By Mr. O'NEAL of Georgia:
H.R. 12703. A bill for the relief of John J. McGrath; to the Committee on the Judiciary.
By Mr. OTTINGER:
H.R. 12704. A bill for the relief of Victor Manuel Valverde-Bracamonte, his wife, Carmen T. Rodriguez de Valverde, and their children, Victor Eddie Valverde Rodriguez and Angel Fernando Valverde Rodriguez; to the Committee on the Judiciary.
By Mr. POWELL:
H.R. 12705. A bill for the relief of Antonio Esposito; to the Committee on the Judiciary.
By Mr. ST GERMAIN:
H.R. 12706. A bill for the relief of Chan Wing Cheung (also known as Bill Woo); to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

324. The SPEAKER presented a petition of the United Original California Indians, Oroville, Calif., relative to an appropriation for payment of an award of the Indian Claims Commission, which was referred to the Committee on Appropriations.

SENATE

TUESDAY, FEBRUARY 8, 1966

(Legislative day of Wednesday, January 26, 1966)

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

Rabbi Maynard C. Hyman, Congregation Adas Yeshurun, Augusta, Ga., offered the following prayer:

Our Father in Heaven, Creator of the Universe, on this third day of the week we are reminded of Thy divine words recorded in the first chapter of the Book of Genesis. Twice was the third day of creation singled out and blessed with the words, "And God saw that it was good."

That day we are told merited such distinction because it represented not only creation but also unity. This teaches us the divine lesson that true goodness and creativity can only come about when the elements of unity and peace shall reign supreme.

O Lord, prosper the hands of our Nation's leaders who carry on Thy great work deliberating for the purpose of beneficial creativity and in the interest of unity and peace.

Bless, O Heavenly Father, all the people of our country. In our relations with one another, may we ever remember that we are all Thy children equally dependent upon Thee. Bring us together into an everlasting bond, regardless of color, race, or creed, so that we may best work for the welfare of all mankind.

Hasten the day when the millennial hope of universal peace will prevail throughout the world with justice and freedom for all people. Amen.

ATTENDANCE OF A SENATOR

GEORGE A. SMATHERS, a Senator from the State of Florida, attended the session of the Senate today.

PROPOSED REPEAL OF SECTION 14 (b) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The Senate resumed the consideration of the motion of the Senator from Montana [Mr. MANSFIELD] that the Senate proceed to the consideration of the bill (H.R. 77) to repeal section 14(b) of the National Labor Relations Act, as amended, and section 703(b) of the Labor-Management Reporting Act of 1959 and to amend the first proviso of section 8(a)(3) of the National Labor Relations Act, as amended.

CLOTURE MOTION

The PRESIDENT pro tempore. Is it the sense of the Senate that the debate shall be brought to a close?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum. With the concurrence of the minority leader, I ask unanimous consent that the time for the quorum call be charged equally to both sides.

The PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, time is so precious that I feel I must ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MANSFIELD. I ask unanimous consent that I may proceed on my own time as long as necessary.

The PRESIDENT pro tempore. The Senator has that right.

Mr. MANSFIELD. Mr. President, in a few moments, the Senate will vote on cloture. In all frankness, the leadership does not expect to sway many—anyone—with its eloquence at the 11th hour. Nevertheless, a decent respect for the opinion of the Senate suggests that there should be set forth for the record the course of events which led to this attempt to close the debate.

It so happens that, as one Senator, I favor passage of H.R. 77. My position in this respect has been made clear not once but many times. As one Senator, I am prepared to vote for H.R. 77 now. I am prepared to vote for it tomorrow or the next day, or whenever a vote can be had. However, the Senate knows me well enough to know, too, that the efforts to bring H.R. 77 to a vote last year and again this year have had nothing to do with my personal position on 14(b).

I would like to add that the efforts also have had nothing to do with any pressure from any source.

I wish to emphasize that point, Mr. President. There has been no pressure of any kind or any sort on me, from any source. On the contrary, this measure was pursued last year by the leadership, on its own initiative, because H.R. 77 is an item in the President's program and the leadership feels that any matter which the President—any President—is constrained to recommend for the consideration of the Congress deserves the decent and respectful attention of the Congress. Furthermore, H.R. 77 is a matter of considerable importance to many millions of Americans who, whether as union members or not, labor for a living. Most important, H.R. 77 is a properly passed resolution of the House of Representatives, and, in the Senate, H.R. 77 has been considered by the responsible committee and properly and favorably referred to the Senate. Finally, H.R. 77 was considered by the majority policy committee and cleared for floor action after it had lodged upon the Senate Calendar for a considerable period of time.

On October 1, 1965, therefore, the leadership moved to lay down H.R. 77. In the circumstances just outlined, this action was the simplest and most routine of procedural motions.

Then the roof fell in. The leadership motion, which should have carried without debate, became instead the catchall for an attack, not only on a perfectly proper bill of the House of Representatives, but on the Senate committee which had had the temerity to report it; on the whole of organized labor which had had the effrontery to advocate it; and on the President who had had the gall to recommend its passage. Indeed, it was as though the heavens were accidentally opened by this simple procedural motion. Out poured the resentments, the irritations, the vendettas, and the whatevers against organized labor which were pent up over the decades.

For 2 weeks, the Senate hemmed and hawed and fumed and flamed over this question of whether or not to take up H.R. 77, a question which the Senate normally disposes of in less than 5 seconds when all is in the usual order, as it was in this case. Was this a filibuster, Mr. President? No. Mr. President, it was a prefilibuster, a hugger-mugger.

The leadership is sometimes generously credited with great patience. But it is not that patient. After 2 weeks of banter and banality, the leadership felt that the Senate ought to have an opportunity to express itself on the merits of continuing with the matter. Therefore, it offered, in preference to cloture, an unusual tabling motion to seek the sentiments of the Senate on the situation. This effort was promptly reduced to meaninglessness by a unanimous vote when those who were arguing against taking up H.R. 77, playfully urged by their votes that the leadership continue to try to take it up.

The leadership was in no mood for games, then, anymore than it is now. Therefore, the Senate was asked again to face up to its responsibility in a vote on cloture on the simple procedural motion of laying down H.R. 77. And on that vote, the Senate finally made it clear that it had no desire to pursue H.R. 77 in the last session.

There the matter stood at the opening of the 2d session of the 89th Congress. Nothing had changed in the status of H.R. 77. It was still a Presidential recommendation. It was still a duly passed House bill, duly considered, and duly reported by the appropriate Senate committee. It was still on the Senate Calendar. Nothing had changed except that the Senate had used up 2 weeks in

the previous session on one simple procedural question.

Now, the Senate has proceeded, in this 2d session, to use up 2 weeks more on the same procedural question. That is a total of 1 month, out of perhaps the 20 or so months of session which are normally available per Congress.

We have spent, to repeat, 1 month out of 20, not on an issue, but on one simple procedural motion. If the Senate were on the question of 14(b), an investment of 1 month's time might be understandable. The issue is difficult; it is controversial. But we are not on H.R. 77. We are on, I repeat, the procedural question of going onto H.R. 77. Indeed, in the normal course of Senate civility in these matters, the leadership motion would be accepted automatically and unanimously. At most, the question which might be raised would be whether or not the Senate should proceed to some other urgent or weighty matter on the calendar rather than to the item recommended by the leadership.

The truth is that the leadership examined the calendar with that thought in mind before proposing that H.R. 77 be laid down on January 24, 1966. And the leadership found such urgent and weighty matters as the following: "An act for the relief of certain retired officers of the Army, Navy, and Air Force"; "A Concurrent resolution recognizing the 50th anniversary of the chartering by act of Congress of the Boy Scouts of America"; "A joint resolution enabling the United States to extend an invitation to the World Health Organization to hold the 22d World Health Assembly in Boston, Mass., in 1969."

So far as I am aware, about the only charge that has not been made to date in this discussion is that the leadership has passed over more urgent pieces of business such as these calendar items in order to appease labor or to cater to the President, or to commit some other breach of Senate trust.

To be sure, there has been some reference to the more urgent matter of Vietnam in the last few days. Vietnam, indeed, is urgent business—very urgent business, as the Senator from Montana is only too well aware, and as, I am sure, most of my colleagues on both sides of the aisle are also fully aware.

But the leadership would hope, especially because Vietnam is grave and grievious as well as urgent that not too many legislative sins of omission and commission shall be obscured in the name of Vietnam before the days of this year have run their course.

The fact is that there is not and has not been any resolution on the calendar pertaining to Vietnam which competes with H.R. 77 for the Senate floor. It is true that committees have been hard pressed to meet and to consider and to prepare urgent legislation on Vietnam and other matters for the calendar. But is that the fault of the leadership? The leadership has urged not once but many times that committees be permitted to meet while the Senate is in session. And, if I may be allowed to say so, it is not the objection of the leadership which has prevented committee meetings on Vietnam or any other matter of importance.

No, Mr. President, the leadership has not used Vietnam as an excuse for a holiday from the responsibilities which are posed by this issue. Rather, the leadership has tried to discover the wishes of the Senate by the course of orderly procedure.

Certain tendencies in this connection, may I say, now appear to be obvious. When a month is spent on a question, which routinely takes 5 seconds, reason and mutual restraint have lost their sway in the Senate. When the Senate spends, for 2 successive years, 2 weeks per year on the same simple procedural question without reaching a conclusion of a vote one way or the other, reason and mutual restraint do not prevail. And when reason and restraint lose their grip here, the Senate invariably reaches an impasse of futility.

To be sure, all meaning of expedients are suggested as the way around the impasse. Of these, none is more lacking in validity than the suggestion of a trial by physical endurance, as though the whole experience of freedom shall be advanced by catapulting it backward to the practices of the Middle Ages. Overlooked in this proposal, of course, is the health of the Members—and especially our older Members. Overlooked, of course, is the demeanor of a pajama-clad session of Congress.

Most important, what is overlooked is the uselessness of the round-the-clock session. In the history of the Senate, this device has been tried many times. Does anyone know when last it succeeded in the face of a substantial minority?

I pause.

I repeat the question: Does anyone know when last it succeeded in the face of a substantial minority?

I gather the answer is no.

Does anyone know if it ever succeeded?

Again I pause.

Again I assume that the answer is no.

Within my memory and, I am sure, in the memory of every other Member, it has been tried but it has never been effective in the sense of breaking a filibuster.

In the end, the round-the-clock session invariably has exhausted those who have sought to move in an orderly course and without unconscionable delay. In the end, the round-the-clock sessions have served to break not the minority but the majority position—to compel a compromise on it or to bring about its defeat.

Is there not room for compromise in the present situation? I do not know if there is room for compromise on the issue of H.R. 77 itself. Whether there is or not, the Senate will never know until it comes to grips with the issue of H.R. 77, and it cannot do that until H.R. 77 becomes the pending business. Until it is pending, we cannot offer to amend this bill as a way to compromise. Indeed, we cannot even refer it back to committee for further work.

In short, there is no way to compromise the question which is now before the Senate. The Senate can either take up H.R. 77 now or not take it up now. That is the sole question. And if it cannot decide a matter which is that elementary, how much less likely is it to come to grips with the substance of H.R. 77 and the possibilities of compromise?

That, then, is where we stand. That, then, is why we are about to vote on cloture. The only question at stake in this vote is whether the Senate shall proceed to consider H.R. 77 or leave this measure to languish on the calendar. I know, only too well, that we need the same vote to prevail as we would require for a constitutional amendment or to ratify a treaty; but if ever there was a situation which cries out, not for a simple majority, or a two-thirds majority, but for an overwhelming vote of the Senate, this is that situation.

I welcome now, in earnest, the concurrence of those who last year playfully voted with the leadership to make it unanimous against tabling the motion to take up H.R. 77.

The Senate will not gag itself by voting to adopt cloture after 1 month of this futility. On the contrary, if the Senate does adopt cloture, it will free itself from the passion and perversity which, since the end of the last session, have held this institution in a deadly stranglehold.

The PRESIDING OFFICER (Mr. HARRIS in the chair). Who yields time?

Mr. ERVIN. Mr. President——

The PRESIDING OFFICER. How much time does the Senator from Illinois yield to the Senator from North Carolina?

Mr. DIRKSEN. I yield 5 minutes to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina is recognized for 5 minutes.

Mr. ERVIN. Mr. President, the demand for repeal of section 14(b) of the Taft-Hartley Act, which authorizes the States to enact right-to-work laws, is a demand for compulsory unionism. In the last analysis, compulsory unionism is based upon the startling proposition that the right to work is a right which the union may sell and which the individual American must buy if he is to be permitted to earn daily bread for himself and his family.

Those who would rob supposedly free Americans of their right to join or refrain from joining a union at their own election advance three arguments to justify the destruction of this freedom. These arguments are as follows:

First. That union security, that is, the existence of the union and its ability to operate effectively, depends upon compulsory membership.

Second. That compulsory unionism is merely a form of democratic majority rule.

Third. That the union negotiates contracts for the benefit of all the employees of the bargaining unit, and compulsory unionism is necessary to make unwilling employees pay for the benefits such union action confers upon them and keep them from being so-called free riders.

The argument that union security is dependent upon compulsory unionism is totally lacking in validity. Unions are

voluntary associations. In this respect, they are like churches, and civil, fraternal, and political organizations. These voluntary associations are wholly dependent upon voluntary persuasion for securing members, and notwithstanding this fact, function effectively. Any union can do likewise.

Indeed, a union is more secure in its existence and its ability to function effectively if it obtains members as a result of its good work rather than by compulsion.

The argument that compulsory unionism is merely a form of democratic majority rule is equally fallacious. Democratic majority rule recognizes the right of the minority to dissent and oppose the programs of the majority. When employees are required to join and support a union regardless of their desire to oppose it and its programs, the whole basis of democratic majority rule disappears and is supplanted by monopoly rule, which has no place in a free society.

A simple illustration discloses the unsoundness of the majority rule argument. The Democratic Party is the majority party in the United States. It is engaged in an effort to give all Americans—Democrats, Republicans, and independents alike—the benefits of the Great Society. According to the free rider argument, the Democratic Party, as the majority party, should be empowered to compel the Republicans and independents, as the minority, to make contributions to the Democratic National Committee for the benefits which the Democratic Party is conferring upon them.

The so-called free rider argument affords no justification for compulsory unionism. In a sense all of us are free riders. We receive the heritage of the past without paying anything for it. Many voluntary associations, such as churches, and civic, fraternal, and political organizations, carry on activities which benefit a great many of us who do not contribute any financial or other support to them. For this reason, it is absurd for any particular voluntary organization which may happen to benefit any group of people to demand that such people be compelled to support it financially or otherwise against their will. This is essentially what unions do when they demand compulsory unionism.

To be sure, a union may be empowered under existing law by a majority vote of the employees in a particular bargaining unit to negotiate contracts binding upon the majority of nonmember employees as well as the majority of member employees. This power is not thrust upon the union against its will. On the contrary, it is diligently sought by the union whose acquisition of it deprives the minority of nonunion employees of their freedom to contract for themselves. As a consequence, the demand of the union that the minority of nonmember employees pay dues to the union for negotiating the contract is tantamount to the demand by the union that nonmembers be compelled to pay for having their freedom of contract taken away and exercised against their will.

The PRESIDING OFFICER. The time of the Senator from North Carolina has expired.

Mr. ERVIN. Mr. President, may I have 3 additional minutes?

Mr. DIRKSEN. I yield 2 additional minutes to the Senator from North Carolina.

Mr. ERVIN. Mr. President, the free rider argument would have more substance if the dues of the unions were devoted solely to the cost of negotiating contracts. The truth is that only a part of such dues is devoted to such purposes. The unions spend vast sums of money obtained from dues in carrying out various programs such as lobbying for legislation, political campaigns, and social and economic propaganda and the like. The records even disclose that during recent years some unions or some foundations established by unions have used moneys derived from union dues to subsidize religious organizations which disseminate doctrines some of the dues-paying members disbelieve.

I respectfully submit that it is incompatible with freedom for any workingman to be coerced by compulsory unionism agreements to contribute money to union programs when he himself is not convinced that they are for his benefit. No amount of sophistry can erase these plain facts:

First. That no American is truly free if he is denied his basic right to join or refrain from joining a union according to his own election.

Second. That no injustice is done to a union by requiring it to obtain its members by voluntary persuasion just as churches and other voluntary organizations obtain theirs.

When all is said, no good union needs a compulsory unionism agreement to obtain members, and no bad union should have compulsory unionism.

COMMITTEE MEETING DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I yield one-half minute to the Senator from Maine [Mr. MUSKIE].

Mr. MUSKIE. Mr. President, I ask unanimous consent that the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary be permitted to meet during the session of the Senate today.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DIRKSEN. Mr. President, I yield 5 minutes to the distinguished Senator from Florida [Mr. HOLLAND].

Mr. HOLLAND. Mr. President, I thank the minority leader for yielding.

I think I shall devote my time entirely to showing that the majority leader is overlooking important Senate history when he finds fault with the fact that unlimited debate is taking place with reference to the motion to take up.

When I came to the Senate in 1946 a motion to take up was not even subject to the cloture rule. When the Senate, after long debate, agreed to the compromise cloture rule known as the Wherry rule, we agreed to take into the cloture rule the motion to take up. We did not mean by that that we were forgoing our right to unlimited debate on a motion to take up, but, instead, we were agreeing to a new rule under which there would be two opportunities to address ourselves at length to the merits of a question in order to wake up the public consciousness throughout the Nation as to the seriousness of the question.

So it is no new thing to have unlimited debate addressed to a motion to take up.

The distinguished majority leader will remember that when we took up the so-called Holland resolution, which is now the 24th amendment to the Constitution, we had to do this very thing; we had to go through a so-called filibuster addressed to the motion to take up.

First, I invite attention to the fact that by no means have we given up our right to have long educational debates on a motion to take up, as well as on the final question when it comes before us.

Second, I say to the majority leader that none of us, as he has suggested, are moved by irritations, are moved by lack of civility, or are advancing some vendetta.

The Senator from Florida knows that the State of Florida in 1944 put the right-to-work provision in the constitution by vote of its people. He knows that the legislature, despite terrific pressure, has refused to submit an amendment to repeal that right. He knows that the Federal courts and the State courts have upheld our right-to-work law. He knows that the Senators from Florida, and he suspects this is true of those from the other 18 States that have right-to-work provisions in their constitutions or statutes, are subject to a mandate from their own States to take every proceeding we can under the rules of the Senate to show our opposition to this effort to violate and emasculate our constitution, to set it aside and to make it so that the long arm of the Federal Government reaches out through a statute to violate the solemn constitutional decision of the sovereign State which believes that this right-to-work provision is essential to its own freedom of employment for its citizens, and the safety and security of our people within its State setup.

So, Mr. President, in closing this brief 5 minutes, I wish to make it clear that so far as I am concerned I am not proceeding from irritation. I am not proceeding under any vendetta. I am not proceeding under any lack of civility. I am proceeding to take advantage of a right which Senate rules give me. The Senate rule, when it was adopted, gave two rights of long educational debate on the floor of the Senate in the effort to speak the conviction of Senators and wake up the conscience of our public.

I thank the distinguished minority leader for yielding me time.

The PRESIDING OFFICER. Who yields time?

Mr. MANSFIELD. Mr. President, I yield 4 minutes to the Senator from West Virginia [Mr. RANDOLPH].

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 4 minutes.

Mr. RANDOLPH. Mr. President, this is not the occasion, because time does not allow, to discuss the need for the Senate to be debating the actual repeal of section 14(b) rather than a procedural matter.

I am one Senator—and I know there are others in the Chamber who vigorously disagree with me—who believes that a majority of the Senate present and voting should bring this measure or any other legislative measure before the Senate for debate on the issue itself. We would then battle in the ring itself—rather than shadowbox.

Nineteen States have enacted right-to-work laws under what I call a misleading slogan. Not a single job was created in so doing.

I remind Senators, that it is only in this section of labor law that we allow State law to take precedence over the Federal statutes. Let us remind ourselves that when we legislate to regulate commerce, we do so for all 50 States uniformly. Why the exception in labor law in this instance?

We have a declared Federal policy approving the rights of employers and unions to negotiate contracts covering union membership.

Inasmuch as unions, by law, are required to provide to all workers in a factory a service which costs money, surely it is proper to provide that all of the workers should share equally in the cost of that service by paying union dues.

I doubt if any employee has ever refused to take a wage raise negotiated by a union simply because he was not a member of the union. This underscores the value of a union to all workers. The fruits of bargaining should be paid by all—not by the few. If the worker who is not a member of the union is reaping the benefits, of course he should help carry the cost.

Mr. President, there are those who charge that this legislation is narrowing—that it is special interest legislation—and that it is restrictive legislation. I disagree.

I believe in the national labor policy of this country based as it is on collective bargaining. The so-called right-to-work laws, and section 14(b) which authorizes such laws, accomplish but one result when they are exercised—that is, the undermining of the collective bargaining process.

Let us face one fact clearly. You cannot have collective bargaining without having responsible unions. And you cannot have responsible unions unless those unions are also secure.

This is the practical and factual evaluation. And because it is factual we need to protect the collective bargaining process by doing away with loopholes in the law which weaken that process.

Those who advocate the right-to-work laws and who now bombard Congress with arguments for retention of section 14(b) of Taft-Hartley, talk about compulsion. They talk about freedom. And they talk about the freedom of the individual.

However, these words and phrases are a smokescreen.

On the matter of compulsion. They seek, they say, to outlaw compulsory unionism. To do so they would create a compulsory open shop. In the first instance, compulsory membership in a union can only come by will of the majority of those directly affected. And, it requires agreement by management.

But under so-called right-to-work laws the compulsory open shop exists no matter what is the feeling of the majority of working men and women who are there employed.

Outlawing one compulsion by creating another more stringent one is no solution. Supporters of right to work continue to employ high-sounding and misleading arguments to bolster their questionable position.

I believe the repeal of section 14(b) of the Taft-Hartley law would serve to restore uniform labor policy to all of the United States. It will ease labor-management tensions and make collective bargaining a reality in all of the States rather than in only 31 States.

It is worth stressing that in the 19 States with the so-called right-to-work laws on the books, wages and other labor standards are at a lower level than in the 31 States which do not have the law. Should we have the outlawing of what is called compulsory unionism by substituting something called the compulsory open shop?

Mr. President, the democratic process will be served if we bring this measure before this body for debate and action on its merit. I ask unanimous consent to have printed in the RECORD a discussion of the volume of economic activity in so-called right-to-work States, levels of living in those States, and labor standards legislation therein—each category of discussion including appropriate statistical tables.

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

VOLUME OF ECONOMIC ACTIVITY IN RIGHT-TO-WORK STATES

The impressive historical percentage gains that can be cited for right-to-work States in such economic measures as number of employees, retail trade, bank deposits, capital expenditures and the like, completely ignore the fact that the right-to-work States, as a group, currently lag behind the rest of the Nation in these and other aspects of economic life.

On a current basis, right-to-work States do not generally share in such activities in the proportions that would be expected, based on their share of the total U.S. population.

Thus, while the number of persons living in right-to-work States made up 28.6 percent—nearly 30 percent—of the total U.S. population in 1964, these States had only 23 percent of total personal income in the country in 1964, only 24 percent of the value of life insurance in force, only 18 percent of the bank deposits, and in 1963 furnished only 19 percent of value added by manufacture. A more complete analysis is given in the attached table.

Volume of economic activity in right-to-work States [1]

	U.S. total	Percent in right-to-work States
Population, 1964	191,334,000	28.6
(1) Total personal income, 1964	$491,000,000,000	22.9
(2) Nonagricultural employment, 1964	58,008,000	24.7
(3) Employees in manufacturing, 1964	17,230,000	21.4
(4) Production workers in manufacturing, 1963	12,325,000	22.3
(5) Total wages of production workers in manufacturing, 1963	$62,200,000,000	18.1
(6) Capital expenditures, 1963	$11,100,000,000	22.9
(7) Value added by manufacture, 1963	$190,400,000,000	18.6
(8) Bank deposits, 1964	$356,300,000,000	18.2
(9) Motor vehicle registrations, 1964	86,297,000	30.0
(10) Retail trade annual payroll, 1963	$27,600,000,000	23.8
(11) Retail sales, 1963	$244,200,000,000	25.8
(12) Number of retail establishments with payroll, 1963	1,206,087	28.5
(13) Value of life insurance in force, 1964	$800,000,000,000	23.8
(14) Number of life insurance policies in force, 1964	308,294	29.3

[1] 1965 list of right-to-work States.

Source: Statistical Abstract of the United States, 1965, supplemented by additional information from U.S. Department of Commerce and U.S. Department of Labor.

LEVELS OF LIVING

No amount of statistical wielding of historical percentage gains for average wages and per capita personal income can erase the fact that wages and other income today fall below the national average in right-to-work States and even further below the levels prevailing in non-right-to-work States. According to the 1960 census, nearly one-third of the families living in right-to-work States lived in poverty, with incomes under $3,000. In non-right-to-work States, the comparable figure was 17.2 percent.

Recent figures from the Wage and Hour and Public Contracts Divisions of the U.S. Department of Labor illuminate the unfortunate pressures generated by low wage economies. Although right-to-work States account for only 23 percent of all workers covered by the Fair Labor Standards Act, close to half of the violations of this act take place in these States—that is, failure to pay the required minimum wage and overtime pay under the law and the illegal employment of child labor.

Educational standards are deficient in the right-to-work group. In the academic year, 1964–65, the average expenditure per pupil in public schools was $395 in these States as compared with $500 in the non-right-to-work States.

Failures in educational attainment are shown also in the high proportion of selective draftees rejected in 1964 for failing mental tests. This proportion was 38 percent in right-to-work States as compared with 21 percent in non-right-to-work States.

Comparison of levels of living in right-to- work States and non-right-to-work States [1]

(1) Per capita personal income, 1964:

United States	$2,566
Right-to-work States	2,055
Non-right-to-work States	2,771

Source: U.S. Department of Commerce.

(2) Wages of production workers in manufacturing, 1964:	Average weekly wages	Average hourly earnings
United States	$102.97	$2.53
Right-to-work States	94.49	2.30
Non-right-to-work States	105.56	2.59

Source: U.S. Department of Labor.

(3) Families with incomes under $3,000, 1960:	Total number of families	Percent with income under $3,000
United States	45,128,000	21.4
Right-to-work States	12,506,000	32.2
Non-right-to-work States	32,625,000	17.2

Source: U.S. Census of Population, 1960.

(4) Violations of Federal Wage and Hour Act, 1964–65:	Covered workers: Number	Covered workers: Percent	Percent of minimum wage violations	Percent of overtime pay violations	Percent of child labor violations
United States	29,593,000	100.0			
Right-to-work States	6,726,000	22.7	49.5	46.9	46.7
Non-right-to-work States	22,867,000	77.3	50.5	53.1	53.3

Source: U.S. Department of Labor.

(5) Expenditures per pupil in public schools, 1964–64:

United States	$484
Right-to-work States	395
Non-right-to-work States	500

Source: U.S. Department of Health, Education, and Welfare.

(6) Selective Service draftees rejected for failing mental tests, 1964:	Number examined	Percent failing mental test
United States	818,300	26.5
Right-to-work States	254,100	38.4
Non-right-to-work States	564,200	21.1

[1] 1965 list of right-to-work States.

Source: U.S. Department of the Army.

LABOR STANDARDS LEGISLATION

Little protection is offered to workers in right-to-work States in terms of labor standards legislation, as compared with States without right-to-work laws.

The following table summarizes the facts for several types of labor legislation:

Labor standards legislation

Type of law	Right-to-work States (19)[1]		Non-right-to-work States (32)[2]	
	Number with law	Percent	Number with law	Percent
1. Minimum wage	6	32	27	84
2. Workmen's compensation: Maximum weekly benefit of $40 or more	9	47	28	87
3. Unemployment insurance:				
Maximum benefits of $50 or more	1	5	15	47
Average benefit above national average of $36	5	26	15	47
4. Fair employment practices	7	37	27	84
5. Equal pay for women	4	21	21	66
6. Child Labor: 3 out of 8 recommended standards included in law	5	26	18	56

[1] 1965 list of right-to-work States.
[2] Includes District of Columbia.

Source: U.S. Department of Labor.

The PRESIDING OFFICER. Who yields time?

Mr. DIRKSEN. Mr. President——

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIRKSEN. Mr. President, there is a higher and greater power in this free land than the House of Representatives, or the Senate, or the two bodies which compose the Congress.

Today we are confronted with a problem of gagging ourselves on a motion to continue the discussion on taking up a measure with respect to which we believe the country has an issue and an interest.

We are confronted with a proposal for the Members of this body to gag themselves. This is one of the only free parliamentary bodies that is left on the face of the earth.

We are asked to gag ourselves on a perfectly legitimate debate under the rules on a motion to take up because a party pledge is involved, adopted, as we know, in the hurly-burly, in the noise and tumult of a national convention when often few of the delegates know what is in the party platform.

Now, it is argued Mr. President that this is nothing more than a motion to consider. So it is. But to consider what? That is what we are interested in after the motion to consider.

It is argued that it has been done before. So it has, but under entirely different circumstances, the most notable being the question of civil rights, where we addressed ourselves to the business of curing the abuses of 100 years in our country. Here, however, we are confronted with a measure that will create abuses instead of curing them and that becomes of interest.

When we came into this 2d session of the 89th Congress we expected that we would probably busy ourselves with Vietnam and all of its dangerous implications for the future, but instead of that, we put last things first.

It could be that compulsory unionism is more important than the youngsters who came and went to Vietnam under compulsory conscription, where death in disguise hides behind every tree and in every foxhole.

Handing this free land over to a labor oligarchy may seem more important, but not to me. It seems more important that the will of the people be listened to. Protracted debate is the only way to bring education to the people and let them understand the issue.

We have no other weapon and that weapon is an honorable weapon under the rules of this body.

So we need not apologize. I am never moved by irritation. I am never moved by frustration. I have been a Member of Congress for a third of a century, and if that has not knocked frustration out of me by this time, then, of course, I give up. But I do not become irritated about these things.

I thought, as we went along, that there might be a lesson in what happened in New York, when Mike Quill tore up a court citation before the television cameras and then shouted arrogantly: "Judge, drop dead in your black robe." It was not the judge; it was Mike Quill who dropped dead. What an inconvenience to millions of people, and then to settle beyond the guidelines that were laid down by the President of the United States.

I thought that perhaps the strike in Alton, Ill., by a few hundred workers, who put 4,600 other workers on the idle list in the plant that manufactures powder for small arms ammunition, might be a lesson. It was necessary to send to Germany for munitions that could be used by the youngsters out there in Vietnam, who have to depend upon small arms to roll back the brutal assaults of the enemy. But no; it did not seem to register.

The issues are abundantly clear. This is a bill to further invade the rights of the States; to render them helpless to legislate in this field. So the way is opened up through this bill to compel another 250,000 free Americans either to join a union within 30 days or lose their jobs. That is what is involved in this proposal. Incidentally, it would enrich the treasuries of the unions by, roughly, $15 million.

With abundant pressure, the unions were able to get this bill through the House by only 18 votes. Do not tell me about pressure. A Member of this body called me yesterday and said that never had he been under such pressure as he has been under in the past days with respect to this proposal. I know these pressures.

Mr. President, first let me ask how the time stands.

The PRESIDING OFFICER (Mr. HARRIS in the chair). The Senator from Illinois has 7½ minutes remaining.

Mr. DIRKSEN. I know something about pressure. I received a telegram last Friday from home. It said:

> Leave your post of duty and come home, because we are going to march around your humble house in the little town of Pekin, Ill. Forty-six unions are going to march there.

I am not there. My family is not there. Mrs. Dirksen's mother, 91 years old, in and out of the hospital, and ill for a long time, is there. That is where they marched, as if to intimidate me, 800 miles away. But, Mr. President, I have seen these pressures before, and they have no effect.

On October 11, last year, the Senate voted on cloture for this measure. The vote was 45 yeas and 47 nays. So the bill is back again. But the issue is clear. The primary issue is whether States shall continue to have the right to legislate in this field. If the bill ever passes, that right will be gone, and it will be gone for good. It will not be retrieved in our lifetime.

There is a secondary issue, and it is whether the States can prevent the application and enforcement of a bargaining contract that will order an employer to fire an employee if at the end of 30 days the employee has not joined the union. This proposal concerns the right to work, to survive; it concerns the right to join or not to join a union. By its action, the House has become a party to it. I think that is greviously unfortunate. But I will be no party to a drive to force, to coerce, to dragoon a free American citizen into an organization against his will.

This is one of the disciplinary weapons—and it is one of the few—that American citizens have today. It will be interesting, when a youngster with a scar of the war in him, returns from Vietnam, goes to the New York City transit system, and says, "I need a job"; and then is told, "You can have a job, but you must join the late Quill's union in 30 days, or you cannot stay on the job."

It will be interesting when the youngsters who left Alton, Ill., return and apply for jobs in the powder factory, and have the personnel director say, "You can get a job; we can use you; but you must join the union in 30 days, or you will have no job." Why are they out on the frontier of freedom, if freedom is not the spirit that compels them? Two hundred thousand of them are in Vietnam; and now the newspapers are speculating about the number being run up to 600,000.

Is it not freedom that sustains them in an anxious and bloody hour? Is it not their hope and belief that as they come back, this will still be a free land, and they will be free from coercion?

This is not a fight against unions; this is not a fight against union labor. The unions are free to recruit to their hearts' content. But we do not want the Federal Government to give them coercive power to destroy freedom. Let them recruit by persuasion, if they have a bill of goods to sell.

The country is on our side. In the opinion polls, 64 percent have stated their view that section 14(b) should not be repealed. Fifty-one percent of union families have voted not to repeal. Forty-four percent of union labor has voted not to repeal. The result is uniformly the same in every section of the country, North, East, South, and West. The question was framed in eight different ways, and the result was always the same. That is the American people speaking. That is a higher power than any power created under the Constitution, because this is still a free country.

Why have we continued this debate? To alert the American people; to let them know what is involved. It was the only weapon we had, and we had to continue with it until the people's representatives, who should speak forth, finally came to their senses in respect to this question.

This is the whole issue in a nutshell. The basic concept upon which the whole structure of government rests is the concept of freedom. God help us if we impair it, if we tarnish it, if we sully it, if we transmit it to the next generation in impaired form. Oh, how that generation could probably strike our generation out of the history books and say, "When you were the trustees and the custodians of this country, you failed us in the hour when you should have stood up in the interests of freedom."

Mr. President, I trust that this proposal to gag the Senate will be rolled back. That will make for a free country.

The PRESIDING OFFICER. Who yields time?

Mr. PASTORE. Mr. President, may I have a minute?

Mr. MANSFIELD. Mr. President, I yield 3 minutes to the distinguished Senator from Rhode Island.

Mr. PASTORE. Mr. President, I have listened attentively to our very dramatic and very eloquent minority leader. However, I dare say to the Senators that the incongruity of the present situation lies in the fact that we are arguing the merits of a measure here, but we are not permitting this debate to go to the merits and a vote on the measure. This is a motion merely to bring up the measure. All we are asking today is: "Give the people of this country the opportunity to have a discussion on the merits, and then a vote on the measure at issue; and if the majority of the Senate is opposed to it, then it will be defeated."

All that we have before us today is a motion to bring up this measure. All the discussion, however, is directed toward the merits of the case. However, we are not being given the privilege and the opportunity to discuss the measure on its merits. I believe that the American people ought to understand the situation—that this is just a parliamentary detour—a diversion.

I do not know what the fate of this legislation will be. I have been told time and time again by the opposition that a poll has been taken by Gallup and that a majority of the people of the United States are opposed to the repeal of section 14(b). If that is the case, why do we not come to a vote on the repeal itself?

The only reason why the cloture motion has been filed is to attempt to stop this filibuster so that we may move on to a discussion on the merits of the case.

I say to my colleagues on the other side, who may be well intentioned, who may be knowledgeable as to the feelings of the people of the United States, that what they are doing is denying either to the majority or to the minority—because I do not know how this vote will come out—the opportunity to discuss the repeal on its merits. That is the gist of today's proceeding—to clear the decks for candid consideration.

We are asking today: "Please, on behalf of the American people, allow this matter to come to a clear discussion of the merits of the case, and let there be a clear-cut decision."

Those in opposition will not do that. They want two bites at the cherry. They want first a filibuster on the motion to bring the matter up and then they want to follow with another filibuster on the merits of the case. That is where I believe they are being unreasonable. That is where the incongruity of the situation lies. That is all I have to say.

The PRESIDING OFFICER. Who yields time?

Mr. MANSFIELD. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator is recognized.

Mr. MANSFIELD. Mr. President, I request that the Chair most respectfully, during the course of the vote to be had in this Chamber, ask those persons who have no business in the Chamber to return to their respective offices where they can do some work on behalf of the committee or Senators for whom they work, and that only bona fide employees attached to the Senate floor be present during the vote.

The PRESIDING OFFICER. The point of the Senator is well taken. It is so ordered by the Chair.

The Senator from Illinois is recognized.

Mr. DIRKSEN. Mr. President, I shall address myself for a moment to the distinguished Senator from Rhode Island.

The Senator from Rhode Island asks, If a majority of the people, according to the polls and the mail, are opposed to the repeal of section 14(b), why not let the matter come to a vote?

I respectfully suggest to the Senator that the people cannot be coursing through the corridors of this Capitol, like some of the labor leaders from the plush and luxurious citadels in Washington, to put a finger upon the people's representatives.

The only way in which we can get an adequate hearing for the view of the people is to do precisely what we are doing. Today we are speaking for the people, and not for the arm twisters who are here in large numbers, as everyone knows.

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

Mr. DIRKSEN. I yield.

Mr. PASTORE. Does the Senator from Illinois wish to leave the inference or the implication that he himself is susceptible to arm twisting on the part of any lobbying group?

Mr. DIRKSEN. If the Senator thinks so, why does he believe that I have been

conducting this fight? That is my answer.

Mr. PASTORE. If the Senator from Illinois feels that he is susceptible, I state that the Senator from Rhode Island is not susceptible to such pressure. I give credit to other Members of the Senate also for not being susceptible to such pressure. No Senator is susceptible to the kind of arm twisting that the Senator from Illinois is talking about. Each of us is willing to stand up and be counted.

Mr. DIRKSEN. Mr. President, I know who comes to my office. I know who tries to persuade. The answer to the Senator is "No." However, I know that the labor leaders are here. I merely hope that the people can exercise an equal pressure, because we speak for them.

Mr. MAGNUSON. Mr. President, will the Senator yield me 1 minute?

Mr. DIRKSEN. Mr. President, I have no time.

Mr. MANSFIELD. Mr. President, I shall first yield 1 minute to the distinguished junior Senator from Florida and shall then yield to the distinguished Senator from Washington.

Mr. SMATHERS. Mr. President, I rise again in opposition to the motion to make H.R. 77 the pending business before this body.

For the second time in less than 1 year, the Senate is nearing the climax of a debate on the issue of the proposed repeal of section 14(b) of the Taft-Hartley Act. Once more, Senators are discussing the virtue—or lack of virtue—in a measure that would strip the States of their power to protect the right of workers to hold jobs without being forced to pay tribute to a labor organization.

Only a few short months ago, I rose in this Chamber, the representative of 1 of the 19 States that have thus far enacted bans on compulsory unionism, and stated my unswerving opposition to a piece of legislation so clearly inimical to the principles of freedom and justice that we, as a nation, profess to cherish. Those of us who shared this view were, at that time, able to prevail. Section 14(b) is still law. I am convinced that it will be law for many years to come.

For time has not muted the clear tones of reason and truth. Time has not changed the fact, for instance, that the right-to-work States—on the whole—lead the Nation in the creation of new jobs, in the growth of manufacturing wages, and in gains in personal income. In 1966, as in 1965, Senators may examine the statistics and find that eight right-to-work States have higher actual weekly earnings than the State of New York. They may study long tables and large charts for weeks on end, and they must still come to the conclusion that the 19 States that outlaw the union shop are growing and prospering at rates that exceed the national pace.

But, Mr. President, the recitation of impersonal numbers can do little to dramatize the moral issues at stake here. What individual worker can care about the relative growth of his home State, as compared with another, when he suddenly finds himself faced with the choice of joining an organization he abhors or losing his livelihood? What wage earner can observe with interest seemingly distant economic trends when right at home he is compelled to give money to causes and political candidates he does not support?

The question, then, is more basic, more human than cold economics. It is the question of whether working men and women are to be entitled to unfettered access to employment, or whether some private organization can force an individual from his job for refusing to join or support that organization.

Last year, during debate on 14(b), I pointed out to my colleagues Florida's experiences with the union shop before my State enacted its right-to-work law, one of the Nation's first, in 1944. Unions and employers in Florida's defense industries entered into contracts which made the unions sole hiring agents, as well as sole bargaining agents. This practice frequently led to a situation in which prospective workers were forced to pay union business agents $30 for 3-week job permits. Supposedly at the end of the 3 weeks, the new employee would become a union member, but, in practice, he often had to keep purchasing $30 permits while his membership application was continuously delayed.

In November 1944, primarily because of these work permit scandals, the people of Florida, by popular vote, adopted an amendment to the State's constitution which stated that membership or nonmembership in a labor organization could not be a condition of employment. Subsequent efforts to repeal or modify this provision have all ended in failure.

Mr. President, in their wisdom, the people of the State I have the honor to represent and the citizens of 18 other States of this Union have seen fit to guarantee to wage earners within their borders a right as fundamental as any contained in the first 10 amendments to the Constitution of the United States. The residents of these States have constructed for themselves legal shields as fine and noble as that forged by Thomas Jefferson in 1785, when he authored the Statute of Virginia for Religious Freedom.

Yet now, Congress is being urged—against every measurable indication of public opinion—to batter aside bulwarks which millions of citizens do not choose to dismantle. Armed with a tired and misapplied arsenal that includes arguments for majority rule and against so-called free riders, the opponents of 14(b) have marched forth to battle.

But, their weapons have been found wanting in the debate that has occupied this body since the 24th of last January. Many of my distinguished colleagues have effectively demonstrated that unions are not governments, and that, therefore, a majority should not be able to coerce a minority. The majority rule contention has been reduced to absurdity by pointing out that no American would accept the proposition that, because a majority of one community belonged to one church, all should join. And, not even the most enthusiastic Democrat would maintain that all citizens should have to join our party.

In addition, Senate debate has shown that the so-called free rider is often a captive rider, a passenger on a trip he does not want to take. The captive rider in a unionized business must accept wages and conditions of employment he could possibly better bargaining for himself. He must defer to a seniority system that rewards years on the job rather than skill.

Mr. President, scores of pages of the RECORD have been devoted this year, and last, to discussion over the repeal of 14(b). Arguments have been advanced and countered. A welter of statistics, quotes, and court decisions have been used as supporting evidence for one point or another. But, rising above the fruits of careful research is the one central issue at stake: the basic right of any individual to seek and hold a job without having tribute exacted from his wages by a private group.

In an age when the freedom of peoples and of individuals is often on the defensive, the U.S. Senate must not and cannot become a party to the destruction of a liberty that is fully as vital as the rights of free association and free speech.

Mr. President, all indications are that the American public is more adamantly opposed than ever to repeal of section 14(b). The debate we have engaged in here has done much to create the current climate of opinion. Yet, I do not believe that all the public is fully informed on the matters we have been discussing, and for the reasons I have stated above, I feel strongly that we have not yet had adequate debate on an issue that is of overriding importance to every worker. I shall vote against cloture.

Mr. DIRKSEN. Mr. President, I yield 1 minute to the Senator from Maine.

Mrs. SMITH. Mr. President, late yesterday afternoon, around 5 o'clock, a letter from the president of the AFL–CIO was delivered at my office. I wish to read his letter and my reply, which was delivered to his office this morning before the vote on cloture.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., February 7, 1966.

Hon. MARGARET CHASE SMITH,
U.S. Senate, Washington, D.C.

DEAR SENATOR: Since January 24, the Senate has been locked in the filibuster against a motion to consider a bill repealing section 14(b) of the Taft-Hartley Act.

Not only has the filibuster prevented the Senate as a whole from acting on other legislation; it has also hampered the work of the Senate committees.

We deplore these delays as wholeheartedly as any editorial writer—or any Senator. But the responsibility does not rest upon us or those who support us. We did not mount the filibuster.

It has always been the position of the AFL–CIO that after every allowance has been made for full debate, the Senate should ultimately vote on all substantive issues brought before it—which would certainly include bills already passed by the House, and duly reported by a Senate committee.

Therefore, we are being consistent when we again say that all we ask is a vote. We ask this of those who oppose repeal of 14(b) as well as those who favor it. To us, the people's right to a decision by a vote of the Senate is more important than the issue itself.

Yes, we believe 14(b) should be repealed. We believe this unique departure from a uniform Federal labor relations code should be eliminated. We believe the compulsory open shop is inequitable and regressive. We believe a union should have the right to ask all workers who, by law, enjoy its benefits to bear their equal burden of the costs—if the majority of the workers want such a provision and the employer accepts it. We believe most Americans share these beliefs, as borne out by election results and referendum votes in the several States.

But our primary objective is a vote; a vote to which the people are entitled, a vote that will permit the Senate to move forward on other issues. It is not the proponents of 14(b) repeal who are blockading the Senate. The blockade can be broken by permitting free exercise of the fundamental act of representative government—a vote on the issue.

Therefore, we earnestly solicit your vote to halt the filibuster.

Sincerely yours,

GEORGE MEANY,
President.

U.S. SENATE,
COMMITTEE ON AERONAUTICAL AND SPACE SCIENCES,
February 8, 1966.

GEORGE MEANY,
President, American Federation of Labor and Congress of Industrial Organizations, Washington, D.C.

DEAR MR. MEANY: I have read with interest your letter of February 7, 1966, hand delivered to my office at 4:55 o'clock yesterday afternoon. After studying it last night, I wish to communicate as clearly and as concisely as I can my position on the matter prior to casting my vote this morning.

I agree with you that there has been sufficient and full debate on the matter and that cloture should be invoked. So I shall vote for cloture this morning just as I did last year on this matter. I do not lightly cast a vote for cloture and only after I feel that there has been sufficient and full debate.

But I do not want to mislead you in the slightest with respect to my vote for cloture. I wish to make it crystal clear that it is neither a commitment nor an indication that, if cloture is obtained, I shall vote for repeal of section 14(b). To the contrary, unlike any other member of the Maine congressional delegation I have refused to commit myself in favor of repeal of section 14(b). Instead I have taken the position that I wanted the benefit of the full arguments before making my decision and that increasingly I felt that the decision resolved itself to whether the issue was of such overriding national interest as to prevail over the right of the people of each State to decide the issue rather than having the Federal Government make the decision for all the States.

Were I to vote on the issue of repeal of section 14(b) today, I would vote against repeal because as of this time I am of the opinion that it should be the people of each State to make this decision rather than the Federal Government through Congress to make that decision for them. I reserve the right to be granted to any person to subsequently change my mind in the event that new factors or arguments are sufficiently persuasive to cause me to do so and I have no hesitancy at any time to admit if I have been wrong in my judgment or opinion.

But, as of now, I am of the opinion that other States should have the same right as that twice exercised in the past by my own State of Maine in rejecting right-to-work proposals. In a statewide referendum in 1948, and during my first campaign for U.S. Senator in which I publicly opposed the right-to-work proposal, the electorate of Maine overwhelmingly rejected the right-to-work proposal. Fifteen years later when a Republican-controlled Maine State Legislature in 1963 considered another right-to-work proposal, I reaffirmed publicly my opposition to such a proposal and again it was rejected by the people of Maine through their State legislature. So that my opposition to the right-to-work proposal has long and repeatedly been recorded along with that of the people of Maine. But I am now of the opinion that every State should have the right to make such decision either way as Maine has had that right to do so.

I note your point that the AFL–CIO is "being consistent when we again say that all we ask is a vote" and I think your point is well taken. But on that very point of consistency, I would ask you if you are willing to apply the same logic and consistency with respect to the Dirksen constitutional amendment on reapportionment to give to the electorate of each State the right to decide whether they desire to have their State senate modeled after the U.S. Senate. I ask this question because there have been indications of an attempted filibuster to prevent the Dirksen proposal from coming to a vote and my question is whether in consistency you and your organization are willing to support a move for cloture in the event a filibuster does develop on the Dirksen constitutional amendment on reapportionment.

For I shall support and vote for cloture after sufficient and full debate on the Dirksen constitutional amendment on reapportionment just as I have and will continue to do on the filibuster against repeal of section 14(b). In doing so, I believe that I am being consistent not only in voting for cloture in both instances but also in my position in both instances that the people of each State, rather than the Federal Government should make the decision on both the right-to-work proposal and on whether they are to have their own State senate modeled after the U.S. Senate.

Sincerely yours,

MARGARET CHASE SMITH,
U.S. Senator.

Mr. MANSFIELD. Mr. President, I yield 1 minute to the distinguished Senator from Washington.

Mr. MAGNUSON. Mr. President, I have not said much in this debate because there has not been too much to be said which had not already been said many times. I do not suppose that even 1 vote has been changed by any of the oratory on either side. However, I cannot sit idly by and listen to the minority leader talk about the will of the people on this issue. Voters of my State also have expressed their will on this issue.

The State of Washington has voted, not once, but three time on this issue—not in the legislature, but the people themselves in initiatives and referendums—and they have denied those who would have a right-to-work law passed.

The last time the vote was almost 2 to 1 against it.

The Senator from Florida [Mr. HOLLAND] can talk all he wishes about his State having such a provision in the State constitution. My State, by a vote of its people—and I am sure what the Senator from Florida said happened by a vote of his people in his State—said that we should not have a right-to-work law.

We have just as much right to vote in the Senate on the issue as the Senator from Florida has the right to use the rules of the Senate to deny us that right.

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

Mr. MAGNUSON. Many today have talked about the "will of the people." The will of the people in Washington said not once, but three times, that they did not want such laws.

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

Mr. MAGNUSON. The people have voted in our State that we should not have the open shop or require a license for an open shop.

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

Mr. MAGNUSON. I have only 1 minute. The Senator from Florida has spoken on this issue many times. I have only 1 minute. I am growing tired of demagoguery about the will of the people. If the will of the people is to be sustained, the Senate must be representative and must give us the right to vote on the issue.

Senators talk about majority rule. Let us do what the majority of the Senate wants to do on this issue.

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

Mr. MAGNUSON. Mr. President, has my time expired?

Mr. MANSFIELD. It has more than expired.

The PRESIDING OFFICER. All time for debate having expired, the pending question is, Is it the sense of the Senate that debate shall be brought to a close on the motion of the Senator from Montana [Mr. MANSFIELD] to proceed to the consideration of the bill (H.R. 77) to repeal section 14(b) of the National Labor Relations Act, as amended, and section 703(b) of the Labor-Management Reporting Act of 1959, and to amend the first proviso of section 8(a)(3) of the National Labor Relations Act, as amended.

Mr. MANSFIELD. Will the Chair withhold putting the question for a moment? Have the yeas and nays been ordered?

The PRESIDING OFFICER. Under the rule, the yeas and nays are automatically ordered.

The clerk will call the roll to ascertain the presence of a quorum.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 30 Leg.]

Aiken	Harris	Murphy
Allott	Hart	Muskie
Anderson	Hartke	Nelson
Bartlett	Hayden	Neuberger
Bass	Hickenlooper	Pastore
Bayh	Hill	Pearson
Bennett	Holland	Pell
Bible	Hruska	Prouty
Boggs	Inouye	Proxmire
Brewster	Jackson	Randolph
Burdick	Javits	Ribicoff
Byrd, Va.	Jordan, N.C.	Robertson
Byrd, W. Va.	Jordan, Idaho	Russell, S.C.
Cannon	Kennedy, Mass.	Russell, Ga.
Carlson	Kuchel	Saltonstall
Case	Lausche	Scott
Church	Long, Mo.	Simpson
Clark	Long, La.	Smathers
Cooper	Magnuson	Smith
Cotton	Mansfield	Sparkman
Curtis	McCarthy	Stennis
Dirksen	McClellan	Symington
Dodd	McGee	Talmadge
Dominick	McGovern	Thurmond
Douglas	McIntyre	Tower
Eastland	Metcalf	Tydings
Ellender	Miller	Williams, N.J.
Ervin	Monroney	Williams, Del.
Fannin	Montoya	Yarborough
Fong	Morse	Young, N. Dak.
Fulbright	Morton	Young, Ohio
Gore	Moss	
Gruening	Mundt	

Mr. LONG of Louisiana. I announce that the Senator from Michigan [Mr. McNAMARA] is necessarily absent.

The PRESIDING OFFICER. A quorum is present.

Under Rule XXII, the yeas and nays are required on the pending question, which is as follows: Is it the sense of the Senate that debate on the motion to proceed to the consideration of H.R. 77, to repeal section 14(b) of the National Labor Relations Act, shall be brought to a close?

The clerk will call the roll.

Mr. PASTORE. Mr. President, may we have order?

The VICE PRESIDENT. The Senate will be in order. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LONG of Louisiana. I announce that the Senator from Michigan [Mr. McNAMARA] is necessarily absent.

I also announce that if present and voting, the Senator from Michigan [Mr. McNAMARA] would vote "yea."

The yeas and nays resulted—yeas 51, nays 48, as follows:

[No. 31 Leg.]

YEAS—51

Anderson	Inouye	Morse
Bartlett	Jackson	Moss
Bass	Javits	Muskie
Bayh	Kennedy, Mass.	Nelson
Brewster	Kennedy, N.Y.	Neuberger
Burdick	Kuchel	Pastore
Case	Long, Mo.	Pell
Church	Long, La.	Proxmire
Clark	Magnuson	Randolph
Cooper	Mansfield	Ribicoff
Dodd	McCarthy	Scott
Douglas	McGee	Smith
Gore	McGovern	Symington
Gruening	McIntyre	Tydings
Harris	Metcalf	Williams, N.J.
Hart	Mondale	Yarborough
Hartke	Montoya	Young, Ohio

NAYS—48

Aiken	Fannin	Murphy
Allott	Fong	Pearson
Bennett	Fulbright	Prouty
Bible	Hayden	Robertson
Boggs	Hickenlooper	Russell, S.C.
Byrd, Va.	Hill	Russell, Ga.
Byrd, W. Va.	Holland	Saltonstall
Cannon	Hruska	Simpson
Carlson	Jordan, N.C.	Smathers
Cotton	Jordan, Idaho	Sparkman
Curtis	Lausche	Stennis
Dirksen	McClellan	Talmadge
Dominick	Miller	Thurmond
Eastland	Monroney	Tower
Ellender	Morton	Williams, Del.
Ervin	Mundt	Young, N. Dak.

NOT VOTING—1

McNamara

The VICE PRESIDENT. On this vote there are 51 yeas and 48 nays. Two-thirds of the Senators present and voting not having voted in the affirmative, the cloture motion is rejected.

Mr. KENNEDY of New York subsequently said: Mr. President, I voted today for cloture of the debate on the repeal of section 14(b).

The people of the United States are entitled to a vote on this issue. It has been the subject of many hearings in this and other Congresses. It has been debated at great length in both sessions of this Congress. The facts, as well as can be, are known and the arguments have been made. It should be settled one way or the other, so that the business of the Senate can go on.

Beyond this is the question of whether 14(b) should be repealed. I believe that it should.

At the outset, we must realize what the issue really is. A vote for 14(b) is not a vote to make the union shop compulsory. Rather it is a vote to allow unions and management to freely reach agreement on whether a union shop should be instituted. In those States which do not have right-to-work laws—and in the Nation should we repeal 14(b)—no union shop can be imposed without the consent of management. No union shop can be instituted over the objection of a majority of the workers in a bargaining unit.

Nor is a vote for 14(b) a vote for arbitrary power of unions or union leaders over their members. In my work in the labor-management corruption hearings, and as Attorney General, I had a good deal of experience with abuses of power, with corruption, with denial of democratic processes within unions. But those abuses occurred both in union shops and nonunion shops, in States with right-to-work laws and those without them. There are still serious problems of union democracy in the United States. But they will neither be solved nor worsened by repeal of 14(b). Abuses must be eliminated where they occur; but there is no reason to penalize all unions, clean and unclean, democratic and autocratic, for the faults of a minority.

A vote for 14(b) is not a vote to upset the present balance of bargaining power between unions and management; nor is it related in any way to strikes such as the transit strike which recently paralyzed New York City. Labor relations in 31 States, covering the great majority of American workers and industry, will not be directly affected by repeal of 14(b).

There are legitimate questions to be raised about the balance of bargaining power between labor and management—and pressing questions about the protection of third, innocent parties affected by a labor dispute. But those questions cannot be solved in 19 States. They must be dealt with in a general review of the National Labor Relations Act. For this reason, I firmly support Senator McNAMARA'S intention to hold general hearings on the act after 14(b) is repealed. At that time, a national labor policy can be dealt with properly—nationally.

Having said this, the question is, Why should 14(b) be repealed?

The first reason is the need to return to a uniform national labor law. Uniformity is no abstract goal; it has real and immediate consequences. It was originally sought in the Wagner Act of 1937 because we realized that ours is a national economy. Our great companies operate in every State in the Union. Their manufacturing operations are often spread over dozens of States; they buy their materials and sell their products everywhere. The unions which represent their employees are also national in scope. For such a national economy to operate efficiently and with a minimum of discord, it is necessary that the laws affecting collective bargaining and union organization not differ from State to State.

Lack of uniformity encourages States to compete with others for industry by making union organization more difficult. Even a Senator from New York, which has lost large amounts of industry to other States in recent years, cannot criticize the efforts of less-developed States to attract industry and the new payrolls it brings. But that competition should not be fought out at the expense of American workers, or of their rights to bargain freely on the terms and conditions of employment—including the union shop.

A third reason for the repeal of 14(b) is that it contributes to wage levels which are unacceptably low. Average weekly wages in manufacturing enterprise in States without right-to-work laws in 1963, for example, were $101.52. For comparable enterprises in States with right-to-work laws, the average weekly wage was $91.80.

Of course, wages are affected by much more than right-to-work laws. But it cannot be denied that these laws, by handicapping union organization, contribute to an imbalance of bargaining power as compared to the rest of the Nation. With one exception, for example, every State in the Southeastern part of the United States is a right-to-work State. In these States, the average weekly wage in manufacturing in 1963 was $77.77. But for Louisiana, the single non-right-to-work State in the area, the average weekly wage in manufacturing was $100.62—$23 more a week than the average for the region, as much as $30 a week more than wages in some neighboring States, a wage on a par or even better than those paid in New York, Pennsylvania, or Illinois.

Wage levels this low mean that many manufacturing workers in these States are working for $50 or even $40 a week—far below the line officially declared by Congress to represent poverty; and they mean that workers in States like New York, where living costs are far higher, must undergo considerable hardship to keep their own wage levels competitive—so that their employers will not leave the State.

Let us, then, be clear as to what the issues are. No one, as a result of repeal of 14(b), will be forced to join a union—only to contribute with his dues toward the work of the union which improves his own wages and working conditions. The only "States right" which is at issue is the right to compete for industry with other States by hindering union organization and keeping wage levels low.

What the repeal of 14(b) would mean, and all that it would mean, is that labor and management would bargain throughout the United States in a more uniform manner—unhampered by restrictive State laws.

It would help to improve wages and working conditions for millions of Americans.

It would remove artificial incentives for industry to change its location.

It would serve a national economy with national rules.

For these reasons, I shall vote for the repeal of 14(b), and vote for cloture on the debate which has held up the work of the Senate these past weeks.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Montana [Mr. MANSFIELD] that the Senate proceed to the consideration of the bill (H.R. 77) to repeal section 14(b) of the National Labor Relations Act, as amended, and section 703 (b) of the Labor-Management Reporting Act of 1959, and to amend the first proviso of section 8(a)(3) of the National Labor Relations Act, as amended.

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

The VICE PRESIDENT. Will the Senator please repeat his request?

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

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

MOTION FOR CLOTURE

Mr. MANSFIELD. Mr. President, I send to the desk a motion for cloture and ask that it be stated.

The VICE PRESIDENT. The motion for cloture will be stated for the information of the Senate.

The legislative clerk read as follows:

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the motion to proceed to the consideration of H.R. 77, an act to repeal section 14(b) of the National Labor Relations Act, as amended, and section 705(b) of the Labor-Management Reporting and Disclosure Act of 1959 and to amend the first proviso of section 8(a)(3) of the National Labor Relations Act, as amended.

MIKE MANSFIELD.
PAT MCNAMARA.
DANIEL BREWSTER.
EDMUND MUSKIE.
PHILIP A. HART.
DANIEL INOUYE.
ROBERT F. KENNEDY of New York.
GALE MCGEE.
JOSEPH S. CLARK.
FRED HARRIS.
EDWARD M. KENNEDY of Massachusetts.
WALTER F. MONDALE.
CLAIBORNE PELL.
THOMAS J. MCINTYRE.
HENRY M. JACKSON.
CLINTON P. ANDERSON.
JOHN O. PASTORE.
PAUL H. DOUGLAS.
WARREN MAGNUSON.
HARRISON WILLIAMS of New Jersey.
STEPHEN YOUNG.
JOSEPH M. MONTOYA.
WAYNE MORSE.
JACOB K. JAVITS.
EUGENE MCCARTHY.
CLIFFORD P. CASE.
JENNINGS RANDOLPH.

ORDER FOR RECESS UNTIL 12 O'CLOCK NOON TOMORROW

Mr. MANSFIELD. Mr. President, if I may have the attention of the Senators, I should like to propound a unanimous-consent request, that instead of the Senate's meeting at 10 o'clock tomorrow morning it meet at 12 o'clock noon.

The VICE PRESIDENT. Is there objection?

Mr. STENNIS. Mr. President, will the Senator from Montana repeat his request?

Mr. MANSFIELD. That the Senate meet at 12 o'clock noon tomorrow instead of 10 o'clock a.m.

Mr. STENNIS. I thank the Senator.

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

Mr. MANSFIELD. That means, of course, that the 10 o'clock a.m. meeting on Thursday next will still hold.

Mr. MAGNUSON. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. MAGNUSON. Many Senators are anticipating the coming recess in order to allow Republicans to test the will of the people over the next week——

The VICE PRESIDENT. Will the Senator from Washington please repeat that?

Mr. MAGNUSON. We should like to know at approximately what time the vote will be taken on the second motion for cloture.

Mr. MANSFIELD. Approximately 11 o'clock a.m. on Thursday.

LEGISLATIVE PROGRAM

Mr. MANSFIELD. Mr. President, if at all possible, I intend to move to consider the Vietnam supplementary authorization bill, so that it will be the pending business on Wednesday, February 16, upon our return, to take up the bill immediately, so that it will receive prompt consideration, because I have been hearing so much about Vietnam in this Chamber.

Mr. RUSSELL of Georgia. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. RUSSELL of Georgia. I wish to emphasize that this will be the authorization. I had hoped that there could be a committee meeting on our regular day on Thursday, but I serve notice now to all members of the Senate Armed Services Committee that it will meet in the morning at 10:30 o'clock, in order that we may consider the authorization bill.

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, and that statements in that connection be limited to 3 minutes.

The VICE PRESIDENT. Is there objection?

Mr. DIRKSEN. Mr. President, for purposes of clarification, the usual morning hour will be for speeches, and so forth, but no business; is that not correct?

Mr. MANSFIELD. The Senator is correct.

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

ENROLLED BILL SIGNED

The VICE PRESIDENT announced that on today, February 8, 1966, he signed the enrolled bill (H.R. 30) to provide for participation of the United States in the Inter-American Cultural and Trade Center in Dade County, Fla., and for other purposes, which had previously been signed by the Speaker of the House of Representatives.

EXECUTIVE COMMUNICATIONS, ETC.

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

REPORT ON THE FEDERAL PLAN FOR METEOROLOGICAL SERVICES AND SUPPORTING RESEARCH

A letter from the Director, Bureau of the Budget, Executive Office of the President, transmitting, pursuant to law, a report on the Federal plan for meteorological services and supporting research, fiscal year 1967 (with an accompanying report); to the Committee on Appropriations.

PROPOSED DISPOSAL OF METALLURGICAL GRADE CHROMITE FROM THE NATIONAL STOCKPILE

A letter from the Administrator, General Services Administration, Washington, D.C., transmitting a draft of proposed legislation to authorize the disposal of metallurgical grade chromite from the national stockpile and the supplemental stockpile (with accompanying papers); to the Committee on Armed Services.

REPORT OF FEDERAL COMMUNICATIONS COMMISSION

A letter from the Chairman, Federal Communications Commission, Washington, D.C., transmitting, pursuant to law, a report of that Commission, for the fiscal year 1965 (with an accompanying report); to the Committee on Commerce.

COMBINED STATEMENT OF RECEIPTS, EXPENDITURES, AND BALANCES OF THE U.S. GOVERNMENT

A letter from the Secretary of the Treasury, transmitting, pursuant to law, a combined statement of receipts, expenditures, and balances of the U.S. Government, for the fiscal year ended June 30, 1965 (with an accompanying document); to the Committee on Finance.

PROPOSED AMENDMENT AND EXTENSION OF RENEGOTIATION ACT OF 1951

A letter from the Chairman, the Renegotiation Board, Washington, D.C., transmitting a draft of proposed legislation to amend and extend the Renegotiation Act of 1951, and for other purposes (with an accompanying paper); to the Committee on Finance.

REPORTS OF ACTING COMPTROLLER GENERAL

A letter from the Acting Comptroller General of the United States, transmitting pursuant to law, a report on survey of research management functions, Air Force Cambridge Research Laboratories, Laurence G. Hanscom Field, Bedford, Mass., Department of the Air Force, dated January 1966 (with an accompanying report); to the Committee on Government Operations.

A letter from the Acting Comptroller General of the United States, transmitting, pursuant to law, a report on review of Federal financial participation in the costs of prescribed drugs for welfare recipients in the

State of Pennsylvania, Welfare Administration, Department of Health, Education, and Welfare, dated February 1966 (with an accompanying report); to the Committee on Government Operations.

REPORT ON COOPERATIVE WATER RESOURCES RESEARCH AND TRAINING

A letter from the Secretary of the Interior, transmitting, pursuant to law, a report on cooperative water resources research and training, for the year 1965 (with accompanying papers); to the Committee on Interior and Insular affairs.

SUSPENSION OF DEPORTATION OF CERTAIN ALIENS

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

ADMISSION INTO THE UNITED STATES OF CERTAIN DEFECTOR ALIENS

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

TEMPORARY ADMISSION INTO THE UNITED STATES OF CERTAIN ALIENS

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

REPORT ON FUNDS RECEIVED BY THE TRUSTEES OF THE JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

A letter from the Secretary, Smithsonian Institution, Washington, D.C., reporting, pursuant to law, that sufficient funds to construct the John F. Kennedy Center for the Performing Arts have been received by the Trustees of the John F. Kennedy Center for the Performing Arts; to the Committee on Public Works.

PETITIONS AND MEMORIALS

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

By the VICE PRESIDENT:

A joint resolution of the Legislature of the State of Colorado; to the Committee on Commerce:

"HOUSE JOINT MEMORIAL 1006

"Memorial memorializing the Congress of the United States to designate or appoint a committee to investigate the cancellation and discontinuance of contracts for the transportation of mails by railroads, and conditions resulting therefrom

"Whereas the Post Office Department of the United States has pursued a systematic program of replacing contracts for the transportation of mail by the railroads of this Nation with contracts for the transportation thereof by other means; and

"Whereas the national transportation policy of the Congress of the United States is to develop and preserve a national transportation system by rail adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense; and

"Whereas one essential element for the continuance of a sound, efficient rail system in this Nation is economic stability, which, in turn, is dependent on contracts for the transportation of mail; and

"Whereas many railroads have been and will be forced by economic necessity to cancel and eliminate many scheduled passenger trains across the Nation, thereby depriving many areas of this Nation of year-around transportation and mail facilities, as a direct result of the discontinuance of such mail contracts; and

"Whereas the economic well-being of thousands of citizens and of hundreds of communities is being endangered by said program of the Post Office Department, thus further increasing the manifold problems of the President and of the Congress in the current war on poverty; and

"Whereas in times of emergency, the railroads are looked to and expected to provide safe, dependable transportation for the Nation and its citizens, and of its mail, when other methods are ineffective: Now, therefore, be it

"Resolved by the House of Representatives of the 45th General Assembly of the State of Colorado (the Senate concurring herein), That the Congress of the United States be requested to designate or appoint some appropriate committee or subcommittee to investigate the overall effects upon the railroads, in particular, and the whole transportation system, in general, of the Nation, directly resulting from the cancellation and discontinuance of contracts for the transportation of the mails by rail; be it further

"Resolved, That a copy of this memorial be transmitted to the President of the United States, the President of the Senate of the Congress of the United States, the Speaker of the House of Representatives of the Congress of the United States, and each Member of Congress from the State of Colorado.

"ALLEN DINES,
"Speaker,
"House of Representatives.
"EVELYN T. DAVIDSON,
"Chief Clerk, House of Representatives.
"ROBERT L. KNOUS,
"President of the Senate.
"MILDRED H. CRESSWELL,
"Secretary of the Senate."

A concurrent resolution of the Legislature of the State of South Dakota; to the Committee on Interior and Insular Affairs:

"HOUSE CONCURRENT RESOLUTION 6

"Concurrent resolution, relating to the benefits of outdoor recreation facilities and fish and wildlife enhancement in connection with water resource projects.

"Be is resolved by the House of Representatives of the State of South Dakota, the Senate concurring therein:

"Whereas the 89th Congress of the United States enacted Public Law 89–72 to provide uniform policies with respect to outdoor recreation features and fish and wildlife benefits and costs of Federal multipurpose water resource projects, and for other purposes; and

"Whereas investigation, planning and construction of such features cannot occur until a declaration of intent has been made by a non-Federal entity indicating intent to agree to administer or to arrange for the administration of land and water areas for outdoor recreation, or fish and wildlife enhancement, or for both of these purposes; and to bear or to arrange for the bearing of not less than one-half of the separable cost of such outdoor recreation of fish and wildlife enhancement features and all of the cost of operation, maintenance and replacement incurred therefor; and

"Whereas it is desirable to the people of South Dakota that opportunities might result from provision for outdoor recreation, or for fish and wildlife enhancement, in connection with the planning and construction of multipurpose water resource projects built with Federal participation in this State: Now, therefore, be it

"Resolved, by the House of Representatives of the State of South Dakota (the Senate concurring therein), That, it is the intent of the Legislature of the State of South Dakota to arrange for the administration of outdoor recreation and fish and wildlife enhancement features of water resources projects, or both of these purposes, and to arrange for the bearing of not less than one-half of the separable costs of such features and all of the cost of operation, maintenance and replacement incurred therefor; and

"It is the intent of the legislature that the planning for such features be participated in by an agency of State government with appropriate planning authority; that the administration of such features be under the supervision of an agency of State government with authority to administer such features; and that payment requirements be met by an agency of State government with authority to collect user fees from the general public and with authority to enter into contracts with Federal agencies covering such requirements; and, be it further

"Resolved, That certified copies of this resolution be forwarded to Honorable Stewart L. Udall, Secretary of the Interior of the United States, and the presiding officers of both Houses of Congress of the United States.

"Adopted by the house of representatives, January 20, 1966.

"Concurred in by the Senate, January 27, 1966.

"CHARLES DROZ,
"Speaker of the House.

"Attest:

"PAUL INMAN,
"Chief Clerk.

"LEM OVERPECK,
"Lieutenant Governor,
"President of the Senate.

"Attest:

"NIELS P. JENSEN,
"Secretary of the Senate."

A concurrent resolution of the Legislature of the State of South Dakota; to the Committee on the Judiciary:

"HOUSE CONCURRENT RESOLUTION 2

"Concurrent resolution memorializing the Congress of the United States to direct the Department of Justice to immediately proceed in an expedient manner to bring to a just conclusion the condemnation proceedings now pending against landowners who have lost acreage to the flood waters of Big Bend Reservoir

"Be it resolved by the House of Representatives of the State of South Dakota, the Senate concurring therein:

"Whereas the U.S. Government has drastically slowed the procedures for compensating landowners located within the taking line of the Big Bend Reservoir in South Dakota, and

"Whereas Big Bend dam has been completed for some time and the land in question is already under the control of the Federal Government and should be compensated for as soon as possible; and

"Whereas landowners involved in these proceedings have been unable to adequately plan for their economic future because they have no way of knowing how much compensation they will receive for their land being taken for flooding by the reservoir; and

"Whereas this lack of expedient action by the U.S. Government is causing economic hardship, uncertainty and despair among the group of South Dakota citizens involved in this taking of land: Now, therefore, be it

"Resolved by the House of Representatives of the State of South Dakota, the Senate con-

curring therein, That the Congress of the United States be, and is, memorialized to direct the Department of Justice of the United States to immediately proceed in an expedient, proper and equitable manner to assure fair and reasonable settlements for land taken from owners for the Big Bend Reservoir, to the end that these economic hardships and uncertainties may be alleviated; and be it further

"*Resolved,* That copies of this resolution be transmitted to the President of the United States, to the Attorney General of the United States, the Vice President of the United States, the Speaker of the House of Representatives of the United States, and the Members of the South Dakota delegation to the Congress of the United States.

"Adopted by the house of representatives, January 21, 1966.

"Concurred in by the senate, January 25, 1966.

"CHARLES DROZ,
"Speaker of the House.

"Attest:

"PAUL INMAN,
"Chief Clerk.

"LEM OVERPECK,
"Lieutenant Governor,
"President of the Senate.

"Attest:

"NIELS P. JENSEN,
"Secretary of the Senate."

A joint resolution of the Legislature of the State of Maine; to the Committee on the Judiciary:

"RESOLUTION RATIFYING THE PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO PRESIDENTIAL SUCCESSION AND INABILITY

"Whereas the 89th Congress of the United States of America, at the 1st session begun and held at the city of Washington, on Wednesday, the 6th day of January 1965 by a constitutional two-thirds vote in both Houses adopted a joint resolution proposing an amendment to the Constitution of the United States, to wit:

"'Joint resolution proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office.

"'*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),* That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"' "ARTICLE —

"' "SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

"' "SEC. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

"' "SEC. 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

"' "SEC. 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

"' "Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office" '; therefore, be it

"*Resolved,* That the Legislature of the State of Maine hereby ratifies and adopts this proposed amendment to the Constitution of the United States.

"*Resolved,* That the secretary of state of the State of Maine notify the President of the United States, the Secretary of State of the United States, the President pro tempore of the Senate of the United States, the Speaker of the House of Representatives of the United States, the Administrator of General Services of the United States, and each Senator and Representative from Maine in the Congress of the United States of this action of the legislature by forwarding to each of them a certified copy of this resolution.

"In senate chamber.

"EDWIN H. PERT,
"Secretary.

"House of representatives.

"JEROME G. PLANTE,
"Clerk."

A joint resolution of the Legislature of the State of West Virginia; to the Committee on the Judiciary:

"HOUSE JOINT RESOLUTION 1 OF THE 57TH LEGISLATURE OF WEST VIRGINIA RATIFYING THE PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO SUCCESSION TO THE PRESIDENCY AND VICE PRESIDENCY AND TO CASES WHERE THE PRESIDENT IS UNABLE TO DISCHARGE THE POWERS AND DUTIES OF HIS OFFICE

"Whereas the 89th Congress of the United States of America, at the 1st session begun and held at the city of Washington on Monday, the 4th day of January 1965, by a constitutional two-thirds vote in both Houses adopted a joint resolution proposing an amendment to the Constitution of the United States, to wit:

"'Joint resolution proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice Presidency and to cases where the President is unable to discharge the powers and duties of his office.'

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein): That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within 7 years from the date of its submission by the Congress:

"'ARTICLE —

"'SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

"'SEC. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

"'SEC. 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

"'SEC. 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

" 'Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as the Congress may by law provide, transmit within 4 days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within 48 hours for that purpose if not in session. If the Congress, within 21 days after receipt of the latter written declaration, or, if Congress is not in session, within 21 days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.'

"Therefore, be it

"Resolved by the Legislature of West Virginia, That the Legislature of the State of West Virginia hereby ratifies and adopts this proposed amendment to the Constitution of the United States; and be it

"Further resolved, That the secretary of state of the State of West Virginia notify the President of the United States, the President pro tempore of the Senate of the United States, the Speaker of the House of Representatives of the United States, the Administrator of General Services of the United States, and each Senator and Representative from West Virginia in the Congress of the United States of this action of the legislature by forwarding to each of them a certified copy of this resolution.

"C. A. BLANKENSHIP,
"Clerk, West Virginia House of Delegates.

"R. D. BAILEY,
"Secretary of State."

A concurrent resolution of the Legislature of the State of Nevada; ordered to lie on the table:

"SENATE CONCURRENT RESOLUTION 2 OF THE STATE OF NEVADA EXPRESSING THE SUPPORT OF THE NEVADA LEGISLATURE FOR THE EFFORT OF OUR SERVICEMEN IN VIETNAM

"Whereas many thousands of American boys have been ordered into Vietnam and are there engaged in actual combat; and

"Whereas when Americans already within the armed services have been ordered into combat and some have already laid down their lives, it ill behooves any American to shirk his duty when similarly called; and

"Whereas the watchword of Americans in the face of the enemy has ever been: 'Our country! May she always be in the right, but our country, right or wrong!': Now, therefore, be it

"Resolved by the Senate of the State of Nevada (the assembly concurring), That this legislature condemns the acts of those pusillanimous few who would avoid military service for themselves or seek to deter others from it; and be it further

"Resolved, That this legislature expresses its gratitude and wholehearted support of all those service men and women whose daily sacrifice upon the soil of Vietnam upholds the fine tradition of American devotion to duty; and be it further

"Resolved, That certified copies of this resolution be transmitted forthwith by the legislative counsel to the President of the United States, the President of the Senate, the Speaker of the House of Representatives, and to the Members of Nevada's congressional delegation.

"Adopted by the senate, November 4, 1965.

"PAUL LASALT,
"President of the Senate.
"LEOLA H. ARMSTRONG,
"Secretary of the Senate.

"Adopted by the assembly, November 5, 1965.

"WM. D. SWACKHAMER,
"Speaker of the Assembly.
"NATHAN T. HURST,
"Chief Clerk of the Assembly."

A resolution adopted by the Assembly of Naha City, of the Ryukyu Islands, relating to public election of the Chief Executive of the Government of the Ryukyu Islands; to the Committee on Armed Services.

A resolution adopted by the convention of the AFL–CIO relating to the American merchant marine and maritime policy; to the Committee on Commerce.

A resolution adopted by the Great Lakes Terminals Association, at Chicago, Ill., protesting against any increase in the St. Lawrence Seaway tolls; to the Committee on Commerce.

A resolution adopted by citizens of Puerto Rico, favoring a plebiscite permitting the people of Puerto Rico to decide, in free and independent elections, what type of final political status the majority of the people of Puerto Rico desire; to the Committee on Interior and Insular Affairs.

Resolutions adopted by the Florida Federation for Constitutional Government, Lake City, Fla., relating to the Civil Rights Act of 1964, and so forth; to the Committee on the Judiciary.

A resolution adopted by the New York State Teachers Association, expressing appreciation for the enactment of the Elementary and Secondary Education Act of 1965; to the Committee on Labor and Public Welfare.

A resolution adopted by the Upper Peninsula Association of American Legion Posts, at L'Anse, Mich., relating to the appointment of a permanent postmaster at Ironwood, Mich.; to the Committee on Post Office and Civil Service.

A resolution adopted by the American Legion at its 1965 national convention, in Portland, Oreg., commending the work of the Federal Bureau of Investigation and its Director, J. Edgar Hoover; ordered to lie on the table.

A resolution adopted by the City Council of the City of Chicago, Ill., expressing approval of the programs promulgated by President Johnson in his state of the Union address; ordered to lie on the table.

Resolutions adopted by Local No. 90, Amalgamated Clothing Workers of America; the Texas Bottlers Association, of Abilene, Tex., and Local No. 149, Plumbers and Steamfitters, of Champaign, Ill., favoring the repeal of section 14(b) of the Taft-Hartley Act; ordered to lie on the table.

BILLS INTRODUCED

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

By Mr. CANNON:

S. 2887. A bill to prohibit arbitrary discrimination in employment because of age; to the Committee on the Judiciary.

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

By Mr. AIKEN (for himself and Mr. COOPER):

S. 2888. A bill to insure that children participating in domestic nonprofit school lunch programs will be assured of adequate supplies of nutritious dairy products; to the Committee on Agriculture and Forestry.

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

By Mr. DOMINICK:

S. 2889. A bill to amend section 5(1) of the Railroad Retirement Act of 1937 to provide benefits for children of deceased railroad employees who are over the age of 18 and below the age of 22 and are attending an educational institution as full-time students; and

S. 2890. A bill to amend the National Labor Relations Act and the Railway Labor Act so as to provide for the certification of representatives only upon vote by secret ballot of 50 percent of employees entitled to vote in the election, and to require that employees voting in such elections be afforded an opportunity to vote against representation by any individual or organization; to the Committee on Labor and Public Welfare.

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

By Mr. SMATHERS:

S. 2891. A bill to provide for the establishment of a U.S. Court of Labor-Management Relations which shall have jurisdiction over labor disputes which result in work stoppages that adversely affect the public interest of the Nation to a substantial degree; to the Committee on the Judiciary.

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

By Mr. MONDALE (for himself and Mr. DOUGLAS):

S. 2892. A bill to amend section 5(1) of the Railroad Retirement Act of 1937 to provide benefits for children of deceased railroad employees who are over the age of 17 and below the age of 22 and are attending an educational institution as full-time students; to the Committee on Labor and Public Welfare.

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

By Mr. MAGNUSON (by request):

S. 2893. A bill to amend section 208(c) of the Interstate Commerce Act to provide that certificates issued in the future to motor common carriers of passengers shall not confer, as an incident to the grant of regular route authority, the right to engage in special or charter operations; to the Committee on Commerce.

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

By Mr. NELSON:

S. 2894. A bill to provide for the establishment of the Wolf National Scenic Waterway in the State of Wisconsin, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. METCALF:

S. 2895. A bill to amend the Migratory Bird Hunting Stamp Act of March 26, 1934, to authorize the overprinting of certain of such stamps, and for other purposes; to the Committee on Commerce.

By Mr. NELSON:

S. 2896. A bill to amend the Agricultural Act of 1949, as amended, relating to price support for dairy products; to the Committee on Agriculture and Forestry.

By Mr. RIBICOFF:

S. 2897. A bill for the relief of Mr. Gioacchino Tordonato and Mrs. Carmela Tordonato; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 2898. A bill for the relief of Dionicia Ulivas;

S. 2899. A bill for the relief of Pedro R. Aguada; and

S. 2900. A bill for the relief of Lenisi Mataele; to the Committee on the Judiciary.

PROHIBITION OF ARBITRARY DISCRIMINATION IN EMPLOYMENT BECAUSE OF AGE

Mr. CANNON. Mr. President, I introduce, for appropriate reference, an amendment to title VII of the Civil Rights Act of 1964 to prohibit arbitrary discrimination in employment because of age.

Our technologically sophisticated society is extending the human lifespan. Yet this same society is making it difficult for people in the prime of life, from age 40 to age 65, to find jobs. These people, who are too young to retire, are thus deprived of the self-respect that is earned by providing a decent standard of living for themselves and their families. In addition to this individual privation, the Nation as a whole is wasting 1 million man-years of productive time each year because of the unemployment of workers over 45.

These figures are taken from a 1965 report by the Secretary of Labor, "The Older American Worker: Age Discrimination in Employment." Based on yearlong, intensive studies, the report reveals a number of startling facts. Especially disconcerting are the statistics derived from a survey of over 500 employers employing one-half million workers in 5 cities located in States that did not, as of early 1965, have laws prohibiting age discrimination in employment. This survey disclosed that: First, over 50 percent of the employers contacted used arbitrary age ceilings, usually age 45 to age 55; second, approximately 50 percent of the job openings in the private economy were closed to applicants over 55, 25 percent to applicants over 45; third, older workers represented less than 5 percent of the new employees in most establishments; and fourth, the proportion of older workers hired by firms with specific upper age limits was 50 percent of the proportion of older workers hired

by firms with specific policies against age limits.

This trend, which shows no sign of relaxation, according to the Secretary of Labor, is intensified by the increasing emphasis our culture is placing on education. Employment criteria requiring, for example, a high school education obviously obstruct the employment of older workers—fairly, if there is a genuine difference in ability in favor of the younger workers; unfairly, if the older worker, in spite of his lack of formal education, has the equivalent of a high school education in long years of experience.

The report by the Secretary of Labor asserts that a significant portion of age restriction in employment is unfair and arbitrary because it involves the refusal to hire people over a certain age without a consideration of individual ability and qualifications. For example, the employers interviewed in the survey just mentioned gave a decline in physical capability as the most frequent reason for refusing to hire older workers. Upon investigation, there proved to be no basis for this conclusion in 70 percent of the cases. This investigation is further substantiated by basic medical and physiological research and by Department of Labor studies demonstrating that there is a wide range of physical ability at any age; and that there is no substantial decrease in productivity involving physical effort until age 60; and that in sedentary work little if any decline in productivity occurs before age 60, while subsequent decline is negligible.

According to the report by the Secretary of Labor, those States with strong, actively administered laws prohibiting arbitrary discrimination in employment because of age have significantly reduced such discrimination. Clearly, Federal legislation is needed to complete the work begun by 20 States so that employers will hire on the basis of ability rather than age.

This amendment would make arbitrary discrimination in employment because of age an unfair employment practice by adding the word "age" to those sections of the Civil Rights Act of 1964 prohibiting discrimination based on race, color, religion, sex, or national origin. This amendment would have no effect on existing State or National laws prohibiting or restricting the employment of children or minors.

Mr. President, this amendment is designed to correct a serious inequity in employment patterns, and I hope that it will receive the expeditious consideration that is merited by a large segment of our population.

The PRESIDING OFFICER (Mr. HARRIS in the chair). The bill will be received and appropriately referred.

The bill (S. 2887) to prohibit arbitrary discrimination in employment because of age, introduced by Mr. CANNON, was received, read twice by its title, and referred to the Committee on the Judiciary.

SCHOOL LUNCH PRIORITY

Mr. AIKEN. Mr. President, on behalf of myself and the Senator from Kentucky [Mr. COOPER], I am today introducing a bill, the purpose of which is to provide that milk and dairy products in the hands of the Commodity Credit Corporation may be used in nonprofit school lunch programs without regard to priorities set up in other laws.

It is based on the premise that our school lunch programs which have done and are doing so much to contribute to the health and well-being, and thus to the better education, of our schoolchildren are entitled to top priority. This is particularly true in the case of milk and dairy products which are so essential to the building of strong bodies and clear minds in active, growing children.

It goes without saying that one of the best possible investments for these CCC stocks is to take them out of the warehouses and use them to build a strong and healthy new generation.

Although milk and dairy products have been made available continuously for school lunch programs, conditions arose recently which threatened to cut off this supply and which served to point up the need for corrective legislation.

Public Law 480, enacted by Congress in 1954, is one of the basic authorities which authorizes the disposal of dairy products acquired by CCC in connection with the price-support programs. The actual authority is found in section 416 of the Agricultural Act of 1949, which was amended by Public Law 480.

This section permits stocks of food in the hands of CCC which cannot be sold back to the domestic commercial trade or exported at competitive world prices to be used for school lunch, domestic relief programs, and charitable institutions. They can also be bartered for strategic materials and products not produced in the United States. If not needed for these purposes, they can be disposed of for foreign relief.

Thus, there are certain priorities for their use. In general, the first priority is domestic or export sales; the second is domestic relief and school lunch; and the third is foreign relief.

This creates a problem when CCC stocks of dairy products are lower than usual. The Secretary of Agriculture recently took the position that stocks on hand might be sold domestically or exported, with not enough left to meet the needs for domestic relief. He restricted the use of dairy products in the relief program, and there was very real concern that the use of dairy products in the school lunch program might also be affected.

This situation is likely to become more serious as production of dairy products more nearly approaches demand and particularly so if there should be increased export opportunities caused by less supplies on the world market.

This bill would correct this condition by permitting the needs of the school lunch program to be met from CCC stocks, even though there might be a possibility that these stocks could be moved into commercial trade or exported at competitive world prices.

In the event CCC stocks are inadequate to meet the full school lunch needs, the bill provides that "additional supplies shall be provided through purchases at market price."

In effect, this bill would put the health and well-being of our schoolchildren under the school-lunch programs above the relatively few dollars that might be realized from subsidized exports under the priorities now existing in section 416.

Mr. President, I emphasize that this special milk program is of the utmost importance to our children, and I shall request that this measure be brought to public hearing at the earliest possible date.

Mr. President, inasmuch as several Members of the Senate have expressed a desire to cosponsor this legislation, I ask that it lie on the desk until next Wednesday, when the Senate reconvenes, for such additional sponsors as may desire to add their names to it.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, will lie on the desk as requested.

The bill (S. 2888) to insure that children participating in domestic nonprofit school-lunch programs will be assured of adequate supplies of nutritious dairy products, introduced by Mr. AIKEN (for himself and Mr. COOPER), was received, read twice by its title, and referred to the Committee on Agriculture and Forestry.

BILL TO PROVIDE BENEFITS FOR CHILDREN OF DECEASED RAILROAD EMPLOYEES

Mr. DOMINICK. Mr. President, I introduce, for appropriate reference, a bill to provide benefits for children of deceased railroad employees who are over the age of 18 and under the age of 22 and are full-time students in an educational institution.

I feel this bill is important for two reasons. First, it is consistent with our policy of bringing railroad retirement benefits up to at least the level of similar social security benefits. Second, it is another method by which higher education can be encouraged among a group of young people who might otherwise find it out of reach.

The distinguished senior Senator from New York introduced a similar bill during the last session of Congress. However, since I serve on the Subcommittee on Railroad Retirement of the Senate Committee on Labor and Public Welfare, I feel that the introduction of this bill is an appropriate way for me to emphasize the importance of obtaining legislation in this area during this session of Congress.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 2889) to amend section 5 (1) of the Railroad Retirement Act of 1937 to provide benefits for children of deceased railroad employees who are over the age of 18 and below the age of 22 and are attending an educational institution as full-time students, introduced by Mr. DOMINICK, was received, read twice by its title, and referred to the Committee on Labor and Public Welfare.

BILL TO AMEND THE NATIONAL LABOR RELATIONS ACT AND THE RAILWAY LABOR ACT

Mr. DOMINICK. Mr. President, I introduce, for appropriate reference, a bill to amend the National Labor Relations Act and the Railway Labor Act so as to provide for the certification of representatives only upon vote by secret ballot of 50 percent of employees entitled to vote in the election, and to require that employees voting in such elections be afforded an opportunity to vote against representation by any individual or organization.

In my opinion, this bill will go a long way to assure the working men and women of this country that union representation will not be imposed upon them by the use of misleading election techniques.

This bill requires that an election must be held in every contest for union representation, thus eliminating the use of the misleading check card technique. It also provides that in any election a majority, as opposed to a plurality, of employees must vote for a specific union before its representation will be certified as valid. In the event that a majority preference for a specific union or nonrepresentation is not evinced, then a runoff election will be held in order to determine the final choice of the employees. Finally, the bill requires that each ballot specifically provide a choice for no union representation, thus making clear to the employee that he does have a choice.

This bill is in keeping with the traditional American way of conducting an election—fully informing the electorate of the decision which it is about to make so that it can make a wise choice. I think it deserves the support of the Senate.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. DOMINICK. Mr. President, I ask unanimous consent that the bill may be held at the desk until Wednesday, February 16, 1966, for additional cosponsors.

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

The bill (S. 2890) to amend the National Labor Relations Act and the Railway Labor Act so as to provide for the certification of representatives only upon vote by secret ballot of 50 percent of employees entitled to vote in the election, and to require that employees voting in such elections be afforded an opportunity to vote against representation by any individual or organization, introduced by Mr. DOMINICK, was received, read twice by its title, and referred to the Committee on Labor and Public Welfare.

Mr. DOMINICK. Mr. President, I wish to add that the bill which I am sending to the desk for reference and holding for additional cosponsors is in accordance with the amendment that we suggested in committee when we were debating section 14(b), and the speeches that I made last October and a week ago in the process of discussing section 14(b). It is, in my opinion, a major part of the bill of rights of the workingman.

THE PRESSING NEED FOR A U.S. COURT OF LABOR-MANAGEMENT RELATIONS

Mr. SMATHERS. Mr. President, I introduce, for appropriate reference, a bill to create a U.S. Court of Labor-Management Relations.

This measure provides for the creation of a five-man court which will be empowered to assume jurisdiction in deadlocked labor disputes that threaten the national interest. The new tribunal will serve as a backstop to our traditional system of free collective bargaining, and only when representatives of labor and management find it impossible to reach agreement through normal processes will the judges be called upon to issue binding decisions in order to protect the safety and well-being of 195 million Americans.

The Court of Labor-Management Relations will enter a labor dispute when the President of the United States determines that an actual or threatened work stoppage in the affected industry would imperil the national interest. The judges will first attempt to get the disputants to settle their differences voluntarily at the bargaining table, and they will have the power to issue whatever orders might be required to bring employer and employee together in honest efforts to arrive at a settlement. All avenues to a voluntary pact having been exhausted, however, the court will be authorized to examine the issues involved and hand down a final and binding judgment covering wages, hours, and any other points of conflict.

Mr. President, collective bargaining tables are valuable pieces of furniture that must not be permitted to gather dust in some attic because those who sit at them are at times unable—for whatever reason—to come to accord on contract terms.

The bill I introduce today will give a new luster to the bargaining table, for at every turn, this proposal reinforces the principles of voluntary negotiations.

When an actual or threatened work stoppage seems to imperil the public interest of the Nation, the President will be authorized to appoint a fact-finding board to report on the issues of the dispute. Then, should he deem it necessary—on the basis of the evidence presented by the Board—the President will direct the Attorney General to invoke the jurisdiction of the Court of Labor-Management Relations.

Once the jurisdiction of the court has been invoked, the judges will be able to enjoin an actual or threatened strike for 80 days. During this period, collective bargaining between employer and employees will continue under the supervision of the judges, who will be authorized to issue whatever orders are necessary to require the parties to make every effort to settle their differences through negotiations.

If, at the conclusion of the 80-day period, both parties feel they are nearing a settlement and voluntarily agree to continue the injunction, the court will honor their request, and free bargaining will go on. If, however, the stalemate has not been broken, and it is apparent to the court that further bargaining would be futile, the court, on its own motion, will continue the injunction and schedule immediate hearings for a final decision. All due processes of law will be afforded, and the parties will be given every reasonable opportunity to present arguments in support of their positions. Finally, though, a binding judgment will be handed down.

Rooted in the conviction that the institutions of collective bargaining must be given every chance to function, this measure contains provisions that will allow the judges to vacate any judgment should they feel that to do so would not harm the national interest, or should employer and employees finally ratify a contract voluntarily.

Mr. President, the proven system by which owner and worker have sat down together to arrive at mutually satisfactory conditions of employment has been the catalyst in the formula that created this Nation's current high level of prosperity. It is a catalyst that cannot be left out if we are to continue to expand our industrial might.

Yet, beneficial as the process of free collective bargaining has proven to be, its occasional failures have demonstrated the pressing need for the sort of machinery I am proposing to protect the public interest in unresolved labor disputes that are harmful to the economy or to the health and safety of innocent Americans.

The fact that the public has an important stake in many labor negotiations has become increasingly clear as the various elements of our highly industrialized economy have moved toward greater and greater interdependence. Gone forever are the days when the skilled craftsman, working in his home, produced the dishes, the shoes, or the clothing required by his family and neighbors. Gone with these days is an economic fragmentation that could shield the average man from the storms of labor strife that might cloud the horizon.

Today, a strike in Detroit can send out shock waves that reach to Gary, to Akron, to New York, and to thousands of other cities and towns throughout the Nation. Unwittingly and unwillingly, millions of ordinary citizens can be made pawns in power struggles between employer and employee—power struggles in which the general public has no primary interest.

Perhaps the most dramatic evidence of the havoc an unsettled labor dispute can wreak on the lives of innocent persons was presented in blaring newspaper headlines for 12 days last month. New York City—a metropolis heavily dependent on its subways and buses—was deprived of public transportation for nearly 2 weeks while negotiators from the Transport Worker's Union and the Transit Authority sought agreement on a new contract for wages and hours.

When the TWU defied the law and ignored the welfare of 8 million New Yorkers by walking out on strike, a giant city was nearly strangled. Stranded sub-

urbanites were unable to get to midtown jobs. Manhattan stores experienced serious losses, and many small businesses were only saved by the prompt action of the Small Business Administration, which authorized emergency loans to shopkeepers and others suddenly faced with serious losses.

The Commerce and Industry Association of New York has estimated that the transit strike cost New Yorkers $1 billion, over three-quarters of which will not be recoverable. Most of this loss was in wages paid to or wages lost by those who could not reach their offices, stores, and factories.

Unfortunately, the transit strike in New York was but the most recent of a number of strikes that have been inimical to the best interests of the United States.

For instance, in 1965, more than 100 days of work stoppages further hobbled our already dangerously infirm maritime industry. The longshoreman's strike that began in December of 1964 and extended through the entire winter kept 191,000 men from their jobs. Besides the 60,000 longshoremen involved, 38,000 seamen and other maritime workers, 45,000 railroad men, and 48,000 truckers could not draw their regular paychecks. According to the Secretary of Commerce, with 855 ships lying idle in their berths, this Nation's imports fell off $60 million a day, and exports declined by $40 million a day.

Thus, America's all-important foreign trade surplus was depleted by $20 million each day that the strike lasted. It took approximately half a year after a settlement was ratified before normal trade patterns reasserted themselves.

Mr. President, since the end of World War II, there have been 84 strikes in the United States that have idled 40,000 or more workers at one time. Several of these stoppages have lasted over 100 days. All have caused immeasurable hardships, not only to management and labor, but also to countless multitudes of citizens who are suddenly unable to get from one place to another, or to get coal or cotton, electrical appliances or automobiles; or who are laid off because the factory where they work cannot get the raw materials necessary to the manufacture of its products.

Each failure on the part of workers and employers to arrive at voluntary agreements without resort to strikes, lockouts or other stoppages has given renewed impetus to the many different campaigns for reform of the methods by which industrial disputes are settled.

Only a few short weeks ago, Walter Reuther, president of the United Auto Workers Union, was quoted in the New York Times as having said:

> Society can't tolerate stoppages which endanger the very existence of society.

Mr. Reuther went on to urge that every effort be made to find new means of dealing with the problems of labor-management relations.

On an informal basis, Presidents have felt constrained to intervene in deadlocked negotiations more and more frequently, often helping to effect settlements at the cost of resentment by employers and employees and a partial erosion of the collective bargaining system.

In a more formal manner, after repeated strikes and slowdowns at our 22 missile bases and test areas seemed to threaten this Nation's missile program, the late President Kennedy appointed an 11-member Missile Sites Labor Commission, headed by the then Secretary of Labor, Arthur Goldberg, to find ways of settling labor disputes at the sites without strikes or lockouts. The result of the Commission's work was a no-strike, no-lockout pledge on the part of labor and management.

Successful as this approach was in this instance, however, it was a solution tailored to a specific situation. Clearly, what is required to prevent future devastating maritime, transit, steel, communications, or other harmful strikes is an ongoing institution with competence in all aspects of industrial relations, and with the power to safeguard the public welfare. In short, what is required is the U.S. Court of Labor-Management Relations.

I am hopeful that the committee to which this legislation is referred will report it out promptly and favorably so that the Congress can take the necessary action to prevent any situation from developing that could imperil our national security or welfare. Never before has the need for this measure been greater than it is today.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 2891) to provide for the establishment of a U.S. Court of Labor-Management Relations which shall have jurisdiction over labor disputes which result in work stoppages that adversely affect the public interest of the Nation to a substantial degree introduced by Mr. SMATHERS, was received, read twice by its title, and referred to the Committee on the Judiciary.

AMENDMENT OF RAILROAD RETIREMENT ACT OF 1937 TO PROVIDE BENEFITS FOR CERTAIN CHILDREN OF DECEASED RAILROAD EMPLOYEES.

Mr. MONDALE. Mr. President, under the social security amendments of 1965, a new provision was added to social security benefits for children. Previous law had allowed a child's benefit to be paid to the child of an insured worker who has died, reached retirement age, or become disabled if the child was either under age 18 or under a disability beginning before age 18. This was changed to add a new entitlement for children age 18 to 22 if they are full-time students. The reason for this change was compelling—a child who has no father to look to for support may be prevented from going to college, vocational school, or even from completing high school because of loss of parental support.

The bill I am introducing today, on behalf of Senator PAUL DOUGLAS and myself, extends this benefit to children of deceased railroad employees who are over the age of 18 and under the age of 22, and are full-time students—so that railroad retirement fund benefits will be on a parity with what we have provided for those under social security.

Only relatively minor costs would be added to the railroad retirement fund and should be passed into law this session of the Congress.

I ask unanimous consent that this bill be received and referred to the appropriate Senate committee.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 2892) to amend section 5(1) of the Railroad Retirement Act of 1937 to provide benefits for children of deceased railroad employees who are over the age of 17 and below the age of 22 and are attending an educational institution as full-time students, introduced by Mr. MONDALE (for himself and Mr. DOUGLAS), was received, read twice by its title, and referred to the Committee on Labor and Public Welfare.

PROPOSED LEGISLATION RELATING TO BUS CHARTER SERVICE

Mr. MAGNUSON. Mr. President, I introduce, by request, for appropriate reference, a bill recommended by the Interstate Commerce Commission to require future applicants to the Interstate Commerce Commission for motor common carrier passenger operating authority to show a need for the transportation of special or chartered parties, instead of conferring the right to perform such transportation as an incident to obtaining a certificate to transport passengers over a regular route or routes.

I ask unanimous consent that this bill and the ICC's recommendation and statement of jurisdiction be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill, recommendation, and statement of justification will be printed in the RECORD.

The bill (S. 2893) to amend section 208 (c) of the Interstate Commerce Act to provide that certificates issued in the future to motor common carriers of passengers shall not confer, as an incident to the grant of regular route authority, the right to engage in special or charter operations, introduced by Mr. MAGNUSON, by request, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 2893

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 208(c) of the Interstate Commerce Act is amended to read as follows:

"(c) Any common carrier by motor vehicle transporting passengers under a certificate issued under this part on or before January 1, 1967, or under any reissuance of the operating rights contained in such certificate, may transport in interstate or foreign commerce to any place special or chartered

parties under such rules and regulations as the Commission shall have prescribed."

The recommendation and statement of justification, presented by Mr. MAGNUSON, are as follows:

RECOMMENDATION CONCERNING INCIDENTAL CHARTER RIGHTS

We recommend that section 208(c) of the Interstate Commerce Act be amended to provide that motor common carriers of passengers shall not engage in special or charter operations except to the extent they are presently authorized to do so, or to the extent they may hereafter be expressly authorized to engage in such operations by a certificate of public convenience and necessity.

JUSTIFICATION

The purpose of the attached draft bill is to require future applicants to the Interstate Commerce Commission for motor common carrier passenger operating authority to show a need for the transportation of special or chartered parties, instead of conferring the right to perform such transportation as an incident to obtaining a certificate to transport passengers over a regular route or routes.

At present, section 208(c) of the Interstate Commerce Act permits any regular route common carrier of passengers by motor vehicle to transport, under a certificate issued pursuant to the provisions of part II of the act, special or chartered parties from any point on an authorized route "to any place" as a destination point. The phrase "to any place" has been interpreted by the Commission to mean "to any place in the United States." *Ex parte No. MC–29,* Regulations Governing Special or Chartered Party Service, 29 M.C.C. 25, 48. Consequently, any regular route common carrier of passengers has an unlimited number of destination points for charter service.

In 1935 when the Motor Carrier Act was passed, charter services were only a small part of common carrier operations. Since 1935, charter operations have increased greatly and have accounted for an increasingly larger share of passenger motorbus revenues. For example, in 1935 charter operations accounted for approximately 3 percent of the revenues of class I motor carriers. In 1964, however, charter operations accounted for 10 percent of the revenues of class I motor carriers. They accounted for nearly 26 percent of the revenues of class II and class III motor carriers in 1963, the latest year for which these figures are available.

Today many motorbus carriers are able to render regularly scheduled service essential to thousands of communities because revenues from charter service offset operating losses incurred on certain intercity schedules. In some instances regular route passenger bus service would be discontinued were it not for charter revenues.

In recent years abuses have been observed respecting "incidental charter operations." Carriers have frequently applied for the right to transport passengers over a short regular route solely for the purpose of obtaining the incidental charter rights from points on such routes to all points in the United States. Some carriers conduct only token operations over their authorized routes in order to retain the right to engage in transportation of charter parties throughout the country. Usually such operations are in the vicinity of a metropolitan area which provides access to a large charter service market which already is served adequately by existing charter operations. For example, some carriers have been known to operate a single station wagon as their only regular route passenger service, while utilizing buses in the performance of charter service to points and places throughout the United States.

The proposed amendment would in no way affect the operations of presently authorized carriers. It would require future applicants for motor common carrier passenger authority to show a need for the service of transporting special or charter parties instead of, as today, automatically obtaining such rights as an incident to a grant of regular route authority.

For the reasons set forth above, the Commission recommends early consideration and enactment by the Congress of this proposed measure.

ADDITIONAL COSPONSOR OF FUGITIVE BAILEE BILL

Mr. ERVIN. Mr. President, I have added my name as a cosponsor of S. 2855, a bill to curb abuses by bail bondsmen in recovering fugitive bailees.

As chairman of the Subcommittee on Constitutional Rights, which has conducted extensive studies and hearings on bail procedures and other aspects of criminal justice, I have been concerned for some time about the need for a law of this kind. It is a deplorable situation, indeed, which permits a private bondsman to cross State lines and seize a bailee in complete disregard of the rights of the bailee and without the necessity of complying with State arrest procedures and other requirements of procedural due process.

I have studied Senator TYDINGS' bill and I believe the approach it takes to be the proper way of handling this problem. I am sure that hearings will reveal any changes that are necessary and that a bill can be reported which merits prompt and favorable consideration by the Senate. I assure Senator TYDINGS that I shall do whatever I can to assure early enactment of this measure.

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

SMALL BUSINESS PROGRAM NEEDS LEGISLATIVE HELP

Mr. RANDOLPH. Mr. President, the abominable financial straits and confusion which currently face the Small Business Administration have been the subject of extensive discussion and analysis during recent committee meetings and in Senate and House debate. We are all familiar with the present moratorium not only on the approval of direct business loans but also on the acceptance of applications. The small business segment of the economy deserves more consideration and assistance than this, both from the Administration and from the Congress.

In December of 1965, several members of the Select Committee on Small Business explored with the SBA Executive Administrator, Ross Davis, the current status of small business programs and future prospects. Under the leadership of the committee chairman, our distinguished colleague from Alabama, Senator SPARKMAN, we discussed in detail the financial and administrative problems of SBA. At that time, Mr. Davis furnished the Small Business Committee with his qualified agreement that remedial legislation was needed to separate SBA's revolving fund into three categories.

Mr. Davis pointed out that even under the original system of SBA funding there was a continuing need for supplemental appropriations due to an unprecedented number of applications for regular business loans.

When disaster funds are merged with the regular funds, the problem of supplemental appropriations to maintain an adequate revolving fund becomes complicated. The inordinate drain on SBA moneys created by the hurricane disasters in the gulf coast region last autumn is a matter of record. There is no need to speak in detail on this situation because we are aware of it.

In effect, the requirement to assist the business people in that devastated area has completely nullified the regular SBA program. No one can deny that the persons involved in these tragedies must be assisted; but the point is that we should have a separate fund for them—a fund which can be replenished by supplemental appropriations in case of excess disaster loan requirements. The able senior Senator from Wisconsin [Mr. PROXMIRE] has introduced a measure, S. 2729, which will accomplish this separation of funds and which will add much-needed stability to the SBA program. I reemphasize that Administrator Davis agrees to the need for this legislation.

I endorsed S. 2729 during the Small Business Committee hearings in December and also during the hearings by the Subcommittee on Small Business of the Senate Committee on Banking and Currency.

Mr. President, I ask unanimous consent that my name be added as a cosponsor of S. 2729, a bill to amend the Small Business Act.

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

ADDITIONAL COSPONSORS OF BILLS

Mr. KUCHEL. Mr. President, I ask unanimous consent that in the next printing of S. 2814 there be added as cosponsors the names of the following Senators: The Senator from Kentucky [Mr. COOPER], the Senator from Illinois [Mr. DOUGLAS], the Senator from Michigan [Mr. HART], the Senator from Montana [Mr. METCALF], the Senator from Vermont [Mr. PROUTY], and the Senator from New York [Mr. JAVITS].

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

Mr. JAVITS. Mr. President, I ask unanimous consent that the name of the distinguished Senator from California [Mr. KUCHEL] be added as a cosponsor of S. 2845.

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

ADDITIONAL COSPONSOR OF BILL

Under authority of the order of the Senate of January 27, 1966, the name of Mr. HARTKE was added as an additional cosponsor of the bill (S. 2843) to revise postal rates on certain fourth-class mail, and for other purposes, introduced by

Mr. MONRONEY (for himself and Mr. BREWSTER) on January 27, 1966.

NOTICE OF HEARING—POPULATION DIALOG CONTINUES

Mr. GRUENING. Mr. President, we have traveled a considerable distance in the population dialog this 89th Congress.

Tomorrow the Subcommittee on Foreign Aid Expenditures will hold its 18th hearing on S. 1676, a bill to coordinate and disseminate birth control information upon request. The hearings will start 1 hour earlier than usual—at 9 a.m. The subcommittee invites all interested persons to attend.

Contributing to the population discussion Wednesday will be Dean William E. Moran, Jr., Georgetown University School of Foreign Service, who is president of the Catholic Association for International Peace. Dean Moran will raise new questions for which answers must be found.

Joining him tomorrow are two Protestant lay spokesmen: Mrs. Theodore F. Wallace, of Shawnee Mission, Kans., a vice president of the National Council of Churches of Christ, and Mr. James MacCracken, New York City, the executive director of Church World Service. Mr. MacCracken directs the work of an organization responsible for the feeding of many millions of hungry people in many parts of our world.

How do we raise enough food to feed the multiplying millions?

The subcommittee has asked Dr. Raymond Ewell, Buffalo, N.Y., vice president for research of the State University of New York in Buffalo to address his remarks to the problems of food supply and food distribution. Dr. Ewell is a professor of chemistry and chemical engineering. He is consultant on research to AID, and consultant on the fertilizer industry for the Government of India and for the United Nations. Dr. Ewell has recently returned from one of his many trips to India and he has also traveled extensively throughout the Soviet Union.

NOTICE CONCERNING NOMINATIONS BEFORE COMMITTEE ON THE JUDICIARY

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

Gilbert S. Merritt, Jr., of Tennessee, to be U.S. attorney, middle district of Tennessee, term of 4 years, vice Kenneth Harwell, resigned.

Anthony J. Furka, of Pennsylvania, to be U.S. marshal, western district of Pennsylvania, term of 4 years, vice James R. Berry, resigned.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Tuesday, February 15, 1966, any representations or objections they may wish to present concerning the above nominations, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed the following bills and joint resolution, in which it requested the concurrence of the Senate:

H.R. 2600. An act to provide for the acquisition and preservation of the real property known as the Ansley Wilcox House in Buffalo, N.Y., as a national historic site;

H.R. 4665. An act relating to the income tax treatment of exploration expenditures in the case of mining;

H.R. 6125. An act to amend Public Law 722 of the 79th Congress and Public Law 85–935, relating to the National Air Museum of the Smithsonian Institution;

H.R. 9273. An act to repeal certain provisions of law relating to the printing as House documents of certain proceedings;

H.R. 10185. An act amending certain estate tax provisions of the Internal Revenue Code of 1939;

H.R. 11006. An act to extend the statutory burial allowance to certain veterans whose deaths occur as a result of a service-connected disability;

H.R. 11007. An act to provide statutory authority for the Deputy Administrator of Veterans' Affairs to assume the duties of Administrator during the absence or disability of the Administrator, or during a vacancy in that office, and for other purposes;

H.R. 11631. An act to amend title 38 of the United States Code to clarify the responsibility of the Veterans' Administration with respect to the training and education of health service personnel;

H.R. 11747. An act to amend section 3203, title 38, United States Code, to restrict the conditions under which benefits are immediately reduced upon readmission of veterans for hospitalization or other institutional care; to the Committee on Finance.

H.R. 11748. An act to amend section 111 of title 38, United States Code, to authorize the prepayment of certain expenses associated with the travel of veterans to or from a Veterans' Administration facility or other place, in connection with vocational rehabilitation or counseling, or for the purpose of examination, treatment, or care;

H.R. 11927. An act to authorize the Administrator of Veterans' Affairs to permit deduction by brokers of certain costs and expenses from rental collections on properties acquired under the veterans loan programs; and

H.J. Res. 12. Joint resolution to permit the flying of the flag of the United States for 24 hours of each day at the grave of Capt. William Driver in Nashville, Tenn.

HOUSE BILLS AND JOINT RESOLUTION REFERRED

The following bills and joint resolution were severally read twice by their titles and referred, as indicated:

H.R. 2600. An act to provide for the acquisition and preservation of the real property known as the Ansley Wilcox House in Buffalo, N.Y., as a national historic site; to the Committee on Interior and Insular Affairs.

H.R. 4665. An act relating to the income tax treatment of exploration expenditures in the case of mining;

H.R. 10185. An act amending certain estate tax provisions of the Internal Revenue Code of 1939;

H.R. 11006. An act to extend the statutory burial allowance to certain veterans whose deaths occur as a result of a service-connected disability;

H.R. 11007. An act to provide statutory authority for the Deputy Administrator of Veterans' Affairs to assume the duties of Administrator during the absence or disability of the Administrator, or during a vacancy in that office, and for other purposes; and

H.R. 11747. An act to amend section 3203, title 38, United States Code, to restrict the conditions under which benefits are immediately reduced upon readmission of veterans for hospitalization or other institutional care; to the Committee on Finance.

H.R. 6125. An act to amend Public Law 722 of the 79th Congress and Public Law 85–935, relating to the National Air Museum of the Smithsonian Institution; and

H.R. 9273. An act to repeal certain provisions of law relating to the printing as House documents of certain proceedings; to the Committee on Rules and Administration.

H.R. 11631. An act to amend title 38 of the United States Code to clarify the responsibility of the Veterans' Administration with respect to the training and education of health service personnel; and

H.R. 11748. An act to amend section 111 of title 38, United States Code, to authorize the prepayment of certain expenses associated with the travel of veterans to or from a Veterans' Administration facility or other place, in connection with vocational rehabilitation or counseling, or for the purpose of examination, treatment, or care; to the Committee on Labor and Public Welfare.

H.R. 11927. An act to authorize the Administrator of Veterans' Affairs to permit deduction by brokers of certain costs and expenses from rental collections on properties acquired under the veterans' loan programs; to the Committee on Banking and Currency.

H.J. Res. 12. Joint resolution to permit the flying of the flag of the United States for 24 hours of each day at the grave of Capt. William Driver in Nashville, Tenn.; to the Committee on the Judiciary.

L.B.J.'S GREAT RECORD IN MEETING PEACE DEMANDS

Mr. PROXMIRE. Mr. President, the United States has met more than 90 percent of the 12 demands on Vietnam policy made by the Committee for a Sane Nuclear Policy in November.

On November 27, Sane organized the biggest peace march ever held in Washington—more than 20,000 persons. Its announced aim was not to force the United States to unilaterally withdraw from Vietnam but to negotiate the issue.

One of the major demands was that the United States stop bombing North Vietnam. A pause was ordered and maintained for 37 days.

Sane asked the United States to state the conditions under which it would negotiate. The answer for months has been without preconditions or restrictions.

Sane asked for an American call for a cease-fire. The United States has called for a cease-fire.

Sane urged U.S. support for the Geneva Accords of 1954. Such support has been stated many times.

Sane wanted a U.S. declaration favoring the withdrawal of all foreign military forces from South Vietnam. This has been a frequently stated goal of U.S. policy.

Sane asked the United States to state its support for free elections in Vietnam. This it has done.

Sane urged U.S. support for "peaceful" reunification of Vietnam. American policy backs this plan if an elected South Vietnamese Government wants reunification.

Other demands with which U.S. policy is in agreement include U.S. support for United Nations initiative on Vietnam, inclusion of the Vietcong in peace talks—as members of the Hanoi delegation—and willingness to "de-escalate" the war if the other side will also.

Mr. President, I ask unanimous consent that a table showing the Sane demands and the U.S. position be printed in the RECORD at this point.

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

SANE DEMAND	U.S. POSITION
1. United States stop bombing North Vietnam.	United States did so for more than a month.
2. United States call for a cease-fire.	United States has called for a cease-fire.
3. United States state conditions under which it will accept peace.	United States says it will discuss peace without any preconditions or restrictions.
4. United States again support Geneva accords.	United States has done so.
5. United States favor eventual withdrawal of all foreign military forces.	United States favors such withdrawal.
6. United States favor Vietnam free elections.	United States does favor this.
7. United States support prohibition of military alliances.	United States indicates it will if after election the South Vietnamese Government so desires.
8. United States favor peaceful reunification of Vietnam.	United States favors reunification if elected South Vietnamese Government wishes reunification.
9. United States agree to constitution of representative government in South Vietnam.	United States favors this if elected South Vietnamese Government does.
10. United States support U.N. supervision of cease-fire and U.N. provision for establishing new government in South Vietnam.	The President welcomes any U.N. initiative. On January 31, L.B.J. announced we are taking the Vietnam issue to the U.N.
11. United States halt introduction of men and materiel and ask other side to do same.	United States welcomes such deescalation. A unilateral halt would mean U.S. surrender.
12. United States negotiate with all parties including Vietcong.	The President has said Vietcong could be represented at conference table.

Mr. PROXMIRE. Mr. President, the administration's stand on Sane's demands, while not announced specifically as such, actually agree with more than 90 percent of this outstanding organization.

Where does North Vietnam stand on these issues? By any standard of measurement Hanoi's score would be near zero.

Peace is what the President is trying with all his heart to achieve; and I think he is doing well, considering the cruel and tragic circumstances.

PRESIDENT KENNEDY SUPPORTED SCHOOL MILK PROGRAM

Mr. PROXMIRE. Mr. President, in view of the Budget Bureau's recent decision to withhold moneys already appropriated from the special milk program for schoolchildren I believe that it is appropriate to take a look at the late President Kennedy's position on this vital program.

In a speech made before a milk and nutrition conference in 1962 President Kennedy put it this way:

> There are many schoolchildren today who do not participate in the school milk and school lunch programs because their schools do not and often cannot make them available. Last year we expanded these programs. I hope more and more children will be able to receive school milk and lunches in the days ahead.

Mr. President, as a result of the Budget Bureau's false economy move less and less children will be receiving school milk in the days ahead. The Bureau's slice of $3 million of appropriated funds from the program has resulted in a 10-percent cutback in the Federal reimbursement rates. As a result the children themselves in many instances will have to pay more. Some children, especially those from low-income families—the ones who need the milk most—will drop out of the program.

Of course the Department of Agriculture's plans for next year are even more destructive of the intent of the program as spelled out by President Kennedy. The budget would be cut from $103 to $21 million and a means test would be used to make sure that the milk goes only to the neediest. In informal discussions the Department has indicated that they feel only one-fifth to one-sixth of the children participating in the school milk program would stop drinking milk if the Federal share were eliminated in all but poverty cases. I think this estimate is far too low. But even if it is correct it means that millions of our Nation's schoolchildren will drop out of the school milk program if it is modified.

JAVITS OPPOSES PROPOSED AGRICULTURE BUDGET CUTS

Mr. JAVITS. Mr. President, I make these remarks to take exception to various budget cuts proposed by the administration in agriculture. Perhaps the most startling of these is the proposed cut for the school milk program.

The Federal Government during fiscal 1966 is spending $100 million to subsidize more than 3 billion half-pint bottles of milk for schoolchildren. The new budget proposes to cut this amount by 79 percent—down to a meager $21 million.

I was concerned earlier this year when the Budget Bureau held back $3 million from the funds already appropriated for the school milk program. But now the administration has decided that this program must suffer so that some of the President's other proposals—some of which are new and unproven—can be undertaken. I believe that the school milk program is one which has proven over the years to be most effective. I feel this country can afford to see that its future generation is given the proper nutritional development. I see no need to reduce this program which has cost relatively little and done so much so that we may grope our way into new programs where the results are uncertain.

Another aspect of this cut in the school milk program would likely be its deleterious effect upon the milk producers across the Nation. While at the moment, there exists a relatively stable balance between the amount of milk produced and commercial demand, milk has historically been produced in greater quantities in the spring and summer than in the fall and winter. So it seems we cannot write off the possibility of increased surpluses in the near future. Any statement to the contrary appears to me to be premature optimism.

The present subsidy payment of the U.S. Government is approximately 3 cents for a half pint. If the milk is regularly sold for 6 cents then the cost to the schoolchildren is only 3 cents. Thus, if there is no subsidy, the cost for the child will double. This few cents may seem very insignificant but to some it may be the determining factor to a child in selecting something other than milk—something perhaps with a lower nutritional value or it is even possible a child might have no milk at all because of the lack of a few additional cents. The unit costs of this subsidy program are very small and benefits certainly very great. It must be maintained at the very least—undiminished.

I take exception as well to the proposed cut of $320,000 from the funds allotted for the joint Federal-State fight against the golden nematode—an insect which has the capability of destroying the entire Long Island potato crop. The destruction of the potato crop could result in the loss to the economy of New York State of over $25 million annually. The proposed nematode control fund cut from $425,000 to $105,000—more than 75 percent—comes at a time when the combined Federal-State investment of some $8 million over a 20-year period is nearing its goal. I am informed that there is a good possibility of almost complete containment of this infestation within the next 3 or 4 years. It is unthinkable to me that the Federal Government should withdraw its financial support and personnel when the success of its efforts is so close to fruition.

I note that the administration has alarmingly reduced the land-grant college program. The Federal land-grant college program has for over a century provided this Nation with trained teachers and engineers who have made significant contributions to the development of this Nation's agriculture. In New York State, for example, the appropriations for instructional purposes for Cornell University, the land-grant college in New York State, have been slashed from $600,000 to $50,000 for fiscal 1967. Also a cut of over $387,000—or a cut of over 20 percent—in agriculture research funds for Cornell University and the New York Agricultural Experiment Station at Geneva, N.Y., has been proposed.

Certainly, this country cannot afford such cutbacks in education and research. The research which will be severely curtailed has been instrumental in giving this Nation the cheapest food in the world in terms of the proportion of our incomes used to buy this food. Only 18 percent of our take-home pay is spent for food whereas in Great Britain and France, the figure is almost 30 percent and in Russia, it is nearly 50 percent. This research is also a critical element in this Nation's expanding foreign aid program—food for peace—as we seek to help the newly developing nations of the world to improve their own systems of agricultural production.

This is the most shortsighted kind of economy that I can think of.

I protest as well the effort to cut the gypsy moth program. I would point out that New York State has cooperated fully with the Federal Government in an effort to suppress the gypsy moth and thus prevent it from spreading westward to the Nation's hardwood forests. If this program is even partially abandoned, the insect is likely to pass through New York into the rest of the Nation. The proposed budget cut of 20 percent—or $261,800—would place an unfair burden on New York State when in fact the rest of the Nation should play a role in eradicating this problem.

I call upon my colleagues to join with me in seeing that each of these very important appropriations are restored to at least the amount appropriated during fiscal 1966.

These are the kinds of programs that I feel Americans, and certainly New Yorkers, would rather pay more taxes to support than to have budget cuts. I strongly protest against them.

RECOGNITION FOR SENATOR RANDOLPH

Mr. BYRD of West Virginia. Mr. President, I wish to extend my warmest congratulations to my colleague, Senator RANDOLPH, on the tribute and display of confidence which the Democratic Party of West Virginia has extended to him.

Saturday of last week was the closing filing date for candidates in West Virginia, and he will enter the Democratic primary this spring for reelection to the U.S. Senate unopposed by any other candidate. I believe this regard which West Virginia Democrats have for Senator RANDOLPH is deserved.

As the ranking Democrat on the Senate Committee on Public Works, and through his membership on the Senate Committees on Labor and Public Welfare and Post Office and Civil Service, Senator RANDOLPH has achieved an outstanding record of service to West Virginia and to the country.

For example, his interest in improving public education in the country is well known, as was his role in developing the President's program for highway beautification. These are matters on the RECORD.

I commend my colleague and wish him continued success in his career of public service.

THE GREAT SOCIETY—THE INTERGOVERNMENTAL COOPERATION ACT OF 1965

Mr. MUSKIE. Mr. President, in his recent message to the Congress on the 1967 budget, President Johnson reaffirmed the Nation's determination to push forward with those economic and social programs which are the goals of our Great Society. The Congress, particularly this 89th Congress, has enacted more than a score of programs to improve the quality of life for all Americans, and to break the chain of poverty, ignorance, and lost opportunity which has passed from generation to generation among countless numbers of our people.

We have approved measures to rebuild and revitalize our overcrowded, inefficient, and rapidly growing cities. We have provided the machinery and the authority for increasing economic and social improvement of our rural areas. We have enacted legislation which provides for wise use and conservation of our precious natural resources.

But it must be clearly understood that the goals of the Great Society can be achieved only by their effective implementation at the State and local levels. As the President noted in his budget message, many of our critical new programs involve joint ventures between the Federal Government and local governments in thousands of communities throughout the Nation.

Our Federal system is being tried, as never before, to meet the demands of a rapidly growing population for services which they have a right to expect. This is especially true in highly urbanized areas. State and local governments are finding it increasingly difficult to carry out their responsibilities.

While we know that time and adversity have proved our Federal form of government to be sound, the dynamics of recent changes have created weaknesses in an otherwise durable system—weaknesses which must be corrected if we are to accomplish the goals of the Great Society.

Last year I was privileged to introduce S. 561, a bill designed to improve the administration and facilitate congressional review of Federal grants-in-aid and to provide a means for coordinating intergovernmental policy in the administration of grants for urban development. Forty Senators joined with me in sponsoring this vital piece of legislation, and you will remember that on August 5, the Senate unanimously approved this proposed Intergovernmental Cooperation Act of 1965. Very briefly, the bill seeks to achieve the fullest cooperation and coordination of activities between the levels of government by providing that:

First. Governors will be fully informed of all grants-in-aid to their States, and that a more uniform, yet flexible, administration of Federal grant funds to the States will be established;

Second. Congress will review new grant programs to insure that such efforts are reassessed at least once in a systematic fashion and reconsidered in light of changing conditions;

Third. Federal departments and agencies will be permitted to render urgently needed technical assistance and training services to State and local governments on a reimbursable basis;

Fourth. Grant applications from localities in metropolitan areas shall include the comments of areawide planning bodies, and that general units of local government will be favored as recipients of Federal aid, in contrast to special-purpose districts and authorities; and

Fifth. The General Services Administration, in its acquisition, use, and disposal of urban will, to the extent possible, take into consideration local zoning regulations and development goals.

This proposed Intergovernmental Cooperation Act constitutes a major step in developing the new machinery required for the federalism of the sixties.

It was gratifying to me, as it must be for all Senators, to hear President Johnson, in his recent budget message, express a special concern for the improvement of intergovernmental relations and an urgent call for final action on S. 561.

> Favorable action should be taken on the proposed Intergovernmental Cooperation Act, already before the Congress. This act would improve the administration and facilitate congressional review of Federal grants-in-aid. It would also provide a means for coordinating intergovernmental policy in the administration of grants for urban development.

In effect, the President provided one of the best arguments for early enactment of this omnibus measure when he stated:

> The success or failure of * * * (the Great Society) * * * programs depends largely on timely and effective communications and on readiness for action on the part of both Federal agencies in the field and State and local governmental units. We must strengthen the coordination of Federal programs in the field. We must open channels of responsibility. We must give more freedom of action and judgment to the people on the firing line. We must help State and local governments to deal more effectively with Federal agencies. We must see that information gets to the field and to cooperating State and local governments, promptly and accurately.

The Senate has already completed action on the measure. It now awaits House action. I strongly urge early consideration and passage of this vitally needed legislation.

COLLEGE STUDENTS SUPPORT U.S. POLICY IN VIETNAM

Mr. LONG of Missouri. Mr. President, the Nation and the world continue to hope for a secure and peaceful solution in Vietnam. In the Halls of this great Congress, in the United Nations, and in capitols all around the world men and women are grappling with the urgent and challenging task of finding a peaceful solution in southeast Asia and a secure independence for the South Vietnamese people.

Meanwhile, American boys—our greatest natural resource—are hour by hour face-to-face with the fact of armed Communist aggression.

The war we debate here today, our boys are fighting in Vietnam. In campuses all across the country, the call of the draft has begun to weave its way

through the dormitories, the student unions, and the classrooms. At the same time, our college students have taken a deep and serious look at the issues of this conflict. Their voice is being raised for all the Nation to hear.

I am proud to say that at the University of Missouri recently over 1,200 students, after considering the critical complexities of Vietnam, signed a petition circulated by the Missouri College Young Democrats in conjunction with the Young Republicans, declaring their full support for the President's policy in Vietnam.

Mr. President, I ask unanimous consent that the text of this resolution be placed in the RECORD.

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

VIETNAM PETITION

Whereas the American commitment in the Vietnam war has become a major issue on many college campuses.

Whereas some of the most striking dissenters to American policy in Vietnam have been college students.

Whereas these critics seem unrepresentative of the majority of the students at the University of Missouri at Columbia: Therefore, be it

Resolved, That we the undersigned students of the University of Missouri at Columbia, after consideration of the critical complexities of this issue, affirm our support of President Lyndon B. Johnson and his administration's policy in Vietnam.

TRUTH IN LENDING

Mr. DOUGLAS. Mr. President, Mrs. Esther Peterson, Executive Assistant to the President for Consumer Affairs, has officially informed me of the resolution passed by the Consumer Advisory Council, January 14, 1966, calling for prompt congressional enactment of fair packaging and truth-in-lending legislation as requested by the President in his state of the Union message, as well as enactment of improvements in the food, drug, and cosmetic acts.

I ask unanimous consent that the text of this resolution be printed in the RECORD.

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

RESOLUTION PASSED BY THE CONSUMER ADVISORY COUNCIL, JANUARY 14, 1966

Whereas President Johnson, in his state of the Union message, has called for action "to prevent the deception of the American consumer—requiring all packages to state clearly and truthfully their contents—all interest and credit charges to be fully revealed—and keeping harmful drugs and cosmetics away from our stores"; and

Whereas President Johnson, in his state of the Union message, has indicated his intent to propose legislation "to seek an end to the mounting tragedy of destruction on our highways"; and

Whereas the Consumer Advisory Council, on a number of occasions, has strongly urged enactment of fair packaging and truth-in-lending legislation, the omnibus food and drug amendments called for in the President's Message on Consumer Interests of 1964, and legislation promoting automobile safety; and

Whereas consumers have a vital interest in seeing that prices are kept down: Therefore, be it

Resolved by the Consumer Advisory Council, That the Congress promptly enact fair packaging and truth-in-lending legislation as requested by the President in his state of the Union message, thus improving the ability of the consumer to choose the best buy and to exert a strong influence in holding down the price line; be it further

Resolved, That Congress buttress the consumer's right to safety by swiftly enacting the Food, Drug, and Cosmetic Act improvements called for in President Johnson's state of the Union message; be it further

Resolved, That Congress act favorably on legislation to assure minimum tire safety standards and legislation to require new cars to incorporate other prescribed safety features.

NEW MEXICO PUBLISHER BEATS THE BIRCH SOCIETY

Mr. MONTOYA. Mr. President, the February 11, 1966, issue of Time magazine, in its "Press" section, carries an article that I commend to my colleagues' attention.

The article deals with the courageous legal battle carried out by the publisher of the Southwesterner, Mr. Bill McGaw, after a member of the John Birch Society attempted to organize an advertising boycott to stifle his criticism of the Birchers.

It gives me particular pleasure to tell you that the story has a happy ending. In the face of the massed legal and propaganda talent of the Birch Society, my friend Mr. McGaw won his case.

Mr. President, I ask unanimous consent that the complete text of this excellent article appear at this point in the RECORD.

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

EDITORS: SHOWDOWN IN THE SOUTHWEST

The litigious reader ready to sue a newspaper for libel at the drop of an insult has become a familiar courtroom character. But this time the roles were reversed. The editor was suing one of his readers. And to add to the novelty, the editor won. Bill McGaw, owner, editor, publisher, and principal reporter of the Southwesterner, claimed that his monthly journal of Western lore had been damaged by the actions of Alamogordo, N. Mex., Furniture Dealer A. A. Webster, Jr., a member of the John Birch Society. And a jury agreed—to the amount of $20,000.

A tough-talking hombre with a shock of silver-white hair and a mustache to match, Bill McGaw, 51, does not usually concern himself with current events. He likes to roam the West, tracking down such legends as the saga of the one-woman bawdyhouse in Columbus, N. Mex. Along the way he collects Western relics, including the stagecoach that may have carried President Polk to his inauguration. In July 1963 he learned that the New Mexico Press Association had held a dinner in honor of defeated California Congressman John Rousselot, who is presently the public relations director of the John Birch Society. McGaw suddenly got excited about current events.

POISONED SPRINGS

"What the hell is the matter with the newspaper editors of this State?" he asked in an editorial. "The very guardians of our intellectual outposts, the very men who should be sounding the warning against radicalism, import this poison to our springs and beg us to sit and sup with them. Birchites and Communists are probably bent upon the same goals, the main one of which is the destruction of confidence in our Government. I, too, consider myself a conservative. I stand for the old-fashioned principles of this country and will fight for them, but that doesn't include harboring Birchites or Communists or any other half-baked radicals, fanatics and seditionists."

If Rousselot read the attack, he ignored it. But Furniture Dealer Webster was outraged. He circulated a letter to McGaw's advertisers: "I ask if you, as a pro-American, anti-Communist businessman, plan to support a newspaper which is evidently following the Communist Party line?" In answer, some 13 advertisers pulled out of the Southwesterner; the newspaper, which had lost $2,500 the previous year, lost an additional $1,400.

McGaw filed suit in Federal court, asking for $1,800,000 from the Birch Society; in State court, he demanded the same sum from Webster. Once the Birch Society won a court order protecting the secrecy of its membership lists, McGaw was unable to prove that Webster was the society's legal agent, and he was forced to withdraw his Federal suit. When that happened, the Birch Society, which had filed a countersuit against McGaw, also called off its lawyers. Had the Birch Society gone into court as a plaintiff, it would have faced the difficult task of proving that it had suffered damages from McGaw's editorial. More important, it could have been forced to produce the same membership lists that it was so anxious to keep under wraps.

A REPORT THAT BACKFIRED

In State court, where he sued Webster instead of the Birch Society, the angry editor fared better. The defense tried the classic libel defense of truth. McGaw's editorial, the lawyers said, followed the Communist line, just as Webster had charged. Appearing as a star witness, far-right Commentator Dan Smoot agreed that the editorial was Communist lining, and the same point was made in a deposition from Martin Dies, onetime chairman of the House Un-American Activities Committee. But then the defense quoted some words of praise for the John Birch Society from a California Senate subcommittee on un-American activities. Once that report had been introduced as evidence, the tactic backfired. McGaw's attorneys were able to read parts that the defense lawyers had ignored, sections that compared the Birch Society to the Communist Party, just as McGaw had done. After that, the jury was convinced.

Throughout the trial, the courtroom was packed with spectators openly sympathetic to Webster. Some of them may have kept busy after hours as well. McGaw received obscene telephone calls at his hotel. "They were so vile," he recalls, "that I couldn't repeat them to a marine drill sergeant—and my own language is pretty salty." Victory should help him bear up under the insults. But it may be some time before McGaw can collect his $20,000. Last week Webster announced his intention of appealing the decision.

MANY BENEFITS FROM FLOOD CONTROL

Mr. PROXMIRE. Mr. President, the importance of flood control projects, so dramatically illustrated by floods last year in my State and the Midwest, is also emphasized by the adequate flow in the main channel of the Missouri River during the relative dry spell earlier this winter. The water held back and stored in upstream reservoirs during spring and

summer rains later was used to good purpose in relieving the subsequent drought.

But much remains to be done. As the Congress studies the President's budget requests for 1967, it is important that we consider all benefits of our water control and utilization programs. In this connection, I ask unanimous consent that an editorial, "Winter Water", by Jim Monroe, of radio station WCMO, Kansas City, Mo., be printed at this point in the RECORD.

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

WINTER WATER

Plenty of water in the midst of a winter drought. Dry weather isn't so critical in winter as it can be in the growing season, yet a shortage of winter water causes its own troubles.

Our winter water lies ready for use in the huge reservoirs upstream on the Missouri River. It will not be used to relieve dryness of the land, but gates will be opened on a calculated basis to generate new record amounts of electric power and to maintain the Missouri at a good level to assure downstream users of plenty of intake capacity without the common winter ice jams.

In years past, ice floes were regular problems as they served to cut the flow of water like dams. Dynamite and bombs were used on occasion to break loose the big packs. City water intakes were bogged with mud in the low water. Now, the six upstream reservoirs are at record high levels to provide plenty of winter water downstream. By spring, they will be lowered sufficiently to take care of floodwaters and prevent damage along with maintaining a good navigation level.

The Missouri River is now tamed as far down as Omaha. Plans are developing slowly to control the river farther downstream in Kansas and Missouri. With public support, flood control and its fringe benefits could become one of the outstanding achievements of the century.

THE RESUMPTION OF BOMBING OF NORTH VIETNAM

Mr. JACKSON. Mr. President, at a time when the President of the United States was nearing a decision with respect to the resumption of bombing in North Vietnam, the commander in chief of the Veterans of Foreign Wars of the United States, sent a telegram to the President urging the resumption of the bombing of enemy supply lines and installations in North Vietnam. The telegram was sent on behalf of the 1,300,000 overseas combat veterans who are members of the Veterans of Foreign Wars.

I should like to bring to the attention of my Senate colleagues this telegram from VFW Commander in Chief Borg, to the President in support of the President's position on the resumption of bombing.

I therefore ask unanimous consent that the telegram be printed in the RECORD.

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

JANUARY 29, 1966.

The PRESIDENT OF THE UNITED STATES,
The White House,
Washington, D.C.:

On behalf of the 1,300,000 overseas combat veterans comprising the membership of the Veterans of Foreign Wars of the United States I respectfully urge you to order the resumption of bombing of North Vietnamese targets. The VFW believes that the Communist aggressors have had abundant opportunity to indicate a desire for peace through the cessation of their cruel aggression. The Red leadership has responded to your efforts by ridicule and continued terror. The VFW further believes that the winning of the war and the protection of U.S. fighting men requires the bombing of enemy supply lines and installations in North Vietnam. Continuation of the bombing pause will permit the Communists to send more bullets into South Vietnam to kill more U.S. troops and those of our allies. I take this occasion also to pledge you Mr. President the continued support of the VFW for your strong and determined policies to turn back Communist aggression in Vietnam. My recommendations in this telegram are based upon the resolution unanimously adopted by the delegates to our 1965 convention supporting whatever steps are necessary to win in South Vietnam.

Respectfully,

ANDY BORG,
Commander in Chief, Veterans of Foreign Wars of the United States.

PROPOSED REDUCTION OF APPROPRIATIONS FOR THE SCHOOL MILK PROGRAM

Mr. MONDALE. Mr. President, innumerable Federal programs show the commitment of the American people to the health and well-being of our children and young people, as the most important single resource we have. The Elementary and Secondary Education Act of 1965, Project Headstart, Crippled Children's Services, Maternal and Child Health Services, Child Welfare Services, National School Lunch Programs, Aid to Families with Dependent Children, and a host of other programs all show the very real concern we have as a nation for guaranteeing that every child have a fair and equal chance to develop all of his talents and capabilities to the fullest extent possible.

Under the national school lunch program, nourishing and well-balanced lunches were served to 16 million children in 1964, 17 million in 1965, and an estimated 18 million in 1966.

Under the special milk program, children in schools, child-care centers, summer camps, orphanages, and similar institutions were provided with almost 3 billion half-pints of milk in 1964 and 1965, and an estimated 3 billion plus in 1966.

The relationship between hunger and nutrition, and the academic performance of children in school is very clear. Children who have not had an adequate, well-balanced diet, do much less well than others who have.

Now we are faced with the proposal to chop and slash the past levels of the special milk program by nearly 80 percent, from $103 to $21 million. This proposal has caused a storm of protest both here in Washington and in my State of Minnesota, and I think rightly so.

The Minnesota Farmers Union policy statement for 1966 said:

We urge measures to insure good nutrition for everyone * * *. This may be encouraged in several ways; through a nationwide food stamp plan; expanded school lunch and school milk program * * *. The Federal aid for the special milk program should be sufficient so that milk at the "milk breaks" is supplied free to the students.

Mrs. Grace Larson, Bloomington, Minn., said:

If you could see how much good this milk does for some of the children in our schools, I am sure you would not want to take this away from them.

Mr. V. E. Harris, Twin Ports Co-op Dairy Association, said:

This program is very essential to the farmers of our Nation and even more important to the schoolchildren.

Mrs. Thomas J. Jones, Faribault, Minn., said:

As a working mother of seven children, I depend on their getting that penny-a-carton milk twice a day at school.

As if it were not bad enough that 80 percent of these children will no longer have milk, and I think we must be practical in recognizing that the States will be hard pressed to provide the funds necessary to subsidize this milk—as if this were not bad enough, it will be a tremendous blow to our dairy farmers in Minnesota. The return per hour to dairy farmers is now shockingly low—much less than $1 per hour. This low rate of return caused a sharp drop in Minnesota milk production in 1965, and I think we could expect a further sharp decline with this greatly reduced consumption.

I am heartened that Senators PROXMIRE and HOLLAND have indicated their opposition to this cut, and I intend to oppose it firmly.

I ask unanimous consent that the following letters from Minnesota residents be printed in the RECORD at this point.

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

THE SAINT PAUL PUBLIC SCHOOLS,
Saint Paul, Minn., January 25, 1966.

The Honorable WALTER MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: It was with considerable concern that we read that President Johnson's budget proposed reducing the sum spent on the school milk program to $37 million for 1967—and, further, that only needy children be allowed to buy milk at reduced cost.

It is our considered judgment that these proposals are false economies to the extreme.

In Saint Paul where we sell milk at 1 cent to students bringing a lunch from home, we are certain that an increase to 4 cents (our cost) would seriously reduce participation among the very students who are most in need of milk at noon from a nutritional standpoint.

In secondary schools, which is our major service in Saint Paul, it is difficult presently to meet the needs of all the underprivileged because such students will go to lengths to avoid being stigmatized as such. We feel certain that such is the case in most secondary schools and only slightly less true in elementary grades.

If the suggested reduction were applied to the school lunch program, it is likely that our lunch charge in Saint Paul would be increased from its present 25 to 30 cents. We feel that such an increase would adversely affect participation among the very students most benefited by the program.

We have worked hard—and have been greatly assisted by State and Federal aids—to increase participation in both the school milk program and the school lunch program. Saint Paul has more than doubled such participation in the past 5 years. We are working to continue this progress.

We urge that you give full consideration to this suggested reduction and work for its reconsideration if you can do so in good conscience.

Cordially,

S. W. DOUCETTE,
Director, Saint Paul School Cafeterias.

BLOOMINGTON, MINN.,
January 31, 1966.

Hon. WALTER F. MONDALE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MONDALE: Congratulations to you as our Senator from Minnesota.

Are you a supporter of the school lunch program as your predecessor Vice President HUMPHREY is? I sincerely hope you are as I have a request to make of you.

I have worked in the school lunch program for 20 years and am aware of the benefits gained by our children by learning to eat a variety of different foods.

The President's proposed budget included large cuts in the special milk program and the school lunch program. These cuts, if allowed to pass, would mean an increase in price to the children and may well cause some to have to go without a school lunch. My request is that you lend your support to disallow the proposed cuts and keep our school lunch program a vital part of the Nation's economy helping our future citizens grow up strong and healthy.

A friend of yours, Mr. Leroy Johnson, with General Mills, mentioned last week that he too was going to tell you how important it is to support the school lunch program.

Thank you for your consideration to this request.

Sincerely yours,

Mrs. DAVID V. JOHNSON.

JANUARY 26, 1966.

DEAR SENATOR MONDALE: We are greatly disturbed over President Johnson's proposal to slash the school milk budget. We feel as an average taxpayer some other budget could be considered—why do we always have to consider the needy, they receive plenty already and it is we who pay for it—or the Cuban exiles, who else but us, is paying their transportation costs and so forth, or that highway beautification bill; is that as beneficial as a glass of milk?

Please give due thought to this proposal.

Gratefully,

Mr. and Mrs. ROGER REICHEL.

FARIBAULT DAILY NEWS,
Faribault, Minn., January 28, 1966.

Senator WALTER F. MONDALE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MONDALE: Can anything be done to prevent the discontinuance of the penny-a-carton milk plan in our public schools? How can our good Democratic President do this to us? Are there not many other places to cut that would not at the same time cut the health of our children?

As a working mother of seven children, I depend on their getting that penny-a-carton milk twice a day at school. Although our county commissioners declared our Rice County not in need of the poverty funds available, this was an unrealistic decision. Actually, there is much poverty in Rice County and Faribault. Wages are low here and the cost of living high. Our real estate taxes are $330.66 per year, * * * my wages $60 per week for 6 days a week. Unions are almost unheard of here in Faribault except among the most skilled labor.

This letter is written in great haste as I felt I must in some way protest. I realize it is not worded most effectively. What I am trying to say is that this milk cut or increase, depending on how you look at it, is going to be hard on families like my own which do not want to go on welfare, but still need that little boost we have been getting with the school milk program. This is the first time I have vehemently disagreed with the administration, and I am sure that this is going to be a weapon in the hands of the Republicans during the next election. C'mon, now, let's reconsider this decision and urge President Johnson to retain this beneficial milk program just the way it has been.

Very sincerely,

Mrs. THOMAS J. JONES.

ARROWHEAD COOPERATIVE MILK PRODUCERS ASSOCIATION,
Duluth, Minn., January 21, 1966.

Hon. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: We, members of Arrowhead Cooperative Milk Producers Association, want you to do your utmost to restore any moneys that are being cut from the school milk program.

This program is one of the best and should be encouraged more, as it gives "nature's best food," milk, to the group that needs it most. It also, supplies it to some, who may not receive it otherwise.

Thank you.

Respectfully yours,

ROY E. PETERSON,
Manager, Operator, Arrowhead Cooperative Milk Producers Association.

MENTOR PUBLIC SCHOOL,
Mentor, Minn., January 31, 1966.

The Honorable WALTER MONDALE,
Washington, D.C.

DEAR SENATOR MONDALE: After much exposure to all the "title programs, the poverty program and colossal waste that will take place there; to know that the Federal Government is trying to give away money for endless "dreamed up" jobs for youth at $1.25 per hour—(we know, because we had to dream them up and furnish names of students); then to know vast amounts of foreign aid moneys are given away with no strings attached—and to read about the plans for school lunch in foreign countries at our expense, we superintendents have trouble with our temperatures when we read the enclosed news item.

We have had to deduct 5 percent on each of our monthly lunch reports on the Federal milk program—which seems silly. Recently I received a letter from the State department of education stating that beginning with the February report 10 percent must be deducted. Every time I do this I think how picayunish the Government can be about established and proven programs and how unbelievably loose they can be on such programs as foreign aid.

In light of some of the things mentioned above, isn't it rather ridiculous that the Federal Government should play the lunch program aids so closely? We should be getting more commodities—meat in particular. This year we have received considerably less.

I have always gone along with the Democratic Party but I am beginning to cool quite a bit. Let Congress and/or the executive branch cut the school lunch program and it will be the biggest political mistake they ever made. This is one place where the money is not wasted on administrative costs. One party might blame the other, but the Democrats are in and must assume the responsibility. It really makes one perturbed to think that a cut in lunch aids was even considered—say nothing about bringing it about.

You will be smart if you work to increase lunch program aids to schools—not to decrease them. Cutting aids would be the biggest joke of the century.

Sincerely yours,

E. P. NEIBAUER,
Superintendent.

BLOOMINGTON, MINN.,
January 27, 1966.

The Honorable WALTER F. MONDALE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MONDALE: I am writing to you to ask you to do all that you can to prevent the cut in the appropriations for the school lunch and special milk programs.

If you could see how much good this milk does for some of the children in our schools, I am sure that you would not want to take this away from them. Also, the appropriations that cover the aid for our lunch program. We have children in our school that would be quite hungry in the evening if they were not able to eat here at school. And, if they had to pay more for their lunches, they would not be able to eat the good hot lunches that are prepared. It is important to keep our youngsters here in the United States well fed at a price that parents can afford.

I would appreciate your efforts in preventing this cut.

Very truly yours,

MURIEL ROSS.

BLOOMINGTON, MINN.,
January 27, 1966.

Hon. WALTER MONDALE,
Senate Office Building,
Washington, D.C.

DEAR SIR: I am a cook in one of our lunchrooms in Bloomington. I can see how much good our hot lunch does for our boys and girls. Please see what you can do, so our school lunch and milk money will not be cut.

Sincerely,

ETTA MUNCKE.

BLOOMINGTON, MINN.,
January 27, 1966.

Hon. WALTER F. MONDALE and Hon. EUGENE MCCARTHY,
Senate Office Building,
Washington, D.C.

DEAR SIRS: Please do not cut the appropriation for the school lunch and special milk programs.

Sincerely,

Mrs. LEONA JUNES.

BLOOMINGTON, MINN.,
January 27, 1966.

Hon. WALTER F. MONDALE and Hon. EUGENE MCCARTHY,
Senate Office Building,
Washington, D.C.

DEAR SIRS: I am writing to you to ask you to do all that you can to prevent the cut in the appropriations for the school lunch and special milk programs.

If you could see how much good this milk does for some of the children in our schools, I am sure that you would not want to take this away from them. Also, the appropriations that cover the aid for our lunch program. We have children in our school that would be quite hungry in the evening if they were not able to eat here at school. And, if they had to pay more for their lunches, they would not be able to eat the good hot lunches that are prepared. It is important to keep

our youngsters well fed at a price that parents can afford.

I would appreciate your efforts in preventing this cut.

Very truly yours,

Mrs. GRACE LARSON.

BLOOMINGTON, MINN.

Hon. WALTER F. MONDALE and Hon. EUGENE MCCARTHY,
Senate Office Building,
Washington, D.C.

DEAR SIRS: I am writing you because of the proposed cut in funds for school lunch and special milk programs. I am hoping you and others will give this much consideration before it is brought up before our lawmakers. If this cut is made, as proposed by President Johnson, it will mean the prices of lunch and milk will have to be raised. If the price of lunches are raised there will be less participating in our lunch program.

I am in hopes the proposed budget will be reconsidered by all persons who have the power to do so.

Very sincerely,

Mrs. FLORENCE RYMAN.

WAUBUN PUBLIC SCHOOLS,
Waubun, Minn., February 2, 1966.

Hon. WALTER MONDALE,
U.S. Senate,
Washington, D.C.

MY DEAR MR. MONDALE: We are very much concerned with the proposed cut in the budget for the support of the school lunch program. Should a reduction take place in the amount of our reimbursement and also a reduction in commodities we receive, it would seriously impair our program.

At the present time we are operating our school lunch program at a loss because we charge our students only 20 cents. If it became necessary for us to raise the price, many of our families would be unable to afford lunches for their children.

The board of education and myself feel that the support of the lunch program is a very worthwhile program and we would certainly not like to see a reduction in the support of it. In fact, if anything, an increase would be most helpful. This is a program that benefits all children and certainly is a very practical and humane way of making the very best use of any surplus agricultural products.

Sincerely yours,

HOMER M. BJORNSON,
Superintendent.

MINNEAPOLIS, MINN.,
January 29, 1966.

Mr. WALTER MONDALE,
Minnesota Senator,
Washington, D.C.

DEAR SIR: The Twin City Chapter of the Minnesota School Food Service Association met on Monday, January 24, at Richfield.

This was the same day it was announced that the 1967 Federal budget recommended a cutback from $89 to $37 million for the school milk program. Also a reduction in the school lunch subsidy was announced.

The 500 members of this chapter from the school districts of St. Paul, Minneapolis, West St. Paul, Richfield, Bloomington, Robbinsdale, Edina-Morningside, Columbia Heights, and White Bear Lake urges you to work for the restoration of these funds so that the school milk program and the school lunch program can continue to meet the needs of our schoolchildren.

We trust that you and your colleagues will be able to execute economies in other areas rather than at the expense of the school food services.

Thank you sincerely,

MAYME MOORE,
Secretary, Twin City School Food Service Association.

MINNEAPOLIS, MINN.,
January 31, 1966.

Hon. WALTER MONDALE,
Hon. EUGENE MCCARTHY,
Senate Office Building,
Washington, D.C.

SIR: Please do not cut the appropriation for the school lunch and special milk program.

Sincerely,

Mrs. ALFRED NYBO.

STILLWATER, MINN.,
January 24, 1966.

Senator WALTER F. MONDALE,
Washington, D.C.

DEAR SIR: Regarding the milk fund and school lunch programs, either all students should benefit or none. Where can the line be drawn. Only the rich and poor will be able to survive the Great Society.

We surely do not want the inspection costs added to the prices we already pay for meats and poultry.

Very truly yours,

Mr. and Mrs. VERNON HOPHAN.

TWIN PORTS CO-OP
DAIRY ASSOCIATION,
Superior, Wis., January 21, 1966.

The Honorable WALTER MONDALE,
U.S. Senator from Minnesota,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MONDALE: At a joint meeting of the executive board of Twin Ports Cooperative Dairy Association and several members of the Arrowhead Cooperative Milk Producers Association, it was brought to the attention of the group the action taken on the school milk program as shown in the CONGRESSIONAL RECORD, pages 223 and 224 of the Senate CONGRESSIONAL RECORD as of January 14, 1966.

These two groups commend Senator PROXMIRE on his stand and Senator HOLLAND for his support to Senator PROXMIRE. We also urge that you throw your support to this very worthwhile program, as well as lend your support to the restoration of the $3 million that was cut from this program. This program is very essential to the farmers of our Nation and even more important to the schoolchildren.

We will appreciate any support that you can lend to this worthwhile program. Thank you.

Yours very truly,

V. E. HARRIS,
General Manager,
Twin Ports Co-op Dairy Association.

THE PROBLEMS AND NEEDS OF THE EGG AND POULTRY PRODUCERS

Mr. DODD. Mr. President, egg producers and poultry farmers have faced an increasingly bleak future during recent years.

In my own State of Connecticut, the number of egg producers has declined by 50 percent or more since 1960.

During these years the price of eggs has dropped steadily, with the exception of 1965 when prices rose slightly.

But 1965 does not portend a better future for the independent poultry farmer.

Due to the unpromising future, many small independents went out of business, a development which caused an egg shortage sufficiently large to drive up the price of eggs after the 10-year period of decreased prices.

In order to help the poultry industry achieve a higher degree of stability, and in order to give the independent egg producers a better chance to prosper, Congress should step in and establish a marketing order similar to those now in effect for other agricultural commodities.

Senator CASE, my distinguished colleague from New Jersey, has introduced such a proposal, S. 2832.

I was pleased to cosponsor this bill, on which hearings were held by the Senate Agriculture Committee, Thursday and Friday of last week, February 3 and 4.

At this time, I ask unanimous consent to have printed in the RECORD the testimony in support of S. 2832 of two Connecticut organizations, the Connecticut Poultry Association and the Central Connecticut Cooperative Farmers Association.

Both are very much in favor of this bill and provide in their statements compelling evidence of the need for marketing orders for the egg producing industry.

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

STATEMENT TO THE SENATE AGRICULTURAL COMMITTEE, SUBMITTED BY MAX GIRSHICK, REPRESENTING THE MEMBERS OF THE CONNECTICUT POULTRY ASSOCIATION, FEBRUARY 4, 1966

Mr. Chairman, and members of the committee; my name is Max Girshick. I am a member of the board of directors of the Connecticut Poultry Association, an organization that counts among its members the vast majority of the egg producers and poultry farmers in the State of Connecticut. I have been authorized to present the following statement representing the views of the Connecticut Poultry Association.

From year to year the economics of egg production become more chaotic and the independent farmer finds himself in a tighter squeeze. And each year, or each time a census is taken, we find that the number has shrunk. Not the number of hens but the number of families who find their freedom to exist under a chosen way of life, being denied them by circumstances beyond their control, either collectively or individually.

In a census taken, county by county, by the Connecticut Extension Service in 1960 there were 981 egg producers. Three years later, in 1963, despite the fact that Connecticut is a deficit egg producing area, a similar census was taken by the same agency and it disclosed that 46 percent of these egg producers were out of business; only 527 were left.

The price of eggs the last 10 or 12 years has declined steadily. During the 5-year period, 1952–1956, the price of eggs averaged about 42 cents per dozen. The next 5 years the average price of eggs was about 36 cents per dozen, and the year 1964 saw the decline continue with an average price of 33.4 cents per dozen.

The temporary reversal of this trend during the past year only emphasizes the dilemma of the family unit. So many family sized units were discouraged by the earning experience of the preceding year that they curtailed their operation. Temporarily there were shortages, and therefore higher prices. This cannot, however, be considered as a reversal of trend.

Already there is again a threat of overproduction. Chick placements during the month of December and the early part of January are averaging 13.5 percent above a year ago. What this portends is best explained in the following quote from the January 1966 Poultry Marketing Bulletin published by the Extension Service, College of Agriculture, University of Connecticut.

I quote, "Producers should watch the chick placement figures of the next 6 months carefully. Past experience would indicate that an increase in placements will be forthcoming. In making comparisons, it should be remembered that placements during the first half of 1965 were low. However, if the chick placements in coming months exceed 1965 levels by more than 5 percent, this would indicate increased production and lower egg prices late in 1966."

The independent egg producer finds himself running hard in order to stay in one place. Those who had the capital or credit have kept increasing their volume of production in order to compensate for declining prices.

This process is continuing and being aggravated by the advent of huge integrated operations supported and financed by the giant national feed, hatchery, and equipment companies—in many cases with unwarranted credit practices—to the point that the independent producers are running out of capital and find it difficult to get the credit to continue as independent businessmen.

It is obvious that the poultry industry cannot find within itself the means to "put its house in order" and that those who will be the victims of disorder will be the independent family units who have been the mainstay of agricultural free enterprise.

History has shown that the producers of other agricultural commodities, when provided by legislation with the tools of self-help have been able to discipline their industries and provide an economic and production atmosphere wherein their independence prospered and their industry was stabilized.

We, in the poultry industry are entitled to have made available to us the same tools that have already been provided to other segments of agriculture. We ask the right to develop a program for self-help; the right to have regional hearings under the auspices of the Department of Agriculture; and, above all, the right to vote for an independent family oriented stable poultry industry. And, this last I want to repeat and emphasize: the right to vote, to decide for ourselves while many of us still have our independence.

The adoption of S. 2832 is urgently needed now, before the small gains of 1965 are wiped out and free enterprise in the poultry industry is engulfed by galloping integration.

Thank you for your permission to present this testimony and for your courtesy in listening to my presentation.

CENTRAL CONNECTICUT COOPERATIVE FARMERS ASSOCIATION, INC.,
Manchester, Conn.

To the Senate Agricultural Committee:

Mr. Chairman, I was very pleased to learn that the Senate Agricultural Committee is looking into the problems and needs of the poultry producers.

Contrary to the continuing and growing prosperity of the Nation as a whole, the poultry farmer has been finding himself in a tightening economic trap. Costs continue to rise year in and year out while both the unit return of our product and, above all, the net return of our operation has been decreasing steadily, almost to the vanishing point. Despite the recent improvement in prices the outlook for the future is bleak. I cannot believe that it is the policy and the intent of our great Congress to do nothing and let the poultry industry become completely "industrialized" to the point where Big Business is the producer-manufacturer, and the so-called independent family farmer of yesterday and today is the "contract slave" on his own farm.

It has been my intention to appear before the committee to present my views and those of the members and patrons of the Central Connecticut Cooperative Farmers Association, Inc., however, having read the statement prepared by Mr. Max Girshick of the Connecticuit Poultry Association I find myself wholly in agreement with what he plans to say.

I appreciate that your time is valuable and do not wish to impose upon it by a personal appearance. I am therefore writing this to indorse the sentiments expressed in the statement by Mr. Girshick of the Connecticut Poultry Association and to impress upon you the urgent need of immediate legislative action.

Respectfully,

SOLOMON BARON,
President, Central Connecticut Cooperative Farmers' Association, Inc.

THE NEW TEACHING BRILLIANTLY ANALYZED BY HARVARD'S BRUNER

Mr. PROXMIRE. Mr. President, certainly Prof. Jerome Bruner of Harvard is one of the country's most brilliant teachers. And he is one of the world's acknowledged experts in social psychology.

Professor Bruner has recently written a book entitled "Toward a Theory of Instruction." For those of us in Congress who have been shattering precedent without massive Federal aid to education legislation, this brilliant book has great pertinence.

This is particularly true because of the revolution in teaching that has come in recent years—not only with new curriculum such as the new math, and the vast influx in pupils, the sharp step-up in educational qualifications for teachers, but a new scientific—rather than the only more artistic approach.

Professor Bruner brings intelligence, experience, and insight to these problems in the field which may be our most significant challenge in coming years.

I ask unanimous consent that a review of Professor Bruner's book, in this morning's Washington Post 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 Washington (D.C.) Post, Feb. 8, 1966]

CAPITAL READING: TEACHING NOW HAS BECOME MORE A SCIENCE THAN AN ART

("Toward a Theory of Instruction," by Jerome S. Bruner, Belknap Press of Harvard, reviewed by Leonard Duhl)

(NOTE.—Dr. Duhl is a student of the education and learning process and edited "The Urban Condition.")

The great teacher of a decade ago was an artist. He taught by catching the mind of the student and stimulating him from his own storehouse of knowledge with a variety of skills.

Teaching today has entered the realm of technology. Our awareness of psychological and intellectual growth and our understanding of the theories of learning have led to the development of new tools, new methods, and a new awareness of the educational process.

While there have been many leaders in this pedagogical revolution, few have had the depth of insight and scientific underpinning of Jerome Bruner.

In this collection of connected essays, Professor Bruner discusses critical questions that must be faced if education is to meet our needs.

A psychologist concerned with education must study the learning process in order to demonstrate what may be called the art of the possible. In so doing, Bruner opens our eyes to new possibilities that clarify both what the great artist-teacher was capable of doing and what can be done for our children.

The concepts of normal growth and development which point to the systematic evolution of skills serve as guideposts to the programing of teaching experiences for the child.

"Growth," says Bruner, "starts out by our turning around on our own traces and recoding in new forms, with the aid of adult tutors, what we have been doing or seeing, then going on to new modes of organization with the new products that have been formed by these recodings." Elsewhere he notes that "the heart of the educational process consists of providing aids and dialogs for translating experience into more powerful systems of notation and ordering * * * a theory of development must be linked both to a theory of knowledge and to a theory of instruction, or be doomed to trivality."

The function of education is to transmit to the child the accumulated culture of his society, and also to teach him skills for adapting to his world. Thus, Bruner focuses on man as one of the major courses of study, emphasizing language and social organization as the major tools that he uses to cope with his world.

In Bruner's view, "language serves many functions, pursues many aims, employs many voices. What is most extraordinary of all is that it commands as it refers, describes as it makes poetry, adjudicates as it expresses, creates beauty as it gets things clear, serves all other needs as it maintains contact."

The will to learn must depend not upon external rewards but upon the internal pleasures and the feeling of success that comes from a job well done. In the process of teaching, much more is passed on that the subject; passed on also are attitudes about the learning experience.

All too often, as Bruner asserts, our school's first lesson of learning "has to do with remembering things when asked, while maintaining an undefined tidiness in what one does, with following a train of thought that comes from outside rather than within and with honoring right answers."

The teacher must be a working model for the student, not to be imitated but as part of the student's internal dialog "somebody whose respect he wants, someone whose standards he wishes to make his own; it is like becoming a speaker of a language one shares with somebody."

As a scientist, Bruner is careful to emphasize the need for a thorough evaluation. But for him, evaluation is not merely a periodic event following the episode of teaching. It is a continuous process whereby the teaching technique can continually be improved and the child's progress estimated.

Reading Bruner leads to an internal demand for further inquiry and exploration. Though he answers many questions which heretofore have been unanswered, he poses quite new questions which can only force us to look further at the problems of education, instruction and the normal growth.

This eminent scholar has proven again that the scientific understanding of education is not a replacement of the art but rather an addition to it. It is clear that he himself is both a creative scientist and a brilliant teacher.

LACK OF TRAINED PERSONNEL ENDANGERS GREAT SOCIETY PROGRAMS

Mr. MUSKIE. Mr. President, the critical question of governmental manpower is beginning to be recognized as a major problem in intergovernmental relations. Great Society programs are in danger of being stalled because of a lack of trained personnel at the State and local levels. These governments find it difficult to recruit, train, or keep the personnel needed to administer joint action programs. Too often we ignore the vital role that topflight technicians and administrators play in the success or failure of meeting national goals.

The Subcommittee on Intergovernmental Relations, of which I am chairman, is actively concerned with this problem. A recently published subcommittee study, "The Federal System as Seen by Federal Aid Officials," reveals that:

> Excessive turnover, low pay, overly stringent merit requirements, and the inability to transfer retirement benefits have impeded State and local governments in their attempts to meet the manpower challenge of the 1960's.

This subject is also the topic of an excellent article entitled, "Federalism and Public Employment." Its author, W. Brooke Graves, finds that very little has been done to streamline our public personnel system. Dr. Graves, Specialist in American Government at the Library of Congress, has brought his training and intellect to bear on the subject and has come up with a number of useful recommendations. I ask unanimous consent that this timely article be printed in the RECORD.

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

FEDERALISM AND PUBLIC EMPLOYMENT—A PLEA FOR A MORE UNIFIED SYSTEM OF PERSONNEL ADMINISTRATION

(By W. Brooke Graves)

(NOTE.—Dr. Graves, president of the Federal Professional Association, is adjunct professor of political science, the American University, and author of a number of books on American Government, most recently "American Intergovernmental Relations," Scribners, New York, 1964. This article was read in draft form by a number of able persons. All agreed on the importance of the subject. Many offered constructive suggestions, whose adoption has considerably strengthened the article. While the author naturally accepts responsibility for any errors of fact or in judgment, he is deeply grateful for their counsel and assistance.)

Public personnel administration in this country today faces many critical problems. If the present situation is not actually a crisis, many indicators suggest that it may soon become one. Federal departments and agencies face serious difficulty in an effort to conform with economy policies established by the administration. Serious shortages of some much needed types of personnel, plus perplexing problems arising out of a rapidly developing automation all confront Federal personnel people.

The phenomenal expansion in the number and scope of grant-in-aid programs in the present and previous sessions of the Congress makes the public personnel question all the more critical, for the success of even the best and most urgently needed of the new programs may be hampered if this vital issue is longer ignored.

All of these problems, and others as well, also affect State and local governments. While needs for high grade professional and administrative talent mount, these governments find their situation aggravated by long years of neglect in recruiting and training needed talent for top-level positions. The size and complexity of this situation has been pointed out many times, most notably in the report of the Municipal Manpower Commission. Applying similar methods of analysis a year later in a study of the personnel problem in New York City, David T. Stanley reported that, in the higher skills, vacancies were numerous, young professionals had little interest in working for the city, the city was not recruiting "the cream of the crop," there were serious shortages in the occupations needed, the selection system was slow and inflexible, employee morale was indifferent, salaries in some jobs lagged behind those paid by other employers, employee training was insufficient.

As a result, there was a danger that services rendered to the citizen would decline in quality. Substitute for New York City in this discussion, the name of your home city, county, or State, and you have a clear indication of the nature of a problem that is national in scope.

What has been done toward meeting this national public personnel problem—a problem fast reaching gigantic proportions. The only truthful answer is: very little. This article is based upon a conviction that the time has come to stop moaning about our sad plight, to lay off on the wringing of the hands routine, and to tackle a national problem on a national basis, with foresight and determination.

Many aspects of the problem confronting us grow, at least in part, out of the Federal nature of our Government. Since as a people, we are quite firmly committed to the Federal principle, the problems will have to be solved—if they are solved—within the governmental framework which a Federal system provides. Intergovernmental cooperation in personnel administration has lagged far behind other types of Federal-State-local cooperation. This paper is concerned with these more or less neglected aspects of federalism, particularly as they are encountered in the United States. It is hoped that, with many new programs emerging, and the current emphasis on protecting State and local governments from Federal usurpation, its appearance may be regarded as timely.

PERSONNEL PROBLEMS OF FEDERALISM

Their nature and scope

Since 1929, government has dramatically increased its role as an employer. Excluding military personnel and private employment resulting from government contracts, there were, as of October 1964, 10.1 million civilian public employees in the United States, 328,000 more than a year before. Whereas in 1929, the private sector of the economy accounted for 94 percent of all employed persons, it now accounts for only 86 percent. The Federal workforce has in recent years been stabilized at approximately 2.5 million. During a 13-year interval from 1951 to 1964, however, State and local government employment on a full-time basis (approximately one-sixth of these employees are part time) rose altogether by 73 percent.

Back in 1929, only 1 out of 16 persons gainfully employed worked for the government; in the decade of the fifties, the ratio was 1 in 10. Now, it is 1 in 7. In every four of these government employees, one works for the Federal Government, three for State and local governments. So, when one considers the problems of public employees, he is dealing with a sizable and important segment of the population and an important factor in the national economy.

It is neither abnormal nor unhealthy to have problems in personnel administration, or in any other field, but some of the current personnel problems—such as severe shortages of qualified people in some categories, lack of merit system, low pay scales, inadequate training programs, and the effects of automation, to mention only a few—seem to present unusual difficulties.

They are, in fact, developing into—if they have not already assumed—crisis proportions. They cannot be solved by any one level of government, acting alone, for they affect all levels, nor can they be solved by piecemeal legislation, one problem at a time, in a single agency. What is needed is an all-out attack upon them, with effective leadership at the Federal level.

Some of these problems are aggravated, if not actually caused by the nature of our Federal system. In some areas where serious shortages exist, these shortages are caused by Federal legislation. The war on proverty, for example, is predicated on the assumption that there will be people at the local level qualified to take command.

The problem arises from the fact that there just aren't very many such people, and many of those who are selected for new assignments have to be taken away from other jobs where they are needed just as badly. The immediate problem is to identify these critical areas, meanwhile making the best possible utilization of the available manpower, especially in shortage categories, while more people are being recruited and trained and while the effort is made to eliminate the causes of some of the current problems in the personnel field.

There are few simple answers to the problems of federalism in the field of personnel administration (or anywhere else, for that matter), but the surprising thing is that, up to this time, little attention has been given to them, either by students of government and administration, or by the Congress, in an effort to find suitable and workable answers.

These questions are important ones in the field of public administration. But they are no less important to the Congress whose Members have a threefold responsibility for general surveillance of the executive branch: to provide the statutory framework within which the executive operates, and to appropriate the funds which are essential to continuing administrative activity.

The fact is that, with respect to most of these matters, we have no policy. That the problems appear to be dimly recognized, if indeed, they are recognized at all, is disturbing. Even more disturbing is the continuing lack of any serious attempts to develop a policy.

In this area, as in so many others involving intergovernmental relationships, we have played by ear, so to speak, usually deciding to do nothing until a real crisis is upon us. Such a practice not only presents barriers to good administration, it virtually prevents a wise use of public funds, and constitutes a continuing source of annoyance and great inconvenience to the public.

Belated recognition of them

These problems have existed from the very beginning, when the Constitution was adopted and the present government established, but no one seems, until rather recently, to have been aware of them. So far as this writer has been able to discover, the first person to talk about them was Leonard D. White, distinguished student, teacher, and writer in the field of public administration who—some 25 or 30 years ago, served with great distinction as a member of the U.S. Civil Service Commission. In one of his

books, and repeatedly in his public addresses while serving on the Commission, he stressed the advantages of cooperation in the personnel field, among the various levels and units of government.

A few years later, during World War II, when the author was serving in the Third Regional Office of the Commission, responsible for recruiting activities within the region—at first for higher level positions, and later for all levels—the serious nature and the extent of this problem became clearly apparent to him. The need for the development of some more rational procedures for recruiting was pretty obvious then, and it still is. Why should Federal, State, county, and municipal governments, all recruiting, examining, and hiring employees for necessary common types of work, all in the same geographical area, complete with one another and duplicate one another's efforts—and in a tight labor market at that?

In 1940, when isolationism was still a live issue, Wendell Willkie reminded Americans that this is "one world" in which we live; perhaps they need to be reminded in the 1960's that the United States is "one country." There is need for a governmental service that is unified enough to be efficient, and at the same time flexible enough to meet the needs of both governments and government employees at all levels. This concept was admirably expressed in the report of the Sixth American Assembly on the Federal Service in 1954:

The Federal service should provide for promotion from within and for the lateral entry of personnel, particularly in the middle and higher grades. It should be open to interchange with the other fields of American life—business, trade unions, universities, and professions, State and local government. Such exchanges benefit both the Federal service and these groups, and our society is the richer. Efforts to close the door to such interchange should be vigorously resisted.

Although, as has been shown, the need is fairly obvious and the opportunities for accomplishment great, relatively little has so far been done. Since there are neither constitutional nor statutory prohibitions effecting such cooperation, all that is lacking is the will to move ahead, and perhaps an occasional piece of authorizing legislation.

SOME SPECIFIC PROBLEMS

The federally inspired personnel problems which confront us, however, are not limited to the field of recruiting. They arise in many other areas as well. They arise in training, and as will be pointed out presently, more progress has been made in this area than elsewhere. They arise in the form of barriers to the transfer of government workers from one job to another, especially where different levels of government or different jurisdictions are involved. They arise out of widely differing pay policies, and out of the need to establish a system in which retirement and other benefits would be freely movable.

Recruiting

Some mention already has been made of the overlapping, duplication, and waste involved in competitive recruiting efforts. A solution for this problem is fortunately relatively simple and readily available. Tests for clerical and stenographic work, for instance, are fairly well standardized. Why shouldn't there be one place in Denver, St. Louis, or Philadelphia, for example, where tests are given and scored, eligible lists compiled, and eligibles certified therefrom to any government appointing officer in the area—Federal, State, or local—having clerical-secretarial vacancies to be filled? The costs to each government (apportioned on some acceptable basis, such as number of public employees) would be greatly reduced because the overlapping and duplication of effort would be eliminated. Assuming that the will to cooperate is present, it should not—with modern computer equipment—be too difficult to find suitable means of handling the mechanics of the program.

In a more centralized system, applicants would be spared the necessity of trapesing all over town to find the separate personnel offices of each department or level of government. It is currently reported that the U.S. Civil Service Commission is working on a thorough revision of its recruiting and examining procedures. What better time could there be to move in the direction of cooperative relations with State and local governments?

A series of experimental projects in selected areas where the climate is known to be friendly could reveal the problems and evolve procedures which could—given a little time—be generally applied.

One reader has raised the interesting question as to whether this proposal really envisions a centralization of the recruiting effort. The answer is: not necessarily for all recruiting, all the time, but when and to the extent to which it would clearly be advantageous, why not? It is interesting to recall that when Federal recruiting was decentralized in World War II, this was not done because anyone believed that the job would be better done, but merely when it was feared that the Commission might not receive funds to employ staff sufficient to do the job.

It was only later that the attempt was made to make necessity appear to be a virtue. Departments and agencies always claim that they can do the recruiting job better, but they rarely do. The country is fortunate if, in fact, they do it as well.

In these days, most recruiting for top jobs is carried on, even for State and local governments, on a nationwide basis. The extreme provincialism that once characterized such operations has greatly diminished and is gradually disappearing.

Appointing officers in many cities and some States no longer fear and there will be serious repercussions if they do not patronize home industry. In general, the results of this have been good. So, when a renaissance of enthusiasm for improving government administration occurs in a city or a State, the "team" is likely to be assembled from all over the country and may include, likely enough, some from foreign countries as well. In Albany, Harrisburg, or Sacramento, one's next door neighbor, either in the office or at home, is as like as not to be an individual from some far away place.

Shortage Categories

Many governments are already finding it difficult to obtain technical, professional, and managerial personnel to staff the public service—and the problem is expected to intensify in the near future. There are many reasons—which need not be discussed here—for these shortages. Several thousand new administrators will be needed by 1970 in California State and local governments alone, and an even larger number in the following decade. Other States, as well as the Federal Government, will need many more new employees in these shortage categories. Despite significant annual increases in the number of public health workers, for instance, the Nation suffers chronic shortages in all categories of health personnel. There are many other shortage categories. Governor Brown, speaking at a statewide conference, summarized the California personnel situation in these words:

"I cannot give you the figures on the increased need for executives in local government by 1970. But I can tell you that in 7 years, the State must replace and train almost 1,990 top managers and some 4,000 middle managers to fill key positions throughout the State government. * * * But the need is not limited to government. It exists in business and industry. And I believe that they would agree that the greatest shortage in the American economy today is the supply of executive talent."

In the outlook for the future, such factors as these must be considered:

Ninety percent of all the scientists who have ever lived are alive today. The new field of nuclear science was almost unknown 20 years ago. Now, the Oak Ridge, Tenn., plant draws 10 percent of all the electricity generated in the country. Two-thirds of the products that we will buy 20 years from now are still to be developed. Of the children in grades 1 through 6, 50 percent will be employed in occupations that do not yet exist.

Apportionment

One practice in the Federal civil service system that is clearly a result of the Federal character of our government is the process of apportionment. This kind of apportionment, of course, has no relation whatsoever to *Baker* v. *Carr*. It grew out of a fear that local people in the vicinity of the Nation's capital would monopolize Federal employment opportunities to such a degree that interested persons in States geographically more remote would be excluded.

When one notes that today, only one-tenth of the total number of Federal employees are located in the Washington metropolitan area, and the remaining nine-tenths in the field, this danger has never seemed to be a very real one.

Whether real or not, it was evidently thought to be when the Congress passed the original Civil Service Act in 1883, containing an apportionment requirement that has since been retained. This provision requires that "as nearly as the conditions of good administration will warrant * * * appointments to the public service aforesaid in the departments at Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census."

That this question is not merely a theoretical or academic consideration is attested by the fact that the U.S. Civil Service Commission has, as recently as last month, announced plans to reduce drastically the number of summer Government jobs to be held by students in the Washington area, including Maryland and Virginia.

The Commission said it plans to hold nationwide competitive examinations for most Federal summer jobs in 1966 and subsequent years, with the aim of giving the majority of them to students from other parts of the country, who would be given "priority for appointment * * * in an effort to bring in highly qualified young people from all over the Nation."

Training

In the field of training, a pattern of cooperative relationships now is becoming accepted, even if not as widely used as it could or should be. State agencies train or give a good deal of support, in terms of financial aid or of professional services, to local training programs and needs. Similarly, the Federal Government is moving toward a policy of assisting both State and local units in the training of many types of specialized personnel. There is considerable pressure for the expansion of this type of assistance.

It is now well known that many State and local employees are trained in schools administered by and largely for the Federal agencies which maintain them. Just as State police academies train many local law enforcement officers, so the FBI Academy trains many officers for both State and local governments.

A current report indicates plans for a new building and considerable expansion for this academy, whose present capacity of 200 graduates a year is scarcely sufficient to make

much impact on the total force of some 378,000 policemen in the country. The new and larger facilities costing many millions of dollars will include classrooms, an auditorium, library, gymnasium, a dormitory for 700 students, and other facilities which will permit the academy to graduate 1,200 a year.

As part of the nationwide effort to improve local efforts at crime control, the Congress passed the Law Enforcement Act of 1965 (Public Law 189–197) which provides "assistance in training State and local law enforcement officers * * * and in improving capabilities, techniques, and practices." This measure, actively supported by the National League of Cities and other national organizations will have its greatest impact with the municipalities.

In addition, a House-passed revision of an administration proposal will move the Federal Government still farther in this direction, by providing grants to public and private nonprofit agencies or organizations to establish or improve programs to train local law enforcement officers.

Many other Federal departments and agencies operate training facilities for their own employees, to which State and local employees in counterpart agencies may be admitted. This is true in the Department of Agriculture, the Food and Drug Administration, the Forest Service, the Public Health Service, and many other agencies.

In the Internal Revenue Service, the training of State and local tax officials is encouraged on a reimbursable basis, as a means of utilizing intergovernmental cooperation in the combating of tax frauds. In this connection, one should mention the fact that all training in the National Guard is carried on under standards and procedures prescribed by the Department of Defense, largely supported by Federal funds, and under the direction of the Department of Defense.

Under these programs, the Federal Government itself provides training for a limited number of State and local government personnel.

There are, in this area, as Chairman John W. Macy of the Civil Service Commission pointed out in an address at the University of California not long ago, three basic needs: (1) a comprehensive approach toward identifying educational and training requirements at all career levels and in all career fields; (2) identification of educational resources within and outside government; and (3) some broad governing theory under which specific kinds of requirements can be systematically matched with existing and desirable educational resources.

A very promising approach toward a solution of the training problem, measured in terms of adequacy for the overall need, was initiated almost 30 years ago but, unfortunately, abandoned after a few years trial. Under this plan developed under the George-Deen Act of 1936, the Federal Government encouraged the establishment of sound State programs for the training of State and local government personnel, and provided financial assistance for the administrative costs of the program.

With funds made available to the States between 1937 and 1945, great progress was made in many States in the training of local government personnel. When in 1945, the Federal funds were suddenly cut off, the programs quickly fell apart in most jurisdictions.

In an effort to restore this type of program on a permanent basis, a bill was introduced in the 87th Congress (H.R. 13305) and again in the 88th Congress (H.R. 4561) by Representative GONZALEZ of Texas.

This measure, called the State and local Government Employees Training Act, was designed to encourage the States to establish, and to assist them to maintain, sound training programs for State and local government personnel. No hearings were held on either bill, and both died in committee.

Two recent and possible significant pieces of legislation should be noted here. The Vocational Training Act 1963 (Public Law 88–210) established new and expanded other vocational education programs already existing. It appears that some funds made available under this act may be used—as were some George-Deen Act funds for a brief period from 1937 to 1945—in support of training programs for specific types of local government personnel. More important, however, was the inclusion of title VIII on training and fellowship programs in the 1964 Amendments to the National Housing Act, authorizing matching grants to the States. Section 801(a) states:

"The Congress finds that the rapid expansion of the Nation's urban areas and urban population has caused severe problems in urban and suburban development and created a national need to (1) provide special training in skills needed for economic and efficient community development and (2) support research in new or improved methods of dealing with community development problems."

Subsection (b) continues:

"It is the purpose of this part to assist and encourage the States, in cooperation with public or private universities and colleges and urban centers, to (1) organize, initiate, develop, and expand programs which will provide special training in skills needed for economic and efficient community development to those technical and professional people who are, or are training to be, employed by a governmental or public body which has responsibilities for community development; and (2) support State and local research that is needed in connection with housing programs and needs, public improvement programing, code problems, efficient land use, urban transportation, and similar community development problems."

This is splendid and with a reasonably liberal interpretation of this language, much could be accomplished; it is worth noting, however, that in 1965, the Appropriations Committees provided no funds for the implementation of this title. Nor have the States shown any greater willingness to respond to the critical situation this legislation was designed to correct.

Although two-thirds of our population already live in urban areas, and while the process of urbanization continues at an astonishing rate, a year later, only a few States—including California, Illinois, and Minnesota—had designated an "officer or agency of the State government who has the responsibility and authority for the administration of a statewide research and training program." Without such delegation, and without funds, no progress is possible.

This situation emphasizes the point that in some jurisdictions, the need for training must still be sold to both administrative officers and legislators. The Senate Subcommittee on Intergovernmental Relations is reporting that, even in some areas where Federal training for State and local officers is available without charge, the States do not take advantage of it.

This is because they do not have funds to pay the transportation expenses of the trainees, are understaffed and cannot spare the time, or are under legal restrictions against sending their employees out of the city or State concerned. The training should be made available, but it is clear that merely making it available is not enough. The whole State and local personnel operation needs beefing up.

Before leaving the subject of training, it might be pointed out that one means of meeting this need would be by establishing a Government Service Academy. This idea is, of course, neither new nor original, for there are numerous precedents for an institution designed to train young people for public service careers already existing.

The Federal Government now has academies for the three branches of the military, the Marine Corps and the Coast Guard, and in addition a variety of other institutions for the training of men for the merchant marine, the training of law enforcement officers by the Federal Bureau of Investigation, to mention only a few of the major domestic programs, while in the Foreign Service and foreign aid programs, we have the Foreign Service Academy, and programs in which much attention and assistance have been given to the training of civil servants in the new and developing countries.

A few months ago for example, the New York Times of May 23 carried a story of the National School of Law and Administration, dedicated to the training of top-flight Government administrators in the Congo. Similar assistance has been provided in the Philippines, in Korea, India, Pakistan, and many other countries. The point is not to raise objection to these highly beneficial and indeed, necessary programs for the advancement of administration in the new and developing countries.

But, if American financed public service training is a good thing in countries in remote parts of the world, might it not be appropriate if more attention—and more financial support—were given to it here at home, where the need is also great?

Although it has sometimes been argued that a Government institution is unnecessary for this purpose because the universities and colleges are meeting the need, proposals for new academies continue to appear. While these institutions are now placing a greater emphasis than they formerly did on public service training, they are only partially meeting the need.

Prof. Frederick C. Mosher has thus summarized the nature of their failure:

"It is the paradoxical, unhappy, and potentially tragic fact that most of the great universities have not addressed themselves to the responsibility of continuing education of government executives in any fashion comparable to their undertakings on behalf of business administrators, lawyers, doctors, engineers, architects and a host of others in private professions.

"They have demonstrated less concern for the broad and vitally important education of top public administrators than for professionals in a variety of governmental specialities, public health, social welfare, city planning, criminology and others."

Further evidence that they are not meeting the whole need is shown in the constantly increasing involvement of the Federal Government in a wide variety of educational and training programs for Federal personnel. These programs for employees' improvement and development extend back over a period of many years.

They do not offer degree credits or grant degrees. Oldest and best known of the several "graduate schools" now operated by Federal departments and agencies is the Graduate School of the Department of Agriculture, established by Act of Congress in 1862. A whole flock of service academies came next: Navy Staff College; Army War College, 1901; The Industrial College of the Armed Forces, 1924; and The National War College, 1946. The most recent programs are found in the Bureau of Standards, Department of Commerce, and in the U.S. Civil Service Commission whose executive seminar centers in Washington and at King's Point, Long Island, are now in the process of expansion as new centers are established in other parts of the country for the training and development of executive personnel.

The establishment of an academy for public service training might be regarded, not as a departure from past policy, but as an

extension of trends and policies already firmly established in the Federal Government. Such an academy could aid materially, in many ways, in establishing and maintaining a climate of excellence in the public service in this country—not just in the Federal service alone, but in the State and local services as well. These, too, are a proper concern of the Central Government. It could help in improving the image of the public service throughout the country, in establishing incentives, in providing motivation for those who are already in the service, and in developing the civilian service the kind of esprit de corps that has long existed in the several branches of the military service. It could assist in the task of recognizing and fully utilizing the available executive and scientific talent, both for those entering the service and for those already a part of it.

Participation in local affairs

Fundamentally, the question of Federal employees participation in local affairs is problem of federalism. Federal employees are citizens of the Nation and of the States in which they reside. They also are residents in a community. As such, they have certain duties and responsibilities, and they also have certain rights. Under present law, all Federal employees are barred from virtually all forms of political participation at all three levels of Government.

The question is whether this is right, whether it is necessary, whether it is desirable—or even defensible. There are strong reasons for suggesting that this is an appropriate time for a reexamination and a reassessment of the whole problem.

The American of the mid-20th century has in the folklore inherited from earlier generations some strange and quite inaccurate ideas about politics and politicians. In the eyes of the civil service reformers of the late 19th century and the muckrakers early in the 20th, a political party was an instrument of the evil one. Politics was a vile and seamy business with which no honest and upright man would want to have any part.

Politicans were dubious and quite untrustworthy characters to be shunned as one would shun the plague. Whatever reasons our forefathers may have had for their views, informed people find little justification for such views today. Even so, they still influence if they do not actually control important legislative and administrative policies.

The Hatch Act was a good example of such legislation. Its purpose was to prevent, through the imposition of severe restrictions, political activity on the part of Government employees. Abuses had, to be sure, existed in the past, and the purpose of eliminating them was commendable, but there was then and there is now good reason for questioning some of the provisions of this legislation.

Even if, for purposes of argument, one grants a need for imposing restrictions on the participation of Federal employees in National and State electoral campaigns, there remains the question of their need as applied to the participation of such employees in local affairs.

There has been a good deal of discussion of this question of "de-Hatching" of Federal employees in recent years—enough so that the U.S. Civil Service Commission has felt it necessary (or at least desirable) to soften the impact of this legislation on Federal employees in the suburban Maryland and Virginia counties around Washington.

In so doing, a number of considerations are involved. Of these, the first is the fact that the legislation was predicated upon an inaccurate if not actually erroneous conception of the political process. Present-day political organizations are quite different from those of a generation or two ago; they do not dominate local affairs now as they often did then. But, in addition, this legislation has unfortunate effects on both the Federal employee and on the community in which he lives.

Local communities in the suburban counties complain, even now, that many of their best educated and most able citizens are barred from participation in local affairs at a time when citizen participation is everywhere being emphasized as of the utmost importance. Such a situation is healthy neither for the government nor for the citizen.

Many of the Federal employees who live in these communities—most of them interested in government and public affairs, or they would not be in the Federal service—deeply resent being cast in the limited role of second-class citizens, especially when they know that, as professional people, they possess knowledge and skills that could contribute much to the solution of local problems.

Interchange of personnel

Often one agency or unit of government has need for a high-grade professional man in a given field only occasionally or on a part-time basis. In such a situation, it should be possible for the governmental unit in question to borrow a specialist for a limited time—and this without prejudice to the specialist, his status, pay, retirement or other benefits relating to his regular employment. The agency by which he was employed would be deprived of his services only temporarily, the agency which borrowed him would be greatly benefited, and the specialist himself would gain additional experience in his field in another work situation.

Or, it sometimes appears to be advantageous to an operating department or agency to loan or shift an individual employee from one position or assignment to another, either to broaden the experience of the individual and prepare him for larger responsibilities, or to strengthen the administrative personnel in a particular State or city, so that the Federal department or agency may more adequately discharge the duties imposed by law upon it.

This sounds reasonable enough, and one might assume that the making of such arrangements would be easy to accomplish. On the contrary, it is not; in fact, under present conditions, it may be very difficult, or even impossible.

The development of loan or exchange arrangements is virtually certain to require prolonged negotiation between Federal and State (or local) officials, and it may require statutory authorization as well.

Interchange procedures might first be worked out on a loan basis, later to be extended or changed to transfer on a permanent basis—without prejudice to the employment or other rights of the transferee. The advantages of a free interchange of personnel among and between governments, and between governments and the various other segments of the American society are obvious and so great as far to outweigh the relatively minor inconveniences to be surmounted in the effort to accomplish them.

But, in practice, there are a number of obstacles to be overcome. Of these, one is the complete and utter lack of uniformity in the requirements for government positions and the fact that, in many jurisdictions, there is still no merit system beyond that required for personnel assisting in the administration of federally aided health and welfare programs.

Low salary schedules in many jurisdictions—often the very ones that would profit most from such a program—are another factor. The multiplicity of public employee retirement systems and the lack of even a semblance of uniformity among them, bordering on chaos even within a single State, is a major (and in the view of the Advisory Commission, the principle) obstacle to interchange, to which may be added the probable opposition of the poorer, low-salary States which might expect to lose such outstanding employees as they might happen to have.

A small beginning was made under a provision contained in the amended Public Health Service Act of 1944, under which the Secretary of Health, Education, and Welfare has authority to place officers in LWOP status for periods up to 2 years, and the Surgeon General under contract on a reimbursible basis for an extendable period of 1 year. Placements may be made upon the request of any State or local health or mental health authority, the detail being authorized for the purpose of assisting such State or political subdivision thereof in work relating to the functions of the Public Health Service.

The status and personal rights of the detailed officers are specifically protected by the statute: "The services of personnel while detailed pursuant to this section shall be considered as having been performed in the Service (USPHS) for purposes of computation of basic pay, promotion, retirement, compensation for injury or death" and other benefits as provided by law. Although no very extensive use has been made of this authorization, the mere fact that it exists establishes a precedent for the development of similar arrangements applicable to specialists in other fields.

A further step in the direction of such cooperation was taken in 1956 when the Congress conferred a similarly limited authority upon the Department of Agriculture, providing for the exchange of employees of the Department and employees of States, their political subdivisions, or educational institutions, for the purpose of aiding the dissemination of information on agricultural subjects.

It also provided a means for more effective working relationships in agricultural administration. In 1959, the Department proposed to the Committee of State Officials on Suggested State Legislation that this congressional legislation be implemented and supported by appropriate State legislation.

The committee supported the Department proposal in theory, but thought that authorization for a more comprehensive employee interchange program would better serve the needs of the States. The Civil Service Commission similarly suggested that the scope of the act be broadened. The existing draft of the Council of State governments bill, the State Employee Interchange Act, is designed to permit departments and agencies of State and local governments to participate in employee interchange programs with the Federal Government, as well as with the departments or agencies of other State and local governments within the State or in other States.

If any appreciable number of State legislatures should react favorably to this proposal and adapt it, the obvious next step would be a congressional act extending the HEW–USDA type of authorization to all executive departments and agencies of the Federal Government, and facilitating interchanges along the lines provided for in the proposed State statute.

Unfortunately, once again, the States seem to be little interested. According to a 1962 survey conducted by the Public Personnel Association, only one State (Hawaii) has specific legislative authority for State employees to participate in interchange programs on a detailing basis.

Ten States (Alabama, Arizona, Arkansas, California, Iowa, Louisiana, Maine, Michigan, New York, Washington, and the Commonwealth of Puerto Rico) have laws, rules, or regulations broad enough to permit participation in interchange programs on a detailing basis. Three States (California,

Wisconsin, Hawaii) permit interchange under certain conditions on a leave-of-absence basis. Thirty-one States, Guam, Puerto Rico, and the Virgin Islands have laws, rules, or regulations broad enough to permit participation through the leave-of-absence method.

Current reports indicate that only two States (Hawaii and New Hampshire) have acted on the proposals now before the States.

There are a few instances of accomplishment and numerous expressions of interest in this type of cooperation. The Securities and Exchange Commission, for instance, has authorized its regional offices to make its broker-dealer inspection manual available to State administrators for their information, and to allow State inspectors to accompany Federal inspectors in making broker-dealer examinations, as a training device for inspectors.

The National Association of Counties, early this year, endorsed the idea of an executive lend-lease program for the interchange of competent personnel between local, State, and Federal Government, and urged consideration of the model bill permitting a State to exchange employees with the Federal Government and with cities and counties, as universities have long done through exchange professorship arrangements.

The American Society for Public Administration has adopted a policy statement urging increased mobility of personnel between and among the various levels of government and the educational institutions, and is now holding a series of regional conferences to promote the idea.

In mid-1965, it was reported that the National Civil Service League was urging the Cabinet committee studying Federal retirement systems to recommend changes that would enable Federal employees to work for State and local governments and on occasions, in private industry, without loss of retirement benefits. All of these developments are indeed, encouraging.

There are many more or less personal factors that serve to make transfers complicated. Some of these problems are difficult to solve, the more so because they were not anticipated, arose unexpectedly, or did not seem to be anyone's fault. Interview expenses and costs of moving (which might be considerable) would fall in this category.

While health and hospitalization insurance are a regular part of the personnel package for regular employees in the Federal service, these benefits are apparently not available for temporary appointments of 1 year or less.

Allowances for official travel are much more closely circumscribed in Government than in a large State university, so that one may expect to be routinely "out of pocket" while traveling on Government business. The person oriented to the relative freedom of university procedures finds it difficult to accustom himself to the requirements of the leave system, and to being chained to a desk from 9 a.m. to 5 p.m.

Such common academic "trappings" as books, journals, attendance at conferences and professional meetings seems not to have any widespread acceptance in Government service.

Many Federal appointments are, moreover, likely to be made in areas where housing is scarce, and living costs are high. The provisions requiring "clearance" are likely to come as a distasteful shock to the academic person imbued with the spirit of academic freedom, and this distaste is likely to remain with him for a long, long time.

Mobility, within the public service is particularly essential in a period of severe manpower shortages because it can, even by short-term assignments, assist materially in achieving full utilization of the skills of existing manpower. There is urgent need for a real career system for professionals in the Federal service. It is important to note, however, that mobility as here discussed would strengthen rather than weaken such a career service. Under normal procedure, the individual employee would advance within its own agency.

But, it should be possible for him to move elsewhere when this would be advantageous to him or would contribute to "the good of the service," conceived broadly to include the entire American public service—Federal, State, and local.

Uniform pay scales

One of the things we should strive for is uniform pay rates for all government workers, in each important category. Generally, State and local salary schedules (though better now than they were a few years ago) are lower than those of both the Federal Government and private industry. The lack of uniformity produces serious inequities among government workers.

Why should three professional men, engaged in the performance of similar duties, receive widely varying rates of pay because one works for the city, another for the State, and the third for the Federal Government?

Just as uniformity would benefit large numbers of Government workers, it would have significant influence in stabilizing Government employment and in preventing useless and costly shifts of personnel from one governmental unit or agency to another, especially in periods of manpower shortages.

Such a program would require the establishment of a national standard—an idea to which State and local officials express a wide variety of reactions. In adopting the comparability principle in the Federal Salary Reform Acts of 1962 and 1964, the Congress took a long step toward the establishment of such a standard.

Although the pay acts are applicable to Federal employees only, if the principle is sound—as it is now generally believed to be—there is no reason why it could not be extended to State and local employees by appropriate State and local legislation. This principle is particularly important with professional employees, for whose services competition between Government and private employers is greatest. Advocacy of its application in State and local government is not hearsay, for years ago, the State of Minnesota and among others, the cities of Milwaukee and St. Paul, experimented with an adjustable compensation plan geared to changes in economic conditions.

Having formally and officially adopted the principle of comparability at the Federal level, it becomes a matter of first importance to find ways of implementing it on a continuing basis.

Toward this end, the administration has proposed establishment of a board empowered to make recommendations for adjustments periodically. This idea was given wide publicity last year in the so-called Udall amendment, which sought to relate congressional pay levels to those of the executive and judicial branches of government. This proposal was adopted in the House, but rejected by the Senate on the ground that it represents an Executive invasion of the legislative prerogative. It should be viewed rather as a means of insuring that the expressed intent of the Congress (i.e., comparability) be made effective in an orderly and systematic manner.

Changes proposed by the Board would be subject to congressional veto like, for example, that to which reorganization plans proposed by the President under the Reorganization Act of 1949 are subjected.

Moveable retirement benefits

In this relatively brief presentation, it is possible to do no more than mention some other problems of interest to all members of the government workforce, regardless of the governmental unit by which they are employed or the kind of work they perform. Some mention has been made of retirement benefits and of the manner in which a greatly excessive number of uncoordinated retirement systems serve as a barrier to the interchange of public employees.

The relation of State and local employees to the Social Security System serves as a good illustration of the manner in which a Federal program can be utilized to strengthen State and local government services. When the Social Security Act was passed, Government employees were excluded on the ground that, with retirement systems of their own, they did not need social security. But many of these retirement systems were so weak, and their benefits so inadequate, that the Congress in the Social Security Act Amendments of 1950 made such employees eligible, if and when their respective State legislatures provided for their inclusion.

There were, of course, difficult problems involved in reconciling social security coverage with the already existing retirement systems for public employees, but when workable solutions to these problems were agreed upon, it was possible to utilize social security benefits to supplement those provided under State and/or local pension plans.

When one proposes a system in which all public employees can move from a position in one governmental unit to a position in another, and take their seniority rights and retirement benefits with them unimpaired, he is not asking for the adoption of some fantastic and impractical scheme. The Senate Subcommittee on IGR finds the general absence of such provisions a hindrance in personnel recruitment.

Such legislation would create difficult problems, to be sure, but they are not insoluble. The basic problems involved may arise in any federal system, and are not unique to our own. In Canada, just last year, an even more difficult project was undertaken in the Province of Ontario, whose law requires all employers (not merely governmental units) to permit employees who are 45 years of age or older to carry their company pensions with them from job to job throughout their working lifetime—if they work at least 10 years on each job. Canada's other Provinces promptly undertook the preparation of similar laws.

The problem is becoming acute in this country where the mobility of workers has greatly increased in recent years. Since most workers who change companies forfeit their pension rights—a luxury few can afford—a very high percentage find themselves "locked in their jobs" and for all practical purposes, barred from accepting employment elsewhere. Secretary of Labor Willard Wirtz, recognizing the seriousness of this problem, has said that "We've got to develop a concept of a moving job instead of one that assumes the person will be working all his life for the same employer."

Here is an opportunity for government to take the lead in developing a pension transfer plan for the public employees of this country—a program which might contribute in a significant way to the success of the drive for the employment of the older worker.

PROPOSED LEGISLATION

What can the Congress do to improve interlevel and interjurisdictional relationships in the personnel field? Actually, it would seem, it can do a good deal, and this without making any drastic or controversial policy changes that might alarm the timid. There have been in these comments a number of ideas and proposals that would require legislative implementation.

The widely publicized shortages of some types of qualified professional personnel at the Federal level, and of many types at the State and local levels, would seem to present a strong argument for taking appropriate action with regard to all of them. We can

ill afford to squander professional skills which are, at best, in short supply.

In addition to the items mentioned here—cooperation in recruiting, and in training, interchange of personnel, the development of uniform pay scales, transferability of pension rights, etc., there are a number of other Federal programs that could, with a little effort, be geared in to serve the needs of State and local as well as Federal employees, such as—for instance—the credit union program and savings and loan program.

Each unit of government would still retain control over its own employees—as it should, in a Federal system—but employees of smaller units would not be deprived of benefits which could readily be made available to them.

Although the Federal administrator has a basic stake in upgrading the quality and effectiveness of State and local personnel operations in counterpart agencies, the Federal Government has shown a remarkable restraint in its dealings with State and local governments on personnel matters. Little Federal pressure has been exerted, even in those States which fail to provide a healthy atmosphere of public employment.

The most important contribution that the Congress could make, however, would be the enactment of a broad measure to improve the quality of the State and local personnel operation, and to authorize and encourage intergovernmental cooperation in public personnel administration.

Basic in such a measure would be a blanket requirement for a merit system applicable to all State and local employees charged with administrative responsibilities in connection with Federal grant-in-aid programs, as has been required by law in the public health and welfare programs since 1939. This would extend merit system coverage to the highway program and to the host of new grant-in-aid programs created by recent congressional action.

If anyone feels that such a requirement is unnecessary or undesirable, he need do no more than take a close look at the two largest and most costly programs. Here, indeed, is a study in contracts. The public health and welfare programs which function under merit system provisions, have been administered with a high degree of competence and efficiency. These have had no scandals—certainly no major ones.

The interstate highway program, without merit system coverage, has not fared anything like as well. In fact, an examination of the hearings held by the Blatnik Subcommittee of the House Committee on Public Works reveals the details of an appalling number of indiscretions and irregularities on the part of State highway officers and employees, not in just a few States, but in many.

The conclusion is inescapable that the interstate highway program has suffered severely from deficiencies in the character and professional competence of many persons associated with it.

As has been shown, such legislation as exists, designed to authorize and encourage intergovernmental cooperation in the public personnel field, has been enacted on a piecemeal basis, with each provision having a very limited application. What is needed at this point is to encourage and authorize by the declaration of an affirmative policy, the development of cooperative relationships in the whole public personnel field between the Federal Government, on the one hand, and the State and local governments on the other.

The better impulses of officials to achieve greater efficiency and effectiveness in administration, through cooperative relationships with State and local authorities should not be frustrated by the absence of appropriate permissive legislation.

The drafting of the proposed legislation could be started by gathering together the provisions of existing law dealing with this problem. The next step would be to arrange these provisions in some logical manner as a step toward development of a broad statute of general application. Such an act might be called: "An act to authorize and encourage cooperative relations in public personnel administration."

The resulting draft should be examined from the point of view of adequacy of coverage seeking to discover omissions and inadequacies needing to be corrected, with a view to making generally applicable throughout government the kind of cooperative authorizations heretofore adopted to cover a problem involving interrelationships with respect to a single department or agency. Presumably, the U.S. Civil Service Commission would be the proper enforcing agency for such legislation.

It should not be necessary to approach the Congress for special legislation every time a Federal department or agency wants to improve its performance through more effective personnel relations with the State and local units with which its program responsibilities are shared. Where it is possible, federally created barriers should be eliminated; where this is not possible, procedures for circumventing them should be developed, if some of the currently pressing problems in the personnel field are to be solved.

PRESIDENT JOHNSON CALLS FOR TRUTH IN LENDING IN ECONOMIC REPORT

Mr. DOUGLAS. Mr. President, consumers in this Nation can take strong encouragement from President Johnson's Economic Report to the Congress. The President said:

> The consumer must have access to clear, unambiguous information about products and services for sale.

This information, the President wrote, will enable the consumer "to reward with his patronage the most efficient producers and distributors, who offer the best value or the lowest price."

The need and right of the consumer to have this "clear, unambiguous information" about what he buys applies no less to the purchase of credit than to the purchase of goods.

The President pointed out:

> Confusing practices in disclosing credit rates and the cost of financing have made it difficult for consumers to shop for the best buy in credit.

Repeated hearings since 1960 on my truth-in-lending bill, before the Subcommittee on Production and Stabilization of the Committee on Banking and Currency, have shown this time and again.

In his consumer message to the Congress in 1964, President Johnson firmly stated the policy of his administration in the protection of consumers. He told the Congress:

> The antiquated legal doctrine, let the buyer beware, should be superseded by the doctrine, let the seller make full disclosure.

Ethical businessmen who extend credit, as well as consumers, will welcome the President's strong reiteration last week of his wish to protect them through uniform disclosure legislation rather than regulation of credit rates. They should be reassured that the policy of the administration is to encourage competition in the marketplace, the basic principle of our economic system, and so to encourage business while helping consumers to make intelligent choices.

Mr. President, I ask unanimous consent that the full text of the President's statement in the Economic Report on "Consumer Protection" be printed in the RECORD.

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

CONSUMER PROTECTION

I have already asked for the cooperation of business and labor in preserving the stability of costs and prices. But the consumer also has a responsibility for holding the price line.

To fulfill his responsibility, the consumer must have access to clear, unambiguous information about products and services available for sale. This will enable him to reward with his patronage the most efficient producers and distributors, who offer the best value or the lowest price.

We should wait no longer to eliminate misleading and deceptive packaging and labeling practices which cause consumer confusion. The fair packaging and labeling bill should be enacted.

While the growth of consumer credit has contributed to our rising standard of living, confusing practices in disclosing credit rates and the cost of financing have made it difficult for consumers to shop for the best buy in credit.

Truth-in-lending legislation would provide consumers the necessary information, by requiring a clear statement of the cost of credit and the annual rate of interest.

Our legislation protecting the public from harmful drugs and cosmetics should be strengthened. I shall propose legislation for this purpose.

BIG BROTHER

Mr. LONG of Missouri. Mr. President, the Subcommittee on Administrative Practice and Procedure has been engaged in investigating the investigative techniques of the Internal Revenue Service.

We have received considerable criticism from some of the higher officials of this Service—possibly because of the thoroughness and vigor of our study.

If there should be any doubt where the rank-and-file IRS employee stands on this matter, please take a look at the following editorial from the recent Bulletin of the 12th District of NAIRE—National Association of Internal Revenue Employees—which I ask unanimous consent to have printed in the RECORD.

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

PUBLIC OFFICE IS A PUBLIC TRUST

"Eavesdropping, or such as to listen under walls or windows, or the eaves of a house, to harken after discourse, and thereupon to frame slanderous and mischievous tales, are a common nuisance and are punishable at the court-leet; or are indictable at the sessions, and punishable by finding sureties for their good behavior." Blackstone (4 Commentaries ch. 13 sec. 5(6)).

The article by Senator LONG which was printed in the November 20, 1965, issue of the Saturday Evening Post, is reprinted here for several reasons.

In the first place, the article concerns itself primarily with the Internal Revenue Service. Accordingly, as employees of IRS, most of us

are vitally interested in developments which concern the Service. Also, most of us are already aware of the Long committee and its investigation, but the article was probably the first widespread publication of Senator LONG's thinking on his investigation.

It also occurred to us that the employees would be interested in some information on how wiretapping and eavesdropping have been affected by the U.S. Constitution, Federal Statutes and U.S. Supreme Court decisions. With such background, it is hoped that it will be easier for all of us to make a more reasoned judgment concerning: (1) whether such an investigation is necessary, (2) whether some of the facts disclosed in the article concerning IRS are not the type of activities that have been part and parcel of investigative activities of enforcement agencies in all areas of government—Federal, State, and local, (3) whether or not the activities are of a type which we, as citizens, feel need legislative control.

It was also felt that the reason for NAIRE's concern about the activities thus far disclosed by the investigation should be stated.

The problem of tapping began almost as soon as the telephone came into general use. In fact, the first time the U.S. Supreme Court faced the problem was in 1928 in the case of *Olmstead* v. *United States*. Ironically, this case involved the enforcement of the controversial prohibition law. Ironic, we say, because much of the impetus for the use of listening devices today involves the same type of organized crime that had its beginning in the days of prohibition.

In the Olmstead case, the defendant had been convicted of a conspiracy to violate the National Prohibition Act. The evidence against him consisted of the testimony of Federal agents who had monitored the defendant's phone calls by means of several taps. Upon conviction, which was sustained on appeal, the Supreme Court agreed to decide the question of whether the introduction of the evidence violated the defendant's rights under the fourth and fifth amendments. In deciding that there was no violation, the opinion relies on the fact that there was no trespass, that the defendant intended his voice to leave the confines of his room and that neither the defendant's person nor tangible property was seized. The Court held that the rule excluding evidence was limited to cases in which the evidence was obtained in violation of constitutional provisions. Further, it was said that while Congress could make the evidence inadmissible, it must do so by "direct legislation."

Bills to this effect were introduced in 1929 and 1932 but failed to become law. In 1933, wiretapping in the enforcement of the National Prohibition Act was forbidden. In 1934, Congress enacted the Federal Communications Act.

Section 605 provides in part that "no person not being authorized by the sender shall intercept any communication and divulge or publish the * * * contents * * * of such intercepted communication to any person." In addition, section 501 imposes a fine or imprisonment or both for willful and knowing violation of the act.

The first case arising under section 605, dealt with the words "no person." In *Nardone* v. *United States* (1937), it was argued that Federal agents could intercept calls and testify as to the contents of the calls, because the Government was not within the terms of the act. This argument was rejected by the Supreme Court of the United States.

An interesting situation presented itself in the Nardone case. That is the fact that had such testimony been permitted, it would have resulted in the anomalous situation of a Federal crime being committed in a Federal courtroom. This would result because there would have been both the interception and the divulgence required by section 605.

The second Nardone case (1939) dealt with the admissibility of evidence against the defendants which was discovered through leads obtained by wiretapping. Such evidence would not result in a divulgence in the courtroom of any intercepted communication. The Supreme Court held that evidence obtained in this manner by Federal officers was also inadmissible. In this situation an analogy to search and seizure was used. Apparently this was intended as a means of limiting official transgression in the future.

Congressional response to the Nardone case followed rapidly. In 1938, a bill to allow tapping by Government agents passed both Houses of Congress but failed to become law because of differences between the versions approved by each House. In 1941, two bills were introduced. The Hobbs bill allowed tapping for any Federal felony upon authorization by the administrative head of the executive department.

The Walters bill allowed tapping where the felonies related to the national defense but only upon the permit of a Federal district judge or U.S. Commissioner. The differences in these bills point up at least two of the basic questions which have continued to come up in the proposed statutes and hearings since then.

However, any limitation upon tapping by Federal officers was seriously undermined by later developments. J. Edgar Hoover has written that in May 1940, President Roosevelt "authorized the Attorney General to approve wiretapping when necessary involving the defense of the Nation." (Hoover, "Rejoinder," 58 Yale L.J. 422, 423 (1949)).

Attorney General Jackson, writing 10 days later to the Judiciary Committee, did not mention the purported authorization, but rather reiterated his view that lawful wiretapping required legislative amendment. However, in a letter to the same committee in March 1941, Jackson indicated that tapping and use of the information did not violate the statute in the absence of a divulgence.

In October 1941, Attorney General Biddle extended the right to tap of the FBI by stating that divulgences by an agent to his superior did not come within section 605. This made it possible for the Government to tap subject only to the restrictions that the contents of the communication could not be used in evidence nor could derivative evidence be used, assuming it became possible to ascertain its nature.

Subsequently Attorney Generals have acquiesced in this interpretation, and it is now claimed that congressional acquiescence therein has made it an accepted interpretation subject to change solely by legislative enactment. (Statement of Warren Olney, Assistant Attorney General, hearings on H.R. 762, et al., before Subcommittee No. 5 of the House Committee on the Judiciary, 84th Cong., 1st sess. at pp. 33–35 (1955).)

With regard to eavesdropping, we know of no general Federal statutes. However, the U.S. Supreme Court has decided cases dealing with this problem.

The case of *Goldman* v. *United States* (1942) involved the case where Federal agents had entered the office of the defendant to install a dictaphone. In addition, the agents had installed a detectaphone in the wall of the office. The use of the detectaphone did not require a physical trespass.

The dictaphone did not work but the detectaphone did. The agents overheard and made notes of defendant's conversation by means of the latter instrument. Some of the statements were made by the defendant during telephone conversations. The testimony was admitted at trial, and the defendant was convicted. The conviction was affirmed. It was held that overhearing these statements did not constitute an interception within the meaning of section 605 and that there was no use of information obtained by trespass.

Ten years later, the case of *OnLee* v. *United States* (1952), was before the Court. The case involved an informer, apparently of extremely low credibility who entered the defendant's laundry and engaged him in a conversation. What OnLee did not know was that the informer had a small radio transmitter which broadcast the discussion to a Treasury agent some distance away. The agent was allowed to testify as to the contents of the purported conversation. The admissibility of the testimony was affirmed by the Supreme Court.

Thus it appears that unless there is a trespass, there is no unreasonable search and seizure which would violate due process. Indeed, not every trespass upon the defendant's property will invalidate the testimony of the observer. If the trespass did not constitute a trespass upon the curtilage, even though the facts observed took place within the curtilage, the testimony would be allowed.

Consequently, it is apparently permissible to look into windows, through transoms, or even peepholes in the door. Likewise, it is apparently permissible to use a searchlight, a flashlight, binoculars, or other listening devices. As long as no trespass occurs, the evidence will be admissible.

This discussion has been limited to the Federal statutes and cases. It can be said, without fear of contradiction, that the statutes and court cases on tapping and eavesdropping in the various States are in conflict with each other and with Federal statutes and cases.

From the above very limited discussion, it can be seen that the situation concerning tapping and eavesdropping has been building up for almost 40 years. The Supreme Court has in this time limited itself to ruling on violation of constitutional rights in the introduction of evidence so obtained. The Congress has conducted many hearings but, except for the Communications Act, has done very little to resolve the situation.

Although section 501 of the Communications Act provides for penalties, prosecutions for the violations have been few. Testimony before a congressional committee over 21 years after enactment of the statute disclosed only three prosecutions. (Hearings on H.R. 762 before Subcommittee No. 5 of the House Committee on the Judiciary, 84th Cong., 1st sess. (1955).) Since this testimony, there have been a number of prosecutions.

Thus many Federal agencies find themselves in a situation of not knowing what the people desire. Should they use these methods to enforce the law or not? Perhaps, if the Long committee perseveres in its investigation of the use of such devices by all enforcement agencies, after almost 40 years, the problem will be identified and resolved.

But let us turn now to the reason for the concern of the NAIRE organization.

In the first place, the NAIRE organization in convention at Washington, D.C., instructed its president to commend Senator LONG and his committee "for their interest and diligent efforts to protect the rights of all citizens, including the employees of the Internal Revenue Service." (Resolution No. 48.) Some members resented this because, I presume, they viewed Senator LONG's investigation as an attack upon IRS.

I believe that the Senator's purpose is clearly stated in the fourth to last paragraph of his article. It may well be that IRS is the first to be investigated and accordingly is smarting somewhat because of that. However, if the investigation continues, it will probably be found that many enforcement agencies use the methods and devices alluded to in Senator LONG's article.

One point should be kept in mind with regard to this type of investigation. This is

one of the tools which our Congressional representatives use to determine the need for legislation. If such a need is found, legislation to fill the need will be enacted. This is the way our Government works. Thus, every American should favor legitimate congressional investigations. It means that Congress is doing the job for which we elected them.

But NAIRE's primary concern is with the protection of the employees. This concern is twofold.

First, with regard to employees who might be involved in the type of activity set forth in the article. Let us look for a moment at the situation in which they may find themselves. In the first place, for wiretapping, they may find themselves in violation of section 605 of the Federal Communications Act and subject to the penalties under section 501. However, considering the Attorney General's opinions, set out above, Federal prosecution is probably unlikely. However, there are many and varied State statutes on wiretapping.

Although there are no Federal "Peeping Tom" statutes, a number of States have such statutes. In addition, prosecution for this type of behavior may be possible under local ordinance. The statutes are generally in terms sufficiently broad enough to include Federal agents with the exception of Oregon which expressly exempts "an officer performing a lawful duty."

The purpose of the statute may be to protect the privacy of any inhabitant of the building (California, Georgia, Indiana, Louisiana, New Jersey, Oregon, Rhode Island, South Carolina, Tennessee, and Virginia) or they may be limited to the the invasions of the privacy of a woman (Alabama and North Carolina).

Many of the statutes require that the actor peep into a dwelling (Alabama, California, Indiana, New Jersey, Oregon, and Virginia). But one expressly includes a "business house or other building" (Tennessee) and some use the term "premises" (Georgia, Louisiana, and South Carolina). Some require a trespass (California, New Jersey, Oregon, and Virginia). Others are ambiguous (Alabama, Georgia, Indiana, North Carolina, Rhode Island, South Carolina, and Tennessee) and one expressly does not require a trespass (Louisiana).

On the other hand, there is the area of civil liability with regard at least to a tapper. Since such damages may be difficult to prove, the statutes provide a minimum which is usually $1,000. Illinois does not establish a minimum but allows punitive damages and extends the liability to people other than the tapper.

Then there is the little problem of paying an attorney to defend you. This is considered a problem because, if the statements attributed to high IRS officials as reported in the article are true, then it follows that the employee's acts are outside the "scope of employment." Thus, the Justice Department probably would be without authority to enter the case to defend the employee.

Then too, there is the question of who would pay the fines imposed or the damages awarded. They would probably be collected from the employee.

The second area of NAIRE's concern is with the possible use of such devices and methods in the investigation of the employees themselves. It is not felt that any explanation is necessary with regard to this statement.

These then are some of the reasons for NAIRE's Resolution 48 commending Senator LONG, and Resolution 40 also adopted at the Washington Convention which stated:

"Whereas a congressional committee and the press have made disclosures that our service has made widespread use of electronic listening devices, and

Whereas these disclosures have brought ridicule and doubt as to the propriety of its practice in the service: Be it

Resolved, That Commissioner Cohen be applauded for his remarks at this convention concerning his opinions on the use of electronic listening devices. Employees of Internal Revenue request our Commissioner to abolish within his organization, these publicly scorned practices."

In conclusion, we would like to point out to all employees, especially those who would order (directly or indirectly) a subordinate to commit a breach, certain parts of the Code of Ethics for Government Service as stated in House Concurrent Resolution 175, passed on July 11, 1958. This code is made part of the Rules of Conduct for IRS Employees (Rev. 10–63) by reason of section 1941.3.

The code, in part, states as follows:

Any person in the Government service should—

Put loyalty to the highest moral principles and to country above loyalty to person, party, or Government department.

Uphold the Constitution, laws and legal regulations of the United States and of all governments therein, and never be a party to their evasion. * * *

Uphold these principles, ever conscious that public office is a public trust.

ADMINISTRATION'S DEFINITION OF BALANCE OF PAYMENTS GROSSLY EXAGGERATES DEFICIT

Mr. PROXMIRE. Mr. President, three eminent American economists were reported yesterday by the Economist of London as charging that both Europeans and Americans have a false view of our balance of payments. They further charge that this view is leading to unsound, unwise policies.

That the indicated view is held by most Members of Congress is also clear. What the Economists Emile Despress, of Stanford, Charles Kindleberger, of M.I.T., and Walter Salant, of Brookings, are talking about is the error in which this Government persists of describing our balance of payments in terms of an outdated, discredited concept.

Last year a panel of the most eminent experts the Budget Bureau could find on the issue unanimously recommended that the balance of payments be reported in more accurate terms—that is in terms of the official settlements.

The panel pointed out that the present or liquidity method of reporting the balance of payments includes as an adverse charge the holdings by foreign private persons and corporations of dollar claims. On the other hand, we do not claim as an offsetting item American holdings of claims against foreign currency.

The Statistics Subcommittee of the Joint Economic Committee under my chairmanship held exhaustive hearings on this issue last year. We made a unanimous recommendation that both the new and the old figure be used for the time being. It was my hope that the demerit of the old system and the greater accuracy of the new system would permit the new method to be gradually accepted.

Unfortunately the President in his state of the Union message and top administration officials in other statements persist in using only the old, inaccurate concept, and of course the press and public under these circumstances have accepted the exaggeration of our payments balance as the true figure.

Despress, Kindleberger, and Salant have made a highly useful contribution to our understanding of these vital concepts in their paper, and issued a most useful caution against putting too heavy an emphasis on our adverse balance in making economic policy.

I ask unanimous consent that the article in the New York Times reporting the paper in the London Economist be printed at this point in the RECORD.

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

[From the New York Times, Feb. 8, 1966]

ECONOMISTS VOICE PAYMENTS DISSENT—SAY FALSE VIEW OF BALANCE HARMS UNITED STATES AND OTHERS

(By Edwin L. Dale, Jr.)

WASHINGTON, February 7.—Three leading economists argued today that Europeans and Americans have a false view of the U.S. balance of payments—a view leading to American capital-movement controls that are harming both sides.

The United States, they said, no more has a deficit than does a domestic bank that expands both its loans and its deposits. In modern conditions, they said, the United States is in fact a bank for the world and both its loans and its deposits, in the form of foreign holdings of dollars, should expand every year. Even though such expansion of deposits now counts as a deficit according to the present way the balance of payments is defined.

[In Canada, major subsidiaries of U.S. corporations said they expected little impact from Washington's balance-of-payments guidelines.]

The three economists were Emile Despres, of Stanford University, Charles P. Kindleberger, of the Massachusetts Institute of Technology, and Walter S. Salant, of the Brookings Institution. Their paper, which they called "A Minority View," was published by the economists of London.

FINANCIAL INTERMEDIARY

The United States, they said, now acts in the world as a "financial intermediary," lending long and borrowing short. The resulting rise in foreign dollar holdings counts as a deficit as the balance of payments is now defined.

"Since the U.S. 'deficit' is the result of liquidity exchanges or financial intermediation," the paper went on, "it will persist as long as capital movement is free, European capital markets remain narrower and less competitive than the United States, liquidity preferences differ between the United States and Europe, and capital formation in Western Europe remains vigorous."

Halting the U.S. capital outflow, they said, would either prove ineffective "or else would cripple European growth." They sharply criticized current U.S. "voluntary" controls over the outflow.

Referring to efforts to reform the world monetary system, they said, "It would be the stuff of tragedy for the world's authorities laboriously to obtain agreement on a planned method of providing international reserve assets if that method, through analytical error, unwittingly destroyed an important source of liquid funds for European savers, loans for European borrowers, and a flexible instrument for the international provision of liquidity."

"The main requirement of international monetary reform," they continued, "is to preserve and improve the efficiency of the private capital market while building protection

against its performing in a destabilizing fashion.

"An annual growth in Europe's dollar holdings averaging, perhaps, $1.5 to $2 billion a year or perhaps more for a long time is normal expansion for a bank the size of the United States with a fast-growing world as its body of customers," the paper said.

The economists conceded that if Europeans failed to "recognize" the true "role of dollar holdings," they may continue to cash dollars for gold. In that event, they said, the United States "could restore a true reserve-currency system" by acting unilaterally.

Such action, they said, would involve relegating gold to "a subordinate position" in the world system, and could involve several possible courses of action, such as reducing the U.S. buying price for gold. The purpose would be to "deprive gold or its present unlimited convertibility into dollars."

If the United States took this course, they said, it would require "cool heads" and the possibility of losing most of the present U.S. gold stock at first.

A spokesman for Canadian Westinghouse, however, said yesterday: "There has been no effect whatsoever on our capital projects, financing, dividend remittances, idle balances, or buying."

POLICY IS NOTED

He said the company for several years has followed a policy of shifting its sources of materials and components from the United States to Canada, either by initiating manufacture of additional parts in its own plants or by encouraging production in other Canadian plants.

He said Westinghouse in the United States had never suggested this policy be changed.

Canadian General Electric officials say the company has been almost completely autonomous for many years and is actively developing components sources in Canada.

Charles Hay, president of British-American Oil, said: We cannot see how the U.S. guidelines can affect our financial or other relationships with our U.S. affiliate. Nearly all our purchases—about 90 percent—are made in Canada. The exceptions are some exotic chemicals and instruments not available in this country. We expect this pattern to continue."

W. O. Twaits, president of Imperial Oil, said his company handled its own financing, established its own dividend policy and did more than 90 percent of its buying in Canada. He said he did not expect this pattern to change.

He added that, while one might dislike Washington's restraint policy, this could not be discussed without reference to the drain on U.S. resources resulting from foreign aid, defense, and the gold loss.

Mr. Twaits said Canada has a vital stake in helping to maintain the strength of the U.S. dollar as an international currency.

A FRESH LOOK AT VIETNAM

Mr. HART. Mr. President, as chairman of the Senate Subcommittee on Refugees and Escapees, the junior Senator from Massachusetts [Mr. KENNEDY] is perhaps more qualified than many of us to suggest that we need to take a new look at Vietnam.

Based on conclusions reached after several months of hearings and personal observations made during a recent trip to Vietnam, it has become increasingly clear to Senator KENNEDY that we need to devote as much attention to improving the welfare of the Vietnamese people as we have thus far devoted to preserving their freedom.

And, as Senator KENNEDY points out in a February 8 Look magazine article, the Vietnamese citizen cannot appreciate freedom as long as he is without food, clothing, shelter, or means of livelihood.

Unfortunately, our humanitarian efforts have not kept pace with our military efforts. Presently, our AID program in Vietnam has insufficient resources to cope with the more than 1 million refugees who have fled invading Vietcong forces and sought refuge in the already overcrowded cities to the south. And the efforts of the local government to meet this problem have been inadequate.

We must always remember, as President Johnson pointed out in his speech last April, that we are waging a battle on two fronts in Vietnam—against the invading forces from the north and against poverty and deprivation.

Doubtless, there could be few who would oppose escalating our humanitarian efforts in Vietnam, nor could there be any objection to Senator KENNEDY'S recommendation, among others, that we should consider the formation of an international volunteer force—rivaling our military force:

The presence of men whose only concern is the health of the population, the education of the children, the bringing of simple technologies to remote lands, or the development of civilian administrators would be an important defense against future political instability and resultant aggression.

Mr. President, I commend the reading of this article by Senator KENNEDY to my colleagues and ask unanimous consent that, at this point in my remarks, "A Fresh Look at Vietnam" be inserted in the RECORD.

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

A FRESH LOOK AT VIETNAM

(By EDWARD M. KENNEDY, U.S. Senator from Massachusetts)

In a small village in Vietnam recently, I had the opportunity to speak with a village elder. This man had seen 30 years of continuous conflict, two sons had been lost in long-past military engagements, and his crude farm implements lay useless behind his home. He was an exhausted man in an exhausted country. Without my asking, he related the needs of his village—but he was really speaking for Vietnam. "We just want to be free from the terror and weapons of soldiers," he said. "We want our children to read, we don't want them to be sick all their lives, and we want to grow our own food on our own land."

This simple statement of human needs, so pathetically stated, was a crushing description of Vietnam. The months of Senate hearings that I had conducted on Vietnam's refugee problems, while dramatic in airing the hurt of people caught in war, never produced such forceful testimony as did this man in the setting where we talked.

We have been involved in two conflicts in Vietnam. One has been the battle against the terror brought in the name of revolution by the Vietcong guerrillas and the forces from the North. The efforts of the South Vietnamese and of our own American forces in this conflict have been the object of American debate and attention on an almost unprecedented scale. Our Government has taken a position in this endeavor that has been clear and firm. Regardless of individual views, most people both at home and abroad are well aware of this aspect of our policy in Vietnam.

The second conflict in Vietnam—the struggle for the hearts and minds of the Vietnamese people themselves—has not been waged with the same ferocity. There has been no one firm humanitarian policy understood throughout our Nation or the world. The struggle in Vietnam has not been one that has produced a concern for the most important element in the Vietnam situation—the welfare of the Vietnamese people themselves.

Positive steps have been proposed by our President, who has made clear his commitment to the welfare of the Vietnamese people. In a major address last April, the President discussed the two faces of the conflict in Vietnam. He outlined a program for the economic and social betterment of all southeast Asia. Later, and more specifically, he established Project Vietnam, a program to encourage American civilian physicians to volunteer their services to Vietnam. In September of last year, he dispatched an eminent specialist on rehabilitation of the handicapped, Dr. Howard A. Rusk, to undertake a special study in that country. The President's concern has stimulated progress in this area.

Yet greater efforts must be undertaken if we are to win the support of these people, for without them and their identification with the democratic governments of the world, the lives of many Americans will have been given to no avail. In the voice of the village elder who described a nation's needs was the clear implication that he was indifferent as to who would supply those needs. Years of fear and deprivation had smothered the concern he may have had for his own personal freedoms. He wanted physical security, education, health, and some form of social justice. While it can be said that we have actively sought to provide for his security, we have yet to fully meet his remaining requests. And it is significant that it is free societies that can best provide these things.

It is the war for the hopes and aspirations of the people that must be escalated in Vietnam. In this land of 16 million people:

There are only 800 Vietnamese doctors, and 500 of these are in the Armed Forces, leaving 300 for the entire civilian population.

Only 28 hospitals have surgical facilities, but 17 of these facilities are idle for lack of physicians.

Eighty percent of the children of Vietnam suffer from worms.

The vast majority of people are illiterate, and what school system did once exist in the countryside has been nearly destroyed by war. Schoolteachers have been prime targets of terrorists. In 1964 alone, more than 11,000 civilians—a high proportion of them teachers—were killed, abducted, or wounded by the Vietcong.

The Nation's production of food, once sufficient to make Vietnam a rice basket for Asia, is so depleted that rice must now be imported to feed the populace.

Local government has been decimated; not one of the 16,000 villages—or their officials—has escaped assassination or terror. Clearly, whatever social institutions once existed for the benefit of the Vietnamese are now crippled or totally ruined by war.

Before I went to Vietnam, the Senate Judiciary Special Subcommittee on Refugees and Escapees, which I chair, took testimony in over 4 months of hearings from some 40 witnesses on the problem of Vietnam refugees. Our subcommittee was concerned with what was being done for the homeless thousands: What provisions were being made for the estimated 100,000 orphans? Were we meeting the challenge of caring for the human fallout of war—the very people that the Vietcong claimed to champion? And in a larger sense, with Vietnam almost a land of refugees, was the United States beginning to engage in this more difficult battle for popular support?

The testimony given at these hearings indicated that our efforts in this area were not sufficient. The Saigon government, assisted

by our AID officials, had only the barest beginnings of a program to meet the needs of the refugees, although they had forecast the presence of 100,000 refugees by July of 1965. Even when the estimate was proven wrong, and the refugee count was greater than 600,000 people, there was still no change in planning, no adequate program set up to handle this massive influx of South Vietnamese, according to a report by the General Accounting Office. And this occurred despite prior knowledge that the escalation of military activity would, and did, lead to a vast increase in displaced civilians.

Moreover, it was discouraging to hear the testimony of representatives of our own Government imply again and again that in Vietnam the problem of refugees is just that—a problem and a burden.

By now, there are approximately 1 million such refugees in South Vietnam, or 6 percent of its population. It is as if the population of the six New England States were homeless in America. These are people whose villages have been overrun by the Vietcong, or who are fleeing to urban areas to escape the crossfire of the fighting or the effect of the bombs from our planes. For the most part, they are grouped around the major population centers on the coastline, but hundreds of smaller centers lie inland.

While in Vietnam, I saw for myself the indifference of the Saigon government to the plight of their own. Government officials assured me that the refugee situation was well in hand—yet I inspected one camp of over 600 people without a toilet. Construction was started on seven refugee camps in anticipation of my visit. Work stopped when my plans were temporarily altered. It began again when it was finally possible for me to go.

Many other aspects of my visit to these camps did not ring true. People applauded when our party entered a camp—thanks to minor officials moving through the refugee crowd as cheerleaders. Blankets were distributed in our presence, and repossessed when we left. The paint on buildings was still wet, and roads were freshly cleared and bulldozed. In essence, the behavior of these officials was more typical of people concealing a lack of effort than of men doing their best at a difficult task. To them, these refugees are a burden—but to me, they can be one of our strongest assets in Vietnam.

I recognize that historically it has always been difficult to attend to the concerns of the civilian population in the midst of war. And in Vietnam, the byproduct of escalation has been a refugee flow that would tax even the most resourceful officials. It is encouraging that last August, our AID officials established their own separate refugee program for Vietnam. And we know that the many voluntary agencies in the field have patiently continued their traditional work—despite hardships and personal dangers.

But now, perhaps, the opportunity presents itself for a greater devotion of our energies to the refugee problem. Now, more can be done to focus our attention on the Vietnamese people themselves.

I would suggest that, first, the U.S. Government must express an overall humanitarian policy in Vietnam that will rival, in resolve and resources, our military effort. This expression by our Government must be so forceful that there will be no danger of the Saigon government's misreading our desires.

The basis of this policy would recognize the potential of 1 million refugees—indeed, that of all the people of Vietnam—the potential to educate, train, and employ them in useful tasks. Experiences in other refugee situations in Asia illustrate what can be done to productively employ and train idle hands. Cottage industries established through private enterprise or voluntary agencies assist the handicapped or the young and old. Cooperative farms could be organized and built by the refugees themselves, as could resettlement villages, schools, or water conservation projects.

It logically follows that this policy direction would imply the need for more adequate facilities at refugee centers. These centers should be equipped for the activity rather than the storage of people.

Second, this strong expression of government policy should be directed to the rebirth of democratic political action among these people to enhance their future role in their village's or nation's life. And within these settlements, people who before had at least exercised free choice in the selection of village leaders could experience greater forms of representation.

Depending upon the time that we would expect people to remain in such settlements, representative government could be fostered. Each refugee camp could elect a council to serve the refugees' interests in the camp itself. And on a national level, refugee representatives could be present in Saigon to assure that the immediate needs of this growing population are met.

The meaning and experience of this kind of activity cannot be minimized in a nation where the idea of a central government responding to individual and local needs is novel.

Third, to assist in these endeavors, it would be wise to recruit men of other nations who have a unique background and experience in the problem of refugees. The men who mastered the problems of refugees following World War II, those who worked in the deserts of the Middle East and more recently in the camps of North Africa have much to offer us. They could be called for this humanitarian purpose, to advise on refugee problems and to assist as intermediaries with the central government and our own Armed Forces.

Our renewed humanitarian commitment to the people of Vietnam would also provide for the presence of a refugee official at the highest policymaking level in our Saigon Embassy. This man, responsible only to the Ambassador and the President, would be involved in all decisions, whether military or civilian. He would also be a coordinator of the Government and voluntary-agency efforts.

Such experts could enlighten both government and people. Their presence could be the promise of great international efforts, not only in Vietnam, but in all of southeast Asia. For the educational and other programs needed in refugee camps are but a small measure of the needs throughout Vietnam and the neighboring states.

Finally, and most importantly, I do not believe it visionary to consider an international force to assist the developing areas of southeast Asia. The presence of men whose only concern is the health of the population, the education of children, the bringing of simple technologies to remote lands or the development of civilian administrators would be an important defense against future political instability and resultant aggression.

This force of dedicated people would be truly international. It would not be a unilateral American effort. It would enroll the citizens of every country in the free world—but especially the citizens of Asia. These volunteers would bring an emphasis on peace and stability to a part of the world that has known too much war. Their accepted presence in any Asian nation would be symbolic of that nation's desire to improve the conditions under which its people live, regardless of ideology.

Such an international effort could be internationally fostered. There are voluntary agencies established on a worldwide basis to oversee this work and assist in the effort. I recently had the opportunity to address the leaders of these agencies in Geneva about Vietnam. I was taken by their warm response to my suggestions of greater involvement by them and their nations in the civilian effort in Vietnam.

But even more appropriately, a way might be found to involve the one organization of international harmony—the United Nations. For it is this body that can best command the resources, talent, and good will among free nations for a concerted development effort.

The work of this force, involving thousands of men and women, would be available to all. Teams of health specialists attacking entire areas suffering from recurrent outbreaks of disease, public health specialists constructing sanitation and sewage systems, teams of agricultural specialists adapting their knowledge to the differing farm conditions, advising and constructing the necessary equipment and systems needed for efficient food production—all these efforts are within the realm of possibility. Entire school systems could be established; adequate communications with centers of safety and government could be devised and strengthened in methods and procedures for administering to local needs.

Regardless of the conditions in Vietnam in the months ahead, such a proposal expressing our true concern for the people of southeast Asia should be aired before the nations of the world. For what cannot be fully accomplished in the military turmoil of Vietnam immediately can now be undertaken in the more secure nations in that part of the world.

We know that the developed nations in the past have displayed an amazing capability to undertake the infinitely complex tasks of war. Cannot the harnessing of equal energy for these peaceful purposes also be achieved?

To the extent that we leave Vietnam one day with more to mark our presence than destruction, we will have met our true commitment to the Vietnamese. And to the extent that we plan and act now to assure against a recurrence of a Vietnam elsewhere in southeast Asia, we will have met the challenge of the future in Asia.

TOWSON STATE COLLEGE—100 YEARS

Mr. TYDINGS. Mr. President, some months ago I had the pleasure of announcing to my colleagues the celebration of the centennial of Towson State College.

Authorized by the Maryland General Assembly in 1865, the school was formally opened in January 1866 as Maryland's first normal school. From a small, single-purpose institution, Towson State College has evolved into a multipurpose college which offers bachelor's degrees in both teacher education and in the arts and sciences.

It is with a great deal of pride, Mr. President, that I ask unanimous consent to place at this point in the RECORD two newspaper articles which tell the story of the evolution of this great educational institution.

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

[From the Baltimore News-American, Jan. 9, 1966]

FUTURE OF TOWSON STATE: FIVE TIMES LARGER BY 1975

(By J. William Joynes)

Mail still comes addressed to the Maryland Normal School.

Taxi drivers know where Towson Teachers College is but will tell you they never heard of Towson State.

If this indicates a lasting impression the school leaves, it also indicates the changes which have taken place at the college, which next Saturday will observe its 100th anniversary.

The largest and oldest of Maryland's seven State colleges, exceeded in enrollment only by the University of Maryland, Towson State's three changes in name also describe the changing needs of education and how the century-old college has adapted its program to meet these changing demands.

But if its name has changed more than once, one thing never has—that's a constant need for space to outdistance the growing student body.

Right now, for example, every facility is bursting with an excess of young people. The college center lounge is crowded daily, the library needs more space, the dining hall cannot handle the crowd, some gym classes must be held in the auditorium. Some 750 live on campus, but nearly 200 others were turned away because of lack of dormitory space.

Only in a new science building does there seem adequate room. A four-story, $2 million facility, it will be dedicated Saturday following a Founder's Day luncheon to which 1,000 guests have been invited to the Towson campus, 1 mile north of the Baltimore city line.

This is the highlight of the centennial year celebration, which began last September and will continue until June with speakers and other special events.

A century has brought many changes.

The year the school opened it had 11 students, 4 teachers. Today, there are just a few under 3,000 students, 171 professors.

By 1975, this is expected to exceed 14,000 full-time day students.

There are 1,500 in the night school, another 2,500 in the summer school—a total of 4,000.

Within the next 10 years, this will exceed 16,000.

Once outnumbered by women nearly 100 to 1, men now make up 40 percent of the students, within the next decade are expected to exceed the women.

Once predominantly a teacher education program, its curriculum divided into five departments—English, history, science, mathematics and pedagogy—the multipurpose liberal arts college now offers 17 majors, expects to add more.

Until 1946, it trained only elementary school teachers. Today, it offers teacher education for kindergarten, primary and secondary levels.

But it has taken 100 years to accomplish.

Maryland Normal School opened January 15, 1866. Following the Civil War, the Maryland General Assembly had passed an act to provide a uniform system of public schools and a normal school to train public school teachers.

The act itself was the culmination of 45 years of repeated demands for better trained teachers and better educational facilities for the State.

Housed in the 1-room Red Men's Hall, at 24 North Paca Street, there were 11 students—all but 1 from Baltimore City—and 4 faculty members, the principal and teachers of drawing, music, and calisthenics.

A model school, for practice teaching, was located in a rented house on Broadway, more than 2 miles away.

The 2-year college program consisted of an academic course that included a rapid review of such elementary subjects as spelling, reading, handwriting, arithmetic, geography, grammar, and history. In the second year, the professional course taught teaching as an art, methods of instruction, discipline and the school law of Maryland.

The first principal, Prof. Alexander Newell, felt it desirable to have admission requirements. But he was a practical man, too, and saw that to insist upon them too rigidly would defeat the purpose of the school.

He felt that teachers trained at the Normal School would eventually raise the standards in the schools, and looked forward to the day when the Normal School could discontinue its review courses.

In his first yearly report, he stated what was to become a familiar cry for the next 100 years—a need for more space and more facilities. One hundred students were expected by the end of the first year.

One need, still felt, was living accommodations. The first students were placed in boarding homes at from $3 to $5 a week, where they usually studied in a family sitting room. The closest Professor Newell ever came to getting a dormitory was when the model school was moved to Fayette Street, just around the corner from Red Men's Hall. Rooms, unsuitable for classes, accommodated nine students for $4 a week.

Outgrowing the Paca Street hall, the school moved in 1872 to a building at Charles and Franklin Streets, later known as the Athenaeum Club. With nine instructors, the enrollment was 162.

Two years later, the general assembly appropriated $100,000 for a normal school building, which was erected at Carrollton and Lafayette Avenues. Some 206 students moved in February 29, 1876, sooner than expected because the ceiling of the Charles Street building collapsed.

The model school, sometimes called the laboratory or practice school, was in the same building, and paying its own way, for it was private, charging tuition. This policy continued until 1935.

Since almost only women attended, it was proposed about this time that St. John's College in Annapolis, to which the State contributed more money, serve as a normal school for men. Nothing came of it, and within a decade the building was again taxed beyond its capacity.

Although there had been some slight changes in curriculum, it was still a 2-year school because students could not afford a longer course.

The last graduation in the Carrollton Avenue building was held in 1915. The following semester, students and teachers happily entered three buildings which had been erected on 75 acres facing York Road in Towson.

One cause that hastened a move to the larger campus was the need throughout Maryland to hire inexperienced and unprepared teachers. The State annually needed 350 new teachers, but Normal School graduated less than 100. More prospective teachers had to be encouraged.

With the new college, a new model school opened with 400 students. Today, the Lida Lee Tall School, named for the Normal School's president from 1920 to 1938, is still on campus but in a new building that is a model in every sense, with curving ramps instead of steps, movable desks, observation windows and, in every classroom, an outside door to the playfield.

During the last 20 years, Towson's study has undergone many changes. In 1934, it was authorized to grant a B.S. degree in education. For this reason, Normal School was changed to Towson State Teachers College the following year.

To accommodate returning World War II veterans, a liberal arts junior college was initiated in 1946. The same year, the education department enlarged its program to include prospective teachers of junior high grades and, in 1960, for senior high school level.

Towson became a 4-year liberal arts college when the State legislature changed the status of the teachers colleges in 1963. Now it offers 17 major subjects leading to either an A.B. or B.S. degree, and tentative plans, subject to approval, will develop three more in philosophy-religion, physics and economics.

This is expected to change even more the ratio of men to women students—now 40–60 percent. Other reasons:

The increase in numbers of high school graduates going to college.

Shortage of space and difficulty getting into other colleges.

A curriculum more attractive than a limited teacher education.

A changing public attitude toward men as teachers, especially in lower grades.

But, while its orientation is no longer narrowly focused on training qualified elementary school teachers, the century-old college has not lost sight of its traditional role of providing quality teacher education for the State.

"And it never will," says Dr. Earle T. Hawkins, president since 1947.

What of the future?

Already overcrowded and faced in the next decade with a day student enrollment four to five times that of 1965–66, an evening student body six times the size of today's and a summer school session five times larger, an expanding campus is planned.

An additional 90 acres, to be added to its present 220, will be acquired from Sheppard-Pratt Hospital, which adjoins the campus on the south.

Another 12 buildings, to cost $26 million, will be added to the 15 already on the campus between York Road and Charles Street and along Burke Avenue.

These will include a new dining hall wing, a $4.5 million library to be completed in 1969, and a fine arts building, with stage and gallery, where those interested in any facet of the theater, from acting to directing, can be trained.

Also a new gymnasium, Student Union, science building wing, administration building, field house, maintenance unit, and three additional classroom buildings.

Once completed, Towson State looks happily toward its second century of providing well-qualified teachers for Maryland classrooms.

[From the Baltimore Sunday Sun, Jan. 9, 1966]

TOWSON COLLEGE CENTENNIAL: FROM 11 TO 7,000 STUDENTS IN A CENTURY

(By John Dorsey)

One hundred years ago next Saturday, on January 15, 1866, the Maryland State Normal School opened at 24 North Paca Street, with an enrollment of 11 students and a faculty of 4.

In the century since, the school has moved three times and changed its name twice—first to State Teachers College at Towson and more recently to Towson State College.

Those changes of location and name have been more than symbolic, for Towson State, at first an institution for the instruction of those preparing to be elementary school teachers, has become a full-fledged arts and sciences college, with a night school, a summer school and 21 major departments of study.

Enrollment, too, has grown from that first meager 11 to over 3,000 full-time and almost 4,000 part-time students. The faculty now numbers over 200.

As it marks its centennial, however, the college finds itself not at an end or a pause in its career, but at the beginning of what promises to be its period of greatest expansion.

BIG EXPANSION PLANNED

To keep up with a tremendous expected increase in the college age population, Towson State plans a huge expansion of facilities, faculty and student body during the next decade. It promises to make the present century's growth look small by comparison.

The present college, including 17 buildings spread over an attractive 220-acre campus just off York Road near the center of Towson, is beyond the dreams of the handful of men and women who opened the Normal School 100 years ago in cramped downtown quarters.

"The term Normal School comes from the French Ecole Normale, in which one was supposedly taught the normal way to teach," observes Dr. Earle T. Hawkins, president of the college since 1947. "Normal schools spread rapidly throughout the country after the first one was opened in Massachusetts in the 1840's."

The first home of the Maryland Normal School, that January following the end of the Civil War, had only one large hall and two small anterooms for teaching, one of which had to double as a cloakroom. It was soon outgrown.

In 1872, the school moved to Charles and Franklin Streets, and 4 years later it moved again, this time to a new building at Lafayette and Carrollton Avenues.

UP THE STAIRCASE

About the turn of the century the Normal School provided a 3-year course of study which included extensive work in sewing, music and elocution, in addition to instruction—for the girls at least—in such essentials as how properly to ascend a flight of steps. Students observed teaching in the Model School, forerunner of the present Lida Lee Tall School, and at the end of their course of study graduates were given a life certificate to teach.

In 1915, under the presidency of Sarah E. Richmond, one of the graduates of the Normal School's first class, the school moved to its present Towson site. It proved to be a wise move, for in the succeeding years, whenever the school needed room to expand, land was available. Over the past 50 years the campus has almost quadrupled its original 60-acre size, and at present there are plans to buy an additional 80 to 90 acres from Sheppard-Pratt Hospital.

As late as the early twenties, there were about 20 women enrolled in the school to every man. Enrollment dropped off during the thirties. That was the decade when the Normal School was authorized to grant a bachelor of science degree in education, was accredited by the American Association of Teachers Colleges, and changed its name to State Teachers College at Towson.

During World War II enrollment again sank, but just after the war it started the steady rise that has brought it to its present position. In 1946 a junior college was instituted at Towson, and in 1960 a 4-year program in the arts and sciences was initiated in addition to the teacher education program. With this change Towson became a liberal arts college. The new status was recognized in 1963 when the institution changed its name to Towson State College.

"Many teachers colleges throughout the country have done the same thing," says Dr. Hawkins. "More and more former teachers colleges have taken on liberal arts curricula."

FROM COLUMBIA AND YALE

Dr. Hawkins is president-elect of the National Association of State Colleges and Universities and president of the Towson Chamber of Commerce. A native of Harford County, he graduated from Western Maryland College, received his master's degree from Columbia University and his doctorate from Yale.

At present, 80 percent of the students at Towson are planning to be teachers. The proportion of males to females has steadily risen until now men make up 40 percent of the student body. In a few years they may outnumber women. About 40 percent of Towson's students are residents of Baltimore City, another 40 percent of Baltimore County, and most of the rest come from other parts of the State. "There are a few out-of-State students here," Dr. Hawkins notes, "and each year we have two or three foreign students. We would like to have more."

Among the 21 majors the college offers are political science, chemistry, biology, art, and music. "There are a few subjects, such as philosophy, physics, and sociology, for which we still don't have full departments, but we're working on them," Dr. Hawkins says.

"Some of our departments, of course, are just for those who are going into teaching. Elementary education and primary education would fall into that category, and I don't imagine there would be many students who would major in physical education unless they wanted to teach it. We are particularly proud of our theater arts department, which we think is excellent."

In 1958 the college opened a new library, which now houses about 100,000 volumes. On Saturday, at the centennial celebrations, Governor Tawes is scheduled to dedicate a new science building which will greatly increase classroom and laboratory space and also add a lecture hall and a planetarium.

MODEST TUITION

Towson's budget now stands at about $3,500,000 a year. Though it costs the State $800 a year to educate each student, the tuition is only $220 a year (not including room and board for the 750 students who live in dormitories on the campus).

If an entering student pledges to teach for two years in the Maryland school system after graduation, the tuition is waived. "Some of those who sign the pledge cannot fulfill it immediately upon graduation," Dr. Hawkins says, "but virtually 100 percent of those who sign fulfill it sooner or later."

Most startling in recent years at Towson has been the growth of the evening school. Three years ago, total enrollment was about 100. Today it is over 1,600, and it is expected to increase by thousands in the coming years. In addition, the summer school, opened in 1950, now enrolls 2,500, making a total student enrollment of over 7,000. Recently, graduate courses have been offered in the evening college, which now awards a master of education degree.

Among the many extra-curricular activities at the college are three student publications: the yearbook, the newspaper and the literary magazine; a student drama group, numerous religious groups, and honor societies in drama, education, history and geography. Fraternities and sororities have been banned from the campus since 1929.

There are men's varsity teams in soccer, basketball, cross country, tennis, swimming and lacrosse, "and we hope to have a football team in a few years," Dr. Hawkins says.

In addition to the college's other facilities the Lida Lee Tall School, on the campus grounds, has a kindergarten and six grades where students in the education program can observe and practice teaching. The education curriculum at Towson includes a provision for students to spend several weeks teaching in Maryland public schools in their senior year.

Though Towson is a State institution, operated by public funds, it must set standards for admission. For every student who gets in, there are two who are turned down. Students applying to Towson must take competitive examinations and have good high school records. Ninety percent of those entering the college come from the upper two-fifths of their high school classes.

Not all of those turned down fail to meet the college's standards. "Last year, for instance," Dr. Hawkins recalls, "we had to turn away between 400 and 600 students who were eligible for admission, simply because we didn't have the space."

Maryland's five colleges offering training in education (Towson, Coppin, Frostburg, Salisbury and Bowie), the University of Maryland and private colleges in the State graduate about 2,000 prospective teachers a year. But the State's school system demands some 5,500 new teachers every year, according to Dr. Hawkins.

BUILDING PROGRAM

"The situation has been bad for over 20 years," he says, "and our capacity to turn out new teachers is still far behind the demand. But now the great numbers of postwar babies who have been increasing school enrollments are reaching college age. If only we can increase our capacity to educate those who want to be teachers, we may be able to catch up with the demand for new teachers in about 10 years."

In order to do so the State colleges must vastly increase their enrollments. Towson State foresees its full-time enrollment increasing from 3,000 in 1965 to 14,000 in 1975. Summer school enrollment during the next decade may go up to as much as 15,000, and evening students may increase by 8,000.

To accommodate a student body four to five times as large as the present one within 10 years, planners have mapped out a $27 million building program for the college, scheduled for completion by 1973 pending approval by the State legislature.

Of the 12 buildings planned, on a campus increased to 300 acres, construction plans have been completed for a new dining hall and kitchen which should be finished next year.

An appropriation of $3,750,000 has been made for an additional classroom building and a new gymnasium, also to be completed by next year.

A $2 million Fine Arts Building, a $4,750,000 addition to the library, which will increase its capacity by 400 percent, and a $4 million student union are in the planning stages and if all goes well should be completed by 1969.

In an early planning stage, and also due for completion by 1969, is a $2 million wing to the just-opened science building. To come between then and 1973, college officials hope, are a $1,750,000 administration building, a $2 million fieldhouse and two more classroom buildings that will cost a total of $5 million. At present, new athletic fields and parking lots are under construction.

Despite the rush schedule of the new buildings, construction will not keep up with demand for space. Enrollment will go up to 4,000 next year and increase about 1,000 each succeeding year. Until new classroom buildings can be constructed, temporary classroom trailers will appear at various points on the campus.

ADDITIONS TO CURRICULUM

Physical problems are not the only worry of Dr. Hawkins and those responsible for the administration of Towson State. Aside from the need for several more major departments, such as those mentioned above, the college is also considering making other additions to its curriculum, such as a degree program in nursing, a business administration program and an undergraduate program in communications and urban affairs.

These courses add to what may be the most critical problem Towson faces in the coming years—that of providing an adequate faculty. The college's faculty is now over 200, but Dr. Hawkins estimates that in 10 years that number will have to jump to more than 800 if the school is to have the desired faculty-student ratio of about 1 to 17.

Salaries at Towson are about "average" Dr. Hawkins says, for State institutions in this part of the country, and there are certain natural advantages to working at Towson. Because of its size the campus retains its rural atmosphere, yet it is in a pleasant suburban area and near a major city.

But all colleges and universities are experiencing difficulty finding adequate numbers

of teachers. To attract a good faculty, a college needs more than just a good pay scale. The faculty must be large enough so that its individual members are not overly burdened with teaching duties and have time for research and study.

Research, in turn, costs money, and Towson does not have available from the State enough money to subsidize additional research programs. In the future the college will have to depend increasingly on contributions from individuals and foundations for research funds.

PRIMARY FUNCTION

Towson, despite its new status as a liberal arts college, is still primarily in the business of educating future teachers. If a rapidly growing student body presents its problems, Dr. Hawkins also feels it is a hopeful sign. "After all," he says, "Maryland needs the teachers. Teaching, particularly below the college level, used to be looked down on as a profession. But lately it has gained a new status. Teachers' salaries are higher, but the rewards of teaching are more than financial.

"I forget what philosopher it was who said that civilization is a race between education and catastrophe, but that truth has certainly been emphasized in recent years. Because of the vital importance of education our society views its teachers, at all levels, with a much higher respect than it did a generation ago."

PRESIDENT JOHNSON'S REPLY

Mr. HARTKE. Mr. President, on February 2 the Columnist Richard Starnes made some comments which appeared in the Washington Daily News under the title "Desperate Acts."

Since this commentary deals with events in an interpretive manner, I ask unanimous consent that Mr. Starnes' views may appear in the CONGRESSIONAL RECORD.

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

DESPERATE ACTS

(By Richard Starnes)

The decision to invoke the UN Security Council is a measure of President Johnson's disquiet over growing criticism of the U.S. role in Vietnam.

The United States, which is treaty-bound to take international disputes to the UN, has refused until now to do so—for the very sound reason that it could not depend on the UN to support it. But the President has obviously concluded that the risks of summoning the Security Council now are smaller than the risks of not summoning it.

The United States is vulnerable on a number of counts in Vietnam, but no more so than in its reluctance to invoke the UN peacekeeping machinery it had such a large hand in creating. If, as the administration contends, we are in Vietnam in response to the plea of a legally ordained government that is the victim of aggression, then the UN is a logical place to turn to for help. We did so to good effect, for example, when South Korea was attacked by North Korea.

But what if the situation in Vietnam is not as we insist it is, but more closely resembles the picture painted by the critics of U.S. intervention? Suppose the fact is that Premier Ky's Saigon government is nothing but a puppet regime imposed by the huge American apparatus? Suppose (as the International Control Commission has alleged) the former Diem government was equally guilty of violating the Geneva accord as Ho's Communist regime from the north? And, above all else, suppose an objective investigation of the origins of the war proves (as many critics of the U.S. insist it must prove) that Diem was invented and installed by the United States solely for the purpose of frustrating the elections that the Geneva treaty ordered? Even Mr. Eisenhower realized that Ho would win if the elections were held in 1956 as the Geneva accord provided.

If this picture of the war is the true one, then it is easy to see why the United States has avoided summoning the Security Council, and why it does so now with such obvious reluctance. President Johnson obviously took the risky step only because he was compelled to take it in an attempt to quiet widespread doubts regarding U.S. policy in Vietnam.

His brusque reply to the 15 Senators who questioned his policies last week was not calculated to increase the base of his support in Congress. He simply cited the joint resolution of support adopted by the Congress on the heels of the mysterious Tonkin Gulf incident of last year. But Mr. Johnson can have no illusions about the long-term utility of the resolution.

He knows that it was never intended by Congress to be a blank check for a major ground war in Asia. Congress was talking about a different sort of operation, and this is plainly understood at both ends of Pennsylvania Avenue.

In a way the President's reply was most revealing. He spent too long manipulating the Senate not to understand that his reply would enrage a great many Senators. Mr. Johnson is not a man who acts in the heat of passion, so it must be concluded that he ran the risks implicit in his brief, almost insulting reply, only after a cold-blooded assessment of the imperatives under which he is trying to manage the war.

Thus he has taken two major steps in the past week that he must have dreaded taking. He has sought to turn aside growing disquiet in the Congress by telling an influential bloc of Senators that they had already given him a blank check, and he invoked the Security Council when he could have no real assurance that it would support American policy.

The fact is that Mr. Johnson is plagued on one hand by his sincere conviction that American interests require us to deny victory to the Communists in Vietnam, and on the other by the suspicion that the country has no stomach for protracted war in Asia, nor for the huge casualty lists that must be anticipated in such an enterprise.

ANEMIC STATES

Mrs. NEUBERGER. Mr. President, in a recent address before the Women's City Club of New York, on the status of Federal-State relations, I noted that:

People are more interested in insuring a quality education for their children than in preserving the Michigan or the Montana way of life.

The failure of the States to keep up with the 20th century is now so widespread that it ranks as a major flaw in the State government.

In the February 7 issue of the Christian Science Monitor, Roscoe Drummond points out that the surest way to continue this anemia of the States is to pass the proposed Dirksen amendment on apportionment of State legislatures. Raising the banner of States' rights on the standard of one man, 10 votes, is a most difficult exercise in logic and a retreat from sensibility.

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

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

BIGNESS AND POWER

(By Roscoe Drummond)

WASHINGTON.—It is a bad mistake that those who are most alert to the danger of the ever-growing bigness and power of the Federal Government are trying to block the one reform which has the best chance of doing something about it.

Public opinion polls show that most people are concerned to see Government getting bigger and bigger and to see big brother in Washington spending more money to do more things. Most Americans would like less spending, less national welfare statism.

WEAKNESS OF STATES

But the trend goes on. Little is done about it. The reason is that for the most part those who speak out offer no acceptable corrective. They lament the growing power in Washington but do nothing to strengthen State governments and it was the weakness of the State governments which caused so many cities to turn to Washington for help.

This is why it seems too incongruous that Senator EVERETT DIRKSEN of Illinois and other Republicans and conservative southern Democrats should be taking the lead in trying to halt the march of reapportionment of the State legislatures so that the voting districts in each State will be about equal in population.

This is the heart of the Supreme Court's one-man, one-vote ruling which the proposed Dirksen amendment would set aside in order to permit one of the two houses of each legislature to be apportioned on other than a population basis.

EQUAL REPRESENTATION

Why is this move to bring about equal representation of all citizens in the State legislatures related to the trend toward an all-pervasive, all-powerful, all-financing Federal Government?

The answer is that the flow of power to Washington just didn't start by itself. The Federal Government did not grab power from the States. It had it thrust upon it by mayors who, beginning with the depression came to Washington pleading with the President and Congress to do things for them which they could not get their own States to do.

And why couldn't they? Mainly because a minority of rural voters held a veto over the will of the majority. They held this veto because malapportionment of the legislatures enabled a minority of the voters to elect a majority of either one or both houses of nearly every State in the Union. In most cases the State constitution required reapportionment every 10 years, but the sitting legislators preferred to violate the constitution rather than risk losing their seats.

I submit that the best way to begin to arrest the flow of political power to Washington is to provide for its better use by the States.

I submit that the best way to do this is to modernize State government and make it answer the will of the majority of voters in each State.

This will be the effect of the reapportionment which is now being carried out in response to the one man, one vote decision of the Court and which in another year or so will be complete—unless the Dirksen amendment is passed and ratified. It lost last year. Mr. DIRKSEN is bringing it up again this year.

POSITION OF THE COURT

The position of the Supreme Court is that it is against the Federal Constitution for either the legislature or the voters to take away from citizens the right to be equally represented; that to make some citizens'

votes count one-tenth and other citizens' votes count 10 times as much is robbing a citizen of his right to vote.

I must say that when most Americans were living on farms, I never heard or read of any effort by earlier Dirksens to reapportion the State legislatures so that the minority of voters in the cities could control at least one house in each State.

Only strong and responsive State governments can begin to cut back somewhat a too powerful Central Government.

THE PSYCHOLOGICAL WARFARE AGAINST THE AMERICAN PEOPLE

Mr. MILLER. Mr. President, for some time, now, I have been concerned over what appears to be a stepped-up campaign to undercut our efforts in Vietnam and southeast Asia.

I have been disturbed over the increase in Communist propaganda to the United States, material which can be said to be a part of the program of the psychological warfare which is being waged against the American people.

This material has been designed to harm our war effort. It is intended to confuse and mislead those who receive it by detracting from the real issues and purposes of the conflict in South Vietnam.

It is because of this concern that I was dismayed to read in this morning's New York Times an article dealing with the reported production by leftists in Los Angeles of radio tapes—as the reporter described it "aimed at undermining the U.S. military effort in Vietnam."

According to the article, the tapes urge the United States not only to withdraw from Vietnam but suggest ways for American soldiers to avoid military service there.

These tapes are said to be broadcast by radio Hanoi. This can only mean that the broadcasts are being fed to any American or ally listening in Vietnam. It can only mean that the broadcasts are intended to undermine the morale of the allied fighting man there.

The article said the Justice Department is investigating the reported production. But at the same time, the article questions the effectiveness of the investigation by quoting the U.S. District Attorney's office in Los Angeles as saying—and I quote:

> It has not yet been determined whether such propaganda was illegal because there had not been a formal declaration of war in Vietnam.

If there is no law on the books which would make the production and distribution of such propaganda illegal, then I believe the appropriate committees of Congress should investigate the matter with a view either to stopping or curtailing such endeavors through appropriate legislation.

The war is difficult enough without permitting this type of propaganda to continue without fear of penalty.

The hardships our soldiers are enduring in Vietnam are severe enough without permitting them to be subjected to broadcasts taped right here in the United States for the purpose of waging psychological warfare against them.

We cannot prevent the broadcasts from originating in Hanoi, but we certainly should be able to do something about tapes being produced in the United States.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD, the article entitled "Red Propaganda Stirs U.S. Inquiry," written by Gladwin Hill, and published in the New York Times of February 8, 1966.

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

RED PROPAGANDA STIRS U.S. INQUIRY—TAPES URGING WITHDRAWAL IN VIETNAM SENT TO STATION

(By Gladwin Hill)

LOS ANGELES, February 7.—The Justice Department is investigating the reported production by leftists here of radio tapes aimed at undermining the U.S. military effort in Vietnam.

The tapes urge the United States to withdraw from Vietnam and suggest ways for American soldiers to avoid military service there. They are said to have been broadcast by radio Hanoi.

The U.S. district attorney's office here said that it had not yet been determined whether such propaganda was illegal because there had not been a formal declaration of war in Vietnam.

The principal speaker on the taped commentaries calls himself "Joe 'Libre' Epstein."

[In Washington, the Justice Department said it was investigating the involvement of a Ronald Ramsey, of Los Angeles, in connection with radio broadcasts to American troops in South Vietnam. A spokesman in the office of Attorney General Nicholas DeB. Katzenbach said the investigation had been in progress for 2 weeks. He declined to say how the Government had learned of Mr. Ramsey's involvement or how soon the results of the investigation might be disclosed.]

The tapes proclaim their source as "Radio Stateside" and "Radio Liberation." They first came to light last October, when four half-hour tapes were sent anonymously to radio station KPFK here, apparently in the hope that they might be broadcast.

KPFK is an FM station operated by the nonprofit Pacifica Foundation, whose other stations are KBAI in New York and KPFA in Berkeley. The stations have often given air time to spokesmen with dissenting minority viewpoints.

LEGAL VALIDITY DOUBTED

However, KPFK's manager, Robert Adler, who was doubtful of the legal validity of the material, turned the tapes over to the Federal Bureau of Investigation after recording copies. Portions were presented as views and documentary material rather than in their original propaganda form. They were broadcast on all three Pacifica stations on the weekend of January 9.

Afterward, a person purporting to be the producer of the tapes telephoned KPFK to ask why, if KPFK had not seen fit to broadcast the material as propaganda, the tapes had not been returned. Mr. Adler reminded the caller that the packages had borne no return address.

He said today he had had no communication with the "Radio Stateside" people in the ensuing month.

The Hanoi broadcasts were said to have been monitored in at least one instance by a radio listening post in the United States.

Mr. Adler said his doubts about the validity of the material were aroused particularly by one passage telling the soldiers, "We're not asking you to shoot your commanding officer or sergeant in the back yet—not at this time."

SECRETARY WIRTZ CALLS FOR UNEMPLOYMENT BELOW 3 PERCENT WITHOUT INFLATION

Mr. PROXMIRE. Mr. President, Secretary of Labor Willard Wirtz is one of the ablest men in Government today.

Today he presented to the Congressional Joint Economic Committee a powerful plea for continuing economic policies that can help reduce unemployment below 3 percent.

He made as coherent and persuasive an overall economic case for this administration and this Congress training and education programs as I have seen.

He also asks for the kind of fiscal and monetary policies that will continue to stimulate economic growth.

For Americans, who long for a thriving, abundant nation with such job opportunities for Negroes and teenagers, as well as married men, this is a cheering document.

For those who hope for an America which will not suffer the depressions of the past, the Secretary has documented confident prospects brilliantly.

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

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

STATEMENT OF W. WILLARD WIRTZ, SECRETARY OF LABOR, BEFORE THE JOINT ECONOMIC COMMITTEE

Mr. Chairman, and members of the joint committee, you have requested a statement of my views regarding the manpower and stabilization aspects of the present and prospective national economic situation. I question how much, even whether, I can add to Chairman Ackley's illumination of these matters before the committee last week. I shall, in any event, start from and rely upon his comprehensive statement of the relevant facts and from his constrained understatement of the remarkable economic gains which have been made in the past 5 years.

My views proceed from unqualified commitment to the idea that full-employment opportunity—letting that phrase mean all it says—is a proper, practicable, and first priority national objective. This objective allows—in terms of the accepted measurement—for no more than the 2- to 3-percent unemployment which results (i) from "transitional" movement into the work force and from one job to another, and (ii) from the fact that a very few people in the work force (less than one-half of 1 percent) are not prepared to meet its demands. To stand now on the "interim goal" of 4-percent unemployment is to realize that it is in fact only the 10-yard line.

This view recognizes employment and unemployment as not only economic but essentially human conditions. It counts underemployment as serious a matter—or almost as serious—as unemployment. It brings into question the definition of "employment" as the filling of whatever jobs the economic system wants filled, and inquiries as well into the extent of use of individual human potentials.

In this view, the aggregate and overall average unemployment figures—which show a remarkable 5-year reduction from about 7 percent in early 1961 to about 4 percent now—are looked at coldly for their concealment of some less attractive facts:

There are still 17 major areas in the continental United States in which unemployment is above 6 percent.

There are still more than 650,000 people—one-fifth of the unemployed—who have been out of work for 15 weeks or longer.

There are still 1¾ million "employed" who want to work full time but have only part-time work.

One out of every eight teenagers who are looking for work (half of them only for part-time work) can't find it.

Negroes still constitute one-fifth of the unemployed—double their share of the labor force. There are 200,000 unemployed Negro teenagers highly concentrated in poor neighborhoods.

Over 3 million household heads are working full time but still living in poverty.

Related considerations prompt my finding substantial explanation of the employment successes of the past 5 years and much of the promise for the future not only in fiscal and monetary policies which affect employment by what they do to the economy but also in manpower development (or, better, human resources development) programs.

It will follow, in the development of this view, that stabilization and full-employment opportunity are coordinate objectives; that neither should be or need be compromised to achieve the other; that stabilization policies will be most equitable, constructive and effective as they take fullest account of the employment objectives, and vice versa. Just as full use of the human resources potential of the country depends upon a combination of different policies and programs, so the most effective defenses against inflation include a variety of safeguards.

Now in a little more detail—but with the anticipation of Commissioner Ross' developing the more persuasive Bureau of Labor Statistics data:

1. EMPLOYMENT, UNEMPLOYMENT, AND UNDEREMPLOYMENT

Five years ago (when the jobless rate was at almost 7 percent or even two (when it was still at 5½ percent), the national purpose was necessarily and properly concentrated on strengthening and invigorating the economy so that it would produce the large number of additional jobs which were needed. If there were even then—and there were—particular concentrations of the unemployment problem, there was at the same time so general a job shortage that it had to be met on the broadest possible basis.

Chairman Ackley has hardly suggested the historic proportions of the decisions—made by an informed public through an enlightened Congress inspired by strong Presidents, advised by wise economic counselors—to make the economy a better servant of human purpose through the adoption of appropriate fiscal, monetary, and budgetary policies. The increase in employment (most of it in full-time employment) by 2.4 million from December 1964 to December 1965, and the reduction in overall unemployment during that year from 5 to 4.1 percent is only the latest index of the effectiveness of those decisions. They benefited in special measure, furthermore, those groups (unskilled workers, younger workers, and nonwhite workers) who had been bearing the brunt of the unemployment burden.

It takes nothing from the magnificence of those decisions that the country decided at the same time to do something more about some other things which bore either directly or indirectly on employment. This course of action included enactment of the Manpower Development and Training Act of 1962 and its subsequent amendments, the Vocational Education Act of 1963, the Education Acts of 1964 and 1965, the Executive orders assuring equal employment opportunity and title VII of the Civil Rights Act of 1964, and the Economic Opportunity Act of 1964.

So, simultaneously with the tax cuts, a series of revolutionary manpower programs were undertaken to upgrade workers' skills and improve the matching of workers to jobs. These innovations reflected a recognition that large numbers of persons would benefit from enlightened fiscal policy only as they were freed from the effects of unenlightened racial prejudice, lack of education, and training, and the larger mobility of industry than of people. The concept of an active manpower policy, geared to the individual and the locality, was recognized as a necessary component of overall national economic policy. It has become clearer that economic growth and stability require increasing the employability of workers and reducing to a minimum the human dislocations of a rapidly changing economy.

As nearly as can be measured, these programs resulted in approximately half of the reduction in unemployment in 1965. And those directly affected by these programs were almost exclusively men and women, and especially boys and girls, who would have been least affected, so far as employment was concerned, by the expansion of the economy.

At the end of 1965, over 100,000 men and women were being trained for future employment under the Manpower Development and Training Act, and 50,000 long-term adult unemployed who had previously been on public assistance were enrolled in the anti-poverty work experience program. There were also between 10,000 and 40,000 otherwise unemployed individuals involved at some time during the year in implementing community action programs at the local level.

At the end of 1965, about 150,000 boys and girls 16 to 21 years of age were working in the Neighborhood Youth Corps, which provides work for students from poor families, including many in school who could not otherwise stay there. Another 17,000 boys and girls were participating in residential work-training programs in the Job Corps. And 100,000 college students, many of whom might otherwise have been unable to continue their studies, were benefiting from the work-study program which provides part-time work.

The Great Society programs have especially aided young persons. The number of unemployed, age 16 to 21, was 175,000 less in December 1965 than a year earlier, even though their number in the labor force was actually greater by 650,000. Much of the drop in the number of unemployed among these young workers was the direct result of the anti-poverty and Manpower Development and Training Act programs.

If there should be disagreement about the extent to which the reduction of unemployment to its present level results from enlightened fiscal and monetary policies on the one hand, or from manpower, education, antipoverty, civil rights programs on the other, there would be no disagreement—or at least very little—about the coordinate importance of these programs in meeting the unemployment problems which remain. Continued expansion of the economy will be essential if use is to be made of the expanding work force. But there is little prospect of much further reduction in unemployment except as efforts are directed specifically at the concentrations of unemployment and of unpreparedness which remain. And the manpower and related programs take on a new significance as the prospect of manpower shortages in certain areas and occupations develops.

There is not, today, an unemployment problem; there are several very different ones. That the language offers a single phrase to cover them all, and the statisticians supply a single figure, and people prefer to have as few problems as possible—all tends to result in an averaging here of success and failure.

The unemployment rate for adult men (20 years and over) is down now to 2.6 percent, and to below 2 percent for married men. Most of the 1.5 million in this group (1 million of them married) are seasonally unemployed, between jobs, or so lacking in qualifications that only extensive basic training will equip them to hold a job.

The adult women's rate is substantially higher (4 percent), but includes a larger number who are looking for part-time work. In answer to Committee Member GRIFFITH'S question at last week's hearings, our best estimate is that if the unemployment rate for women could be reduced to that for men this would be reflected in an increase of $3 billion in the gross national product.

The unemployment rate for the 20- to 24-year-old group (male) has been running high (over 5 percent), but there is significance in recent reports indicating marked improvement in this situation.

Over half of the unemployed now have been out of work for less than 5 weeks—the first time this has been true since 1957. Less than 1 percent of those in the work force have been unemployed for 15 weeks or more. But this is over 600,000 people.

Five years ago today, there were 5,705,000 people in this country looking for work and unable to find it; over 1,600,000 had been out of work more than 14 weeks. New workers have been pouring into the work force ever since and at an increasing rate—so that every morning now there are (on the average) over 8,000 more than there were at the end of the preceding day. Yet we have cut unemployment so that there are today (making the most accurate possible estimate from last month's figures) 3,300,000 people unemployed (instead of 5,705,000) and only 600,000 of them (instead of 1,600,000) have been out of work for more than 14 weeks.

But it is the very magnificence of this broad accomplishment that makes two failures more acute, and emphasizes the necessity of looking behind the camouflage of averages that include too many different things.

The unemployment rate for teenagers is now 12 percent. This is four times the rate for adults. About 800,000 of the 3.3 million unemployed are in this group, just about a 4th; although they represent less than a 10th of the work force (about 7 million out of 75 million).

I question the validity of lumping teenagers and adults in our employment statistics. And these 14-to-19 figures both overstate and oversimplify the situation.

Half of the 800,000 teenage unemployed are in school and looking only for part-time work. Their getting it may be the difference between their being able to stay in school and their having to leave it. This problem is as serious in some ways as the problem of the unemployed father of seven children; but it is a different problem, warranting different analysis and different remedy.

Quite different situations are presented, too, by the 14- to 15-year-old group (which probably shouldn't be in the employment/unemployment statistics at all); the 16- to 17-year group (high school); and the 18- to 19-year group (college). I have asked the Bureau of Labor Statistics to separate these three groups out in future monthly reports.

One of the significant factors in the 1965 increase of 2.4 million jobs in the nonagricultural sector of the economy is that about 800,000 of this increase was in this teenage group. This is a mixed gain. To the extent that these jobs went to boys and girls who are out of school (especially those who dropped out of high school before finishing it) the satisfaction in seeing them employed instead of unemployed is mitigated by the realization that many of these jobs are unskilled jobs which will soon be replaced by machines, leaving the inadequately trained boys and girls who now have them unprepared for anything else. To the extent, on

the other hand, that this job increase represents part-time jobs for boys and girls who are thereby enabled to stay in school, they obviously represent an unqualified gain.

There is increasing reason to believe that the first 20 years of most American boys' and girls' lives ought to go into one kind of training or another, perhaps in some cases into a mixture of education and work but with the emphasis on preparation.

"Later starting" would make more sense today than "earlier retirement." A preemployment equivalent of social security would make eminent good sense. There is encouragement in last fall's college enrollment figures: a 200,000 increase in enrollment figures was anticipated on the basis of the population increase in this age group, but the actual increase was 495,000. Perhaps 50,000 of this reflects the decision of some boys to stay in school instead of going into military service. The rest of it is the antipoverty program at work, and civil rights maturing into civil results, and the Great Society coming true in people's lives.

The other failure—so far—involves nonwhite employment.

The current nonwhite unemployment rate is 7 percent—down from 9 percent a year ago, but still twice the white rate. Among teenagers, one of every four nonwhites looking for work is denied it.

This situation is improving. But as the instance of flagrant discrimination diminishes, the effects of undertraining and inferior education emerge more sharply. The Manpower Development and Training Act and Office of Economic Opportunity programs are directed increasingly at compensating for decades of disadvantage, but the general education system moves ahead on this front more slowly.

A complex problem—to which the first, easy answers are wrong—is presented in the increasing evidence of the nonwhite worker's rejecting available unskilled, low-paid work because he knows he would have been equipped for something better if he had had a fair chance earlier, and because the work is itself a symbol of previous economic bondage.

The nonwhite unemployment problem is merging rapidly with the broader problem of the disadvantaged worker. The number of hard core unemployed—those out of work 15 weeks or more—dropped markedly between the last quarter in 1963 and the last quarter in 1965, from over 1 million to 675,000. But this is still half a million more than the comparable figure for 1953. Any substantial further reduction in this total depends very largely on special training programs, usually including basic literacy training.

Continued expansion of the economy remains the central necessity. A decline in the rate of job creation in the economy would mean losing ground against the rapid labor force growth.

Yet the availability of jobs, even the availability of training programs, will not solve all the problems of unemployment.

An effective employment service is also important. A special task force on the employment service headed by Dean George Shultz, University of Chicago School of Business, submitted its report at the end of 1965. This expert group forcibly recommended that employment service be established as a comprehensive manpower service agency providing support for government and private manpower programs.

Another dimension of program need is reflected in the pilot "human resources development program" which has been established in cooperation with civic, industry, labor and government agencies in Chicago including the Chicago Association of Commerce and Industry, the Illinois Bureau of Employment Security, the Cook County Department of Public Assistance, the public school system, the Chicago Committee on Urban Opportunity, the division of rehabilitation, the Urban League, and the NAACP. The needs and capabilities of each individual are being assessed to develop a plan of action to assist him in the manner best designed to increase his employability. This includes aid and assistance to minority youngsters by providing preapprenticeship training to enable them to be indentured into apprenticeship programs. It also includes enlisting the cooperation of employers in developing jobs for the disadvantaged.

Representatives of the Department of Labor have met with officials of other cities including Los Angeles, St. Louis, East St. Louis, Houston, and Rochester, N.Y., to plan similar programs.

The setting up of youth opportunity centers in over a hundred areas is another illustration of the program now underway to reach out for those who today need—to be plain about it—more than opportunity. They need a push or a pull. Quite a few of them gave up too soon. A full employment program today is not only an economic program, and not only a manpower program; it is also a human resources development program.

2. MANPOWER SHORTAGES

Increasing concern is being expressed today about the problem not of unemployment but of prospective manpower shortages, particularly in certain areas and occupations.

At the instruction of the President, the Department of Labor has recently instituted, in cooperation with the Department of Commerce and other Government agencies, an active program of continuing surveys of possible developing manpower shortage situations. A recent report, based on a December survey and subsequent field advice, notes these illustrative items:

Continuing rapid increases in employment (up 570,000 in December, seasonally adjusted) indicate adequate general labor supply still available. Number of factory production workers passed 1956 peak for first time.

Average factory workweek (41.7 hours) highest for any December since 1945, but up only two-tenths of 1 hour over December 1964. Overtime hours at average 4 (up four-tenths) since December 1964.

Employment turnover rates are inconclusive. Quit rate in manufacturing (2.2 percent) up from December 1964 (1.6 percent), but well below Korean and World War II rates.

Few production schedules are being impeded significantly because of manpower shortages, but production backlogs and unfilled orders are increasing in a few industries, especially defense-related industries, and metalworking. In the construction industry, the short supply of certain skilled workers is resulting in bid rejections caused by too few bidders and sizable differences between the low bids and the engineers estimates.

Geographically, the number of areas with very low unemployment rates—2 percent or less—rose from 8 in November 1964 to 21 in November 1965. The number with rates of 6 percent or more declined from 20 to 11.

The most severe labor stringencies appear to be in the most heavily industrialized Great Lakes States, particularly Michigan, Wisconsin, and Illinois. In Massachusetts and California, heavily defense-oriented States, unemployment rates in many labor areas remained at 6 percent or more in November 1965.

Occupations in shortest supply are engineers, technicians, draftsmen, metalworkers, electricians, plumbers and pipefitters, medical and health workers, and some types of mechanics and repairmen. Local employment service offices received more openings this December than in any other December since 1945.

With the possible exception of metalworking machinery, recent price rises for industrial products are not believed to be caused by shortages of labor. However, wage levels for entry level workers and in some low paying industries are rising as a result of intense competition for available qualified workers.

Many employers are scheduling longer workweeks, raising the maximum age at which they will hire new workers, and lowering educational and experience requirements. Indications are that turnover among many of these newly hired workers is extremely high, with possible future implications for costs and prices.

These general surveys are being supplemented by special task force surveys of particular cities and industries in which there are reports of developing manpower shortages. The findings of a survey team that looked into the situation in Milwaukee, Wis., 2 weeks ago are illuminating:

"1. There is no general or critical shortage of manpower yet in Milwaukee.

"2. But the supply of skilled labor has been stretched near its limits; and there is a real shortage of experienced highly skilled workers, particularly machinists; also of professional workers.

"3. There is a major problem of finding acceptable workers for entry level jobs; and a considerable turnover in entry level jobs.

"4. There is little sign of production being impeded significantly by labor shortages.

"5. Delivery schedules in a number of plants are being lengthened by 1 to 2 months.

"6. There seem to have been no sharp increases in hourly wages.

"7. Hours of work are lengthening.

"8. The number of unemployed workers in Milwaukee is estimated at approximately 13,400; the quality of unemployed workers is considered very low by employers; but this reflects in part previous ability to hire experienced workers.

"9. The Negro labor force is being underutilized."

In general, it is clear that manpower shortages in certain areas and occupations are now imminently possible. The indications are that these will not be drastic shortages. But they warrant the immediate stepping up of the available training facilities.

It is likely, from the available evidence, that this development will mean that the 1.3 million increase in the work force expected for 1966 on the basis of population growth will be augmented by the return to employment of approximately 300,000 who are not now seeking work. Our estimates are that the number of presently unemployed will also be reduced by approximately 500,000 and that the unemployment rate will drop during the year—assuming fulfillment of present production prospects—to 3.5 percent, or possibly a little less.

Manpower policy, it is now clear, is as important in periods of high employment as when jobs are hard to find. With rising employment and tightening job markets, the training programs have become increasingly important in easing and preventing production bottlenecks, with their consequent inflationary pressures.

The Manpower Development and Training Act program is currently being reoriented to meet requirements for specific skills in current or prospective shortage. During the first 2 years of operation, its training programs were designed primarily to increase the skills of the hard-core unemployed so that they could qualify for the job vacancies which persisted even in the midst of widespread unemployment. The emergence of possible skill shortages, however, has required the broadening of the scope of training efforts under Manpower Development and Training Act to include training persons who are working at less than their full potential, to enable them to meet requirements for jobs in critical demand.

Approximately 35 percent of Manpower Development and Training Act training in 1966 will be directed specifically against skill shortages, 40 percent to the occupational reclamation of the hard-core adult unemployed, and 25 percent to disadvantaged youth.

3. WAGES

The central point of the past 5 years' history in this country is that economic forces, like those of nature, can be shaped to human purpose without compromising the principles of the free society. Three myths have given way before the exercise of purposive good sense: that there had to be cycles of depression and prosperity; that the price of technological advance had to be unemployment; and that poverty was implacable.

Now the question is raised whether the price of prosperity in this country has to be, as it has so often been in the past, wage and price inflation; or more particularly, so far as the subject of today's discussion is concerned, whether there can be full employment without creating wage increase pressures which will lead to inflationary spiraling.

There is already, at the 5-year point in this period of unprecedented economic growth, considerable disproof of the theories of the inevitability of wage and price inflation in a period of advancing prosperity and decreasing unemployment.

Wage increases have stayed in line, in general, with increasing productivity. In fact, real compensation per man-hour rose at an average rate of 3 percent a year between 1960 and 1965, which was less than the increase in productivity.

Unit labor costs have remained remarkably level. In manufacturing industries, they rose only one-fifth of 1 percent a year during the 5-year period between 1959 and 1964. That compared with an average rise in manufacturing unit labor costs of 3.2 percent a year during the preceding 12-year period. And while these costs stayed virtually level in this country between 1959 and 1964, they went up by 11 percent in Japan, 12 percent in the United Kingdom, 15 percent in Sweden, 21 percent in West Germany, 27 percent in France, and 28 percent in the Netherlands.

In 1965, just ended, there were larger increases in both wages and prices than had been true in the preceding 4 years.

A study of major collective bargaining agreements negotiated during the first 9 months of 1965 shows annual average wage increases during the period of the contract of 3.3 percent. (The first year average increase was 4.2 percent, with substantially lower increases during subsequent years.) This study does not include fringe benefits in either the increases or the base upon which the increase percentages are computed.

Two recent surveys of union wage scale changes in the building and construction industry (not included in the study referred to in the preceding paragraph) show that union scales in seven key trades were 3.9 percent higher in January 1965 than in January 1964; and that the rise between July 1964 and July 1965 (using a broader coverage of trades) was 4.1 percent. A comparison of average hourly earnings in this industry for the year 1965 as a whole shows a substantially smaller increase over the 1964 average than is reflected in the scale changes. On the other hand, inclusion of fringes along with the scale changes indicates an even larger increase than in the wage rates taken alone.

There are no comprehensive surveys of smaller collective bargaining agreement adjustments (i.e., in terms of number of employees involved) available for 1965. Previous experience indicates that they average less, in terms of wage and fringe increases, than the major agreements. Preliminary reports on wage movements in establishments which are not unionized indicate that they were probably higher, on the average, than those in organized establishments.

The information which is presently available indicates that average compensation per man-hour in the private economy increased by 3.7 percent in 1965. Average hourly earnings for factory production workers, including premium pay for overtime, increased by 3.1 percent (on a December-to-December basis).

This is the wage record to date. It is, in general, a healthy record. The public notice which has understandably and properly been focused on those cases in which there have been excessive wage increases has tended to obscure the larger fact that the last 5 years have witnessed, overall, an unparalleled demonstration of responsible self-restraint.

The future is less clear.

It is a relevant practical fact that comparatively few major collective bargaining agreements will be negotiated this year.

A good deal of significance attaches to the effectiveness with which the prospective, or potential, manpower shortage situations are met.

It is plain that there will be a strong interaction between what happens to prices and what happens to wages.

Secretary Fowler, Chairman Ackley, and Director Schultze have discussed with the committee the fiscal measures which the President is proposing to the Congress to assure continued stable growth.

There have been adjustments in the national monetary policy.

In addition to this, the President and all of the members of his administration have made clear their commitment to the principles of the stabilization policies embodied in the President's economic message and in the report of the Council of Economic Advisers. This commitment is reflected in a series of affirmative, and in general effective, actions.

The future remains in the hands of the private decisionmakers—which is right in a democracy. The evidence is that the key decisions will be made responsibly, and with sufficient realization that the historic gains of the past 5 years depend upon the continued exercise of this responsibility.

I shall be glad to respond to your questions.

VIETNAM

Mr. INOUYE. Mr. President, I rise reluctantly to make the following observation:

During the past several weeks I have noted the issuance of many statements by my colleagues in the Senate relating to the involvement of our Nation in southeast Asia.

I have also noted press reports indicating that there are some Members of the Senate who felt that the action we took on August 6, 1964, in adopting Senate Joint Resolution 189 did not in any way endorse the actions taken by the President.

If I may, I should like to read from the committee report, which was issued on August 6, 1964. The first two paragraphs of the committee report read as follows:

The Committee on Foreign Relations and the Committee on Armed Services, hereinafter referred to as the joint committee, having had under consideration Senate Joint Resolution 189 supporting the President's determination to repel any armed attack against U.S. forces in southeast Asia and to prevent further Communist attacks, report the resolution favorably and recommend that it be passed by the Senate.

PURPOSE OF THE RESOLUTION

The basic purpose of this resolution is to make it clear that the Congress approves the actions taken by the President to meet the attack on U.S. forces in southeast Asia by the Communist regime in North Vietnam. Full support by the Congress also is declared for the resolute policy enunciated by the President in order to prevent further aggression, or to retaliate with suitable measures should such aggression take place.

On August 5, 1964, the President of the United States sent a message to Congress. The message is incorporated in the committee report from which I have read. I wish to quote from the President's message, as follows:

As President of the United States I have concluded that I should now ask the Congress, on its part, to join in affirming the national determination that all such attacks will be met, and that the United States will continue in its basic policy of assisting the free nations of the area to defend their freedom.

The committee report concludes as follows:

The President's message and Senate Joint Resolution 189, introduced by Senator FULBRIGHT (for himself and Senator HICKENLOOPER, Senator RUSSELL, and Senator SALTONSTALL) to give effect to the Presidential recommendations, by unanimous consent were referred jointly to the Committee on Foreign Relations and the Committee on Armed Services. During the morning of August 6 the joint committee, with Senator FULBRIGHT presiding in executive session, heard Secretary of State Dean Rusk, Secretary of Defense Robert McNamara, and Gen. Earle Wheeler, Chairman of the Joint Chiefs of Staff.

After receiving the testimony the joint committee voted 31 to 1 to report the resolution favorably without amendment.

I am certain that all Members of the Senate have studied this document with great care, because it reports upon a resolution of great significance and importance. I am certain that Senators, in casting their votes in support of the adoption of the resolution, did so only after careful study and consideration.

SENATOR CLARK'S SPEECH BEFORE THE PLANNED PARENTHOOD ASSOCIATION OF PHILADELPHIA

Mr. TYDINGS. Mr. President, 5 years ago, population control was a politically taboo subject. Today I think that most Americans agree with President Johnson that a solution to the population explosion is a cause second only in importance to the search for peace. This change in public attitudes came about because farsighted and bold men were willing to speak out.

No man has spoken out more intelligently and courageously on the problem of population control than the distinguished senior Senator from Pennsylvania. JOSEPH CLARK was the first man to discuss population control on the floor of the Senate and has consistently encouraged planned parenthood programs in Pennsylvania and throughout the United States.

Recently Senator CLARK delivered a thoughtful address at the annual luncheon of the Planned Parenthood Association of Philadelphia, summarizing the progress made so far in this field, and urging that appropriate local, State, and Federal authorities play a more active role in making birth control information and advice available on a strictly voluntary basis. Mr. President, I ask unanimous consent that Senator CLARK's address be inserted in the RECORD.

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

SPEECH OF U.S. SENATOR JOSEPH S. CLARK, DEMOCRAT, OF PENNSYLVANIA, BEFORE THE ANNUAL LUNCHEON OF THE PLANNED PARENTHOOD ASSOCIATION OF PHILADELPHIA

I

The duty of a politician is not to follow but to lead his constituents in seeking solutions to problems of public concern. But, if he wants to remain an active, rather than a former, public servant, he had better not get so far ahead of his public that he gets shot in the rear.

I have long been an active, if private, supporter of planned parenthood. To me the right to know what needs to be done to prevent the birth of unwanted children is one of the basic freedoms of a just and a compassionate society. To deny that right is unethical, immoral and wicked.

It was not until I was reelected to the Senate in 1962 that I had the courage to speak out. That fall, before the election, I promised my wife that if I won in November I would make my position clear early in the next year. It was not, however, until August 15, 1963, that I addressed the Senate on the topic "The Time Has Come To Speak Out on the Problem of Population Control."

I was, I believe, the first U.S. Senator to so speak out. Since that time I have been followed by Senators GRUENING, TYDINGS, BASS, BARTLETT, BYRD of West Virginia, DOMINICK, DOUGLAS, HART, MCGOVERN, MOSS, SIMPSON, YARBOROUGH, and YOUNG.

The support of Senator PHILIP HART, of Michigan, born and brought up in Bryn Mawr, Pa., a Roman Catholic, the father of eight children and one of the most conscientious, high minded men in the Senate, is particularly heartening to me. I should also note that, upon his retirement from the Senate, Kenneth Keating, of New York, now a judge on the New York Court of Appeals, assumed the presidency of the Population Crisis Committee and, all through 1965, performed yeoman service in calling to the attention of the country the seriousness of the population crisis and the need to take prompt action to resolve it.

In the House of Representatives many Congressmen have also spoken up, among them UDALL, DIGGS, MOSS, CONYERS, MACKAY, BROWN, and LONG.

Not all of these men, by any means, can be categorized as "starry-eyed liberals." A number of them usually follow conservative principles.

At the executive level, former President Eisenhower has spoken out, much to his credit, having reversed a stand he had previously taken. In a letter written June 22 of last year to Senator GRUENING, who has been holding most useful hearings on legislation to create executive secretaries for population in both the State and Health, Education, and Welfare Departments, President Eisenhower wrote:

"Unless something is done to bring an essential equilibrium between human requirements and available supply, there is going to be not only a series of riotous explosions but a lowering of the standards of all people, including our own. * * * I devoutly hope that necessary measures will be enacted into law * * * so * * * that human and material resources can be promptly mobilized and employed to cope effectively with the great need of slowing down and finally stabilizing the growth of the world's population."

President Johnson has been equally forthright on a number of occasions. In his state of the Union message last year, he said:

"I will seek new ways to use our knowledge to help deal with the explosion in world population and the growing scarcity in world resources."

At the 20th anniversary of the United Nations at San Francisco on June 25, 1965, he said:

"Let us in all our lands—including this land—face forthrightly the multiplying problems of our multiplying populations and seek the answers to this most profound challenge to the future of all the world. Let us act on the fact that less than $5 invested in population control is worth a hundred dollars invested in economic growth."

The White House Conference on Health which met in Washington on November 3 and 4, 1965, had a panel on family planning which reported:

"There is wide general agreement that the time has come in this country to take definitive steps to make family planning services a part of routine medical practice and readily available to those who desire it—particularly those who have previously been unable to secure either information or service. All parts of government must take leadership in cooperation with private groups to establish and maintain family planning services with the understanding that there shall be no coercion and that there is a full freedom of choice of methods to be used in regulating pregnancy. This goal is believed to be in accord with the present wishes of a majority of people of all faiths, of all social and economic levels."

Assuredly, the climate of opinion toward the cause of planned parenthood has changed drastically in the last 3 years.

II

There has indeed been a breakthrough, which I date from the publication of Dr. John Rock's book, "The Time Has Come," early in 1963, with its introduction by former Secretary of State Christian Herter. As most of you know, Dr. Rock is a well-known Catholic professor emeritus of gynecology at the Harvard Medical School. The subtitle of his book is: "A Catholic Doctor's Proposals To End the Battle Over Birth Control."

In a review of Dr. Rock's book quoted in the New York Times on April 20, 1963, Richard Cardinal Cushing of Boston, who delivered the invocation at the inauguration ceremonies of President Kennedy in 1961, wrote:

"The Church is not opposed to birth control as such but to the use of artificial means to control births."

In a speech delivered before the Planned Parenthood Federation lunch at the Shoreham Hotel in Washington on May 8, 1963, Dr. Rock said that Catholic doctrine today is no obstacle to a massive program of Government action on the population problem; that many Catholic scholars are as concerned with the tragic consequences of overpopulation and the encouragement of responsible parenthood as are non-Catholics; and that authoritative Catholic teaching encompassed a broad approach of toleration toward those areas of public policy on which there are remaining disagreements. He further stated that, while he did not expect the Catholic Church to reverse its longstanding opposition to artificial contraception, differences of religious approach did not mean that we must be paralyzed:

"In the event of such disagreements, the only democratic solution is enactment of laws and adoption of policies by each public body which respects the deeply held convictions of all groups. Such a policy would remove all restrictions on birth control in public agencies offering all methods so that communicants of all faiths can choose a method in accord with their beliefs."

As reported in the New York Times, June 24, 1965, Cardinal Cushing, speaking about the effort to repeal the Massachusetts birth control law which prohibited the sale of contraceptive devices said:

"I do not see where I have the obligation to impose my will on those who do not accept the faith I do."

There is now, I believe, an overwhelming consensus in this country—but not in this city—that both information and contraceptive devices should be made available to every human being who wishes to exercise his or her right to know how to prevent conception of an unwanted child. And this consensus includes an overwhelming majority of all three major religious groups, Protestants, Catholics, and Jews—including the inhabitants of this city—but not its leadership.

Recent polls show that 8 out of 10 Americans think birth control information should be made available to anyone who wants it. Two years ago, 53 percent of the Catholics interviewed were of this view; by last summer the percentage had increased to 78. These are national figures but there is no reason to think that the percentages are any different in Philadelphia. Planned parenthood clinics report that their clinics include Catholics in a number at least equal to their percentage in a particular community.

A survey conducted in the South by Dr. Joseph Beasley shows that three out of every four Negro women interviewed did not want any more children, but that more than half of them did not know how to stop having them. I suspect that Negro leaders who do not recognize this fact and act accordingly will not long remain the leaders of their people.

I like to think of myself as a practical politician. As such, I have no hesitation in telling you that espousal of the cause of planned parenthood is, in my judgment today, a political asset and not a liability. As Dr. Rock so cogently put it: The time has come to speak out.

III

Let's define more closely what we are talking about. We are concerned primarily with two matters: First, methods; and second, relations between church and state and private agencies. Would not the members of this organization agree with me?

First, that all tested and medically supported methods of voluntarily preventing conception should be made available to all married couples and also, under proper safeguards, to those unmarried mothers from underprivileged social groups who presently have no practical way, in view of the environment in which they live, of protecting themselves from the unwanted child.

Second, that dissemination of this information and the services required to make it effective should be supported not only by voluntary civic organizations such as yours but by the local, State, and Federal governments as well.

Third, that the program should be entirely voluntary, entirely without coercion and that those who have religious scruples should be free to reject the information if they so desire.

Fourth, that the program is an essential part of any successful war on poverty at home or abroad.

Fifth, that both at home and especially abroad, methods of curbing the presently excessive rate of population increase must promptly be put into effect to protect the well-being of the human race and perhaps, indeed, its very survival.

As President Johnson has said: "This cause is second only to the search for peace."

IV

It would be carrying coals to New Castle to dwell at further length on the need for a program of population control. You are all aware of the basic facts. I shall mention only a few in passing:

As long ago as 1959, President Eisenhower's Committee, chaired by William H. Draper, Jr., reported:

"A large part of the world population is at present underfed. World food production is barely keeping pace with the increase in population in the world. However, the increase in food production in most of the underdeveloped countries has been falling behind the increase in population.

"Unless the relationship between the present trends of population growth and food production is reversed, the already difficult task of economic development will become a practical impossibility.

"In many countries, national production is failing even to keep pace with population growth, and per capita gross national product and food supplies are decreasing rather than increasing."

The Committee on Population for the International Cooperation Year, chaired by former Deputy Assistant Secretary of State Richard Gardner, and meeting in Washington in November 1965, concluded that an annual appropriation of $100 million for the next 3 years would be required to prevent the population explosion from becoming a threat to both the United States and the underdeveloped portions of the world—a threat which would, in the first instance, undermine our continuing prosperity and, in the second, create widespread hunger and famine. It has been reliably estimated that there are 4,500,000 women in poor families now who are being denied an opportunity to make personal choices on family size because they don't have the money to pay for birth control information and services. With a population of 190 million—plus today, the United States is growing at the rate of around 1.6 percent, double that of most European nations. If this pace continues there will be upwards of 350 million of us by the turn of the next century. In less than two centuries, if the present rate continues, the population in the United States would surpass the present world population of 3.3 billion persons.

David Lilienthal, in a perceptive article in the New York Times Sunday magazine for January 9, 1966, acknowledging that he had previously been wrong in not supporting the planned parenthood program, stated:

"An additional 100 million people will undermine our most cherished traditions, erode our public services, and impose a rate of taxation that will make current taxes seem tame.

"There comes a point at which a change in quantity becomes a change in quality—when we can no longer speak of 'more of the same.' And another 100 million people will, I fear, make just that change in the joy of life in America."

Mr. Lilienthal pointed out the disastrous effect on education, water pollution, air pollution and the distribution of electric power which such an increase in population would bring about. He also spoke eloquently of the relationship between population growth and the poor, the recent doubling of Federal aid to dependent children, the appearance of the third generation on our relief rolls and the close analogy between the burden of unwanted children among American impoverished and uneducated mothers and that experienced by mothers in underdeveloped countries.

"Government policies and private programs must make plain the kind of life we all face if economically comfortable families reproduce at rates they personally can afford. With equal urgency we must make plain the dangers if poor families have children in numbers they cannot afford."

And he concluded:

"What is needed is a far more drastic cut in the birth rate—a voluntary curtailment of the right to breed. * * * Confronted by the crisis of population growth, we must, at present appeal to private conscience for the sake of the general good."

I could continue almost indefinitely with further chapter and verse. But there is no need to convince the already converted.

V

The need is thus clear. What are we doing about it at the local, State, and Federal level? The Federal Government is presently authorizing a somewhat timid policy of granting assistance to community action agencies operating under the poverty program. Funds granted by the Office of Economic Opportunity can be expended only under strict regulations which forbid the provision of contraceptive devices or drugs to unmarried women or married women not living with their husbands. Program funds are not permitted to be used to announce or promote, through mass media, the availability of the family planning program funded by OEO.

Despite these restrictions, grants have been made in sums totaling around $700,000 to Oakland, Calif.; Corpus Christi, Tex.—a heavily Catholic community—Austin, and Travis Counties, Tex.; Buffalo, N.Y.; Nashville, Tenn.; Albuquerque, N. Mex.; York County, Pa.; Hidalgo County, Tex.; Floyd County, Ky.; Cincinnati, Ohio; Santa Barbara, Calif.; Washington, D.C.; Minneapolis, Minn.

OEO has also funded health programs, of which family planning services are a part, in Boone, N.C.; Rochester, N.Y.; St. Louis, Mo.; Tufts University, Boston; Detroit, Mich., and Atlanta, Ga.

At the State level, Arlin Adams, the secretary of welfare, has recently announced that family planning information and services will be made available to individuals on public assistance in Pennsylvania when requested. He stated that his decision in this matter, a question of conscience, requiring considerable courage in the light of the climate at Harrisburg, had been cleared with Governor Scranton, who stated he had no objection to the secretary of welfare going ahead.

Here in Philadephia we are running well behind the pack—a generation behind the thinking and action in more enlightened communities. Your fine organization has long been the ugly duckling, or perhaps the unwanted stepchild, of an otherwise generous community. Those who contribute thousands of dollars to the United Fund which denies admission to the Planned Parenthood Federation will only reluctantly drop an anonymous $10 bill in the lap of your devoted solicitors.

Last Saturday night Mrs. Clark and I attended a magnificent concert and ball at the Academy of Music and the Bellevue which raised, to the tune of 1,000 popping champagne corks, an enormous sum of money for that splendid old institution, the Academy of Music. We were delighted to participate in this thoroughly worthwhile enterprise. But I wonder how much money the expensively dressed women and their immaculately white-tie attired escorts are giving to this cause in whose support we are gathered here today.

So far, planned parenthood has been unable to agree with the community action committee on a plan to obtain Federal aid for services to the poverty program. The leaders of that program have told me that they are prepared to go forward as soon as an acceptable program is submitted to them. I would hope that further delay could be avoided and the show put promptly on the road. And I would further hope that some support for this vitally needed endeavor would be forthcoming from the power structure of this city, including the directors and trustees of the health and welfare council, the united fund, and the Greater Philadelphia movement.

Why should not the city health centers provide birth control information? How can they possibly justify their refusal to do so? Is it not time for Philadelphia to shake itself out of its lethargy and do something effective to minimize, if not prevent, the misery caused by the unwanted child and the denial of the right to know?

VI

There is a big job to be done in the Greater Philadelphia Metropolitan Area. We are over the ideological hump, the consensus of public opinion is with us. The logjam has broken; the road should be all downhill from here.

This is no time to rest on one's oars. The energy, the time, the support, and the finances to achieve the goals of the Planned Parenthood Federation of Philadelphia are all here, ready and willing to go to work. Let's not shrink from the task.

THE BANK MERGER ACT

Mr. ROBERTSON. Mr. President, before the House adjourns today, it will complete action of H.R. 12173, the Patman bank merger bill. This bill is a compromise between those of us who thought that the views of the banking agencies should control in bank mergers and those of us who thought that the views of the Justice Department should control in bank mergers. Probably no one who has been concerned with this legislation agrees 100 percent with what is in the Patman bill. But, the Patman bill does provide the kind of uniform action that the Justice Department has endorsed and it likewise provides for more consideration of the views of the banking regulatory agencies than is possible under the ruling of the Supreme Court in the Philadelphia merger case.

The bankers of this Nation are overwhelmingly in favor of this bill and feel that the Senate should accept the House bill because they don't believe that a better bill can be agreed upon and they are very definitely of the opinion that if the Senate attempts to amend the House bill, it will merely result in killing all legislation on this subject for this session. Therefore, a motion will be made next Thursday to accept the House bill, and I hope that it will carry.

Mr. President, in order that Members of the Senate may be informed as to what is in the House bill, I ask unanimous consent to have published in the CONGRESSIONAL RECORD at this time an excerpt from the House committee report to accompany H.R. 12173.

There being no objection, the excerpt from the report (No. 1221) was ordered to be printed in the RECORD, as follows:

REPORT NO. 1221—BANK MERGER ACT AMENDMENT

WHAT THE BILL WOULD DO

The major purpose of the bill is to resolve the apparently conflicting interpretations which have been given the Bank Merger Act of 1960. It would also provide a procedure for the adjudication of the propriety of bank mergers prior to their consummation. The

legal effects of the bill may be summarized as follows:

(1) The bill would establish a single set of standards for the consideration of future mergers by the banking supervisory agencies, the Department of Justice, and the courts under the antitrust laws—standards stricter than those in the Bank Merger Act, but which include both the effect of the merger on competition and the convenience and needs of the community to be served; it would postpone consummation of mergers hereafter approved for 30 days to give the Department of Justice an opportunity to enjoin them; and it would exempt mergers consummated under the new standards and procedures from attack thereafter under any provision of the antitrust laws except the antimonopoly provisions of section 2 of the Sherman Act.

(2) It would exempt from all provisions of the antitrust laws, except section 2 of the Sherman Act, mergers consummated before June 17, 1963, including the three "pre-Philadelphia" mergers now in court.

(3) It would exempt from all provisions of the antitrust laws, except section 2 of the Sherman Act, mergers consummated after June 16, 1963, and before enactment of the bill, except mergers against which antitrust suits had been brought before such enactment.

(4) It would require the courts to use the new standards of the bill in all cases instituted under the antitrust laws after June 16, 1963, and before enactment, including the three "post-Philadelphia" cases now pending in court.

THE NEED FOR THE LEGISLATION

This legislation is needed to clarify the applicability of the antitrust laws to bank mergers. It has been contended on the one hand that banking is such a unique industry, and that the determination of where the public interest lies in a given bank merger situation requires such special expertise, that any bank merger which has been approved by the appropriate Federal supervisory agency should be absolutely immune from antitrust attack. On the other hand, your committee has heard the contention advanced with equal vigor that no special consideration should be given to factors which may differentiate banking from other industries; that any bank merger whose effect may be substantially to lessen competition in any one line of commerce in any one section of the country should on that ground alone be absolutely prohibited, and that neither the banking agencies nor the courts should even be permitted to examine the question of whether the overall effect of any such merger might be in the public interest.

The proponents of each of the foregoing contentions have sought to identify their positions with the intent of the Congress in the enactment of the Bank Merger Act of 1960, but your committee finds it unnecessary to take any position on what Congress may have meant to say 5 years ago. The fact that so many and such capable jurists and administrators have arrived at such diametrically opposed interpretations of the same statutory language is in itself a sufficient proof of the need for clarification.

PURPOSE OF THE BILL

The banking agencies and the Department of Justice are united in the expression of their ultimate goals, which are the maintenance of a sound banking system and the promotion of healthy competition among financial institutions to the end that the needs of a growing economy and the individuals and business units which make it up shall be adequately served. Needless to say, the attainment of these objectives is also the primary concern of your committee in recommending for enactment the bill reported herewith.

So far as the general substantive law is concerned, the disagreements between the Department of Justice and the banking agencies seem to have revolved, among other things, around two specific problems in economic regulation. These are the floundering bank problem and the relevant market problem.

The floundering bank

Under general antitrust law criteria, particularly as they have been developed over the past few years, the banking agencies find it difficult to deal as they would like with the floundering bank problem in medium to smaller sized communities. The problem arises where there is a relatively small number of banks, and one or more of these banks appear to be stagnating. It may be because it is below the economic minimum size to attract capable and vigorous management personnel, it may be because it is closely held by owners who insist on unrealistically conservative policies, or it may be for any other reasons which are discernible only by an examination of that particular bank as an individual institution. The banking agencies, with some differences in degree among themselves, have contended that they should be able to consider a merger application on the basis of such an individual examination, and to approve it if they believe that the result would be a more vigorously competing institution, furnishing better overall service to the community, even though the reduction in the number of competing units, or the concentration in the share of the market in one or more lines of commerce, might result under general antitrust law criteria in a substantial lessening of competition.

The relevant market

A recurrent bone of contention in the development of general antitrust law is the problem of defining the relevant market. Sometimes this is easy, as in the case of automobile manufacturers whose market is clearly national, or laundries whose market is clearly local. It is not so easy in the case of the larger banks, which serve a local market of individuals and small businesses, but which are also competing in the regional or national financial markets for the opportunity to place large loans with major corporations which are shopping the country for funds.

Committee action

Your committee has attempted to furnish both the agencies and the courts with more definite guidelines for dealing with the foregoing problems. Existing law (the sixth sentence of sec. 18(c) of the Federal Deposit Insurance Act) provides that in the case of a merger transaction the "agency shall also take into consideration [in addition to the so-called banking factors] the effect of the transaction on competition (including any tendency toward monopoly) and shall not approve the transaction unless, after considering all such factors, it finds the transaction to be in the public interest."

The intended legal effect of the bill is to modify the foregoing provision in three respects:

First, it is intended to make clear that no merger which would violate the antimonopoly section (sec. 2) of the Sherman Antitrust Act may be approved under any circumstances.

Second, the bill acknowledges that the general principle of the antitrust laws—that substantially anticompetitive mergers are prohibited—applies to banks, but permits an exception in cases where it is clearly shown that a given merger is so beneficial to the convenience and needs of the community to be served—recognizing that effects outside the section of the country involved may be relevant to the capacity of the institution to meet the convenience and needs of the community to be served—that it would be in the public interest to permit it.

Third, the bill provides that this rule of law is to be applied uniformly, in judicial proceedings as well as by the administrative agencies.

Your committee has taken this opportunity to revise the archaic and inappropriate phraseology by which existing law expresses the so-called banking factors as applied to bank mergers. It had its origins in the National Bank Act of 1863 and has become successively less appropriate as it was copied into the Federal Reserve Act in 1913, later into the Federal Deposit Insurance Act of 1933, and then finally again into that act in 1960. Its meaning in the present context is much better expressed as "the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served." Of course, the expression of these factors in the statute would not preclude the banking agencies, charged as they are with general supervisory responsibility, from considering in any particular case such other factors as they might deem relevant. However, only the convenience and needs of the community to be served can be weighed against anticompetitive effects, with financial and managerial resources being considered only as they throw light on the capacity of the existing and proposed institutions to serve the community.

PENDING CASES

Your committee considered carefully what to do with the six banks against which the Department of Justice now has cases pending. The Attorney General strenuously opposed any legislation which might relieve these six banks from further prosecution under the antitrust laws. Other witnesses urged equally strongly that all six mergers should be relieved of any further liability under the antitrust laws. Three of these mergers were consummated and the antitrust suits instituted before June 17, 1963, when the Supreme Court for the first time (*United States* v. *Philadelphia National Bank* (374 U.S. 321)) held that bank mergers were subject to section 7 of the Clayton Act. These three cases were the Lexington, Ky., merger, the Manufacturers Hanover merger in New York City, and the Continental Illinois merger in Chicago. Three other mergers—in California, Tennessee, and St. Louis—were consummated after the *Philadelphia* decision and with knowledge of its possible effect on their situations.

Under these conditions, your committee took the position that the first three mergers—the pre-Philadelphia mergers—should be exempted from section 7 of the Clayton Act and section 1 of the Sherman Act, like all other mergers consummated before the Philadelphia case. These three banks had reasonable grounds to rely on the authority of the banking agencies to approve mergers under the Bank Merger Act of 1960. These three banks, acting in good faith, and their depositors and other customers and their communities should not be required to suffer the confusion, the disruption, and the losses which would result from further efforts to unscramble them.

Your committee concluded that the three banks which merged after the Philadelphia decision should be treated just the same as banks which merge in the future under the new standards established by the bill. Accordingly, your committee's bill does not exempt these three banks from the antitrust laws. The bill provides that the courts having jurisdiction over these cases must apply the new standards set forth in paragraph (5) to be applied to all future mergers.

Before leaving this subject, however, your committee wishes to express its deep concern over the manner in which at least one of the post-Philadelphia cases has been han-

died by the Department of Justice. The facts are set forth in the supplemental views filed herewith by the Honorable LEONOR K. SULLIVAN.

LEGAL ANALYSIS OF THE BILL

Technical structure

The so-called Bank Merger Act of 1960 was an amendment to section 18(c) of the Federal Deposit Insurance Act. As now in effect, this section covers not only mergers but also certain other transactions, viz, reductions of capital and conversions, which have no direct competitive impact.

For clarity and convenience of reference, the bill rewrites section 18(c) of the Federal Deposit Insurance Act so that it contains no provisions which do not relate to merger transactions. Those provisions of the present section 18(c) not relating to merger transactions are then reenacted as a new section 18(i). The bill would also divide both section 18(c) and the new section 18(i) into numbered paragraphs.

Section 18(c) as proposed to be amended

Paragraph (1)

This paragraph repeats existing law without change. It requires written approval by the FDIC for any merger of an insured bank with an uninsured bank or institution. (In this analysis, the term "merger" is used to include consolidations, acquisitions of assets, and assumptions of liabilities as well as mergers.)

Paragraph (2)

This paragraph repeats the requirement of existing law that any merger between insured banks be approved by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, depending on whether the resulting bank is National, State member, or State nonmember.

Paragraph (3)

This paragraph sets forth without change the requirement of existing law that notice be published of proposed merger transactions except when the agency finds that it must act immediately in order to prevent the probable failure of one of the institutions involved. The period of publication is normally 30 days, but may be shortened by the agency to 10 days in emergency situations.

Paragraph (4)

This paragraph repeats the requirement of existing law that the responsible agency must normally obtain reports on the competitive factors involved in any merger transaction from the other two banking agencies and from the Attorney General. Thirty days are ordinarily allowed for furnishing the reports; this may be reduced to 10 days in emergencies, and if the responsible agency finds that it must act immediately to prevent a failure, the reports may be dispensed with altogether.

Paragraph (5)

The legal effect of this paragraph has been fully discussed above under the heading "Committee Action" on page 3 of this report.

Paragraph (6)

This paragraph contains a new provision which delays the effectiveness of agency approval except where immediate action is required to prevent a probable failure. The normal waiting period would be 30 days, which could be shortened to 5 days in those cases found by the agencies to be emergencies requiring expeditious action.

Paragraph (7)

This provides a special statute of limitations for antitrust actions, other than those based on the antimonopoly section (sec. 2) of the Sherman Act, arising out of an agency-approved bank merger. Any such action must be commenced during the waiting period provided in paragraph (6). In effect, this would preclude such an action altogether in any case where the agency found it must act immediately in order to prevent a probable failure. The commencement of an antitrust action within the prescribed period would automatically stay the effectiveness of agency approval, unless the court itself orders otherwise. It is expressly provided that the review by the courts shall be de novo.

Subparagraph (B) requires the courts, in adjudicating the propriety of any merger transaction, to apply the same rule of law that paragraph (5) directs the responsible agencies to apply when initially passing on the question. To make abundantly clear the narrowness of the scope of this modification of the antitrust laws as applied to banks, subparagraph (C) of this paragraph provides "nothing in this subsection shall exempt any bank resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction."

Subparagraph (D) permits any Federal banking agency approving a merger which is subsequently challenged in an antitrust suit to appear in the suit by its own counsel and present to the court the reason for its action. It also permits any State banking supervisory agency to present its evidence and views to the court in such suit, which may be either in support of or in opposition to the merger. This right might be of particular importance to a State agency in a case where two national banks were to be allowed to merge and, in the view of the State agency, would thereby create an intolerable competitive situation for one or more State banks.

Paragraph (8)

For convenience and precision of reference, this paragraph defines the term "antitrust laws" as the Sherman Act, the Clayton Act, and any other acts in pari materia.

Paragraph (9)

This paragraph repeats the requirement of existing law that the responsible agencies include in their annual reports descriptions of the mergers approved by them, the names and resources of the banks involved, summaries of the Attorney General's reports, and statements of the bases for approvals.

Section 18(i) as proposed to be added

This entire subsection reenacts without change certain provisions of law now contained in section 18(c). As noted above, this rearrangement has been effected solely for the purpose of promoting clarity in the law by removing from section 18(c) all provisions which do not relate to mergers.

Paragraph (1) requires that insured State nonmember banks (other than District banks) obtain the prior consent of the FDIC before effecting a reduction of capital.

Paragraph (2) prohibits conversions accompanied by reductions of capital without the consent of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the FDIC depending upon whether the resulting bank is to be a District bank, a State member bank, or a State nonmember insured bank.

Paragraph (3) requires the prior written consent of the Corporation before any insured bank may convert into a noninsured bank or institution.

Paragraph (4) repeats the provision of existing law mentioning certain specific factors relating to the history, condition, management and prospects of any bank making application pursuant to the preceding paragraphs, and requiring agency consideration of such factors in passing on such applications.

Pending cases

The rationale and effect of section 2 of the bill have already been discussed at page 4 of this report. Section 3 was added to the bill to remove any possible doubt that banks whose prior applications have been abandoned or judicially blocked as a result of the Attorney General's opposition may make new applications without prejudice in the light of the new standards proposed in the bill.

CONFLICTING DEPARTMENTAL REPORTS

In considering this bill, your committee was placed in the position of having to resolve a conflict of opinion among the departments. The manner in which this has been done has already been discussed in this report: some inkling of the sharpness of this conflict and the very difficult nature of the task with which your committee was confronted may be gleaned from the following correspondence:

DEPARTMENT OF JUSTICE,
Washington, D.C., September 24, 1965.

Hon. WRIGHT PATMAN,
Chairman, Banking and Currency Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Following the testimony of myself and other Government officials, a number of additional proposals with respect to bank mergers are presently pending before your committee. I thought it might be helpful in guiding your consideration of these various proposals if the views of the Department of Justice, the Department of the Treasury, the Comptroller of the Treasury, and the Federal Deposit Insurance Corporation on this subject were set forth.

1. As I testified, I have very strong objections to those provisions in pending bills which seek to forgive past mergers already found by the courts to be in violation of the antitrust laws, or which are presently pending before the courts. With respect to cases awaiting trial on the merits, I feel they should be subjected by the courts to the same standards by which future mergers would be governed, if any new legislation should be enacted.

2. Again, as I testified, the Department of Justice has no intention of seeking to attack past mergers on the basis that in and of themselves they violate section 7 of the Clayton Act or section 1 of the Sherman Act. While I believe that this position is a sound one and should be followed by future Attorneys General, I can understand a concern on the part of the banking industry and its desire that this viewpoint be formalized in law. Accordingly, I have no objection to a provision which would make this explicit. H.R. 11033, introduced by Congressman TODD, contains language which would satisfactorily incorporate this position into law.

The Department, of course, would wish to preserve its right to present facts concerning a past merger as evidence in any case challenging a new merger. It would not, however, seek relief which would set aside the past merger. The only circumstances I can envision in which relief might affect assets acquired in a past merger would arise only if the new merger under attack had been consummated, and the assets intermingled. In such a case it might not be possible to restore a situation approximating that preceding the new merger without affecting the assets. If the law enacted by Congress provided, as does the Senate bill, for a mandatory injunction against commingling of assets, this circumstance could never arise.

3. H.R. 11011, introduced by Mr. ASHLEY, makes a number of proposals governing mergers in the banking field. One of the principal premises of the Ashley bill is that the Department of Justice and the courts apply different standards to bank mergers than those applied by the bank regulatory agencies pursuant to the Bank Merger Act of 1960. The procedures set out in the Ashley bill are designed to promote uniformity in the standards which the various forums apply.

While there are those in the banking industry and, indeed, in Government who differ with me, I strongly believe that objective analysis will disclose that in actual practice

the differences in the standards applied by the banking agencies and by the courts, if any, have been overstated. In fact, the Supreme Court in the leading case has made it clear that all or most of the factors specified in the Bank Merger Act are relevant to a determination under section 7 of the Clayton Act or section 1 of the Sherman Act. The governing law, as stated by the majority of the Supreme Court in the Philadelphia Bank case is as follows:

"We are clear * * * that a merger, the effect of which 'may be substantially to lessen competition' is not saved because, on some ultimate reckoning of social or economic debits and credits, it may be deemed beneficial. A value choice of such magnitude is beyond the ordinary limits of judicial competence, and in any event was made for us already, by Congress when it enacted the amended section 7. Congress determined to preserve our traditionally competitive economy. It therefore proscribed anticompetitive mergers, the benign and malignant alike, fully aware, we must assume, that some price might have to be paid.

"In holding as we do that the merger of appellees would violate section 7 and must therefore be enjoined, we reject appellees' pervasive suggestion that application of the procompetitive policy of section 7 to the banking industry will have dire, although unspecified, consequences for the national economy. Concededly, PNB and Girard are healthy and strong; they are not undercapitalized or overloaned; they have no management problems; the Philadelphia area is not overbanked; ruinous competition is not in the offing. Section 7 does not mandate cutthroat competition in the banking industry, and does not exclude defenses based on dangers to liquidity or solvency, if to avert them a merger is necessary."

In addition, the Court noted that "the so-called failing company defense * * * might have somewhat larger contours as applied to bank mergers because of the greater public impact of a bank failure compared with ordinary business failures."

In view of this language, I find it difficult to believe that the standards applied by the courts and the standards specified under the Bank Merger Act of 1960 are, in fact, different. It seems to me clear that any concept of the overall "public interest" must be capable of articulation in terms of specific considerations such as those which the act specifies and which the Court has indicated should be taken into account as relevant aspects of "competitive effects."

Nonetheless, I think the appearance of conflicting standards is undesirable, particularly where it is seized upon by the industry and sincerely felt to be a substantial problem. Therefore, there is undoubted merit in Mr. ASHLEY'S attempt to specify uniformity of standards and I have no objection to making it clear by statute that the standards applied by the Court should be identical to those which the banking agencies are directed to apply by the Bank Merger Act of 1960.

I am opposed to particular procedures set forth in H.R. 11011. The bill provides for review in a court of appeals on the basis of a "record" upon which the order complained of was entered, and further provides that on review the findings of the agency as to the facts, if supported by substantial evidence, shall be conclusive. This type of review is normally used for determinations by such agencies as the Federal Power Commission and the Federal Trade Commission who, pursuant to the Administrative Procedure Act, have held full public adversary hearings on a public record, with full opportunities to all parties to develop evidence as to rebut evidence produced by the others. No such procedures for the full development of a record are provided for by the Bank Merger Act or by any current proposal, and indeed there are important considerations that make the more summary handling of merger applications particularly appropriate. Since the vast majority of applications raise no serious problems of an antitrust nature, there would seem to be no little point in subjecting all merger applications before the regulatory authorities to all of the requirements of the Administrative Procedure Act in order to lay the groundwork for court review in those few instances where serious questions of competition are presented.

Consequently, while I am sympathetic to efforts to clarify through legislation the application of antitrust law to banks, I believe that the current practice, whereby the Department of Justice institutes proceedings in Federal district courts against mergers which it believes to be unlawful, should be allowed to continue; so that there could be a trial de novo of all issues in any such suit.

In summary, I am not opposed to legislation which would clarify the application of antitrust law to banks and am sympathetic to provisions which would remove some of the fears presently held by the banking industry with respect to retroactive application of section 1 of the Sherman Act or section 7 of the Clayton Act. Nor would the Department be opposed to explicitly providing that the factors taken into account by the banking agencies under the Bank Merger Act of 1960 would also be taken into account by the courts—the proposition which underlies H.R. 11011. We believe all such factors should be taken into account in determining whether the merger is desired to be in the public interest. We believe it important to keep in mind that both regulation and competition have a role to play in seeing to it that banking institutions serve the high and especial public interest for which they are designed.

I have discussed the positions identified in this letter with the Secretary of the Treasury, the Comptroller of the Currency, and the Chairman of the Federal Deposit Insurance Corporation. All of us are in agreement except for point 1. The Secretary of the Treasury and the Chairman of the Federal Deposit Insurance Corporation believe that point 1 is a matter within the purview of the Department of Justice. The Comptroller of the Currency objects to the position taken in point 1. The Department of Justice would be happy to assist you or any members of the committee in drafting revisions of pending proposals along the lines suggested above.

Sincerely,

NICHOLAS DEB. KATZENBACH,
Attorney General.

U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., October 20, 1965.

Hon. NICHOLAS DEB. KATZENBACH,
Attorney General of the United States,
Justice Department, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: The question of bank merger legislation continues to be of interest to members of the House Committee on Banking and Currency. The letter of Attorney General Katzenbach to Chairman PATMAN of April 24, 1965, and the letter of Secretary of the Treasury Fowler to Congressman MOORHEAD of October 11, 1965, comments generally on the undoubted merit of providing "uniformity" of standards governing the banking agency, the Attorney General, and the courts. Because of the importance of the wording of these standards, I should appreciate your analysis and comments on the Ashley-Ottinger proposal, and on the Reuss proposal. In order that the specific language of these proposals may be before you, I include them herewith:

1. The Ashley-Ottinger proposal:

"The responsible agency shall not approve any merger transaction under this subsection unless it finds that such transaction will not violate the antitrust laws, except that in considering the application of the antitrust laws to merger transactions, the responsible agency, the Attorney General, and any court reviewing the legality of such transaction shall take into account the effect on the public interest and the community to be served of the following banking factors:

"(A) the financial history and condition of each of the banks involved;

"(B) the adequacy of its capital structure;

"(C) its future earnings prospects;

"(D) the general character of its management;

"(E) the convenience and needs of the community to be served; and

"(F) whether or not its corporate powers are consistent with the purposes of this act.

"A merger transaction which tends to lessen competition may be approved where the probable adverse competitive effect thereof is clearly outweighed in the public interest by the probable effect of such transaction in meeting the convenience and needs of the community to be served."

2. The Reuss proposal (in other sections identical with the Ashley-Ottinger proposal):

"The responsible agency shall not approve any proposed merger transaction—

"(A) unless it finds that such transaction would not involve a violation of section 2 of the Sherman Antitrust Act (15 U.S.C. 2).

"(B) which would violate section 1 of the Sherman Antitrust Act (15 U.S.C. 1) or section 7 of the Clayton Act (15 U.S.C. 18) unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

"In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions."

I believe the Reuss proposal is preferable for the following reasons:

1. The Ashley-Ottinger proposal permits the regulatory agencies and the courts to approve a merger though it violates section 2 of the Sherman Antitrust Act—the section prohibiting monopolies, except for the "failing company" doctrine. I do not believe it in the public interest for such monopolistic mergers to be consummated.

2. The Ashley-Ottinger proposal lumps together six vague criteria—with no weight assigned to each—that are to govern whether a merger is to be allowed. Some of these criteria, such as "whether or not its corporate powers are consistent with the purposes of this act," do not appear to have any particular meaning. The criteria, and how to apply them, offer inadequate guidance to the agencies and the courts. The Reuss proposal permits the antitrust laws (other than section 2 of the Sherman Act) to be overriden only where they are "clearly outweighed by the probable effect of the transaction in meeting the convenience and needs of the community to be served."

3. The Ashley-Ottinger proposal allows the regulatory agencies and the courts to turn down a merger even "where the probable adverse competitive effect thereof is clearly outweighed in the public interest by the probable effect of such transaction in meeting the convenience and needs of the community to be served." This is so because of the use of the word "may," and because "convenience and needs" is merely one of six factors listed. The Reuss proposal, properly, I think, requires the approval of a merger where "convenience and needs" outweighs the anti-competitive effects.

4. The Ashley-Ottinger proposal permits the regulatory agencies and the courts to approve a merger, even though the "convenience and needs of the community" are not served by the merger, if even one of the other six factors is satisfied. Thus, a merger transaction could be approved, despite an adverse

effect both on competition and on the convenience and needs of the community if, let us say, the banks' "corporate powers are consistent with the purposes of this act"—whatever that may mean. The Reuss proposal allows a merger only when "convenience and needs" clearly outweigh the anticompetitive effects.

I shall deeply appreciate your prompt comment, together with any suggestions for improvement. I am also asking Secretary of the Treasury Fowler for his opinion.

Sincerely,

HENRY S. REUSS,
Member of Congress.

THE SECRETARY OF THE TREASURY,
Washington, November 10, 1965.

Hon. HENRY S. REUSS,
House of Representatives,
Washington, D.C.

DEAR HENRY: This is by way of an interim reply to your letters of October 19 and October 20, in which you request our comments on the so-called "Ashley-Ottinger" and "Reuss" proposals for bank merger legislation.

Our Acting General Counsel is convening a meeting of the general counsels of the bank supervisory agencies for the purpose of examining both of these proposals from a technical and legal standpoint and I would, therefore, like to await the results of their study before making any definitive comments.

In general, it seems to me that within the scope of the two proposals there is the making of a piece of legislation which could solve the problem.

I should like to add that it would seem to me at first reading that the Reuss proposal deals with what may be some technical defects in the Ashley-Ottinger proposal. For example, it does seem to me that the legislation should make clear that a merger should not be approved which involves a violation of section 2 of the Sherman Act. Again, I think the Ashley-Ottinger proposal is susceptible to some disagreement as to the relationship between the six factors listed and the factor of the "public interest," vis-a-vis the adverse competitive effect of the merging. There also seems to be some lack of clarity in the relationship of subparagraph (F) in the Ashley-Ottinger proposal; namely, "corporate powers are consistent with the purposes of this act" to the other factors specified.

On the other hand, it has been pointed out to me that the provisions of the present bank merger legislation including items (A) through (F) have a long legislative history and that there might be some loss in terms of complying with congressional intent resulting from the deletion of these items. It is possible that something in the nature of a combination of points in the two proposals would prove to be a better bill.

I have an idea that these are principally drafting points rather than substance, and it is for this reason that I hope that the committee of general counsels can come up with some recommendations looking toward an agreed solution.

You will hear from me further on this.

With best wishes,

Sincerely,

Joe,
HENRY H. FOWLER.

THE SECRETARY OF THE TREASURY,
Washington, January 3, 1966.

Hon. HENRY S. REUSS,
House of Representatives,
Washington, D.C.

DEAR HENRY: This is a supplement to my letter of November 10 responding to your inquiries concerning the proposed bank merger legislation.

As you know, the Acting General Counsel of Treasury (Fred Smith) and the Under Secretary (Joe Barr) have been vigorously exploring with representatives of the Justice Department and of the bank supervisory agencies possibilities for obtaining a meeting of the minds on technical revisions of the bill, taking into account certain points of criticism which you made in your letter of October 20, 1965. A number of meetings have been held and I must say that all parties concerned have made a sincere effort to find a workable formula. However, our success has only been partial.

To review the situation, you will recall that in my letter of November 10, 1965, I indicated to you that on a first reading it would appear that the so-called Reuss and Ashley proposals were within the "ball park" of feasible legislation to deal with the problem, and within the ambit of Attorney General Katzenbach's letter of September 24, 1965, in which he endorsed the effort to specify uniform standards and to make clear by statute that the standards applied by the court should be identical to those which the banking regulatory agencies are directed to apply.

As to the technical points raised in your letter of October 20, 1965, we find upon exploration that the agencies concerned agree that some drafting improvements could be made. There is general agreement that the substance of the language in subsection 5 of the Reuss proposal which reads: "The responsible agency shall not approve any proposed merger transaction unless it finds that such transaction would not involve a violation of section 2 of the Sherman Antitrust Act (15 U.S.C. 2)" is an improvement over the corresponding provision of subsection 5 of the Ashley-Ottinger proposal. However, since it is not considered appropriate for the banking agencies to determine whether violations of the antitrust laws exist, alternative language might be considered along the following line:

"No merger transaction shall be approved by the responsible agency where it finds that such transaction would result in a monopoly of any part of the trade or commerce among the several States."

However, our attempts to arrive at an agreed position on the language contained in part B of subsection 5 of your proposal, which reads "The responsible agency shall not approve any proposed merger transaction which would violate section 1 of the Sherman Antitrust Act (15 U.S.C. 1) or section 7 of the Clayton Act (15 U.S.C. 18), unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed by the probable effect of the transaction in meeting the convenience and needs of the community to be served" were not successful.

My personal position is as follows:

(1) The Bank Merger Act of 1960 set forth specific standards to guide the regulatory agencies in approving or denying merger applications.

(2) I believe that there should be one law for all parties concerned and that the same standards should be applied by the regulatory agencies, the Department of Justice, and the courts.

(3) The standards of the Bank Merger Act of 1960 are satisfactory to me, as indicated by the Attorney General's letter to Chairman PATMAN dated September 24, 1965 (see particularly the second full paragraph of p. 3 beginning "Nonetheless" and the last paragraph of the Attorney General's letter). It may well be that these existing standards could be improved and made more precise. We have earnestly tried to find a more precise formula on which there was agreement. However, since we have not been able to find an area of agreement as to how the present language on standards could be improved, it seems to me that the application of the present standards to all parties would be a legislative improvement of the existing situation.

Sincerely yours,

"Joe,"
HENRY H. FOWLER.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., January 5, 1966.

Hon. HENRY S. REUSS,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN: Confirming oral discussions between you and my staff, I am responding to your letter of October 20, 1965, in which you requested my comments and suggestions with respect to proposals offered by yourself and by Messrs. Ashley and Ottinger to achieve uniformity of standards to be followed by the banking agencies, the Department of Justice and the courts in reviewing bank mergers. Your letter and your subsequent assistance were very helpful to us in our further consideration of the matters involved in the proposed legislation. To meet the problems suggested by your letter and certain other difficulties, we have drafted the attached revision of subsections (5) and (7) of the Ashley-Ottinger bill. I believe that the proposed revision accurately states the standards which Congress, in the Bank Merger Act of 1960, directed the banking agencies to apply in passing on bank mergers. In amplifying in detail the position outlined in my letter of September 24, 1965, to the chairman of the House Banking and Currency Committee, the proposed revision clarifies some of the possible ambiguities that that letter may have contained.

As you have pointed out in your letter, my letter of September 24, 1965, to Chairman Patman commented favorably on the objective of providing uniformity of standards for bank mergers; and, as I stated, I have no objection to making it clear by statute that the standards applied by the courts should be identical to those which the banking agencies are directed to apply by the Bank Merger Act.

My views in this regard, however, as stated in my September 24, 1965, letter, stem from the premise that the appearance of conflicting standards is undesirable, particularly where it is felt by the industry to be a substantial problem, and not because of any belief that the standards specified in the Bank Merger Act and those applied by the courts are, in fact, significantly different. I should like to repeat here my strong belief that the differences, if any, in the standards applied to bank mergers by the courts and the standards applied by the agencies have been overstated. Therefore, it is vitally important in my view that any legislation aimed at achieving uniformity of standards should not, by inadvertent language, create entirely new and untested standards in this field. The analysis in your letter of October 20, 1965, illustrates, however, that it has been very difficult to draft statutory language creating uniform standards without also modifying existing law in undesirable ways.

For example, as you point out, the Ashley-Ottinger proposal could be reasonably interpreted to permit the regulatory agencies and the courts to approve a merger that violates the Sherman Act. This would effect a substantial change in current law, for, as is clearly indicated by the legislative history of the Bank Merger Act, that act was not intended to affect in any way the applicability of the Sherman Act to bank mergers.

Moreover, according to the Ashley report of October 19, 1965, the proposal "would change the present standards for the consideration of bank mergers" and would provide "in effect, that the general principle that substantially anticompetitive mergers

are absolutely prohibited is to be modified in the case of banks to the extent that a 'merger transaction which tends to lessen competition may be approved where the probable adverse competitive effect thereof is clearly outweighed in the public interest by the probable effect of such transaction in meeting the convenience and needs of the community to be served.'" In thus permitting the single factor of "convenience and needs" to override all other considerations, the proposal goes far beyond the desirable objective of achieving uniformity in the review of bank mergers by means of a direction to the courts and agencies to take into account all of the standards of the Bank Merger Act, and does not accord with my view that a substantive change in existing law is neither necessary nor appropriate.

As you know, we also had some difficulties with your bill, again largely stemming from the fact that it incorporated novel tests that would create new uncertainties in this area of the law and might lead to a substantial modification of antitrust principles, although this was clearly not your intent. I understand that my staff has reviewed the proposed revision of subsections (5) and (7) of the Ashley-Ottinger bill which I am enclosing herewith, and that you are agreeable to the proposed revision.

I believe that the proposed revision does not conflict in any way with the views expressed by Secretary Fowler in his letter to you of January 3. In my opinion, the proposed revision accurately reflects the present law applicable to bank mergers, and with the exception which I shall shortly note, I would be agreeable to the Ashley-Ottinger bill if revised as indicated.

The exception concerns section 2(a) of the Ashley-Ottinger bill. For the reasons set forth in my testimony and in my letter of September 24, 1965, I remain opposed to this or any similar provision.

Sincerely,

NICHOLAS DEB. KATZENBACH,
Attorney General.

Draft revision of subsections (5) and (7) of S. 1698, as amended in proposed bill filed by Congressmen Ashley and Ottinger

1. Subsection (5) to read as follows: "The responsible agency shall not approve a proposed merger transaction unless it finds that such transaction will be in the public interest, taking into consideration the effect of the transaction on competition (including any tendency toward monopoly) and the importance of protecting the public against bank insolvency. In determining the effect on competition and the likelihood of insolvency, the agency shall take into account the following factors, among others:

"(A) The financial history and condition of each of the banks involved;

"(B) The adequacy of their capital structure;

"(C) Their future earnings prospects;

"(D) The general character of their management; and

"(E) The convenience and needs of the communities to be served."

2. Subsection (7) to read as follows:

"(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

"(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

"(C) Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this subsection shall exempt any bank resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction."

CHANGES IN EXISTING STATUTORY PROVISIONS

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, the provisions of existing Federal statutes which the bill, as reported, would expressly amend or repeal are shown below. The proposed changes are shown (a) by enclosing in black brackets material to be omitted from the existing provisions, (b) by printing the new matter in italic type, and (c) by printing in roman type those parts of such provisions in which no change is to be made.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828)

SEC. 18. (a) Every insured bank shall display at each place of business maintained by it a sign or signs, and shall include a statement to the effect that its deposits are insured by the Corporation in all of its advertisements: *Provided,* That the Board of Directors may exempt from this requirement advertisements which do not relate to deposits or when it is impractical to include such statement therein. The Board of Directors shall prescribe by regulation the forms of such signs and the manner of display and the substance of such statements and the manner of use. For each day an insured bank continues to violate any provisions of this subsection or any lawful provisions of said regulations, it shall be subject to a penalty of not more than $100, which the Corporation may recover for its use.

(b) No insured bank shall pay any dividends on its capital stock or interest on its capital notes or debentures (if such interest is required to be paid only out of net profits) or distribute any of its capital assets while it remains in default in the payment of any assessment due to the Corporation; and any director or officer of any insured bank who participates in the declaration or payment of any such dividend or interest or in any such distribution shall, upon conviction, be fined not more than $1,000 or imprisoned not more than one year, or both: *Provided,* That, if such default is due to a dispute between the insured bank and the Corporation over the amount of such assessment, this subsection shall not apply, if such bank shall deposit security satisfactory to the Corporation for payment upon final determination of the issue.

[(c) Without prior written consent by the Corporation, no insured bank shall (1) merge or consolidate with any noninsured bank or institution or convert into a noninsured bank or institution or (2) assume liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution or (3) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured bank. No insured bank shall convert into an insured State bank if its capital stock, or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholders' meeting approving such conversion, without prior written consent by the Comptroller of the Currency if the resulting bank is to be a District bank, or by the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank (except a District bank), or by the Corporation if the resulting bank is to be a State nonmember insured bank (except a District bank). No insured bank shall merge or consolidate with any other insured bank or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured bank without the prior written consent (i) of the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a District bank, or (ii) of the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank (except a District bank), or (iii) of the Corporation if the acquiring, assuming, or resulting bank is to be a nonmember insured bank (except a District bank). Notice of any proposed merger, consolidation, acquisition of assets, or assumption of liabilities, in a form approved by the Comptroller, the Board or the Corporation, as the case may be, shall (except in a case where the furnishing of reports under the seventh sentence of this subsection is not required) be published, at appropriate intervals during a period (prior to the approval or disapproval of the transaction) at least as long as the period allowed under such sentence for furnishing such reports, in a newspaper of general circulation in the community or communities where the main offices of the banks involved are located (or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto). In granting or withholding consent under this subsection, the Comptroller, the Board, or the Corporation, as the case may be, shall consider the financial history and condition of each of the banks involved, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served, and whether or not its corporate powers are consistent with the purposes of this Act. In the case of a merger, consolidation, acquisition of assets, or assumption of liabilities, the appropriate agency shall also take into consideration the effect of the transaction on competition (including any tendency toward monopoly), and shall not approve the transaction unless, after considering all of such factors, it finds the transaction to be in the public interest. In the interests of uniform standards, before acting on a merger, consolidation, acquisition of assets, or assumption of liabilities under this subsection, the agency (unless it finds that it must act immediately in order to prevent the probable failure of one of the banks involved) shall request a report on the competitive factors involved from the Attorney General and the other two banking agencies referred to in this subsection (which report shall be furnished within thirty calendar days of the date on which it is requested, or within ten calendar days of such date if the requesting agency advises the Attorney General and the other two banking agencies that an emergency exists requiring expeditious action). The Comptroller, the Board, and the Corporation shall each include in its annual report to the Congress a description of each merger, consolidation, acquisition of assets, or assumption of liabilities approved by it during the period covered by the report, along with the following information: the name and total resources of each bank involved; whether a report has been submitted by the Attorney General hereunder, and, if so, a summary by the Attorney General of the substance of such report; and a statement by the Comptroller,

the Board, or the Corporation, as the case may be, of the basis for its approval. No insured State nonmember bank (except a District bank) shall, without the prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.]

(c)(1) Except with the prior written approval of the responsible agency, which shall in every case referred to in this paragraph be the Corporation, no insured bank shall—

(A) merge or consolidate with any noninsured bank or institution;

(B) assume liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution;

(C) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured bank.

(2) No insured bank shall merge or consolidate with any other insured bank or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured bank except with the prior written approval of the responsible agency, which shall be—

(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a District bank;

(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank (except a District bank);

(C) the Corporation if the acquiring, assuming, or resulting bank is to be a nonmember insured bank (except a District bank).

(3) Notice of any proposed transaction for which approval is required under paragraph (1) or (2) (referred to hereafter in this subsection as a "merger transaction") shall, unless the responsible agency finds that it must act immediately in order to prevent the probable failure of one of the banks involved, be published—

(A) prior to the granting of approval of such transaction.

(B) in a form approved by the responsible agency.

(C) at appropriate intervals during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection, and

(D) in a newspaper of general circulation in the community or communities where the main offices of the banks involved are located, or if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto.

(4) In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless it finds that it must act immediately in order to prevent the probable failure of one of the banks involved, shall request reports on the competitive factors involved from the Attorney General and the other two banking agencies referred to in this subsection. The reports shall be furnished within 30 calendar days of the date on which they are requested, or within 10 calendar days of such date if the requesting agency advises the Attorney General and the other two banking agencies that an emergency exists requiring expeditious action.

(5) The responsible agency shall not approve—

(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the banks involved and reports on the competitive factors have been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General and the other two banking agencies of the existence of an emergency requiring expeditious action and has requested reports on the competitive factors within 10 days, the transaction may not be consummated before the 5th calendar day after the date of approval by the agency. In all other cases the transaction may not be consummated before the 30th calendar day after the date of approval by the agency.

(7) (A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

(B) In any judical proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

(C) Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 51 U.S.C. 2), but nothing in this subsection shall exempt any bank resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction.

(D) In any action brought under the antitrust laws arising out of a merger transaction approved by a Federal supervisory agency pursuant to this subsection, such agency, and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.

(8) For the purposes of this subsection, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1–7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12–27), and any other Acts in pari materia.

(9) Each of the responsible agencies shall include in its annual report to the Congress a description of each merger transaction approved by it during the period covered by the report, along with the following information:

(A) the name and total resources of each bank involved;

(B) whether a report was submitted by the Attorney General under paragraph (4), and if so, a summary by the Attorney General of the substance of such report; and

(C) a statement by the responsible agency of the basis for its approval.

(d) No State nonmember insured bank (except a District bank) shall establish and operate any new branch unless it shall have the prior written consent of the Corporation, and no State nonmember insured bank (except a District bank) shall move its main office or any branch from one location to another without such consent. The factors to be considered in granting or withholding the consent of the Corporation under this subsection shall be those enumerated in section 6 of this Act.

(e) The Corporation may require any insured bank to provide protection and indemnity against burglary, defalcation, and other similar insurable losses. Whenever any insured bank refuses to comply with any such requirement the Corporation may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank.

(f) Whenever any insured bank (except a national bank or a District bank), after written notice of the recommendations of the Corporation based on a report of examination of such bank by an examiner of the Corporation, shall fail to comply with such recommendations within one hundred and twenty days after such notice, the Corporation shall have the power, and is hereby authorized, to publish only such part of such report of examination as relates to any recommendation not complied with: *Provided,* That notice of intention to make such publication shall be given to the bank at least ninety days before such publication is made.

(g) The Board of Directors shall by regulation prohibit the payment of interest on demand deposits in insured nonmember banks and for such purpose it may define the term "demand deposits"; but such exceptions from this prohibition shall be made as are now or may hereafter be prescribed with respect to deposits payable on demand in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the Board of Governors of the Federal Reserve System. The Board of Directors shall from time to time limit by regulation the rates of interest or dividends which may be paid by insured nonmember banks on time and savings deposits, but such regulations shall be consistent with the contractual obligations of such banks to their depositors. For the purpose of fixing such rates of interest or dividends, the Board of Directors shall by regulation prescribe different rates for such payment on time and savings deposits having different maturities, or subject to different conditions respecting withdrawal or repayment, or subject to different conditions by reason of different locations, or according to the varying discount rates of member banks in the several Federal Reserve districts. The Board of Directors shall by regulation define what constitutes time and savings deposits in an insured nonmember bank. Such regulations shall prohibit any insured nonmember bank from paying any time deposit before its maturity except upon such conditions and in accordance with such rules and regulations as may be prescribed by the Board of Directors, and from waiving any requirement of notice before payment of any savings deposit except as to all savings deposits having the same requirement. For each violation of any provision of this subsection or any lawful provision of such regulations relating to the payment of interest or dividends on deposits or to withdrawal of deposits, the offending bank shall be subject to a penalty of not more than $100, which the Corporation may recover for its use. During

the period commencing on October 15, 1962, and ending on October 15, 1968, the provisions of this subsection shall not apply to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

(h) Any insured bank which willfully fails or refuses to file any certified statement or pay any assessment required under this Act shall be subject to a penalty of not more than $100 for each day that such violations continue, which penalty the Corporation may recover for its use: *Provided*, That this subsection shall not be applicable under the circumstances stated in the proviso of subsection (b) of this section.

(i) (1) No insured State nonmember bank (except a District bank) shall, without the prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.

(2) No insured bank shall convert into an insured State bank if its capital stock or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholder's meeting approaching such conversion without the prior consent of—

(A) the Comptroller of the Currency if the resulting bank is to be a District bank;

(B) the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank (except a District bank);

(C) the Corporation if the resulting bank is to be a State nonmember insured bank (except a District bank).

(3) Without the prior written consent of the Corporation, no insured bank shall convert into a noninsured bank or institution.

(4) In granting or withholding consent under this subsection, the responsible agency *shall consider—*

(A) the financial history and condition of the bank,

(B) the adequacy of its capital structure,

(C) its future earnings prospects,

(D) the general character of its management,

(E) the convenience and needs of the community to be served, and

(F) whether or not its corporate powers are consistent with the purposes of this Act.

SUPPLEMENTAL VIEWS OF THE HONORABLE LEONOR K. SULLIVAN OF MISSOURI

Section 2(a) of the committee bill would exempt from antitrust proceedings those banks which merged prior to June 17, 1963, the date on which the Supreme Court held for the first time that bank mergers were subject to section 7 of the Clayton Act. The principal effect of this provision is to stop further antitrust proceedings in the case of three mergers which were consummated prior to that date. The committee rightfully says that these three banks had reasonable grounds to rely on the authority of the banking agencies to approve mergers under the Bank Merger Act of 1960 and that, having acted in good faith, they should not be put to the trouble and expense of trying to unscramble the merged banks.

As the committee report points out the Justice Department is proceeding against three other banks which merged after June 17, 1963. These banks would not be relieved of the pending antitrust proceedings against them under the committee's bill on the theory that they merged with full knowledge of the effect of the Supreme Court's decision on their situations and thus do not have the same good faith basis for relief as do the three predecision banks. Based on the facts before the committee at the time I do not quarrel with this conclusion. However, it has subsequently developed that at least one of the postdecision mergers was planned and carried forward only because the parties relied in good faith on statements made by responsible officials of the Justice Department. The facts, which are fully documented, are briefly these:

The attorneys for the merging bank had a conference with the then Chief of the Antitrust Division of the Department of Justice—the purpose being to find out, if possible, what the Department's attitude would be if the two banks decided to merge. Although this official would not give any specific guidance to the banks he did say that the Department would not bring suit against bank mergers unless the Department had the support of two of the banking agencies. This statement was made to the banks' attorneys in March of 1965. Subsequently in April 1965 the same official made a similar statement at a public hearing held by Senator HART's antitrust subcommittee, saying in part:

"* * * As I have stated, our enforcement policy and practice contemplates that we will not today, bring suits to enjoin bank mergers unless two of the other three agencies agreed with us that the anticompetitive effects outweighed what other advantages the merger might have. And this is our present policy."

The testimony was given wide publicity. Relying on the policy statement made both privately and publicly by the Chief of the Antitrust Division, the parties proceeded with plans to merge and in fact did so.

However, despite the fact that two of the banking agencies did not support the Department of Justice, that Department, in a clear contradiction of its stated policy, brought suit against the merged bank. It is true that the Department advised the parties that it would proceed against them if they merged, but this came so late in time that it was the best judgment of the parties that irreparable damage would be done to the smaller bank if the proposed merger was abandoned. If the first of the conflicting positions taken by the Department of Justice did not create justifiable reliance, it at least provoked unwarranted confusion.

It is also true that the Department attempted to enjoin the merger but the court refused to grant the injunction. If the first of the conflicting positions taken by the Department of Justice did not create justifiable reliance it at least provoked unwarranted confusion.

On the facts, I think that the banks involved had a good faith basis for proceeding with plans to merge and for merging. Therefore, the amendment I have offered in committee would provide that any merger consummated after the Supreme Court's decision and prior to the enactment of this act would be conclusively presumed not to have been in violation of the antitrust laws unless both of the reports on the competitive factors furnished, as required by law, by the two banking agencies other than the one having responsibility over the merger conclude that the anticompetitive effects of the particular transaction would be substantially adverse. Thus, I would put in the law as a basis for stopping further antitrust proceedings the policy statement made both privately and publicly by the then head of the Antitrust Division of the Department of Justice, and upon which one or more banks relied in good faith in proceeding to merge.

DISSENTING VIEWS OF THE HONORABLE HENRY B. GONZALEZ OF TEXAS

I dissent from the views expressed in the report on the proposed bank merger bill, H.R. 12173. My disagreement rests principally on three grounds:

(1) I am in favor of uniformity in the law, but against vagueness. A vague uniform law is at least as undesirable as several different ones. The language of H.R. 12173 acknowledging that the general principle of the antitrust laws and creating an exception in cases where a merger is so beneficial to "the convenience and needs of the community to be served" that it would be in the public interest to permit it, is as vague and undefined a standard as any group of men could possibly dream up.

I agree with Attorney General Nicholas deB. Katzenbach that the differences in standards applied by the banking agencies and by the courts have been vastly overstated. A reading of the cases, in fact, will reveal that the standards applied by the courts are no different from those specified under the Bank Merger Act of 1960. In my opinion, therefore, there is a serious question as to whether a public purpose is being served by enacting any legislation on this subject at this time. Frankly, the burden of establishing the need for such far-reaching legislation resting on the proponents, I have not been convinced that there is any genuine need for the proposed law, despite the fury and histrionics that have accompanied the various bills in this 89th Congress.

But even assuming the need for a law, it is one thing to enact uniform standards. But it is another thing to enact new and untested standards, and vague ones at that. What exactly is meant by the phrase "the convenience and needs of the community to be served"?

If it has a precise meaning it should have been spelled out in the bill. If it was intended to provide a ball of wax for any administrator to stick his finger into and pull out an exception, it could not have been done better.

(2) No compelling reasons were demonstrated during the hearings to "forgive" past mergers already found by the courts to be in violation of the antitrust laws. What we are doing by this bill is enacting a special law for the banks involved in the three mergers which are receiving forgiveness.

(3) The bill would permit any Federal banking agency approving a merger which has subsequently been challenged by the Department of Justice to appear in the suit by its own counsel and present the court the reasons for its action. In effect, this encourages Federal agencies to intervene in a lawsuit instituted by the Department of Justice for the purpose of opposing the Department of Justice. This is a bad precedent, one that fragmentizes the authority of the Attorney General to enforce the law, and one that could lead to much internecine squabbling amongst separate agencies of the Federal Government.

For all of these reasons, I am in disagreement with the majority report and am opposed to the bill, H.R. 12171, that has been reported out of the House Banking and Currency Committee.

DISSENTING VIEWS OF THE HONORABLE CHARLES L. WELTNER OF GEORGIA

In enacting the Bank Merger Act of 1960, Congress expressed its alarm over the rising tide of bank mergers. In the words of its sponsors, that act was to make bank mergers more difficult, not easier. Prior to enactment of the 1960 law, many bank mergers could be consummated without any banking agency approval whatever. Congress was determined to do something to maintain vigorous competition in the banking system and in the industry and commerce served by the banking system. This congressional intent was confirmed by the highest court in the land in the *Philadelphia National Bank* case decided in 1963. Yet, the majority has undertaken to substantially dilute the application of section 1 of the Sherman Antitrust Act and section 7 of the Clayton Act to bank mergers.

Since 1960 the commercial banking industry has become even more concentrated and centralized, rather than more competitive.

In 1964, the 100 largest commercial banks held deposits amounting to $142.7 billion, or 46.3 percent of all deposits—up from $105.8 billion, or 45.9 percent of all deposits in 1960. In 1964, the 14 largest banks in America held $75.7 billion in deposits, or 24.5 percent of the total—up from $52.8 billion, or 22.9 percent of total bank deposits in 1960. This increased concentration has come about throughout the country, and is particularly acute in areas such as New York City and California.

It is argued by the proponents of a lax merger policy that mergers generally provide superior banking services at less cost to the public. Evidence is strongly to the contrary. A study recently prepared by Franklin R. Edwards, senior economist in the Bureau of the Comptroller of the Currency, concluded:

"Examining bank performance in 36 major metropolitan areas, we found that structural differences among these markets exert an important influence on bank performance. Market concentration, especially, was found to be significantly associated with the pricing, output, and profits of banks—*high concentration being associated with high loan rates, low rates on time and savings deposits, and high profits.*" [Emphasis added.]

Of the approximately 800 bank mergers approved by the banking agencies since the 1960 act, the Justice Department has brought suit in only 8 instances. Furthermore, the approval rate by the banking agencies for that same period exceeds 90 percent. It should be clear to all, therefore, that the enactment of legislation diluting the antitrust laws to a substantial degree is not a step forward, but rather a dangerous step backward. It is contrary to our accepted emphasis on free and open competition, and our traditional fear and distrust of great concentration of economic power.

The Sherman Act was passed in 1890. In 1914 Congress provided additional protection through the Clayton Act. For more than 50 years, then, the laws of the United States have proscribed combinations of economic power which "tend to create a monopoly" or tend "substantially to lessen competition," or which operate "in restraint of trade."

These protections extend to banks, as well as all other business enterprises operating in competitive markets. Over the decades, court decisions have interpreted and defined the basic terms of the antitrust laws, providing relatively sure standards for guidance.

Now, with the passage of H.R. 12173, all this is to be changed. These standards which have assumed virtually constitutional proportions during this century are to be wiped out.

Before relegating the antitrust laws to the dustbins, it would be wise to consider what would take their place. Even a casual perusal shows the substituted standard to be vague, ambiguous, and virtually unintelligible.

"* * * unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by probable effect of the transaction in meeting the convenience and needs of the community to be served."

"Clearly outweighed." How clearly outweighed? On what scale? And by what standards?

"Public interest." What "public interest"? Is not enforcement of the antitrust laws of cardinal importance to the public interest?

"Convenience and needs." What is convenience? Drive-in windows, corner locations, personalized checks? Should these "outweigh" the antitrust laws?

"Community." Which community? A town of 2,000? A central city? A regional trading center? A State? A multistate financial capital?

All these questions go unanswered. Yet, this is the "standard" which is to supplant the antitrust laws of the Nation.

It cannot be argued that this new language will clarify the bank merger situation. The contrary is true; and if this bill becomes law, we must await years of litigation to know what we are actually legislating.

It is important to bear in mind that individuals will have the power effectively to overrule the antitrust laws. In the case of national banks, it is one man—whoever happens to be Comptroller of the Currency. In the case of member banks of the Federal Reserve System, a bare majority of the seven-man Board of Governors. In the case of nonmember, insured banks, a bare majority of the three-man Board of Directors of the Federal Deposit Insurance Corporation (one of whom, by law, is the Comptroller of the Currency) can "outweigh" the antitrust laws.

It is argued that judicial review is available in every case. In a limited sense, that is true. Yet, these individuals may, under H.R. 12173, effectively repeal the antitrust laws, because the courts must of necessity rely heavily upon agency "expertise" concerning questions of fact, even where provision is made for de novo review. If these individuals conclude that the "convenience and needs of the community to be served" clearly outweigh a substantial lessening of competition or a tendency toward monopoly, it is highly doubtful that a court will overrule even a substantially anticompetitive merger. To do otherwise, courts must develop expertise in portfolio analysis, loan policy, liquidity, personnel management—in short, the entire panoply of commercial banking.

I support "forgiveness" for mergers consummated prior to the Philadelphia decision as the bill provides as well as the procedural improvements concerning proposed mergers, but paragraph 5(B) of section 1 is not in the public interest, nor in the best interests of the banking industry.

DISSENTING VIEWS OF THE HONORABLE PAUL H. TODD, JR., OF MICHIGAN

My disagreement with the majority view centers on the retroactive exemptions to our antitrust laws given three banks, which the Attorney General has justifiably characterized as "outrageous"; and to the provisions of paragraph 7(D), which permits administrative agencies to appear against the position of the Justice Department before the courts.

In addition, although the majority report states that "the bill would establish a single set of standards for the consideration of future mergers by the banking supervisory agencies, the Department of Justice, and the courts under the antitrust laws * * *," I fear that the wording of the relevant section of the bill is vague enough to permit endless litigation in defining its meaning, with a repetition of pressures on this committee to grant special exemptions to particular institutions.

Because the meaning of the present antitrust laws is defined through judicial interpretations, I see no need to clarify it by rewording statutes in a manner which will probably give rise to future uncertainties and controversy.

(1) The case against granting retroactive antitrust exemptions to three banks, who have either been held to be in violation of the antitrust laws, or who have suits pending.

The three banks benefiting from section 2(a) of the bill argue that they were unaware of the meaning of the Bank Merger Act of 1960, and contend that it granted them immunity from the antitrust laws as applied by the courts. They contend that the Supreme Court, in the Philadelphia decision, misinterpreted the intent of Congress; that they (the banks) merged in "good faith" while understanding fully the intent of Congress; and that they should, therefore, be relieved of the application of the antitrust laws to themselves.

This argument is fatuous. In view of the material developed in the committee hearings, it cannot be contended that the Supreme Court was unreasonable in its interpretation of the 1960 act. Furthermore, it is disrespectful of the role and wisdom of the Supreme Court to make the allegation that it was not competent to pass upon the meaning of a law as intended by the Congress.

The "good faith" argument, in my opinion, is not only irrelevant, it is improper.

In the preliminary injunction proceedings brought by the Justice Department against each of these banks immediately after approval of its merger, the banks in each case argued that they were aware of the risks of future divestiture, and were willing to undergo those risks as the price of not delaying their merger.

In the Manufacturers-Hanover case, attorneys for both merging banks told the court, in arguing that they be allowed to merge pending the outcome of the antitrust suit:

"Mr. SEYMOUR. The Government has an ultimate remedy if it prevails. * * * They have got a divestiture relief, and there are decisions to that effect.

"Mr. DRYE. That there are always some problems about divestiture, if they win, but we are willing to assume those problems. They are much more serious to us than they are to the Government, but their only relief and the only procedural relief they are entitled to is a suit for divestiture.

"There are scores of divestiture cases * * * If we have to face that * * * we will take our risk." [1]

I have counted at least 14 similar statements by the bank's attorneys in this Manufacturers-Hanover case.

In the Lexington case the bank's attorney told the court:

"Mr. PARK. I may say at this time that we recognize the possibility that at the end of the litigation we may have to restore these banks to their former status and we recognize that for our own protection we must do everything that we can to keep the assets segregated and identifiable so that they can be restored. That we expect to do. That is our opinion, your honor." [2]

In the Chicago case, similar representations were made.

In summary, the banks appear to argue that even though they pleaded their willingness to assume the risk of divestiture, they should not be held accountable to the judicial decision because they did not expect it to go against them.

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[1] *United States of America* v. *Manufacturers Trust Company and the Hanover Bank*, U.S. District Court Southern District, 61 Civ. 3914, before Judge John N. Cashin, Sept. 8, 1961, pp. 32–33 and 59–60, respectively. Also see hearings, p. 64, for another Manufacturers-Hanover statement (House Banking and Currency Committee, 89th Cong., 1st sess.). Also, see hearings, pp. 19–20, where on the first day he testified, Chairman William McChesney Martin of the Federal Reserve Board stated he very much supported relief for the six banks, and especially Manufacturers-Hanover. When he returned, see p. 143, Martin stated that reading the transcript of the injunction proceedings in that case convinced him that: "They [the banks] were on notice, and they have run that risk."

[2] *United States of America* v. *First National Bank and Trust Company of Lexington, et al.*, transcript of record, Supreme Court of United States, October term, 1963, No. 36, before Hon. H. Church Ford, judge, Mar. 6, 1961, p. 77.

To me, this is the same argument a housewife might use, when requesting that her ticket be fixed because she really didn't think it was a speed zone in which she was speeding.

A violation of the law should not be given legislative immunity in one case and not the other merely because one party was more powerful, or claimed to be acting in good faith.

The Attorney General of the United States testified to this point when he appeared before the subcommittee:

"Mr. KATZENBACH. Fairly stated, this is a private bill for the relief of the parties to the six pending suits. * * *[3]

"I, therefore, believe that the Congress should consider retroactive immunization of unlawful transactions only in the most compelling circumstances. I believe that no such circumstances exist which would warrant the immunity that S. 1698 would give. I respectfully urge the committee to weigh and consider carefully the adverse effects of this bill upon enforcement of the antitrust laws and therefore to withhold approval of such special legislation."[4]

It should be made clear that the committee did not consider the antitrust or anticompetitive effects of the mergers granted relief by this bill, and in no sense passes upon whether or not the mergers of these banks would even be approved by the bank supervisory agencies under the criteria established for them by this bill.

(2) The case against permitting the banking agencies to appear in court against the United States.

I vigorously oppose paragraph (7)(D) of H.R. 12173, which would try to give any Federal or State banking agency the authority to appear as a party of its own motion and as of right, and to be represented by counsel in any case brought against a bank merger under the antitrust laws by the Government.

First, this committee and its subcommittee did not have hearings on this subject. As a member of the subcommittee which so painstakingly examined S. 1698, and who attended regularly, and as a member of the committee who attended all the committee meetings, I can remember no discussion of the implications of this paragraph.

Second, I oppose it because it would create the ludicrous situation in court of seeing the Comptroller of the Currency, the Federal Reserve Board, or the Federal Deposit Insurance Corporation, all agencies of the Federal Government, opposing the United States in its sovereign capacity. We do not need the Government opposing itself in court. The Attorney General is presently charged with representing the executive branch of the Government in court. To provide otherwise by this bill would create a drastic change in existing law.

Third, the provision is in derogation of the President's power to initiate and carry out policy and of his authority over the executive branch. Presumably, when a branch of the executive like the Antitrust Division acts, it acts for the President, and the effectiveness of that action should not be undermined by other executive agencies. Moreover, it is normally assumed that the President, in his role as head of the executive branch, can and should resolve differences among executive agencies, so that the ultimate expression of a position (as, for example, in court) reflects a firm and well-considered executive determination. It is unseemly for executive agencies to fight it out in court, and it implies that the President is unable to keep his own house in order.

Fourth, the provision derogates the Attorney General's authority and responsibility to control Government litigation (see 28 U.S.C. 507(b)). In any case in which the Comptroller intervened, the court could no longer look to the U.S. attorney or departmental attorney as the spokesman for "the Government" and would indeed be denied the benefit of any uniform Government position.

The act[5] which established the Department of Justice in 1870 clearly had the intent of putting all matters requiring that the Government be represented before the courts under the supervision and control of the Attorney General. In reading the full act, nothing could be clearer.

"SEC. 16. And be it further enacted, That the Attorney General shall have supervision of the conduct and proceedings of the various attorneys for the United States in the respective judicial districts, who shall make report to him of their proceedings, and also of all other attorneys and counselors employed in any cases or business in which the United States may be concerned."[6]

That this was the legislative intent and purpose for the very creation and existence of the Justice Department was reemphasized by the Court of Claims in 1893, when the court said:

"These provisions are too comprehensive and too specific to leave any doubt that Congress intended to gather into the Department of Justice, under the supervision and control of the Attorney General, all the litigation and all the law business in which the United States are interested, and which previously had been scattered among different public officers, departments, and branches of the Government, and to break up the practice of frequently employing unofficial attorneys in the public service."[7]

The whole intent of Congress in establishing the Department of Justice is under direct attack in paragraph (7)(D) of H.R. 12173. If anyone advocates the abolition of the Justice Department, let them introduce a bill to be considered by the proper committee, but let us not do it by the back door.

The present law is in direct conflict with paragraph (7)(D) of H.R. 12173. The existing law is specific:

"The officers of the Department of Justice, under the direction of the Attorney General, shall give all opinions and render all services requiring the skill of persons learned in the law necessary to enable the President and heads of departments, and the heads of bureaus and other officers in the departments, to discharge their respective duties; and shall, on behalf of the United States, procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the Supreme Court and in the Court of Claims, in which the United States, or any officer thereof, as such officer, is a party or may be interested; and no fees shall be allowed for any service herein required of the officers of the Department of Justice, except in cases of services performed by attorneys appointed under section 503 of title 28.[8]

"(b) The Attorney General shall have supervision over all litigation to which the United States or any agency thereof is a party and shall direct all U.S. attorneys appointed under section 503 of this title, in the discharge of their respective duties."[9]

The proposed legislation is also in conflict with Executive Order No. 6166 of June 10, 1933 (5 U.S.C. 124–132), which fixed in the Attorney General final and exclusive authority to determine the course of all litigation in which the United States is interested. Section 5 of the order provides as follows:

"The functions of prosecuting in the courts of the United States claims and demands by, and offenses against, the Government of the United States and of defending claims and demands against the Government, and of supervising the work of U.S. attorneys, marshals, and clerks in connection, herewith, now exercised by any agency or officer, are transferred to the Department of Justice."

The Comptroller of the Currency has argued that he should be allowed to intervene in bank merger suits brought by the United States, on the grounds that he does not receive his funds from the Treasury, but rather from the banks, and hence this is permissible by law.[10] The Comptroller is a servant of the Government, not the banks he is supposed to regulate. His argument is in conflict with the existing statutes, and violates their specific meaning and the entire intent and purpose of the existing law in this area.

"No compensation shall be allowed to any person besides the respective U.S. attorneys and assistant U.S. attorneys, for services as an attorney or counselor to the United States, or to any branch or department of the Government thereof, except in cases specifically authorized by law, and then only on the certificate of the Attorney General, or Solicitor General, or the officers of the Department of Justice, or by the U.S. attorneys. This section does not apply to the compensation of counsel under section 1037 of title 10."[11]

The argument that the agency can employ its own counsel because it does not receive its funds from the Treasury violates the spirit and specific meaning of the law. It raises a key question: Is an agency that receives its funds from fees paid by banks a part of the Government, or is it a prestigious front representing the banks? Would this result in proper supervision and administration of the banks or would it result in collusion with them?

Paragraph (7)(D), inserted into the bill at the last moment, is in conflict with the whole intent and meaning of the law in this area. Further, paragraph (7)(D) is totally irrelevant to the rest of the bill. The fact that this paragraph and the rest of the bill both concern lawsuits hardly proves that the topic of paragraph (7)(D) was considered by the committee.

Paragraph (7)(D) is poor policy, in direct conflict with the laws, and has never been studied by this committee. It is a direct attempt to subvert the policy behind the very creation of the Justice Department. It is wrong. I respectfully voice my most astonished and amazed opposition to inclusion of paragraph (7)(D), and urge its removal.

(3) The fuzziness of the rewording of the antitrust, anticompetitive section.

I agree with the view expressed by Congressman WELTNER that this bill will not clarify the bank merger situation, and that endless litigation may be required to define the meaning of the wording of section (5)(B). Although it is my understanding that the bill leaves the antitrust laws intact, it will be argued by any future beneficiary of an anticompetitive merger that the bill intends to eviscerate the antitrust laws: Accordingly, the intent of Congress, should this bill be passed into law, will probably re-

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[3] See hearings on S. 1698 before a subcommittee of the House Banking and Currency Committee, 89th Cong., 1st sess., p. 170.

[4] See hearings on S. 1698 before a subcommittee of the House Banking and Currency Committee, 89th Cong., 1st sess., p. 174.

[5] 16 Stat. 162–164 (June 22, 1870).

[6] 16 Stat. 164.

[7] *Richard Ross Perry* v. *the United States* (28 Ct. Cl. 483, at 491 (1893)).

[8] Title 5, United States Code, sec. 306.

[9] Title 28, United States Code, sec. 507(b).

[10] See press release, July 8, 1965, announcing that his office would attempt to intervene in St. Louis bank merger case, issued by Comptroller of the Currency, and papers filed by that office in Mercantile Trust Co., St. Louis case, arguing this point in detail.

[11] Title 5, United States Code, sec. 314.

quire definition by the Supreme Court. Until that time, we will not know the meaning of what we have written.

The majority report states: "(1) The bill would establish a single set of standards for the consideration of future mergers * * * under the antitrust laws * * *,"[12] and in the section 2(d), H.R. 12173 defines the antitrust laws as those now in existence. Thus, there is a clear implication that the antitrust provisions have not been changed. Also, the language of paragraph (5)(B) is exactly that used in Clayton, section 7, and intentionally so.

On the other hand, in the discussion of the floundering bank, the report of the majority might be interpreted by someone in the future to imply that the antitrust criteria need to be relaxed in order to allow the banking agencies to permit mergers which are anticompetitive, but which, because of financial or managerial problems of the banks, "* * * are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served."

The courts have long recognized the failing company problem as an exemption from the antitrust laws. The purpose of section 6 of the bill is to recognize this. An agency is clearly permitted to allow a failing bank to merge with another, under existing law, and the Justice Department has never challenged an agency action under this provision. In fact, in none of the eight cases brought by the Department of Justice, has any bank been smaller than 10th in the community and all have been financially healthy.

I do not believe that the failing bank doctrine should be extended, even by possible but not probable implication, to permit bank supervisory agencies to promote or approve anticompetitive mergers of banks "held by owners who insist on unrealistically conservative policies," for example. Our economic philosophy places its prime reliance upon competition to serve as a self-regulating mechanism. It is wrong to suggest that a regulatory agency should place itself in the position of saving the owner of an enterprise from either the benefits or hardships of his management decisions, either because the agency considers the management too progressive or too out of date. The present law provides protection to the public in the event the management policies of the bank threaten its depositors. It is not the function of the agency to save the investors from their own decisions.

There is a further implication in the majority report that the phrasing of paragraph (5)(B) is intended to enhance the ability of the approving agency to promote competition. The report states that the banking agencies should be allowed to approve a merger, on the basis of a specific situation, "if they believe the result would be a more vigorously competing institution * * * [even though it] might result under general antitrust law criteria in a substantial lessening of competition." I can recall no case, real or hypothetical, discussed by the committee in connection with the failing bank doctrine in which it was contended that present antitrust law inhibited a pro-competitive merger.

Thus, I fail to see the need for paragraph (5)(B) as applied to the either failing or flounding bank.

I am in accord that great difficulties are encountered in defining the relevant market. This must be left to the agencies, and in turn, ultimately to the courts. The courts will take this upon themselves, in any event, as in the Philadelphia case. There is nothing in the language of paragraph (5)(B) of the bill to suggest that any change in the definition of the relevant market as defined in the Clayton Act or in antitrust case law was intended, any suggestion in the majority report, to the contrary, notwithstanding. The language was consciously chosen to conform to language used in the Clayton Act, section 7, and I do not believe that the meaning of these words can or should be changed by irrelevant discussion in the majority report. I believe that the plain meaning rule of statutory interpretation must be applied by the courts in interpreting this section of the statute, and the plain meaning is that the Clayton Act definition was consciously used and it carries the same meaning it has always carried as to relevant market.

It should also be recognized that under this bill the supervisory agencies are charged with evaluating the proposed merger on the basis of the same standards that the Justice Department uses. This was not the case under the Bank Merger Act of 1960, wherein the agencies used different standards than the Justice Department and could evaluate them differently from the Department of Justice. In making one set of standards apply to both the Justice Department and the agency, we are not eliminating the following very basic premise of the Bank Merger Act of 1960. The decision that the agency makes is not intended in any way to influence or to be binding on any court, on the Justice Department, or to be binding in any suit brought to challenge the merger. The court must examine the factors, and if the merger is not in the public interest; i.e., if there is a tendency to substantially reduce competition or a tendency toward monopoly created that adversely affects the community, then under paragraph 5(B) of H.R. 12173, the merger would not be approved under the criteria established. This must be made as an independent judicial decision, and is specifically provided for under paragraph 7(A), which calls for de novo review.

It is recognized that the regulatory agencies have been concerned with different criteria for evaluating a merger than the Justice Department, which has now led, in this bill, to the establishment of uniform standards for evaluation of the merger. It is also specifically recognized that only the Justice Department is charged with enforcing the antitrust laws.

The majority report states that the bill applies "the general principle of the antitrust laws * * * but permits an exception in cases where it is clearly shown that a given merger is so beneficial to the convenience and needs of the community to be served * * * that it would be in the public interest to permit it." I regret that the report does not more fully amplify the committee's meaning here, in accordance with committee discussions of the bill.

A leading proponent of H.R. 12173, when asked what this bill was intended to do, stated that the language of section 5 was changed from earlier proposals for the purpose of making it clear that the competitive factors are in a sense preeminent, and that as far as section 1 of the Sherman Act and section 7 of the Clayton Act are concerned, the burden of proof shall be upon the merging institutions to show that any substantial lessening of competition caused by the merger is clearly outweighed in the public interest.

The committee is fully cognizant, as a consequence of the hearings, of the interpretation of the "public interest" as enunciated by the Supreme Court in the Philadelphia case:

"It therefore proscribed anticompetitive mergers, the benign and the malignant alike, fully aware, we must assume, that some price might have to be paid. * * *

"The fact that banking is a highly regulated industry critical to the Nation's welfare makes the play of competition not less important but more so. At the price of some repetition, we note that if the businessman is denied credit because his banking alternatives have been eliminated by mergers, the whole edifice of an entrepreneurial system is threatened; if the costs of banking services and credit are allowed to become excessive by the absence of competitive pressures, virtually all costs, in our credit economy, will be affected; and unless competition is allowed to fulfill its role as an economic regulator in the banking industry, the result may well be even more governmental regulation. Subject to narrow qualifications, it is surely the case that competition is our fundamental national economic policy, offering as it does the only alternative to the cartelization or governmental regimentation of large portions of the economy."[13]

It is also recognized by the committee that out of approximately 2,200 bank mergers, only 8 have been challenged in the courts under the antitrust laws. Some of these mergers—for example, two banks in a small town—clearly resulted in a diminution of competition in terms of numbers of competing units. However, in the judgment of both the regulatory agency and the Justice Department, most of these mergers were justified in terms of viability of the institutions, and overall competitive effects. It cannot be reasonably argued that the removal of one bank through merging is anticompetitive if the bank removed is failing or floundering, and if the resulting institution is able to offer more competition in its market. This is well recognized in existing practice, and needs no further legal authorization.

I am in full accord with granting immunity under Sherman 1 and Clayton 7, to banks 30 days after merging, in the event no antitrust suit is brought. However, this single achievement of the bill could have been accomplished by itself, without promoting the likelihood of further litigation and confusion about the meaning of bank merger law.

SUPPLEMENTAL VIEWS OF THE HONORABLE RICHARD L. OTTINGER, OF NEW YORK

On the whole, I think this is a wonderful bill providing for vitally needed certainty, uniformity, and promptness in the resolution of antitrust questions involved in bank mergers. It also assures that the banking services available to meet the convenience and needs of a community are considered in all cases and will prevail where they clearly outweigh nonmonopolistic anticompetitive effects of a merger.

I helped draft the crucial provisions of this legislation through the series of compromises that produced it. It contains my proposal that State regulatory agencies be permitted to intervene as of right in antitrust suits attacking mergers. I shall support it wholeheartedly on the floor of the House.

The bill does represent a series of compromises, however, and it does not reflect my views in granting absolute forgiveness to three banks adjudicated to be in violation of the antitrust laws before the Supreme Court decision in the Philadelphia case—*United States* v. *Philadelphia National Bank* (374 U.S. 321 (1963)). While I appreciate that these three banks could not accurately predict the interpretation of law adopted in the decision, I do not feel that fairness to these banks should be our overriding consideration. The public interest as represented in the antitrust laws and the convenience and need of the communities involved should be our dominant concern. I therefore would have preferred to permit these three banks to reapply to the Supreme Court for a redetermination in accordance with the new rules of law laid down in this legislation.

[12] Majority report on H.R. 12173 of the House Banking and Currency Committee, 89th Cong., 2d sess.

[13] *United States* v. *Philadelphia National Bank, et al.* (374 U.S. 321, at 371–372 (1963)).

I agreed to the bill as a whole in committee, including the forgiveness features, feeling that the importance of its fine prospective provisions far outweighed any harm that could result from inclusion of these retrospective features with which I disagree. I shall support the measure as is on the floor of the House for the same reason and urge my colleagues to do the same. The handling of these banks was an essential part of the compromise that produced this bill, and an unhinging of this compromise might well jeopardize the greatly needed and important prospective features of the bill.

SUPPLEMENTAL VIEWS OF THE HONORABLE EARLE CABELL OF TEXAS

Apparently this bill meets the requirements of fair treatment of the banks involved and, at the same time, provides protection of the public interest against monopolistic practices.

AT LONG LAST: A VETERANS' BILL FOR THE HITHERTO NEGLECTED SERVICEMEN

Mr. GRUENING. Mr. President, it is with great satisfaction I note the action on Monday of the House of Representatives in passing legislation to provide benefits for veterans of the armed services comparable with that made available to veterans of World War II and the Korean conflict. The bill enacted by the House is, even as our commitment in Vietnam has been termed by the majority leader of the Senate, open ended. I believe this is a realistic reflection of the state of the world, which, regrettably, indicates vastly expanding requirements for service in the Armed Forces.

While I deplore the fact that it has been the conflict in Vietnam which has finally forced the entire Congress to recognize the need for veterans benefits for all servicemen, I am glad the action has been finally taken which will accomplish objectives enacted repeatedly by the Senate. Since the first seesion of Congress in which I served in the Senate I have repeatedly cosponsored legislation to extend benefits originally enacted for World War II veterans and Korean conflict veterans to veterans of subsequent service in the Armed Forces. I was a cosponsor of legislation to extend GI benefits introduced by the senior Senator from Texas [Mr. YARBOROUGH] in the 86th Congress when it passed the Senate; in the 87th Congress when it was reported by the Senate Committee on Labor and Public Welfare too late for consideration by the Senate; again in the 88th Congress when it was again reported from committee, and now I am proud to be a cosponsor of S. 9, which has passed both Houses of Congress. All of us who have joined in the cause of extending veterans benefits congratulate the distinguished senior Senator from Texas for his vision and determination in leading action in the Senate on this measure. He is assured of the respect and gratitude of untold numbers of veterans who will obtain benefits they deserve as a result of his efforts.

On July 19, 1965, I commented as follows concerning S. 9, now passed by the House:

The record should be clear that when the cold war GI bill is enacted into law—and I am more convinced than ever that it is only a matter of time before it is enacted because the need for it grows greater day by day—my colleague, the able and distinguished senior Senator from Texas [Mr. YARBOROUGH] will deserve the appreciation of the many cold war GI's who will benefit from this bill for his untiring and persevering efforts to secure for them this much needed protection. * * *

We are now involved in a shooting war in Vietnam which seems to be escalating into a ground war as fierce and as destructive of human life as the Korean conflict. Surely if those who fought in the Korean conflict were entitled to the benefits of a GI bill of rights, those who are fighting in Vietnam should be entitled to readjustment assistance, education and vocational training assistance, and loan assistance upon their discharge under conditions other than dishonorable.

By the same token, since any person serving in the armed services during this period could have been sent to Vietnam and, his not being sent is only happenchance, these benefits should be made available to all serving in the armed services since the termination of the Korean conflict.

While in past years the legislation to provide benefits for servicemen whose service occurred after 1955 has been called cold war GI benefit legislation, it is now ludicrous to present this legislation as a bill for the benefit of peacetime veterans. We are engaged in a full-scale war and all now serving in the Armed Forces should have the comfort of knowing that the U.S. Government will recognize service by assuring availability of educational assistance, home loan guarantees, medical care and related services, and benefits to which all veterans are so deservedly entitled.

I hope the veterans benefit bill will speedily clear the Congress and become law as soon as possible. Only a few adjustments are needed to reconcile the House and Senate drafts of the legislation.

This legislation is a great personal triumph for Senator YARBOROUGH. He has stayed with it through thick and thin and in the face of great obstacles. He deserves the everlasting gratitude of all veterans.

DETERGENTS MAY CREATE UNFORESEEN NEW WATER POLLUTION PROBLEMS

Mr. NELSON. Mr. President, an article in the February 6 Washington Star points to significant evidence that the new degradable detergents introduced by the soap and detergent industry last year may create unforeseen new water pollution problems.

The new soft detergents may cut down the unsightly mounds of foam in our lakes and streams, but evidence from the Robert A. Taft Sanitary Engineering Center indicates they are considerably more toxic to fish.

I think this striking new evidence underlines the need for constructive legislation.

In 1963, I cosponsored a bill directing the Secretary of Health, Education, and Welfare to set standards which would have to be met by all detergents sold in America. The bill passed the Senate but final action was deferred when the industry began a voluntary changeover to a new chemical which it claimed would not pollute water supplies.

In 1965, I stated that the new product, LAS, did not appear to be the final answer to the problem of detergent pollution, and I introduced a new detergent control bill. The bill would establish a national advisory committee of experts from business, government, and science. They would study the detergent pollution problem and recommend standards for detergents which would protect the public interest in fresh water.

At the time, I made this comment:

Impressive claims are made as to the biodegradability of this new product, LAS. The Soap and Detergent Association states that it is highly degradable, both in sewage disposal plants and in household septic tanks. However, there is expert testimony to the effect that the new chemical, LAS, is not highly degradable in typical household septic tanks. Furthermore, some question must remain as to whether this chemical is fully degradable in municipal sewage disposal plants where the aeration time must be reduced to some short period, such as 3 hours, because of the heavy demands on the system.

The Taft Center research, as reported in the February 6 Washington Star, said that the new chemical may well be increasing the detergent pollution problem in communities which are not served by modern sewage treatment plants. About two-thirds of the Nation's population falls in this category.

The report further pointed out that this chemical, when not broken down by a modern treatment plant, is considerably more toxic to fish than the old detergent.

It appears that LAS, in amounts of less than two parts per million, affects the ability of fish to reproduce, and that much smaller amounts prevent eggs from hatching normally. Repeated exposure to the chemical tends to make fish even more sensitive to it.

Industry-sponsored research on the effects of LAS on fish before the new detergent was marketed indicated negligible effects on fish studied over a period of 94 hours. I think the conflicting evidence of more thorough research at the Taft Center calls for further congressional investigation.

I ask unanimous consent to have this article inserted in the RECORD at this point.

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

[From the Washington Star, Feb. 6, 1966]

TESTS HINT NEW DETERGENT HITS FISH HARDER THAN OLD

(By Orr Kelly, Star staff writer)

At a cost of $150 million, the Nation's detergent makers switched over last summer to a new chemical designed not to cause foam in rivers and streams.

But now it appears that, while the new chemical may cut down on the foam, it is considerably more toxic to fish than the chemical it replaced.

Before the new product was put on the market, R. D. Swisher, of Monsanto Chemical Corp. in St. Louis, Mo., tested it on fish and found that, after an exposure of 96 hours, the only noticeable change was a slight alteration in the gill tissue.

But Donald I. Mount, a scientist at the Robert A. Taft Sanitary Engineering Center in Cincinnati, Ohio, decided to run a much longer test.

He took young bullheads, emerald shiners, bluegills and flatheads and observed them for 8 months as they grew to adulthood and spawned and as their young hatched from eggs and began to grow. In some of the tanks, he put minute quantities of linear alylate sulfonates (LAS)—the basic cleaning chemical now used in almost all household detergents.

Amounts less than two parts per million affected the ability of the fish to reproduce, he found. And much smaller amounts prevented the eggs from hatching normally.

In fact, he found, repeated exposures to LAS made the eggs increasingly more sensitive to the chemical rather than building up an immunity, as might have been expected.

The new Federal Water Pollution Control Administration maintains a network of 131 reporting stations throughout the country, but the switchover to LAS has been so recent that there are no meaningful statistics on how much LAS is in the water.

LAS is designed so that one part of the molecule attaches itself to grease while the other part is attracted by water. It thus pulls the dirt out of clothes into water.

The chemical previously used—alkylbenzene sulfonates, or ABS—did the same job. But it was such a tightly put together molecule that it refused to come apart during normal sewage treatment. It thus tended to get into rivers and cause an unsightly foam.

But LAS is designed to come apart during the sewage treatment process or even in a stream.

The only trouble is that only 33 percent of the Nation's population is served by modern secondary sewage treatment plants. In some of the country's major cities, including New York City, millions of gallons of raw sewage are dumped into the waterways each day. In such cities, the switch to LAS may well have resulted in an increase, rather than a decrease, in the effects of water pollution.

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

POOR ADVICE HAS BEEN GIVEN OUR PRESIDENT ON VIETNAM

Mr. YOUNG of Ohio. Mr. President, it has been unfortunate for our country, but the facts cannot be denied that President Eisenhower throughout his two terms favored the services and advice of multimillionaires and considered the counsel and advice of industrial tycoons to exceed the purity and validity of Ivory soap whose advertising men employed by Procter & Gamble claim is 99.44 percent pure. Incidentally, Neil H. McElroy, chairman of the board of Procter & Gamble was one of those multimillionaire industrial magnates high in his counsel, and for a time was his Secretary of Defense. George Humphrey and Charlie Wilson were among the multimillionaire industrialists upon whom President Eisenhower leaned and to whom he manifested deference and devotion. They were both members of his Cabinet.

It will be remembered that the first Eisenhower Cabinet was sometimes referred as as "eight millionaires and a plumber," the latter being the late Martin P. Durkin, president of the Plumbers' Union and Eisenhower's first Secretary of Labor. Incidentally, he resigned after only a few months in office.

It appears that President Eisenhower gave really second rating to generals. Perhaps one reason was that he himself had been a general and dealt with hundreds of other generals. Also, the fact that Gen. Douglas MacArthur, the most flamboyant of all of our generals, had made the snide remark that "Eisenhower was the best clerk he had ever had" may have caused that President to take a dim view of at least one general.

Now President Johnson appears to hold generals in the highest admiration, appoints them to high positions usually reserved for or held by civilians, including ambassadorships, and follows their advice implicitly despite the fact that the record has proven many of them wrong on many occasions. In 1961 just a few weeks after Lyndon B. Johnson had become Vice President, the newly inaugurated President John F. Kennedy agreed reluctantly with the Chiefs of Staff, other generals and CIA leaders in permitting the Bay of Pigs invasion they had planned and which proved a horrible and tragic fiasco.

President Kennedy took the blame in his capacity as Commander in Chief of our Armed Forces. He said in private, "How could I have been so far off base?" The late great President John F. Kennedy did not make that mistake again. In fact, he said of the Joint Chiefs of Staff, "They advise you the way a man advises another man whether he should marry a girl. He doesn't have to live with her."

Gen. Douglas MacArthur gave President Harry S. Truman very poor advice. He said—and this was late in 1950—"If any Chinese were to enter Korea they would face certain disaster." MacArthur added he did not expect them to try anything that foolish. He permitted his Armed Forces to be divided in North Korea with a mountain range between two armies.

He said in November 1950 following his successful Inchon landing, "The boys will be home from Korea by Christmas." On the following bitter wintry day the Chinese divisions, many thousands in number, crossed the Yalu and thousands of our finest soldiers and Marines fighting valiantly in the best traditions of our country lost their lives trying to stem the onslaught of the invading horde.

President Truman accepted the blame, not General MacArthur. In his reminiscences the General blamed the CIA, charging that agency gave him faulty intelligence.

President Eisenhower in 1954 was urged by Admiral Radford, then Chairman of the Joint Chiefs of Staff, to send in our paratroopers and war planes to the rescue of Dienbienphu to save French colonialism making a last ditch fight against the National Liberation Forces of the Viet Minh, now termed Vietcong. At that time Vice President Nixon was a warhawk as he is now. He later revealed the fact that Secretary of State John Foster Dulles and President Eisenhower were planning to send in our Armed Forces to save the Indochinese French colonial empire for the French and would have done so had not the British Foreign Minister, Anthony Eden, reacted violently against the proposal and Prime Minister Winston Churchill expressed his strong dissent.

Under President Kennedy in 1961, our Joint Chiefs of Staff again gave warlike advice. General Lemnitzer, then chairman, made a trip to Laos and then advised President Kennedy to send our Armed Forces into that jungle area. President Kennedy, according to the history of the memorable 1,000 days of that superb but so tragically terminated administration by Arthur Schlesinger, said, "If it hadn't been for Cuba, we might be about to interfere in Laos." Our late great President had learned the hard way not to be swayed by his warlike generals. Under his leadership an agreement was negotiated establishing the neutrality of Laos. We signed as guarantors of that neutrality. The less said about whether, by our recent actions, we are honoring our agreement the better.

Mr. President, let us consider statements made by some of our other military leaders. Gen. J. W. O'Daniel, in 1961, speaking of South Vietnam as free Vietnam said, "The Communists now realize that they can never conquer free Vietnam." In 1963 Gen. Paul D. Harkins, commanding general of our forces in South Vietnam, said, "I can safely say that the end of the war is in sight." Adm. Harry D. Felt, the commander of our entire Pacific forces, earlier in 1963 said, "I am confident the South Vietnamese are going to win the war. The Vietcong face inevitable defeat." That was in 1963, at a time when the Saigon government held much more land area than they do at the present time.

In 1965 General Westmoreland, commander in South Vietnam, said, "If we can get the Vietcong to stand up and fight, we will blast him." Gen. Ellis Williamson added a footnote, "We can go in and tear pure hell out of the Vietcong."

The facts are that historically, there is no such thing as North Vietnam and South Vietnam. The Geneva accords of 1954, which we agreed to, but which our representatives did not sign, stated:

> The military demarcation line at the 17th parallel is provisional and should not in any way be considered as constituting a political or territorial boundary.

If and when there are negotiations for a cease-fire or armistice and I feel that most, if not all, Americans hope that there will be such negotiations, and the sooner the better—whether those negotiations are held in Geneva or in the military demarcation zone separating what is termed North and South Vietnam or an Asiatic city, of course delegates representing the Vietcong or National Liberation Front, so-called, must be seated along with delegates of the Hanoi government and delegates of the United States.

Mr. President, parenthetically, the head of the Vietcong forces of the National Liberation Front, so-called, was born and reared in South Vietnam. Prime Minister Ky is now probably urging in Hawaii that the Vietcong should not be permitted to participate in any conference, and that his Saigon government—which would probably not last 1 week without our support—should alone represent the people of South Vietnam. Ironically enough, Prime Minister

Ky, of South Vietnam, was born and reared in Hanoi, which is now in North Vietnam.

Furthermore, Secretary of Defense McNamara and the Chairman of the Joint Chiefs of Staff, Gen. Earle Wheeler, admit as of February 1966 that the Vietcong, or the forces of the National Liberation Front, so-called, in South Vietnam, hold more land area under their control in South Vietnam than they did in 1963 and in 1964. In fact, Prime Minister Ky, of the Saigon government, stated that his forces control but 25 percent of the land area of South Vietnam.

Unfortunately, Gen. Maxwell D. Taylor who had been our Ambassador to South Vietnam and who posed as an authority on our situation in southeast Asia testified at a hearing of the Foreign Relations and Armed Services Committees of the U.S. Senate in 1965 that the government of the then Prime Minister, Phan Huy Quat, of South Vietnam was on a solid basis and there was no indication that this Prime Minister would be overturned by a coup. Yet, within 2 days after giving this optimistic testimony the generals had overturned that Prime Minister and installed a military council composed of Nguyen Van Thieu, Air Marshal Ky, and Brig. Gen. Nguyen Huu Co, and his council 7 days later installed Marshal Ky as Prime Minister. General Taylor was not even en route back to Vietnam before a few hours and events proved him 100 percent wrong. He was so wrong. Yet President Johnson appears to be impressed by his counsel.

It would seem that our situation in Vietnam would be better and we would have the friendship and support of other governments in Asia and elsewhere, instead of their opposition, if our President would tell the generals to stick to the job of being generals and the CIA to stick to the job of collecting intelligence, and depend more upon his own good judgment and unparalleled experience for the decisions that are his to make by reason of our constitutional system, which provides that civilian authority must always be supreme over the military.

The men who wrote the Constitution of our country were wise men. They provided in the Constitution which we revere that civilian authority must be supreme over the military. I am happy that on a historic occasion, that great President, Harry S Truman, upheld that principle of our fundamental law when he removed General MacArthur from his post.

This is a civil war going on in Vietnam. Before I visited southeast Asia, it had been my belief that all of the Vietcong fighting in South Vietnam were Communists and infiltrators from the North. But I had not been in Vietnam for more than 4 days—and during that period of time, I was in every area of Vietnam—when almost immediately I observed very definitely that we were involved in a miserable civil war in the steaming jungles and rice paddies of South Vietnam. I learned from General Westmoreland that the bulk of the Vietcong fighting in South Vietnam were born and reared in South Vietnam. I learned from General Stillwell and other generals that 80 percent of the Vietcong fighting the Americans and the South Vietnamese in the Mekong Delta south and west of Saigon were born and reared in that Mekong Delta area. This is a civil war in which we are involved. The fighting has been going on there since 1945. Very definitely, Vietnam is of no strategic importance to the defense of the United States.

Approximately 230,000 Americans are committed in this cruel fighting in the jungles and rice paddies. That force will no doubt be expanded and escalated. In addition, we have some 50,000 men of our 7th Fleet off the coast, and we have 20,000 troops from South Korea. But except for the Korean forces—all of whom are maintained, armed, fed, clothed, and paid by American taxpayers—and about 850 Australians and 200 New Zealanders, not one ally of ours has come to our aid in Vietnam—not Japan, despite the $4 billion we have paid to build up Japan since we destroyed that country in World War II. As a matter of fact, while I was in Tokyo they were rioting against Americans. Even Chiang Kai-shek with his Taiwan regime which is a dependency of ours and has received some $4 billion of American taxpayers' money, offered only a token force to help us.

We Americans should have a sense of history. We should remember that the history of China and of southeast Asia shows that China over thousands of years has never held sway over the area known as Vietnam, Cambodia, Laos, and Thailand. Statues and monuments erected throughout this area and also Korea—as I observed during some 5 days that I was in Korea—commemorate battles and rulers centuries back who hurled back the hordes of Chinese invaders with great slaughter.

That is true in Vietnam. It is certainly true in Thailand. Successive Chinese emperors sought in vain to establish by force, sway and authority over this area in southeast Asia. History proves they never succeeded. On occasions when their forces invaded they held certain limited areas or sectors only for very limited periods of time, and then they were driven back north. The people of southeast Asia have over thousands of years—over the ages—shown an obstinate insistence on shaping their own destiny.

They have proven themselves in the past to be great warriers. The Chinese never, never overcame this and they would fail now. The French alone—with rifles and artillery against bows and arrows and knives—subjugated Vietnam; and then the Japanese took over for a short time only in World War II. The Vietnamese are fierce, obstinate, determined fighters who have been struggling for liberty for 21 years. They will never give up.

We lose face by messing into this miserable civil war in the steaming jungles and rice paddies of southeast Asia. We would save face by withdrawing to bases on the Vietnam coast for some short period of time, under the guns of our 7th Fleet and cover of our airpower—which is magnificent, as are our ground forces and our Navy. Our airpower, of course, is more powerful than the air and naval forces of all other nations in the world combined.

We would do well to withdraw to those bases on the seacoast for the time being, while the matter is before the Security Council of the United Nations. If that effort proves fruitless, then every effort should be made to secure a renewal of the Geneva Conference of 1954 with armistice terms that might be agreed on carried out either by some international commission or under the auspices of the United Nations.

Finally, I emphasize that if the President would follow his own judgment and not listen to the generals who are seeking to advise on the foreign policy of our country, we would save the lives of thousands, and possibly millions of American boys.

EFFORTS TOWARD PEACEFUL SETTLEMENT OF WAR IN VIETNAM

Mr. McGOVERN. Mr. President, a United Press wire carried a story a few minutes ago that informed sources have advised that President Ho Chi Minh of North Vietnam has requested the Indian Government, as the neutral member of the International Control Commission, to institute discussions and efforts leading to a peaceful settlement of the war in Vietnam.

This report, which comes out of New Delhi, further advises that Mrs. Gandhi, of India, and the Foreign Minister of that country have the matter under consideration at the present time.

Of course, I have no knowledge—none of us has—as to the reliability of this report, other than that a respected wire service states it is from an informed source.

We can only hope and pray that this report has some substance to it and that it may be the beginning of what will lead to an end of the tragic war in southeast Asia.

Another report advises that Vice President HUMPHREY will be on his way this evening, with a group of other administration officials, to visit Vietnam and other countries in Asia. I can think of no member of our Government better capable of undertaking such a mission at this very difficult time.

Mr. President, for many weeks I have been convinced that there is far more apprehension and opposition centering on our growing involvement in Vietnam than has been publicly apparent. I think sometimes public opinion polls do not really get at the heart of peoples' thinking on issues as complex as this one.

Most people, for example, responded in the affirmative when they were asked if they support the war in Vietnam and our part in it, but the polls are misleading, in that they do not reflect the deep anxiety and mounting apprehension which people across this country feel about our growing involvement in an Asiatic war.

In my own State of South Dakota and in other parts of the country where I have traveled in recent days and months, large numbers of people, representing what I regard to be a fair cross section of the country, have told me of their concern over what they believe to be a

mistaken U.S. course in southeast Asia. I know that other Members of the Senate have detected similar apprehension.

I am convinced that many of the same people who tell a pollster that they are behind the administration in its foreign policy do so with serious reservations. Perhaps they do it because most of us understandably hesitate to take issue with our country's foreign policy in time of war. No one does that lightly. It is not comfortable to be in the role of critic at a time when the Nation is committed to battle.

But for whatever cause, I am sure that administration policy planners will gravely misinterpret public opinion if they assume that they have an overwhelming mandate for a growing war in Asia or even for an indefinite continuance of our present commitment.

I am further convinced that while the administration cites the Bay of Tonkin resolution of August 1964 as evidence of overwhelming Senate support for the war buildup, that in fact there is no such support in the Senate for the course we are now on. It is my studied judgment after private conversations with most of the Members of the Senate that at least 75 percent of them feel we never should have become involved militarily in Vietnam in the first place.

I do not know of half a dozen Senators who believe that the original involvement there was wise. To be sure, some of those Senators feel that because we did become involved, however mistakenly, we have no recourse now except to stay and fight it out.

I can understand that there may be certain logic in that position. But I believe that fully two-thirds of the Members of the Senate would be more enthusiastic about a course of action that would take us out of Vietnam than one that would take us in any more deeply. I do not find any widespread backing on the part of U.S. Senators for escalating this war. What I do find is great doubt, if not outright opposition, to the size of the commitment we have already made.

For my own part, I am more sure each day that we must find some way to end our involvement in this war.

We have already committed forces far beyond any reasonable American interest in that part of the world. We are making what should be a Vietnamese struggle an American war. This is the very danger which the late President Kennedy, many of our greatest generals, and other leading Americans have warned against for years.

Resuming the bombing of North Vietnam was a grave error. The case has never been made satisfactorily for bombing in the first place or resuming the bombing. We have been told the bombing was necessary to cut off the flow of North Vietnamese forces to the south. The facts are that nine North Vietnamese regiments—some estimates say seven regiments, but somewhere between seven and nine regiments—moved into the south while the bombing was in progress. This was probably North Vietnam's method of responding to the bombing.

As former Assistant Secretary of State for Far Eastern Affairs Roger Hilsman said in testimony before a House Foreign Affairs subcommittee:

> Bombing the north probably makes it more difficult for our troops rather than helping them.

Hilsman says that the North Vietnamese regulars came south in force "after the bombing, and there is evidence they pulled back at least into the mountains during the bombing pause, which may be a signal."

It is probable that the North Vietnamese stepped up their efforts to send more men into the fighting in the south as their way of retaliating to the bombing attacks on the north.

Madam President, I have felt for months that the bombing of North Vietnam is escalating the war, expanding its periphery, increasing the military pressures on our forces on the ground in the south, and increasing the risk of a major war with the limitless forces of China. Furthermore, it has hardened the diplomatic position of North Vietnam, greatly disappointed our friends, and alarmed many other countries that have been hoping for a more restrained policy on our part leading toward a negotiated settlement.

Shortly before the decision to resume the bombing was announced, the press was filled with what appeared to be planted stories charging that the North Vietnamese had increased their antiaircraft defenses during the pause. What these stories did not say but which we now learn is that the buildup of antiaircraft defenses proceeded at no faster pace than during the bombing exercises all last year.

A column in the New York Times of February 4, 1966, has this interesting comment:

> Official sources here said today that although the North Vietnamese had taken advantage of the bombing pause to repair bridges and roads and other lines of communication, the work they did on antiaircraft defenses was no more intensive than before the pause and these defenses had not been improved substantially.

I saw one report that the SAM missile sites around the cities of North Vietnam have been increased by 10 during the 37-day bombing pause, but it is equally true that 50 such missile sites were installed while the bombing was in progress. It is true, too, that certain bridges and roads were repaired during the bombing pause, but it is equally true that those repairs were going on during the bombing period last year.

In the kind of guerrilla war which faces us in South Vietnam, it is a delusion to believe that aerial bombardment can turn the tide. I think it has done far more harm to our cause than any positive results it has achieved. I think the advocates of bombing North Vietnam have perpetrated a delusion in giving the impression that such tactics would save American lives in the south and bring the war to an earlier conclusion.

Before the administration goes further with involvement in this war, I think that our policy planners should ask themselves the following questions. I have pulled together a dozen brief questions that I would like to submit for consideration.

SOME QUESTIONS ABOUT VIETNAM

First. Why have a considerable number of the Senate's most internationally minded Members including the chairman of the Foreign Relations Committee [Mr. FULBRIGHT], the majority leader [Mr. MANSFIELD], and the senior Republican of the Senate [Mr. AIKEN]—men who have strongly backed a dynamic U.S. foreign policy over the years—why have they questioned our deepening intervention in Vietnam?

Second. Why has a large portion of the university community—both students and faculty—a community traditionally in support of U.S. efforts abroad—including former Ambassador George Kennan, the author of the U.S. containment policy; Profs. Quincy Wright and Hans Morgenthau, noted experts on international law and politics; Prof. George Kahin, director of Cornell University's Southeast Asia Studies program and Prof. Bernard Fall, whose knowledge of Vietnam is perhaps second to none—why do these and dozens of other top authorities on southeast Asia all oppose our policy in Vietnam?

Third. Why has the strongest and most vocal support for the administration's bombing and escalation efforts in Vietnam come from those who advocated Senator Goldwater's election in 1964? Did not a majority of the American electorate reject the Senator's campaign prescription for bombing North Vietnam and defoliating the jungle and destroying the rice crops of South Vietnam?

Fourth. Much has been made of the so-called beatnik element joining in the Vietnam protest demonstrations. But what can be said about the demonstrative backing of the Vietnam war by the Hells Angels, the Ku Klux Klan and American Nazi Party?

Fifth. Why have most of our longtime allies, most of the countries of Asia and Africa, the countries of Eastern Europe and, indeed, the overwhelming majority of the countries of the world been opposed or indifferent toward our Vietnam policy?

Sixth. Why have hundreds of the Nation's leading clergymen and religious leaders spoken out against our policy in southeast Asia?

Seventh. Has our Government forgotten the strong warnings of Generals Ridgway, MacArthur, Bradley, and Gavin—who is now testifying before the Foreign Relations Committee—have we forgotten the warnings of those generals against U.S. involvement in Asiatic wars?

Eighth. Have we rejected the late President Kennedy's warning of September 2, 1963:

> I don't think that unless a greater effort is made by the (South Vietnam) Government to win popular support that the war can be won out there. In the final analysis, it is their war. They are the ones who have to win or lose it. We can help them, we can give them equipment, we can send our men out there as advisers, but they have to win it—the people of Vietnam—against the Communists. We are prepared to continue to assist them, but I don't think that the war can be won unless the people support the effort.

Ninth. Has Secretary of Defense McNamara abandoned the statement he made in congressional testimony in February 1964, when he said:

I think we must recognize that success in the counterinsurgency campaign in South Vietnam depends primarily upon the South Vietnamese themselves. It depends upon their ability to construct a stable government. It depends upon their willingness to fight. It depends upon the competency with which they are led. It depends upon the extent to which their government deserves and receives the loyalty of the people, and the support of the people. All of these conditions are conditions that additional men and equipment from the United States are not likely to advance.

Tenth. Why is the mainland Chinese Government apparently doing all in its power to keep us deeply involved in the war in southeast Asia?

Eleventh. At the end of World War II the United States generally supported nationalistic independence movements against the imperial nations of Western Europe. For example, we supported the effort of India to achieve independence from Britain; we pressured the Dutch to give up Indonesia and the British to grant independence to Malaya; we granted independence to the Philippines. Only in Vietnam did we throw our weight against the revolutionary forces and instead commit our support to the French imperial system. Why in this one instance did we back a continuance of colonial control against a popular move for independence? Why did we then encourage our protege in Saigon, Diem, to repudiate the Geneva agreement which called for elections in 1956 to decide the future course of Vietnam?

Finally, why do such distinguished columnists as Walter Lippmann, Marquis Childs, James Reston, Joseph Kraft, Emmett John Hughes, Richard Starnes, and Drew Pearson, and such respected editors as those of the Knight newspapers, the New York Times, the St. Louis Post-Dispatch, and the Milwaukee Journal, and many other prominent newspapers so consistently question our deepening course in Vietnam?

Mr. President, in line with my earlier statements about the contrast between the public opinion polls and the actual feelings of Americans about the war in Vietnam, I cite the extremely revealing article entitled "Aversion to Viet War Heard," written by Mr. Harold James, and published in the Christian Science Monitor of Monday, February 7, 1966. Mr. James found in talking with a cross section of Americans that most of them are opposed to the war and our present policy. I ask unanimous consent that Mr. James' article be printed at this point in the RECORD.

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

AMERICANS QUERIED: AVERSION TO VIET WAR HEARD

(By Howard James, staff correspondent of the Christian Science Monitor)

CHICAGO.—Are Americans in general suddenly concerned about where they are going in Vietnam?

To find out, I stationed myself in the Illinois Central Railroad terminal, where commuters pour in from Chicago's South Side and suburbs and from northwestern Indiana.

By national standards the sampling was small. Most of those selected were blue-collar workers—men and women representing the bulk of the American people. Here is what I learned:

Most are opposed to the war.

Like the Nation's politicians, most are split over what to do about it. Some want to fight harder and win. Others say pull out at any cost.

With few exceptions, they wonder why Americans are fighting in Vietnam. They have heard explanations, but often do not find them satisfactory or logical.

Almost all fear a nuclear war with Communist China as the outgrowth. A few feel the United States should get into that war now—before China has a greater nuclear capability.

U.N. ROLE URGED

One of the most interesting reactions centers on President Johnson's role in the Vietnam war. Many who bitterly condemned present U.S. policy in Vietnam, at the same time approved the President's approach. Yet not one specifically mentioned his peace efforts as the reason.

Sample comments:

A photostat operator: "Vietnam is one of the main topics everyone talks about today. I know I feel we should pull out. We should never been in there in the first place.

"It is absolutely not worth people getting killed. At one time the country belonged to China, and I think eventually they will get it back. At least 90 percent of the people are opposed to this war. I'm sure of it.

"Johnson got ensnared. It's not his fault. If Kennedy was still alive I don't think we would be in this mess. I'm afraid of China. We should get to a conference table. And the U.N. ought to do more."

Mailman: "The President is doing the right thing. * * * I don't think Vietnam is worth dying over. Look at history. The Communists took over a lot of countries in Europe and we didn't do anything.

"We should have started with Poland. Now I'm afraid we're going to be in a war with Red China. I don't think it's necessary.

CONCERN FOR SONS

"What about our allies? Like Canada and the others? They keep selling to Red China. Why do we let our allies trade with the Communists? All it does is prolong this war and keep the other side from coming to the peace table."

Woman selling candy: "I've got two sons that are going to have to go in. I think we should keep our noses out of it. We've got no business over there. Most of my friends feel that way. We feel we've had enough wars and it's about time we stopped all this business.

"We pour our money here and pour our money there and these people all over the world don't even have respect for us, and why? That's how I feel. I have two sons. My friends have boys. My friends don't say too much * * * we just kinda look at our boys."

Male office clerk: "As long as we're there we should make the most of it. The question is, why did we go there in the first place. One life is too many to lose. By the same token, maybe we will save lives later on. Only history will tell. Look at Truman and the atomic bomb.

PURPOSE PONDERED

"Maybe if I had a brother or somebody over there, or if I was a woman—a gal with a husband over there—maybe I would feel different. Too many of us are to concerned with our immediate personal problems. And to a lot of us Vietnam isn't a personal problem."

Wrestling-match promoter: "Everybody's talking about Vietnam. That and inflation and foreign aid. What I don't understand is if communism is so bad, why is it spreading and spreading all over the world. This country is spending millions to keep others from going Communist. But what difference has it made. One told us to 'go jump in the lake' or something. But we keep givin' out money.

"I don't know why we're in there * * *. Now it looks like we might be heading for another world war."

A hospital janitor: "Quite a few people are talking about Vietnam * * *. It should be an all-out effort. I think we should use more air power. It shouldn't lead to a war with Red China."

Young housewife: "Some of my girl friends have brothers in Vietnam. They think it's terrible, too—so many people getting killed. It's all the fault of Communists. I guess all we can do is fight harder and arrive at some kind of decision."

Retired scrap-metal worker: "Nobody wins in any war. Both sides lose. The best thing to do is negotiate. Let 'em have whatever they want. We got no business there. We should stay out. Asia isn't worth anything to us."

Mr. MCGOVERN. Mr. President, I ask unanimous consent to have printed at this point in the RECORD an article entitled "Surprising Challenge to Johnson's Viet Policy," written by the distinguished journalist, Richard Wilson, and published in the Washington Sunday Star of February 6, 1966.

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

SURPRISING CHALLENGE TO JOHNSON'S VIET POLICY

(By Richard Wilson)

A future historian may blink with incredulity when he studies how in 1966 a determined group in the Senate of the President's own political party challenged him in the conduct of a war.

It would not be so surprising if the duly constituted political opposition were murmuring and rumbling. This was not unusual in other wars.

But when the elected leader of the President's party in the Senate and the chairman of the Foreign Relations Committee cut at the ground under the President's position and doggedly continue to get him to change his policy it is highly unusual.

When upward of 20 Senators of the President's party covertly or openly oppose and undermine the Commander in Chief's military strategy and broad purposes, the duly constituted opposition is constrained to keep quiet.

That is what the Republicans in Congress, generally speaking, are now doing. They are letting the Democrats continue to shake public confidence, which is shaky enough anyway, in the justifiability of the war in Vietnam.

The President's leader in Congress, Senator MIKE MANSFIELD, of Montana, has been opposed to this involvement from the beginning. So in effect has Senator WILLIAM FULBRIGHT, Democrat, of Arkansas. The opposition of the President is formidable.

These Senators are trying to force the President of the United States to accept what amounts to defeat in Vietnam. They are supported by powerful voices in the press. This effort is no longer an expression of intellectual or beatnik opinion, but a political revolt of considerable proportion.

The present situation of President Johnson has no comparability to Lincoln's quarrels with Congress and his generals; it has no relation to Truman's discharge of MacArthur. This is primarily a challenge to Johnson's

right to conduct the Vietnam war at all; and secondarily, a challenge to the way he is conducting it, and to his general aims and purposes.

The Fulbright group in confrontations with Secretary of State Dean Rusk, and others, says in effect that the President has far exceeded the limited approval given by Congress to the Vietnam intervention. It is saying to him that he had better stop the fighting now before he gets into a large-scale war with Communist China that may lead to a third world war.

Concessions or humiliation are not important to the Fulbright group; they contend that our vital interests are not involved and that this war is not worth the cost and the risk.

Any attack on the motives of these men or conclusions that they are aiding the enemy is clearly unjustifiable. They have every right to oppose this involvement if only because a full-scale national decision never has been made.

Only the legalists would contend that a congressional resolution adopted following pin-prick torpedo boat attacks on our warships authorized a military expedition that is apparently scheduled to mount to 600,000 men and may force a reserve callup and increased taxes.

What is lacking is a clear, unambiguous declaration by Congress supporting the war in Vietnam as it exists today and may exist tomorrow. One objection to a declaration of war is that it may force similar declarations on the other side that would prove irreversible. Another objection is that a debate of a new resolution would feed the false assumption of the Asian Communists that American opposition to the war is so great that we will finally give up.

Neither of these objections has much application to the President's problem right now. His problem is that he has escalated the war so much, and may have to do it so much more, that neither Congress nor the general public has the sense that this is their own commitment.

They think of it more as a commitment arrived at without full endorsement by Johnson, Rusk and Secretary of Defense Robert McNamara—which, in fact, is the case.

This is not to say that the President has not consulted with Congress nor measured public opinion. It is to say that he has arrived at judgments on how he analyzes these factors; another President might analyze them another way.

Consequently the President needs a formal affirmation of his policy if he is to go forward with the confidence that this critical situation demands.

Mr. McGOVERN. Mr. President, one of the best informed men writing on American foreign policy today is the brilliant columnist, Joseph Kraft. He has written a number of highly important articles on the Vietnam war, not the least of which is his Washington Post column of January 29, 1966, entitled "The Agnostic Voice."

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

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

THE AGNOSTIC VOICE

(By Joseph Kraft)

One voice, it seems to me, has been missing from the clamor over whether or not to resume bombing North Vietnam. It is the voice of those who don't know, and know they don't know—the voice of the agnostics.

Perhaps above all others, however, the agnostic voice deserves to be heard. For while dogmatic assertions are expressed in all quarters at all times, the fact is that American policy in Vietnam is largely grounded on hunches, guesses, prejudices, and assumptions—on propositions that are unknown and unknowable, untested and untestable.

For example, there is the assumption that the National Liberation Front, or Vietcong insurgent movement, is the pure puppet of the Hanoi government in North Vietnam. To hear the Secretary of State tell it, no doubt on that score can even be admitted.

But the U.S. Government knows next to nothing about the politics of the Vietcong. Systematic investigation was not even begun until late last summer. The study that resulted offers no explanation of why the Vietcong changed its Secretary General three times in less than a year—a critical development. It does not indicate why the admittedly Communist element of the front, the Peoples Revolutionary Party, was not set up until 1962, or why it was set up then—another critical development. It asserts that the Secretary General of the Communist wing of the front is a man who has been for the last 3 years in Algiers—a manifest absurdity.

A second assumption in Washington is that there is no interest in negotiating on the part of the Hanoi government. That view is now supplemented by confident assertions that such experienced and Western-oriented leaders as President Ho Chi Minh and Premier Pham Van Dong have lost power to a Chinese-oriented hard liner—Le Duan, the Secretary General of the North Vietnamese Communist Party.

But that whole story finds its source in an English scholar, P. J. Honey. Mr. Honey has been out of North Vietnam for years. He has argued that since Ho Chi Minh is a clever fellow who would not work his country into a box, and that since North Vietnam is now plainly in a bad box, Ho Chi Minh cannot possibly be running the country. That theory, even if it had a respectable base in logic, is at least put into question by several visitors who have seen Ho Chi Minh in Hanoi during the last 2 months.

As to the notion that Le Duan is a Chinese-oriented hard liner, it is pure speculation. It is matched by an equally justified speculation that Le Duan takes a middle position between those in Hanoi who look toward Moscow and those who look toward Peiping.

Still a third Washington assumption is that the Vietnamese struggle is a first step in a long-range Communist Chinese program for world domination. In support of that view Secretary of State Rusk and, following his lead, Secretary of Defense McNamara, have cited as the "Chinese Mein Kampf" a long article on strategic doctrine written by the Chinese Defense Minister, Lin Piao, last fall.

But as a recent study of the article by the Rand Corp. indicates, the Lin Piao statement can be read as a move by Peiping to wash its hands of the Vietnamese war. And to me, at least, there are indications both in the Lin Piao statement and in the important speech made recently by the political director of the Chinese Army, Hsiao Hua, that the true point at issue is a struggle between Hanoi and Peiping for control over the Vietcong.

It may be, of course, that all the ruling official assumptions in Washington are right. But that is not the point. The point is that they rest on a foundation of guesswork. This country cannot be certain, or even close to certain, about any of the central political relations on the other side.

In this circumstance, agnosticism seems to me a healthy state of mind. And if it does not solve the question whether or not to bomb, it suggests the wisdom of caution; of not moving except when absolutely necessary; of a modest no lose, as against an ambitious win, strategy; of small steps by small things.

Mr. McGOVERN. Mr. President, Mr. Norman Cousins, editor of the Saturday Review, also has written a number of thoughtful pieces on the crisis in Vietnam. I ask unanimous consent to have printed at this point in the RECORD his editorial entitled "Dilemmas and Agonies for All," published in the Saturday Review of February 5, 1966.

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

DILEMMAS AND AGONIES FOR ALL

In one respect, at least, the participants and many of the nonparticipants involved in Vietnam stand on the same ground. All of them are bedeviled by dilemmas and agonies; none of them has an unmuddied choice or prospect. This may make life hard for all concerned but it may also represent a hope for peace in Vietnam.

Begin with the United States. The United States has been getting deeper into Vietnam because it wants to get out. That is, the United States feels its only chance of ending the war in Vietnam is by convincing the enemy it is prepared to fight the war on ever higher levels—levels too costly for the enemy to sustain. But these same levels may be even more costly for the United States than for the enemy. For the last thing in this world the United States wants is a toe-to-toe encounter with Communist China and its limitless reserves of manpower. And the United States knows that if it should attempt to bypass a land war by reaching for nuclear firepower, the result could be a larger fire than we or anyone else might be able to put out.

Just as the United States is trapped between the impossible and the intolerable, the Government of South Vietnam has its own agonies and dilemmas. It is irrevocably and totally dependent on the United States. If the United States withdraws, the wall against the north, already permeable, would evaporate. But if the United States stays in Vietnam and succeeds in bringing about negotiations, the specific result is likely to be a test of self-determination, since the United States has proclaimed from the start that its main objective in Vietnam is to give the people a chance to choose their own government and way of life, free of coercion or subversion. Self-determination, however, is a test which South Vietnam officials have sought to discourage on the grounds it may be premature. So South Vietnam would like the Americans to press for victory in a situation which the Americans have already declared permits no victory.

North Vietnam's cup of dilemmas is no less full. It cannot fight the war without outside aid. If it takes as much aid as it needs from the Russians, who live far away, the Chinese, who live next door, may decide to occupy the entire premises. And if the North Vietnamese get as much aid as they need from the Chinese, the Chinese will insist on controlling its use. If North Vietnam refuses to negotiate with the Americans, the result is likely to be a sharp step-up in the American military effort. But the alternative—negotiations—calls for a measure of independence and detachment from the Chinese that Hanoi may be reluctant to attempt, especially if no other big brothers are nearby.

And the Russians, too, are literally saturated with dilemmas. Their basic interests in Vietnam are not too dissimilar from those of the United States. The one thing the Soviet Union would not like to see happen is the extension of Chinese influence or power anywhere in the world, especially in Asia. And the total or precipitate withdrawal of the United States from Indochina would produce a significant increase in that probability. But the Soviet Union feels

compelled to send military aid to North Vietnam because of the requirements of solidarity inside the Communist world.

Communist China is in a position to exploit the agonies and dilemmas of others in Vietnam, but it is far from enjoying a confident serenity itself. For despite everything they may say about their ability to survive an atomic war, the Chinese have had far more difficulty in raising the level of their industry and agriculture than they had anticipated. Even if China should survive a major war, it is highly doubtful that the present government or any government could survive post-atomic conditions, assuming the wreckage is not complete. And the more Peiping goads Hanoi to carry on or step up the fight, the closer Peiping itself gets to a confrontation in which the prospects will be as bleak for her as they are for anyone else.

The agonies and dilemmas spill over to the nations of central Europe. The longer the war continues, the greater the danger that the hardliners inside the Kremlin will return to power. If that should happen, there would be a tightening of controls over central Europe, especially in Poland, Yugoslavia, Hungary, and Czechoslovakia. Those governments have a direct stake in an early end to the Vietnam war but ideological unity calls for their support of North Vietnam, which is not the surest way of ending the war.

In a curious sense, there is hope in the very fact of agonies and dilemmas, for if there are enough of them and if they are severe enough, alternatives that were rejected out of hand in the past may seem less unattractive now. Peace begins with the awareness by all parties concerned that there is very little personal gain in a continuation of the present struggle. The one agency which so far has not been able to play a vital role, for a wide variety of reasons, may be increasingly relevant and useful. That agency, of course, is the United Nations. True, the U.N. cannot enforce a settlement; it may not even be able to command one. But the U.N. can at least help to provide the auspices under which a settlement might take shape, and it could help monitor the terms—if enough of the principals have enough of a desire to find a way out.

At the very least, the U.N. is now in a position to define an alternative to the present deadend. It will take adroitness to weave the U.N. into Vietnam. But at least the U.N. is less vulnerable to the agonies and dilemmas of the national sovereignties. Such was the original intention and hope.

N.C.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed the bill (S. 9) to provide readjustment assistance to veterans who serve in the Armed Forces during the induction period, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had passed a bill (H.R. 9883) to amend subchapter S of chapter 1 of the Internal Revenue Code of 1954, and for other purposes, in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

The bill (H.R. 9883) to amend subchapter S of chapter 1 of the Internal Revenue Code of 1954, and for other purposes, was read twice by its title and referred to the Committee on Finance.

PROPOSED REPEAL OF SECTION 14(b) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The PRESIDING OFFICER. The Chair lays before the Senate the pending question, which is the consideration of the motion of the Senator from Montana [Mr. MANSFIELD] that the Senate proceed to the consideration of the bill (H.R. 77) to repeal section 14(b) of the National Labor Relations Act, as amended, and section 703(b) of the Labor-Management Reporting Act of 1959 and to amend the first proviso of section 8(a)(3) of the National Labor Relations Act, as amended.

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

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

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

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

The question is on agreeing to the motion of the Senator from Montana [Mr. MANSFIELD] that the Senate proceed to the consideration of the bill (H.R. 77) to repeal section 14(b) of the National Labor Relations Act, as amended, and section 703(b) of the Labor-Management Reporting Act of 1959 and to amend the first proviso of section 8(a)(3) of the National Labor Relations Act, as amended.

Mr. EASTLAND. Mr. President, if the administration and the congressional advocates of the right-to-work repealer are sincere in their alleged concern over labor strife in this country, and are really serious about doing something constructive in the area of labor relations, I would like to suggest that they start with a full-scale congressional review of the role presently played in this field by the National Labor Relations Board.

For this modern-day star "chamber of the house of labor" has become so notoriously and brazenly biased, so completely devoid of any semblance of fair play or intellectual impartiality, it has created an atmosphere of uncertainty, frustration, and bitterness throughout the business world as well as with the rank and file of American workingmen. They have willfully twisted, distorted, and perverted the spirit as well as the letter of the law in such a manner as to clearly expose their contempt for the legislative intent of the Congress, and make sheer mockery of the statutory rights of businessmen and workingmen throughout our country.

As a result of recent decisions of the Board in particular, any statement to the effect that union designations are reached by a majority of the employees in a "free election," or that the statutory rights of the individual employee will be protected by the NLRB after he becomes a union member, appear to be unmitigated nonsense.

The deep-rooted apprehension with which the business community views the mounting trend of open hostility by the present National Labor Board and the growing influence exercised over its actions by organized labor, is summed up in the September 1965 issue of Nation's Business as follows:

Businessmen are becoming convinced that the cards are stacked against them when they go before the National Labor Relations Board, the Federal agency charged with protecting the rights of employers, of unions, and of individual workers.

And with good reason. Growing union and other liberal influence on the agency and shifts in Board policies in favor of unions began in the Kennedy administration and continue at an alarming rate today.

CLIMATE FAVORS UNIONS

Many employers dealing with the NLRB feel that a prounion climate, reminiscent of the Wagner Act days when the Board was widely believed to be prejudiced against employers, pervades the agency from the staff on up through the trial examiners, to the five-man Board and even beyond—to the White House.

Although the Board has equal responsibility to labor, management, and individual workers, the White House feels that major appointments, surely those to the Board itself, must have AFL–CIO approval.

George Meany, president of the labor federation, has been given a virtual veto power. His opposition blocked the reappointment to a third 5-year term last December of Boyd Leedom, former presiding judge of the Supreme Court of South Dakota, who had been chairman of the Board until deposed by the Kennedy administration in 1961.

The nationally eminent Chamber of Commerce of the United States has voiced similar alarm over the increasingly reckless and frequently arrogant assertions by members of the NLRB, both in their official decisions and in their public statements. Mr. Eugene Kenney, manager and labor counsel of the chamber's labor relations department, testifying on September 17, 1965, before the House Committee on Education and Labor, stated as follows:

The chamber appreciates this opportunity to present its views to the committee concerning an investigation of the National Labor Relations Board. We urge the committee to conduct extensive hearings on all phases of NLRB activities.

Decisions and practices by the NLRB in the past few years have been a matter of great concern to management. The NLRB in the past few years have not only exceeded its authority, but its decisions do not reflect the balanced viewpoint that Congress implicitly intended for this agency to maintain when Congress stated in section 1(b) of the National Labor Relations Act that "It is the purpose and policy of this act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce * * *."

Recent NLRB decisions, however, have distorted this policy to mean that the prevailing consideration in virtually all so-called leading decisions in recent years is not whether it protects the legitimate rights of the parties concerned, but whether it will further union organizational efforts.

It is our firm view that an administrative agency must defer to the expressed will of Congress. It is the function of Congress, not the NLRB, to establish our national labor policy.

Mr. Keeney appropriately pointed out to the House committee that the growing national concern over the arrogation of power by the present National Labor Re-

lations Board is by no means limited to business interests, noting that the Federal courts in general and the Supreme Court of the United States in particular have been increasingly critical of the board. Mr. Keeney cited the following language of the Supreme Court handed down in a recent decision:

> Indeed, the role assumed by the Board in this area—attempting to outlaw employer lockouts during bargaining—is fundamentally inconsistent with the structure of the act and the function of the sections relied upon. The deference owed to an expert tribunal cannot be allowed to slip into inertia which results in the unauthorized assumption by an agency of major policy decisions properly made by Congress.

Commenting on the Court's candid reprimand of the Board, Mr. Keeney concluded as follows:

> This is in sharp contrast to the assertion of one member of the Board that it is "undoubtedly a policymaking tribunal."
>
> NLRB's improper arrogation of power, as reflected in its procedures and decisions, has led the national chamber to conclude that the imbalance in NLRB decisions can be corrected only by transferring unfair labor practice jurisdiction to Federal district courts.
>
> This concern has also caused the national chamber to conduct a survey among leading labor attorneys representing management in this country to solicit their views on what changes they believe are needed in our labor laws. A copy of the results of this survey is attached.
>
> At the present time the national chamber, together with these attorneys, is exploring the areas of the law where changes are required in order to bring it into line with realities of modern day industrial relations problems.
>
> Accordingly, when full-scale hearings are held, we expect to be in a position to propose comprehensive recommendations for labor law reform.
>
> The aggressive prounion and antiworker leanings of the Board are not confined to its far-reaching policy decisions. Equally as much damage is being done in the everyday handling of routine type cases in the regional offices and before such little known groups as the appeals section. The investigation of unfair labor practice charges, the decision to issue or not issue a complaint, the unilateral consideration of appeals from regional dismissals all bring to bear upon the employer this overriding Board philosophy of promoting unionism.
>
> Manifestations of this favoritism are numerous. When this committee is authorized to conduct a full-scale investigation of the NLRB, we will be prepared for an extensive discussion of the NLRB procedures which provoke, and indeed invite, charges against employers resulting in an increased workload and case backlog.
>
> The NLRB has flagrantly shifted with the political winds, set itself up as the self-annointed maker of our national labor policies and nullified the congressional intent through distortions of the law. It has become discredited in the public eye. There is no confidence or public trust in this agency. It no longer merits the responsibility of administering the Labor Act. A full and complete investigation of the National Labor Relations Board by this committee is most desirable and we strongly urge that it be undertaken.

It is interesting to note that in the administration of the National Labor Relations Act, the NLRB has been as openly contemptuous of the directives set forth in legal precedents as it has been of the clear, cogent, and unambiguous language of the statute itself, and the plainly stated and patently obvious congressional intent as clearly manifested by its legislative history.

For instance, in the Metropolitan Life Insurance case, the Supreme Court attempted to warn the NLRB that the law expressly prohibits its common practice of giving controlling weight to the extent that a union has organized an industry or business. The NLRB, however, ignored the opinion of the Court and in the recent Purity Food Stores case, found that one store out of seven was an appropriate unit, that being the only store organized by the union. The First Circuit Court of Appeals questioned the credibility of the Board's findings, pointedly noting that—

> Some of the facts * * * were so expressed, or limited, as to give the wrong impression, some of them were at least materially incomplete, and some seem almost totally insignificant. Furthermore, to isolate some facts, and omit others, some of them at least comparable, and some of seemingly much greater importance than some mentioned, is per se, a failure to view even the recited facts in context.
>
> The NLRB should give some consideration—

The Court also noted that—

> * * * to the consequences of employees similarly situated who apparently do not wish to unionize, but who would inevitably be affected, basically, by the union's activities. We believe, also, that there should be some minimum consideration given to the employer's side of the picture, the feasibility, and the disruptive effects of piecemeal unionization.

In other words, the first circuit not only held that the NLRB had failed to follow the directions of the courts in their application of the law, but had actually distorted the statement of the facts in an attempt to reach the desired result. Is it any wonder that businessmen, judges, lawyers, and the rank and file of our workingmen have come to regard the National Labor Relations Board with suspicion and distrust.

As a result of action by Congress in 1953, efforts to reorganize the National Labor Relations Board were included in the work of the Commission on Organization of the Executive Branch of the Government, commonly referred to as the Hoover Commission. The Hoover Commission found that the NLRB was one of the administrative agencies that had grown at the expense of the separation of powers idea as envisioned in the Constitution.

The Hoover Commission concluded that the substantial functions of the Board be transferred to a court of limited jurisdiction. The Commission recommended that investigations relating to unfair labor practices be conducted by informal conferences to make as many corrections as possible, without resorting to judicial action. Formal proceedings would be determined by a completely independent judicial body. In accord with these findings the Commission recommended the establishment of a labor section in its proposed administrative court. The exact language used by the Hoover Commission reads as follows:

> A labor section should be established in the administrative court of the United States to have jurisdiction in the field of labor-management relations over the adjudication of cases involving unfair labor practices presently decided by the National Labor Relations Board.

The criticisms leveled at the operation and administration of the NLRB by the Hoover Commission have become more acute with every passing year and the need for sweeping reform within the present framework of the NLRB or the outright abolition of the Board is obviously long overdue.

The basic recommendations of the Hoover report were endorsed by the house of delegates of the American Bar Association in 1956. The special committee on legal services and procedure stated:

> We concur in the recommendations of the Hoover Commission and of the Task Force that adjudication of labor relations matters, being also within the criteria stated above, should be transferred to a specialized court.

Resolution No. 4 adopted by the house of delegates states as follows:

> 4. SPECIALIZED COURTS.—*Resolved*, That the American Bar Association recommends to the Congress the establishment, by amendment of title 28 of the United States Code, of one or more courts of special jurisdiction within and as part of the judicial branch of the Government, such courts to have original jurisdiction in specified cases to insure the tradition of independence in areas presently subject to administrative action equivalent to judicial action in courts of general jurisdiction, and their final orders and judgments to be subject to review by the courts of appeals; and that there be transferred to divisions of a single such court or to several such courts:
>
> (a) Limited jurisdiction in the trade practice field with respect to certain powers now vested in the Federal Trade Commission and in certain other agencies.
>
> (b) The jurisdiction now vested in the National Labor Relations Board over the adjudication of representation and unfair labor practice cases.
>
> (c) Such other adjudicatory functions as the Congress may from time to time determine.

The rationale for this recommendation is stated in the comment on resolution No. 4 in the report dated January 31, 1956, of the special committee on legal services and procedure, wherein it states:

> The primary argument for transfer of such adjudicatory functions from agencies to courts is that litigation and adjudication, as such, can be done better by judicial then by administrative bodies, with better assurance of considered action and a greater confidence on the part of the litigants that they are being impartially dealt with.
>
> The primary argument against such a separation of functions is that it would unduly impede administrative responsibility and effectiveness. That argument is entitled to prevail where administrative action is essentially regulatory. The argument is, however, not properly applicable where the administrative action is in essence not regulatory but adjudicatory in the judicial sense and where such adjudication is not an integral part of a larger regulatory process.
>
> Where the machinery of administrative action is essentially the machinery of litigation and adjudication, in substance equivalent to judicial adjudication, the arguments for a full separation of functions are

strongest and those against the course weakest.

The argument is made, also, that transfer of adjudicatory functions to the courts would be at the expense of an expertness in adjudication in specialized fields. That argument is met by vesting adjudication in such specialized fields in specialized courts. Specialized expertness can, moreover, be furthered in appropriate instances through the process of specialized litigation in which the administrative agency, familiar with the field and with adequate powers of investigation, can present all relevant factors for consideration by the specialized court.

The dividing line suggested by the recommended resolution is between functions essentially adjudicatory in the usual sense and those essentially regulatory. The two areas of adjudication presently recommended for transfer to a specialized court or courts fall within the first category. Other transfers should be effected as the Congress explores the field and finds other adjudicatory functions to be within that category.

In one form or another, and beginning as far back as 1936, the matter of establishing Federal administrative courts has been a subject of recurring consideration by this association (see, for example, vol. 61, ABA reports, at pp. 217–221, 231–234, and 720).

Thus, the prestige of the American Bar Association has been added to the growing demand throughout the country for a full scale congressional review of the NLRB and the serious question as to its continued usefulness as an arbiter of our national labor laws.

Although the rulings of the NLRB often border on the ridiculous, there is mounting evidence that even the general public is not amused. For instance, the "Huntley-Brinkley Report" of January 24, 1966, noted the recent Westinghouse case in which the union demanded that the company bargain about a penny-a-cup increase in the cost of coffee sold in the company cafeteria. Commenting on this situation, David Brinkley remarked:

> The company said that was nothing to bargain about and refused. Well, the dispute finally reached the National Labor Relations Board. It is supposed to be an unbiased, adjudicating body somewhat like a court. It usually behaves like a department of the AFL–CIO, and is about as neutral as George Meany. So, today it ruled Westinghouse must bargain with the union about a 1-cent increase for coffee carried out in paper cups. Two board members dissented, and they said the next thing might be bargaining with the union about the color of the paint on the rest room walls.

If such decisions are irritating to the American people, they will surely be outraged by the revelations that will accompany a national debate on the role of the National Labor Relations Board as presently constituted and the time for such a public review of its policies is long overdue. If the National Labor Relations Board cannot be reformed within the framework of its present organizational structure, then serious thought should be given to the proposals abolishing the board in its entirety and transferring its functions to the courts.

The National Association of Manufacturers has also joined in the criticism of the present trend of the Board's decisions, as reported by Morris Cunningham, noted Washington correspondent, in the first of a series of articles appearing in Scripps-Howard papers in April of 1965:

> Lambert Miller, general counsel of the National Association of Manufacturers, accuses the NLRB as presently constituted of going back to the old Wagner Act pitch on free speech.
>
> "How can an employer build up morale and a community of interests among his people if he has to have a lawyer standing beside him advising him on what he can and cannot say?" Miller demanded.
>
> He said it is bad enough for big companies with staffs of lawyers and labor relations experts to oversee company communications.
>
> "What about the little fellow who has no experts to advise him?"
>
> Miller said a particularly vexing matter to small employers is the question of backpay which often develops in labor disputes and sometimes is in litigation in the courts for years.
>
> "An adverse decision can wipe out a little fellow," Miller observed.
>
> On the question of backpay, Miller cited the recent Supreme Court decision in the Darlington Manufacturing Co. case. In this decision the Court refused to enforce an NLRB order against the company because it closed its South Carolina textile mill to avoid dealing with a union which had won a representation election.
>
> The decision generally was hailed by critics of the NLRB. But the Supreme Court said only that a company can close its entire plant to avoid bargaining with a union but may not liquidate only a part of its business. It sent the case back to lower court and the NLRB to determine the fact of all or part in the Darlington case.
>
> "This case has been in litigation 8 years, and now it could be tied up another 8 years," said Miller. "Meanwhile, there is the question of backpay for Darlington's employees."

Mr. President, one of the arguments advanced by the advocates of the 14(b) repealer is to the effect that all employees should be bound to abide by the decision of the majority reached in a free election. In the first place, I do not agree with the argument of principle set forth by the proponents of this legislation. Secondly, the majority rule argument seems to be a moot question if based upon the idea that such decisions are to be reached in a full, free, and fair election, or even by the free choice of a majority. When viewed in the light of present NLRB practices and procedures followed in controverted union designation cases, any idea that the decision to authorize a union as the bargaining agent, in any given case, is the result of either a free election, or by free choice in the accepted sense of these terms, or even by a majority of those affected, is, at best, sheer supposition.

As we all well know, the NLRB was given responsibility under the original Wagner Act in 1935 to designate the appropriate unit and to determine whether a majority of employees in that unit desired to be represented by a labor union. The statute provided that the NLRB could take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives. The alternative to secret ballots was found to be unreliable and unsatisfactory. Thus, the Congress sought to assure the use of secret ballots as the sole means of determining union authorization in the Taft-Hartley Act by striking the words providing for any other suitable method to ascertain such representatives.

Accordingly, the Board in its "Thirteenth Annual Report," 1948, at page 32, stated:

> Section 9(c) of the act, as amended, prescribes the election by secret ballot as the sole method of resolving a question concerning representation, and leaves the Board without the discretion it formerly had in using other "suitable means" of ascertaining representatives.

As a result, after Taft-Hartley, a law-abiding employer could legally insist upon an election by secret ballot, to determine the union's majority status, or so it was assumed at the time.

It was thought that the issue was closed, but the Congress underestimated the resourcefulness with which the NLRB would defy the clear intention of the Congress and ignore the clear mandate of this and other sections of Taft-Hartley, by continuing to certify unions on the basis of card checks.

Time and time again, it has been shown that employees often sign these cards under pressure or under the impression that a secret ballot will be taken, although they do not personally desire to join a union. Yet the NLRB continues to use the card check as an alternative to secret elections.

This past year, for instance, the NLRB ordered the Lenz Co., of Dayton, Ohio, in 153 NLRB No. 120, to bargain with the Electrical Workers Union on the basis of deceptive cards.

Mr. President, I ask unanimous consent to have printed at this point in my remarks the text of the cards.

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

PETITION AND AUTHORIZATION TO SHOW THAT I WANT AN NLRB ELECTION NOW

I, the undersigned, an employe of Lenz Co. hereby authorize the International Union of Electrical Radio and Machine Workers, IUE–AFL–CIO, to petition the National Labor Relations Board for an election as soon as possible.

I authorize the IUE–AFL–CIO to act as my bargaining agent with the company in regards to wages, hours, and working conditions.

Name: Douglas Wagner. Date May 6, 1964.

Address: 921 Ferguson Avenue. Dayton, Ohio.

Department: machine. Shift: 8 to 4:30. Phone: 277–7915.

DOUGLAS ALLEN WAGNER.

PETITION AND AUTHORIZATION FOR NLRB ELECTION

I, the undersigned, a salaried employee of Lenz Co. authorize the IUE–AFL–CIO, to petition the U.S. National Labor Relations Board for an election as soon as possible, in order that I may become a part of the professional, technical, and salaried conference board.

I authorize the IUE–AFL–CIO to act as my bargaining agent with the above named company in regard to wages, hours, and working conditions.

Name: Ronald D. DeHart. Date: May 6, 1964.

Address: Rural Route No. 1, Box 70, Laura, Ohio.

Classification: Assembly.

RONALD D. DEHART.

Mr. EASTLAND. Mr. President, the union organizer obtained signatures on such cards by 14 of the 26 employees in a production unit. When the company refused to bargain with the union on the basis of such cards, the Electrical Workers filed charges of refusal to bargain and other unfair labor practices. The trial examiner found the cards used by the union to be so ambiguous and deceptive as to constitute "fraudulent misrepresentation," and stated that the Board should not require bargaining on the basis of a majority obtained by "fraud or coercion" or other "chicanery." The trial examiner further characterized the cards as containing "fine print" designed to "dupe and deceive." The National Labor Relations Board reversed the trial examiner and upheld the validity of the cards as representing a binding election by each signer to be represented by the listed union, although it is patently clear on the face of the cards that the signers thought they were only authorizing an election, and that the trial examiner was absolutely right in his findings. But, of course, the NLRB is not interested in what is right but only in what will advance the movement of organized labor.

Mr. President, as I have stated, it never ceases to amaze me that many of those who are strongest for the protection of civil liberties are against the civil liberties of the individual workingman. Indeed, although the National Labor Relations Act is designed for the protection of the individual rights of workingmen, the NLRB in recent years has been undermining those rights.

For example, the Board has recently, in Bernel Foam and later cases, overturned existing doctrine by imposing upon employers the duty to bargain with unions, despite the fact that the unions in question had won less than a majority of the ballots in a Board election. In each case, the rationale of the Board was that the union, prior to filing its representation position, had in its possession union membership application cards from a majority of the employees in the bargaining unit. More and more, the Board is disposed to accepting the "card check" as sufficient basis to impose a bargaining obligation, despite the common knowledge on the part of persons familiar with the industrial relations scene that signatures on such cards frequently do not represent the true desires of the signer with respect to designation of a union. There is an ironic contrast here between the harsh and rigid rules of conduct imposed on employers during a preelection period in order to insure "laboratory conditions" for the election and, on the other hand, the Board's naive and easy acceptance, in lieu of such carefully screened election, of signatures scribbled on application cards under conditions and in places completely unknown to the Board.

In view of the clear language of the statute and the long record of notorious abuses in the use of card checks, it seems inconceivable that the Board can continue to recognize their validity. This question is particularly relevant in view of the Board's own statement as contained in its ninth annual report, wherein it stated:

> Although the act does not require the Board to conduct an election in each case to determine representatives, almost invariably the Board resorts to an election by secret ballot as the means of ascertaining which union, if any, the employees desire to designate as their collective bargaining representative. It is the Board's opinion that an election is the most satisfactory means of resolving representation questions.

The National Labor Relations Board preceding the present one have likewise held that these so-called union authorization cards are "notoriously unreliable," especially in rival union campaigns where a majority of employees often sign up with both unions. In the *Sunbeam Corp.* case, 99 NLRB 546, 1952, the Board stated:

> This Board has also long recognized that authorization cards are a notoriously unreliable method of determining majority status of a union as a basis for making a contract where competing unions are soliciting cards, because of the duplication which then occurs. Thus as the Board said in Midwest Piping and Supply Co.:
>
> "It is well known that membership cards obtained during the heat of rival organizing campaigns like those of the respondent's plants do not necessarily reflect the ultimate choice of a bargaining representative; indeed, the extent of dual membership among the employees during periods of intense organizing activity is an important unknown factor affecting a determination of majority status, which can best be resolved by a secret ballot among the employees."

There is an endless line of cases which expose the absurdity of relying on these pledge cards as a sure indication of the employees' choice in controverted union designation cases. In the case of *Permacold Industries, Inc.*, 147 NLRB 131, two employees signed these pledge cards because they thought they would be invited to a union party by so doing. There are countless cases where employees have been induced into signing these cards thinking they were only authorizing a free election, and many other cases in which misrepresentations, fraud, and even coercion have been employed for the same purpose.

At least one member of the present Board believes that these cards should be considered conclusive proof of the employees' intentions and that the Board should not look at the circumstances and facts surrounding the procurement of these signatures. In the *Cumberland Shoe Corp.* decision, 144 NLRB No. 124, the Board referred to this member as follows:

> In his opinion, the best evidence of employees' intent, i.e., their signature * * * establishes the majority status. He believes it unnecessary and inappropriate to consider any representations the union's solicitors may have made or what the employees may have been told.

Although the Board has not yet adopted the foregoing contention as an official policy, it appears from cases such as *Peterson Brothers, Inc.*, 144 NLRB No. 65, that the Board's examination of the facts and circumstances relating to these signatures is merely perfunctory. In that case an employee named Jones was held to have signed a card even though he testified that he had not signed it and that he had not authorized anyone else to sign it for him. However, two other employees contradicted him and stated that he had authorized one of them to sign for him. The NLRB trial examiner believed the two prounion employees and the Board upheld his decision.

In the same case, the card of another employee was counted for the union, although he could not read. Without his prior knowledge, his wife had signed the card for him and mailed it to the union. The trial examiner held the card should be counted—and the Board upheld the trial examiner's decision to count the card—because the employee "had made no attempt to recover the card or rescind his action."

The Board further found that:

> How he voted or would have voted in any subsequent election does not alter the affect of signing the card.

As a result of these unbelievable findings, the union in the Peterson case won the election by a count of 29 votes in an appropriate bargaining unit of 51, even though the trial examiner himself had found only 26 cards valid. Thus without an election, and on the basis of these highly questionable manipulations in regard to these card pledges, the Peterson employees were unionized. In view of the Board's endorsement of these dishonest and fraudulent methods, is it any wonder that the reputation of the Board has been severely damaged?

How can the NLRB place such reliance on the use of pledge cards when the AFL–CIO itself takes a dim view of them? In its "Guidebook for the Union Organizer," published in 1961, it states:

> NLRB pledge cards are at best a signifying of intention at a given moment. Sometime they are signed to "get the union off my back." Whatever the reason, there is no guarantee of anything in a signed NLRB pledge card except that it will count toward an NLRB election.

The *George Groh* decision, 141 NLRB 931, handed down in March of 1963 gives an illustration of the Board's procedure when an employer refuses to agree to recognize an alleged card check. In that case the trial examiner stated that:

> The evidence * * * establishes no unlawful * * * activity, but based on other record evidence I am convinced and find that the (company's) refusal to recognize and bargain with the union was motivated not by a good-faith doubt of the union's majority status but by a rejection of the collective bargaining principle.

Upon what other "evidence" did the trial examiner base his conclusion that the employers refusal to bargain was "motivated not by good-faith doubt of the unions majority status but by a rejection of the collective bargaining principle." Here are the reasons given:

> 1. As stated by the trial examiner, "although on June 5 (the employer) asked to see the authorization cards he readily acquiesced in (the union's) refusal to show them."
>
> 2. The employer's statement to the union representatives that they were "wasting their time," and that he "wasn't interested in the union."

3. The employer's labeling one of his employees, in a discussion with the union, as the "fomenter" of "all this union fuss" his statement that "while he had no objection to his employees becoming union members," he "didn't want any part to do with the union again."

On the basis of "other record evidence" such as this, the trial examiner concluded that the employer, in seeking an election, "was motivated not by a good-faith doubt of the union's majority status but by a rejection of the principle of collective bargaining. Is it any wonder that the American Bar Association and other reputable organizations now advocate transferring the functions of the Board to the courts?

The gross injustice of the NLRB policy of forcing employers to bargain with unions, and forcing employees to accept unions as their agents on the basis of these card checks was vividly pointed out in several cases decided within this past year.

In the case of NLRB against A. & P. Tea Co., the AFL–CIO Meat Cutters Union procured authorization cards from three of the four employees in one of the company's stores and demanded that the company recognize it as their bargaining agent. The company had reason to believe that the cards had been obtained by coercion and refused. For reasons best known to themselves, but obviously apparent from the facts developed in the record, the union declined to seek an election but instead filed unfair labor practice charges alleging unlawful refusal to bargain. The hearing revealed that the withdrawal of one of the cards by an employee had left the union without a majority. The NLRB ruled, however, that since the employer did not know about the withdrawal at the time it refused to bargain, it did not have good-faith grounds for doubt of the union majority and thus ordered the company to bargain.

The Fifth Circuit Court of Appeals reversed the Board and found that the employer did in fact have good-faith grounds for believing that some of the employees who signed the cards did not want the union.

In the case of NLRB against Flomatic Corp., the union lost an election by a vote of 19 to 7, after having obtained authorization cards from 20 of the 28 employees in the production unit. Even though the union lost the election, the NLRB held that the employer had exceeded the bounds of free speech in answering the union's propaganda prior to the election, and ordered the employer to bargain. Thus, even though the employees had rejected the union in a secret election, they were forced to accept the union as their agent because of certain alleged actions of the employer.

The Second Circuit Court of Appeals refused to enforce the order and noted that the NLRB itself had recognized in earlier decisions that authorization cards are a "notoriously unreliable method of determining majority status of a union." It also drew attention to the fact that a bargaining order based on such cards may impose on employees a union which a majority do not want, and "thus frustrate rather than effectuate the policies of the act."

The court also commented on the policy of ordering such bargaining as adopted in the Bernel Foam case. In regard to that decision the court said:

Hereafter, even though there is only a very slight basis for doing so, a union will take care to raise an unfair labor practice charge along with petitioning for an election. If the union should win the election, all would be well. If it lost, it would then press the unfair labor practice charge, and, following its decision in this case, the Board would be empowered to order bargaining even if the violation were minimal. Thus the union could become the exclusive bargaining agent regardless of whether it prevailed in the secret election. In cases of this kind the granting of such an advantage to the union would create an unwarranted limitation on the employees' freedom of choice.

Thus the second circuit refused to enforce the bargaining order in the case of NLRB against Flomatic Corp., and directed the Board to conduct new elections.

No, Mr. President, there is no substance to the proponents' contention that union representation cases are necessarily decided by elections, or even by a majority of those participating when such elections are held. And as was shown in the 1965 case of NLRB against A. & P., which I have previously mentioned, and the decision in *Singer Sewing Machine Co.* v. *NLRB*, 329 F. 2d 200, decided in 1964, the National Labor Relations Board obviously has no hesitation in using deliberately gerrymandered bargaining units so as to assure union victories.

Mr. President, equally disturbing has been the Board's policy in regard to the employees' freedom of speech, which the Congress intended to insure with the enactment of section 8(c).

In the early days of the Wagner Act, section 7 was interpreted by the NLRB as requiring strict employee neutrality in union designation cases. In such cases as *Wickwire Brothers*, 16 NLRB 316; *Rockford Mitten and Hosiery Co.*, 16 NLRB 501; and *Kentucky Utilities Co.*, 58 NLRB 335, the Board consistently held that any form of employer speech was coercive, per se, because of the employer's economic power over the employee.

As stated by Gregory, "Labor and the Law," second revised edition, 1958:

During the first years of the Wagner Act it was taken for granted that whatever an employer said against unions was a violation.

In the 1940 case of *Virginia Electric and Power Company*, 314 U.S. 469 and 319 U.S. 533, the Supreme Court adopted the "totality of conduct" doctrine, which it interpreted as follows:

The employer * * * is as free now as ever to take any side it may choose on this controversial issue. But, certainly, conduct, though evidenced in part by speech, may amount, in connection with other circumstances, to coercion within the meaning of the act. If the total activities of an employer restrain or coerce his employees in their free choice, then those employees are entitled to the protection of the act. And in determining whether a course of conduct amounts to restraint or coercion, pressure exerted vocally by the employer may no more be disregarded than pressure exerted in other ways.

However, the NLRB, in its annual report of June 30, 1943, stated:

Even when the employer's preelection statements are not accompanied by or a part of other antiunion conduct, the Board has nevertheless made findings that such statements can be coercive under certain circumstances.

That same year the Board applied this policy in the *American Tube Company* case, 134 F. 2d 993, when the president of the firm had spoken to his employees during working hours and on company property, concerning an upcoming union election. Although the speech and the accompanying letter were apparently noncoercive, the NLRB again ignored the Virginia Electric decision, holding this type of participation in the preelection campaign was an unfair labor practice.

The Second Circuit Court of Appeals reversed the decision, stating:

The respondent professed itself willing to abide loyally by the results of the election, but did not conceal, though perhaps it made some effort to disguise, its preference for no union whatever. But there was no intimation of reprisal against those who thought otherwise; quite the opposite. The most that can be gathered from them was an argument, temperate in form, that a union would be against the employees' interests as well as the employer's and that the continued prosperity of the company depended on going on as they had been.

Further defining the "totality of conduct" doctrine earlier enunciated in Virginia Electric, the Eighth Circuit Court in *Brandies and Sons* v. *NLRB*, 145 F. 2d 556, held that:

So long as the reasoning power of the employee and not his fear is appealed to * * * certainly, effectiveness of statement is not a test of its constitutionality; neither is accuracy.

In *Budd Manufacturing* v. *NLRB*, 142 F. 2d 922, the Second Circuit Court reversed the Board's ruling declaring an employer's correspondence urging his employees to form an independent unit, as being coercive, when viewed in light of the employer's past record of unfair labor practices. The court found that it was necessary to consider time differentials in evaluating the employer's speech and rejected the Board's contention that prior antiunion practices should be considered conclusive proof of coercive speech.

In other words, the decisions rendered subsequent to the Virginia Electric case were concerned with the extent to which the "totality of conduct" test would be applied and pointed the way toward further clarification by the Supreme Court in the 1945 case of *Thomas* v. *Collins*, 323 U.S. 516, in which the High Court said that:

Employers' attempts to persuade to action with respect to joining or not joining unions are within the first amendment's guarantee * * * when to this persuasion other things are added which bring about coercion, or give it that character, the limit of that right has been passed. But short of that limit, the employer's freedom cannot be impaired.

In this case, Justice Jackson enunciated the doctrine of "separability,"

which essentially stated that employee speech should be considered separately and distinctly from actions taken in the past on which might be taken in the future.

The debates preceding the passage of section 8(c) of the Taft-Hartley Act focused on the extent to which employers shall be allowed to speak to employees on the subject of unionization, and the distinction between the "totality of conduct doctrine" and the test of "separability" as announced by Justice Frankfurter.

The Congress decidedly elected to adopt a liberal rule in favor of protecting the employer's right to free speech, save only as limited by the prohibition against expressions containing any "threat of force or reprisal or promise of benefit."

The legislative intent regarding section 8(c) could not have been more clearly or convincingly stated than it was in the conference report on the subject, same being House Report No. 510, 80th Congress, wherein it stated:

> Both the House bill and the Senate amendment contained provisions designed to protect the right of both employers and labor organizations to free speech. The conference agreement adopts the provisions of the House bill in this respect with one change derived from the Senate amendment. It is provided that expressing any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, is not to constitute or be evidence of an unfair labor practice if such expression contains no threat of force or reprisal or promise of benefit. The practice which the Board has had in the past of using speeches and publications of employers concerning labor organizations and collective bargaining arrangements as evidence, no matter how irrelevant or immaterial, that some later act of the employer had an illegal purpose, gave rise to the necessity for this change in the law. The purpose is to protect the right of free speech when what the employer says or writes is not of a threatening nature or does not promise a prohibited favorable discrimination.
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> The result was that the following amendment, section 8(c), was enacted:
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> "The expressing of any views, arguments, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

To any fairminded, reasonable men, the issue of employers' free speech in union elections was settled by the clear, cogent, and convincing congressional mandate of section 8(c). But the NLRB has seldom since its creation contained a majority of fairminded or reasonable men and by 1948, the Board was afforded another opportunity to demonstrate its traditional contempt for the Congress in the case of *General Shoe Corporation*, 77 NLRB 124.

Faced with the embarrassing mandate of section 8(c) and the patently plain meaning so obviously reflected not only by its language but also the legislative history attendant thereto, the Board exhibited its ingenuity in distorting and perverting the Taft-Hartley Act.

The method by which the Board set about to read section 8(c) out of the act, was their interpretation to the effect that 8(c) was not intended to apply to elections, but only to unfair labor practices.

Having thus disposed of the barrier imposed by 8(c), the Board in effect concluded that employers' speeches in this area would continue to be governed by section 7 of the original Wagner Act.

Having so concluded, the Board then simply followed their theory to its logical consequence, and held that even when the employer's election campaign contained no specific promise of benefits or threat of reprisals or force:

> Conduct that creates an atmosphere calculated to prevent a free and untrammeled choice by the employees will sometimes warrant invalidating an election, even though that conduct may not constitute an unfair labor practice.

The practical effect of the General Shoe doctrine was to place the rights of employers to speak during union election campaigns right back under the "totality of conduct" doctrine of the Virginia Electric decision, and for all practical purposes, to completely negate the intended effect of section 8(c).

The General Shoe case provided a means by which the NLRB could set aside elections under a broad test for evaluating campaign propaganda without raising the "right to speech" issue.

Although the NLRB later held that the free speech amendment, section 8(c), did apply to employer statements in election cases, as was intended by the 80th Congress, the Board expressly overruled it in the 1902 *Dal-Tex Optical Company* decision, 137 NLRB 1781. Apparently returning to the General Shoe rule, the Board held that:

> The test of conduct which may interfere with the "laboratory conditions" for an election is considerably more restrictive than the test of conduct which amounts to interference, restraint, or coercion.

Despite numerous judicial reverses, the Board has persisted. In an astonishing disregard of the first amendment and of section 8(c) of the act, in requiring employers, during the periods prior to a representation election, to adhere, in communications to their employees, to a Pollyanna approach to the dangers and disadvantages inherent in unionization.

The devices used by the Board to accomplish this double violation of the first amendment and section 8(c) have been fourfold:

> The novel ruling that, since 8(c) of the act—guaranteeing the right of free speech—literally applied only to unfair labor practice cases, employers can be deprived of free speech in representation proceedings. This rule, laid down by the current Board in 1962 in the case of Dal-Tex Optical Co. not only blithely ignores the clear intent of Congress in passing 8(c), but ignores the impact of the first amendment. As Professor Bok has said in the Harvard Law Review article I previously cited, "The critical question under the first amendment is whether speech is in fact restrained, and the Board is currently attempting to accomplish this result when it overturns an election and subjects the employer to another representation campaign."
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> The Dal-Tex decision imposed a new test in place of the standard right of free speech. This test was one under which the Board would decide whether or not "the requisite laboratory conditions had been maintained during the election period." The very vagueness of this concept and the right retained by the Board to make subjective determinations in free speech matters under this vague rule are an affront to all standards of constitutional rights.
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> In determining whether "laboratory conditions" have been complied with during the preelection period, the Board has invented a novel concept under which it will seek to determine whether "an atmosphere of intimidation" was created by employers' communications concerning the potential disadvantages of unionization. This generalized concept has resulted in adverse findings in such areas of communications as the following:
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> Employer predictions that the advent of the unions will probably mean strikes, violence and possible loss of jobs. Prime examples of this rule are the NLRB decisions in the case of *Polchman & Harrison*, 140 NLRB 130, decided in 1962 and *Storkline Corp.*, 143 NLRB 875 decided in 1963.
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> An employer prediction that the election of a union might lead to loss of business and, therefore, of jobs, as decided in *Haynes-Stellite, Inc.*, 136 NLRB 95, a 1962 case, and *R. O. Cole Mfg. Co.*, 133 NLRB 1455, handed down in 1961.
>
> Employer statements indicating that it will treat employees no differently whether they are represented by a union or remain unrepresented. The leading cases in this respect are the 1962 case of *Trane Co.*, 137 NLRB 1506 and the 1963 case of *Oak Mfg. Co.*, 141 NLRB 1323.
>
> The determination by the Board that employer statements which are either incorrect in minor respects or not susceptible of clear proof warrant the upset of representation elections, as held by the Board in the case of *Haynes-Stellite, Inc.*
>
> A blanket rule with two parts under which the Board will consider "the totality" of the employers' conduct rather than specific elements of it and under which the Board will appraise the temperateness or intemperateness of the employer's preelection speeches and letters in considering the "totality" of his conduct. Both aspects of this rule are unavoidedly recognizable as the standard tools of the censor. By picking and choosing from an employer's speeches and other communications, the Board can create its own version of the totality of the employer's conduct in order to find him in violation. In addition, the power of the Board to appraise the degree of "temperateness" is about as subjective as censorship can become.

As the result of these decisions following the Dal-Tex Optical Co. case, Kenneth McGuiness, former General Counsel of the NLRB, in his book, "The New Frontier," states as follows:

> Current decisions make it abundantly clear that the Kennedy Board has reverted to the policies of the Wagner Act Boards with little concern shown for section 8(c). It seems determined to nullify that section of the law and to deprive employers of their constitutional and statutory rights to state their views on union matters vitally affecting their interests and the welfare of their employees.

Speaking at N.Y.U.'s 17th Annual Conference on Labor, Chicago Attorney Owen Fairweather stated:

> Our democratic governmental processes are based upon the assumption that adults who vote can make correct decisions after hearing the opinion of the different candidates and their supporters. The Board, however, candidly admits that it does not support a similar theory of unlimited expression by advocates of different points of view.
>
> The Board states that it is charged with overseeing "the propaganda activities of the

participants." When any agency of the Government assumes the role of "overseeing the propaganda activities" of anyone, the fundamentals involved in freedom of speech are being infringed. Justice Goldberg said that under the "theory of our Constitution" one "may not be barred from speaking or publishing because those in control of Government think that what is said or written is unwise, unfair, false, or malicious."

These trends have not gone unnoticed in the Congress. On June 19, 1963, Congressman LANDRUM, coauthor of the Landrum-Griffin Act, stated on the floor of the House of Representatives that:

Last year we reported indications that the NLRB evidently could not resist the temptation to tinker with established free speech rights. Events since then reveal that the Board has yielded fully to this temptation.

Nor have these distorted interpretations of section 8(c) of the Taft-Hartley Act escaped the condemnation of academic scholars. In the November 1964 issue of the Harvard Law Review, Derek Bok, professor of labor law, sharply criticized the Board's recently imposed censorship in the labor relations field, as follows:

But when the employer merely seeks to engender emotions and prejudices that do not depend upon his power over the employees, he does no more than any political candidate might do in exploiting racial issues or predicting the dire consequences which will follow if his opponent is elected. Such tactics may appeal to passion rather than reason, but it would be just as improper for the Government to draw this line in representation elections as it would be in the ordinary run of political campaigns. In either context, regulations of this sort seem alien to the prevailing philosophy of the Supreme Court in matters of free speech.

Prof. Thomas Christensen, of New York University Law School, writing in N.Y.U.'s Law Review for April 1963, noted the disturbing trend of the present NLRB to return to the strict neutrality doctrine followed in the early days of the Wagner Act. Professor Christensen stated:

The inherent difficulty, however, lies in the fact that the Board, having assumed the power to decide what is misleading, is inexorably pushed further and further into the business of determining "truth."

The unfortunate fact is that we have no real knowledge of the standard by which the Board will or can judge what has misled voters and what has not. One member of the present Board has suggested that the "truth, timing (and) relevance" of the utterance will determine its permissibility. While I am not confident that unanimity will ever be achieved as to whether or not a given speech carries with it a message of threat or promise under section 8(c), I am even less confident that such standards offer some hope of objectivity and certainty as to impairment of voters choice.

The Board, it seems to me, has now assumed precisely that power; the power to decide not whether employees have been restrained or coerced in the exercise of their rights but whether they have made a foolish or misguided choice.

Mr. President the recent decisions of the Board in the free-speech area disclose, perhaps more than in any other area, the antimanagement, prounion attitude being taken currently by the Board. Thus, Congressman LANDRUM's speech to the House, as quoted in the Daily Labor Report of June 19, 1963, included the following statement:

The restrictions imposed by the Board, as to what employees may hear from their employers are in sharp contrast with the wide latitude accorded union officials. And the net result is to force an imbalanced package of information on the employees, thus denying them access to all the facts necessary to an informed and intelligent decision.

Others have noted the prounion aspect of the current Board.

The abrupt change of face of the NLRB has not gone unnoticed. For instance, Mr. A. H. Raskin, veteran labor reporter of the New York Times, in an article in the January 1963 issue of Challenge magazine, said:

Jubilant union lawyers believe that the administration of the labor laws by the old Eisenhower Board and the new Kennedy Board are as different as day and night. Thus, without any congressional action, the climate of Taft-Hartley enforcement has been altered.

John Herling's Labor Letter of February 2, 1963, quotes Labor Attorney Henry Kaiser as follows:

Some comments were made about the upswing that labor is going to enjoy in direct consequence of the new appointments to the National Labor Relations Board. That is abundantly and happily true. But I would raise with you here this morning some questions as to the implied reasoning behind that comment. I would suggest that the fundamental rights of workers might not have to depend on the changing vagaries and whims of political and politicians' fortunes.

What is wrong with Taft-Hartley is not who is administering that law, what is wrong with Taft-Hartley is very simply Taft-Hartley. Taft-Hartley continues the tawdry, unspeakable, indecency no matter how attractive its temporary tasty icing. I mean the present Board. This Board will not be there forever.

Prominent management attorneys have naturally been disturbed by these and other decisions of the present Board. J. Mack Swigert, the labor relations partner in the law firm of the late Senator Robert Taft, stated:

The unions now have a clear majority of union sympathizers on the Board. During the past 2 years, under the leadership of the new Chairman of the Board, numerous precedents have been overruled and discarded, and the labor law has been substantially changed without legislation.

As many commentators have noted, the Board's decisions in the free-speech field have not only intruded severely into what formerly had been, and still should be, a sensitive and important area of constitutional privilege, but the Board's decisions themselves have created a situation of great confusion and ambiguity.

Thus, the well-known labor lawyer, J. Mack Swigert, writing in the U.S. News & World Report, has said:

As a result of the Board's continuing rejection of precedents, and retroactive overruling of interpretations of law previously established by Board decisions and relied on by employers and others in the industrial relations field, no employer can be sure today that any action taken by him which might prove harmful to a union will be sustained by the NLRB.

Even the highly objective Bureau of National Affairs Labor Relations Reporter, in an analysis of May 16, 1964, has noted this deplorable factor:

NO PRECISE STANDARD

The decisions in the present Claymore and American Greetings cases indicate how imprecise the standard is. In neither case is there unanimity among the members of the Board on the effect the employer's campaign propaganda had on a free choice by the employees in the election.

Mr. President, even the Board's own regional directors are reflecting this state of confusion. Board decisions in two back-to-back elections at the same plant in the well-known *Lord Baltimore Press* cases, 142 NLRB 328, 2d 145 NLRB 388, supply ample proof of this confusion. In the first case, the union which had lost an election objected to a preelection letter sent by the employer to its employees. The regional director upheld the letter as a proper exercise of free speech, but the Board reversed its regional director and held that the letter had destroyed the laboratory conditions we seek to maintain, and ordered a new election. Prior to the second election, the employer sent to his employees a letter which can be described as a somewhat expanded paraphrase of the first letter. The regional director, by now thinking he had achieved a navigator's fix on the Board's free speech doctrine, upset the second election. However, the Board again reversed the regional director, holding that the second letter was a proper exercise of free speech. It is not difficult to imagine the regional directors, following that second Lord Baltimore decision, deciding to use the "toss the coin" approach in deciding future free speech matters.

No, Mr. President, it is not section 14(b) that has caused frustration, confusion, bitterness, and labor strife throughout this Nation, but the NLRB's arrogant, insolent arrogation of authority and their persistent defiance of the legislative intent of the Taft-Hartley Act.

As can be clearly seen from the foregoing decision, the realization of "free choice" in union elections will never be achieved until this Congress undertakes the job of either reorganizing the NLRB or transferring its functions to the courts.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 32 Leg.]

Aiken	Hart	Mundt
Allott	Hayden	Murphy
Bass	Hill	Muskie
Boggs	Holland	Prouty
Byrd, Va.	Hruska	Ribicoff
Cannon	Javits	Saltonstall
Carlson	Jordan, Idaho	Scott
Case	Kuchel	Smith
Clark	Long, Mo.	Symington
Cotton	Long, La.	Yarborough
Dirksen	Magnuson	Young, N. Dak.
Eastland	Mondale	
Fannin	Morse	

The PRESIDING OFFICER. A quorum is not present.

Mr. HART. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Michigan.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After a little delay, the following Senators entered the Chamber and answered to their names:

Anderson	Hartke	Neuberger
Bartlett	Hickenlooper	Pastore
Bayh	Inouye	Pearson
Bennett	Jackson	Pell
Bible	Jordan, N.C.	Proxmire
Brewster	Kennedy, Mass.	Randolph
Byrd, W. Va.	Kennedy, N.Y.	Robertson
Church	Lausche	Russell, S.C.
Cooper	McCarthy	Russell, Ga.
Curtis	McClellan	Simpson
Dodd	McGee	Smathers
Dominick	McGovern	Sparkman
Douglas	McIntyre	Stennis
Ellender	Metcalf	Talmadge
Ervin	Miller	Thurmond
Fong	Monroney	Tower
Fulbright	Montoya	Tydings
Gore	Morton	Williams, N.J.
Gruening	Moss	Williams, Del.
Harris	Nelson	Young, Ohio

The PRESIDING OFFICER (Mrs. NEUBERGER in the chair). A quorum is present. The Senator from Alabama is recognized.

Mr. HILL. Madam President, in the closing days of the last session of Congress, we discussed at length section 14(b) of the Taft-Hartley Act. In advance of that debate, all of us received expressions from our constituency and from the people of other States on the subject. The expressions I have received from my State have been overwhelmingly against the repeal of section 14(b). The latest findings of a survey conducted by the Opinions Research Corp. of Princeton, N.J., show that two-thirds of the people throughout the Nation who have an opinion on the subject believe in the right-to-work principle embodied in section 14(b). This survey was published in January 1966—just last month—and the results are tabulated only on the basis of inquiry to those who, after sampling, were determined to recognize and understand the issues involved in 14(b). Incidentally, this sampling revealed that two out of every three persons questioned did understand the issue involved in 14(b).

I think it is of interest at this point, Madam President, to note that in 1944, some 3 years before the enactment of the Taft-Hartley amendments to the National Labor Relations Act, the Opinions Research Corp. of Princeton, N.J., began surveys among the American public on the subject. Since that time, some seven or eight surveys have been conducted, and each one reveals an increase in the number of Americans who believe that one should have the right to earn a livelihood without compulsory membership in a union or in any other type organization.

When I last addressed this Senate on the subject, I stated that the proposal to repeal section 14(b) raises important and vital questions regarding the constitutional relationship between the Federal Government and the respective States—questions which should be given careful and thorough deliberation by Members of this body. As I said at that time and I say again now, only in this way can we ascertain what course will serve the best interests of organized labor, of the business community, of the individual worker, and of the American people as a whole.

Madam President, in the heat of argument on important issues it is frequently difficult to keep the main subject in its proper perspective. There is always a tendency to permit the issue to become obscured in clouds of rhetoric, and claims and counterclaims, with the result that the real objectives and main issues are sometimes lost sight of.

This is particularly true, I feel, on the issue of repeal of section 14(b) of the National Labor Relations Act now before us for consideration. There are very strong views on each side of this issue, and we hear very eloquent and persuasive arguments from the advocates on each side. Each of us must, of course, weigh and test these arguments in deciding where the truth lies. But we can hope to ascertain the truth only by keeping this question in its correct context and perspective in the overall scheme of Federal labor legislation.

Madam President, I feel that I can approach this subject with some degree of objectivity and from a certain vantage point of having participated in the development of the National Labor Relations Act, and the various amendments to that act from time to time. I am confident, in the first place, that no one can properly charge that I have been unfriendly to organized labor or that I have been indifferent to the problems of the working men and women in this highly industrialized economy. Secondly, it has been my good fortune during a good part of the more than 42 years which I have been in Congress to serve on the committees which have had the responsibility for shaping our major labor statutes. I have had the benefit in this connection of the advice and wisdom of well-qualified experts who have studied and lived with labor problems throughout their careers.

Those who advocate repeal of section 14(b) of the Taft-Hartley Act have repeatedly asserted that this section is wrong in principle because it permits the individual States to adopt laws contrary to the national labor policy as expressed in the National Labor Relations Act. Since the national law favors and encourages union shop agreements, they argue, the States should not be allowed to restrict or prohibit such agreements. By authorizing such State laws, it is said, section 14(b) destroys the necessary and desirable goal of consistent and uniform application of Federal regulation of interstate commerce, and raises serious constitutional questions under the commerce clause of the Federal Constitution. The proponents of repeal further assert that in no other instance has Congress authorized State interference with Federal power, or permitted State policy to override national policy.

This argument, I hasten to point out, is based upon two entirely false premises: First, that Federal labor policy affirmatively fosters and encourages compulsory union shop agreements, and, second, that section 14(b) represents a unique exception to the rule that State authority cannot be exercised in any area in which the Federal Government has a regulatory interest. Both of these propositions are unqualifiedly erroneous.

In respect to whether the Federal labor policy affirmatively sanctions compulsory unionism, I have on several occasions pointed out that it was never the intention of Congress under either the original Wagner Act or the Taft-Hartley amendments to it, to adopt an overriding Federal rule of policy favoring the union shop or any other form of union security agreement. What Congress did do is adopt a policy and a legislative structure designed to guarantee workers the right of self-organization and, free from employer domination or discrimination, the right to form, join, or assist labor organizations for the purpose of bargaining collectively. This was the central policy expressed in the National Labor Relations Act from the time of its original enactment, and this policy has never changed.

The primary purpose of the National Labor Relations Act was well expressed by the Supreme Court in stating that "the purpose of the act was to insulate workers' jobs from their union activities." It did so in the 1954 case of Radio Officers union against National Labor Relations Board, when it stated that:

> The policy of the act is to insulate employees' jobs from their organizational rights. Thus section 8(a)(3) and 8(b)(2) were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members, or abstain from joining any union without imperiling their livelihood.

Madam President, I have contended that in order to put in proper perspective the subject of Federal-State authority in labor-management matters and to answer the contentions of those who would repeal section 14(b), we must review and understand the original thinking and the historical development of Federal legislation pertaining to labor disputes and labor relations affecting interstate commerce.

When I first came to Congress in the year 1923 there was no such thing as Federal labor law or Federal labor policy. There was no law affecting labor; no law laying out any Federal labor policy. As of that time the only statutory provision that could be said to be an expression of Federal labor policy was found in the language of section 6 of the Clayton Act, which recited that "the labor of a human being is not a commodity or article of commerce," and that the Federal antitrust laws should not be construed "to forbid or restrain individual members of—labor—organizations from lawfully carrying out the legitimate objects. thereof." This language of the Clayton Act had the purpose of merely enumerating the well-recognized and longstanding principle that unions were not to be regarded as unlawful conspiracies in restraint of trade and commerce. Up until the time of the Clayton Act this right had been established and recognized through judicial decisions, but had never been set forth in statutory law.

Beyond this simple provision of the Clayton Act, however, there was no Federal statutory sanction of protection for

employee organization activities or collective-bargaining efforts.

The first step in this direction was taken with the enactment of the Railway Labor Act in 1926, which stated that employees of railroads "shall have the right to organize and bargain collectively through representatives of their own choosing," and that no rail carrier, its officers or agents, shall deny this right or interfere in any way with the organization of its employees. In the Railway Labor Act, the Federal Government thus for the first time expressed its desire to protect workers in interstate commerce in their efforts to obtain collective-bargaining rights and to be represented by labor unions. Until then employers in the railroad industry were free, as were employees generally, to discourage union organizing activities and to refuse to recognize or bargain with labor unions. In many instances employees who took the lead in organizing or showed any militancy in union activities were subject to reprisals by their employer.

It is interesting to note in this connection that the Railway Labor Act was subsequently amended in 1934 so as to expressly make it unlawful for a carrier to enter into an agreement with a union which would require workers to join or belong to the union as a condition of employment. This union shop prohibition, interestingly enough, was advocated by the railroad brotherhoods themselves. Their position at that time was that company dominated or controlled unions could, through union shop clauses, exercise unconscionable control over the individual worker's job and livelihood, and thus open the door to widespread abuses. As a result, section 2 of the Railway Labor Act was amended to provide that:

> Employees have the right to organize and bargain collectively through representatives of their own choosing * * * and it shall be unlawful for any carrier to interfere in any way with the organization of its employees * * * or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions. * * *
>
> No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization * * *.

It is thus an historic, if not a somewhat ironic, fact that organized labor itself was the first to insist upon incorporation of the right-to-work principle in a Federal labor statute.

A similar expression of the principle of freedom of choice for workers to join or decline to join labor unions was incorporated into the Norris-LaGuardia Act in 1932, a statute designed to prevent employers from resorting to Federal court injunctions to restrain strikes and other concerted activities of employees in connection with labor disputes. Section 2 of that act stated as public policy of the United States that the individual worker should have full freedom of association and self-organization and designation of representatives of his own choosing, and also "should be free to decline to associate with his fellows." This language obviously strikes at compulsory membership, as well as compulsory nonmembership in a labor union.

Aside from the Norris-LaGuardia Act, up to the year 1935 workers in industries other than the railroad industry still had no Federal protection of their organizing activities and their efforts to obtain collective bargaining rights from their employers. All this was changed with the enactment in 1935 of the National Labor Relations Act, the first comprehensive Federal labor statute which, since that time, has occupied a central position in the overall scheme of Federal labor law. When this law was adopted, union membership was at a low ebb and the labor movement in this country was struggling for its very existence. The widespread unemployment caused by the economic depression created excessive competition among workers for jobs, and exerted a consequent downward pressure on pay scales and wages. Few workers were willing to jeopardize their jobs by union organizing activities, and employers were free to use threats of economic reprisals against militantly prounion employees.

In this setting, many people became convinced that it was necessary for the Federal Government to provide protection for workers who desired to organize into unions, and to require employers to recognize and collectively bargain with unions formed by their employees. The National Labor Relations Act was drafted for precisely this purpose, and the heart of that act was embodied in the language of sections 7 and 8. Section 7 guaranteed to workers the right to self-organization and to form, join, or assist labor organizations for the purpose of bargaining collectively. Section 8 made it unlawful as an unfair labor practice for an employer to interfere with, restrain or coerce his employees in the exercise of their right of self-organization and collective bargaining, to discriminate against any employee for the purpose of encouraging or discouraging membership in a labor organization, and to refuse to bargain collectively with a union organization representing his employees.

There is, to be sure, a certain ambivalence between the purpose and policy expressed in section 7 of the National Labor Relations Act, and the proviso to section 8(a)(3) which permits employers to enter into agreements with labor unions to require, as a condition of employment, membership in the union on or after the 30th day following the beginning of employment or the effective date of the agreement. The proponents of repeal of section 14(b) contend that this proviso in section 8(a)(3) expressly sanctioned and approved union shop agreements and established a Federal policy favoring such agreements. This is in error. A careful analysis of the legislative history of the National Labor Relations Act shows that the proviso was never intended as an affirmative expression of endorsement of the union shop as a matter of national labor policy. On the contrary, section 8(a)(3) treats union shop agreements as a type of arrangement which, while not prohibited, constitutes an exception to the statutory purpose of insulating workers' jobs from their union activities and, in the words of section 7, guaranteeing their freedom "to form, join, or assist labor organizations—and to refrain from any or all such activities."

This entire question of the proper interpretation of section 8(a)(3) was considered at length by the Supreme Court of the United States in the case of Algoma Plywood and Veneer Company against Wisconsin Employment Relations Board, a 1949 case. After reviewing the legislative history of the original Wagner Act and the Taft-Hartley Act amendments, the Supreme Court concluded that the language in question was intended not as an affirmative endorsement of union shop agreements but rather, at best, as a negative toleration of such agreements. In stating this conclusion, the Supreme Court said:

> It is argued, therefore, that a State cannot forbid what section 8(3) affirmatively permits. The short answer is that section 8(3) merely disclaims a national policy hostile to the closed shop or other forms of union security agreements. This is the obvious inference to be drawn from the choice of words "nothing in this act * * * or in any other statute of the United States," and it is confirmed by the legislative history.

Madam President, it is consistently evident that "the right to join a union" was established as a basic principle of Federal policy—the right to join—but that did not mean the compulsion to join, that one had to join. Virtually all of the other provisions of the National Labor Relations Act are aimed at the preservation and enforcement of this right. The union election provisions of the National Labor Relations Act merely provide the machinery for the expression of the employee's choice, and the National Labor Relations Board is established as the agency of Government to assist in the enforcement of this right.

I emphasize again, What?—the right to join, if one wished to join, if one saw fit to join, if one wished to join, but nothing to compel him in any way to be forced to join.

In the light of this clear legislative history and the Supreme Court interpretation of it, it is difficult to see how anyone can now argue that the State laws of the 19 States which restrict union shop agreements are in conflict with the national labor policy, or that legislative language which "merely disclaims a national policy hostile to union security agreements," is now to be construed as a Federal policy which gives affirmative legal endorsement to union shop agreements. The actual documented fact is that Congress declared an attitude of neutrality toward union shop agreements, rather than an affirmative sanction or approval of such agreements, and, in connection with its declaration of neutrality, Congress expressly left to the several States the decision as to whether and to what extent union shop agreements should be permitted or prohibited.

Since, as the Supreme Court has held, the national labor policy does not foster or encourage union shop agreements, but merely tolerates them in States where such agreements are not prohibited by State law, it can properly be said that the State laws of the 19 right-to-work States are completely in harmony with and complement the national labor policy of protecting workers in their self-organization activities and preventing, in the words of section 8(a)(3), "discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

In its proper perspective, then, the Federal labor policy is aimed at guaranteeing and preserving freedom of choice of the workingman. Thus, it is entirely compatible with the principles of the democratic self-governing society in which we live.

It has been pointed out that the freedom to join a labor union must necessarily carry with it the freedom not to join a labor union. Unless this concomitant is present, there is no true freedom. The freedom of association springs from the liberty of the individual to order his life as he sees fit, to choose where he will work, and what, if any, church, political party, fraternity, lodge, society, league, club, or other private organization he will join and support.

The right of association has been upheld time after time by the Supreme Court of the United States as one of the fundamental rights protected by the Constitution. It is the principal basis for the recognition of the right to organize labor unions, forming one of the grounds upon which Chief Justice Hughes upheld the National Labor Relations Act as constitutional in Labor Board against Jones & Laughlin Steel Corp.

In Thomas against Collins, a 1945 case, the Supreme Court sustained the right of workmen and of unions to assemble and discuss their affairs and enlist the support of others, going on to say that there is some modicum of freedom of thought, speech, and assembly which all citizens of the Republic may exercise and which neither the Nation nor any State can prohibit, restrain, or impede.

The right not to join, said the Court, is a necessary corollary of the right to join, for without a right not to join there can be no such thing as a right to join. Freedom rests on choice, and where choice is denied freedom is destroyed as well.

Thus it is that the Supreme Court has recognized the affirmative and negative sides of constitutional liberties. In *Board of Education* v. *Barnette* (319 U.S. 624, 633 (1943)), it specifically pointed out that freedom of speech carries with it a freedom to remain silent. And in Santa Fe against Brown, the Supreme Court of Kansas said:

> It would seem that the liberty to remain silent is correlative to the freedom to speak. If one must speak, he cannot be said to freely speak.

If men are to be free to join unions they must also be free not to join, for otherwise they will be burdened with a duty or obligation to join an organization selected, not by themselves but by others—which is the very antithesis of the freedom of choice of the individual—the core of American constitutional liberty.

The self-evident character of the principle that freedom of association must involve a right not to join as well as a right to join, was explicitly recognized as recently as May 31, 1955, by a unanimous Supreme Judicial Court of Maine in Pappas against Stacey. This case involved a Maine statute which was construed to prohibit striking and picketing by 3 restaurant employees who were union members intended to force the employer to make the other 27 nonunion employees join the union. In the course of its opinion, the supreme judicial court said:

> Freedom to associate of necessity means as well freedom not to associate.

At the time the proposed National Labor Relations Act was being considered by the congressional committees in 1953, representatives of organized labor used the "freedom to associate" principle as an argument in favor of giving unions exclusive bargaining status. They argued that in order to be effective the union should have such status, otherwise the nonunion workers in the unit could, by agreeing to different terms of employment, erode the strength and status of the union in the establishment. They, therefore, urged in the strongest possible terms that Congress write into the proposed legislation a provision which would make the union, once it achieved majority status, the exclusive bargaining representative for all workers in the plant, both union and nonunion. Such a provision, they made plain to Congress, was desired above all other rights and guarantees that might possibly be adopted as part of this proposed legislation. The problem of union security, they implied, would be adequately and effectively covered if such a clause were adopted.

Following the urging of these union representatives, Congress complied with their request and wrote into the National Labor Relations Act the language of section 9(a) which reads:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all of the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

From the standpoint of organized labor this provision can properly be regarded as the single most important feature of the National Labor Relations Act. What it means to a union is that, once it has achieved majority status, it, and it alone, is entitled to recognition by the employer. It also means that no rival labor organization can compete with or challenge it, and that it need not be concerned that any other labor organization can come in and seek to represent any of the employees in the bargaining unit. No individual employee, no matter what his skills or qualifications, and no matter what his feelings or attitude toward the union might be, can bypass the union and deal directly with the employer in regard to the terms of his wages, hours, and working conditions.

Mr. ERVIN. Madam President, will the Senator yield?

Mr. HILL. I yield.

Mr. ERVIN. Does the Senator from Alabama know of any other law or any other circumstances under which a man can have an agent appointed to represent him without his consent and against his will?

Mr. HILL. The Senator does not. I have been in Congress for over 42 years. I believe that I am at least conversant with the laws passed during that period of time. I have some knowledge of the many laws that were passed before I came to Congress.

This is the only instance I know of in which a man can have someone represent him as an agent in matters of employment and bargaining without his consent and without being a party to the representation.

Mr. ERVIN. I ask the Senator from Alabama, if, once a union assumes the status of agent for an employee—who may be entirely unwilling to have the union assume that status—his union status does not continue indefinitely into the future; and if the worker, unlike any other human being in any other relationship in life, is without power to revoke that authority?

Mr. HILL. He cannot revoke it. He cannot set it aside. He is bound by it.

Mr. ERVIN. I ask the Senator from Alabama, if, in any other status or any other business relationship the law does not recognize that the person who appoints an agent has the absolute authority to revoke such appointment at his own discretion?

Mr. HILL. It does, indeed. Everyone who is familiar, as is the distinguished Senator from North Carolina, with the law of agency knows that a person who has an agent has a right to revoke the agency at any time.

Mr. ERVIN. Does not the National Labor Relations Act provide in section 9 that an employee or group of employees can petition for an election to be conducted by the National Labor Relations Board to ascertain whether that union still represents a majority of people in the appropriate bargaining unit?

Mr. HILL. The Senator is correct.

Mr. ERVIN. Has the National Labor Relations Board not nullified the right to have a statute conferring that right upon an individual employee by adopting a regulation providing that at least 30 percent of the employees in a particular bargaining unit must file such a petition for decertification before the board will call an election for that purpose?

Mr. HILL. The Senator is correct. The board has fixed a minimum of 30 percent. The individual would be absolutely helpless in that situation.

Mr. ERVIN. The individual could not have an opportunity to have the matter reconsidered.

Mr. HILL. The Senator is correct.

Mr. ERVIN. The individual would have to get at least 30 percent of the

workers in the plant to join in a decertification petition.

Mr. HILL. The individual could not start a case at all. As the Senator said, the individual could not have a matter reconsidered unless he received the support of at least 30 percent of the plant workers.

Mr. ERVIN. Does the Senator from Alabama not agree with the Senator from North Carolina that the National Labor Relations Board held in several cases—notably, Tawas Tube Products case, handed down on February 15, 1965, and the Richard C. Price case, handed down on August 25, 1965, that if an individual employee files a decertification petition, he can actually be punished by a fine and suspension from union membership for a time merely for asking that he be allowed to exercise a right that the law vests in him?

Mr. HILL. The Senator is correct.

Mr. ERVIN. Once a man has had his power to act as his own agent taken away from him, in view of the 30-percent ruling and in view of these decisions of the National Labor Relations Board, he is in the tragic condition that Dante described: "Abandon hope, all ye who enter here."

Mr. HILL. The Senator describes the situation most graphically, indeed.

As I stated, the employee must accept the union as his bargaining representative and he is bound by whatever collective bargaining agreement the union makes with the employer, even though he may be dissatisfied with the terms of that bargaining agreement as it affects him.

The value of this exclusive status—and as the Senator from North Carolina has brought out so clearly and forcefully, the Senator knows just how exclusive that status is——

Mr. ERVIN. I ask the Senator from Alabama if the union was not given that exclusive status as bargaining agent for all of the employees in the particular bargaining unit on the theory that that was the only way by which we could provide for collective bargaining?

Mr. HILL. That was certainly the thought at the time the Labor-Management Relations Act was passed. That was certainly the thought behind the passage of that act.

Mr. ERVIN. And those who advocate repeal of section 14(b) go beyond that point, do they not? They say the fact that the union has the exclusive authority to make contracts is not sufficient, but the union must have the further power to deny the worker his freedom of choice to determine whether he will or will not join the union?

Mr. HILL. The Senator is correct. In other words, the union has it within its power that, if he does not join that union, pay his dues, and be a member of the union, then he cannot have a job.

Mr. ERVIN. The Senator from Alabama, as I analyzed his speech, was referring a moment ago to what we call the constitutional right or the constitutional freedom of association. I ask the Senator from Alabama if it is not agreed by the courts that in all other relations of life, freedom of association is enjoyed, as a basic constitutional privilege of all Americans, under the first amendment.

Mr. HILL. The Senator is correct.

Mr. ERVIN. Any group of people can join together for any lawful purpose with those of like mind, can they not?

Mr. HILL. They can, indeed.

Mr. ERVIN. Did not the Senator from Alabama bring out a moment ago that not only does a man have the right to associate with others for legitimate objects, but he has the right to refuse to join with others for even the most laudable object?

Mr. HILL. The Senator is correct. Freedom encompasses the freedom to join and the freedom not to join.

Mr. ERVIN. Now let us assume, for the sake of argument, that a wise man who uses his hands or talents in order to earn a livelihood, would join the union. If we deny him the right to make that determination, we are denying him freedom, are we not?

Mr. HILL. We are, indeed.

Mr. ERVIN. Is it not true that in order to be free, a man must have the power to act foolishly as well as wisely?

Mr. HILL. Surely he must.

Mr. ERVIN. I ask the Senator from Alabama if he agrees with the Senator from North Carolina on the proposition that the basic teaching of the Bible, and particularly the New Testament, is that man should be a free agent.

Mr. HILL. The Senator is correct.

Mr. ERVIN. Man is given the right to elect whether he will pursue the narrow path to Heaven or the broad way that leads to Hell; is he not?

Mr. HILL. That is his freedom. That is his right.

Mr. ERVIN. Our religion gives him that right; does it not?

Mr. HILL. The Senator is correct. And in writing the Constitution of the United States, and particularly the first amendment, that is exactly what the Founding Fathers had in mind, that the citizens of the United States of America should have that freedom, should have that right.

Mr. ERVIN. Of course, the good Lord could have made mankind so that men would always do good; but if the good Lord had made mankind that way, He would not have made them free.

Mr. HILL. The Senator is correct.

Mr. ERVIN. The Almighty, in His omnipotent wisdom, did not so choose.

Mr. HILL. That is exactly correct.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that those of us who are fighting for the freedom of the American worker to join or refuse to join a union, are fighting to give him the same kind of freedom, which providence intended all human beings to enjoy?

Mr. HILL. We are indeed, sir. The Founding Fathers, under the Constitution of the United States, sought absolutely to insure such freedom in that immortal document.

Mr. ERVIN. Is not the surest indication of lack of freedom the lack of power, under the law, of a man to make his own determination as to what he will do?

Mr. HILL. Certainly; that is exactly right. When we deny him that right, we take from him his freedom.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that the greatest provision in the Taft-Hartley Act is in section 7, which says that a man may join or refrain from joining a union, or may participate or refrain from participating in concerted activities?

Mr. HILL. The Senator is correct; and that right is recognized in the fundamental freedom which the Senator from North Carolina has so beautifully described.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that when we give to the words in section 7 of the Taft-Hartley Act their obvious meaning, they would permit a man, whether he is a union member or is not a union member, to participate in a strike or refrain from participating in a strike, at his own election?

Mr. HILL. The Senator is correct.

Mr. ERVIN. Does not the section of the Taft-Hartley Act dealing with unfair labor practices provide that no employee, whether he is a union man or a nonunion man, can be coerced in the exercise of his rights under section 7?

Mr. HILL. It does indeed, yes, sir.

Mr. ERVIN. Does the Senator from Alabama agree with the Senator from North Carolina that the National Labor Relations Board has held that a man can be compelled against his will, to participate in strike activities, and can be fined and have his membership in the union suspended if he does not participate in such activities?

Mr. HILL. The Senator is correct.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that nothing was further from the intent of Congress, when Congress drafted section 7 of the Taft-Hartley Act and gave a man the right to participate or refrain from participating, as he saw fit?

Mr. HILL. Congress had no concept, no idea at all of any such requirement as that of which the Senator from North Carolina has spoken.

Mr. ERVIN. In fact, did not Congress intend exactly the opposite?

Mr. HILL. Congress did intend exactly the opposite.

Mr. ERVIN. I thank the Senator.

Mr. HILL. That a man should have reserved to him his freedom, the freedom, as the Senator says, proclaimed by providence and guaranteed by the Constitution of the United States.

Mr. ERVIN. I thank the Senator.

Mr. HILL. I thank the Senator from North Carolina for his enlightened comments.

We were speaking of the exclusive status of the unions.

Mr. President, the value of this exclusive status to unions was well summarized by Prof. Archibald Cox, of the Harvard Law School, when testifying before the Senate Judiciary Committee in 1959. As expressed by Professor Cox:

> Labor unions enjoy their present power by virtue of Federal statutes, chiefly the Na-

tional Labor Relations Act. Other voluntary associations are different in two respects: (1) They lack the statutory power of a union designated as a bargaining representative; (2) no other voluntary association has as much power over an individual's livelihood and opportunities or over the rules governing his daily life. The union bulks much larger in the life of a worker than a corporation in the affairs of a stockholder.

Mr. President, at the time Congress enacted the Taft-Hartley Act on June 23, 1947, 11 States had adopted laws prohibiting compulsory unionism, and six of these expressly prohibited not only compulsory membership, but also any requirement for payment of dues, fees or other charges. Congress was aware of these State laws and intended the language of section 14(b) to fully cover them. This language provided: First, that a union shop agreement would be valid only where it had been approved by a secret ballot vote of a majority of the employees affected; and second, such an agreement would be enforceable only in States where such agreements are not prohibited by State law.

Senator Taft, sponsor of the legislation in the Senate, and a member of the Senate-House conference which approved the final version, explained the purpose of section 14(b) by declaring:

> Many States have enacted laws or adopted constitutional provisions to make all forms of compulsory unionism in such States illegal. As stated in the report accompanying the Senate committee bill, it was not the intent to deprive the States of that power.

The report of the managers on the part of the House stated with reference to section 13 of the House bill and section 14 of the conference committee amendments:

> Under the House bill there was included a new section 13 of the National Labor Relations Act to assure that nothing in the act was to be construed as authorizing any closed shop, union shop, maintenance of membership, or other form of compulsory unionism agreement in any State where the execution of such agreement would be contrary to State law. Many States have enacted laws or adopted constitutional provisions to make all forms of compulsory unionism in those States illegal. It was never the intention of the National Labor Relations Act, as is disclosed by the legislative history of that Act, to preempt the field in this regard so as to deprive the States of their powers to prevent compulsory unionism * * *. To make certain that there should be no question about this, section 13 was included in the House bill. The conference agreement, in section 14(b), contains a provision having the same effect.

This is the very section we have been talking about. This is the section we debated at length last fall and are debating here now for 2 weeks.

Other references in committee reports show that Congress intended section 14(b) as validating all forms of anti-compulsion statutes enacted by the States. The House report on the act states that by this section:

> The United States expressly declares the subject of compulsory unionism one that the States may regulate concurrently with the United States, notwithstanding that the agreements affect commerce, and notwithstanding that the State laws limit compulsory unionism more drastically than does Federal law.

The House conference report stated:

> Under the House bill there was included a new section—14(b)—of the National Labor Relations Act to assure nothing in the act was to be construed as authorizing any closed shop, union shop, maintenance of membership, or other forms of compulsory unionism agreement in any State where the execution of such agreements would be contrary to State law.

Mr. President, at the time the conditions embodied in section 14(b) were adopted, representatives of organized labor objected to these limitations upon their authority to make union shop agreements, and after the Taft-Hartley Act was passed, immediately began urging further amendments to eliminate these two conditions. The first condition which required a secret ballot vote by a majority of workers to validate a union shop agreement, was subsequently eliminated, but Congress has adamantly refused, for the past 19 years, to accede to the elimination of the second condition.

Congress has thus consistently adhered to the original intent that union shop agreements are not to be regarded as valid and enforceable except in those instances where they are not prohibited by State law. As I have said, it is this very issue which is now before us again at this time, and no new reasons have been advanced as to why we should adopt this drastic change in national labor policy. Instead, we hear the implausible argument that the present language of the National Labor Relations Act should be further amended because it is inconsistent with the true national labor policy of fostering and encouraging union shop agreements. In other words, the National Labor Relations Act, by conditioning the validity of union shop agreements on State law, does not now accurately reflect the national labor policy as viewed by the advocates of repeal rather than the policy concept which was in the mind of Congress when it formulated, wrote, and adopted the National Labor Relations Act. It is, thus, not a case of the State laws of the 19 right-to-work States being out of harmony with the existing national labor policy, but with the policy that the advocates of repeal would like the Federal Government to adopt.

Mr. President, the point that must be emphasized again and which is abundantly clear throughout the entire legislative record, is that there was never any congressional intent in any of the Federal labor statutes, beginning with the Clayton Act, through the Norris-La Guardia Act, the NRIA Act, and the Wagner Act, to in any way deprive the individual States of authority to deal with compulsory unionism agreements including the union shop. As I have shown, when the Taft-Hartley Act amendments to the Wagner Act were adopted in 1947, section 14(b) was inserted purely for the purpose of reiterating what had always been recognized to be the prevailing law of our country.

Earlier in my remarks, Mr. President, I stated that those who advocate repeal of section 14(b) claim that by allowing individual States to adopt right-to-work laws, section 14(b), among other things, destroys the necessary and desirable goal of consistent and uniform application of Federal regulation of interstate commerce and raises serious constitutional questions under the commerce clause of the Federal Constitution. The proponents of repeal of section 14(b) further assert that in no other way has Congress authorized State interference with Federal power or permitted State policy to override national policy.

These arguments are based on two premises: first, that Federal labor policy affirmatively fosters and encourages compulsory union shop agreements. As I have shown, Mr. President, the origin and historical development of Federal labor-management legislation does not in any way sustain this premise. I think it abundantly clear that the sense of the Congress was, has been, and is, to the contrary.

The second premise is that section 14(b) represents a unique exception to the rule that State authority cannot be exercised in any area in which the Federal Government has a regulatory interest. I now turn my attention to proving the falseness of this premise. In fact and in law it cannot be sustained.

In the first place, there is not now, nor has there ever been, an absolute rule that regulation of interstate commerce must be uniformly applied throughout every State, or that the States may not regulate interstate activities within their own jurisdictional borders.

The commerce clause of the Constitution—article 1, section 8—and the Federal supremacy clause—article 6—have been construed as permitting State regulation affecting interstate commerce so long as the State regulatory action is not in conflict with Federal law or so repugnant to the Federal law that the two cannot consistently stand together. Only where an act of Congress regulating interstate commerce expressly evidences an intent to exclude State authority in that particular area or field will the Federal power be held to be exclusive.

The established judicial precedents respecting the exercise of State regulatory power were reviewed by Justice Frankfurter in the case of Hill against Florida, wherein the Supreme Court declared:

> It was settled early in our constitutional history that the mere fact that Congress has power to regulate commerce among the several States does not exclude State legislation in the exercise of the police power, even though it may affect such commerce, where the subject matter does not demand a nationwide rule. The States, in short, may speak on matters even in the general domain of commerce so long as Congress is silent. But when Congress has spoken, although not as fully as the Constitution authorizes, that is, when a Federal enactment falls short of the congressional power to legislate touching commerce, the States may still speak where Congress is still silent. The real question is: Has Congress spoken so as to silence the States? The same regard for the harmonious balance of our Federal system, whereby the States may protect local interests despite the dominant commerce clause, allows State legislation for the protection

of local interests so long as Congress has not supplanted local regulation either by a regulation of its own or by an unmistakable indication that there is to be no regulation at all.

In a great variety of cases, the Court has applied the accommodation formulated in *Sinnot* v. *Davenport* and either reasserted or reinforced that policy. The emphasis has been on recognizing that both the State law and the Federal statute must be allowed to prevail if they may prevail together—that is, if they do not, as a matter of language or practical enforcement, collide, or if Congress has not manifested an unambiguous purpose that there be no regulation, either State or Federal, as to matters for which it has not prescribed. This judicial principle is established by an impressive body of opinions.

In construing Federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a State, even where that may be done, unless, and except so far as, its purpose to do so is clearly manifested.

The principle thus applicable has been frequently stated. It is that the Congress may circumscribe its regulation and occupy a limited field, and that intention to supersede the exercise by the State of its authority as to matters not covered by the Federal legislation is not to be implied unless the act of Congress fairly interpreted is in conflict with the law of the State.

Certainly, nothing could be clearer than that declaration on the part of Mr. Justice Frankfurter. I am sure the Senator from North Carolina [Mr. ERVIN], who was a member of the Supreme Court of North Carolina, would agree that Mr. Justice Frankfurter has clearly and forcefully stated in unmistakable terms just what it means under our Federal Constitution and Federal system.

Mr. ERVIN. Mr. President, I should like to ask unanimous consent that I may assure the Senator from Alabama that I agree with him in his exposition of the principle that the States and the Federal Government may concurrently regulate interstate commerce, if they see fit to do so, and concur also with him in his fine exposition and explanation of what Mr. Justice Frankfurter had to say in the decision to which he has alluded.

Mr. HILL. I thank the Senator.

Mr. ERVIN. I should like to ask the Senator from Alabama if it has not been customary in times past to regard the provision which allows the States to regulate certain matters themselves, either by consent of Congress or by reason of their reserved powers, as one of the most efficacious provisions of the Federal system?

Mr. HILL. Certainly, there is nothing in our Federal system that has been more efficacious than the very proposition to which the Senator from North Carolina has referred.

Mr. ERVIN. Is it not true that in times past we have had States make experiments in government which were quite different from the procedure which prevailed in the country generally?

Mr. HILL. The Senator is exactly correct.

Mr. ERVIN. The States, in a sense, have been laboratories for experiment?

Mr. HILL. For testing matters.

Mr. ERVIN. When they made an experiment which turned out well that experiment was followed by other States and in some cases by the Federal Government. Is that correct?

Mr. HILL. That is correct.

Mr. ERVIN. Whereas if the experiment turned out to be bad, the rest of the States did not follow it, and the only one that was adversely affected was that one State.

Mr. HILL. The other States would not follow the action of that one State, and the Federal Government would not follow the action of that State.

Mr. ERVIN. So when Congress adopted section 14(b) of the Taft-Hartley Act it evidenced an intention to allow an experimentation to be conducted in laws with reference to this important field of union and employee relationships.

Mr. HILL. The Senator is correct.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that this is one of the wisest provisions of the act? Instead of trying to impose uniformity on people where conditions may be diverse, the provision allows each State to solve its problems.

Mr. HILL. Not only that, but that is in line with carrying out the entire concept of the Federal system as that system was set up under the Constitution of the United States.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that one of the most deadening things that we could have in our country is absolute uniformity in all respects?

Mr. HILL. The Senator is correct. Nothing could be more deadly than that.

Mr. ERVIN. The Senator from Alabama recalls, does he not, Procrustes, who had a Procrustean bed. He wanted uniformity for all of his guests. He made them sleep in the Procrustean bed. If the guest was too short, he stretched him out so he would be long enough for the bed, and if the guest were too long, he chopped off a part of his limbs so he would fit the bed.

Mr. HILL. The Senator is correct.

Mr. ERVIN. Is not uniformity alien to the Lord's universe where there is so much diversity?

Mr. HILL. The Senator is correct, and that is the very thing under our Government that we have sought to avoid. Is that correct?

Mr. ERVIN. The Senator is correct. We have believed in the individual rather than the regimented man.

Mr. HILL. And his freedom and his rights.

Mr. ERVIN. The Senator is correct. We have given him the opportunity to make his own decisions.

Mr. HILL. The Senator is correct.

Mr. ERVIN. We give to every individual, if he does not like the way in which his Senator votes, or his Representative votes, or the way his Governor acts, or his State legislator acts, the privilege of having an election every 2, 4, or 6 years, to vote them out.

Mr. HILL. He has the right to turn them out. He does indeed.

Mr. ERVIN. Yet in the colloquy which we had a moment ago, that is not true where compulsory unionism exists even though Congress declared otherwise.

Mr. HILL. The Senator is correct. No matter how much a worker may disagree, no matter how much he may feel he may have been injured by some of the acts of the union, he does not have this right, as a citizen does, to recall his representative.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that the world would be a most depressing and monotonous place if everything was uniform, which is the argument that the administration gives for passing the repeal of section 14(b) of the Taft-Hartley Act?

Mr. HILL. It would be most unfortunate for our country, for our people, and our whole constitutional system.

I thank the Senator.

Mr. President, a good example of concurrent State and Federal regulation of interstate commerce may be found in the transportation industry. Railroads and interstate motor carriers are, of course, subject to intense regulation and control by Federal agencies such as the Interstate Commerce Commission, but they are, at the same time, subject to substantial regulation by State public utilities commissions and boards, and even by county and city authorities. In respect to labor-management relations in the railroad and airlines industries, the Federal Government has adopted a broad and comprehensive statutory scheme of regulation and has created the National Mediation Board as the agency of Government to carry out and enforce this policy. In spite of this, the individual States continue to exercise authority to establish work rules pertaining to length of runs, work crew requirements and various other aspects of the employment relationship. Moreover, there are wide variations in these work rules from State to State, with the result that there is no such thing as uniformity or consistency, and most railroads have to contend with work rules changes each time one of their trains crosses a State line. Interstate motor carriers are similarly subjected to many State and local limitations in spite of the fact that Federal agencies also exercise control over them.

It is thus entirely inaccurate to say, as the proponents of repeal of section 14(b) have repeatedly said, that the power which Congress expressly reserved to the States under that section to regulate or prohibit compulsory unionism represents a unique departure from the principle of uniform regulation of interstate commerce by the Federal Government. Far from being unique, section 14(b) is only one of many statutory expressions which recognize and preserve State authority in the field of commerce. Many Federal labor statutes are designed to permit State action concurrent with Federal action affecting commerce. In the National Labor Relations Act itself there are numerous examples of this. For example, section 10(a) of the National Labor Relations Act expressly authorizes the National Labor Relations Board to cede its jurisdiction over cases

involving unfair labor practices affecting commerce to State labor relations boards and agencies.

Section 14(c) of the National Labor Relations Act further authorizes the National Labor Relations Board to decline to assert jurisdiction over labor disputes affecting interstate commerce, and provides further that wherever the Board has declined jurisdiction the States and territories may assume and assert their jurisdiction over such labor disputes.

Mr. ERVIN. Mr. President, will the Senator from Alabama yield for a question on the point he is making?

Mr. HILL. I yield.

Mr. ERVIN. I ask the Senator whether the provisions of the Taft-Hartley Act which authorize the National Labor Relations Board to decline jurisdiction, do not expressly provide, in effect, that jurisdiction can be assumed under 50 different sets of laws in the 50 States?

Mr. HILL. Yes; each State may have its own law or regulations or procedures. Therefore, the law, regulations or procedures in each State will control the situation in that State.

Mr. ERVIN. It would be possible to have as many different varieties of regulations, laws or procedures in the Nation as there are varieties of Heinz' pickles. Is that correct?

Mr. HILL. The Senator from North Carolina is correct.

Mr. ERVIN. Therefore, it is absurd for people to say that the repeal of section 14(b) is necessary in order to establish uniformity under the Taft-Hartley Act, because that act authorizes a diversity. Is that correct?

Mr. HILL. Yes; not only a diversity, but many diversities, as the Senator from North Carolina has stated.

Section 303(b) of the Taft-Hartley Act authorizes actions against labor unions in State courts for damages resulting from secondary boycotts and other unfair labor practices affecting interstate commerce.

Numerous other examples can be given of situations in which the Federal Government has exercised its powers under the Constitution to regulate certain areas of activity, but at the same time has permitted concurrent State regulation of the same activities. The Bankruptcy Act establishes procedures to be followed in bankruptcy cases. But in applying the Federal bankruptcy law and the Federal procedures provided therein, the Federal courts are obligated to recognize and apply State laws affecting the rights of creditors.

Another example of concurrent Federal and State regulation of activities affecting interstate commerce can be found in the field of antitrust legislation. The original Sherman antitrust law, and all of the subsequent amendments under the Clayton Act, the Robinson-Patman Act, and other acts, were enacted as an exercise of the power of Congress to regulate interstate commerce. Notwithstanding that the Sherman Act, and its subsequent amendments, constitute a complete scheme of Federal regulation of restrictive trade practices in interstate commerce, this body of Federal legislation has never been regarded as displacing State authority to restrict, prohibit, or punish various types of restraints of trade in interstate commerce.

It is interesting to note, Mr. President, that State antitrust laws may be invoked to prevent union boycotts in restraint of trade even though such boycott activities also fall within the scope of the regulatory powers exercised by Congress in the National Labor Relations Act.

As we see, Mr. President, those who contend that section 14(b) represents an exception to the rule that State authority cannot be exercised in any area in which the Federal Government has a regulatory interest have no basis in fact or in law for their contention.

I have discussed the proposition that the right not to join must in a free society necessarily be a corollary of the right to join. In a related context, I turn now, Mr. President, to another argument frequently advanced by the advocates of repeal of section 14(b) to the effect that State right-to-work laws improperly interfere with and infringe upon the exercise of constitutional rights of workers to form associations for their own mutual benefit and protection. These questions have previously been raised and litigated extensively throughout the State and Federal courts, culminating in a series of three cases heard and decided by the Supreme Court of the United States in 1949. These cases are Lincoln Federal Labor Union against Northwestern Iron & Metal Co., Whitaker against North Carolina, and American Federation of Labor against American Sash & Door Co. These three decisions are reported at 335 U.S. 525 and 538.

In these three decisions, the Supreme Court considered the applicability of the constitutional rights guaranteed in the 1st amendment, the 5th amendment, and the 14th amendment, insofar as they are effected by State prohibitions against the union shop. In these cases the Court had before it challenges raised by unions to the constitutionality of the right-to-work statutes of North Carolina and Nebraska and the right-to-work amendment to the constitution of the State of Arizona. The Court pointed out that the constitutional right of workers to assemble and to discuss and formulate plans for furthering their own self-interest in jobs cannot be construed as a constitutional guaranty that no one shall get or hold these jobs except those who will join in the assembly or will agree to abide by the assembly's plans, since where conduct affects the interests of other individuals and the general public, the legality of such conduct must be measured by whether the conduct conforms to valid law.

The Court went on to say that the State statute or constitutional amendment which provides that no person be denied an opportunity to obtain or retain employment because he is or is not a member of a labor organization and prohibits employers and unions from entering into contracts or agreements obligating the employer to exclude persons from employment because they either are or are not union members, does not violate the guarantee of equal protection of the laws found in the 5th and 14th amendments, since such provision forbids employers to discriminate against either union or nonunion workers.

In order to fully understand the broad sweep of the Supreme Court's opinions in these three cases, I shall quote from the opinion of the Court in the Lincoln Federal Union and Whitaker cases. It disposed of the constitutional questions raised in these cases in this way:

> Under employment practices in the United States, employers have sometimes limited work opportunities to members of unions, sometimes to nonunion members, and at other times have employed and kept their workers without regard to whether they were or were not members of a union. Employers are commanded to follow this latter employment practice in the States of North Carolina and Nebraska. A North Carolina statute and a Nebraska constitutional amendment provide that no person in those States shall be denied an opportunity to obtain or retain employment because he is or is not a member of a labor organization. To enforce this policy North Carolina and Nebraska employers are also forbidden to enter into contracts or agreements obligating themselves to exclude persons from employment because they are or are not labor union members.
>
> These State laws were given timely challenge in North Carolina and Nebraska courts on the ground that insofar as they attempt to protect nonunion members from discrimination, the laws are in violation of rights guaranteed employers, unions, and their members by the U.S. Constitution. The State laws were challenged as violations of the right of freedom of speech, of assembly and of petition guaranteed unions and their members by "the 1st amendment and protected against invasion by the State under the 14th amendment." It was further contended that the State laws impaired the obligations of existing contracts in violation of article 1, section 10, of the U.S. Constitution and deprived the appellant unions and employers of equal protection and due process of law guaranteed against State invasion by the 14th amendment. All of these contentions were rejected by the State supreme courts and the cases are here on appeal * * * The substantial identity of the questions raised in the two cases prompted us to set them for argument together and for the same reason we now consider the cases in a single opinion.

The Supreme Court of the United States sustained the decisions of the State courts in holding that these actions were not in violation of these constitutional provisions and were not in violation of any rights that the Federal Government might have in these matters.

The Court continued:

> First. It is contended that these State laws abridge the freedom of speech and the opportunities of unions and their members peaceably to assemble, and to petition the Government for a redress of grievances. Under the State policy adopted by these laws, employers must, other considerations being equal, give equal opportunities for remunerative work to union and nonunion members without discrimination against either. In order to achieve this objective of equal opportunity for the two groups, employers are forbidden to make contracts which would obligate them to hire or keep none but union members.
>
> It is difficult to see how enforcement of this State policy could infringe the freedom of speech of anyone, or deny to anyone the right to assemble or to petition for a redress

of grievances. And appellants do not contend that the laws expressly forbid the full exercise of those rights by unions or union members. Their contention is that these State laws indirectly infringe their constitutional rights of speech, assembly, and petition. While the basis of this contention is not entirely clear, it seems to rest on this line of reasoning: The right of unions and union members to demand that no nonunion members work along with union members is "indispensable to the right of self-organization and the association of workers into unions"; without a right of union members to refuse to work with nonunion members, there are "no means of eliminating the competition of the nonunion worker"; since, the reasoning continues, a closed shop is indispensable to achievement of sufficient union membership to put unions and employers on a full equality for collective bargaining, a closed shop is consequently an "indispensable concomitant" of "the right of employees to assemble into and associate together through labor organizations." Justification for such an expansive construction of the right to speak, assemble and petition is then rested in part on appellant's assertion that the right to work as a nonunionist is in no way equivalent to or the parallel of the right to work as a union member; that there exists no constitutional right to work as a nonunionist on the one hand while the right to maintain employment free from discrimination because of union membership is constitutionally protected. (Citations omitted.)

We deem it unnecessary to elaborate the numerous reasons for our rejection of this contention of appellants. Nor need we appraise or analyze with particularity the rather startling ideas suggested to support some of the premises on which appellants' conclusions rest. There cannot be wrung from a constitutional right of workers to assemble to discuss improvement of their own working standards, a further constitutional right to drive from remunerative employment all other persons who will not or cannot, participate in union assemblies. The constitutional right of workers to assemble, to discuss and formulate plans for furthering their own self-interests in jobs cannot be construed as a constitutional guarantee that none shall get and hold jobs except those who will join in the assembly or will agree to abide by the assembly's plans. For where conduct affects the interests of other individuals and the general public, the legality of that conduct must be measured by whether the conduct conforms to valid law, even though the conduct is engaged in pursuant to plans of an assembly.

Second. There is a suggestion though not elaborated in briefs that these State laws conflict with article 1, section 10, of the U.S. Constitution, insofar as they impair the obligation of contracts made prior to their enactment. That this contention is without merit is now too clearly established to require discussion. (Citations omitted.)

Third. It is contended that the North Carolina and Nebraska laws deny unions and their members equal protection of the laws and thus offend the equal protection clause of the 14th amendment. Because the outlawed contracts are a useful incentive to the growth of union membership, it is said that these laws weaken the bargaining power of unions and correspondingly strengthen the power of employers. This may be true. But there are other matters to be considered. The State laws also make it impossible for an employer to make contracts with company unions which obligate the employer to refuse jobs to union members. In this respect, these State laws protect the employment opportunities of members of independent unions. This circumstance alone, without regard to others that need not be mentioned, is sufficient to support the State laws against a charge that they deny equal protection to unions as against employers and nonunion workers.

It is also argued that the State laws do not provide protection for union members equal to that provided for nonunion members. But in identical language these State laws forbid employers to discriminate against union and nonunion members. Nebraska and North Carolina thus command equal employment opportunities for both groups of workers. It is precisely because these State laws command equal opportunities for both groups that appellants argue that the constitutionally protected rights of assembly and due process have been violated. For the constitutional protections surrounding these rights are relied on by appellants to support a contention that the Federal Constitution guarantees greater employment rights to union members than to nonunion members. This claim of appellants is itself a refutation of the contention that the Nebraska and North Carolina laws fail to afford protection to union members equal to the protection afforded nonunion workers.

Fourth. It is contended that these State laws deprive appellants of their liberty without due process of law in violation of the 14th amendment. Appellants argue that the laws are specifically designed to deprive all persons within the two States of liberty (1) to refuse to hire or retain any person in employment because he is or is not a union member, and (2) to make a contract or agreement to engage in such employment discrimination against union or nonunion members.

Much of appellants' argument here seeks to establish that due process of law is denied employees and union men by that part of these State laws that forbids them to make contracts with the employer obligating him to refuse to hire or retain nonunion workers. But that part of these laws does no more than provide a method to aid enforcement of the heart of the laws; namely, their command that employers must not discriminate against either union or nonunion members because they are such. If the States have constitutional power to ban such discrimination by law, they also have power to ban contracts which if performed would bring about the prohibited discrimination.

Many cases are cited by appellants in which this Court has said that in some instances the due process clause protects the liberty of persons to make contracts. But none of these cases, even those according the broadest constitutional protection to the making of contracts, ever went so far as to indicate that the due process clause bars a State from prohibiting contracts to engage in conduct banned by a valid State law. So here, if the provisions in the State laws against employer discrimination are valid, it follows that the contract prohibition also is valid. (Citations omitted.) We therefore turn to the decisive question under the due process contention, which is: Does the due process clause forbid a State to pass laws clearly designed to safeguard the opportunity of nonunion members to get and hold jobs, free from discrimination against them because they are nonunion workers?

There was a period in which labor union members who wanted to get and hold jobs were the victims of widespread employer discrimination practices. Contracts between employers and their employees were used by employers to accomplish this antiunion employment discrimination. Before hiring workers, employers required them to sign agreements stating that the workers were not and would not become labor union members. Such antiunion practices were so obnoxious to workers that they gave these required agreements the name of "yellow dog contracts." This hostility of workers also prompted passage of State and Federal laws to ban employer discrimination against union members and to outlaw yellow dog contracts.

In 1907 this Court in *Adair* v. *United States*, considered the Federal law which prohibited discrimination against union workers. Adair, an agent of the Louisville & Nashville Railroad Co., had been indicted and convicted for having discharged Coppage, an employee of the railroad, because Coppage was a member of the Order of Locomotive Firemen. This Court there held, over the dissents of Justices McKenna and Holmes, that the railroad, because of the due process clause of the fifth amendment, had a constitutional right to discriminate against union members and could therefore do so through use of yellow dog contracts.

* * * * *

In 1914 this Court reaffirmed the principles of the *Adair* case * * * and held that a Kansas statute outlawing yellow dog contracts denied employers and employees a liberty to fix terms of employment. For this reason the law was held invalid under the due process clause.

(This) constitutional doctrine was for some years followed by this Court. It was used to strike down laws fixing minimum wages and maximum hours in employment, laws fixing prices and laws regulating business activities.

* * * * *

This Court beginning at least as early as 1934, when the Nebbia case was decided, has steadily rejected the due process philosophy enunciated in the Adair-Coppage line of cases. In doing so it has consciously returned closer and closer to the earlier constitutional principle that States have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific Federal constitutional prohibition, or of some valid Federal law * * *. Under this constitutional doctrine the due process clause is no longer to be so broadly construed that the Congress and State legislatures are put in a straitjacket when they attempt to suppress business and industrial conditions which they regard as offensive to the public welfare.

Appellants now ask us to return, at least in part, to the due process philosophy that has been deliberately discarded. Claiming that the Federal Constitution itself affords protection for union members against discrimination, they nevertheless assert that the same Constitution forbids a State from providing the same protection for nonunion members. Just as we have held that the due process clause erects no obstacle to block legislative protection of union members, we now hold that legislative protection can be afforded nonunion workers.

In the case of American Federation of Labor against American Sash and Door Company, the Supreme Court considered additional constitutional challenges to the constitutional attacks upon the Arizona right-to-work amendment. In this case the Court considered the question of whether the Arizona amendment had the effect of denying union members their constitutionally guaranteed freedom of speech, assembly, or petition, or impair the obligation of their contracts, or deprive them of due process of law. The Court, in a short opinion, quickly disposed of these attacks upon the Arizona law when it said:

This case is here on appeal from the Supreme Court of Arizona. * * *. It involves the constitutional validity of the following amendment to the Arizona constitution, adopted at the 1946 general election:

"No person shall be denied the opportunity to obtain or retain employment because of nonmembership in a labor organization,

nor shall the State or any subdivision thereof, or any corporation, individual or association of any kind enter into any agreement, written or oral, which excludes any person from employment or continuation of employment because of nonmembership in a labor organization."

The Supreme Court of Arizona sustained the amendment as constitutional against the contentions that it "deprived union appellants of rights guaranteed under the first amendment and protected against invasion by the State under the 14th amendment to the U.S. Constitution; that it impaired the obligations of existing contracts in violation of article 1, section 10, of the U.S. Constitution; and that it deprived appellants of due process of law, and denied them equal protection of the laws contrary to the 14th amendment." All of these questions, properly reserved in the State court, were decided against the appellants by the State supreme court. The same questions raised in the State court are presented here.

For reasons given in two other cases decided today we reject the appellants' contentions that the Arizona amendment denies them freedom of speech, assembly, or petition, impairs the obligation of their contracts, or deprives them of due process of law * * *. A difference between the Arizona amendment and the amendment and statute considered in the Nebraska and North Carolina cases has made it necessary for us to give separate consideration to the contention in this case that the Arizona amendment denies appellants equal protection of the laws.

The language of the Arizona amendment prohibits employment discrimination against nonunion workers, but it does not prohibit discrimination against union workers. It is argued that a failure to provide the same protection for union workers as that provided for nonunion workers places the union workers at a disadvantage, thus denying unions and their members the equal protection of Arizona's laws.

Although the Arizona amendment does not itself expressly prohibit discrimination against union workers, that State has not left unions and union members without protection from discrimination on account of union membership. Prior to passage of this constitutional amendment, Arizona made it a misdemeanor for any person to coerce a worker to make a contract "not to join, become or remain, a member of a labor organization" as a condition of getting or holding a job in Arizona. A section of the Arizona code made every such contract (generally known as a yellow dog contract) void and unenforceable. Similarly, the Arizona constitutional amendment makes void and unenforceable contracts under which an employer agrees to discriminate against nonunion workers. Statutes implementing the amendment have provided as sanctions for its enforcement relief by injunction and suits for damages for discrimination practiced in violation of the amendment. Whether the same kind of sanctions would be afforded a union worker against whom an employer discriminated is not made clear by the opinion of the State supreme court in this case. But assuming that Arizona courts would not afford a remedy by injunction or suit for damages, we are unable to find any indication that Arizona's amendment and statutes are weighed on the side of nonunion as against union workers. We are satisfied that Arizona has attempted both in the anti-yellow-dog-contract law and in the antidiscrimination constitutional amendment to strike at what were considered evils, to strike where those evils were most felt, and to strike in a manner that would effectively suppress the evils.

In *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.* this Court considered a challenge to the National Labor Relations Act, on the ground that it applied restraints against employers but did not apply similar restraints against wrongful conduct by employees. We there point out, at page 46, the general rule that "legislative authority, exerted within its proper field, need not embrace all the evils within its reach." And concerning State laws we have said that the existence of evils against which the law should afford protection and the relative need of different groups for that protection is a matter for the legislative judgment.

As we see, Mr. President, it is firmly established, beyond any question of doubt, that State right-to-work laws are compatible with and do not in any way infringe upon constitutionally protected and guaranteed rights of the individual, I would like to pass on to the next logical question, that is, whether compulsory unionism in its various forms, including the union shop, results in any deprivation of constitutionally protected rights. This question has also been raised in a number of court cases, and although no final and definitive ruling has been made on this issue by the Supreme Court of the United States, there are very clear indications tending to show that the Supreme Court would ultimately hold, when it is squarely presented with this question, that the operation of union shop agreements and the activities of labor organizations parties to such agreements very clearly deprive the individual worker of constitutionally protected rights.

The clearest indication of the attitude of the members of the Supreme Court on this question can be found in the opinion of Justice Black, dissenting from the majority opinion in International Association of Machinists against Street, decided by the Supreme Court June 19, 1961.

This opinion recited that:

This action was brought in a Georgia State court by six railroad employees in behalf of themselves and others similarly situated against railroads making up the Southern Railway System, labor organizations representing employees of that system in collective bargaining, and a number of individuals, to enjoin enforcement and application to them of a union shop agreement entered into between the railroads and the labor organizations as authorized by section 2, 11th of the Railway Labor Act. The agreement's terms required all employees, in order to keep their railroad jobs, to join the union and remain members, at least to the extent of tendering periodic dues, initiation fees and assessments, not including fines and penalties. The complaint, as amended, charged that the agreement was void because it conflicted with the laws and constitution of Georgia and the 1st, 5th, 9th, and 14th amendments to the Federal Constitution.

* * * * *

It is alleged that the union dues and other payments they will be required to make to the union will be used to support ideological and political doctrines and candidates which they do not believe, and that this will violate the first, fifth, and ninth amendments of the Constitution.

* * * * *

The trial court made lengthy findings, one crucial here being:

"Those funds have been and are being used in substantial amounts to propagate political and economic doctrines, concepts and ideologies and to promote legislative programs opposed by plaintiffs and the class they represent."

The trial court then found and declared section 2, 11th "unconstitutional to the extent that it permits, or is applied to permit, the exaction of funds from plaintiffs and the class they represent for the complained of purposes and activities set forth above." Compulsory membership under these circumstances was held to abridge first amendment freedoms of association, thought, speech, press and political expression.

* * * * *

The Supreme Court of Georgia affirmed, holding that one who is compelled to contribute the fruits of his labor to support or promote political or economic programs or support candidates for public office is just as much deprived of his freedom of speech as if he were compelled to give his vocal support to doctrines he opposes. I fully agree with this holding of the Georgia Supreme Court and would affirm its judgment with certain modifications of the relief granted.

Section 2, 11th of the Railway Labor Act authorizes unions and railroads to make union-shop agreements notwithstanding any other provision of State or Federal law.

* * * * *

It is contended by the unions that precisely the same first amendment question presented here was considered and decided in *Railway Employees' Dept.* v. *Hanson*, 351 U.S. 225. I agree that it clearly was not. Thus the Hanson case held only that workers could be required to pay their part of the cost of actual bargaining carried on by a union selected as bargaining agent under authority of Congress, just as Congress doubtless could have required workers to pay the cost of such bargaining had it chosen to have the bargaining carried on by the Secretary of Labor or any other appropriately selected bargaining agent. The Hanson case did not hold that railroad workers could be compelled by law to forgo their constitutionally protected freedom of association by participating as union members against their will. That case cannot, therefore, properly be read to rest on a principle which would permit government—in furtherance of some public interest, be that interest actual or imaginary—to compel membership in Rotary Clubs, fraternal organizations, religious groups, chambers of commerce, bar associations, labor unions, or any other private organizations Government may decide it wants to subsidize, support or control. In a word, the Hanson case did not hold that the existence of union-shop contracts could be used as an excuse to force workers to associate with people they do not want to associate with, or to pay their money to support causes they detest.

The first amendment provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Probably no one would suggest that Congress could without violating this amendment, pass a law taxing workers, or any persons for that matter (even lawyers), to create a fund to be used in helping certain political parties or groups favored by the Government to elect their candidates or promote their controversial causes. Compelling a man by law to pay his money to elect candidates or advocate laws or doctrines he is against differs only in degree, if at all, from compelling him by law to speak for a candidate, a party, or a cause he is against. The very reason for the first amendment is to make the people of this country free to think, speak, write, and worship as they wish, not as the Government commands.

There is, of course, no constitutional reason why a union or other private group may not spend its funds for political or ideological causes if its members voluntarily join it and can voluntarily get out of it. Labor unions made up of voluntary members free to get it in or out of the unions when they please have played important and useful roles in politics and economic affairs. How to spend its money is a question for each voluntary group to decide for itself in the absence of some valid law forbidding activities for which the money is spent. But a different situation arises when a Federal law steps in and authorizes such a group to carry on activities at the expense of persons who do not choose to be members of the group as well as those who do. Such a law, even though validly passed by Congress, cannot be used in a way that abridges the specifically defined freedoms of the first amendment. And whether there is such abridgment depends not only on how the law is written but also on how it works.

There can be no doubt that the federally sanctioned union-shop contract here, as it actually works, takes a part of the earnings of some men and turns it over to others, who spend a substantial part of the funds so received in efforts to thwart the political, economic and ideological hopes of those whose money has been forced from them under authority of law. This injects Federal compulsion into the political and ideological processes, a result which I have supposed everyone would agree the first amendment was particularly intended to prevent. And it makes no difference if, as is urged, political and legislative activities are helpful adjuncts of collective bargaining. Doubtless employers could make the same arguments in favor of compulsory contributions to an association of employers for use in political and economic programs calculated to help collective bargaining on their side. But the argument is equally unappealing whoever makes it. The stark fact is that this act of Congress is being used as a means to exact money from those employees to help get votes to win elections for parties and candidates and to support doctrines they are against. If this is constitutional the first amendment is not the charter of political and religious liberty its sponsors believe it to be. James Madison, who wrote the amendment, said in arguing for religious liberty that "the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever."

And Thomas Jefferson said that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." These views of Madison and Jefferson authentically represent the philosophy embodied in the safeguards of the first amendment. That amendment leaves the Federal Government no power whatever to compel one man to expend his energy, his time or his money to advance the fortunes of candidates he would like to see defeated or to urge ideologies and causes he believes would be hurtful to the country.

The Court holds that section 2, 11th denies "unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes." While I do not so construe section 2, 11th, I want to make clear that I believe the first amendment bars use of dues extorted from an employee by law for the promotion of causes, doctrines and laws that unions generally favor to help the unions, as well as any other political purposes. I think workers have as much right to their own views about matters affecting unions as they have to views about other matters in the fields of politics and economics. Indeed, some of their most strongly held views are apt to be precisely on the subject of unions, just as questions of law reform, court procedure, selection of judges and other aspects of the "administration of justice" give rise to some of the deepest and most irreconcilable differences among lawyers. In my view, section 2, 11th, can constitutionally authorize no more than to make a worker pay dues to a union for the sole purpose of defraying the cost of acting as his bargaining agent. Our Government has no more power to compel individuals to support union programs or union publications than it has to compel the support of political programs, employer programs, or church programs. And the first amendment, fairly construed, deprives the Government of all power to make any person pay out one single penny against his will to be used in any way to advocate doctrines or views he is against, whether economic, scientific, political, religious, or any other.

I would therefore hold that section 2, 11th of the Railway Labor Act, in authorizing application of the union shop contract to the named protesting employees who are appellees here, violates the freedom of speech guarantee of the first amendment.

These opinions of the judges of the Supreme Court merely reflect, Mr. President, what most Americans instinctively feel. The American public rejects the idea that a man may be compelled to become a member of the union or to pay money to a union in order to be entitled to the privilege of the right to earn his living. Compulsory union membership violates two of the most fundamental rights of man—the right to work and the freedom of association; and freedom of association is a composite right derived from freedom of speech, freedom of assembly, freedom to petition, and the general right to liberty of action.

Mr. President, the right to work, which we are discussing here today, is not a guarantee of employment by a paternalistic system controlling the means of production. It only signifies the inherent right of every individual to an opportunity to seek and retain the gainful employment which he or she desires; and that is the proposition we who oppose H.R. 77 have been defending and have been endeavoring to preserve.

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

Mr. HILL. I yield.

Mr. ERVIN. Is it not sometimes said by those who advocate the repeal of section 14(b) of the Taft-Hartley Act that right-to-work laws do not provide a job for any man?

Mr. HILL. The Senator is correct.

Mr. ERVIN. Is it not a fact that a right-to-work law states that a man can secure any job he can find without having to pay tribute to a union for the privilege of earning his own bread in the sweat of his own brow?

Mr. HILL. The Senator is correct.

Mr. ERVIN. I ask the Senator from Alabama if compulsory unionism finds a job for anybody.

Mr. HILL. It does not. There is no guarantee or assurance that anybody will get a job.

Mr. ERVIN. Are not all jobs provided by industries or factories which are erected and operated with the money of investors?

Mr. HILL. The Senator is correct.

Mr. ERVIN. So, if right-to-work laws do not provide jobs for people, then, by the same token, compulsory unionism does not provide jobs for people.

Mr. HILL. The Senator is correct. As the Senator said, jobs are provided only by those who invest their capital in an organization which must employ workers. The only way an individual can get a job is from a concern or individual who must employ workers.

Mr. ERVIN. Regardless of whether the worker lives in a State which has a right-to-work law or in a State which has compulsory unionism in the form of a union shop contract, the worker obtains his job because a certain group of Americans has made an investment in an industry or business.

Mr. HILL. The Senator is correct. In addition, an individual, such as a doctor or a lawyer, might employ workers. However, compulsory unionism does not provide jobs, as the Senator so clearly pointed out.

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

Mr. HILL. I yield.

Mr. MURPHY. In a State such as California, which has on two occasions voted to have union shop contracts—which are proper under the law—is it not true that, in such a State, a union would not only not provide a job, but might also make it almost impossible in some instances for a man to get a job, as in the case of a studio with which I am familiar in which a man desired to become a studio driver? The man was allowed to have a C-class card. The C-class card is called after the B's are used up. The B-class cards are called when the A's have been called up.

I asked the union representative how often such a man would work. The union representative said, "Probably never."

Individuals were unable to obtain cards in the Musicians Union in New York years ago. They were unable to get jobs. Such a situation would not only not provide a job, but in many cases in my long experience, it would actually deny a man the right to work.

Mr. HILL. The Senator is correct. It would deny an individual the job he seeks and must have, and his right to get that job.

Mr. MURPHY. There is always a temptation, when a certain group of human beings, with the weakness of human nature may say "We have enough jobs for ourselves—let us not let any new members in." This is one of the things that we in Congress must be careful about. We make the rules and regulations in order to eliminate all such mistakes, and make certain that the rights of individuals be protected at all times.

Mr. HILL. The Senator is correct. We recognize human nature as it is and recognize the fundamental right of the man to get the job that he must have in order to make a living for himself and his family.

Mr. MURPHY. Mr. President, I thank the Senator.

Mr. HILL. Mr. President, we maintain that the right of each and every American wage earner to make a free choice regarding union membership or

any other kind of membership must be paramount above the wishes and desires of any private interests group. The very spirit of America requires the preservation of this liberty.

It was to escape compulsion that many of our forefathers came to the New World, and it was to defeat coercion that their descendants fought and won the American Revolution.

The Supreme Court of the United States in the case of Takahashi against Fish and Game Commission in 1948 summed up the position and efforts of those of us who cherish this heritage and wish to preserve it, the following language:

> It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Constitution to secure.

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

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

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

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

Mr. ERVIN. Mr. President, when my speech of some days ago was interrupted by the recess of the Senate, I was discussing the arguments made by those who advocate compulsory unionism in all 50 States.

At that time, I discussed at some length the first argument, the argument that union security—that is, the existence and strength of the union—is dependent upon compulsory unionism, which is the power to draft unwilling men into membership in the union.

I pointed out then that the greatest institutions on earth are free institutions supported by free men. I also observed that any organization which exists for a worthwhile purpose insults itself when it says it can not obtain members by voluntary persuasion.

I also pointed out that a union is a voluntary association, and that in the very nature of things, voluntary associations should obtain their members by voluntary persuasion.

I discussed the proposition that compulsory unionism is merely an application of majority rule. As I stated then, it is just as logical for the Democratic Party to say that all Republicans should be compelled to make contributions to the Democratic National Committee, because the Democratic Party won the last election and is established as the majority party.

The majority rule, as known to America, is a rule which provides that every person has the right to dissent from and oppose the program of the majority. Any such system as compulsory unionism is the very opposite of majority rule, which recognizes the rights of the minority. As Donald Richberg said:

> Compulsory unionism is akin to the Communist philosophy, which decrees that there shall be only one party in a state, and that those who disagree with the single party shall be purged.

On that occasion, I also dealt with a third argument advanced by those who advocate repeal of section 14(b) and the imposition of union shop agreements upon workers in all 50 States—the argument that because the union negotiates a contract for the benefit of all the workers in the plant, both union and nonunion, the nonunion member should be made to pay his part of the cost of negotiating the contract. Those who advocate complusory unionism argue that unless the nonunion member is compelled to pay his part of the cost of negotiating the contract, he is a free rider.

I respectfully submit that a man who does not wish to join a union because he considers the union unworthy of his support, or because he disagrees with the program of the union, is not a free rider. He is merely exercising his right as a free American. A man may not like the way the union operates. A man who is conscientiously opposed to the union's program and does not join the union for that reason is no more a free rider than a man who is compelled to enter a taxicab which is going to a destination to which he does not wish to go, and is operated by a driver in whose capacity to drive wisely or safely he has no confidence. On that aspect of the matter, an employee may, instead of being a free rider, be one who is being taken for a ride. That is certainly true when the dues which he pays are used in part by the union to support candidates for public offices whom he opposes, and to put into effect legislative or other programs which he deems unwise and contrary to the best interests of his country.

On a previous occasion during this debate I read a passage from an excellent book entitled "Power Unlimited—the Corruption of Union Leadership," written by Prof. Sylvester Petro, professor of labor law at the New York University Law School.

This book discussed the findings of the McClellan committee, of which I had the melancholy privilege of being a member.

Professor Petro pointed out that the unions sought the privilege of being collective bargaining agents for the nonunion employees as well as the union employees, and that it was not reasonable to assume that the union did anything extra that it would not otherwise do for union employees in negotiating a contract for all employees.

Professor Petro further suggested, however, that if a union objected to negotiating contracts for nonunion employees, Congress should remove the objection by changing the law and relieving the union of that responsibility, placing the freedom to contract back into the hands of nonunion employees, and that such action on the part of Congress would give back to nonunion employees in a unionized shop the same freedom to contract which all other Americans possess in all other aspects of life.

Mr. President, I wish to refer to the fourth main argument which was made in behalf of compulsory unionism. In so doing, I wish to read the words of Donald R. Richberg, which appeared in an article entitled "The New Slavery—No Right To Work Without a Union License."

Donald Richberg was one of the greatest of American lawyers of our generation. He argued many cases before the Supreme Court of the United States on crucial constitutional and legal questions.

Among these cases were those involving the constitutionality of certain right-to-work laws which were sustained by the Court in the decisions to which our attention has been invited by the Senator from Alabama [Mr. HILL], in the speech which he has just delivered on the floor of the Senate.

This is what Mr. Richberg wrote in his article with respect to the fourth argument for compulsory unionism, the claim that compulsory unionism is needed by the union in order to obtain increased power of discipline over the employees in the bargaining union:

> The need of an increased power of discipline: This argument, which is being made with increased vehemence, is based on the theory that nonunion employees, who cannot be disciplined by depriving them of their employment, are a menace both to the union and to the employer because they will not live up to contract obligations. Here again is a fraudulent argument because the nonunion employee is just as much bound as the union employee to carry out the obligations of the trade agreements.
>
> Also, without being made a member of the union, the independent worker is subject to employer discipline to an even greater degree than a union member. If he breaks contract obligations, or refuses to obey management orders, he can be and will be disciplined and he will not have any union backing to support him in a recalcitrant position. On the other hand, if a union man gets in difficulty with the management, the union is obligated to support him if it can.
>
> What the unions really mean is that they want the power of discipline over all employees, particularly so that they will all strike, or otherwise support the union officials in whatever position they may take which is antagonistic to management. The fact is that the increased power of discipline given to union officials by compulsory unionism is all contrary to the interests of both the employer and the free worker.

With respect to the fourth argument for compulsory unionism, Mr. Richberg made certain observations concerning some other arguments and concerning this issue generally in the remainder of his article. It reads as follows:

> Among other arguments for compulsory unionism, the AFL contends that if an employee is not a union man, he has no voice at all in determining his rate of pay, his hours, or other conditions of employment. Theoretically, this appears to be plausible. But as a practical fact the union member of one of the huge unions of modern times has as small a voice in determining union policies and programs as the average citizen who is not active in politics has in making the laws. The most effective voice which any member can have in an organization, unless he is part of the ruling hierarchy, is the voice of opposition, the voice of criticism.

Mr. President, I believe that Mr. Richberg put his finger squarely on one of the fundamental reasons why compulsory unionism is unwise and why right-to-work laws should be retained in the

19 States which now have them and should be adopted in the other 31 States.

As I expect to demonstrate, in discussing the decisions of the National Labor Relations Board relating to union discipline of union members in compulsory union States, the average union member has very little voice in his affairs, when he is compelled to remain in the union and pay dues to the union as the price of holding his job.

As Wallace Turner stated in the quotation which I took from his testimony before the McClellan committee in my last speech, the average union member is very reluctant to get out of line with ruling authorities in his union for fear that his union card may be taken up for some reason and he will be deprived of a job.

So the most healthy thing in this country, not only in government but also in unionism, is the right of a man to dissent from union programs which he doubts are beneficial to him or to his fellow workers or to his country. That was the reason why Mr. Richberg said that the most effective voice which a worker can have, unless he is a part of the ruling hierarchy, is the voice of opposition.

Speaking further on this subject, Mr. Richberg said:

> This small voice can be made effective only if it is coupled with the power to withdraw from the organization, to refuse to give it moral and financial support and to threaten unwise or vicious leadership with the development of a rival faction or a rival organization to challenge its authority.
>
> The major value of labor organizations to the workers lies in their power to control their representatives. They may become helpless subjects of a labor autocracy if they are denied the right and freedom of each individual worker to refuse to support an official or an organization which does not truly represent him. How much should a man rely on the servant he employs who then assumes to be his master and says, "You must obey me or I will cut your throat"?

That is the end of the quotation from this portion of Mr. Richberg's article.

That statement with reference to the relation of servant to master is tantamount to the statement which has been made in hundreds of instances investigated by the McClellan committee over a period of 2 years, in which it was discovered that that was the threat which a dictatorial or corrupt union officer made to union members: "If you seek to overthrow my dictatorship or if you seek to expose my corruption, I will take up your union card and see that you cannot have a job whereby you can earn daily bread for yourself and your family."

Union members who elect union officers ought to have the same right, and not only the same right but the same power, to repudiate their officers that our constituencies have to repudiate us when they are dissatisfied with our official representation of them.

Union members cannot have that power, even though the law professes to give them that right, if they can be compelled to continue to support, financially or otherwise, labor leaders or union officers who are not faithful to the trust reposed in them by the union members.

It is a fearful thing to put into the hands of one man or a group of men, by law or by union shop agreements, the power to say to other men, "You cannot hold your jobs, even though your jobs are essential to livelihood for yourself and your loved ones, if you do not cooperate with us and support us in our programs, regardless of whether or not you approve of those programs."

That is economic intimidation of a nature which is incompatible with a free society.

I have heretofore pointed out the fact that a union is a voluntary association, and that there is nothing antiunion in saying to a union, "You must obtain your members in exactly the same way in which churches, civic organizations, fraternal organizations, and patriotic organizations obtain their members; that is, by peaceful persuasion."

There is not a single right-to-work law in existence in any of the 19 States having such laws which prevents a union from numbering among its dues paying members every worker it can persuade to join it.

There is nothing unjust to a union or any other voluntary association by saying to it that it shall obtain its members voluntarily by peaceful persuasion on its part. That is the way that churches and civic and fraternal organizations and all other voluntary associations of all kinds obtain their members.

Mr. Donald Richberg had something to say on the claim of the unions that right-to-work laws are antilabor. I read further from his article:

> The unions claim the right-to-work laws are "antilabor." How can a law sustaining the freedom of labor be honestly called an antilabor law? The unions are actually claiming that it is against the interests of the worker to be free from employer coercion. They are claiming that if the union approves of employer coercion then it is antilabor to insist that the employee be kept free from any tyrannical use of the employer's power, against which union labor claims to be the ancient, time-honored enemy.
>
> The agreement for a union closed shop is now called a union security agreement. This very designation is a confession that it is not the worker who is made more secure by union closed agreements. In fact, he is made utterly dependent upon a tyrannical control of his livelihood exercised jointly by the employer and the union. Only the union itself, that is the union officialdom, is made more "secure" by such agreements. These closed shop contracts, these "one party" monopolies, make it practically impossible for dissenters, even for a substantial majority in the union, successfully to oppose the dictatorial control of a well-entrenched machine of labor bosses.
>
> The Railway Act (1926, 1934), the Wagner Act (1935) and the Taft-Hartley Act (1947) in the same language established in all industries, subject to Federal law, the right of all employees to "self-organization" and "to bargain collectively through representatives of their own choosing"—and the right to exercise these rights free from employer "interference, influence, or coercion." How can there possibly be "self-organization" or "representatives of their own choosing" when men and women are compelled to join unions against their will? How can there be freedom from employer "interference, influence and coercion" when every employee is forced by his employer to join the particular union with which the employer has made a union shop agreement.
>
> Chief Justice Hughes in upholding the constitutionality of the Railway Labor Act (281 U.S. 548) said: "Collective action would be a mockery if representation were made futile by interference with freedom of choice." The outstanding labor unions of the United States are making a mockery out of collective bargaining and destroying the essential freedom of labor by their campaign to establish compulsory unionism which should not be lawful under a free government or tolerated by a free people.

That is the end of the article by Donald R. Richberg.

As was made plain by the colloquy between the distinguished senior Senator from Alabama [Mr. HILL] and myself, the Taft-Hartley Act was intended to be something in the nature of a Magna Charta for those who are condemned by Adam's curse to eat their bread in the sweat of their faces, and that includes most of mankind. It certainly includes all of those who are compelled to earn a livelihood by their hands or their talents.

Section 7 is sometimes called the bill of rights for workers. I wish to read section 7 at this point:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Section 8(a)(3) provides in substance that the employer and the union may enter into a union shop agreement. That agreement may require the employee to join the union 30 days after he begins his employment, and to pay dues to the union.

It further provides, however, that the employee may not be discharged at the instance of the union except for the nonpayment of his customary union dues and assessments.

There is a proviso to the effect that unions may adopt rules concerning the acquisition and retention of members.

Certainly there is nothing in these sections of the Taft-Hartley Act which would justify the decision handed down by the National Labor Relations Board in the Local 283, United Automobile Workers case. In that case it was held that a union had the power to fix the amount of work which a union member should do and to punish him by fine and suspension from union membership in case he did more work than the union said he could do.

I respectfully submit that the provision allowing unions to establish rules for the acquisition or retention of union membership does not justify any such decision.

This opinion appears in volume 145 of the reports of the National Labor Relations Board, at page 1097.

I respectfully submit that the dissenting opinion of Board Member Leedom sets forth a correct interpretation of the Taft-Hartley Act on this point. In order

that the soundness of his position may be set forth, I shall read extracts from the opinion.

The bylaw—

That is, the union bylaw—

inter alia, provides that members who fail to abide by the work quotas shall be subject to a fine, and, in the case of habitual offenders, disciplined by the union on the charge of conduct unbecoming a union member. At present, the production ceilings limit an employee's earnings to 45 to 50 cents per hour over the machine rate, which is based on minimum employer production requirements.

The contract between the employer and the union contains a union-security provision. By its terms, all employees are required to become members of the union after the 30th day of employment or pay a service fee which shall not exceed the amount of the union's monthly dues.

The employer has placed no limits on the employees' production or earnings and has vigorously opposed such a limitation, but without success. The company is in a highly competitive market and the increased costs resulting from the union's production ceilings have caused a decline in its competitive position. The record shows that the union's production ceilings have reduced and slowed down production, that an employee can reach the production ceiling in 5 hours, and that the employees have read books, played cards, and talked in the remaining time.

In February 1961, the union discovered that the charging parties had been violating the work quota rule. Subsequently, a hearing was held before the union's trial board, and each of the charging parties was found guilty of "conduct unbecoming a union member," was fined $50 to $100, and was suspended from union membership. In October 1961, the union brought suit against the charging parties in a State court to collect the fines.

On these facts, the general counsel issued a complaint against the union, charging that the fines that were imposed restrained and coerced employees in the exercise of their section 7 rights and therefore violated section 8(b)(1)(A) of the act. My colleagues are validating the union's actions. I disagree. In my opinion, my colleagues' holding misconstrues a very basic section of the act, misinterprets congressional intent, undermines congressional policy, and disregards established precedent.

In refusing to abide by the union rule, the employees were exercising their section 7 right to refrain from union activity. In fining the employees, the union was attempting to force these employees to cease exercising that section 7 right. The question is whether the fine employed by the union as a sanction to compel the charging parties to comply with the union rule constitutes restraint or coercion within the meaning of section 8(b)(1)(A), and, if so, whether the union's action is nevertheless protected by the proviso to that section. I think it is clear that the fines imposed do constitute such restraint and coercion, and that the proviso does not afford any protection to the union.

Mr. President, in the interest of time, I ask unanimous consent that the entire dissenting opinion of Board Member Leedom, which begins on page 1105 of the report referred to, and ends on page 1112, be printed at this point in the RECORD.

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

Member Leedom, dissenting. This case presents the question of whether a union that has unilaterally promulgated a restrictive scheme of work production quotas may, with legal impunity, enforce that scheme against employees, members of the union, through the imposition of severe retaliatory penalties, including monetary fines.

Since 1938, respondent union has had an established scheme of production ceilings or work quotas. The production ceilings, first formulated pursuant to a "gentleman's agreement" between union members, were later formalized by a union resolution, and finally became the subject of a union bylaw. The bylaw, inter alia, provides that members who fail to abide by the work quotas shall be subject to a fine, and, in the case of habitual offenders, discipline by the union on the charge of conduct unbecoming a union member.[1] At present the production ceilings limit an employee's earnings to 45 to 50 cents per hour over the machine rate, which is based on minimum employer production requirements.

The contract between the employer and the union contains a union security provision. By its terms all employees are required to become members of the union after the 30th day of employment or pay a service fee which shall not exceed the amount of the union's monthly dues.[2]

The employer has placed no limits on the employees' production or earnings and has vigorously opposed such a limitation, but without success. The company is in a highly competitive market, and the increased costs resulting from the union's production ceilings have caused a decline in its competitive position. The record shows that the union's production ceilings have reduced and slowed down production, that an employee can reach the production ceiling in 5 hours, and that the employees have read books, played cards, and talked on the remaining time.[3]

In February 1961, the union discovered that the charging parties had been violating the work quota rule. Subsequently, a hearing was held before the union's trial board, and each of the charging parties was found guilty of "conduct unbecoming a union member," was fined $50 to $100, and was suspended from union membership. In October 1961, the union brought suit against the charging parties in a State court to collect the fines.

On these facts, the general counsel issued a complaint against the union, charging that the fines that were imposed restrained and coerced employees in the exercise of their section 7 rights and therefore violated section 8(b)(1)(A) of the act.[4] My colleagues are validating the union's actions. I disagree. In my opinion, my colleagues' holding misconstrues a very basic section of the act, misinterprets congressional intent, undermines congressional policy, and disregards established precedent.

In refusing to abide by the union rule, the employees were exercising their section 7[5] right to refrain from union activity.[6] In fining the employees, the union was attempting to force these employees to cease exercising that section 7 right. The question is whether the fine employed by the union as a sanction to compel the charging parties to comply with the union rule constitutes restraint or coercion within the meaning of 8(b)(1)(A), and, if so, whether the union's action is nevertheless protected by the proviso to that section. I think it is clear that the fines imposed do constitute such restraint and coercion, and that the proviso does not afford any protection to the union.

The Supreme Court has left little, if any, room for argument over the meaning of the words "restraint or coerce" used in section 8(b)(1)(A). In *N.L.R.B.* v. *Drivers, Chauffeurs and Helpers Local Union No. 639, International Brotherhood of Teamsters, etc.* (*Curtis Brothers*) 362 U.S. 274, which involved the question of whether recognitional picketing by a minority union constituted a violation of section 8(b)(1)(A), the Court, after a thorough analysis, concluded that section 8(b)(1)(A) was "a grant of power to the Board limited to authority to proceed against union tactics involving violence, intimidation, and reprisal or threats thereof—conduct involving more than the general pressures upon persons employed by the affected employers implicit in economic strikes."

A careful reading of the Court's opinion shows that the word "reprisal," as used by the Court, means economic as well as physical reprisal, and specifically includes financial exactions.[7] Thus, the Court referred some of the examples mentioned by Senator

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[1] The bylaw, in pertinent part, reads as follows:

"A. The basic object of the union is to protect members of the union in their employment and to give them as much security as the industry can provide. The local union in its judgment and reasoning has established a production ceiling which it feels will bring more protection to the members. It follows that a member who is found in violation of the [sic] this rule is guilty of conduct unbecoming a union member.

"B. Any member who violates these ceilings shall be subject to a fine of $1 for each violation. The violators shall be processed by not less than three, nor more that [sic] than five members of the executive board.

"In case of persistent ceiling violations, the member will be charged with conduct unbecoming a union member."

[2] While, in light of the presence of the service fee provision in the contract, it cannot be said as a matter of law that all employees were required to join the union, it is obvious that the contract provisions left so little to choice that, as a practical matter, the employees were compelled to join the union in order to obtain the most value for the money they were required to expend.

[3] In spite of this, the employees produce more than the production ceilings allow. The excess is "banked" for payment in the future when an employee is unable, for any reason, to produce the maximum allowable under the production ceilings.

[4] Section 8(b)(1)(A) provides as follows:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *."

[5] Section 7 of the act reads:

"RIGHT OF EMPLOYEES

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

[6] Printz Leather Company, Inc., 94 NLRB 1312. My colleagues apparently concede that the charging parties were exercising their section 7 right in refusing to limit their production pursuant to the union's rule for, absent such right, it would have been unnecessary to reach the issues discussed in the majority opinion.

[7] In this connection, I point out that the economic pressure inherent in a fine is not unlike the pressure caused by the threat of loss of employment which has always been recognized as economic "intimidation" or "reprisal" constituting a violation of section

Ball in the legislative debates involving threats of "violence, job reprisals and such repressive assertions as that double initiation fees would be charged those who delayed joining the union," as the type of conduct against which section 8(b)(1)(A) was directed; and the Court summed up the "central theme" of the legislative debates on the section as seeking "the elimination of the use of repressive tactics bordering on violence or involving particularized threats of economic reprisal." [8]

In the later *International Ladies' Garment Workers Union AFL–CIO (Bernhard-Altmann Texas Corp.)* v. *N.L.R.B.* case, 366 U.S. 731, the Court set forth the proposition that section 8(b)(1)(A) prohibited "unions from invading the rights of employees under section 7 in a fashion comparable to the activities of employers prohibited under section 8(a)(1)," pointing out that it was the "intent of Congress to impose upon unions the same restrictions which the Wagner Act imposed on employers with respect to violations of employee rights." [9]

The Board itself in the past has read "restrain or coerce" in section 8(b)(1)(A) in a manner consistent with the ordinary meaning of the term. Thus the Board has held that compulsion by sanctions, such as fines and expulsion from membership, "are in fact coercive," [10] and has also found that other forms of pressure directed against employees, including threats not to process grievances,[11] threats of union disciplinary action and expulsion,[12] and causing a reduction in seniority,[13] likewise constitute restraint and coercion within the meaning of section 8(b)(1)(A).

Accordingly, consistent with the foregoing authoritative case law, I am of the opinion that the fines levied by the union against the charging parties in the instant case constitute restraint and coercion under section 8(b)(1)(A) of the act.[14]

The proviso to section 8(b)(1)(A) does not compel a contrary conclusion. That proviso excepts from the ambit of 8(b)(1)(A) only such restraint or coercion that results from a union's application of its rules relating to "the acquisition or retention of membership." [15] As the Board stated in Marlin Rockwell Corp., 114 NLRB 553, 562:

"As we read the 8(b)(1)(A) proviso, its sole purpose is to guarantee to unions the privilege, as a voluntary association, to determine both who shall be a union 'member' and what substantial conditions a 'member' must comply with in order to acquire or retain union membership status. It is for this reason that the Board cannot and will not judge the fairness or unfairness of internal union determinations which may enable or disable particular individuals to obtain the incidental benefits of union membership as provided by internal union legislation." [16]

And more recently, in *Allen Bradley Company* v. *N.L.R.B.*, 286 F. 2d 442, the Seventh Circuit shared this view of the scope of the proviso saying:

"[The] Board strenuously insists that the company proposal was not a subject for bargaining because the union in its coercive activities was protected under the proviso in section 8(b)(1)(A), which authorizes the union to prescribe its own rules "with respect to the acquisition or retention of membership therein." True, the fines which the union had previously imposed and about which the company was concerned were authorized by union rule. Even so, there is nothing in the situation before us which indicates that such fines bore any relation to the "acquisition or retention of membership." The Board evidently recognizes this because it argues, "imposition of the fine is merely a step in determining membership status; nonpayment leads to expulsion." We assume that a union had broad powers in prescribing rules relative to the acquisition and retention of its members. However, that power in our view, is not absolute. It goes beyond any permissible limit when it imposes a sanction upon a member because of his exercise of a right guaranteed by the act. Coercive action whether by way of fine, discharge, or otherwise, which deprives a member of his right to work and his employer of the benefit of his services, cannot be said to relate only to the internal affairs of the union." [17]

8(b)(1)(A). (See, for example, International Association of Bridge, Structural & Ornamental Iron Workers, Local 600 (Bay City Erection Company, Inc.), 112 NLRB 1059; Marlin Rockwell Corporation, 114 NLRB 553, 562; Local Union No. 450, International Union of Operating Engineers, AFL–CIO, etc. (Tellepsen Construction Company), 122 NLRB 564, 568; Local 138, International Union of Operating Engineers, AFL–CIO, etc. (Nassau and Suffolk Contractors Association, Inc., etc.), 123 NLRB 1393, 1396.) In my opinion, there is little difference between a union's causing the discharge of an employee for refraining from engaging in concerted activity, and a union's fining an employee the partial, or total, equivalent of his salary for refraining from engaging in concerted activity. Each is an equally potent form of economic restraint and coercion, and the net effect of each on the employees involved could be identical.

[8] *Curtis Brothers, supra,* at 286–287. The Court cited the remarks of Senator Taft in which he stated that section 8(b)(1)(A) was intended to outlaw threats of "economic reprisal," and also cited with approval the language of the Board's decision in *United Shoe Workers; Perry-Norvell Shoe Workers Committee (Perry Norvell Company)*, 80 NLRB 225, listing economic reprisal as one of the means proscribed by section 8(b)(1)(A).

[9] *Bernhard-Altmann Texas Corp., supra,* at 738.

[10] *Peerless Tool and Engineering Co.*, 111 NLRB 853, 857; see also *Minneapolis Star and Tribune Company*, 109 NLRB 727, in which the Board adopted the trial examiner's conclusion that a fine was a "form of coercion."

[11] *Ibid.*

[12] *Local 401, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL–CIO; et al. (M. A. Roberts & Company)*, 126 NLRB 832, 834; *United Stone and Allied Products Workers of America, Local No. 24, AFL–CIO, etc. (Gibsonburg Lime Products Company)*, 121 NLRB 914.

[13] *Local 553, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Miranda Fuel Company, Inc.)*, 140 NLRB 181.

[14] The legislative history of section 8(b)(1)(A) fully supports this interpretation that the language, "restrain or coerce," covers the conduct herein. Section 8(b)(1)(A) originated in the Senate as an amendment to S. 1126. It was sponsored by a group of Senators who could "see no reason whatever why [unions] should not be subject to the same rules as the employers" and accordingly introduced section 8(b)(1)(A) as a corresponding section to 8(a)(1). (S. Rept. 105 on S. 1126, Supplementary Views, Leg. Hist. of the LMRA, 1947, vol. I, p. 456.) Senator Ball, who introduced the amendment, explained that its purpose was "to insert an unfair labor practice for unions identical with [section 8(a)(1)]," which was essential "to equalize the rights and responsibilities of both employers and unions in this field, to really assure to employees the freedom supposedly guaranteed in section 7." (Leg. Hist. of the LMRA, 1947, vol. II, pp. 1018, 1021.) During the debates, Senators repeatedly stressed that section 8(b)(1)(A) was to be read and interpreted as broadly as its Wagner Act counterpart. When Senator Pepper asked what the interpretation of the language "restrain or coerce" would be, Senator Taft answered that "the Board has been defining those words for 12 years" and although the "application to labor organizations may have a slightly different implication * * * from the point of view of the employee the two [sections] are parallel." (Leg. Hist. of the LMRA, 1947, vol. II, p. 1028, and to the same effect pp. 1032–1033.)

Contrary to my colleagues, it does not appear that Congress intended to limit section 8(b)(1)(A) to any particular type of restraint or coercion. In the course of the debates, examples of the conduct that would be prohibited by section 8(b)(1)(A) included threats of higher initiation fees or higher dues, retaliatory internal union disciplinary action, threats to strike, threats to picket, threats of loss of employment, economic pressure, and misrepresentation. (Leg. Hist. of the LMRA, 1947, vol. II, pp. 1018–1019, 1029, 1030, 1031, 1192–1193, 1200, 1205.) No attempt was made by Congress either to exhaust or to constrict the scope of the statutory language. Further, I do not agree with my colleagues that the House understood that section 8(b)(1)(A) covered only that conduct which had been dealt with under section 12(a)(1) of the House bill (H.R. 3020). Rather, the House conference report shows that section 8(b)(1)(A) included, but was not limited to, the conduct outlawed by section 12(a)(1) of the House bill. (Leg. Hist. of LMRA, 1947, vol. II, p. 546.)

[15] The legislative history of the proviso clearly shows that the restrictive terms in which the proviso was written were not chosen by accident, but by design, and that Congress meant just what it said, no more. The proviso originated in the Senate and was offered by Senator HOLLAND as an amendment to section 8(b)(1)(A). In introducing the amendment, Senator HOLLAND stated that the proponents of section 8(b)(1)(A) had not intended that section "to affect at least that part of the internal administration which has to do with the admission or the expulsion of members, that is with the question of membership," and that his amendment (the proviso) "would make clear that [section 8(b)(1)(A)] would have no application to or effect upon the right of a labor organization to prescribe its own rules of membership either with respect to beginning or terminating membership." (Leg. Hist. of the LMRA, 1947, vol. II, pp. 1139, 1141.) Senator Ball, who accepted the proviso as an amendment to section 8(b)(1)(A), replied that "it was never the intention of the sponsors of [section 8(b)(1)(A)] to interfere with the internal affairs or organization of unions," and he subsequently described the proviso more specifically as covering "the requirements and standards of membership in the union itself." (Leg. Hist. of the LMRA, 1947, vol. II, pp. 1141, 1200.) In the face of these authoritative statements from the two men in the Senate most intimately acquainted with the proviso, I cannot, as my colleagues do, subscribe to an interpretation based on the more general characterizations of certain legislators.

[16] See also the Babcock & Wilson company, 110 NLRB 2116, 2132.

[17] My colleagues attempt to distinguish the *Allen Bradley* case on the ground that the court "was not called upon to show whether the union had a right under section 8(b)(1)(A) to fine a member for crossing a picket line and that, accordingly, the above portion of the opinion was obiter dictum. However, as the portion of the court's opinion quoted above clearly shows and as a reading of the Board's decision and brief in that case will confirm, the Board argued in that case that the union's conduct which the employer wished to subject to restraining was protected

I find the rationale of these cases most persuasive for it comports with the language of the proviso itself as well as its legislative history. This rationale, moreover, achieves the accommodation intended by Congress between the rights. Congress guaranteed employees and the right of unions to determine their own qualifications for membership. In my opinion, therefore, it cannot reasonably be said that the Union's conduct here related to its right "to prescribe its own rules with respect to the acquisition or retention of membership." Accordingly, I conclude that respondent's conduct is not protected by the proviso.

According to my colleagues, the proviso to section 8(b)(1)(A) protects all internal union affairs or all action taken pursuant to the union's rules and internal processes. They attempt to prove that the proviso does not mean what it says by arguing that Congress did not intend to distinguish between expulsion and any other form of union discipline, such as a fine, in the application of the proviso. However, in view of the special treatment Congress gave expulsion, as opposed to any other form of coercion by union discipline, I think that Congress did intend such a distinction. Employees are specifically protected against coercion in the form of expulsion by the second proviso to section 8(a)(3), which guarantees employees that expulsion for any reason other than nonpayment of dues and fees will not imperil their job security.[18] Thus, Congress preserved the right of unions to deny membership to, or terminate the membership or, whomever they pleased regardless of the reason; but, at the same time, Congress insulated employees from coercion by making sure that they would suffer no economic consequences as a result of such action.[19]

But even assuming that the proviso has a broader reach than I would ascribe to it, I would still disagree that the matter here involved is one that is merely a matter of internal union regulation. Employees may occupy a dual status: first, is their status as employees; second, is their status as union members. Those matters affecting employees as union members may appropriately be referred to as internal union affairs. Those matters which affect employees as employees are not internal union affairs. Of course, it is quite possible that some matters may affect both the employment relationship and the membership relationship, but to the extent they involve the former, they are not internal union affairs. Here, I am satisfied that the union's attempt to control production and wages, which are subjects clearly related to employment, and not to membership, is not merely an internal matter.

Under my colleagues' reading of the proviso, it would appear that the union can turn any employment matter or section 7 right into an internal union affair simply by adopting a union rule or bylaw dealing with the subject and disciplining employees thereunder.[20] But there is no evidence that Congress ever intended to permit the subversion of employees' rights by unions under the guise of regulating the conduct of union members.[21] In short, I think that when unions use the union membership of employees—membership which may, or may not, be voluntary—as a means of encroaching on their rights as employees, which Congress did regulate, the unions subject themselves to the sanctions of section 8(b)(1)(A) of the act. More particularly, by imposing fines on these employees because they exceeded the respondent union's unilaterally established work production quotas the respondent union took action which went beyond any permissible limit, that is, the action taken did not relate only to the internal affairs of the respondent union but imposed a sanction on its members because they exercised their right, guaranteed by the act, not to go along with the union-imposed production quotas.

Accordingly, for all the foregoing reasons, I would find that the respondent violated section 8(b)(1)(A) of the act, as alleged.

Mr. ERVIN. Mr. President, the dissenting opinion which I have placed in the RECORD is, of course, diametrically opposed to the majority opinion, which held that the union could establish a bylaw setting the amount of production which the individual employee could make; that the exceeding of such production limit would constitute conduct unbecoming a member of the union; and that any union member who exceeded the production quota established by the bylaw could be fined as much as $100 and suspended from his union membership.

The employees who are designated as the charging parties were members of the union under a union shop agreement. They had no option. Despite the fact that section 7 of the Taft-Hartley Act provides, in the plainest language imaginable, that they had a right to abstain from union activities or concerted activities; and despite the fact that section 8 provides that no union shall coerce or restrain an employee in the exercise of the rights secured to him by section 7; the National Labor Relations Board, by a majority opinion, held that union members drafted into a union under a compulsory union shop agreement could, under those circumstances, be punished.

I assert, without fear of successful contradiction, that that is a misinterpretation of sections 7 and 8 of the National Labor Relations Act, or the Taft-Hartley Act, as it is popularly known, and nullifies to a substantial degree the right of employees to make their own determination as to what activities they will participate in and their right to be free from restraint and coercion on the part of the union.

There are other decisions which, in my judgment, nullify the clear intent of Congress in enacting the Taft-Hartley Act. I have alluded to section 9(c)(1)(A)(ii) of the Taft-Hartley Act, which authorizes any employee or any group of employees, and certain other persons or organizations, to file what is called a decertification petition. That is a petition asking the National Labor Relations Board to call an election in the bargaining unit for the purpose of determining whether a majority of the employees in such unit desire to retain a union as their bargaining agent.

I do not believe that any legislative body could have drafted clearer language to express the congressional purpose that any employee or group of employees should have an absolute, legal right to file such a decertification petition. Yet, the National Labor Relations Board has held on several occasions, notably in the Tawas Tube Products case, which was handed down on February 15, 1965, and the Richard C. Price case, which was handed down on August 25, 1965, that if a union member who has been drafted into a union by a union shop agreement, and who cannot escape from the union except by route of a decertification petition and an election, files a decertification petition, the union can punish the worker by fine and suspension of his union membership.

These cases—and the situations to which I shall allude in a moment with regard to deauthorization petitions—constitute the only cases that I have ever found in any Anglo-Saxon jurisdiction which hold that a man can be punished for exercising a right given him by law.

The Price case also involved the filing of a deauthorization petition. Section 9(e)(1) provides that 30 percent of the employees in a bargaining unit can file

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by the proviso to section 8(b)(1)(A). Therefore, it cannot currently be said, as my colleagues do, that the court's discussion of this issue "was not material to a decison in the case."

[18] My colleagues argue that no action had been taken here to impair the employees' job status or job opportunities. Apparently, they are unwilling to recognize that impairment of job status or job opportunities can take the form of restricting an employee in his earnings where, as here, that employee is willing to work and the employer wants the benefit of his services. That the fines were intended to have this restrictive effect cannot be denied.

[19] See the debate between Senator Taft and Senator Pepper (Leg. Hist. of LMRA, 1947, vol. II, pp. 1141–1142, and also pp. 1096–1097). As shown by the above rationale, there is nothing inconsistent in the decision of the Court of Appeals for the Seventh Circuit in *Allen Bradley* and the decision of the same court in *American Newspaper Publishers Association* v. *N.L.R.B.*, 193 F. 2d 782. The latter case involved a union's threat to expel members, conduct which specifically falls within the proviso. Speaking of the proviso, the court said: "Congress left labor organizations free to adopt any rules they desired governing membership in their organizations. Members could be expelled for any reason and in any manner prescribed by the organization's rules, so far as 8(b)(1)(A) is concerned."

[20] For example, pursuant to a union rule or bylaw, unions, under my colleagues' decision, could now fine employees for filing charges with the Board against the union, for testifying against the union in Board proceedings, for filing a decertification petition, for refusing to give the union a copy of any statement made to a Board agent, for giving a statement to a Board agent without the union's approval, for refusing to participate in unlawful union activity, for working with nonunion employees, for working with Negro employees, for filing a grievance not approved by the union, for producing more than a certain number of items per day, and for working more than 30 hours per week.

[21] See *Local 100, United Association of Journeymen and Apprentices* v. *Borden*, 373 U.S. 690, in which the Supreme Court recognized that even though the union's action was based on the employee's failure to comply with internal union rules "it is certainly 'arguable' that the union's conduct violated section 8(b)(1)(A), by restraining or coercing Borden in the exercise of his protected right to refrain from observing those rules." The Court went on to distinguish its earlier decision in *I.A.M.* v. *Gonzales*, 356 U.S. 617, on the ground that Gonzales involved matters relating to expulsion which was an internal union affair, not within the Board's competence by virtue of the proviso to section 8(b)(1)(A). See also *Local 207, International Association of Bridge, Structural and Ornamental Iron Workers Union* v. *Perko*, 373 U.S. 701.

what is known as a deauthorization petition.

A deauthorization petition is a petition for an election to be conducted by the National Labor Relations Board on the question of whether the employees in the bargaining unit wish to deny the union the power to make union shop agreements.

The section further provides that, upon the filing of such petition, the National Labor Relations Board shall call and hold an election for the purpose of determining whether a majority of the employees in the particular bargaining unit wish to withdraw from the union the authority to enter into union shop agreements with the employer.

I submit that in section 9 and the subsections of section 9 to which I have directed attention, Congress stated its purpose to confer upon the employees an absolute right to file a deauthorization petition. Yet, in the Richard C. Price case, the National Labor Relations Board held that an employee who participated in the exercise of the legal right to file a deauthorization petition could be suspended from membership for exercising his legal right.

I say that because a very substantial fine was imposed upon the employee involved. The employee filed an unfair labor charge against the union, and invoked the protection of the National Labor Relations Board. However, before the National Labor Relations Board could hear the case, the union withdrew the fine, but left the suspension standing.

Mr. President, I ask unanimous consent that the decision in the Tawas Tube Products case by the National Labor Relations Board be printed in the RECORD at this point in my remarks. It was handed down on November 15, 1965.

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

TAWAS TUBE PRODUCTS, INC.—DECISION OF NLRB—TAWAS TUBE PRODUCTS, INC., TAWAS CITY, MICH., AND HAROLD LOHR (PETITIONER) AND UNITED STEELWORKERS OF AMERICA, AFL–CIO—CASE NO. 7–RD–573, FEBRUARY 15, 1965, 151 NLRB NO. 9

(Before McCulloch, Chairman; Fanning, Brown, and Jenkins, members.)

Election Section 9(c): Union did not interfere with election by expelling two members for filing petition to decertify union and actively supporting decertification cause: (1) Union's disciplinary action was limited to employees' union membership status and no attempt to affect their job interests is involved; (2) ground for expulsions plainly relates to matter of legitimate union concern and one that properly may be subject matter of internal union discipline; (3) expulsions are appropriate union disciplinary action under circumstances; union may take steps to preserve its own integrity.

62.5642: This proceeding was initiated by the filing of a decertification petition on June 8, 1964, by a member of Steelworkers' Local 6401, which local has represented the employees in the unit involved, although its international is on the ballot.

On July 15, the local president wrote the petitioner and another member of the unit notifying them that they would be tried on August 1 by the local for violating a provision of the international's constitution creating the offense of "advocating or attempting to bring about the withdrawal from the international union of any local union or any member or group of members."

On August 1, the two members were tried by a committee of local members and expelled from the union because of filing the petition and actively supporting the decertification cause.

The employer asserted in his objection to the election that these expulsions restrained and coerced the employees in the election. The acting regional director concluded that the expulsions were unfair labor practices under the rationale of Local 138, Operating Engineers (Charles S. Skura), 148 NLRB No. 74, 57 LRRM 1009, that they inhibited other employees from freely supporting the decertification cause, and that, therefore, the election should be set aside.

Text: "We disagree with the acting regional director's recommendation. Initially, we look to the proviso to section 8(b)(1)(A) of the act, which states:

" 'This paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.'

"Three considerations lead us to conclude that this case is within the terms of the proviso, and of our general rule with respect to internal union discipline not affecting employment interests.[1] First, the union's disciplinary action in this case was limited to the union membership status of Lohr and Lee, and no attempt to affect their job interests is involved.[2]

"Second, the ground for the expulsions plainly related to a matter of legitimate union concern and one which may properly be a subject matter of internal discipline. In this connection, even a narrow reading of the provisio would necessarily allow a union to expel members who attack the very existence of the union as an institution,[3] which is literally the case here, since Local 6401 represents only the employees in the unit involved in the case.

"As we said in the *Allis-Chalmers* case, when a situation 'involves the loyalty of its members during a time of crisis for the union * * * we cannot hold that a union must take no steps to preserve its own integrity.' That language is even more applicable here, for we can conceive of no conduct by a union member more hostile or threatening to his union than that engaged in by Lohr and Lee.

"Finally, the unique defensive aspect of the expulsions here should be noted. It would be difficult for the union to carry on an election campaign were Lohr and Lee, as members, entitled to 'equal rights and privileges * * * to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings * * *,' rights now guaranteed to union members by section 101(a)(1) of the Labor-Management Reporting and Disclosure Act. We therefore conclude that the expulsions here are reasonably to be viewed, and probably were so viewed at the time, as appropriate union disciplinary action under the circumstances.

"We disagree with the acting regional director's conclusion that the expulsions are comparable to the conduct before the Board in the Skura case, supra. In that case, Skura was fined by his union for filing with the Board a section 8(b)(1)(A) charge alleging that he was being denied job referrals by the union because he had sought to replace incumbent union officials. The ground relied upon by the union to fine Skura was that a union rule required exhaustion of internal union procedures by a member 'before resorting to any civil or other action.'

"Our decision in Skura limited the scope of union disciplinary action generally allowable under the terms of section 8(b)(1)(A)'s proviso because of the importance of safeguarding prompt and unimpeded access to the Board's processes by employees complaining of union infringement of their statutory rights. We held that in light of this overriding policy it was beyond the competence of the union to enforce its rule by coercive means and thus deter employees from resorting to Board processes in such circumstances.

"This case, however, presents a situation where union members have resorted to the Board for the purpose of attacking the very existence of their union rather than as an effort to compel it to abide by the act. We do not consider it beyond the competence of the union to protect itself in this situation by the application of reasonable membership rules and discipline. Furthermore, the employees' attempt to repudiate the union by a decertification proceeding demonstrates that loss of membership was of no significance to them; consequently their expulsion from the union could hardly be an effective deterrent against resorting to the Board. For these reasons, we conclude that the policy underlying the exception created in Skura is inapplicable here."

Mr. ERVIN. Mr. President, I also ask unanimous consent that the complete text of the decision and order of the National Labor Relations Board in the Richard C. Price case be printed in the RECORD at this point.

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

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD—UNITED STEELWORKERS OF AMERICA, LOCAL NO. 4028, AFL–CIO (PITTSBURGH-DES MOINES STEEL CO.) AND RICHARD C. PRICE, AN INDIVIDUAL—154 NLRB NO. 54, D–6997, SANTA CLARA, CALIF.

DECISION AND ORDER

Upon charges duly filed by Richard C. Price, the general counsel of the National Labor Relations Board, by the acting regional director for region 20, on November 5, 1964, issued a complaint against the respondent, United Steelworkers of America, Local No. 4028, AFL–CIO. Copies of the charge, the complaint, and notice of hearing before a trial examiner, were duly served upon the respondent and the charging party. In substance, the complaint alleged that the respondent violated section 8(b)(1)(A) of the National Labor Relations Act, as amended, by fining the charging party and suspending him from membership in the respondent because the charging party had filed petitions with the National Labor Relations Board "pertaining to the respondent's representation" of a unit of employees of the Pittsburgh-Des Moines Steel Co.

The respondent filed its answer on November 19, 1964, denying the commission of any unfair labor practice. It admits the jurisdictional allegations of the complaint, and that it took certain action, including the suspension and fine of the charging party, but alleges that such action was taken pursuant to the constitution of the United Steelwork-

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[1] Local 248, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO (Allis-Chalmers Manufacturing Co.) 149 NLRB No. 10, 57 LRRM 1242; Local 283, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW–AFL–CIO (Wisconsin Motor Corp.), 145 NLRB 1097, 55 LRRM 1085.

[2] *Radio Officers' Union* v. *N.L.R.B.*, 347 U.S. 17, 40, 33 LRRM 2417.

[3] Cf. sec. 101(a)(2) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 411(a)(2).

ers of America, hereinafter referred to as the Steelworkers. The respondent further alleges as a defense that the charging party had failed to exhaust his administrative remedies under its constitution. On December 18, 1964, the respondent amended its answer and alleged that on November 23, 1964, a committeee of the Steelworkers acting under the provisions of its constitution withdrew the fine imposed on the charging party.

On January 26, 1965, all parties to this proceeding entered into a stipulation of facts, and on the same date moved jointly to transfer this proceeding on stipulated record directly to the Board for findings of fact, conclusions of law, and a decision and order. The parties waived their rights to a hearing before a trial examiner and to the issuance of a trial examiner's decision. The parties further agreed that the stipulation of facts and the exhibits attached thereto constituted the entire record in the case, and that no oral testimony is necessary or desired by the parties. By an order dated February 8, 1965, the Board approved the stipulation and ordered the proceeding transferred to, and continued before, the Board for the purpose of making findings of fact and conclusions of law and for the issuance of a decision and order. The Board further directed that briefs be submitted not later than February 24, 1965. Thereafter the respondent and the general counsel filed briefs.

The Board has considered the briefs and the entire record in this case, and based thereon makes the following:

FINDINGS OF FACT

I. Jurisdiction: The employer, Pittsburgh-Des Moines Steel Co., is a Pennsylvania corporation engaged in the manufacture and distribution of fabricated steel products, with its principal office located at Pittsburgh, Pa., and facilities in various States, including the plant involved herein, located at Santa Clara, Calif. The employer, in the course and conduct of its business, annually purchases and receives goods and materials directly from suppliers outside the State of California valued in excess of $50,000 and annually sells goods and materials directly to customers outside the State of California valued in excess of $50,000.

The parties stipulated, and we find, that Pittsburgh-Des Moines Steel Co., during all times material herein, has been, and is now, an employer within the meaning of section 2(2) of the act, and that it is engaged in commerce within the meaning of section 2(6) and (7) of the act, and that it will effectuate the policies of the act to assert jurisdiction herein.

II. The labor organization involved: The respondent, United Steelworkers of America, Local No. 4028, AFL–CIO, is now, and at all times material herein has been, a labor organization within the meaning of section 2(5) of the act.

III. The unfair labor practices: The employer and the Steelworkers, with which the respondent is affiliated, have been parties to a number of collective-bargaining agreements covering employees at the employer's Santa Clara, Calif., plant. One such contract entered into by the employer and the Steelworkers on behalf of the respondent was effective from September 1, 1962, to September 1, 1964, and contained a lawful union-security clause.[1]

The charging party, Richard C. Price, has been an employee of the employer since 1951, and a dues-paying member of the respondent from 1951 until June 10, 1964.[2] Price was at all relevant times subject to the union-security provision of the 1962 contract between the employer and the Steelworkers.

On April 15, 1964, Price filed a petition with the regional director for region 20 (Case No. 20–UD–60) seeking an election to withdraw authority to enter into a union shop agreement from the Steelworkers. Thereafter, as Price actually had intended to file a decertification petition, he submitted a request to withdraw the petition in case No. 20–UD–60. This request was approved by the regional director on April 24, 1964, and on June 3, 1964, Price filed with the regional director a petition (case No. 20–RD–384) seeking to decertify the Steelworkers as the bargaining representative of the employees of the employer.

On May 13, 1964, three employees of the employer, who were also members of the respondent, filed charges with the respondent alleging that Price, by filing the petition in case No. 20–UD–60, had violated article XII, section 1(d) of the Steelworkers' international constitution.[3]

Price appeared before the respondent's trial committee on June 1, 1964, and was found guilty of violating the Steelworkers' constitution as charged. The trial committee recommended to the general membership of the respondent that Price be (1) suspended from membership and precluded from attending meetings for 5 years; (2) fined $500 plus costs of the hearing; and (3) suspended from membership completely pending payment of the fine. On June 3, 1964, the findings and recommendations of the trial committee were approved and accepted by the respondent's membership. Thereafter, Price appealed the action taken against him to the Steelworkers' international executive board, which on November 23, 1964, withdrew the fine, but left in full force and effect Price's suspension from membership. Although under the Steelworkers' constitution Price was entitled to appeal the decision of the executive board to the regular international convention, he took no such action and the time to file the appeal has expired.

The General Counsel, relying particularly on the Board's decision in Local 138, Operating Engineers (Charles S. Skura), 148 NLRB No. 74, contends that, by taking the above action against Price because he filed petitions with the Board, the respondent restrained and coerced him in the exercise of the rights guaranteed by section 7, in violation of section 8(b)(1)(A) of the act. In Skura, the Board held that a union violated section 8(b)(1)(A) by imposing a fine on an employee for filing unfair labor practice charges with the Board against the union without first exhausting the available internal union remedies. The Board there concluded that, in view of the overriding public interest involved in preserving the right of an employee to file unfair labor practice charges, the proviso to section 8(b)(1)(A) which permits a union "to prescribe its own rules with respect to the acquisition or retention of membership" had no application in a situation where a union attempted to regulate the exercise of this right by fining a member because he had filed a charge. However, more recently, in Tawas Tube Products, Inc., 151 NLRB No. 9, the Board took note of the fundamental distinction between union disciplinary action aimed at the filing of charges seeking redress for asserted infringement of statutory rights, as in Skura, and union disciplinary action aimed at defending itself from conduct which seeks to undermine its very existence. In the latter circumstances present in the Tawas Tube case, the Board considered a disciplinary expulsion which did not affect job interests as permissible action which did not constitute interference with the election process; it noted in that connection that the decision in Skura represented an exception to the general principle that union disciplinary action is not covered by section 8(b)(1)(A). Consequently, the Board considered in the Tawas Tube case that the Skura holding was inapplicable and that an election should not be set aside because the union expelled a member during the election campaign for filing a petition seeking the decertification of the union and actively supporting the decertification cause.

We believe the reasoning in Tawas Tube is equally applicable in the instant case.[4] Accordingly, we find that by the above conduct the respondent did not violate section 8(b)(1)(A) of the act.

Conclusions of Law

1. Pittsburgh-Des Moines Steel Co. is engaged in commerce within the meaning of the act.

2. Respondent union is a labor organization within the meaning of section 2(5) of the act.

3. The respondent has not committed unfair labor practices within the meaning of section 8(b)(1)(A) of the act.

Order

Pursuant to section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

Dated, Washington, D.C.

FRANK W. McCULLOCH, *Chairman.*
JOHN H. FANNING, *Member.*
GERALD A. BROWN, *Member.*
HOWARD JENKINS, Jr., *Member.*
SAM ZAGORIA, *Member.*
NATIONAL LABOR RELATIONS BOARD.

Mr. ERVIN. Mr. President, the reason given by the National Labor Relations Board for these two decisions is the most astounding reason ever assigned to deny to men the right to exercise a right which the law gives them. The opinion stated that if a majority of the employees in a union vote to decertify the union, the union will lose its existence and its power to represent them.

So that is the only excuse which is given for denying men an absolute right, vested in them in the clearest terms by the National Labor Relations Act or the Taft-Hartley Act, which was being construed.

There are other decisions of like tenor. Notwithstanding the provision of section 7 of the Taft-Hartley Act that any employee may refrain from participating in concerted activities, and notwithstanding section 8, which provides

[1] The clause provided: "All eligible employees who after Sept. 1, 1962, became members of the union and all employees hired after that date, upon completion of their probationary period (30 days), as a condition of continued employment shall pay initiation fees and union dues until Sept. 1, 1964. * * *"

[2] There was, however, a 2-year period not here material, during which Price served in the Army.

[3] Art. XII, sec. 1(d) of the constitution provides: "Any member may be penalized for committing any one or more of the following offenses: * * * (d) advocating or attempting to bring about the withdrawal from the International Union of any Local Union or any member or group of members; * * *." Art. XII, sec. 2 of the constitution provides: "Any member convicted of any one or more of the above offenses may be fined, suspended, or expelled."

[4] Although the respondent also imposed a fine on Price, this fine was, as noted, later withdrawn by the international executive board following an appeal by Price from the action of the respondent. As Price was therefore never obligated to pay a fine, we see no warrant for concluding that the initial levy of the fine ever became an operative factor in this case.

that the union shall not restrain or coerce any employee in the exercise of any rights secured to him by section 7, the National Labor Relations Board held, in the Minneapolis Star and Tribune case, that a union may fine a dissenting member for not attending union meetings and performing picket duty.

In other words, the National Labor Relations Board, in effect, in that decision nullified the provisions of both section 7 and section 8 and held that even though a person who has been drafted into the union and guaranteed the right to refrain from participating in concerted activities, and the right to be free from coercion and restraint in so refraining, he can actually be penalized for not participating in a strike as a member of the picket line, even though he disapproves of the purposes of the strike.

If time sufficed, I could point to other decisions of this character. Under such decisions a supposedly free American is drafted into membership in a labor union against his will, and then is denied the right to invoke the only procedure established by the Taft-Hartley Act to secure an end to his membership or to prevent the union from continuing it indefinitely under other union shop agreements. These decisions provoked my statement to the distinguished Senator from Alabama that in the light of these interpretations, we should put up a sign, like Dante at the entrance to his Inferno: "Abandon hope, all ye who enter here."

That is the kind of tyranny which those of us who oppose the taking up for consideration of this bill to repeal section 14(b) of the Taft-Hartley Act are fighting. These great freedoms which Americans enjoy, and which have been nibbled away by the interpretations of the National Labor Relations Board, were purchased at great price for them. This proposal for the repeal of section 14(b) would take them away from the supposedly freemen in 19 States where reverence is still paid by legislative bodies to the basic freedoms of American citizens. I repeat something I said the other day: We are confronted here by the old issue of tyranny versus freedom, and I believe it is fitting to close by quoting again from a poem of Kipling, the great English poet, entitled "The Old Issue":

All we have of freedom, all we use or know,
This our fathers bought for us long and long ago.

Ancient right unnoticed as the breath we draw,
Leave to live by no man's leave, underneath the law.

Lance and torch and tumult, steel and grey-goose wing,
Wrenched it, inch and ell and all, slowly from the King.

So they bought us freedom, not at little cost,
Wherefore must we watch the King, lest our gain be lost.

Mr. President, we had better watch Congress, when the proposal to repeal section 14(b) of the Taft-Hartley Act is being considered, because otherwise we may lose one of these great rights, the right of an American worker to stand in an upright position on his own two feet, and decide for himself with his God-given faculties whether he wishes to join or refrain from joining a union. Kipling called this right the ancient right. He said it was "leave to live by no man's leave."

Mr. President, a person does not have leave to live by no man's leave if he has to pay a union for leave to earn his daily bread.

I yield the floor.

RECESS UNTIL TOMORROW AT 12 O'CLOCK

Mr. BREWSTER. Mr. President, in accordance with the order previously entered, I move that the Senate stand in recess until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 8 minutes p.m.) under the order previously entered, the Senate took a recess until tomorrow, Wednesday, February 9, 1966, at 12 o'clock meridian.

EXTENSIONS OF REMARKS

On Seeing America First

EXTENSION OF REMARKS
OF
HON. FRANK T. BOW
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Tuesday, February 8, 1966

Mr. BOW. Mr. Speaker, a feature of the annual New Year's edition of the Alliance, Ohio, Review was a 40-page section devoted to seeing America first. This section, devoid of any advertising, was the contribution of Mr. Merrick Lewis and the Alliance Machine Co., evidencing Mr. Lewis' interest and support of our efforts to remedy the balance-of-payments program by keeping tourist dollars at home. I know of no similar contribution by anyone in this country.

Recognition of this distinguished public service has gone to Mr. Lewis from the Secretary of Commerce, the Honorable John T. Connor, whose letter follows:

THE SECRETARY OF COMMERCE,
Washington, D.C., January 28, 1966.
Mr. MERRICK LEWIS,
President, Alliance Machine Co., Alliance, Ohio.

DEAR MR. LEWIS: The special supplement in the January 4, 1966, edition of the Alliance Review of Alliance, Ohio, entitled "See America First," has been called to my attention, and I wanted you to know how favorably impressed I was by this important effort.

I have been heartened, indeed, by the response of industry to help solve the problem of our balance of payments. Your contribution in the form of the very impressive supplement which was published in the Alliance Review is another example of the voluntary cooperation which is so essential to meet our vital national problems. Please be assured that your efforts are appreciated.

Best wishes.

Sincerely yours,

JOHN T. CONNOR,
Secretary of Commerce.

Budget Cuts Hit School Milk and Lunch Programs

EXTENSION OF REMARKS
OF
HON. ROBERT C. McEWEN
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Tuesday, February 8, 1966

Mr. McEWEN. Mr. Speaker, several items in the administration's 1967 "guns and butter" budget deserve very careful congressional scrutiny. For some inexplicable reason, the programs insuring milk and lunches for schoolchildren have been especially hard-hit by senseless reduction of funds.

According to the proposed budget, $19 million is slated to be deleted from the school lunch program. Another "saving" is made at the expense of the special milk program which is cut from $103 million to an estimated $21 million. These reductions of $19 and $82 million, respectively, are both unsound and unjustified by the facts and nature of the programs they will drastically curtail. Providing milk and lunches for school-age children have been important, efficiently executed, and well administered programs receiving well-deserved praise and effecting sound nutritional benefit to the Nation's schoolchildren.

I urge the appropriate committees examining this facet of the budget to take every step necessary to ascertain that the special milk and school lunch programs do not become the victims of irresponsible budget cuts.

Education Benefits for Veterans

EXTENSION OF REMARKS
OF
HON. RICHARD L. OTTINGER
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Tuesday, February 8, 1966

Mr. OTTINGER. Mr. Speaker, I was attending Senate hearings on the nominations of Lincoln Gordon as Assistant Secretary of State for Inter-American Affairs and Coordinator of the Alliance for Progress and Jack Vaughn as Director of the Peace Corps when H.R. 12410 was brought to a vote yesterday. Unfortunately, I was not notified of this action and was not recorded in the final tally.

I was deeply interested in this legislation and had I been able to reach the