to its own employees in the bargaining unit, nor does it seek to dilute the Union's present work jurisdiction.

"Recommendation: That the Carrier's proposal be adopted.

"(c) *TWA Proposal No. 3*

"The Carrier proposes that its mechanics and guards agreement be amended to permit the establishment of whatever number of shifts, at whatever starting times, operations and needs of the service require and that the requirements of Article VII(f) (that shifts in excess of three be confined to station crews serving flights) be eliminated. The required overlap of one-half hour between standard present shifts would no longer be mandatory.

"The Carrier is presently limited to the establishment of three shifts at its major stations, the first shift not to start earlier than 6:30 a.m., or later than 8 a.m. Each shift is of 8 hours duration, exclusive of one-half hour for lunch. The second and third shifts are subject to a 30-minute overlap requirement.

"Article VII(f) permits two additional shifts but restricts the additional shifts to station crews servicing flights; this would be in the terminal or station area. Additional shifts would not be utilized at the hangar and the air freight warehouse.

"The Carrier established fluctuations in the demands for service which do not correspond wtih standard mandatory shift schedules now set out in the contract. Further, the majority of the domestic airline trunk carriers have rules which permit starting time limited only by the needs of the service. Of the remaining carriers, only Northwest Airlines has a rule as restrictive as TWA.

"The National Airlines Agreement on this issue provides that the starting times of shifts should be established in accordance with the needs of the service at each base.

"The Eastern Airline Agreement provides that the starting times of shifts be established in accordance with the needs of the service at each station provided that there shall be no more than six shifts each with a single starting time within a 24-hour period for any classification of employees involved.

"The United Airlines Agreement provides for not more than five starting times within a 24-hour period.

"On the other hand, Northwest and TWA agreements have the detailed restrictive clauses which have given rise to this dispute.

"The Board was impressed by the evidence presented by the Carrier that reasonable control over shift starting times should be within the prerogative of management. It is the view of the Board, moreover, that reasonable modification of the hours of service section relating to shift starting time and Article VII of the agreement would result in more efficient operation which in the long run would be of benefit to the Carrier, consumers and employees.

"Recommendation: That the parties modify their present agreement so as to include a provision, "That there shall not be more than five starting times within a 24-hour period for any classification of employees for a work area of a line station."

"(d) *TWA Proposal No. 4*

"The Carrier proposes to amend Article XIV (b), to eliminate the prohibition against suspension of an employee pending investigation by a safety committee for refusal to work on a job which is allegedly unsafe.

"The Carrier testified that the adoption of this amendment would result in fewer attempts by employees to raise questionable health and safety issues. It also stated that the Safety Committee is not always readily available to pass upon safety issues.

"The Union testified that even if the Safety Committee is not always available, IAM stewards are instructed to handle such problems until the Safety Committee becomes available. It further states that TWA has refused to participate in a system safety provision.

"Recommendation: That the Carrier withdraw its proposal and that the contract be modified to permit IAM stewards and TWA foremen jointly to investigate such allegations if a Safety Committee is not readily available.

"(e) *TWA Proposal No. 5*

"The Carrier proposes to make permanent work assignments for ramp servicemen.

"The Carrier testified that under the present agreement the ramp servicemen classification encompasses numerous duties involved in the handling of food and mail service, loading and unloading of mail, express and freight cargo handling, baggage handling and, at some stations, cleaning and fueling of aircraft.

"The Carrier seeks a letter of understanding which would permit assignment of ramp servicemen to a particular work assignment for the purpose of permitting specialization and more efficient service. There was also some indication that overtime could then be worked by experienced personnel instead of requiring that it be available to all ramp servicemen in the general classification.

"The Union replied that this proposal would, in effect create departmental groups within the classification of ramp servicemen, establishing departmental seniority which the Union has opposed.

"The Board is of the opinion that this proposal would result in more restrictive classifications.

"Recommendation: That the Carrier withdraw its proposal.

"2. Union proposals

"(a) *District 142 (TWA) Proposal No. 1*

"The Union proposes to amend Article II (c) to require two ramp servicemen at all Carrier domestic stations, if there are two flights at the station within an 8-hour period.

"The Carrier stated that only 6 of its 39 domestic stations are not staffed with ramp servicemen and that at these stations the activity is too light to warrant such staffing. Further, that no other carriers have a minimum staffing requirement.

"The Board is convinced that there is not sufficient work at all stations to justify the minimum staffing proposal of the Union.

"Recommendation: That the Union proposal be withdrawn.

"(b) *District 142 (TWA) Proposal No. 2*

"The Union proposes that the Carrier be prohibited from using legitimate sick and/or injury leave in certain cases for the purpose

of discharging employees for excessive absenteeism.

"The Union contended that legitimate absence for illness or injury should not be a basis for discharge.

"The Carrier position is that management has a right to require regular attendance and to discharge for persistent absenteeism, including legitimate illness or injury. Numerous arbitration decisions are cited in support of the Carrier's position.

"This issue is similar to Union issue No. 4 on Eastern Airlines. The Board finds no basis for disagreeing with the decisions of arbitrators that excessive absenteeism may justify discharge of an employee. For this reason as well as the reasons stated in District 100 (Eastern) Proposal No. 4 the Board cannot support the Union's proposal. The Board suggests that the Carrier provide for redress of the employee's record when such action is supported by review of it.

"*Recommendation:* That the Union withdraw its proposal, and that the Carrier provide for redress of the employee's record, when warranted by review of it.

"(c) *District 142 (TWA) Proposal No. 3*

"The Union proposes that the Carrier be required to return employees' pass privileges to the status existing January 1, 1964, when a surcharge was imposed on first-class travel. The contract provides that this pass privilege is within the discretion of the Carrier.

"In the agreement between the parties, the Carrier had provided pass privileges to all their employees. A small service charge is levied to cover costs. In the case of first-class travel, there is a surcharge which is the charge complained of here. The Union position is that this pass privilege is an important fringe benefit and that the employees should not be required to pay a surcharge for first-class travel in addition to the service charge.

"The Board considers the Carriers' employee pass privileges a liberal provision in the contract. It does not believe the surcharge imposed on first-class travel is an unreasonable charge.

"*Recommendation:* That the Union proposal be withdrawn.

"D. United Airlines, Inc., and District 141

"1. Carrier proposals

"(a) *United Proposal No. 1*

"The Carrier proposes to amend the agreement to provide that passenger service employees may operate jetways. The Carrier argues that passenger agents performed this duty until an arbitration award granted ramp men the exclusive right to it. It is the position of the Carrier that passenger agents in any case are required to stand at the point where jetway controls are located, while ramp servicemen must be brought from one floor below, where their other duties are performed. The Carrier contends that the current procedure adds to its costs; that the change it has proposed would not result in layoffs, only in reassignments.

"The Union argues that under the contract terms the 'operation of automotive and other ramp equipment for service aircraft' is by definition within the scope of the ramp servicemen's work jurisdiction. It points out that, if the Carrier's proposal to assign the operation of jetways to passenger agents were accepted, it would take work away from bargaining unit employees and give it to workers who are not organized. Further, the Union points out that at the busier airports where jetways usually are located, there is sufficient work for a full-time employee to be assigned to this function.

"The contract provision involved in this issue has been in the collective bargaining contract for many years. The Union's claim to the work under that provision has been sustained in arbitration. Evidence presented by the Carrier on this issue appears to the Board to be insufficient to warrant changing a long standing negotiated contract clause.

"*Recommendation:* That the Carrier proposal be withdrawn.

"(b) *United Proposal No. 2*

"The Carrier proposes that ramp servicemen be permitted to receive and dispatch plans. The Carrier argues that none of the duties of receiving or dispatching aircraft requires the skill of a mechanic. At stations where no mechanics are assigned, station agents perform this function, while at four other stations, by agreement with the Union, either utility men or ramp servicemen perform the duties. At 22 larger stations only mechanics may receive or dispatch planes. The Carrier wishes to assign these mechanics to mechanic's work and to permit ramp servicemen to receive and dispatch planes at those stations. They state no mechanics would be displaced.

"The Union argues that it has been the practice for many years to use mechanics to perform this function at stations to which they are assigned. It insists that mechanics could be expected to observe conditions which might create safety problems a ramp serviceman is not trained to observe. Further, the Union argues that the Carrier is trying to get mechanic's work done by a lower pay classification and that this proposal will have the ultimate effect of removing a number of mechanics.

"The testimony in the case showed that there are no FAA regulations requiring a mechanic to perform this function, as a matter of safety. Moreover, there is a shortage of mechanics at the present time to perform work for which a mechanic's skills are required. Since both parties agree that at many stations these duties are performed by personnel other than mechanics, the Board is persuaded that a mechanic's skills can be better utilized in other assignments.

"*Recommendation:* That the proposal be adopted.

"(c) *United Proposal No. 3*

"The Carrier proposes to amend Article IV(H) to permit either utility employees or ramp servicemen to do interior through-cleaning and cabin setup. It is the Carrier's position that historically there was a difference between through-cleaning and turn-around cleaning which no longer exists. Ramp servicemen have performed a minimum amount of through-cleaning as an incidental part of their basic duties. Now there is little difference between through and turn-around flights. The Carrier therefore is seeking to use specialized utility crews to do all cleaning at larger stations.

"The Union contends that, by this proposal, the Carrier is attempting to assign to lower paid employees work that formerly was performed by ramp servicemen.

"There is no allegation either that ramp servicemen will be displaced under this proposal or that cleaning ever was more than a minimal part of their work. The Carrier's proposal would appear to lead to increased efficiency and improved service to the public. The Board believes that no ramp service employees would be adversely affected by adoption of the Carrier's proposal.

"*Recommendation:* That the proposal be adopted.

"(d) *United Proposal No. 4*

"The Carrier proposes an amendment to Article VII(F) to provide that an employee may be excused by his supervisor from working overtime if the needs of the service permit. The existing clause states that an employee will not be required to work overtime against his wishes. The Carrier contends that there have been instances where the employees engaged in a concerted refusal to work overtime to force concessions from management either in negotiations or at other times.

"The Union states that the International has intervened to stop mass refusals to work overtime but that men cannot be forced to work overtime.

"The Board cannot agree with the Union that employees have no obligation to work overtime. It is generally accepted industrial practice that reasonable amounts of overtime may be required by an employer. Moreover, in this industry, a mass refusal of overtime could adversely affect the service the Carrier is obligated to provide. More importantly, the safety of the public could be involved.

"*Recommendation:* That the proposal be adopted.

"(e) *United Proposal No. 5*

"The Carrier proposes to eliminate the current provision in Article VII(I) which provides that employees be given 4 hours' notice of contemplated overtime. United urges that under present operating conditions management itself frequently does not know 4 hours in advance that overtime work will be required.

"The Union indicated that, if the Carrier would make a satisfactory adjustment on overtime distribution, it would accept the Carrier's proposal.

"The Board has indicated in certain of its other recommendations that it recognizes and supports the efforts of the parties to move toward greater uniformity in working conditions in this industry. In the contracts of two other airlines, parties to this case, a similar contract provision includes exceptions to the rule specifying 4 hours' notice of overtime. The Board therefore suggests a similar provision here.

"*Recommendation:* That employees shall be given 4 hours' notice of contemplated overtime work, except in cases of emergency and at line stations where interruptions of flight schedules make a 4-hour notice impossible.

"(f) *United Proposal No. 6*

"The Carrier seeks to amend Article X(A–2) (I) to permit the extension from 30 to 90 days of the time limit within which jobs higher than mechanic can be filled without being bulletined. United argues that fluctuating workloads result in a need to make temporary reassignments for periods in excess of 30 days. To replace a lead for a temporary period, the Carrier contends, creates a chain reaction of vacancies which later must be reversed by layoffs.

"It is the Union position that the present contract provision requiring the bulleting of vacancies in excess of 30 days is current practice. The Union rejects any change.

"Provisions that vacancies in excess of 30 days must be bulletined are common in labor agreements generally as well as in this industry. Testimony presented by the Carrier fails to demonstrate any handicap to its operations as a result of the present contract clause which would warrant departure from this widely accepted practice.

"*Recommendation:* That the proposal be withdrawn.

"2. Union proposals

"(a) *District 141 (United) Proposal No. 1*

"The Union proposes that Articles IV(A) and V(A) be amended to provide that all assignments be made by the lead to his crew except that, when he is not readily available, the foreman or supervisor shall make such assignments. Further, the Union proposes that a lead shall be on duty when 3 or more employees are on duty and no lead shall direct the work of more than 11 employees. The Union agreed that these ratios are generally maintained by United but cited instances where no lead is employed.

"The Carrier contends that flexibility is necessary in permitting supervisors to give assignments and in determining whether there is need for a lead.

"The Board believes that the Union proposal could lead to restrictions on the Carrier's operations which would handicap efficiency. Moreover, such a clause in the contract places an unwarranted limitation on the Carrier's prerogative to manage its operations.

"*Recommendation:* That the proposal be withdrawn.

"(*b*) *District 141 (United) Proposal No. 2*

"The Union proposes that Article IV(B) be amended to restore the right of mechanics to receive and dispatch aircraft at the four stations where, by agreement in 1961, the work was assigned to ramp servicemen.

"The Carrier contends that such a restriction would require assignment of mechanics to work in which their skills could not be utilized.

"For the same reasons given in its decision to permit the use of ramp serviceman to perform this function at other stations (United Proposal No. 2), the Board finds no basis to limit assignment of this function to mechanics.

"*Recommendation:* That the proposal be withdrawn.

"(*c*) *District 141 (United) Proposal No. 3*

"The Union proposes that system overtime rules be adopted which would include provision for equalization of overtime and pay for bypass. It contends that local agreements which govern the distribution of overtime have functioned unsatisfactorily and that many grievances have resulted from overtime bypass. The Union insists on pay for bypass and on assignment on the second day off if the same employee is still the low man.

"The Carrier has agreed to a uniform set of system overtime rules. It opposes bypass pay, contending that existence of the penalty does not eliminate errors. Overtime assignment on the second day off is opposed because pay would be at double time rather than time and one-half as it would be if assigned to another employee.

"The Board finds that the parties are in substantial agreement with respect to new system overtime rules, except for bypass pay and second-day-off assignment. The purpose of an equalization of overtime provision is to insure all employees a fair opportunity to work at premium rates. Generally, such clauses provide that the opportunity should be equalized over a specific period such as 30 or 90 days. An opportunity missed is not lost; it may be deferred. But if an employee is consistently bypassed he has a remedy through grievance machinery. Moreover, the obligation of the employer under an equilization of overtime clause is normally not as restrictive as under seniority clause. The Board, therefore, finds no basis to recommend instituting bypass pay where it does not now exist.

"As to the second day off at double pay, the same arguments generally apply. Labor organizations typically have sought an increased overtime penalty to discourage 7 day assignments. It cannot then be argued that having achieved inclusion of the penalty rate in the contracts, employees must be assigned on the seventh day. There is no basis for imposing a penalty on the employer because the same employee is still low man on the overtime list. The employee is not thereby entitled to extra premium pay, or the employer subject to the extra penalty, so long as over a fixed span of time overtime work opportunities are offered as equally as possible to all employees. The Board finds no support in general industry practice for this penalty provision.

"*Recommendation:* That the system overtime rules proposed by the Union on which general agreement has been reached be adopted, but that the rules should not include bypass pay or assignment on the second day off if the same employee is still low man.

"(*d*) *District 141 (United) Proposal No. 4*

"The Union proposes that the present point seniority provision be replaced by system seniority. The Carrier has agreed to the Union proposal except that it includes two conditions which are unsatisfactory to the Union. The Union insists that every vacancy be bulletined as it occurs, while the Carrier desires permanent bids. The second condition that the Union rejects is a provision that the Carrier would not be required to accept bids for vacancies created by employees voluntarily transferring by bid. The Union contends that both of the Carrier's conditions would prevent reasonable application of seniority preference.

"The Carrier supports its first condition by pointing out that the Ramp and Stores agreements now have permanent bid procedures which are less time consuming and costly than the current Mechanics agreement procedure of bulletining each bid. With system seniority, transfers would be likely to increase and to cause new problems unless a permanent bid procedure is adopted. Because the Carrier anticipates a substantial increase in transfers with an accompanying high cost of training on different equipment, it has proposed the second condition as a deterrent to an excessive number of transfers.

"The testimony indicates that permanent bids are now the accepted practice for other United employees organized by IAM. It is in accord with the parties' general approach toward greater uniformity of working conditions that the same practice should be incorporated in the proposed system overtime rules for mechanics. The Board finds, further, that the effect of widespread chainbumping, which could occur under system seniority would be to impose a burden of high costs on the Carrier. The Carrier has agreed to the Union's proposal on seniority; that their agreement should also require the assumption of unnecessary costs appears to be unreasonable.

"*Recommendation:* That the Union's proposal be adopted and that the two conditions of permanent bids and no requirement to accept bids on vacancies created by voluntary transfers be included in the contract provision.

"*VI. Conclusion*

"The Board is grateful to the representatives of the International Association of Machinists and Aerospace Workers and the five Carriers for their diligence, good will, candor, and objectivity. The Board is impressed with the obvious sincerity of the parties and with their desire to present the facts as they saw them; this they have done without the bitterness or resentment which might unduly delay eventual agreements.

"Their cooperation has assisted the Board in the performance of its duties; we in turn sincerely hope that the Board's recommendations will help them to reach prompt settlements. With 60 percent of our air transport industry involved, any delays would threaten the welfare of the country and the convenience of many Americans.

"The parties have provided the Board with a good record to which the Board has given full consideration.

"The Board strongly believes that in the public interest the disputes submitted to it should be settled in accordance with its recommendations.

"Respectfully submitted.

"WAYNE MORSE, *Chairman.*
"DAVID GINSBURG, *Member.*
"RICHARD E. NEUSTADT, *Member.*"

Senator MORSE. Also, because they bear on the first point I shall make, I refer to the editorial in this morning's Washington Post concerning the emergency, which disagrees, as I disagree, with the position of the Administration, taken in this case, which amounts, really, to a postponement of Congressional action, and the editorial in this morning's New York Times, "Politics Versus Public Interest."

I ask to have those inserted as introductions to my testimony.

The CHAIRMAN. Without objection, it is so ordered.

(The editorials referred to follow:)

"[From the New York Times, July 28, 1966]

"POLITICS VERSUS PUBLIC INTEREST

"The only conclusion possible from Secretary of Labor Wirtz's testimony on the airlines strike is that politics is the chief yardstick the White House applies in determining when the cut-off of an essential service creates a national emergency.

"The Secretary's recommendation that Congress scrap plans for an immediate back-to-work law and give 'free collective bargaining' another chance was a clear capitulation to the dictates of organized labor. Twenty-four hours earlier, while the Senate Labor Committee held off its hearing at the Administration's request, George Meany had given the White House its cue.

"'No danger to the nation's health and welfare and no threat to national defense have been demonstrated,' the A.F.L.–C.I.O. president declared, 'The air traveling public has, of course, been inconvenienced, but inconvenience is a small price to pay for freedom.'

"Mr. Wirtz put it differently, but came up with the same answer: Do nothing right away. This a week after President Johnson had declared that the strike was trying 'the patience of the American people' and that the time had come for a settlement. Mr. Wirtz acknowledged that the tie-up already has had 'a serious, substantial, adverse impact on the national interest' and that its prolongation would bring the country to a 'crisis' stage at some point.

"Why the nation must wait until the hardship becomes intolerable before Congress acts, the Secretary failed to make clear. Even more obscure was his idea of how 'free collective bargaining' can be secured in a dispute that has already been reviewed by a Presidential emergency board. That board, headed by Senator WAYNE MORSE, recommended wage increases that went beyond the Administration's anti-inflation guideposts. The President urged both labor and management to follow these proposals; the airlines not only accepted them, they bettered them. The striking machinists still say no.

"Presumably what Mr. Wirtz means by his prescription that Congress send both sides 'back to the woodshed' with a settlement deadline is that pressure will now be exterted on management to save the union's face by giving it more money. Such appeasement of labor under White House aegis has been the historic road to instability in industrial relations and to wage-price inflation. The airlines, as a regulated industry enjoying record prosperity, are in poor position to hold out against what the Administration wants.

"The course Secretary Wirtz has charted points more surely to the destruction of 'free collective bargaining' than to its preservation."

"[From the Washington (D.C.) Post, July 28. 1966]

"WOODSHED, BUT NO EMERGENCY

"It is difficult to follow the reasoning behind Labor Secretary Wirtz's opposition to congressional action in the 20-day-old airline strike. The Secretary does not regard the situation created by the strike as an emergency, although he readily admitted that it may soon reach the emergency stage. His current estimate is that 'We are confronted with a serious, substantial, adverse

impact on the national interest.' Well, if this does not amount to an emergency, how serious does this 'adverse impact on the national interest' have to become before it will produce action in Administration circles?

"The remedy offered by Mr. Wirtz seems to us equally inconsistent. He suggested to the Senate Labor Committee that Congress send the deadlocked negotiators 'back to the woodshed' of collective bargaining with a threat to use a 'paddle' if they do not reach a settlement. In the first place, a congressional committee has no authority in this sphere. And how could Congress itself pass a law telling the parties that they must agree, or else? To our way of thinking any such attempt at intimidation would be far more troublesome from the viewpoints of both labor management and government than the kind of emergency act proposed by Senator MORSE.

"Secretary Wirtz acknowledged that he had received more than 2000 telegrams and letters from members of Congress, officials, businessmen, and others expressing grave concern over this dispute. Yet all he has to suggest by way of governmental action is an empty threat to crack down on the parties if they fail to agree. This negativism in high places after nearly three weeks of paralysis on five airlines is in itself disturbing.

"One of our greatest statesmen James Madison once said in a letter to Edward Everett: 'A political system that does not provide for a peaceable and authoritative termination of occurring controversies would not be more than the shadow of a government.'

"It is a mistake to suppose that the Government must wait in critical situations of this kind, until the national defense has been impaired or until the public health or safety have been gravely undermined. Congress has complete authority to regulate interstate commerce in the national interest. It has an obligation to the public to keep essential transportation services running and this authority ought to be exercised in an orderly way without meaningless threats of taking anyone 'to the woodshed.'

"After a visit to the White House Senator MORSE revised his bill calling for a 180-day suspension of the strike by eliminating any suggestion that it might be contingent on a presidential finding of a national emergency. He would justify congressional action by a finding that the tie-up threatens to interrupt commerce and deprive regional areas of vital services. This is all that is necessary to justify the mild action proposed to the Senate Labor Committee.

"If the emergency continues we think the Committee and Congress will have no alternative to proceeding along this line."

Senator MORSE. The first issue that I would like to raise with the Board is the issue: Does an emergency exist which threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation services?

I would ask next to have inserted at this point in the record my original resolution and this amendment, which contains the language of the National Railway Labor Act.

The CHAIRMAN. Without objection, it is so ordered.

(The resolution and amendment referred to follow:)

"S. J. RES. 181

"Joint resolution to provide for the settlement of the labor dispute currently existing between certain air carriers and certain of their employees.

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) the Congress does hereby find and declare that a labor dispute between Eastern Airlines, Incorporated, National Airlines, Incorporated, Northwest Airlines, Incorporated, Trans World Airlines, Incorporated, and United Air Lines, Incorporated and certain of their employees represented by the International Association of Machinists and Aerospace Workers, a labor organization, threatens essential transportation services of the Nation; that it is essential to the national interest, including the national health, safety, and defense, that essential transportation services be maintained; that all procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and have not resulted in settlement of the dispute, including a report and recommendations of the emergency board Numbered 166, a proffer of arbitration and mediation with the parties by the National Mediation Board; further, that the efforts of the National Mediation Board and the Secretary of Labor to settle this dispute have been unsuccessful; and that it is desirable to achieve a settlement of this dispute in a manner which serves the public interest and economic stabilization and which preserves the free collective bargaining method.

"(b) The Congress therefore finds and declares that emergency measures are essential to the settlement of this dispute and to the security and continuity of transportation services by such carriers.

"SEC. 2. The period of time provided for in section 10 of the Railway Labor Act, paragraph 3, during which no change except by agreement, shall be made by the parties to the controversy, or affiliates of said parties, in the conditions out of which the dispute arose, is hereby reinstated and extended, for one hundred and eighty days, effective immediately. During said period of time none of the parties to the controversy, or affiliates of said parties shall engage in or continue any strike or lockout.

"SEC. 3. The President shall, at the earliest possible date, appoint a Special Airline Dispute Board which shall engage in mediatory action directed to promoting agreement between the parties. Any such agreement shall provide that the wage settlement provisions be retroactive to January 1, 1966. Notwithstanding any other provision of law, each member of the Board shall be compensated at a rate prescribed by the President for each day together with necessary travel and subsistence expenses.

"SEC. 4. If the agreement has not been reached within one hundred and fifty days, the Board shall make recommendations to the President, and the President shall advise the Congress, regarding terms or procedures which will assure final settlement of this dispute in the public interest and without further interruption of the continuity of transportation services by these carriers.

"SEC. 5. (a) Upon suit by any of the parties to the aforesaid dispute or by the Attorney General the several district courts of the United States shall have jurisdiction to restrain any violations of section 2 of this joint resolution. Whenever it shall appear to the court before which any proceeding under this section may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpenas to that end may be served in any district by the marshal thereof.

"(b) In granting an injunction or relief under this section, the jurisdiction of such court sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code, to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932 (29 U.S.C. 101–115).

"SEC. 6. If any provision of this joint resolution or the application thereof is held invalid, the remainder of this joint resolution shall not be affected thereby."

"S.J. RES. 181

"Amendment intended to be proposed by Mr. MORSE to S.J. Res. 181, a joint resolution to provide for the settlement of the labor dispute currently existing between certain air carriers and certain of their employees

"Strike out all of lines 9 and 10 on page 1 and lines 1 and 2 on page 2 and insert in lieu thereof the following: 'Aerospace workers, a labor organization, threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation services; that such essential transportation services must be maintained;'."

Senator MORSE. The transcript shows what Mr. Wirtz had to say in answer to a specific question from Senator JAVITS yesterday, on page 29 of the transcript.

"Senator JAVITS. Finally, Mr. Secretary, it is a fact that, although you do not arm us with a finding of national emergency, I think that is the clear implication of your testimony, and you do testify that the test set out by the Railway Labor Act has been met.

"Do you testify that this strike has resulted in a substantial interruption to interstate commerce such as to deprive sections of the country of essential transportation service?

"Secretary WIRTZ. Yes, sir. And further, Senator, that finding was, of course, made by the President as a basis for the invoking of the Railway Labor Act."

Mr. Chairman, Secretary Wirtz was notified by me yesterday morning of the amendment that I had made to my resolution. My relationships with Secretary Wirtz are both of a high order of professional relationship and they also represent a very close, personal relationship.

I told him, following the conference I had the night before, I was now putting on completely my Senatorial hat and would not further engage in work in my capacity as chairman of the Emergency Board by way of seeking to settle this dispute on the basis of the new position which the Administration had come to take, in support of which he would testify yesterday afternoon. He fully understood it.

I told you yesterday that I was in a long conference the night before last at the White House, where Mr. Ginsburg and I were notified that the Administration was going to take the position in the hearing yesterday that no national emergency existed that called for legislation at this time. It might very well, in the not too distant future, exist and, therefore, they were going to seek, as Secretary Wirtz testified yesterday, further mediation sessions.

I shall not go into any detail as to the position I took other than that I disagreed with that. I went home and after some hours of deliberation decided to modify my amendment as I modified it yesterday, on my own.

That leads me to the first point I now wish to discuss: Does an emergency exist which threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation services ?

The burden of proof on this question is established by the testimony of the Administration witnesses of yesterday. Secretary Wirtz testified that the strike of these five carriers has "caused extensive disruption . . . in air travel and transport generally"; "hurt particular businesses and particular areas badly"; slowed up the Postal Service significantly". He stated that 150,000 passengers a day have been grounded; that five of the 100 top city pairs are without direct one-carrier service:

"We calculate that at the present rate, the struck airlines are incurring a loss of about

$7 million per day in passenger, cargo and mail gross revenues. Taking into account the offsetting gains in revenue by the non-struck lines, railroad, truck and bus lines, we estimate that the gross revenues for the entire transportation industry are reduced by $1 million a day. The indirect effects are estimated as of about the same order of magnitude.

"We have many reports of the indirect impacts on hotel business and resorts. It appears that certain localities are seriously affected. Hotel occupancy is down in some cities.

"There are other secondary effects which should be mentioned:

"•The rapid shipment of spare parts for repairs is often a matter of critical importance.

"•Perishable commodities such as cut flowers or fresh seafood cannot be shipped long distances except by air.

"•Air shipment is the preferred method of shipping delicate electronic and scientific equipment.

"According to the Federal Reserve Board, the strike has affected the normal float by increasing it from $275 million to $900 million daily, with an average increase of $570 million daily. The excess of float resulting has an inflationary effect according to the Federal Reserve Board. Without a detailed study, it is almost impossible to determine the financial losses experienced by individuals using the mails for business, such as deposits to banks by mail, payment of bills, et cetera, but it is generally considered to be a substantial sum of money."

With regard to mail delay, Assistant Postmaster General Hartigan stated on page 2, the first paragraph of his statement:

"The loss of this valuable capacity and schedules has resulted in delays of up to 24 hours, and in some instances where important connections are lost, and congestion or limited capacity is acute, delays could be as much as 48 hours."

In addition, the Civil Aeronautics Board in its report to the National Mediation Board of April 15, 1966, stated in paragraphs 2 and 3 the following:

"2. At least 800 one-carrier, non-competitive airline markets (city-pairs) involving one or more passengers per day, would receive no airline service. The total number of markets which would be without airline service would be substantially larger"—

May I go back to say I think they made a typographical error of their own. Where it says "passengers" it should be "flight", but the testimony is "passengers".

"The total number of markets which would be without airline service would be substantially larger if competitive markets served by at least two of the five carriers were included, i.e., New York-Denver served by both TWA and United.

"3. Eighty-two communities will be deprived of all scheduled trunkline service, although some will continue to be served by local service carriers. Included in these cities are some vital defense and space installations on both the East and West Coast."

If further proof is needed by the committee that there has been substantial interruption of interstate commerce to sections of the country, I refer you to the statements of our colleagues in the Senate, and Mr. Curtin's statement of yesterday. Mr. Curtin quoted the CAB action on pages 3 and 4 of his statement as follows:

"Not only have the National Mediation Board and the President spoken forcefully upon the disruption of essential national transportation services caused by this dispute, but the Civil Aeronautics Board has also come to this conclusion. On July 9, 1966, in Order E–23926, the Civil Aeronautics Board recognized that because there was little airline capacity not already being used, it (the CAB) could take action which could 'have only a negligible effect' upon the dispute. The Civil Aeronautics Board nevertheless saw that the strike required extraordinary measures and granted emergency authority in an attempt to alleviate some of the public's suffering which occurred as 61 percent of its domestic trunk service was removed by the strike."

The CAB said:

"This strike has created an emergency situation of major proportions. The five trunkline carriers handle well over one-half of the Nation's domestic passenger traffic—approximately 85,000,000 passengers during 1965—and collectively they serve over 230 important cities, over 70 of which are left completely without trunkline service as a result of this strike. Manifestly, a shutdown of service of this magnitude will work substantial hardship on the public. Also, as the President has stated, the work stoppage could bring a disruption of the movement of "men and materials needed to support our commitments to freedom's cause throughout the world.

"In many of the airline markets the carriers in this group provided the only air services available. For example, between Seattle/Portland and such important cities as the Twin Cities, Milwaukee, Chicago, Detroit, New York and Washington, there are no regular through services. In the New York-Miami and Chicago-Miami, as well as other important Florida markets, at least two-thirds of the service was provided by one or more of these carriers.

"On the transcontinental routes, two-thirds of the service between the principal Eastern cities and Los Angeles and San Francisco was operated by the struck carriers. In the Northeast corridor, the shutdown of operations by Eastern has affected approximately 85 percent of the traffic moving between Boston, New York and Washington.

"Similarly, termination of this carrier's services has removed the only regular air service between Huntsville and Cape Kennedy.

"The Civil Aeronautics Board only this week tried to alleviate the traffic jam of defense, space and technical travelers between Washington, D.C. and Huntsville, Alabama, by asking a local service carrier to try to fly its equipment over this long route. This stop-gap effort was done at the request of NASA.

"There are now 68 cities in the United States without trunkline service, including five State capitals. Included are such important cities as Akron, Allentown, Harrisburg, Lansing, Lincoln, Madison, Milwaukee, Moline, Norfolk, Richmond, Spokane and Youngstown. In addition, there are more than 25 cities deprived of all their air transportation.

"A survey of the 100 top markets in the country shows that 65 of them have lost between 50 and 100 percent of their air transportation service. Among the major cities most severely damaged are Tallahassee, Fla., a State capital which has no air service; Mobile, Alabama, which has lost 98 percent of its trunkline service. Flint, Michigan, which has lost 91 percent of its service; and Baltimore, Pittsburgh, Richmond and Toledo, all of which have lost more than 80 percent of their trunkline service. Some 87 cities have been deprived of 50 percent or more of their normal air transportation service."

For a summary of the statements of our colleagues, I refer you to the appendix to Mr. Curtin's statement filed with the committee, and others which I have here, which I will not refer to now, not included in the appendix.

Further, I remind you that the National Mediation Board and the President made this same determination posed by this question when an Emergency Board was created by the President in the Five Carrier-IAM dispute on April 21, 1966 and the American Airlines-TWU dispute on July 27, 1966.

There would have been no appointment to either one of these boards if the President had not made the finding that there was a dispute which threatened substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service.

There is one other main point I want to cover before I take your question. That is under the question: Is the Railway Labor Act language in my amendment to S.J. Res. 181 sufficient basis for ordering strikers back to work?

There is a charge of strikebreaking by some of our labor leaders who are seeking to prevent the passage of any legislation by the Congress, charged by some of their lawyers. There is a situation here which gives us a legal basis for our course of action.

The answer to this question as to whether or not the facts support legislation is clearly and unequivocally yes. The language in question is contained in the Railway Labor Act, section 10: ". . . threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service."

That is the language.

A finding by the National Mediation Board, and subsequently the President, triggers the appointment of an Emergency Board. The Board has 30 days to make its investigation and report to the President. During this 30 days, and for 30 days after the report is filed, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

In effect, then, upon a finding in accordance with the language of section 10, which I have included in S.J. Res. 181, the parties are enjoined from a lockout or strike. Certainly if it is legal and constitutional to so enjoin a strike under the Railway Labor Act, it is under S.J. Res. 181.

In addition, there are a number of cases which support the proposition that Congress can legislate return-to-work laws under the general interstate commerce powers.

1. At the outset, it should be noted that the courts have considered transportation to be a particularly appropriate subject for Congressional regulation. There is, of course, no question as to the interstate nature of the air transportation as viewed here. The routes of all of the struck carriers cross State lines. They carry passengers and cargo from State to State. See Island Airlines v. United States, 352 F. 2d 735 (9th Circuit 1965) (Commercial air travel wholly within Hawaii held to be interstate commerce).

Thus, it is difficult to conceive of any type of business which is more interstate in character than the commercial air transportation of the struck carriers.

In addition, air transportation, like railroad transportation, is affected with the public interest. For this reason, each industry is already subject to Congressional and agency regulation of a quite detailed nature. And it is these two elements—the clearly interstate nature of and the basic public interest in transportation—which have caused the courts to give Congress broad latitude in the regulation of transportation.

An example of this latitude is found in Wilson v. New, 243 U.S. 332, where the court upheld a Congressional statute which ended a railway strike, sent the employees back to work and prescribed the precise terms on which work was to be continued for up to nine months.

In this case, the Congress set the wages of the employees. In this case, the Congress set the hours of work of these employees.

What this case really adds up to, gentlemen, is that the Congress arbitrated the

case. Its decision was to apply for a period of nine months, leaving it up to the parties thereafter to enter into whatever agreement they could.

This case is such a strong case, as you analyze the language of the case, that it ought to put at rest any question as to whether or not we can go this short distance that I propose to go in my resolution, which only says to the parties, "You are going to go back to work; you are going to work under your old agreement subject to retroactivity to January 1, 1966, when it is finally settled."

The period will ask for 180 days. In 150 days, a Special Board appointed by the President shall make a report to the Congress, giving them 30 days in which to determine whether or not they want to pass different legislation.

Furthermore, may I say there is a reason for the 180 days. I want the record to show it. I based it upon good advice that I got at that time from the Administration: that is, they wanted the Congress back in session. The parties would have a chance to settle it ahead of time, but the 180 days puts the Congress back in session and the 150 days gives the Congress 30 days in which to pass more legislation.

Now, I happen to think that Congress acted very unwisely in 1916. It went beyond compulsory arbitration. The Congress became the arbitrator. But that is beside the point. Rather, the significance of Wilson v. New is that under the Constitution, the Congress has very wide powers under the commerce clause to regulate transportation and, in particular, to deal with labor disputes resulting in serious strikes in that industry. For as the Supreme Court stated in that case:

"When one enters into interstate commerce one enters into a service in which the public has an interest and subjects one's self to its behest. And this is no limitation of liberty; it is the consequence of liberty exercised, the obligation of his undertaking, and constrains no more than any contract constrains. The obligation of a contract is the law under which it is made and submission to regulation is the condition which attaches to one who enters into or accepts employment in a business in which the public has an interest. See also Brotherhood of Locomotive Firemen & Enginemen v. Chicago, Burlington & Quincy Railway Company, 225 F. Supp. 11, 21–22 (D.D.C. 1964), aff'd, 331 F. 2d 1020 (D.C. Cir. 1964)."

Senator EDWARD KENNEDY. Was that during the first world war, that case?

Senator MORSE. The dispute arose in 1916 and the decision was in 1917.

2. General constitutional principles applicable to regulation of interstate commerce likewise support the constitutionality of the Morse resolution.

In passing upon cases predicated on such commerce, the courts adopt a very simple approach. They first ask whether the object of Congressional regulation may be rationally said to move in or affect interstate commerce—the interstate nature of air transportation here requires no argument.

After concluding that interstate commerce is involved, the courts then determine whether there is a rational connection between the problem which the legislation seeks to meet and the method chosen by the Congress to deal with it. The court's function is not to decide whether the methods chosen were the best or the wisest ways of regulating the commerce. These are the responsibilities of the legislature.

The court's job is ended once it decides if there was a reasonable tie between the evils against which the Act is drawn and the means chosen to cope with the evils.

And in deciding the degree of nationality required to uphold the constitutionality of Congressional regulation of commerce, the court properly accords great latitude to the Congress. Indeed, I know of no case during the last 25 years in which the Supreme Court has held to be unconstitutional a statute dealing with something which the court has concluded to move in or affect interstate commerce.

The earlier cases just remove any doubt as to the constitutional right of the Congress to come in and regulate interstate commerce.

Thus, in Atlanta Motel v. United States, 379 U.S. 241, upholding the constitutionality of the public accommodations provisions of the 1964 Civil Rights Act, the Supreme Court described the judicial function in interstate commerce cases in explicit terms.

". . . The only questions are: (1) whether Congress had a rational basis for finding that social discrimination by motels affected commerce; and (2) if it had such a basis, whether the means it selected to eliminate that evil are reasonable and appropriate . . ." Id. at 258–259. These tests are easily met here. First, air transportation is clearly interstate commerce. Second, the means contemplated by the Morse Resolution—a 180-day no-strike period during which time mediation will go forward and in which any agreement with respect to wages will be retroactive to January 1, 1966 are "reasonable and appropriate" to "eliminate the evil"—a tie-up of essential air transportation services which has inflicted heavy and continuing damage to the national interest and to the traveling public.

While it could be argued that the Morse Resolution is not the only rational means of coping with the current strike, it cannot fairly be said that it is not a rational means of dealing with the strike.

3. When essential transportation services are threatened, section 10 of the Railway Labor Act calls not only for the establishment of an Emergency Board, but also for a ban on strikes or lockouts during the 60-day period the Emergency Board is considering and has reported on the dispute. 45 U.S.C. 160.

You don't hear a charge of strikebreaking at that time, do you? The applicants of the Railway Labor Act for 60 days stopped the strike or prevented them from striking. It made clear they had to work. And they work under the terms of the old agreement.

My bill extends it for another 180 days, giving the parties further time to try to reach a settlement, and it sets up another Mediation Board to try to lead them to a conscionable compromise.

There are no cases on this point only because the law is so clear that neither management nor labor has ever thought it worth the trouble to make a contrary argument or to challenge this section of the Railway Labor Act.

This section of the Railway Labor Act, I repeat, has never been challenged in the courts of this country because it has been recognized that it falls clearly within the interstate commerce regulating powers of the Congress.

Since the Morse Resolution merely extends the section 10 period during which work and mediation is to proceed, it can be said to be unconstitutional only if section 10 as now constituted is unconstitutional. In other words, the Morse Resolution is unconstitutional only if the whole pattern of railway labor negotiations over the past 40 years is unconstitutional.

Neither does it make sense to contend that although the 60-day ban on strikes is constitutional under the present section 10, the extension of that period by 180 days makes it unconstitutional. After all, the operation of the Railway Labor Act now often prohibits strikes for far more than 180 days while the normal processes of the Act—including the notices, bargaining, mediation and reporting—are being exhausted.

First, however, any lingering doubt on the constitutionality of a 180-day no-strike period should have been laid to rest by the decision of the Court of Appeals for the District of Columbia Circuit in Brotherhood of Locomotive Firemen and Enginemen v. Certain Carriers, 225 F. Supp. 11 (D.D.C. 1964), 331 F. 2d 1020 (D.C. Cir. 1964).

There, the Court of Appeals affirmed a lower court decision upholding the 1963 railway strike statute, which prohibited strikes for two years after the arbitration award went into effect—for a total ban of about 2½ years after passage of the statute itself.

4. The Court of Appeals decision in the Locomotive Firemen case supra, supports the Morse Resolution in another respect. The 1963 railway statute provided a far more drastic remedy than would the Morse Resolution in that the former called for compulsory arbitration whereas the Morse Resolution does not. The 1963 Act banned strikes for 2½ years and imposed compulsory arbitration and nevertheless was found to be constitutional. These two elements would appear to make the constitutionality of the milder Morse Resolution in a fortiori matter.

5. It is true that the 1963 railway situation posed more of an emergency threat than does the current airline strike at this time. But this difference is not significant. In the first place, it is settled that Congress has the authority to avert emergencies, as well as to resolve those that have actually arisen.

Much of the implication, it seems to me, of some of the testimony of the Secretary of Labor yesterday was that we ought to wait until, according to his definition, a real emergency exists. I am very disappointed that the Administration would take the position that when the very evidence that it put into the record through Secretary Wirtz yesterday shows that already you have a very serious situation that interrupts to a substantial degree interstate commerce, but we better wait until it is worse, after this whole period of time that has been made available for the parties to settle this case.

In my closing argument, I will tell you why in my judgment they haven't closed the case and they will not close the case until this Administration surrenders to the union.

I go back to the fact that the Congress has the legislative authority under the Constitution to avert emergencies as well as to act after emergencies have developed.

Wilson versus New, I think, is a clear support of my position on that.

Moreover, in weighing the constitutionality of legislative action, it is settled that the courts will relate the statutory remedy to the situation it seeks to correct. In other words, an emergency situation may justify imposition of more drastic measures than would be true of a less-than-emergency situation. The Morse Resolution follows this approach by avoiding drastic steps. It avoids compulsory arbitration and cuts the no-strike, no-lockout period from 2½ years to the relatively short period of one-half year.

And, under the terms of the bill, the parties themselves will fix the wages and working conditions for the six-month cooling-off period, as well as for the future. To put it another way, the Morse Resolution rationally tailors the relief sought to the nature of the conditions against which the relief is directed.

This underscores the essential soundness of the bill in constitutional terms; it deals logically and rationally with the precise nature of the interruption of air services.

6. Wilson v. New, 243 U.S. 332, held constitutional a Congressional statute which went far beyond anything contemplated by the Morse Resolution. The Act in question imposed, by legislation, the terms and conditions on which a railway labor dispute was

to be settled. In other words, Congress legislated a solution. It did not leave the parties free to try to resolve their difference during a no-strike period as does the Morse Resolution.

It did not set up a Board of Arbitration to resolve the points of controversy as did the 1963 Emergency Railway Act. Instead, in Wilson v. New the Congress had imposed specific terms on the railroads and unions for which work was to be continued for a period of up to nine months. Nevertheless, the Act was upheld. In the light of that decision, the constitutionality of the Morse Resolution follows as a matter of course.

My last point, and I will make it brief, gentlemen—I haven't had time to get it dictated, but I decided that I would give it to you on the basis of my knowledge of the case—is that I think you better reread Mr. Siemiller's testimony of yesterday. In the latter part of his testimony I think, to speak descriptively, he threw his case out of the window.

In response to the questions put to him, I think he made perfectly clear that this union has no intention of coming to an agreement short of legislation or a settlement that goes through the anti-inflationary ceiling. I want to say this union has had no intention of taking any other position from the very beginning of this dispute.

During the weeks of mediation by the National Mediation Board, it took this adamant position, insisting upon wage demands that were highly inflationary in character.

I want to also say that in my judgment this is not only a bellwether case of this union, this is a bellwether case of many unions in this country. You are dealing here not only with the Machinists Union; you are dealing here in this case with the obvious strategy on the parts of a large section of organized labor to break the inflationary controls.

You have one of two choices to make, in my judgment: either hold the line here or pass legislation in regard to inflation—and if you think the Administration is opposed to my legislation, let me tell to even suggest to this Administration that it ought to come forward with the necessary economic controls to check inflation makes their present objection to my legislation very mild indeed.

Now, let me say something about the guidelines; this Emergency Board did not act on the basis of guidelines. This Emergency Board decided to exclude the guidelines. That was an agreement even back before we ever went into our first session. We did decide that we were going to work for the best agreement that we could on the basis of the evidence the parties submitted that was non-inflationary in nature. We have yet to hear a reputable economist that has commented upon our report say that it is inflationary.

We never translated the report into percentages. We were not at all interested in translating it into percentages. I have heard it said that if translated into percentages, it is somewhere between 3.5 and 3.7, but that depends on what value you give on so-called fringe benefits.

At the opening of the board hearing the counsel for the union opened as follows, and I read from page 49 of volume I of the transcript:

"Executive Order Number 11276 creating a Presidential Emergency Board to investigate the current dispute between employees of Eastern Air Lines, Trans World Airlines, Northwest Airlines, United Air Lines, and National Airlines, represented by the International Association of Machinists, was issued April 21, 1966. Our formal protests in respect to creation of a Presidential Emergency Board under Section 10 of the Railway Labor Act was submitted to President Lyndon B. Johnson Tuesday, April 19, 1966, and a copy of same is now made available to this honorable board as Employees' Exhibit No. 1.

"The CHAIRMAN. Employees' Exhibit No. 1 as identified by the witness will be inserted into the record at this point.

"(The exhibit reads as follows:)

"The President, White House, Washington, D.C. We are advised that the National Mediation Board and the Department of Labor have recommended that you, through Executive Order, create an Emergency Board to hear the dispute between Eastern, National, Northwest, Trans World, and United Air Lines, and the International Association of Machinists and Aerospace Workers. In our opinion, the appointment of such board would be a total waste of time at the taxpayers' expense. We respectfully request that you reject the recommendation for the creation of an Emergency Board in this dispute. P. L. Siemiller, International President."

Counsel for the Union then continued:

"Mr. RAMSEY. Our protest was predicated on strong evidence that a board created under present conditions is not free to enter unrestrained judgments or recommendations on wages or other economic conditions such as those involved in the dispute. We sincerely believe this board will feel bound in any recommendations made on economic issues to adhere to such guidelines as the President has emphasized in the past months. The guidelines referred to have not been accepted as appropriate or reasonable by organized labor, and certainly are not recognized by this Union as valid or controlling. Therefore, we suggest recommendations emanating from this board and reported to the President if so governed will be without value insofar as the Union is concerned.

"The CHAIRMAN. If counsel would permit the Chairman to interrupt, but because the statement of counsel refers to the board, I want to disabuse his mind of any validity of the major premise he has just expressed. He is entitled to have the position of the chair and the board stated at this point in view of the fact that he has raised the issue. I want counsel for both sides to know that this board has been appointed without any condition imposed upon the board. In fact, it would be a reflection upon this board if anyone attempted to impose any conditions on this board.

"This board is going to consider this case from cover to cover of the record that the parties make, without any precondition imposed upon this board that we are subject to any restriction. I wouldn't serve on the board, and I am sure my colleagues wouldn't serve on the board, if we were sitting on the board in any way, as any sort of a rubber stamp for any views of anyone else as to how this case should be settled.

"It is up to you gentlemen to present the evidence that warrants whatever settlement the evidence would support. So I wouldn't want to proceed further, Mr. Counsel, with the press here, to have any impression go out that this board is appointed by the President of the United States with any instructions whatsoever except to be an Emergency Board, hear the evidence and decide its recommendations to the President based upon the record.

"It wouldn't be fair to my President to make that statement in the very beginning of this hearing. It wouldn't be fair to my colleagues not to make it. And it wouldn't be fair to you or the men you represent or to Mr. Curtin and his principals if you didn't disinvolve here and now any implication to any degree whatsoever that this board is not 100 percent a free board as a judicial body to decide this case on the records.

"Mr. RAMSEY. Mr. Chairman, I know the employees appreciate your comments and the clarification in regard to this board's position with regard to freedom to judge this matter.

"The Union desires to make clear that it will cooperate with this board to the highest degree possible in making the facts available that directly relate to our dispute with the air carriers."

Then we took the evidence.

I want to say, Mr. Chairman and members of the committee, that this evidence just does not sustain any claim on the part of this board for any such wage demands they are insisting upon. Contrary, there is no doubt that the preponderance of the evidence overwhelmingly supported the contention of the carriers for the wage settlement that we decided in this board.

Of course, the carriers made a strong case on the inflation point. The inflation issue was part of their case. The board had to decide what weight to give it. We received no evidence because we had excluded the 3.2 guideline matter, there was no evidence in regard to the 3.2 guideline.

When we came to write our decision on the basis of the transcript the parties made, we gave our report in the recommendations, a copy of which you have before you.

There has been some criticism that the recommendations of the board exceeded the so-called Administration Guidelines. I think they probably do. But the guidelines were not a factor as far as the board was concerned.

Also, may I say, in a labor dispute, an arbitrator, or in this case an Emergency Board, which is a quasi-judicial body, takes into account inequities.

During the war, in World War II, the War Labor Boards, on which I sat, had guidelines, too. We had a national wage policy beyond which neither employers nor unions were supposed to go, save and except the ironing out of inequities which the evidence would show existed in any case. There were some inequities in a good many cases. But we didn't infringe upon the wage policy.

I left the War Labor Board in 1943. I resigned from the War Labor Board on an 11 to 1 decision in the famous November, 1943, United Mine Workers' case, when the President of the United Mine Workers, John L. Lewis, entered into an agreement, without any knowledge of the Board, with the Secretary of Interior, Mr. Harold Ickes, which violated all of the wage criteria of the Board. Every member of the Board knew it.

But the Board finally, after two days and two nights of Executive Session, two and a half nights of Executive Session, capitulated to the agreement. It meant one rule for the United Mine Workers of America and a different rule for the rest of labor; or it meant we would pierce the whole wage stabilization program of World War II.

As I said to the President subsequently, this is not a court in the sense that when the majority speaks then the dissenter applies the decision of the majority. This is a case in which I have to decide, as the enforcement officer of the board as well as a member of the board, whether I can enforce this decision to the discrimination of the other employers of America who are going to have labor disputes, and did have labor disputes, as a result of that unfortunate decision. I resigned from the board then.

I want to say that the President of the United States, Franklin Roosevelt, thoroughly understood and respected my position in regard to the matter.

In closing, I happen to think that this committee has a clear duty to send to the Floor of the Senate my resolution, or my resolution amended if someone can show it can be improved, and we should do it today. For I think the country is entitled to have a report from this committee today on what, in my judgment, on the basis of the facts, is truly an emergency that interrupts interstate commerce and which is denying

essential transportation services to sections of the country, as proven by the Secretary of Labor himself yesterday, in his own testimony.

The CHAIRMAN. Senator CLARK?

Senator CLARK. The Senator has answered most of the questions which I wanted to address to him. There are one or two which will only take a minute or two to ask, which I would like to ask.

I would like to very briefly express my hope that we can agree on some legislation to recommend to the Senate, but my strong belief that it is of the utmost importance that to the maximum extent feasible we should have a consensus of the committee behind whatever we do. I think to go to the Floor with a bill on which there has been a wide difference of opinion, and a close vote split within this committee, practically means that the Congress will not adopt the legislation which the majority would recommend. I believe we ought to start working on the Morse proposal and see what, if any, amendments would meet with the approval of the large majority of this committee.

Preliminary—and I don't, myself, feel that time is absolutely essential. I think a good case could be made for taking enough time, maybe two, three, four or five days, to bring out a bill which would have the enthusiastic support of the large majority of this committee, accompanied by a report carefully drafted which will sustain, by an irrebuttable argument, what a large majority of the committee is in agreement upon.

WAYNE, I shall be very brief on this. I understand that the Emergency Board did not base its decision on the guidelines. In fact, as I look quickly through the report, which has been made a part of this record, the guidelines are not referred to. But I understood you to say that the board was very much interested in a non-inflationary settlement. Is that correct?

Senator MORSE. That is correct. And the carriers approved the need for it.

Senator CLARK. In Mr. Siemiller's testimony last night, he made certain points which I believe should be answered by you in the record in order to give us the strongest record to the Senate with.

I would ask you, first, why the board was unwilling to include a cost of living escalation clause?

Senator MORSE. First of all, the cost of living escalator clause that this Union asked for is not a cost of living escalation clause at all. The clause that this Union asked for was when the cost of living goes up they get an increase and if it goes down, they don't lose anything. That is not a cost of living escalator clause.

The cost of living escalator clause is one that when the cost of living goes up a certain percentage they get an increase, but if it goes down a certain percentage they get a decrease; that is what is known as the escalator clause.

Senator CLARK. Could not the board have recommended such a clause?

Senator MORSE. Well, the board did recommend a kind of escalator clause. I will take you to page 5 of our report:

"Although we recommend against the use of an escalator clause, we believe that the effort of the Union to devise a means to safeguard the economic position of the employees, particularly in respect to the protection of their real wages, is warranted. We, therefore, recommend that the Union be given the right to re-open the wage rate provisions of the contract if by December, 1967 the cost of living since December, 1966 has increased one percent or more over the average annual increase in the Consumer Price Index during the five-year period 1962–1966."

Senator CLARK. That answers my question.

Senator MORSE. The re-opener right would be limited to the basic wage rates of the new agreement.

Senator CLARK. That answers my question.

Senator MORSE. Permit me to say this: Don't forget, they have to absorb one percent. In a war situation such as we have now, we certainly can't justify saying to a Union, "You don't have to absorb anything." They have to absorb one percent, but then they get their increase.

Senator CLARK. You answered my question.

Mr. Siemiller made much of the fact that the hourly rate for Greyhound Bus mechanics was substantially higher than the hourly rate for aviation mechanics, although the skill required was somewhat less. Would you comment on that?

Senator MORSE. First, let me say in answer to that question that it is difficult to get comparison of certain wage classifications such as a mechanic with other comparable wage groups.

The Union presented no such comparisons to the board. Read the transcript. On the wage rate, I am at a loss to understand how a Union can come in and make as poor a wage case as they made in this case. They wouldn't even have a lawyer represent them. They made no use of an economic labor consultation group. This Union has taken the position that they made what I would call a minimal presentation on the various issues, and sat back, obviously relying on their naked economic power.

It was the responsibility of the Union to make the case. Read the transcript. They didn't give us the evidence.

I will say something about what those differentials are in a moment.

Senator CLARK. What he said last night is what I am interested in.

Senator MORSE. The reference to bus mechanics in Mr. Siemiller's testimony of yesterday was not presented at the hearing. However, the board did consider the position of mechanics' pay as compared with other comparable job classifications.

Exhibit 26 submitted by the carriers shows the average hourly earnings of IAM represented employees of the five carriers have increased a greater percentage, 55.7 percent, than the average hourly earnings of all manufacturing production workers, which has been only 39.1 percent in the period January 1956 to January 1966.

You have to have a base period to use as a basis for comparison.

Senator NELSON. Can I ask a question at that point?

The percentage is one thing, especially if you are starting at a lower base. What is the actual dollar and pennies increase?

Senator MORSE. Can I finish this statement?

Senator NELSON. Yes.

Senator MORSE. Exhibit 27 shows that the IAM represented employees progressed from a ranking of fifth place in the groups in 1956 to the top position in 1962, a position which has been retained to date.

These carrier exhibits were not rebutted by the Union. The carriers placed an exhibit in the record which showed that the IAM represented employees of the five carriers rated first among some 20 manufacturing industries in terms of average gross hourly earnings in January, 1966. The IAM employees have risen from fifth place in 1956 to achieve first place in 1959 and again in 1962, and have maintained that position since 1962.

You are not dealing with underpaid workers on any comparative basis. The IAM employees of the five carriers averaged $3.42 an hour in January 1966, compared with gross hourly earnings in the other industries as follows:

Five carriers, $3.42; petroleum, refining and related industries, $3.27—don't forget, they have mechanics, too. Many of these other industries I now give you have mechanics, too. But what Siemiller wants to do now is to pick out the mechanic rate and say there are mechanics in other industries, some of which get more.

Let me tell you something about that argument: Number one, you go into these other industries and you will find in many instances it is not a blanket rate. They have mechanics and mechanics. They have different grades of mechanics. They pick the most highly skilled mechanics that they have in a given industry and show that is more than $3.52.

Secondly, we have a responsibility, unless they want to make a plea to select out of their employees increases for a special group, which they did not do. Their case is for a blanket, uniform percentage increase for all their employees. They made no argument that we should take the mechanics out of this case and give the mechanics separately the wages received by the highest paid mechanics in some of the other industries, such as, apparently, some of the bus operations.

That is not the theory of their case. Their case wasn't presented on that theory. The case was presented on the theory as to what our wage increases should be for the workers in the two main groups; that is, your mechanical and highly skilled workers, and then your cleaners, cafeteria workers, your ramp men, and others in the so-called lower skills.

But keep in mind when I am talking about these wages in other industries, which is the evidence before us, I am talking about industries that have mechanics, too.

Transportation equipment, "$3.29; primary metals industry, $3.23; ordnance and accessories, $3.16."

I can go on down the list.

Senator CLARK. I think the point I am interested in is the one having to do with Mr. Siemiller's question about the bus mechanics. Have you anything in there on that?

Senator MORSE. There is nothing on it because there is nothing in the record. It is an afterthought on their part.

Senator CLARK. My next to the last question is to ask you——

Senator MORSE. May I say one more thing on your first question and then I will be through?

Senator CLARK, you couldn't have a labor case in which they couldn't bring in some exceptional payment in some industry showing that someone gets more for that classification than they get, but you certainly do not try a labor case on the assumption that because they show somebody else gets more, therefore you grant them more.

Senator CLARK. I don't want to argue with you. I am just trying to make a factual record.

Senator MORSE. I don't want to argue. I want to tell you the theory of the board.

Senator CLARK. My next to the last question is to ask you to comment briefly, if you will, on the charge of Mr. Siemiller that the board was unfair in connection with its consideration of the insurance plan and pension plan.

Senator MORSE. Here, again, they didn't attempt to sustain any burden of proof. On the question of why did not the Emergency Board recommend improved health and welfare programs and improved insurance plans, the Board recommendations are included on pages 10 and 11 of the report you have before you. I will read it:

"In this area, the Union proposed that the entire cost of the individual carrier health and welfare plans shall be borne by the carrier and that all plans should be liberalized to provide full coverage for employees and dependents.

"The Union emphasized that Eastern has already assumed the full cost of these programs and that the Union recommendation

is supported by the prevailing practice in industry generally. The carriers contended that current benefits under their plans exceed those typical of industry generally, but, nevertheless, offered to make an additional contribution of three cents per hour in the second year of the contract against premiums for dependents coverage under presently existing group insurance.

"The carriers stated that with this addition, the average cost of the carriers of current plans would be 17.4 cents per hour compared with an average employee contribution of 2.6 cents per hour."

There is no denial of that. That is the fact. The carriers contribute 17.4 cents and the workers 2.6.

"The board has taken note of these facts and others in the record and recommends against any increase in carrier contributions at this time. The Union has not proposed, and the carriers have not offered, an improved plan or additional benefits, since the scope and coverage of the plans would remain unchanged and additional carrier contributions of three cents per hour given the second year would simply result in an increase in employee compensation by this amount.

"The board believes it is in the interest of both parties at this time to deal with an increased cash compensation in connection with wage rate adjustments and has done so under paragraph 4 of Section A above."

Senator CLARK. How about the pension plan?

Before you answer, just to get the question clear, Mr. Siemiller said last night the airline industry is the only one where the employees have to contribute to their pension plan.

Senator MORSE. That is just not true. There are scores and scores of welfare, health and pension plans in the country.

Senator CLARK. Let me say this to you, Senator MORSE: I know that your answer is contained on page 11 of the report, and the report is already in the record. So unless you desire to read it to the other members of the committee your answer, I think it is somewhat redundant to do it again.

That is my last statement.

Senator MORSE. I refer the committee to p. 11 of the Report which contains the Emergency Boards findings on this issue.

Also, the Union's position was that only National Airlines among the five carriers has a non-contributory plan. The BLS study shows that a majority of pension plans are non-contributory but that many are contributory. The carriers' case was that the contributory plans of the four carriers vary considerably but all provided benefits on normal retirement, early retirement, disability retirement, and investing provisions as earnings increase the pension benefit increases.

Any uniform recommendation by the board would affect each carrier differently. Employees contributions are always returned to the employee in some form. At the current rate of pay for mechanics, average pension would be $260 per month. Although a majority of pension plans in industry generally are non-contributory, they usually provide a lower amount of benefits. It is $4.25 in autos, $4.25 to $4.75 in aerospace, and $5 in steel.

If I were mediating a settlement, allowed to take into account information they didn't get into the record, here is one place in which I would propose some benefits to the Union. I would decrease the contribution of the Union and increase the contribution of the employer. But for the union, on the basis of the evidence submitted, to take the position, "We are now entitled to wipe it out entirely" in my judgment, wouldn't be sustained by the record.

Senator CLARK. Mr. Chairman, that concludes my questions.

I have no doubt other members of the committee may want to ask Senator MORSE questions. I would hope, in the reasonably near future, we can proceed to consider amendments to the Morse Resolution. I will have one or two to suggest at that time.

Senator MORSE. May I make one other point?

Mr. Bruff was my counsel throughout the hearings and did a magnificent job for the whole board. We were informally advised that what the union wanted was the wage money and not the welfare and pension money.

In their mediation hearings with the carriers, let me say they made no fight at all of any real efforts on this particular issue. They would have liked to have had, I think, some change, but it was not one of the issues that they made an issue in the case.

Finally, let me say that the issues involved in this case are of vital importance to the economy.

1. Every free industrialized country which tries to maintain full employment faces this problem: strong unions have the power to push wages up faster than productivity and thereby to inflate costs and prices; and semi-monopolistic industries have the power to push up prices even if costs are stable. No country has really solved it. Sooner or later we will have to come to grips with it.

2. I think it is obvious that—with our balance of payments situation—we cannot afford inflation, even if it could be tolerated domestically. This either means abandoning full employment or finding a way to live with it.

3. This is not a problem for the next six months or two years but for the decade. The end of the war will not solve it. A tax increase will not solve it—though it could help. It will have to be approached head on. Some time, somewhere, we will have to find a way to bring the unions to the realization that they cannot continually push wage costs up, and to convince business that profit margins cannot continually rise.

4. The union's demands in this case are way out of line.

If IAM's demands are granted, this would be by far the largest increase for any important union outside construction.

They are demanding an increase of 7 or 8% a year for 3 years—5.1%, plus 2 or 3% for the cost of living. In contrast:

The auto workers got about 4.5%, plus cost of living escalation, at a time when cost of living escalation didn't mean nearly as much.

Aerospace got about 4%, plus escalation;

The New York transit workers probably got something over 5% without escalation.

Western lumber got around 5% without escalation a few months ago.

Every other major union outside construction has got less—very much less.

It's *still* true that unit labor costs in manufacturing have not risen. They stood at 99.3 in June 1966 (1957–59=100) vs. 99.3 in January 1964, vs. 100.6 in January 1963, etc. Thus we would *not* be locking the barn door after the horse is stolen. But it will be stolen soon if this settlement is made on union terms.

An important segment of the public is aroused over this case—whether the facts justify a "national emergency" finding, or only the denial of essential transportation to a section or sections of the country.

The high visibility of this case can increase the leverage we get on prices from taking a strong stand on wages.

5. Facing up to the problem will have to involve a firm position by Congress, such as S.J. Res. 181, for the purpose of this particular dispute; a really strong, organized, and continuous course of high level persuasion directed toward union leaders, in which they are, in effect, told they have to choose between full employment and a responsible wage policy; *plus* a big job of public education on what the problem really is, and why it has to be solved; *plus* a new drive on prices and profits.

6. Maybe it cannot be done. Maybe things have to get worse before Congress will act. But history suggests that once they get worse, the job is twice as difficult.

PROVISION FOR JUDICIAL REVIEW OF THE CONSTITUTIONALITY OF GRANTS OR LOANS UNDER CERTAIN ACTS

The Senate resumed the consideration of the bill (S. 2097) to provide for judicial review of the constitutionality of grants or loans under certain acts.

Mr. MORSE. Mr. President, I wish to make a brief statement on the bill itself, and I want to make a brief statement as to the history of the movement for judicial review legislation. Then I shall make a brief statement as to why I think we ought to pass the bill, unless someone can offer an amendment to improve the bill. I shall vote for the bill.

Mr. President, I wish to commend my very good friend, the senior Senator from North Carolina [Mr. ERVIN], upon the bill he has brought to the Senate. As one of the original sponsors of the legislation, I have no hesitancy whatsoever in accepting the changes in the format of the bill which resulted from the hearings and the subcommittee deliberations upon the measure as introduced.

The legislation as it is now before the Senate, in my judgment, has been perfected and it should be enacted.

I share the views of the Senator from Michigan, which I interpret to mean that he wished we did not have to enact any legislation. Who does not wish that? The Senator said he thought that if we could get this issue settled without legislation, he would not be inclined to favor legislation.

I am of the opinion that if we get it settled better with legislation than without it, I am disappointed that it has not been settled heretofore.

I know it can be argued, and has been argued here on the floor of the Senate, that Federal legislation is not necessary because the judicial procedures exist for issues such as this to reach the Supreme Court via the State juridical route. But they have existed for a long time and we do not have a decision on the nose, as we lawyers say, to determine how far Congress can go under the first amendment to the Constitution.

Frankly, I do not think the so-called State route is the answer to the problem. I think the senior Senator from New York is wrong. We will have to have Federal legislation. I therefore support this legislation.

Objections raised by witnesses on some of the original provisions have been met insofar as I can discern most equitably.

I commend Senator ERVIN and his colleagues for their diligence and care in giving to S. 2097 the careful scrutiny which is evidenced by the reported measure and the report which accompanied it to the floor.

As a teacher of law in past years, one of my great cares in the instruction of my students was to try to impress upon them

that a substantive right is conditioned and affected to such a degree by the procedures permitting the exercise of that right; that it could be said in truth that there is no substantive right unless there are effective procedures available to the individual to affirm that right.

S. 2097 in the area of first amendment law was designed to provide procedures to individuals and associations of individuals which would enable them to obtain judicial consideration of their claims. That is its virtue; that is why I believe it should be enacted by the Congress.

I realize full well that the Supreme Court of the United States is not bound by this legislation. It is, however, afforded an opportunity to clarify what is admittedly a gray area in our constitutional law and it will be given an indication by the enactment of this legislation that the Congress believes the time is ripe for the necessary constitutional clarifications.

Therefore, I am making legislative history in the presence of the senior Senator from North Carolina [Mr. ERVIN], and in the expectation, or at least the hope, that the Supreme Court in due course of time if this legislation becomes the law of the land, will read the debate in the Senate that gave birth to the legislation. It should take note of what the intent of the floor manager of the bill was in respect to this legislation, and what the intent of the senior Senator from Oregon was in respect to this legislation, because when I relate the early history of this legislation, I think the Court will note that what I say is apropos and pertinent to a subsequent consideration by the U.S. Supreme Court of the history of the legislation.

It certainly is my intent that, although the Court is not bound by this legislation, the proponents expect the Court to recognize that it, too, under our system of government, has a responsibility to assist the people of this country in rendering a judgment upon an issue that at the present time plagues the law of the land. The law is uncertain because of the lack of a decision that the people and the legislatures of this country can rely upon in respect to the meaning of the first amendment to the Constitution in respect to aid to private schools, financial aid to private schools by the Federal Government. That needs to be clarified.

The purpose of this legislation, may I say for the record, is unquestionably to accomplish that end. The Supreme Court can take note from the discussion that is now taking place on the floor of the Senate that that is one of the primary purposes of this legislation.

I ask the senior Senator from North Carolina [Mr. ERVIN] if he agrees in respect to the legislative history that I have just made; namely, that one of our motivating purposes and primary legislative intent behind this bill is to have a legislative framework on which the Supreme Court can render a judgment as to the application of the first amendment to legislation that provides financial aid in any degree whatsoever, in any form whatsoever, to private schools in the United States.

Mr. ERVIN. Mr. President, that is the intent of the legislation. The intent of the senior Senator from Oregon and the senior Senator from North Carolina is fundamentally to get decisions which will enable us to legislate in what is now a more or less unknown field.

When I offered my amendment to the Higher Education Facilities Act, the senior Senator from Oregon gave the Senate the assurance that he favored independent legislation to provide for judicial review in this field.

The Senator from Oregon introduced the bill which we are considering today. He appeared before the committee and made a magnificent statement as to the purposes of the bill. That statement ought to be read by everyone interested in this particular subject.

Mr. MORSE. Mr. President, I appreciate the comments of the Senator from North Carolina. I thank him very much for the statement he has made as to the purpose of this legislation.

Because of my high regard for his great legal and judicial ability, I am honored that he shares my view as to the legislative intent of the Senate this afternoon, as we proceed to the passage of this bill.

The Senator from North Carolina was very kind to make flattering remarks about the testimony that I gave before his committee in regard to the legislation. Mr. President, the testimony will speak for itself. It does not deserve the accolade that the Senator has bestowed upon it. I believe that as part of the legislative history of the bill, that testimony should be part of the RECORD; and I ask unanimous consent that the testimony which I gave before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, in connection with S. 2097, be printed at this point in the RECORD.

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

TESTIMONY OF SENATOR WAYNE MORSE, DEMOCRAT, OF OREGON, BEFORE THE CONSTITUTIONAL RIGHTS SUBCOMMITTEE, SENATE COMMITTEE ON THE JUDICIARY, ON S. 2097

Mr. Chairman, members of the Subcommittee, I wish to thank the Subcommittee and its most distinguished chairman for the privilege of appearing before you to support S. 2097 which I had the honor to introduce on June 7, 1965 in association with my good friend, the senior Senator from Pennsylvania, Mr. CLARK, and the distinguished senior Senator from Texas, Mr. YARBOROUGH.

As one of the co-authors of this legislation may I say that the support given to it by the Senator from North Carolina, Mr. ERVIN, in his capacity as chairman of the Subcommittee through his action in asking that his name be added to the bill at the next printing is most welcome, since he is a most able constitutional lawyer in his own right and because his experience on the bench of the highest court of his State, which he graced for more than six years, has equipped him to speak with great authority on the constitutional implications of the measures.

We are fortunate, indeed, in the Senate to have available to us the wealth of legal experience and study which are represented by the chairman of the Subcommittee.

While at times I have been constrained to differ with him in the course of the journey through the floor of the Senate of some educational bills in which the principle of judicial review was involved, I can assure him that I did so only with very great reluctance and then only for the reasons which I shall develop in my testimony in chief a little later on.

Mr. Chairman, before making my case in detail, may I review for the Subcommittee the legislative history of the judicial review proposal.

I take the Subcommittee back to the 87th Congress, 1st session, in March of 1961. At that time the Education Subcommittee of the Senate Committee on Labor and Public Welfare was conducting hearings on some nine measures, including S. 1021, the Administration bill which provided for a three-year problem of Federal grants to the States to assist their local educational agencies in paying part of the costs of urgently needed public elementary and secondary school facilities construction and to provide for the payment of teachers' salaries and for the funding of special educational projects.

During the course of our hearings, it became evident that First Amendment questions would be raised in connection with proposed amendments to that bill and therefore as the Chairman will recall, I requested the then Secretary of Health, Education, and Welfare, our present able colleague, the distinguished junior Senator from Connecticut, Mr. RIBICOFF, for a memorandum which would set forth the Administration position concerning any form of Federal aid to our private schools and, in addition, a legal brief setting forth the position of the Department on the question of the constitutionality of Federal aid to education per se. Secretary RIBICOFF responded to this request on March 28, 1961 in what became known as the Willcox memorandum set forth in our hearings record on pages 110–147.

I ask the indulgence of the Subcommittee to have this memorandum and the accompanying transmittal letter printed in the committee hearings record as an appendix to my testimony this mornnig. I ask also for permission to include in that appendix the views of the constitutional authorities on the question which were solicited by my subcommittee and which were later incorporated together with the basic memorandum in Senate Document No. 29.

Senators will recall that during Senate debate on S. 1021 much use was made of this very helpful material in connection with amendments offered to the bill. Although S. 1021 did not become public law, its role as a forerunner bill to educational measures subsequently enacted was, I believe, of crucial importance.

My position, then, as my position has been in connection with other education legislation since that time may be stated quite simply. It is that as a Senator I have supported and I shall continue to support measures designed to provide all of our children with an opportunity to obtain the best education we can afford to give them without regard to where they obtain that education, in our public or in our private sector, to the extent that these measures can be justified as being within the confines of the Establishment Clause of the First Amendment to the Constitution of the United States.

There are two tests which I have applied in coming to my decision on the specifics of legislation. First and foremost, "Is the measure within the constitutional authorities of the Congress to act?" Secondly, "Is the measure, proposed to be enacted, in the public interest?" Although I happen to believe that proposals which will strengthen our educational system are quite clearly in the public interest, I am always conscious that this aid must necessarily be supported by a firm constitutional foundation.

In the 87th Congress, a higher education measure also passed the Senate of the United States. It was a college construction bill. Senators will recall that having carried S. 1241 to a point of passage in the Senate, it was set aside and a companion bill which had passed the House, was amended by striking all after the enacting clause and substituting therefor the text of S. 1241. H.R. 8900 as thus amended, was then passed by the Senate and a conference was requested with the House. Permeating that conference, and in my judgment, one of the most potent factors which led to the rejection by the House of the conference report on H.R. 8900, was the question of the extent to which public monies could be made available to meet the educational needs of church-related institutions of higher education. That is why in the 88th Congress we attempted through a categorical limitation on the use of funds to establish clearly that the type of assistance we proposed to offer was linked to Article I of the Constitution of the United States.

Although H.R. 8900 did not become law, the debate and conference discussion on it served a very useful purpose, in that it posed quite squarely questions which S. 2097 of this Congress is designed to answer.

In the 88th Congress, many bills which were carved from the Administration's omnibus education bill, S. 580, became law, among them the Higher Education Facilities Act of 1963. The Higher Education Act of 1963 went into conference with a judicial review amendment, which I had opposed as a floor leader of the bill, but which the Senate felt to be essential. In that conference, strongly supported by my colleagues, we strove to retain the amendment. It was made perfectly clear very early in our sessions that on this point the House of Representatives, in the view of the House Managers of the bill, was adamant, and that if a conference bill containing the amendment were to issue from the conference, once again the conference report would be rejected by the House.

Mr. Chairman, the objective needs of our educational system which were clearly demonstrated by the testimony taken before the Education Subcommittee made it imperative that a start be made to finance the expansion and rebuilding of the physical plant of higher education. It was because of this recognition of the pressing needs of our young students on the part of the Senate conferees, that, with great reluctance and much soul searching, we receded on the judicial review amendment. We did so, however, only after having obtained assurances that the judicial review concept would be introduced as separate legislation in both bodies, and that to the best of our respective abilities we would endeavor to bring such legislation up for action at an early date in both bodies. I have been very much in earnest in fulfilling the undertakings I then gave and I have been, together with my colleagues on the subcommittee since that time, fully committed to the redeeming of the pledge we gave.

It is for that reason that I have offered or cosponsored judicial review bills, the last of which, S. 2097, is before you today for your consideration.

This recapitulation of the antecedents of S. 2097, Mr. Chairman, I felt was necessary in order that we may understand the present bill in its historical context.

Essentially, S. 2097 deals with the establishment of a procedure whereby a clarification of a disputed area of constitutional law may be obtained from that branch of our government which has the responsibility, in the final analysis, to speak with authority.

In the limited area of education legislation, S. 2097 sets aside the restrictions which, since the case of *Massachusetts* v. *Mellon*, decided in the Supreme Court of the United States in 1923 (262 U.S. 447), the Court has imposed upon itself and its subordinate courts with respect to taxpayers suits.

What is it that is provided in S. 2097?

Section 1 enumerates certain acts which have been passed by the Congress as well as any other act administered by the Department of Health, Education and Welfare which has become law since January 1, 1965, which contain provisions for making grants or loans for educational purposes to public and nonpublic educational institutions.

Section 2 of S. 2097 provides, in effect, "a standing to sue" to any public other nonprofit institution or agency which is, or may be, prejudiced by the order of the Federal officer making a loan or grant to another institution on the grounds that such grant or loans serve to reduce the amount of funds available for grants or loans which might otherwise have been available to the institution bringing suit.

Section 3, of the act, vests with "standing to sue" a citizen, upon whose taxable income there was imposed an income tax, permitting him to bring a civil action against the Federal officer making a loan or grant to an educational institution on the grounds that the citizen challenges the award under First Amendment to the Constitution of the United States.

Section 4 provides access to court relief to any public or nonprofit private institution or agency whose application for a loan or grant under any of the Acts enumerated in section 1 has been denied by the Federal officer, having appropriate authority, on the ground that such loan or grant would be prohibited by the First Amendment to the Constitution.

The District Court of the United States for the District of Columbia, a statutory court, is empowered to take judisdiction of such suits.

Mr. Chairman, what are the advantages of these procedures?

First, they do not in any way, in themselves, challenge the constitutionality of any act of Congress which has become law. The presumption of constitutionality for such acts is not in question. No Senator or Representative who voted for these bills, I am sure, did so in the belief that he was voting for an unconstitutional measure. It was certainly my conviction, founded upon careful study and consideration of the measure, that they were valid exercises of Congressional authority under the Constitution.

But I realize, as does, I am sure, that learned jurist who is the Chairman of this Subcommittee, that lines of legal theory in support of, or in opposition to, a measure, which can be legitimately projected, may nevertheless, be in conflict or opposition in a legal area where the courts of our country have not spoken with finality upon a case or controversy which is squarely on the point. These lines of legal theory are necessarily just that—they are projection of what we feel as lawyers the courts would hold were an opportunity to be presented to them to rule upon the case directly.

Human beings are fallible and it is the essence of our system that conflicts in constitutional theory which need to be resolved in due course can be when the time is right, and through that organ of our governmental system which under our system has the power to render such final decisions. It is part of the wisdom of the checks and balances which were built into our system at the beginning of the Republic that there be procedures available to citizens to determine their rights under the law.

As a teacher of Constitutional Law I have impressed upon hundreds of students of the law what I believe to be axiomatic; namely, that there are no substantive rights unless procedures are provided whereby these substantive rights can be effectively claimed.

Without the procedural rights the substantive right is but a vain and empty—a hollow—right. Since our courts quite wisely and quite properly refuse to give, on their own initiative, advisory opinions upon the laws enacted by the Congress, the only way in which an act may be tested, and the rule of the Constitution applied to it, is through a case or controversy being brought by interested parties who have suffered damages. By enactment of S. 2097, the Congress will have provided an access to the courts in this particular category of cases to parties having legitimate interests.

In the long run, Mr. Chairman, it is perhaps far less important how the court would actually rule in such a case or controversy brought before it. The important thing is that with the instrument of S. 2097 citizens, individually or collectively in corporate form, would have available to them the right to invoke a procedure which could lead to the resolution of a basic and deeply rooted controversy.

That is all S. 2097 does. No burden is placed upon the Supreme Court of the United States by this legislation. We do not attempt, in violation of the comity between the legislative and the judicial branch, to force the Supreme Court to take or not to take action in its field of constitutional paramountcy.

We are simply saying that the inferior courts established by statute can be clothed by the Congress with an appropriate jurisdiction. It would be my hope that the Supreme Court through appropriate review procedures would be moved to take cognizance of a case which might arise under the provisions of S. 2097. Should it choose not to do so, the finding of the statutory court would of course prevail, and would guide our legislative actions thenceforth.

Once the first cases have been adjudicated under the provisions of S. 2097, it is my judgment that there would be a great sense of relief throughout the land, and that as a consequence, educational measures in the future could be considered upon their merits in terms of the public interest, the constitutional questions having been settled for our generation.

May I say to those who fear the consequences of the enactment of S. 2097, "Be not afraid." If the courts rule, as it is my confident belief that they would, that that which has been done was a proper exercise of the constitutional authority given to the Congress, then we could look forward to meeting the full needs of the education of our young people directly, which we have now met, but in part, and indirectly.

On the contrary, if the courts should rule that in good faith we in the Congress have gone beyond the proper bounds of our constitutional function, then we need to know the limits and bounds which we must observe until such a time as the people of the United States change, through constitutional amendment, our organic law.

* * * * *

Mr. MORSE. Mr. President, again I wish to commend the Senator from North Carolina, who in this instance, as always, has shown the qualities of judicial impartiality in the presentation of the case for this legislation. In this instance, his work is marked by his distinguished service as a justice of the highest court of the State during the years he graced the bench of North Carolina.

I wish now to say a word for the RECORD as to the origin of this bill. In my work as chairman of the Subcommittee on Education, during the first year of the administration of President Kennedy, we were confronted with the problem of amendments to be offered in the Senate calling for judicial review of specific legislation.

As the Senator from North Carolina has pointed out, I believed that we should have a law providing for judicial review rather than for a special judicial review amendment attached to each Federal aid bill in the field of education.

President Kennedy called me to the White House, and we spoke about this matter. I had announced to Senator ERVIN and others that I would submit a judicial review amendment, and President Kennedy completely agreed with the suggestion that I made, that we should have a separate bill on judicial review.

I came back and reported that information to the Senator from Pennsylvania [Mr. CLARK], a member of my subcommittee; and he joined me in what subsequently became known as the Morse-Clark judicial review amendment.

President Kennedy assigned the then Attorney General of the United States, Mr. ROBERT KENNEDY, to make available to us the assistance of the Department of Justice, in its preparation.

I had a conference with the Attorney General, Mr. ROBERT KENNEDY, and he assigned the Solicitor General of the United States, Mr. Archibald Cox, to serve as the consultant with Senator CLARK and me in the preparation of the amendment.

Both Senator CLARK and I are appreciative of the legal expertise service that the Solicitor General of the United States rendered in the preparation of the legislation. However, I wish to exonerate the Department of Justice, including the then Attorney General, Mr. ROBERT KENNEDY, and the then Solicitor General, Mr. Cox, from any responsibility, in the sense that the bill carries any obligation on their part to share my views in respect thereto. Senator CLARK and I placed our own imprint upon the bill, although I should say that we followed almost completely the drafting recommendations of the Department of Justice.

That is the history of this bill, and I give it because it should assure Senators that the bill was thoroughly considered and carefully drafted. After we introduced the bill, as the RECORD will show, President Kennedy left no room for doubt that he thoroughly supported the passage of such legislation.

Mr. President, I believe we have an opportunity here this afternoon to pass legislation that is long overdue, and I hope the Senate will proceed to pass it.

Mr. YARBOROUGH. Mr. President, as coauthor of S. 2097, as a member of the Subcommittee on Education since 1958, and as coauthor or active sponsor of virtually every educational bill that has passed through the Subcommittee on Education since 1958, I desire to commend the distinguished senior Senator from North Carolina for his leadership in this matter.

I believe that this bill is long overdue. Many people conscientiously think that some of the expenditures which are made under the authority of the various education bills are unconstitutional. They have lacked a means of testing their views in the courts of the land. I believe that when we pass these laws and appropriate this money, we should furnish the citizens a remedy.

We know that a lot of these funds are being given to private schools, and that some of the expenditures may come close to the boundary line of unconstitutionality. I do not believe that these are frivolous complaints. The question is so close, as the Maryland case illustrates, that citizens who conscientiously think their tax money is being used unconstitutionally should have a right to test that belief in the courts.

I believe that this problem is well stated in a sentence by Professor Jaffe, of Harvard, when he said:

> Many of the States, perhaps even the Federal Government, are or soon will be undertaking expenditures for education which allegedly violate constitutional prohibitions against aid to religious establishments.

We heard much about that matter in the various hearings on the education bills. Groups appear at virtually every one of these hearings and oppose passage of the legislation on constitutional grounds.

I believe that education should move ahead in this country and that we should put money into colleges, and into elementary and secondary education. I also believe the people should have a right to judicial review, to test the constitutionality of these actions. These laws were not so written, on their face, as to be unconstitutional. From the reading of them, they appear to be constitutional. But the question of whether they have been unconstitutionally applied can be tested in court. That is the purpose of judicial review, where it will reach far and do much.

There we would have the facts as to how the law is applied after it is passed. Some taxpayers think Congress has unconstitutionally used their money. I desire to see this matter threshed out in the courts, where all the facts can be developed. The courts can review the historic precedents, the historic principle of the separation of church and state that Thomas Jefferson called for, and which I believe is needed in this country today.

I thank the distinguished senior Senator from North Carolina, a great constitutional lawyer, for his leadership in bringing the bill through his committee and to the floor of the Senate for passage.

Mr. ERVIN. I thank the distinguished senior Senator from Texas, who is a cosponsor of the bill, for his gracious remarks and for the great assistance he has given us in bringing this bill to its present stage.

The PRESIDING OFFICER (Mr. HARTKE in the chair). The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (S. 2097) was passed.

The title was amended so as to read: "A bill to provide effective procedures for the enforcement of the establishment and free exercise clauses of the first amendment to the Constitution."

Mr. ERVIN. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

INFLATION NOT ATTRIBUTABLE TO FARMERS

Mr. CURTIS. Mr. President, I hold in my hand an article which appeared in the Chicago Tribune which arrived today. The article relates to political activities of the Secretary of Agriculture. The article states:

> Secretary of Agriculture Orville Freeman has told Democratic congressional candidates at a closed briefing that they must overcome deep resentment against the administration in farm areas and should stay away from discussion of inflation.

Mr. President, that is a rather interesting observation, to say the least.

The article continues:

> A Chicago Tribune reporter listened in on Freeman's discussions with congressional candidates, after a girl, who was a staff member of the Democratic national committee, directed him into the room for a scheduled "news briefing."
>
> The reporter was wearing a badge which had been issued by press officials, but it was similar to these worn by the candidates and was never checked closely. The reporter later learned that the news briefing, which was to be held in an adjacent room of a Washington hotel, had been canceled.

The article further states:

> "There is a reaction far deeper and more bitter than I could ever have anticipated" among the nation's farmers over recent remarks by administration officials concerning farm prices, Freeman told the candidates. "Farmers know what a tremendous minority they are and they are very sensitive."

Mr. President, it may be that the farmers are in the minority, but they are an important minority. They provide the Nation with the best food that is available to any nation in the world. They provide food at a lower cost, compared with other prices, than any other nation in the world.

The average factory worker in the United States has four-fifths of his wages remaining after he buys his food to spend for other things. That money can be spent on houses, savings, life insurance, piano lessons, dental or medical bills, college education, or anything else. He has four-fifths of his wages remaining after living in a land that is the best fed land in the world. He pays his grocery bills. And yet, the Secretary of Agriculture, in times past, has proceeded against the farmer with his words and his actions, on a theory that the farmer is responsible for inflation.

The article also states:

> ASKS FOR ADVICE
>
> A candidate from Columbus, O., told Freeman that a poll in his district showed that the major issue was inflation, and he sought advice on how to handle questions about the increased cost of living.

Mr. President, 15 years ago when a housewife spent a dollar for groceries 47

cents went to the farmer, on an average. Today the farmer receives only 39 cents out of every dollar spent for food. In other words, three-fifths of the cost of food are costs that occur after the raw products leave the farm.

There is no wonder Mr. President, that Secretary Freeman, who appears to be directing the political campaign, now tells the candidates that the farmers are very sensitive. They should be. They have been kicked around. They have had the force of Government used to lower their prices. That practice is unheard of.

Mr. President, I would be the first person to admit that there are many difficult and complex problems in the field of agricultural legislation. We have had problems for 30 years or more. There are problems to which it is difficult to find the correct solution.

However, there is one thing that the Secretary of Agriculture can do. The Secretary of Agriculture can be a champion for farmers. He can speak up for them strongly. He can explain to the people that it is not the farmer who is causing inflation. He could explain some of the financial and monetary policies of this country, the spending policies, and a few other things. Such an explanation would be a correct report to the people as to what is causing the inflation.

Mr. President, I ask unanimous consent to have printed in the RECORD the entire article from the Chicago Tribune.

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

L.B.J. AID WARNS CANDIDATES OF FARMER'S IRE—DON'T TALK INFLATION, FREEMAN ADVISES

(By Aldo Beckman)

WASHINGTON, July 28.—Secretary of Agriculture Orville Freeman has told Democratic congressional candidates at a closed briefing that they must overcome deep resentment against the administration in farm areas and should stay away from discussion of inflation.

"There is a reaction far deeper and more bitter than I could ever have anticipated," among the nation's farmers over recent remarks by administration officials concerning farm prices, Freeman told the candidates. "Farmers know what a tremendous minority they are and they are very sensitive."

Several weeks ago, President Johnson indicated that high farm prices were partly to blame for the increased cost of living and two days later, Freeman announced he was "pleased to report" that certain farm prices were down.

DIRECTED TO CONFERENCE

Both remarks triggered almost instant criticism from farm belt congressmen and from farm leaders thruout the nation.

A Chicago Tribune reporter listened in on Freeman's discussions with congressional candidates, after a girl, who was a staff member of the Democratic national committee, directed him into the room for a scheduled "news briefing."

The reporter was wearing a badge which had been issued by press officials, but it was similar to those worn by the candidates and was never checked closely. The reporter later learned that the news briefing, which was to be held in an adjacent room of a Washington hotel, had been canceled.

ASKS FOR ADVICE

A candidate from Columbus, O., told Freeman that a poll in his district showed that the major issue was inflation and he sought advice on how to handle questions about the increased cost of living.

"I've been trying to figure out an answer to that question for six years," Freeman replied. "Slip, slide, and duck any question of higher consumer prices if you possibly can."

"Don't get caught in a debate over higher prices between housewives and farmers," he cautioned. "If you do, and have to choose a side, take the farmers' side. It's the right side, and, besides, housewives aren't nearly as well organized."

"GET 40 PER CENT"

Freeman said that farmers get only 40 per cent of the dollar that housewives spend for food at the supermarkets and suggested that candidates could point out that housewives pay extra for the luxury of ready-made foods.

"A TV dinner that costs 60 cents at the store could be fixed at home for 20 cents," Freeman said.

He urged the candidates to emphasize that net farm income is at its highest in history. "Farm income and farm outlooks are better under this administration than they have been under any other in years," he said. "But," he warned, "farmers never like to be told they're doing all right."

"BUNCH OF NONSENSE"

Freeman said grain surpluses that were such a problem several years ago have diminished so much that "we may be able to increase wheat acreage allotments" this fall.

He described as a "complete bunch of nonsense" the controversy over his letter to Secretary of Defense Robert McNamara, asking the defense department to stop buying pork several months ago, when the farmers were receiving 30 cents a pound for hogs at the market. "It didn't affect farm income one bit," he said. "It was the absolutely logical thing to do and was consistent with the farmers' interest."

He indicated he would take the same action if a similar situation arose again. "It is only good sense that the defense department should buy beef when there is less demand for it by the nation's consumers," he said.

"THEY WON'T BUY IT"

Freeman said he asked the defense department to resume their pork purchases as soon as the market price dropped several cents.

The former Minnesota governor told the candidates that the percentage of each pay check that now goes for food is lower than in 1960. "You could tell them [the housewives] that, but we know they wouldn't buy it," he said.

The three-day closed meeting will end tomorrow. During the sessions, the candidates were permitted to question either cabinet members or representatives from each cabinet-level department.

Mr. CURTIS. Mr. President, I hold in my hand a letter dated July 29, 1966. The letter is signed by the Hon. JOHN R. HANSEN, Member of Congress from the Seventh District of Iowa. The letter reads, in part:

DEAR COLLEAGUE: Last Sunday, it was my pleasure to accompany the Honorable Orville Freeman on a tour of the 7th Iowa Congressional District. He was the first cabinet-level official to visit southwest Iowa since Henry Wallace, then Secretary of Agriculture, toured the region in the late 1930's.

It was an added pleasure to have a National Broadcasting Company television crew along to film the full day's activities. The Frank McGee Report will feature the Freeman visit to the 7th District this Sunday, July 31, to be shown here in Washington on WRC–TV, Channel 4 at 6:00 P.M. EDT.

The letter continues and tells about the Freeman campaign. They start out visiting a church. Mention is made of activities during the day and how they concluded with a speech at night to 1,000 people.

Apparently, NBC has been enlisted in this cause of Mr. Freeman's. No doubt it will be informative and perhaps it will be news to some people, but I suggest that they might anticipate a call for equal time.

Mr. President, on the subject of inflation and Mr. Freeman's behind-the-scenes conniving against the farmers, I wish to read further from the article in the Chicago Tribune:

A candidate from Columbus, O., told Freeman that a poll in his district showed that the major issue was inflation, and he sought advice on how to handle questions about the increased cost of living.

Here is the answer, Mr. President:

"I've been trying to figure out an answer to that question for six years," Freeman replied. "Slip, slide, and duck any question of higher consumer prices if you possibly can. Don't get caught in a debate over higher prices between housewives and farmers," he cautioned. "If you do, and have to choose a side, take the farmers' side."

That is a switch for Mr. Freeman.

It is the right side, and besides housewives are not nearly as well organized.

I think housewives should be interested in the cause of inflation. The issue should not be hidden from them. All that needs to be done is to tell them the truth.

The reason Mr. Freeman got in trouble was not that housewives found out something they should not know but that it was an attempt on the part of high administration officials to tell housewives something that was not so, blaming the cause of inflation on the farmers.

Mr. President, time will tell, that both farmers and housewives are quite intelligent—in fact, very much so. If I were going to pick out two groups of alert citizens who know what is going on in the country, it would be the housewives who manage the bulk of the wealth of the country and do the greater share of the buying. They know what is going on. Right alongside that group, I would pick a group of farmers, who are private enterprisers, who have spent their lives meeting costs, taking risks, taking a chance on what the weather will do to their crops, taking a chance on the market. And now there is another hazard: the hazard of government.

When prices start to rise, instead of farmers being able to take advantage of it as compensation for the days when they had no crop at all, or when prices were down so low, the Secretary of Agriculture now moves in and directs the Secretary of Defense to cut down the purchase of pork by one-half, and specifically says that the Armed Forces should serve bacon not five times a week to our troops but two or three times. In that same letter, which is addressed, "Dear Bob," and signed "Orville," from the Secretary of Agriculture to the Secretary of Defense, he suggests that all

beef and pork for troops located in Europe be purchased in Europe.

Mr. President, it is important that this account of Mr. Freeman's political tour be placed in the RECORD. I do not think it is necessary that I answer it. It will be answered by the people, I am sure. They are not so easily fooled as sometimes it is assumed.

THE INCOME TAX TREATMENT OF EXPLORATION EXPENDITURES IN THE CASE OF MINING

Mr. ERVIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1342, H.R. 4665.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 4665) relating to the income tax treatment of exploration expenditures in the case of mining.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Finance with amendments on page 2, in the heading in line 1, after "SEC. 617", to insert "Additional"; and in line 2, after the word "Of", to insert "Domestic"; on page 7, in line 18, after "(2)", to strike out "(3), and (6)", and insert "and (3)"; on page 9, in line 22, after "631", to strike out "(c)." " and insert "(c)"; after line 22, to insert:

(g) SPECIAL RULES RELATING TO PARTNERSHIP PROPERTY.—

(1) PROPERTY DISTRIBUTED TO PARTNER.—In the case of any property or mine received by the taxpayer in a distribution with respect to part or all of his interest in a partnership, the adjusted exploration expenditures with respect to such property or mine include the adjusted exploration expenditures (not otherwise included under subsection (f)(1)) with respect to such property or mine immediately prior to such distribution, but the adjusted exploration expenditures with respect to any such property or mine shall be reduced by the amount of gain to which section 751(b) applied realized by the partnership (as constituted after the distribution) on the distribution of such property or mine.

(2) PROPERTY RETAINED BY PARTNERSHIP.—In the case of any property or mine held by a partnership after a distribution to a partner to which section 751(b) applied, the adjusted exploration expenditures with respect to such property or mine shall, under regulations prescribed by the Secretary or his delegate, be reduced by the amount of gain to which section 751(b) applied realized by such partner with respect to such distribution on account of such property or mine.

(h) CROSS REFERENCE.—

For application of subsections (b)–(g) of this section to certain expenditures deducted or treated as deferred expenses under section 615, see section 615(e).

On page 12, in the material after line 3, after "SEC. 617," to strike out "Exploration", and insert "Additional exploration"; and after the word "of", to insert "domestic"; and, at the beginning of line 4, to strike out:

SEC. 2. (a) Section 615 of such Code (relating to exploration expenditures) is amended—

(1) By striking out the heading and inserting in lieu thereof the following:

"SEC. 615. EXPLORATION EXPENDITURES IN THE CASE OF COAL."

(2) By striking out "deposit of ore or other mineral" in the first sentence of subsection (a) and inserting in lieu thereof "deposit of coal".

(3) By striking out the last sentence of subsection (a).

(b) The table of sections for part I of subchapter I of chapter 1 of such Code is amended by striking out the item relating to section 615 and inserting in lieu thereof the following:

"SEC. 615. EXPLORATION EXPENDITURES IN THE CASE OF COAL."

And, in lieu thereof, to insert:

SEC. 2. Section 615 of the Internal Revenue Code of 1954 (relating to exploration expenditures) is amended—

(1) by striking out "In" in the first sentence of subsection (a) and inserting in lieu thereof "At the election of the taxpayer, made in such manner and at such time as the Secretary or his delegate may prescribe by regulations, in"; and

(2) by adding at the end of such section the following new subsection:

"(e) CORRELATION WITH SECTION 617.—

"(1) INELIGIBILITY TO MAKE ELECTION UNDER THIS SECTION.—If the taxpayer makes an election under section 617(a), no election may be made by the taxpayer under subsection (a) for the taxable year for which the election under section 617(a) is made or for any subsequent taxable year, and any election previously made by the taxpayer under subsection (a) for any such taxable year shall have no effect. If any individual or corporation who transfers (within the meaning of subsection (c)(3)) any mineral property to the taxpayer makes or has made an election under section 617(a) which applies to any period prior to such transfer, no election may be made by the taxpayer under subsection (a) for the taxable year in which such transfer is made or for any subsequent taxable year, and any election previously made by the taxpayer under subsection (a) for any such taxable year shall have no effect.

"(2) APPLICATION OF RECAPTURE PROVISIONS OF SECTION 617.—In the case of a taxpayer who has made an election under subsection (a) and who makes an election under section 617(a), the provisions of subsections (a)(2)(C), (b), (c), (d), (e), (f), and (g) of section 617 shall under regulations prescribed by the Secretary or his delegate, apply to all expenditures paid or incurred by the taxpayer after the date of the enactment of this subsection which have been deducted under subsection (a) or treated as deferred expenses under subsection (b). For purposes of the preceding sentence, there shall be taken into account expenditures paid or incurred by any individual or corporation who has transferred any mineral property to the taxpayer (determined by applying the rules of subsection (c)(3)), but only with respect to mineral property so transferred.

"(3) Deficiencies.—

"(A) The statutory period for the assessment of any deficiency for any taxable year, to the extent such deficiency is attributable to the application of paragraph (1) by reason of a transfer of mineral property, shall not expire before the last day of the 2-year period beginning on the day after the date on which the election under section 617(a) is made by the transferor; and such deficiency may be assessed at any time before the expiration of such 2-year period, notwithstanding any other law or rule of law which would otherwise prevent such assessment.

"(B) For statutory period for assessment of deficiencies attributable to elections by taxpayers under section 617(a), see section 617(a)(2)(C).

"(4) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this subsection, including regulations for the application of this section in cases in which an election under section 617(a) has been revoked."

Mr. LONG of Louisiana. Mr. President, the Senator from Utah [Mr. BENNETT] has made a thorough study of this bill and I should like to ask that the Chair recognize him at this time to explain the bill.

The PRESIDING OFFICER (Mr. HARTKE in the chair). The Senator from Utah is recognized.

MINING NEEDS A BOOST—EXPLORATION EXPENDITURE DEDUCTION LEGISLATION WOULD PROVIDE IT

Mr. BENNETT. Mr. President, as a Senator from a key mining State, and as a member of the Senate Finance Committee serving under the chairmanship of the Senator from Louisiana, I rise to support H.R. 4665, a bill which has been reported favorably by the committee, which would provide income tax deductions for exploration expenditures made by mining companies.

The purpose of this bill is to provide the deductions without limitation for exploration expenditures for minerals paid before the beginning of the development stage of the mine.

Under present law, such deductions are allowed up to a maximum of $100,000 a year, with an overall maximum of $400,000 for each taxpayer. This arbitrary restriction on deduction, of exploration expenses, essential to development of a mining property, results in an unwarranted inhibition on investment in mining. The bill would remove the present restriction in the Internal Revenue Code.

I feel, as does the mining industry, that the proposed legislation would give new impetus and encouragement to our long-neglected American miners, not only because companies lose the tax advantage of the immediate writeoff of their exploration costs, but also, in the case of exploration expenditures which prove unsuccessful, they are likely to have to forego the recovery of the costs for an almost indefinite period.

Since the bill before us today provides for the recapture of exploration expenditures—in the event of a profitable operation—not only those added by the bill, but also those provided by present law—it is not expected that in the long run there will be any appreciable long-run revenue reduction under the legislation.

Mr. President, it is my feeling that the mining industry in the West and throughout the country has a special entitlement to the kind of assistance it would receive as a result of liberalizing the tax laws. This industry, for too long, has been the stepchild of the Federal Government, with one control after another standing in the way of its progress.

With all the encouragement the Federal Government has been giving for development of competing mines abroad,

relief programs of subsidy, technical assistance, and tax relief have been granted for agriculture, transportation, and other industry enterprises, but in the case of mining, very little help has ever been made available. This bill is a modest step toward obtaining long needed assistance for minerals on a scale commensurate with that provided other industries.

Technically, the bill adds a new provision to the Internal Revenue Code's section 617 which permits a taxpayer to elect to deduct mining exploration expenditures in the taxable year in which they are paid or incurred, without regard to the present $100,000 and $400,000 limitations. It also provides for the recapture of deductions when a mine reaches the producing stage. When this occurs, the taxpayer may either elect to include in income for that year the deductions chargeable to the mine, or forego depletion from the property which includes or comprises the mine until the deductions foregone equal the amounts previously deducted.

Mr. President, since this legislation will not mean a substantial revenue loss in these times of heavy deficits and financial burdens due to the Great Society's programs and the Vietnam war, I cannot see why there should be any opposition to the proposal, and I urge the Senate to act quickly and pass the bill.

Mr. SIMPSON. Mr. President, I wish to commend the Senator from Utah on the statement he has just made with regard to mining which, of course, is an industry in my State, too, and is adjacent to the State of my colleague from Utah.

The inhibitions against the mining industry over the years have been very hurtful.

With the pending bill enacted into law, we can hope for a greater and more prosperous mining industry in the States, especially in the raw materials provided by the State of Wyoming, where only recently taconite has been discovered and where, of course, uranium has been one of Wyoming's older mining ventures. Together with our coal supplies and the like, there is a necessity for a change in the law which will enable us to widen the scope of the mining industry.

I wish to associate myself with the remarks of the Senator from Utah.

Mr. BENNETT. I thank my friend from Wyoming.

Before I close, I might point out that the Secretary of the Interior has had a program for a number of years under which the Department will pay 50 percent of the cost of exploration. Exploration is so important, in his mind, that he is willing to go that far. I think this approach, which allows deduction of exploration expenses, subject to recapture if the mine is profitable, will provide an even greater boost than the Secretary's 50–50 proposition.

Mr. LONG of Louisiana. Mr. President, I ask unanimous consent that the committee amendments be adopted en bloc and that the bill as thus amended be considered as original text for the purpose of amendment.

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

Mr. MORTON. Mr. President, I call up my amendment No. 715, which I offer for myself, the Senator from Indiana [Mr. HARTKE], and the Senator from West Virginia [Mr. RANDOLPH].

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment, No. 715, as follows:

On page 2, line 25, and page 3, line 1, strike out "oil, gas, or coal" and insert "oil or gas".

On page 9, line 16, after "Disposal of" insert "coal or".

On page 9, line 18, after "disposal of" insert "coal or".

Mr. LONG of Louisiana. Mr. President, I know of no objection to the amendment. Had the Senator from Kentucky offered this amendment in committee it would have been agreed to. At that particular time there was doubt as to whether the coal industry wanted to receive the same treatment being given other industries. The gas and oil industries come under quite different provisions and are not covered by this bill.

There is no objection to the amendment, so far as I know. I am prepared to accept it.

Mr. MORTON. The coal industry was divided originally on the bill, as between tonnage and the number of mine operators. Then came the Smathers amendment. There was a question as to whether the coal industry was for the pending legislation. Then the coal industry became united. At the time the Smathers amendment was adopted, I, representing a coal State, was not aware of the feeling of the coal industry, or I would have offered the amendment at that time.

I thank the chairman [Mr. LONG of Louisiana] and the Senator from Montana [Mr. METCALF], who is a member of the Finance Committee, for their help. I know I speak for the Senator from Indiana [Mr. HARTKE] and the Senator from West Virginia [Mr. RANDOLPH] who come from great coal States.

I trust the amendment will be adopted.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 715) offered by the Senator from Kentucky [Mr. MORTON], for himself and other Senators.

The amendment was agreed to.

Mr. LONG of Louisiana. Mr. President, I think the RECORD should show that the distinguished Senator from Indiana [Mr. HARTKE] was the Presiding Officer at the time the amendment was agreed to.

Mr. GRUENING. Mr. President, this is an important piece of legislation to help a somewhat depressed segment of our industry, the mining industry.

I am particularly impressed by and agree with the statement of the senior Senator from Utah [Mr. BENNETT] that this bill will not, in the long run, cause a diminution of revenues to our Treasury. On the contrary this legislation will stimulate production, which will give us new mines, cause new explorations, and make mines an increasingly viable part of our economy.

This is a long overdue piece of legislation for an industry which has not received the favors that other industries have.

Our neighbor, Canada, has done far more in the way of incentives for its mining industry. I had occasion to visit Canada recently with top officials of Government in the field of mining, the Assistant Secretary of the Interior, Mr. Cordell Moore, Jr., Walter Hibbaw, the Director of the Bureau of Mines, and Dr. William T. Pecora, the new Director of the Geological Survey. We went into the Yukon territory to see if we could secure some of the wisdom that has been demonstrated by the far greater activity of Canada in the mining industry.

I shall not take time now but shall a little later go into details of what we learned.

H.R. 4665 represents a small part of what Canada has done to stimulate mining. As a result of much greater Canadian activity mining in Canada is far ahead of what it is in this country.

This legislation is a first step in the right direction. I hope it will be adopted. And let me know elaborate in what we have learned from our Canadian neighbors.

Mr. METCALF. Mr. President, under present law, mining exploration expenditures—that is, expenditures to determine the existence, location, extent, or quality of any mineral—paid before the development of the mine are deductible in computing taxable income to the extent they do not exceed either of the two dollar limitations. These deductible expenditures in any one year may not exceed $100,000, and the total amount of these deductions over all time for any one taxpayer may not exceed $400,000. Exploration expenditures in excess of these limitations are capitalized; that is, they are included as part of the cost of the property. If the property becomes nonproductive, these capitalized expenditures can be recovered in the form of a loss upon the sale of the property or its abandonment where it has become worthless.

For many taxpayers who have already reached the $400,000 limitation, the incentive to continue mining exploration has been substantially reduced. They lose the tax advantage of the immediate writeoff and at the same time may have to forgo the recovery of these expenditures for an almost indefinite period of time. They must forgo the recovery for this extended period of time whenever it is undesirable to sell or abandon the mineral properties because of the possibility that future exploration or new mining techniques may make the mining of lower grade deposits profitable. As a result, mining companies are forced either to dispose of the property without regard to these economic considerations or postpone the writing off of these costs almost indefinitely.

The Committee on Finance believes that these restrictions on mining exploration expenditures are undesirable. For that reason, it has accepted the provision of the House bill which removed the $100,000 and $400,000 limitations; therefore, under the law, as the bill would

amend it, it would be possible to deduct mining explorations currently without regard to these limitations.

There is, however, clearly an added tax advantage over present law in being able to write off exploration expenditures currently. Not only is there the advantage of the unlimited current write-off itself, but also the gains on the sale of the mining property under present law are generally treated as capital gains, while under the bill the deductions taken currently are ordinary income.

As a result, the Finance Committee has gone along with the House bill in providing what is called the "recapture" of exploration expenditures which have been deducted. This recapture occurs in the form of a reduction of percentage depletion deductions when the property becomes productive or by treating part of what would otherwise be capital gain as ordinary income when the property is sold or otherwise disposed of.

So far, what I have described is the bill as we received it from the House. The Finance Committee amendments have essentially retained all of the House provisions but provided an election for taxpayers which permits them to avoid the recapture rules I have explained to the Senate if they are willing to limit their exploration expenditure deductions in accordance with the limitations of present law—that is, limit their current deductions to $100,000 a year and $400,000 in the aggregate.

The committee has retained this provision as an election to the House provision so that full advantages of present law will continue to be available to new and small businesses. In addition, the Finance Committee amendments retain the right to deduct amounts for exploration expenditures outside of the United States up to $100,000 a year and $400,000 in the aggregate. The continuation of the present limited deductions for U.S. taxpayers conducting mining activity overseas is consistent with this Nation's policy as evidenced in its trade and tax laws of encouraging the extraction of minerals from without the United States in order to assist processing and manufacturing industry within the United States.

With these changes made by the committee, taxpayers will find preserved for them all of the advantages of present law; however, should they desire to deduct currently exploration expenditures in excess of $100,000 a year or $400,000 in the aggregate, they may do so but with the proviso that all of these exploration expenditures—both those above and those below the $100,000 and $400,000 limits—will be recaptured.

It is estimated that for a short transitional period there will be a revenue loss under this bill of about $3 million a year. However, because of abandonment losses which would otherwise occur and because the bill provides for the recapture of exploration expenditures wherever the deductions exceed the $100,000 or $400,000 limitations, there will not be any longrun revenue reduction under the bill.

It has been said that the recapture provisions in the bill are desirable in order to prevent a double recovery. However, I do not believe that this is an appropriate description in this case. While there is a direct writeoff of the exploration expenditures themselves, the percentage depletion deduction allowed is wholly separate and apart from this. Under present law, to the extent exploration expenditures are taken currently, this presently results in a lesser basis for the mining property than would otherwise be the case; and as a result, any depletion allowance taken which is based on cost is lower as a result of the exploration expenditures being taken currently. Therefore, in this case, it clearly is impossible to say that there is any double recovery. Where percentage depletion instead of cost depletion is used, the recovery allowed is based upon the income from the property rather than upon the original cost of the property; therefore, in this case, it would not be appropriate to take in account adjustments to the cost or basis of the property.

While I do not consider that there is a double recovery under existing law, I do not object to the recapture feature applying to the extent we permit taxpayers to write off more than they are allowed under present law. It is clearly more generous to permit the current writeoff of these additional exploration expenditures and also, as I indicated before, upon the sale of the property, it is capital gains which are realized rather than the ordinary income which is being deducted in this case. As a result, the recapture appears entirely appropriate, since we are expanding the area in which mining exploration expenditures may be deducted under present law.

Mr. President, in conclusion, it has been said that this legislation is important to the West, and of course it is; but it is national legislation, too. The legislation will provide an incentive for further exploration and further discovery of hard metals, except for gold. We know what the problem is with gold production. If it were not for the erroneous policies of the administration, we could produce gold.

However, we do not know where many metals in short supply are to be found, and we should urge the mining industry to improve its exploration methods. This legislation provides a tax incentive for mining explorations.

When I say it is a national bill, I mean it is a bill that will help to provide needed metals required by the national economy. It will encourage exploration for copper, for example, which is in very short supply. It will be an incentive for industry to explore for scarce metals which are needed in our electronic and other industries.

Because the Smathers amendment was adopted, the bill will continue the present favorable treatment of the small companies while at the same time the larger companies will be benefited by the removal of the limitations even though they will as a result be subject to the recapture provisions.

As the Senator from Alaska [Mr. GRUENING] has said, this bill, except for a very short period of time, will not take money from the Treasury. It will, in the final result, bring income to the Treasury and also increase national revenues by providing jobs and by producing additional metals. The additional metals should ease the pressure on the prices of some metals that are in such short supply.

I urge the passage of the bill.

Mr. CHURCH. Mr. President, first of all, I wish to commend the distinguished Senator from Montana for the statement he has just made in behalf of the pending bill, and the Senator from Alaska [Mr. GRUENING], who was the original sponsor of the measure, and who has worked so hard for its passage. I am happy to have been one of those Senators who joined as a cosponsor at the time that the legislation was first introduced. I have been very much interested in its course through Congress.

Mr. President, this morning's Wall Street Journal reports the uncovering of a large new vein of silver by the Bunker Hill Co. in Idaho. Assayed at approximately 100 ounces per ton, the discovery of this survey should certainly be considered good news for a country still suffering from a serious drain on accumulated silver reserves.

The news is also pertinent to the bill before the Senate today, H.R. 4665, because this bill could lead to more discoveries of this nature. Exploring for silver is tremendously expensive—more so than almost any other major mineral except lead and zinc which are often found in much the same way, in the same areas. H.R. 4665 is designed to encourage exploration by providing immediate deduction for tax purposes of the cost of exploration. Under present law the cost of exploration can only be written off when a mine is abandoned. Mr. President, this lag in receiving tax treatment of exploration expenses—which is often 5 to 10 years—is a serious impediment to mineral exploration. The House recognized this fact in passing H.R. 4665 and the Senate Finance Committee has done likewise, adding an amendment which supporters of this legislation, like myself, find acceptable. I hope the Senate will accept the recommendations of the Finance Committee.

One problem I have already mentioned, the short supply of silver, will be brought closer to solution by this bill. But there are others. Most of the mining industry should find this bill of benefit. Few industries bend more in the winds of market and industrial demands than does the mining industry. Few industries face the constant element of risk and disappointment that are the handmaidens of mining, exploration and development. Because of these economic vagaries, and because of the large sums of capital that must be expended in unprofitable searches for new ore sources, mining exploration has declined to dangerous lows in recent years.

Present Federal tax laws limit deductions for exploration at $100,000 per year and set at $400,000 lifetime deduction. In an age of increasing material and labor costs, such limitations are unrealistic.

The legislation now pending is designed to cure these defects in existing tax laws. I think the bill will be very helpful to the mining industry; and, because it will encourage further exploration for new metals, it will be most beneficial to the country as well.

Mr. President, I ask unanimous consent that the article published in today's Wall Street Journal to which I have referred entitled "Bunker Hill Company Says It Found 'Good Silver Ore' at Deeper Level in Idaho," be printed in the RECORD at this point.

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

[From the Wall Street Journal, July 29, 1966]

BUNKER HILL CO. SAYS IT FOUND "GOOD SILVER ORE" AT DEEPER LEVEL IN IDAHO

KELLOGG, IDAHO.—Bunker Hill Co. said further drilling work on the silver vein found at its Crescent mine in Wallace, Idaho, late last year showed "good silver ore" at a new level.

The company said it has exposed more than 425 feet of the vein at a depth of 3,500 feet and found an average minable width of 4¾ feet of ore averaging more than 40 ounces of silver per ton. Sections of the vein currently being studied "have averaged about 100 ounces of silver per ton," the company said. It didn't estimate the amount of possible ore reserves.

The vein was originally explored at the 3,300-foot level last year and showed "good" silver ore, but Bunker Hill officials said then that its extent at the lower level wasn't known. The drilling at 3,300 feet exposed 500 feet of the vein with an average minable width of five to six feet, but details of the silver content weren't disclosed.

The company said it will continue drilling work on a two-work-turn-a-day basis to determine the full extent of the vein.

Mining engineers say they consider 40 ounces of silver per ton of ore to be "a very good grade," but they note that the ultimate value of any deposit depends on many factors.

Mr. DOMINICK. Mr. President, I am delighted to have this opportunity to lend my support to H.R. 4665. Those of us who have been working over the years for new mining legislation are well aware that this bill is not a panacea for all of the problems facing the mining industry However, I do feel that this bill is an encouraging and constructive step forward. If enacted, this bill will give some long overdue assistance to the mining industry which is so vital to the economy of our country. This industry has been declining over the years, due in part to the fact that it has received absolutely no assistance or encouragement from the Government. This industry is the backbone of our economy and needs and deserves more assistance. It is imperative that we develop more creative and imaginative legislation to assist in the revitalization of this crucial segment of our economy. Revitalization of this industry is in part dependent on increased exploration and to that extent this bill will be most beneficial. It deserves the full support of the Senate.

Mr. RANDOLPH. Mr. President, I was privileged to join the Senators from Kentucky [Mr. MORTON] and Indiana [Mr. HARTKE], members of the Finance Committee, in sponsoring amendments to H.R. 4665, Calendar No. 1342, relating to the income tax treatment of exploration expenditures in relationship to mining. Without these amendments, the coal mining industry would be discriminated against in the sense that it would not be accorded the same option being extended to all other taxpayers in the mining industries.

The purpose of the amendment and its effect were lucidly explained by the able Senator from Kentucky [Mr. MORTON] when they were offered in this body and ordered to be printed on July 28.

I urge the acceptance of the amendments and passage of the bill.

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 amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill (H.R. 4665) was read the third time, and passed.

Mr. METCALF. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GRUENING. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CANADA'S ENLIGHTENED ATTITUDE TOWARD ITS MINING INDUSTRY: AN EXAMPLE THE UNITED STATES SHOULD FOLLOW—WE HAVE NOW MADE A START WITH THE PASSAGE OF H.R. 4665

Mr. GRUENING. Mr. President, our neighbor, Canada, has much to teach us in the field of mining, and I am hopeful that our country will profit by its example. In our northern neighbor mining is flourishing. In the United States, it is in the doldrums. This is particularly apparent in my own State of Alaska, with its vast mining potential so sadly underdeveloped. This is in addition to our shortsighted policy on gold mining by which the United States is the only country in the world with gold resources which is making their mining extinct.

Recently, in the first report made by Joseph Fitzgerald, chairman of the Federal Field Committee for Development Planning in Alaska, appeared a most revealing map. It showed Alaska, the adjacent Yukon territory across the border in Canada, and that portion of British Columbia lying due east of the Alaska Panhandle—roughly one-third of British Columbia. On this map were marked with crosses the major mining projects now in operation. In Alaska's vast area, there were seven. In Yukon territory, in a much smaller area, there were 19. And in the northern third of British Columbia, there were 30. In other words, in an area much small than Alaska but adjacent to it and with similar geologic structures, were 49 active mining projects, in contrast with Alaska's 7. The ratio is 7 to 1 in favor of the Canadians. There are reasons for this disparity. They stem from different governmental policies.

It was my privilege to spend a week in Alaska recently with the three top U.S. Federal Government officials responsible for our mining activities. It happaned that all three of them had only recently been appointed to their high offices. They were: J. Cordell Moore, Assistant Secretary of the Interior for Mineral Resources; Dr. Walter Hibbard, Director of the Bureau of Mines of the Interior Department; and Dr. William T. Pecora, Director of the Office of Geological Survey of the Interior Department. Of these three, both Secretary Moore and Dr. Hibbard were visiting Alaska for the first time. We were also accompanied by Dr. Harold T. James, the chief geologist of the Geological Survey Office, who likewise had never before been to Alaska, and Mr. George Gryc, Alaska's specialist in the Geological Survey. With us traveled the leading Alaska officials in the field of mines: Phil Holdworth, the Commissioner of Natural Resources, Charles F. Herbert, the Deputy Commissioner, and James Williams, Alaska's Director of the Division of Mines in the Department of Natural Resources.

We looked over, as nearly as possible, all the mining projects in Alaska and then spent a most illuminating day at Whitehorse, the capital of Yukon Territory. We had notified its authorities and the leaders in the mining field in Yukon Territory and British Columbia of our desire to meet with them and learn what we could of their approaches to the development of mining, with the conviction that we had much to learn from them. We were received most hospitably at a meeting at which the Canadian approaches to mining were fully discussed. Not fewer than 40 executives in the field of mining and Canadian as well as British Columbian officials charged with the development of mining were present and generously gave their time and ideas to us.

We found out that among the things the Canadians do which we in the United States do not do are: First, to have the Government pay two-thirds of the infrastructure, that is to say, the construction of the transportation arteries to and from the mining project—railway, highways, airports, as well as power development; second, to relieve a new project of all taxes during the first 3 years of its production; and third, to subsidize prospectors.

The results of this enlightened policy are manifest.

Much of this is admirably discussed in a current article from U.S. News & World Report entitled "The Big Rush Is On To Tap Canada's Wealth." It also gives, in an appended box, some more of the tax incentives which are offered in Canada.

I recommend this article to the attention of my colleagues in both the Senate and House, as well as to the executive branches of the Government, particularly the Interior Department, the Treasury Department, and the Commerce Department, which all should have a concern, hitherto not adequately exhibited, for helping our mining industry develop.

I ask unanimous consent that this article from the July 25, 1966, issue of U.S. News & World Report be printed at this point in my remarks.

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

[From U.S. News & World Report, July 25, 1966]

THE BIG RUSH IS ON TO TAP CANADA'S WEALTH

(The natural riches of Canada are going to play an increasingly important role in the world, and especially in the U.S.

(Oil, uranium for atomic power, and fresh water are only three of many basic resources Canada has in abundance.

(All are sought in growing amounts by U.S. and others. Upshot: an expanding race to gather Canada's treasures.)

OTTAWA.—Now, more than ever before, the eyes of the world are turning to Canada as a treasury of resources for the future.

This country of less than 20 million people already is producing from its mineral, forest and water resources at a rate of 7 billion dollars a year.

The rate is climbing rapidly, and all the while the search for more riches goes on. This search has barely scratched the surface of the land.

In the United States, at the same time, warnings are heard that American mineral resources are being played out.

As time goes by, economists and industrial planners say, the U.S. will have to depend increasingly on Canadian resources to keep its industrial machine going.

All this has caused Canada to take a searching new look at its great store of raw materials. Canadians are asking themselves this question:

"Who is going to develop and own Canada—Canadians or foreigners?"

Debate over the question is producing sharp political splits between "nationalists" and those who welcome foreign investments. All over the country, businessmen, provincial leaders and economists are at odds over the best way to go about unlocking the Canadian treasure house.

Here is the story of Canada's natural wealth—what it is, where it is, and how much of it there is for export in the years ahead.

Minerals: Canada's diversified mineral industry is pacing the world in growth rate. Output has tripled in value since 1950 and is expected to approach the 4-billion-dollar mark this year as Canada—

Leads the world in nickel, zinc and asbestos production.

Ranks second after the U.S. in total output of uranium and of molybdenum, a vital additive in steel manufacturing.

Keeps its place as the world's third biggest producer of aluminum.

Stands fourth in output of lead, fifth in copper and iron ore, and sixth in production of potash. Canada ranks ninth in output of oil and gas.

The future, to Canadian geologists and mining men, is even more exciting than the feverish present. The potential of Canada's mineral wealth is awesome. The rush to measure it and bring it out of the ground is turning the country into the world's biggest mining camp.

Ores: Two big iron-ore bodies, far to the north, are getting attention.

One is on Baffin Island, almost 300 miles beyond the Arctic Circle. There, Baffinland Iron Mines has mapped more than 127 million tons of high-grade ore that can be shipped directly to mills without upgrading.

In the Yukon, Crest Exploration, Ltd., a subsidiary of Standard Oil of California, has located an estimated 11 billion tons of medium-grade ore. The deposits are near the Snake River, close to the boundary between the Yukon and the Northwest Territories. A rail line nearly 600 miles long would be needed to haul the ore to tidewater at Skagway, Alaska, but an existing narrow gauge road, the White Pass & Yukon, might serve as the final leg, from Whitehorse, Yukon Territory, to Skagway.

The search for nickel, too, is moving northward. A belt of mineralized rock cutting across the Ungava Peninsula in northern Quebec is believed to hold rich nickel deposits. Canada now produces 80 per cent of the world's nickel, mostly from mines in Ontario and Manitoba.

Metals locked together: Canada's booming base-metals industry feeds chiefly from ore bodies that produce more than one metal.

The big nickel deposits in Ontario and Manitoba also are major producers of copper concentrates. Zinc, lead and copper—often with silver included—are found linked in various combinations in the mineralized rock that is found throughout Canada.

Spurred by a worldwide shortage and high prices, the search for copper deposits now is centering in the mountains of British Columbia and the Yukon.

Several copper mines in Western Canada already in production are being expanded, and a number of new bodies of ore are being developed to meet Japanese requirements. Production from a deposit found on an island in remote Babine Lake in northern British Columbia is to start this year at a 5,000-ton-a-day rate.

Potash success story: Within the last four years, Canada has emerged as a major producer of potash—an ingredient in much of the world's fertilizer.

Thick beds of potash were found far underground in Saskatchewan by oil drillers. During 1965, three companies were in production, two others were sinking shafts or wells, and three more had announced major potash projects.

Production in 1965 totaled 1.3 million tons of refined potash, either by mining or by a process using wells to pump dissolved potash to the surface.

By 1970, it is estimated, 750 million dollars will have been invested in developing. Saskatchewan's potash beds, and Canada will be producing 7 million tons of potash, enough to make it the world's largest supplier. Recoverable potash in vast Saskatchewan beds has been estimated at 60 billion short tons, about half the world's known supply.

Asbestos is another giant Canadian industry. Asbestos Corporation, Ltd., a major producer with large mines in Quebec, is spending 50 million to develop a large deposit at Asbestos Hill, 1,100 miles north of Montreal.

The mine is expected to be turning out 100,000 tons of asbestos fiber a year in 1970. It will be shipped to plants in Canada, Britain and the U.S. from Deception Bay, on Hudson Strait, during the short ice-free season there.

Uranium marks time: Canada has the biggest known reserves of uranium—an estimated 200,000 tons producible at $5 to $10 a pound. Even under current conditions of relative depression in the uranium market, Canadian production is second only to that in the U.S.

Most mines in the major producing areas—Beaverlodge, Sask.; Elliot Lake and Bancroft, Ont.—are shut down or operating only part time.

Rising world demand, however, is expected to revive the uranium-mining industry in the 1970s. Stockpiling by the Canadian Government is helping to keep the mines functioning.

Forests: Canada leads the world in newsprint production, ranks second in the production of wood pulp for other paper products and fourth in output of lumber and plywood.

Exports of Canadian forest products total nearly 2 billion dollars. New mills are being built all across Canada to meet the growing demand for newsprint and other paper goods.

Currently, Canadian timber workers cut an estimated 3 billion feet of wood annually. Experts say the forests of the country could sustain an annual yield of 12 billion cubic feet under intensive management.

Oil and gas: Vast quantities of oil and natural gas in Canada's sedimentary rock provide one of the best guarantees of future prosperity.

"As far down the road as we can see," says a geologist-executive of the oil industry, "Canada will have oil for world markets."

Present known reserves are set at 7.7 billion barrels of oil, enough for 23 years of production at the present rate, and 44.4 trillion cubic feet of gas, a 35-year supply. These are the proven reserves of fields that have been in production for some time.

There are new discoveries in northern Alberta and northeastern British Columbia that soon will send the official estimates of reserves soaring.

It is believed that more than a million cubic miles of sedimentary rock, of the type that bears oil and gas, lies under Canada's northern regions.

On the basis of the North American average of production per cubic mile, the oil potential of the Yukon Territory is set at 3 billion barrels of the Northwest Territories at 13 billion barrels and of the Canadian Arctic islands at 33 billion barrels.

Oil from sand: Oil-impregnated sands lie close to the surface under several hundred square miles of wilderness along the Athabaska River in northern Alberta. This "tar sand" can be mined by strip-mining processes.

Production is to begin next year on a limited basis. Great Canadian Oil Sands Ltd., a subsidiary of Sun Oil Company, is rushing a 230-million-dollar plant and pipeline system into completion.

Early next year, the firm will start pumping 45,000 barrels of oil a day through its 266-mile pipeline.

Water: Canada now produces 22 million kilowatts of hydroelectric power. All of it, plus 7 million kilowatts produced by thermal-electric plants, is used by Canada's own booming industrial machine.

Giant new projects are under way in Quebec, British Columbia and Manitoba. All told, U.S. power authorities believe, 7 million kilowatts of new hydroelectric power will be available for export to the U.S. within the next decade.

Electric power in Canada is now a billion-dollar business. But much of the value of the country's hydroelectric resources shows up in the form of exports. Canada's position as the third-biggest producer of aluminum, for instance, is due to its plentiful supply of hydroelectric power.

Canadians are beginning to view their almost limitless flows of fresh water as a valuable source of export dollars.

Arthur Laing, Minister of Northern Affairs, sees water "as one of the prime resources of the Yukon—one which I predict in the future will be of equal, if not greater, importance than the mining industry."

Two plans are being pushed in the U.S. to make use of the waters of the Yukon River—the Rampart Dam proposal in north-central Alaska and the North American Water Alliance proposal.

The latter is a plan advanced by private engineering interest with support from some western members of Congress. It would divert Alaskan and Yukon water southward through a network of waterways reaching into Mexico and across the plains to the Great Lakes.

The U.S. stake: In the race now going on to develop the resources of Canada, the biggest spenders are American firms or their Canadian subsidiaries.

Foreign corporations, mostly from the U.S., already own or control more than half of Canada's industry. American-owned firms dominate the oil and gas fields and their pipelines. Nearly 60 per cent of Canada's mineral production belongs to outsiders.

One Canadian leader who welcomes even more American investment is Premier W. Ross Thatcher of Saskatchewan, who has this to say:

"In the last several years, American capital has been responsible for a dramatic transformation of Saskatchewan from an impoverished 'have not' province to its present position as one of the most prosperous. . . ."

U.S. companies are spending heavily in the search for oil and gas, in developing Saskatchewan's rich potash beds, and in creating a pulp and paper industry in the Province.

"Had our doors been even partially closed to America's capital," Mr. Thatcher says, "we would still be one of Canada's backward Provinces. The Government of Saskatchewan, in the months ahead, intends to take every practical or feasible step to attract additional American investment."

National policy toward foreign investment in Canadian resources, and ownership of those resources, may change in the future.

But meanwhile in Canada, with the help of U.S. dollars, the biggest development boom of modern times is under way.

[From U.S. News & World Report, July 25, 1966]

A HELPING HAND—TAX INCENTIVES

Here are the ways Canada encourages mineral development:

1. A full write-off of exploration, drilling and excavation costs in connection with the search for minerals.

2. Any company with income from mineral production can write off its off-property exploration costs against its mineral income. New syndicates for mineral exploration can write off cost against future mineral income, with unlimited carry-forward privileges.

3. Income from production of new mines is exempt from income tax for three years.

4. Depletion allowance of 33⅓ per cent for most types of oil, gas, prime-metal and industrial-minerals operations on net income.

5. Depletion allowance of 25 per cent on income received by nonoperators from gross royalties or rentals based on production.

6. Shareholders can deduct 20 per cent of their dividend income from companies that get at least 75 per cent of their earnings from mineral production.

7. Full deduction from producers' federal income tax of any provincial taxes against production.

8. Special 40 per cent, or $4 per ounce—whichever is greater—depletion allowance for gold mines.

9. Ten-cents-per-ton subsidy for coal production.

Mr. GRUENING. Mr. President, and now let me add that the passage by the Senate today of H.R. 4665 introduced by our able House colleague, Representative AL ULLMAN, of Oregon, a companion bill to S. 338 which I introduced is an important and gratifying first step in the direction of encouraging mining as Canada has done.

My bill was favored by a number of dishinguished cosponsors who were my colleagues Senators BOB BARTLETT of Alaska, ALLOTT of Colorado, BENNETT of Utah, BIBLE of Nevada, CANNON of Nevada, CHURCH of Idaho, DOMINICK of Colorado, HART of Michigan, JACKSON of Washington, JORDAN of Idaho, LONG of Missouri, MCGOVERN of South Dakota, METCALF of Montana, MONTOYA of New Mexico, Moss of Utah, MUNDT of South Dakota, RANDOLPH of West Virginia, and SIMPSON of Wyoming. The strong support of these able colleagues has been invaluable in achieving the result today of enactment of this important legislation to aid the American mining industry.

The amendment of Senator SMATHERS which increased the flexibility of the measure is a very useful contribution and a provision I am happy to have seen adopted.

In the work which has been done to obtain passage of H.R. 4665 our able and distinguished colleague from Montana, Senator METCALF, has been invaluable. His energetic and constructive assistance represents a major contribution to the welfare of the mining industry and one for which I am very gateful.

SUMMIT MEETING WITH DE GAULLE

Mr. CHURCH. Mr. President, this week's issue of Newsweek suggests that some diplomats, in both Washington and Paris, see a good chance for a meeting in September between President de Gaulle and President Johnson. President De Gaulle has planned a trip around the world, stopping in southeast Asia to visit Cambodia, and according to Newsweek, has scheduled a 48-hour stop on the French Caribbean island of Guadeloupe on his way back from the Pacific.

As Senators know, I visited Europe in early May. In a report to the Committee on Foreign Relations, entitled "Europe Today," I made a number of recommendations. One of them was that effective communications must be restored between the French and American Governments. I suggested, in this connection, a summit meeting between the two Presidents, if feasible.

President de Gaulle's stop in Guadeloupe seems to me to offer an ideal opportunity for these two statesmen to meet, if not at Guadeloupe then perhaps in Puerto Rico. Surely, our differences should not stand in the way of such a meeting. On the contrary, a discussion of these differences should contribute to improving understanding between the two countries.

I hope that the President will give serious consideration to meeting with De Gaulle.

THE DANGER OF EMPIRE IN ASIA

Mr. CHURCH. Mr. President, the course of the war in Vietnam has begun to generate an uneasiness that we may be slipping unawares into the role of a colonial power in Asia. A recent editorial in the July 12 edition of the Lewiston, Idaho, Morning Tribune raises a clear alarm over this possibility. Quoting two widely respected foreign correspondents, the editorial concludes with the following warning:

Two American presidents have said this must never be permitted to become an American war. It not only has become an American war, but South Vietnam has become an American enclave and Southeast Asia has become a bog from which we will have a most difficult time escaping. The possibility of empire by accident is by no means remote.

Mr. President, I ask unanimous consent to have printed in the RECORD the editorial from which I have quoted, entitled "The Danger of Empire in Asia," published in the Lewiston, Idaho, Morning Tribune of July 12, 1966.

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

THE DANGER OF EMPIRE IN ASIA

Is the United States in danger of stumbling into empire in Asia? C. L. Sulzberger, the foreign affairs columnist of *The New York Times*, thinks so, and a reporter's conversation with some military officers bears him out.

Sulzberger pointed out in a recent column that the United States has plowed millions of dollars into Southeast Asia in the form of harbor developments, roads and military bases. He believes the temptation may be great, once the shooting war ends, to seek to protect these enormous investments by maintaining a strong American presence there. This would create the danger "that the United States might unconsciously create an empire in Southeast Asia. At whatever cost we must avoid any absent-minded imperialism that would not only contradict America's national philosophy but could lead to nothing but trouble."

One can scarcely argue with Sulzberger's point of view. Yet there are ominous signs that some military men on the scene are not daunted by the prospects of empire. Richard A. Dudman, a roving correspondent of *The St. Louis Post-Dispatch*, is writing a series of reports from Saigon. American officers in South Viet Nam, he writes, are now speaking in terms of 400,000 U.S. troops in Southeast Asia by the end of this year and possibly 600,000 by the end of 1967. "Some speak seriously of needing a total American buildup of 1-million men." Dudman adds:

"Carried to its logical conclusion, the Americanization of the war could conceivably lead to a complete American takeover of South Viet Nam. A widely respected American commander advocates this course privately in so many words.

" 'We should occupy and rule this country,' he says, 'instead of pretending to respect the sovereignty of a government that really is only temporary and illegal and could change tomorrow. It would be more efficient, and probably the end result would be better, if we abandoned the idea of assistance and pacification and settled for subjugation, regarding South Viet Nam as an enemy country . . .' "

Two American presidents have said this must never be permitted to become an American war. It not only has become an American war, but South Viet Nam has become an American enclave and Southeast Asia has become a bog from which we will have a most difficult time escaping. The possibility of empire by accident is by no means remote.—L. H.

EDITORIALS COMMEND SENATORS BYRD OF WEST VIRGINIA, ERVIN, AND DIRKSEN

Mr. SIMPSON. Mr. President, I ask unanimous consent to have printed in

the RECORD two editorials entitled "BYRD Sparks U.S. Promise of Aid To End Race Riots" and "Would Lift Confession Bar," published in the Huntington, W. Va., Advertiser of July 26, 1966, and an editorial entitled "Congratulations to Senator DIRKSEN," published in the Chicago Tribune of July 18, 1966.

In connection with the latter editorial, the concluding sentence, I believe, is very pertinent:

For his successful leadership Senator DIRKSEN deserves the thanks and congratulations of the American people.

I certainly subscribe to that sentiment.

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

[From the Huntington (W. Va.) Advertiser, July 26, 1966]

BYRD SPARKS U.S. PROMISE OF AID TO END RACE RIOTS

Law-abiding Negroes and responsible civil rights workers as well as other conscientious citizens will welcome the federal government's promise of assistance to cities harassed by race riots.

The announcement of federal aid was made by Attorney General Nicholas Katzenbach in response to a letter by Sen. ROBERT C. BYRD (D–W.Va.) to President Johnson urging him to use the power and prestige of his office to stop the outbreaks of "lawless and provocative demonstrations."

Sen. BYRD's letter declared "There is no rational justification for tolerating these incredible attacks on firemen, policemen and innocent victims."

In calling the President's attention to the responsibility of the federal government to discourage outbreaks of lawlessness, Sen. BYRD was serving the cause of law-abiding Negroes as well as the public generally.

His statement that continued violence would set back the cause of civil rights was substantiated in part by the announcement from New York that extremism was sharply cutting contributions to the more militant organizations.

There are also indications in Congress that riots are causing reluctance to enact the administration's civil rights measure now pending.

Much of the money for civil rights efforts has come from northern liberals. In spite of this some of the militant individuals and organizations have expressed irreconcilable hostility to all white people.

A thorough investigation of the riot in the Watts section of Los Angeles disclosed unprovoked brutal assaults upon a great many white people just because they were white.

A check of the records of those arrested disclosed also that the majority of them had police records.

Possibly the same class of people were responsible for most of the recent violence in Chicago and Cleveland.

As Sen. BYRD has pointed out in connection with efforts to reduce crime in Washington, the most frequent victims of Negro criminals throughout the year are the respectable colored people themselves.

No doubt this is true in other cities also.

President Johnson himself should make it clear that the federal government is at least as much interested in protecting the public from the vicious as it is in seeking equality for all classes.

Those who use the civil rights movement as an excuse for arson, assault, looting and vandalism are betraying his efforts as well as those of their own leaders.

They are as guilty of crime as are those who violate the law for any other reason, and so are those militant agitators who incite them to riot.

The government should see that they are all adequately punished.

[From the Huntington (W. Va.) Advertiser, July 26, 1966]

WOULD LIFT CONFESSION BAR

Sen. SAM J. ERVIN, JR., has introduced a proposed constitutional amendment to remove from law-enforcement officers the shackles clamped on by a series of unprecedented decisions of the U.S. Supreme Court.

The North Carolina senator's proposal would make voluntary confessions admissible in evidence and prevent an appeals court from throwing them out if the trial court's determination of voluntariness was "supported by competent proof."

The provision was directed particularly at the Supreme Court's 5-4 decision in the Miranda case which required that before questioning a prisoner the police must advise him of his right to remain silent and warn him that anything he says may be used against him.

The suspect must also be told that he has a right to a lawyer and that if he is without funds, one will be appointed for him.

Whether the Ervin amendment is strong enough to give law enforcement an even break in dealing with criminals and protecting society may be questionable, but at least it is a move in the right direction.

The Advertiser has repeatedly urged that Congress submit an amendment for ratification by the state legislatures to remove the handicaps imposed by the majority of the Supreme Court upon police and trial courts.

Defendants who have confessed such serious crimes as robbery, rape and murder have been released repeatedly on technicalities never before used.

In the Mallory case a defendant who had confessed a Washington rape was released merely because he had been held for seven and a half hours between his arrest and his arraignment.

Soon afterward the same man went to Pennsylvania and committed another similar offense. This indicates the class of criminals that the court's opinions are releasing to prey upon society.

To protect the public from the increasing number of violent criminals who are responsible for growing lawlessness Congress should approve some such amendment as that offered by Sen. ERVIN and give the state legislatures an opportunity to express the favorable attitude of the court of last resort—the American people.

And while considering amendments, Congress should include one giving public schools the same right to prayer as both the legislative body and the Supreme Court exercise themselves.

[From the Chicago (Ill.) Tribune, July 28, 1966]

CONGRATULATIONS TO SENATOR DIRKSEN

By a vote of 66 to 27 the Senate approved a 2.06 billion dollar foreign economic aid bill for the current fiscal year, lopping off 408 million dollars that had been requested by the Johnson administration. Moreover, the Senate not only refused to go along with an administration request for a five-year aid program, but even refused to agree with the House on a two-year authorization, except for the Latin American Alliance for Progress.

Of the money eliminated from the administration's request, 250 million dollars was cut from the bill's development loan fund on a motion by Sen. DIRKSEN, the minority leader. The Illinois Republican also obtained approval of seven technical amendments designed to tighten loan procedures of the agency for international development.

DIRKSEN, in fact, was in the forefront of the successful battle to hold down foreign aid spending all along the line during the seven day debate on the bill. We believe the great majority of taxpayers agreed with him when he told the Senate that after an expenditure of 14.5 billion dollars for all types of foreign aid since the start of World War II, "this country is running into a serious situation. . . . The time has come for us to start cutting back."

For his successful leadership Sen. DIRKSEN deserves the thanks and congratulations of the American people.

POLICE BRUTALITY A MYTH?

Mr. HICKENLOOPER. Mr. President, I call attention to an article which appeared in the Des Moines Sunday Register, Des Moines, Iowa, on July 24, written by the distinguished junior Senator from West Virginia [Mr. BYRD] in which he points out the manner in which policemen across the Nation are being insulted, beaten up, and shot at, and offers refutation of the spreading myth of "police brutality." Constructively, Mr. BYRD urges all American citizens to support the law.

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

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

URGES TOUGHER LAWS TO PROTECT POLICE

(The author, a Democrat, is U.S. Senator from West Virginia. He serves on the Senate appropriations committee for the Department of Justice.)

(By Senator ROBERT C. BYRD)

WASHINGTON, D.C.—Are we attaining civil rights or civil war? Several police officers were shot in the back by snipers in the recent Chicago riots.

Last week Cleveland police were the targets. These men were performing their sworn duty as fully as our brave young men are doing in Viet Nam. But in Viet Nam we are at war.

Has it come to civil war here in our nation? I am sure it would be difficult to persuade the families of the wounded police officers that this isn't the case.

In a nation that prides itself on having a government of laws, not men, can we sit idly by while certain factions in our nation make mockery of this concept?

Our legal system is founded on the principle of equal justice under law. I interpret this to mean that every citizen regardless of race, color, creed or social condition, has this inalienable right. I also interpret this to mean that every citizen has the corollary responsibility to obey the law. If the benefits are available to all, then all must share the responsibility.

During the past several years, steady progress has been made to place added safeguards on the rights of minority groups, but as one reads of flagrant civil disobedience, the flouting of constituted order and decency, the open defiance with murderous means of the laws of our land, it may be appropriate to pause and reflect on whether we have gone too far.

I am confident that the great majority of Americans will agree with me that too many of those who have benefited from these safeguards have gone much too far.

MAUDLIN COMPASSION

As conditions exist as they do in our nation today, when our guardians of law and order are pictured as villainous oppressors; when the lawless who snipe at them, assault them with any means at hand, spit on them, and

villify them with obscenities are viewed with maudlin compassion, then I say, "Yes, we have gone too far."

It has gotten to the point where it is becoming increasingly difficult for any concerned American to understand how police have been able to maintain their composure and endure these attacks. Law-abiding Americans owe them a great debt of gratitude because they have been able to do this, while continuing to perform their sworn trust under these extreme provocations.

But we owe them more than gratitude: We owe them our active support, because respect for the law is the shared responsibility of each of us.

Historically, we Americans do not have the inherent respect for law enforcement that is characteristic of some of the old world nations. This stems, I believe, from the fact that our nation was founded in revolution, and expanded and settled by our ancestors who had little regard for the legal niceties that had any deterring effect on the immediate job at hand. Those ancestors of ours were, on the successive frontiers, their own law which they enforced with their own guns.

RURAL FREEDOM GONE

But the world of our ancestors no longer exists. No longer can each man be a law unto himself. Our world of rural freedom has become a world of urban congestion, and, as such, places greater emphasis on the necessity for law and order.

Fortunately for us, those who serve in maintaining law and order have changed, too. Now the entrance qualifications into police service are so stringent as to eliminate three out of every four applicants.

Today, the college graduate is no longer a rare exception in the ranks of the police. Today, physical ability and good marksmanship are only two of many varied qualifications necessary for a law officer. In addition, he must possess many of the characteristics and skills found in the doctor, lawyer, psychiatrist, clergyman, social worker, educator, humanitarian, soldier and administrator.

And most importantly, he must possess the iron resolve and dedication to duty that will permit him to endure the physical and psychological assaults heaped upon him by vicious malcontents, power-seekers who are adroit in twisting public opinion, and the overly idealistic sentimentalists who interpret freedom as license.

FIFTY-THREE MURDERED

It is a bloody fact of life in our nation that 53 police officers were murdered by criminal assaults during 1965, and 11 out of every 100 were criminally assaulted. While these men were being killed and wounded, cries of "police brutality" rose to a crescendo. And what was the fact in this case?

In a speech here in Washington last month, Quinn Tamm, executive director of the International Association of Chiefs of Police, set the record straight. He said, "the fact that, of the over 4,700 allegations of such action filed in the past three years [fiscal years 1963–64–65], only three-tenths of one percent were substantiated is certainly adequate refutation of this baseless charge."

The seriousness of this debasement of law enforcement is best evidenced in the grave difficulties police departments are experiencing in recruiting potential officers of the quality they must have.

While the average pay for a patrolman on the front line of law and order can hardly be considered an inducement—the median maximum salaries range from $5,292 to $6,514—it is a minor factor in the lack of volunteers. The major factor is that qualified dedicated young men do not want to be subjected to the disrespect and psychological abuse that, in effect places them, rather than the lawbreaker, on trial for doing their duty.

"UNCLE TOMS"

One complaint heard frequently from militant civil rightists is that the law is "white law," enforced by "whites." They refuse to recognize that Negro officers are in demand in most municipal departments, but those Negroes who are qualified are often reluctant to enter the service because they know they will be forced to endure opprobrium and be castigated as "Uncle Toms," or "Handkerchief Heads" by some irresponsible elements from their own race.

It is to their great credit that the police have given this problem dispassionate and thorough study and have taken far-reaching action to ameliorate it. Many municipal police departments have established police-community relations councils in the districts of their cities.

I firmly believe that the police, by and large, are striving to do their part. Last month, 70 leading police executives from 40 of our largest municipalities met for three days at Indiana University to confer regarding a long-range program on police-community relations.

The responsibility we have placed on our police is simple in concept—maintain law and order. We did not tell them they would need to be philosophers, psychiatrists, sociologists and linguists. Nor did we tell them that when they performed their duty, they would often be condemned in the court of public opinion.

I firmly believe that the time is far overdue for law-abiding Americans to rally to the cause of law and order. I believe the time is long past when we can sit idly by and let the police stand alone in fulfilling our common civic responsibility.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

(The ACTING PRESIDENT pro tempore assumed the chair at this point.)

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

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

AMERICAN ECONOMIC POLICY AND INTERNATIONAL ECONOMIC PROBLEMS

Mr. HARTKE. Mr. President, Prime Minister Harold Wilson is in Washington today. His presence here dramatizes the destructive international impact of American attempts to manage our economic affairs. For it was only 1 week ago that Mr. Wilson quite clearly placed a major share of the blame directly on the U.S. Government for the crisis which is forcing the most restrictive British economic program in decades. He stated:

Action taken by the United States authorities to strengthen the American balance of payments has led to an acute shortage of dollars and Euro-dollars in world trade and this has led to a progressive rise in interest rates in most financial centers, and to the selling of sterling to replenish dollar balances.

Those were the words of the Prime Minister on the floor of the House of Commons when he announced his austerity program.

Less than 1 year ago, I joined with the distinguished Senator from Minnesota [Mr. McCARTHY] in warning that too great a restriction on the outflow of dollars in a misguided effort to oversolve our balance-of-payments problem could have a disastrous impact upon the rest of the world, above all upon Britain:

No doubt—

We then said—

that Britain's fundamental problem of uncompetitiveness in the world can only be solved, over time, by Britain herself. But no doubt, as well, that Britain must have the time—as well as the determination now manifiest—to undertake the fundamental reforms modernization requires . . . It is certain that the United States cannot afford to see Britain go under; it is equally certain that we cannot afford to contribute, in any degree, to Britain's present difficulties.

At that time, Senator McCARTHY and I were expressing our deep concern at the potentially adverse international impact of U.S. balance-of-payments policy. We had no reason to be suspicious then that American economic policy in yet another critical area would also contribute to the now growing worldwide disruption of financial and monetary relations. Today, however, it is apparent that domestic monetary policy, which has fostered an unprecedented domestic interest rate war among savings institutions, is adding as well to the global interest rate war among nations.

On Wednesday, July 27, I reported on the adverse domestic impact of our non-policies for financing the war in Vietnam and for maintaining stable, noninflationary expansion at home. Today, I intend to report on the equally disturbing international impact of two completely clear policies of our Government. The first is the series of measures aimed at eliminating the U.S. balance-of-payments deficit. The second policy is that aimed at driving interest rates up to, and even beyond, internationally competitive levels.

Mr. President, in the first months of 1965, I was one of the first to applaud the President's emergency program for reasserting control over America's international accounts. The impact of that program—which included voluntary restrictions on foreign lending by banks and voluntary reductions in dollar outflows by international American corporations—was dramatic. By August 1965, Vice Chairman Robertson of the Federal Reserve Board was able to characterize the success of the emergency program as "amazing." In the second quarter of 1965, the U.S. balance of payments actually ran a small surplus.

But even then it was clear that such a program of restrictions embodied both present disadvantages and future dangers. The immediate financial and psychological impact of the emergency program gave the administration the opportunity to take the initiative in promoting international monetary reform. But the longer term effects threatened both the underlying international economic position of the United States and the fundamental stability of the international monetary and financial system.

The economic, financial, and monetary role of America is unique in the world. We are the world's largest trading nation: U.S. exports and imports account

for fully one-sixth of the free world's trade. The United States has by far the largest supply of savings and, even more, U.S. investors have an unmatched willingness to put money out at long term, for reasonable interest rates, and across international borders. Finally, the U.S. dollar stands at the heart of the international monetary system. On the stability and strength of the dollar depends not only the value of virtually every other currency in the world, but the value of gold itself.

Thus, any and all acts of American economic policy necessarily affect the stability of the world monetary system, the flow of funds into new investment everywhere in the world, and the economic prosperity which expanding world trade brings.

When the administration moved to restrict the flow of new dollars abroad last year, its action threatened the maintenance of the U.S. trade surplus. New foreign investment generates new exports. A clampdown on foreign bank credits—from which export credits were not excluded—threatened the financing of export sales, at a time when the export financing techniques of our competitors were becoming ever more liberal and even aggressive. To the extent that the emergency program adversely affects American exports—and at last a study of this impact is underway—there is an offset to any favorable balance-of-payments effect. Thus here the balance-of-payments policy of the United States may be self-defeating.

In its second area of impact, the emergency program—combined with the earlier interest-equalization tax—has served virtually to close the great New York financial market to foreign borrowers. Even subsidiaries of American corporations have been driven to finance their operations and investments in the narrow, divided financial markets of continental Europe. Every dollar that is not invested abroad today means a dollar that will not return as income on that investment tomorrow. Further, beginning in June 1965, there has been a breakout in international borrowing in Europe, with the lions' share being taken by the subsidiaries of American companies. Such international financings have more than doubled in the last 12 months. This rise—desirable in itself as it contributes to a growing ability of industrial Europe to finance its own expansion—has taken place haphazardly and recklessly. From February to May of this year, in fact, the European capital market broke down; no issues could be floated whatsoever. This forced-draft expansion, too, has involved a driving up of interest rates to levels rarely seen before. Moreover, much of the cash which has gone into the new European capital market has simply been taken out of New York for that purpose—thus, once again, offsetting the supposedly positive impact of the emergency program. The fact is that U.S. balance-of-payments policy, by placing a near-embargo on New York, has placed an unsupportable burden upon the free world's financial system. Here, the balance-of-payments policy of the United States is clearly self-defeating.

Finally, American balance-of-payments policy has struck at the underlying stability of the entire international monetary system. The compromise system formulated at Bretton Woods more than 20 years ago was based upon international cooperation. At its center was a twofold determination: the United States determined to supply the rest of the world with dollars for trade, investment, and reserve purposes; and the rest of the world determined to hold and use those dollars for these productive ends. Unilateral action by France and a range of other nations to cash in their dollars for gold has for some time threatened the second determination. And the U.S. reaction to the excessive dollar outflow of the 1958–63 period—a reaction embodied in the emergency program—now threatens the first determination. The indispensable basis for the mere operation of the present monetary system is disappearing more quickly than negotiations can proceed to reform that system. The fact is that a growing number of nations no longer desire to hold dollars—despite the clear need of their bankers and businessmen for dollars with which to do business—and the United States is just as desirous to prevent their getting more dollars.

The emergency program, and its subsequent extension to cover direct foreign investments by American corporations, was explicitly intended as a temporary expedient to eliminate the dollar drain and, thus, to gain bargaining power for the effort to reform the monetary system. What has been its real effect?

First. A temporary expedient has become ever more institutionalized.

Second. The immediate achievement of surplus in the summer of 1965 has been superseded by a—once more—growing deficit; dollars spent to buy imports and to pay the dollar price of escalation in Vietnam have risen faster than the emergency program can cut down on productive dollar investments. A $1.3 billion deficit in 1965 has become a 1966 payments deficit which is headed toward $2.5 billion; no firm figure is possible as only the Defense Department planners can even estimate the further dollar cost of Vietnam escalation.

Third. The international negotiations on monetary reform have demonstrated clearly that there is no consensus either for the need or for the method of reform; they have demonstrated equally clearly that we cannot depend upon these negotiations to bail our bankrupt policy out before it bankrupts the world.

For, let us make no mistake about it, it is bankruptcy that threatens the free world. The unmistakable signs have been seen in Britain. After months of creeping, Government-sponsored deflation, after two full-scale, international rescue operations inspired, organized, and led by the United States—the only alternative to devaluation of the pound has been seen to be savage economic restrictions and the deliberate promotion of unemployment in Britain. In simple terms, the British Government has determined that its only hope for avoiding devaluation is to create unemployment. I point out parenthetically that this is the same policy that was followed in 1931.

This continuing, cruel British experience points up the bitter irony of American policy. On the one hand, the United States has—as I have said—inspired, organized, and led emergency rescue operations to save the pound by pumping dollars into British reserves. But, on the other hand, U.S. restraint on dollar outflows has created a condition of international tight money which has forced ever greater restrictiveness on Britain. It is clear, after all, that the fundamental problems in the British economy—an outmoded industrial plant, archaic union, and management practices—require massive new investment to solve.

Deflation, effective as it may or may not be in the short run to "save the pound," only at best puts off the day of reckoning with the critical need for modernization of plant, equipment, and attitudes. It has been American balance-of-payments policy which bears a share of the responsibility for this forced restraint. It is American economic policy in another field which has put a halt, for the time being at least, to Britain's modernization hopes. U.S. monetary policy, which has produced unprecedentedly high interest rates at home, here in the United States, has contributed to the international interest rate war and has helped provoke the current crisis in Britain.

Interest rates have been rising higher and higher in every financial center in the world. In good part, this reflects the deliberate tightening of credit by foreign central banks. But the movement toward tighter money in the majority of industrial countries, which began as separate, individual efforts to restrain domestic expansion, has now become a crazy international competition at ever higher levels. Just as currency devaluation by one nation breeds competitive devaluations by others, so interest rate escalation in one financial center leads to competitive escalation in others. During the last 3 months alone, as U.S. rates have moved to historically high levels, four major foreign central banks—Germany, Belgium, Holland, and Britain—have increased their discount rates to meet this new competition.

The United States is not alone responsible for this destructive competition. But the international aspect and impact of higher U.S. interest rates is incomparably greater than that of any other nation's monetary policy. There is yet another irony here in American economic policy. Without question the United States is the most important single factor in determining the course of the free world's economy and finances. But international considerations are—in normal times, at least—far from the most important factors in determining U.S. economic policy. There is an old saw that when America sneezes, the rest of the world catches pneumonia. It is neither excuse nor consolation to say that we did not even know we were sneezing.

It is also no excuse or consolation to note that European central bankers

seem happy with the financial situation. Their irresponsibility is no excuse for ours. When Germany, for example, deflates at a time of sound U.S. expansion and contribution to prosperity, Germany's restrictiveness is isolated before it hurts the prosperity of others. But today, German restrictiveness—which has, incidentally, sent short-term German interest rates up to 10 percent—is being aided, abetted, and internationalized by American policy.

There is no excuse again for American policy, in the fact that the run on the London money market has "at least" brought new funds to New York to offset the dollar outflow. For these funds are the notorious "hot money" which jumps from financial center to financial center at the drop—or rise—of an interest rate. In fact, it is this "hot money" which has again and again provoked the sterling crisis of the past 35 years. There is no consolation for American policy in making the United States, as well, today, a prisoner of hot money.

There is neither excuse nor consolation for American monetary policy in any aspect of the growing international financial and monetary anarchy. Internationally, as well as domestically, American monetary policy has proved disruptive where it has not actually been destructive, as the homebuilders demonstrated in their march on Washington yesterday. Domestically, American monetary policy has been destructive to the housing industry and disruptive to the savings industry. International American monetary policy has been destructive to Great Britain and disruptive to the whole complex system of international financial relations. This is consistency of a kind—and it is a kind that spells disaster.

Why have American balance of payments and monetary policy had these bad results—so opposite to those for which any reasonable man would hope? The answer, I believe, is that there has been the same kind of open-ended commitment, the same kind of increasingly frozen position, and consequently, the same kind of escalation of effort, without reconsideration of purpose, that have characterized our policy in Vietnam. Our commitment to total elimination of our payments deficit, our frozen position on the emergency balance-of-payments program, and our escalation of interest rates—all three require immediate reconsideration. In Vietnam our purpose must be peace—I hope it is, and I pray that this administration seeks peace—and our policies must be brought into line with that purpose. Just so, in the economic world, our purpose must be prosperity—and our policies must be rethought, refashioned, and reformulated to bring them into line, too. As our unprecedented military power must be used for world peace, so our unprecedented economic power today must be used for world prosperity.

STAKES IN VIETNAM

Mr. SMATHERS. Mr. President, the Arizona Republic takes us to the heart of the Vietnamese situation in an editorial commenting on waves of public optimism and pessimism over the fighting in southeast Asia.

President Johnson and Secretaries Rusk and McNamara have put matters into perspective, the newspaper says, after an unduly optimistic impression sprang from the President's guarded news conference remarks early in July.

Whatever else, the Republic comments, Americans should realize that the fighting is going better for us than for the enemy, that a new element of stability has asserted itself in Saigon and that a campaign of economic and social reconstruction is progressing in South Vietnam.

The stakes are high, says the newspaper—high enough for patience and fortitude at home as well as courage and strength on the other side of the Pacific.

I wish to insert this editorial in the RECORD.

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

[From the Arizona Republic, July 14, 1966]

VIETNAM PENDULUM

President Johnson made an optimistic assessment of the Vietnam war in his July 4 interview on the ranch. He said "diplomatic reports" indicate the Communists "no longer expect a military victory." He felt the air raids on the oil depots near Hanoi and Haiphong had destroyed well over half of the enemy's reserves and equipment. "Success will be ours in Vietnam," he said.

If these guarded statements were parlayed into the general impression that Ho Chi Minh was hanging on the ropes and that his backers were likely to throw in the towel at any minute, that is unfortunate. For such is not the case.

This week, Secretary of Defense McNamara put matters into better perspective when he told a news conference he was "cautiously optimistic," but said he saw no indications that the Communists were ready to go to the negotiating table. He indicated additional appropriations, above the present figure of $1 billion a month, might be necessary, and other administration spokesmen have indicated the U.S. might have to beef up its troop commitment in Vietnam.

Secretary of State Rusk was equally realistic when he said, "One can be encouraged without believing the war is over." And then he added, "We are not over the hump yet. We haven't begun to see the end of this thing. There has not been the necessary decision on the other side."

The President, speaking to the American Alumni Council meeting at White Sulphur Springs, W. Va., Tuesday said that peace "may be long in coming, but it is clearly on the way. And come it must."

If the average American gets impatient with alternate messages of optimism and pessimism, he must realize that no one can predict day-to-day developments on a battlefield. What Americans should realize is that the Vietnam war is going better for us than for the enemy, in a military sense, and that a new element of political stability seems to have asserted itself in Saigon. Only a few months ago, the Buddhists were burning themselves all over the place and the peaceniks were saying the U.S. could not possibly win. The pendulum may have swung too far the other way last week, but it has been righted this week.

In the meantime, if anyone has any doubt, the Vietnam war gives every appearance of being one of the decisive battlefields on which communism must be stopped. Just as communism was stopped in Greece and in Korea, it must be stopped in Vietnam or the future, not only of Southeast Asia, but of the whole free world, will be endangered.

Nor should Americans forget the other war, the campaign of reconstruction, that is being waged in Vietnam. Just as South Korea and Formosa have built up their economies to the "take-off point," at which economic aid is no longer needed, so can South Vietnam establish a viable economy. And when that is done, the siren call of communism will fall on deaf ears in South Vietnam and the international conspiracy will have suffered another great setback in its effort to subvert and conquer free countries everywhere.

The stakes are high—high enough to call for patience and fortitude on the part of those at home as well as courage and strength for those on the other side of the Pacific. This won't be the last battle between freedom and tyranny, but its importance can't be minimized.

BOMBINGS CLEAR AIR

Mr. SMATHERS. Mr. President, the Copley newspapers detect a new feeling of pride and sense of purpose among the American people.

They suggest it dates from the day our planes bombed the oil storage facilities near Hanoi and Haiphong.

The newspaper organization agrees with President Johnson that we would rather reason than fight, but we never run from duty nor desert an ally. The air strikes served notice to the enemy that the price they may have to pay for aggression might not be to their liking. And they represent tactical action aimed at a quicker honorable peace in Vietnam.

I offer for the RECORD the Copley editorial as it appeared in the Elgin, Ill., Daily Courier-News.

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

BOMBINGS CLEAR AIR—NO OTHER CHOICE

There is a new feeling of pride and a sense of purpose among the people of the United States of America that can almost be felt tangibly.

It dates from the day when the United States Air Force and Navy carried the most telling blow of the war to the enemy in Viet Nam by bombing military targets at Hanoi and Haiphong.

The President is entirely correct in his assessment that American people "would rather reason than fight. We are using our power in Viet Nam because the Communists have given us no other choice."

He also is entirely correct in the statement that American people "when they understand what is at stake have never run from their duty . . . The American people have never left an ally in a fight."

Unfortunately, at times in the past the American public has been justifiably confused over the war in Viet Nam, not about goals but in tactics.

For too long the initiative has been given the enemy. Our responses were only to meet some new condition of battle he imposed. Important strategic targets such as the oil storage facilities that now have been severely damaged were untouched by our superior air might.

Equally confusing is the fact that some of our other allies who protest loudly at each countermove the United States made to an enemy tactic are themselves contributing substantially to prolongation of the war. Without the supplies they ship to North Viet Nam through the port of Haiphong, the war may have taken a far different turn some

time ago. In other words, some of our allies have made our drastic action necessary.

From recent history Americans are aware that the only way to meet what the President calls "raw Communist pressure" is by looking it in the eye and making it unmistakably clear that we will not retreat.

It was this type of confrontation that made the Communist guerrillas retreat in Greece, it broke the blockade of Berlin, prevented Russian nuclear tipped long range missiles from being installed in Cuba and it worked in the Dominican Republic where a free election has been conducted.

It was understandable that the U.S. public might be confused why we were not applying the same pressures in air and naval superiority, as military leaders suggest.

Since the enemy has not shown any desire to reason or come to a peace table under any conditions, the price of the war to him must be made untenable.

The air strikes against oil storage and other strategic targets were a plain notice to the enemy that the price they might have to pay for the war might not be to their liking.

On a purely military level, the latest air strikes undoubtedly hampered the flow of supplies to the south and as a result saved many American lives by reducing the Viet Cong ability to wage war.

For these reasons, the long delayed air strikes are really tactical action for a quicker honorable peace in the embattled nation.

ORDER FOR ADJOURNMENT TO MONDAY

Mr. SMATHERS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock noon on Monday, August 1, 1966.

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

REDWOOD PARK A NATIONAL MUST

Mr. KUCHEL. Mr. President, I have introduced S. 2962, to establish a Redwood National Park, because God's magnificent, awe-inspiring northern California virgin redwood giants ought to be preserved for humanity, rather than be chopped down from mountainsides to be made into 2 by 4's. I have consistently supported sound conservation programs, and I earnestly share the conviction that our unique and precious natural resources must be preserved to the maximum extent possible. But some say that S. 2962 does not fit this pattern. What is that maximum extent? How does one honestly arrive at what it should be? The bill I have introduced is endorsed by the national administration. It bears the approval of the Save-the-Redwoods League. The State government urges its enactment. Some, however, say it covers too big an area; others say it covers too little an area.

On June 29, 1966, Mr. President, I had printed in the RECORD a letter from one of the Nation's leading conservationists, Mr. Laurance S. Rockefeller, to President Johnson. In his letter to the President, dated July 20, 1965, Mr. Rockefeller concluded, after a thorough investigation and appraisal of all the various park proposals, that the best redwood park plan was the one embodied in my bill. He felt compelled to reject the Sierra Club proposal for a far larger park. Mr. Rockefeller commented on the Sierra Club plan:

The Sierra Club's ambitious plan is supported almost exclusively by the Sierra Club and its out-of-state adherents. Serious consideration of so ambitious a plan would consolidate opposition and provide the means of raising substantial amounts of money to oppose the proposal by propaganda, by lobbying, and by recourse to the courts. The industry would be joined by most local supervisors and other local officials and, of course, businessmen in fear of the effect on the economy. In addition, the state would probably oppose it.

If we are to have the Redwood National Park, which we so urgently need, let us proceed on the sensible and workable proposal embodied in S. 2962, rather than spinning our wheels on a plan which, however well-intentioned, carries a high price tag, which the Budget Bureau will not approve. S. 2962, though only half the size of the park proposed by the Sierra Club, would require the largest single expenditure for land acquisition ever authorized for a national park in the history of our Nation. Should not those who, with good motives, seek a large area, realistically recognize that time is of the essence, and that S. 2962 can be enacted if all conservationists unite behind it?

Mr. President, an editorial which appeared in the San Jose Mercury-News on Sunday, July 17, 1966, echoes my thoughts on this topic. I ask unanimous consent that it be printed at this point in the RECORD.

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

[From the San Jose Mercury-News, July 17, 1966]

REDWOOD PARK BOOSTERS SHOULD ACCEPT HALF LOAF

The war in Viet Nam which the United States is now clearly committed to winning may make it advisable for the proponents of a Redwood National Park to accept the half-loaf that's better than none.

The Johnson administration's Redwood National Park bill, which is co-authored by California's Republican senior Senator, Thomas H. Kuchel, by the way, calls for a park of approximately 45,000 acres, primarily in Del Norte County along the Mill Creek watershed.

Proponents of a larger park, mainly the Sierra Club, want a park of some 90,000 acres, in Del Norte and Humboldt counties, centered on the Redwood Creek watershed.

All other things being equal, it would be preferable to have a 90,000 acre national park rather than a 45,000 acre park, but all other things are clearly unequal in this case.

The Sierra Club proposal, which is offered at the moment in the form of a rider to the administration's bill, makes no provision for financing the larger acquisition or for handling the temporary economic dislocations which would result from the creation of a huge park sprawling over two counties. It is extremely unlikely that the administration, with a war on its hands abroad and a commitment to fight inflation at home, will exert influence on the Congress for more than its original proposal.

It envisions tax assistance to Del Norte County over a period of years to compensate the county, school districts and other units of local government for loss of local tax revenues. It offers similar economic protection to the lumbering industry in Del Norte County and for the individual employes who would be affected by creation of the park.

Further, the administration bill, by protecting the entire Mill Creek watershed, will make it possible to avoid the sort of tragedy that occurred on Bull Creek, when upstream cutting created erosion problems and eventual destruction of trees nominally protected in a downstream park.

Should the administration bill (S. 2962) become law, the National Park Service is pledged to begin development immediately and concentrate its purchases and hiring in the Del Norte County area of the park, to minimize the loss of lumbering jobs. It is interesting to note in this regard that economic studies of the area point to a diminishing income from lumbering even without establishment of a national park and that the county's economy will, by shifting emphasis to tourism, grow beyond what it could ever have expected from lumbering.

Sen. KUCHEL summed up the case for the smaller, but economically more feasible national park plan succinctly when he told the Senate Interior Committee's subcommittee on parks and recreation:

"Some people, of course, would like to see a much larger park, especially in Humboldt County. None of us, I am sure, would dispute the beauty of the area they recommend. However, we have in S. 2962 the opportunity to preserve an entire watershed, long the top priority location of the Save The Redwoods League, for a Redwood National Park. And quite apart from the aesthetic questions involved, I, for one, cannot see how we can pay for the larger park proposal or how we can mitigate its negative economic impact on the County of Humboldt or the entire Northern California area."

A half-loaf, in other words, is definitely better than none.

AUTHORIZATION FOR MEMBERS OF UNFORMED SERVICES ON DUTY OUTSIDE THE UNITED STATES TO DEPOSIT SAVINGS WITH A UNIFORMED SERVICE

Mr. SMATHERS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1387, H.R. 14875. I do this so that the bill will become the pending business.

The ACTING PRESIDENT pro tempore. The bill will be read by title.

The LEGISLATIVE CLERK. An act (H.R. 14875) to amend section 1035 of title 10, United States Code, and other laws, to authorize members of the uniformed services who are on duty outside the United States or its possessions to deposit their savings with a uniformed service, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

APPOINTMENT OF DELEGATES TO THE 12TH ANNUAL SESSION OF THE NATO PARLIAMENTARIAN'S CONFERENCE TO BE HELD IN PARIS ON NOVEMBER 14–19, 1966

The ACTING PRESIDENT pro tempore. The Chair, on behalf of the Vice President, pursuant to Public Law 84–689, appoints the following Senators as delegates to the 12th Annual Session of the NATO Parliamentarians' Conference, to be held in Paris on November 14–19,

1966: JOHN SPARKMAN, JOHN O. PASTORE, HENRY M. JACKSON, HOWARD W. CANNON, ABRAHAM RIBICOFF, BOURKE B. HICKENLOOPER, KARL E. MUNDT, JACOB K. JAVITS, WINSTON L. PROUTY, BIRCH BAYH (alternate), and THOMAS H. KUCHEL (alternate).

ADJOURNMENT TO MONDAY

Mr. SMATHERS. Mr. President, in accordance with the previous order, I move that the Senate stand in adjournment until 12 o'clock noon on Monday next.

The motion was agreed to; and (at 3 o'clock and 13 minutes p.m.) the Senate adjourned until Monday, August 1, 1966, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate July 29, 1966:

IN THE ARMY

The following-named officers under the provisions of title 10, United States Code, section 3066, to be assigned to positions of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant generals

Maj. Gen. Jonathan O. Seaman, [redacted], U.S. Army.

Maj. Gen. Stanley R. Larsen, [redacted], Army of the United States (colonel, U.S. Army).

IN THE MARINE CORPS

The following named officers of the Marine Corps for temporary appointment to the grade of major general, subject to qualification therefor as provided by law:

William K. Jones
Raymond G. Davis
Charles J. Quilter

The following-named officers of the Marine Corps for temporary appointment to the grade of brigadier general, subject to qualification therefor as provided by law:

George E. Dooley
James E. Herbold, Jr.
Regan Fuller
Webb D. Sawyer
John R. Chaisson
Robert P. Keller
Oscar F. Peatross
Alan J. Armstrong
Edwin B. Wheeler

CONFIRMATIONS

Executive nominations received by the Senate July 29, 1966:

U.S. AIR FORCE

Brig. Gen. Duane L. Corning, [redacted], South Dakota Air National Guard, for appointment to the grade of major general in the Reserve of the U.S. Air Force, under the provisions of sections 8218, 8351, 8363, and 8392, title 10, of the United States Code.

Lt. Gen. Maurice A. Preston, [redacted] (major general, Regular Air Force), U.S. Air Force, to be assigned to positions of importance and responsibility designated by the President, in the grade of general, under the provisions of section 8066, title 10, of the United States Code.

U.S. ARMY

The following-named officer to be placed on the retired list, in grade of lieutenant general, under the provisions of title 10, United States Code, section 3962:

Lt. Gen. Leonard Dudley Heaton, [redacted], Army of the United States (major general, Medical Corps, U.S. Army).

U.S. NAVY

Vice Adm. Paul H. Ramsey, U.S. Navy, when retired, for appointment to the grade of vice admiral, pursuant to title 10, United States Code, section 5233.

IN THE AIR FORCE

The nominations beginning William H. Abbott, to be lieutenant colonel, and ending Francis S. Smith, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 11, 1966; and

The nominations beginning John F. Anderson, to be second lieutenant, and ending George V. Zimmerman, Jr., to be first lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 15, 1966.

IN THE ARMY

The nominations beginning William D. Sydnor, Jr., to be colonel, and ending John J. Zepko, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on June 20, 1966.

IN THE NAVY

The nominations beginning Raymond F. Esparza, to be chief warrant officer, W–3, and ending Collis O. Marshall, to be commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on June 20, 1966.

EXTENSIONS OF REMARKS

Mr. Helms, of CIA, Writes Letter to Editor of St. Louis Globe-Democrat

EXTENSION OF REMARKS
OF
HON. JAMES H. SCHEUER
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Friday, July 29, 1966

Mr. SCHEUER. Mr. Speaker, I was astonished to read today of the letter to the editor of the St. Louis Globe-Democrat, written by Mr. Richard Helms, the Director of the Central Intelligence Agency. Only last week, Mr. Helms injected himself into the Senate ethics hearings.

Mr. Helms seems to be recently addicted to injecting himself into the center of public controversy and politically charged debate in a fashion which is wholly inconsistent with his role as Director of the top secret and highly sensitive Central Intelligence Agency.

The CIA needs a Director who finds no necessity for such personal public embroilment. To the contrary, an agency as uniquely sensitive as the CIA needs a Director with a highly developed sense of restraint and discretion, and a sophisticated and judicious awareness of the importance of the nonpolitical character of the CIA.

This country cannot tolerate our most secret and sensitive intelligence organization injecting itself into domestic politics. There is already deep concern among many thoughtful Members of both Houses of Congress as to the role of the CIA in our foreign policy.

The extraordinary lack of mature, balanced judgment which Mr. Helms has shown in recent weeks would be more than sufficient to have placed in serious jeopardy the usefulness of any official serving at any level of a discrete and sensitive intelligence agency.

I urge that the proper committees of Congress make a thorough scrutiny of Mr. Helms recent conduct and determine his fitness to continue in this highly sensitive and demanding post.

Mining Legislation

EXTENSION OF REMARKS
OF
HON. ROY H. McVICKER
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Friday, July 29, 1966

Mr. McVICKER. Mr. Speaker, Colorado received its first economic impetus from the mining industry. My State has long been known for the mineral wealth it has produced, and has long been a leading producer of those metals without which a modern economy cannot exist. But in recent years, some mining enterprises in my State have fallen upon hard times, and foreign dumping of excess supplies of certain metals has contributed to this situation.

The lead and zinc producers of Colorado have been among the sufferers. I feel this situation should at least be alleviated by Federal action. A bill I now offer would accomplish this, and I am most pleased to join with my distinguished colleague, the senior member of the Colorado delegation and chairman of the House Interior Committee, the Honorable WAYNE ASPINALL, in offering this legislation.

This bill provides for flexible quota legislation with a 5-year term. During this period, quotas on either lead or zinc ores and metal would become effective for a 3-year period if domestic producers' metal stocks reach levels considered excessive as defined in the bill.

The quotas would be canceled if stocks were reduced below normal levels and additional imports were needed. A minimum import quota would be guaranteed. Producer, consumer, and importer fare well under this flexible quota system, which is based on supply and demand for these metals in our domestic markets. It would only be in effect when it was proved necessary to stabilize the supply-consumption rate at proper levels. It will alleviate some of the hardships the lead and zinc producers of Colorado are now laboring under. It will inject new vitality into that industry in my State.