proval, a bill of the House of the following title:

H.J. Res. 804. An act making continuing appropriations for the fiscal year 1968, and for other purposes.

ADJOURNMENT

Mr. HUNGATE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 28 minutes p.m.), the House adjourned until tomorrow, Thursday, August 31, 1967, at 12 o'clock noon.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. TAYLOR: Committee on Interior and Insular Affairs. H.R. 5605. A bill to provide for the establishment of the Florissant Fossil Beds National Monument in the State of Colorado; with amendment (Rept. No. 622). Referred to the Committee of the Whole House on the State of the Union.

Mr. TAYLOR: Committee on Interior and Insular Affairs. H.R. 10835. A bill to establish the National Park Foundation; with amendment (Rept. No. 623). Referred to the Committee of the Whole House on the State of the Union.

Mr. HALEY: Committee on Interior and Insular Affairs. H.R. 11847. A bill to provide for the disposition of judgment funds now on deposit to the credit of the Cheyenne-Arapaho Tribes of Oklahoma (Rept. No. 624). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BENNETT:

H.R. 12705. A bill to amend chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, by creating single-officer general and special courts-martial, providing for law officers on special courts-martial, affording accused persons an opportunity to be represented in certain special court-martial proceedings by counsel having the qualifications of defense counsel detailed for general courts-martial, providing for certain pretrial proceedings and other procedural changes, authorizing the Judge Advocate General to grant relief in certain court-martial cases, extending the time within which an accused may petition for a new trial, and for other purposes; to the Committee on Armed Services.

By Mr. BINGHAM:

H.R. 12706. A bill to amend the Internal Revenue Code of 1954 to raise needed additional revenues by tax reform; to the Committee on Ways and Means.

By Mr. BOGGS:

H.R. 12707. A bill authorizing construction of certain navigation channel improvements on the Atchafalaya River and Bayous Chene, Boeuf, and Black in Louisiana; to the Committee on Public Works.

By Mr. BROYHILL of Virginia:

H.R. 12708. A bill to amend the National Capital Planning Act of 1952 to provide that the Members of Congress who represent the counties of Maryland and Virginia adjacent to the District of Columbia shall be ex officio members of the National Capital Planning Commission; to the Committee on the District of Columbia.

H.R. 12709. A bill to designate the bridge authorized by the act of October 4, 1966, as the Light Horse Harry Lee Bridge; to the Committee on the District of Columbia.

By Mr. DICKINSON:

H.R. 12710. A bill to amend section 620 of the Foreign Assistance Act of 1961 to prohibit assistance to any country which is 6 months or more in arrears with respect to payment of its assessed share of United Nations expenses; to the Committee on Foreign Affairs.

H.R. 12711. A bill to amend title II of the Social Security Act to provide for cost-of-living increases in the benefits payable thereunder; to the Committee on Ways and Means.

H.R. 12712. A bill to amend title II of the Social Security Act to increase (from $1,500 to $3,000) the amount of outside earnings permitted each year without any deductions from benefits thereunder; to the Committee on Ways and Means.

By Mr. DINGELL:

H.R. 12713. A bill to provide for the issuance of a special postage stamp to commemorate the 50th anniversary of the independence of the Baltic States (Estonia, Latvia, and Lithuania); to the Committee on Post Office and Civil Service.

By Mr. DONOHUE:

H.R. 12714. A bil to amend the tariff schedules of the United States with respect to the rate of duty on whole skins of mink, whether or not dressed; to the Committee on Ways and Means.

By Mr. GOODELL:

H.R. 12715. A bill to amend the tariff schedules of the United States with respect to the temporary rate of duty for color television picture tubes; to the Committee on Ways and Means.

By Mr. HELSTOSKI:

H.R. 12716. A bill to amend the Internal Revenue Code of 1954 to eliminate the percentage depletion method for determining the deduction for depletion of oil and gas wells; to the Committee on Ways and Means.

H.R. 12717. A bill to amend the Internal Revenue Code of 1954 to provide that any unmarried person who maintains his or her own home shall be entitled to be taxed at the rate provided for the head of a household; to the Committee on Ways and Means.

By Mr. KUPFERMAN:

H.R. 12718. A bill to amend section 403 of title 23, United States Code, to authorize research on certain specified problems; to the Committee on Public Works.

By Mr. MIZE:

H.R. 12719. A bill to amend the income limitation provisions applicable to veterans and widows of veterans receiving non-service-connected disability pensions under chapter 15 of title 38, United States Code; to the Committee on Veterans' Affairs.

By Mr. PETTIS:

H.R. 12720. A bill to establish a Small Tax Division within the Tax Court of the United States; to the Committee on Ways and Means.

By Mr. SCOTT:

H.R. 12721. A bill relating to the prohibition of riots and incitement to riot in the District of Columbia; to the Committee on the District of Columbia.

H.R. 12722. A bill to provide for orderly trade in textile articles; to the Committee on Ways and Means.

By Mr. WYMAN:

H.R. 12723. A bill to incorporate the Catholic War Veterans of the United States of America; to the Committee on the Judiciary.

By Mr. ZWACH:

H.R. 12724. A bill to amend title 39, United States Code, to extend city delivery service, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. HANNA:

H.J. Res. 812. Joint resolution to provide for the issuance of a gold medal to the widow of the late Walt Disney and for the issuance of bronze medals to the California Institute of the Arts in recognition of the distinguished public service and the outstanding contributions of Walt Disney to the United States and to the world; to the Committee on Banking and Currency.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BROYHILL of Virginia (by request):

H.R. 12725. A bill for the relief of Walid Y. Kirma; to the Committee on the Judiciary.

H.R. 12726. A bill for the relief of Nashaiat Y. Kirma and his wife, Suad M. Kirma; to the Committee on the Judiciary.

By Mr. BURTON of California:

H.R. 12727. A bill for the relief of Norma J. Salunga; to the Committee on the Judiciary.

By Mr. DINGELL:

H.R. 12728. A bill for the relief of Alfredo Caprara; to the Committee on the Judiciary.

By Mr. FINO:

H.R. 12729. A bill for the relief of Sabato Ruberto; to the Committee on the Judiciary.

H.R. 12730. A bill for the relief of Giovanni DiMaggio; to the Committee on the Judiciary.

By Mr. HELSTOSKI:

H.R. 12731. A bill for the relief of Guissepe Castellano; to the Committee on the Judiciary.

H.R. 12732. A bill for the relief of Erlinda Inducil Sison; to the Committee on the Judiciary.

By Mr. SCHEUER:

H.R. 12733. A bill for the relief of Catherine Veronica Conlan; to the Committee on the Judiciary.

By Mr. WHALEN:

H.R. 12734. A bill for the relief of Calogero Gianbrone; to the Committee on the Judiciary.

SENATE

WEDNESDAY, AUGUST 30, 1967

(Legislative day of Tuesday, August 29, 1967)

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.

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

Eternal Spirit, amid the tensions of these terrific days, we seek in Thy presence a saving experience of inner quiet and certainty.

In these days with destiny, grant that those who here speak to the Nation, and for the Republic, may be true to their high calling as servants of the common good.

We come in deep anxiety concerning the world the next generation will inherit from our hands.

Facing decisions with destiny, unite our hearts and minds, we beseech Thee, in a mighty purpose that our Nation's strength, material and spiritual, be dedicated to throw open the gates of more abundant life for all mankind.

We ask it in the name which is above every name. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Tuesday, August 29, 1967, be approved.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a period, not in excess of 15 minutes, for the transaction of routine morning business as in legislative session, and that at the conclusion of that period, the Senate resume the consideration of executive business.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

SENATOR TYDINGS ADDRESSES NATIONAL STUDENT ASSOCIATION

Mr. MANSFIELD. Mr. President, on Saturday, August 26, at the University of Maryland, the distinguished Senator from Maryland [Mr. TYDINGS] delivered a speech on Vietnam.

Senator TYDINGS, as has every Member of the Senate, and as has the President of the United States, has done a great deal of soul searching and has spent a great deal of time and thought on this most important subject which confronts the Nation and, indeed, the world today. As a result of the thoughtful consideration which he has given to this subject, he delivered a speech of great significance which I think is worthy of the consideration of the Senate and the Congress as a whole. Because of the high regard for Senator TYDINGS and the detailed content of his remarks I ask unanimous consent that the well-considered, thought-out views of the distinguished Senator from Maryland be printed at this point in the RECORD.

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

VIETNAM

(Address of Senator JOSEPH D. TYDINGS at the Final Plenary Session of the National Student Association, University of Maryland, College Park, Md.)

I want to talk to you tonight about the war in Vietnam.

I am a member of the generation which our Secretary of State likes to call the generation which has faced the post-World War II problem of constructing a durable peace. As it happens, it fell to me during my military service to patrol the Soviet zone border in Germany and Czechoslovakia at the very time the Communist takeover of Czechoslovakia confirmed the beginning of the Cold War.

I have been to Vietnam. Just two weeks ago I spent almost five hours in Pearl Harbor with Admiral Sharp, Commander of the Pacific Theater, reviewing the war situation. So I think it fair to say that I am not a complete stranger to the questions Vietnam poses. Yet I must say that I am profoundly disturbed about our involvement in Vietnam and the implications of that involvement for our entire foreign policy.

I am not satisfied with the explanations and defenses of our Vietnam policy offered by its authors and advocates in the Department of State. I believe the time has come to reexamine the Vietnam situation and strike out anew in the pursuit of peace.

We now have more men committed in Vietnam than we had in Korea at the height of that conflict. Our 13,000 dead exceed one-third of the Korean total and our 75,000 wounded exceed three-fourths of that total. Both figures are rising geometrically with the passage of time. American casualties for the first half of 1967 are double the number suffered during the first half of 1966.

We find ourselves defending a government in Vietnam which is either unknown, uncared for, or despised by many of the people it rules.

The war in Vietnam now costs at least thirty billion dollars a year; $600 million a week; $85 million a day. The war in Vietnam costs as much every month as our own domestic war on poverty costs in a year. The war costs as much every week as the Demonstration Cities program will cost this entire year. The war costs every day as much as Congress will vote this whole year for hospital modernization, rat extermination, and juvenile delinquency control. Yet, despite the expenditure of these thousands of lives and billions of dollars, we find ourselves after two years of massive engagement still confronted by an adversary who still appears to prefer death to surrender and destruction to compromise.

In our own country the war's cost has disrupted the orderly expansion of our economy, doubled the rate of inflation, and will this year create our largest peacetime deficit in history, even if taxes are increased. Urgent domestic priorities have been ignored, deferred or pathetically underfunded.

The fact of the matter is that, whatever the actual extent of our national financial resources, it is politically impossible to pay for the urgent priorities at home while we must bear this enormous war cost in Vietnam. Every dime of the projected $29 billion deficit we face this year is attributable to the cost of the war in Vietnam. Yet this massive war deficit is, I am sorry to report, seized upon with increasing success by opponents of needed programs at home to defeat adequate funding for urgent domestic priorities such as city rebuilding, mass transit construction assistance, rural economic development, and job training.

Meanwhile, public opinion about the wisdom of our course in Vietnam has so divided our people that the latest polls show fully 40% now believe our original troop commitment was a mistake.

Abroad, the war is dividing us from our allies, all but a handful of whom refuse to support our role in Vietnam with either words or deeds. The brilliant hopes for progress toward peace which crowned our courage in the Cuban missile crisis have been enveloped in the icy murk which has overwhelmed nearly all our efforts toward a lessening of tension with the Soviet Union and other Communist countries. At the very time we should be trying to drive wedges between the Communist bloc countries, the war in Vietnam is minimizing our economic and diplomatic contacts with them.

Although I have consistently supported every realistic initiative toward peace, I have tried to give every benefit of doubt to the policy which has been pursued in Vietnam. But the fact is now starkly clear that no one who could have known ten, five or three years ago the cost we are paying today in Vietnam would have suggested that Vietnam was worth that price. I believe our growing commitment of military forces to Vietnam is a mistake which no degree of retrospective rationalization can justify. If Vietnam has become a test of our national will upon which the value of our word in the world will stand or fall, it has become such a test by our own making, not by any intrinsic strategic value of that unhappy land.

The United States is not going to cut and run in Vietnam. Too many innocent persons have staked their lives and welfare on our protection there for us now to leave them to the tender mercies of the Vietcong. But I think we must clearly recognize the enormous cost of our present course and reckon with the consequences of continuing to attempt to solve the Vietnam dilemma by bombing our adversaries to the brink of obliteration, heedless of the cost, the risk of Soviet or Chinese intervention, and the judgment of history on our deeds.

Blessed as we are in this nation, we are not immune from history. If our course in Vietnam leads us to nuclear war, we will surely not be spared the ghastly consequences of nuclear bombardment.

If we can bomb and shell and shoot our adversaries into capitulating to our will, what will we have gained in Vietnam? A client state dependent indefinitely on us for her economic stability and defense?

And if we flatten every work of man used or inhabited by our adversaries in Vietnam, and look about us and count our dead and wounded and calculate our gain, might we not like King Pyrrhus, in another war declare: "One more such victory and I am lost"?

There are those who seem to believe the solution lies in an expansion of the war to the very threshold of nuclear weapons. They would ignore the incalculable danger which such mindless expansion of the war entails. They seem to believe China's ability to intervene will be permanently immobilized. They seem to believe that there is no point beyond which our militancy in Vietnam might so humiliate the Soviet Union as to lead them to confront us with nuclear alternatives—either get out or exchange nuclear disaster—just as we confronted them in Cuba.

Clearly, the time has come to stop the continuous escalation. We must move toward peace in Vietnam, not toward greater war. The coming elections in Vietnam provide a unique opportunity for a renewed search for roads to the negotiating table.

Whatever their shortcomings, those elections will give the new Vietnamese government a popular warrant no recent South Vietnamese government could claim. And to those who would condemn the elections in advance, because they are not perfect, I recommend a study of Lincoln's second election, during our own civil war, and, as a matter of fact, a reading of the recent electoral history of parts of our own country.

The fact is that the elected South Vietnamese government can claim a mandate from the people both for government and for peace negotiation. We should not let rigidity on the part of any new elected government or cynicism in our own country fritter away this fresh chance for peace. We should seize this chance and make new departures toward negotiations.

Up until now, despite countless suggestions advanced by our own government, in the Congress, by private citizens and by many abroad, neither the United States nor North Vietnam nor the Vietcong have ever gotten beyond the stage of explaining why the enemy's proposals are unacceptable. We must do better than that.

The new South Vietnamese government, after the elections, should open direct negotiations with the National Liberation Front. Both the NLF and the North Vietnamese

claim that the war in the South is conducted by the Front and that the NLF is the proper and indispensable party to negotiations. Why should we not explore the possibility of separate negotiations with the Vietcong? The French in Algeria negotiated with nationalists like Ben Bella in jail in France; with the Liberation Front in Tunis; and with guerrilla leaders in the field. The British played the same three-cornered game in Cyprus. We should try it in Vietnam.

In addition, as the South Vietnamese move toward negotiations, they should propose a general cease-fire to all belligerents.

No obstinacy, false national pride or nearsightedness should be allowed to squander this chance for peace. We've simply got to make it clear to the South Vietnamese that this is their war, not ours, and that they must fight it more vigorously than they have and seek to end it as quickly as they can. The South Vietnamese army must stand and fight, not leave the job to our brave men in Vietnam. If the South Vietnamese people do not have the will to save themselves, nothing we can do will save them.

We must face the fact, as President Kennedy said, "that the United States is neither omnipotent nor omniscient . . . that we cannot impose our will upon the other 94% of mankind—that we cannot right every wrong or reverse every adversity—and that therefore there cannot be an American solution to every world problem."

In the last analysis, the most effective weapon against tryranny is not a bomb, a rocket, or a bullet, but the fire of freedom so easily ignited in men's souls and so impossible of destruction, regardless of weaponry.

This country's most effective exports are not tanks and planes and guns, but American enthusiasm for liberty, American know-how and American capital.

America's place in history will be measured not by our military power, but by our Alliance for Progress and Food for Peace; not by the number of enemy we kill, but by the lives we save, the industries we build, the help we give other peoples to help themselves.

The weak and the cynical urge this generation to "drop out" and condemn the fabric of our society because of its flawed threads. But the future of this country and the world belongs to you and to no one else, to shape or be shaped by it, to turn to man's achievement or to his destruction. No one is going to demand an adequate allocation of our resources to help other nations help themselves, unless you do. No one will move toward broader understanding among all peoples and against the barriers that tragically and dangerously divide us unless you will.

Nor can we realistically hope that the future will always spare us from armed conflict in defense of our system of freedom and values. We will need courage to meet such challenges, but wisdom as well to resist entanglement when a situation does not pose a dangerous challenge to our national security or, especially as Vietnam may be, is beyond our practical ability to affect.

No nation in the history of the world approaches the United States in its zeal for liberty, its willingness to share its blessings, and its ability to help mankind. Despite the mistakes our critics are so quick to seize upon, we are still, as Jefferson said, "the last best hope of earth." I believe that if we are wise and courageous, freedom will prevail, not at the end of a gun, but through the seeds of hope and tools of industry and education which you can, if you will, create.

VIETNAM AND THE UNITED NATIONS

Mr. LONG of Missouri. Mr. President, the Vietnam war must be brought to a responsible end as quickly as possible. Its high cost in human lives and the high risk it presents to world peace demand that every avenue be sought and every effort be made to obtain an early peace.

President Johnson has my support in helping South Vietnam in its struggle against aggression. But just as our military efforts have been increased, so should our peace efforts be increased.

On Monday, the majority leader and several other of my colleagues called for a renewed effort on our Government's part to bring the Vietnam war before the Security Council of the United Nations. I want to associate myself with their position. I believe we should pursue this course diligently. We should do all we can to bring the Vietnam situation before the Security Council. Several arguments have been advanced as to why we could not be successful in bringing the Vietnam issue before the Security Council, but I am convinced we should try, and try hard. Then, if we are prevented from doing so, we should take the Vietnam war before the General Assembly.

The United Nations was organized to serve peace, and few, if any, situations have developed during its existence that have so threatened world peace. Therefore, I urge the President to take the initiative necessary to bring before the Security Council the U.S. resolution on Vietnam that has been on its agenda since early 1966.

Such action would prove to the world our Nation's sincerity; and I believe if directly faced with the responsibility, the United Nations would develop a solution which would bring an honorable peace to Southeast Asia.

The United Nations, I am convinced, offers the best hope for peace in Vietnam, and we must take the action necessary to bring the Vietnam issue before the world organization.

TRIBUTE TO U.S. MARSHAL FLOYD STEVENS

Mr. HART. Mr. President, too often the competent, efficient, public official is unnoticed and unsung. I am delighted to have an opportunity to bring to the attention of the readers of this RECORD the story of an able, devoted public servant whose faithful discharge of duty is reported by the Grand Rapids Press of August 20, 1967.

As the U.S. marshal for the Western District of Michigan, Floyd Stevens has served in a fashion which adds to the long record of a selfless service by U.S. marshals and their deputies. I take this opportunity to thank Marshal Floyd Stevens and those associated with him in Grand Rapids. I want also to suggest to my colleagues that the responsibilities which attach to those in the Federal marshals' office require our recognizing the need to increase their compensation and give them career status. As law enforcement is upgraded in this country, and the salaries of State and city law enforcement agencies are advanced, as they should be, the Federal Government must insure comparable compensation if the quality of service expected of the office of the marshal and his employees is to be available. This is a problem which has been before the Congress for some years, and I hope we will resolve it in this Congress.

I ask unanimous consent to have the article printed in the RECORD.

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

U.S. MARSHALS' OFFICE NEARS SECOND CENTURY OF SERVICE

President George Washington established this country's oldest law enforcement agency shortly after his inauguration.

It was Sept. 26, 1789, when the Senate confirmed President Washington's nomination of 13 U.S. marshals—one for each of the 13 original states.

The first 13 marshals became "handymen" of the federal administration and their duties included taking the census, hiring and supervising jails for federal prisoners, receiving and executing precepts from French consuls and executing courts-martial.

Although duties have changed, the federal post is still active in its 178th year.

LITTLE KNOWN ORGANIZATION

"A lot of people think we're extinct," admits U.S. Marshal Floyd Stevens with a smile. "Very few know anything about us or what we do."

One of 91 U.S. marshals scattered throughout the country, Stevens operates from an office on the third floor of the old Grand Rapids post office building. He was appointed by President John F. Kennedy in June of 1961 and reappointed to a second four-year term in 1965 by President Johnson.

As an officer of the Department of Justice and the federal courts, Stevens is supervised and directed by the attorney general through Chief U.S. Marshal James McShane.

His western Michigan district is made up of 49 counties, including all of the Upper Peninsula.

HAS SHERIFF'S POWERS

According to law, "A U.S. marshal and his deputies, in executing the laws of the United States within a state, may exercise the same powers which a sheriff of such a state may exercise in execution of the laws thereof." This includes the power to make arrests and license to carry firearms.

Stevens' staff includes Chief Deputy John Beatty; Deputy Leo Wilson, who operates a field office in Marquette; Deputies Ben Decker, Karl Wheat and Richard Grossenbacher; and office girl Fran Malizia.

Among the duties of a U.S. marshal are maintaining order in federal courts, transporting federal prisoners, executing and serving writs processes and orders issued under federal authority and serving as paymaster for the federal courts, probation department and the U.S. District Attorney's office and staff.

Stevens says he works with the FBI, Secret Service, Postal Service and other U.S. agencies on investigations and occasionally conducts an investigation of own.

U.S. marshals are instructed to be concerned with "defiance of federal authority or disturbances involving the interests of the government" and may make arrests without a warrant "for any offense against the United States committed in their presence or for any felony under U.S. law."

The foregoing instructions resulted in the appearance of U.S. marshals in certain southern states a few years ago to help enforce federal integration orders. Stevens sent two of his deputies to Mississippi to serve as representatives of the U.S. Government on an issue involving civil rights.

RARE PUBLIC APPEARANCE

Many people were mildly surprised when U.S. marshals appeared on the integration scene in positions of authority as direct representatives of the attorney general and the federal courts. Until that time, most people assumed that the marshal's office had passed

on along with frontier days and "the Wild West." Officers wear no uniforms and generally work quietly behind the scenes on federal cases which are often less than sensational.

The Wild West concept of a marshal, as exemplified by Marshal Matt Dillon on television's Gunsmoke, was apparently accurate at one time. Early marshals were constantly subjected to hazards resulting from lawlessness in the frontier areas and it was often difficult to fill the post.

Attorney General William Miller commented in 1889 that "In certain localities, no occupation is so dangerous as the faithful performance of duty by a U.S. marshal."

OTHER ENFORCEMENT GREW

With the advent of efficient local police agencies, however, the federal marshal reverted more and more to official governmental chores.

Prior to becoming a marshal, Stevens, 62, of 4121 Burton Rd. SE, was an engineer with the Michigan Highway Department and U.S. Army, an active Kent County Democrat, chairman of the Michigan State Athletic Board of Control (boxing commissioner) and president of the National Boxing Association.

The marshal says he fought as an amateur but "had enough sense to stay outside the professional ropes." He also admits he quit the fight game at the right time—just before its decline to present levels.

Stevens is still interested in boxing and is also an enthusiastic hunter and fisherman.

He sees the office of U.S. marshal as an important one, even though it may be less dramatic than other police agencies. And he takes pride in the fact that his authority dates back to the father of our country.

THE NATIONAL GUARD AND THE RIOTS—WHERE LIES THE BLAME?

Mr. HANSEN. Mr. President, much has been said recently in the press and in hearings before the Senate and House concerning the performance of National Guard troops in Detroit last month.

Recently, before the House Armed Services Subcommittee, Lt. Gen. John L. Throckmorton and his deputy, Maj. Gen. Charles P. Stone, called the National Guardsmen in Detroit, "trigger-happy and nervous." General Throckmorton, who had issued an order for the Guard to keep their weapons unloaded, was critical of the Guard's failure to get word of his order through to their troops for days. "This," he pointed out, "is no problem in a properly trained unit."

Said Throckmorton:

Lack of fine discipline also reflected adversely on the command and control elements.

General Throckmorton further asserted, in reply to those who insisted that the Guard had been on their feet too long to take time out for a shave, that "a soldier can always find an opportunity to shave once every 24 hours."

Many of these accusations are undoubtedly true. Certainly, the actions of some guardsmen in Detroit are reasons for public concern. Nevertheless, the blame for imperfect performance cannot be heaped upon the National Guard nor upon its military leaders alone. A great deal of the responsibility must rest upon the civilian leadership in the Pentagon, which has continued to reassure the Nation of the Guard's high degree of military preparedness.

Numerous times since 1965, Secretary McNamara and members of his staff have testified before congressional committees as to the readiness of the National Guard.

On March 2, 1966, Secretary McNamara stated at a press conference:

The Army Selected Reserve Force is at a higher state of readiness than any reserve force in the history of the reserve components.

This may be true of conventional warfare.

But due to lack of foresight on the part of the Secretary, the Guard was less than ready for the warfare in our cities.

Watts, and the destruction, turmoil, and civil disorder which occurred there, should have established that riot control would be in the Guard's future and that readiness for such duty would be of paramount interest in training of the Guard.

There is a vast difference between duty in the jungles of Vietnam and on the streets of American cities. Watts should have established that the streets were the more likely battleground for the Guard.

Effective discipline is as important in controlling a riot as it is in killing an enemy soldier.

The Constitution of the United States makes clear that the dual purpose of the National Guard is "to execute the laws of the Nation, suppress insurrections, and repel invasion."

Certainly Secretary McNamara, who is praised continually for his farsighted, computerized savings in the Defense Department, should have foreseen, in the light of Watts, that two-phased training with its two-phased responsibility was a necessity. Nevertheless, training continued in conventional warfare despite the long hot summers that were obviously yet to come.

As the Department of Defense now acknowledges, riot control in urban areas is a highly complicated responsibility necessitating much training and preparation.

But it was not until August 10 of this year—2 years after Watts—that the Defense Department announced that such training would be given National Guardsmen.

I think it would be wise, Mr. President, that as we criticize our National Guard units for their actions in Detroit in a tense, dangerous situation, we should look behind those men and their military superiors to the civilian leadership that has failed to recognize the danger and to give the Guard adequate training for the tasks it would be called on to perform.

ORDER OF BUSINESS

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

The PRESIDING OFFICER (Mr. LAUSCHE in the chair). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate resume consideration of executive business.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the nomination on the calendar under "New Report."

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

DEPARTMENT OF COMMERCE

The legislative clerk read the nomination of Joseph W. Bartlett, of Massachusetts, to be General Counsel of the Department of Commerce.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

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

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

SUPREME COURT OF THE UNITED STATES

Mr. MANSFIELD. Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will state the pending business.

The LEGISLATIVE CLERK. The nomination of Thurgood Marshall, of New York, to be an Associate Justice of the Supreme Court of the United States.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HART. 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. HART. Mr. President, for the third time the Senate is asked to advise and consent to the nomination of Thurgood Marshall—this time to serve as an Associate Justice of the Supreme Court of the United States.

In 1962 the Senate advised and consented to the nomination of Thurgood Marshall as a judge of the Second Circuit Court of Appeals. Later, after his distinguished service on that court, the Senate advised and consented to the nomination of Judge Marshall as Solicitor General of the United States. Today I hope very much that the Senate again will advise and consent to the nomination of this very distinguished American lawyer.

Mr. President, I suspect that the Senate has never had for consideration or approval to serve on the Supreme Court one whose qualifications are so dramatically and compellingly established. I have no idea as to the batting averages of lawyers who serve in this body in appearances before the Supreme Court as advocates. A few Senators may have appeared there once or twice. I never did.

Thurgood Marshall, as an advocate, won in the Supreme Court on 29 out of 34 occasions. Indeed, I suspect that a

part of his troubles in obtaining advice and consent to nominations on earlier occasions is explained by the dramatic success he did achieve in the Supreme Court. I suppose his most significant success was in connection with the Brown case. Then, as the Government's principal litigating officer, he maintained the remarkable batting average that we associate with those who serve as Solicitor General. So as an advocate both for the Government and for private citizens, Thurgood Marshall's record before the Supreme Court probably is exceeded by no man or woman at the American bar; certainly, it can be exceeded by only a few. Therefore, we have this background against which to measure his ability as a lawyer.

Then, we have Mr. Marshall's service as an appellate judge in the Federal judiciary. The senior judge of the second circuit, on which Judge Marshall sat, has described Thurgood Marshall as a man of exceptional ability. While sitting as a judge on the second circuit, he participated in decisions on a variety of matters, characteristic of the almost endless variation of matters that now go into Federal litigation. So we have this second measure of the man: Actual service and ability as a Federal judge.

Mr. President, I am proud to announce that a majority of the members of the Committee on the Judiciary report favorably and recommend the confirmation of the nomination of Thurgood Marshall. I think that both in private practice and in public office he has demonstrated the possession of those characteristics and qualities which we admire in lawyers and seek in judges.

In connection with the several earlier occasions on which the Senate considered nominations of Thurgood Marshall, hundreds and hundreds of pages of testimony have been taken. There is on the desk of each Senator this morning a full record provided by the Committee on the Judiciary. This record, together with the record made before the Committee on the Judiciary in 1962, when we considered Mr. Marshall's nomination to the circuit court, is the basis upon which the Committee on the Judiciary strongly recommends the approval of the nomination.

I think the Senate will do itself honor, the Court will be graced, and the country will be benefited by the confirmation of the nomination of Thurgood Marshall to the Supreme Court.

LEGISLATIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, to include all statements made during the executive session not germane to the nomination of Thurgood Marshall, with a limitation of 3 minutes on statements.

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

ENROLLED BILLS SIGNED

The PRESIDENT pro tempore announced that on today, August 30, 1967, the Vice President signed the following enrolled bills, which had previously been signed by the Speaker of the House of Representatives:

H.R. 3717. An act for the relief of Mrs. M. M. Richwine;

H.R. 5876. An act to amend titles 5, 14, and 37, United States Code, to codify recent law, and to improve the Code; and

H.R. 11945. An act to amend the college work-study program with respect to institutional matching and permissible hours of work.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session,

The PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

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

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

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

S. 1633. An act to amend the Act of June 12, 1960, relating to the Potomac interceptor sewer, to increase the amount of the Federal contribution to the cost of that sewer; and

H.R. 547. An act to authorize the Secretary of Agriculture to sell the Pleasanton Plant Materials Center in Alameda County, Calif., and to provide for the establishment of a plant materials center at a more suitable location to replace the Pleasanton Plant Materials Center, and for other purposes.

EXECUTIVE COMMUNICATIONS, ETC.

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

REPORT ON EXPORT-IMPORT BANK INSURANCE AND GUARANTEES ISSUED IN CONNECTION WITH EXPORTS TO YUGOSLAVIA

A letter from the Secretary, Export-Import Bank of Washington, Washington, D.C., reporting, pursuant to law, on insurance and guarantees issued by that Bank in connection with exports to Yugoslavia, for the month of July 1967; to the Committee on Appropriations.

REPORT ON DEPARTMENT OF ARMY RESEARCH AND DEVELOPMENT CONTRACTS

A letter from the Acting Assistant Secretary of the Army, Research and Development, transmitting, pursuant to law, a report on research and development contracts, for the 6-month period ended June 30, 1967 (with an accompanying report); to the Committee on Armed Services.

DISPOSAL OF CORUNDUM FROM NATIONAL STOCKPILE

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

DISPOSAL OF CASTOR OIL FROM NATIONAL STOCKPILE

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

DISPOSAL OF BERYL ORE FROM NATIONAL STOCKPILE

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

REPORT ON DEPARTMENT OF DEFENSE PROCUREMENT FROM SMALL AND OTHER BUSINESS FIRMS

A letter from the Assistant Secretary of Defense (Installations and Logistics), transmitting, pursuant to law, a report on Department of Defense procurement from small and other business firms, for the fiscal year 1967 (with an accompanying report); to the Committee on Banking and Currency.

REPORTS OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on balance-of-payments aspects of barter contracts for the acquisition of industrial diamonds for the stockpile, Department of Agriculture, Department of State, dated August 1967 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on need for revision of foreign service travel regulations to achieve a reduction in per diem costs, Department of State, dated August 1967 (with an accompanying report); to the Committee on Government Operations.

REPORT ON SOUTHERN SCHOOL DESEGREGATION

A letter from the Chairman, U.S. Commission on Civil Rights, Washington, D.C., transmitting pursuant to law, a report on southern school desegregation, 1966–67 (with an accompanying report); to the Committee on the Judiciary.

DISPOSITION OF EXECUTIVE PAPERS

A letter from the Acting Archivist of the United States, transmitting, pursuant to law, a list of papers and documents on the files of several departments and agencies of the Government which are not needed in the conduct of business and have no permanent value or historical interest, and requesting action looking to their disposition (with accompanying papers); to a Joint Select Committee on the Disposition of papers in the Executive Departments.

The PRESIDENT pro tempore appointed Mr. MONRONEY and Mr. CARLSON members of the committee on the part of the Senate.

REIMBURSEMENT OF STATE ADVANCES TO MUNICIPALITIES

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the resolution passed by the General Assembly of the State of Connecticut memorializing the Congress to authorize the reimbursement of State advances to municipalities for planning studies by referring to the ap-

propriate committee and printed in the RECORD at this point.

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

The resolution was referred to the Committee on Banking and Currency, as follows:

RESOLUTION MEMORIALIZING CONGRESS TO AUTHORIZE THE REIMBURSEMENT OF STATE ADVANCES TO MUNICIPALITIES FOR PLANNING STUDIES

Resolved by this Assembly:

Whereas, the Congress of the United States has recognized the existence of planning problems in urban areas resulting from the increasing concentration of population by authorizing grants for local governments to help solve such planning problems through the initiation and continuation of planning programs and the organization and strengthening of local planning staffs; and

Whereas, lack of sufficient federal appropriations to meet the response of local municipalities and delayed processing of grants are proving detrimental to the purposes of such grants by preventing local municipalities from initiating or completing planning programs before enthusiasm has dwindled or development problems have escalated; and

Whereas, state legislatures should be encouraged to assist municipalities in meeting their responsibilites by advancing funds to municipalities for such planning programs before initiative and enthusiasm have deteriorated;

Now, therefore, be it resolved, that the general assembly of the state of Connecticut memorialize the Congress of the United States to provide in legislation authorizing grants to municipalities for urban planning assistance under section 701 of the housing act of 1954, as amended, that any state may advance funds to a municipality for a planning project under section 701 which may become eligible for a federal grant; and that should such project become eligible for a federal grant under section 701, the state shall be reimbursed by the federal government in an amount equal to such advance provided that such reimbursement is no greater than the federal share of the cost of such project.

Be it further resolved that the clerks of the house and senate cause copies of this resolution to the President of the United States Senate; the Speaker of the United States House of Representatives and to the members of each of said bodies from the state of Connecticut.

CHARLES M. MCCOLLAM, Jr.,
Clerk of the Senate.
PAUL B. GROOBERT,
Clerk of the House.
ELLA T. GRASSO,
Secretary of State.

REPORTS OF A COMMITTEE

The following reports of a committee were submitted:

By Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, without amendment:

H.R. 9837. An act to amend the Legislative Branch Appropriation Act, 1959, as it relates to transportation expenses of Members of the House of Representatives, and for other purposes (Rept. No. 555);

S. Con. Res. 42. Concurrent resolution authorizing the printing for the use of the Senate Banking and Currency Committee, of additional copies of its hearings of the present Congress on housing legislation (Rept. No. 556);

S. Res. 162. Resolution authorizing the printing of additional copies of the committee print entitled "Planning-Programming-Budgeting: Official Documents" (Rept. No. 557);

S. Res. 163. Resolution authorizing the printing of additional copies of the committee print entitled "Planning-Programming-Budgeting: Selected Comment" (Rept. No. 552);

S. Res. 164. Resolution to provide additional funds for the Committee on Labor and Public Welfare (Rept. No. 553); and

S. Res. 165. Resolution authorizing a study of matters pertaining to the education and related problems of Indian children (Rept. No. 554).

By Mr. JORDAN, from the Committee on Rules and Administration, with amendments:

S. Res. 157. Resolution to print as a Senate document a report on "Waste From Watercraft" (Rept. No. 558);

S. Res. 158. Resolution to print as a Senate document a report entitled "Manpower and Training Needs in Water Pollution Control" (Rept. No. 559); and

S. Res. 159. Resolution to print as a Senate document a report on "Automotive Air Pollution" (Rept. No. 560).

AUTHORIZATION OF A STUDY OF THE EDUCATION AND RELATED PROBLEMS OF INDIAN CHILDREN—REPORT OF A COMMITTEE

Mr. KENNEDY of New York, from the Committee on Labor and Public Welfare, reported the following original resolution (S. Res. 165); which was referred to the Committee on Rules and Administration:

S. RES. 165

Resolved, That the Committee on Labor and Public Welfare, or any duly authorized subcommittee thereof, is authorized under sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdictions specified by rule XXV of the Standing Rules of the Senate, to examine, investigate, and make a complete study of any and all matters pertaining to the education and related problems of Indian children.

SEC. 2. For the purposes of this resolution the committee, from September 1, 1967, to January 31, 1968, inclusive, is authorized (1) to make such expenditures as it deems advisable; (2) to employ, upon a temporary basis, technical, clerical, and other assistants and consultants: *Provided,* That the minority is authorized to select one person for appointment and the person so selected shall be appointed and his compensation shall be so fixed that his gross rate shall not be less by more than $2,300 than the highest gross rate paid to any other employee; and (3) with the prior consent of the heads of the departments or agencies concerned, and the Committee on Rules and Administration, to utilize the reimbursable services, information, facilities, and personnel of any of the departments or agencies of the Government.

SEC. 3. The Committee shall report its findings, together with its recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than January 31, 1968.

SEC. 4. Expenses of the committee under this resolution, which shall not exceed $35,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

KEEN JOHNSON AND CATHERINE JOHNSON REDANS—REPORT OF A COMMITTEE

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported the following original resolution (S. Res. 166); which was placed on the calendar:

S. RES. 166

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Keen Johnson, brother, and Catherine Johnson Redans, sister, of Christine Johnson, an employee of the Senate at the time of her death, a sum to each equal to six months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

ERNEST E. WILES—REPORT OF A COMMITTEE

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported the following original resolution (S. Res. 167); which was placed on the calendar:

S. RES. 167

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Ernest E. Wiles, widower of Yukie Wiles, an employee of the Senate at the time of her death, a sum equal to five months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

REPORT ENTITLED "PREDICTIONS AND PROJECTIONS OF ELECTION RESULTS"—REPORT OF A COMMITTEE (S. REPT. NO. 561)

Mr. PASTORE. Mr. President, from the Committee on Commerce, I submit a report entitled "Predictions and Projections of Election Results." I ask unanimous consent that the report be printed, together with the supplemental views of the Senator from Indiana [Mr. HARTKE].

The PRESIDING OFFICER. The report will be received and printed, as requested by the Senator from Rhode Island.

EXTENSION OF TIME FOR FINANCE COMMITTEE TO REPORT ON PRESIDENTIAL ELECTION CAMPAIGN FUND ACT

Mr. LONG of Louisiana. Mr. President, the Senate Committee on Finance is under instruction to report by September 1 with respect to the Presidential Election Campaign Fund Act and campaign financing expenditures related thereto.

The committee has held hearings and voted a number of times. We have instructed our staff to draft the best thoughts of all Senators.

It appears, unfortunately, that we will not be able to muster a quorum of the committee tomorrow, when we had planned to vote on this matter, and probably will not be assured of a quorum until after we come back from the Labor Day adjournment.

In view of the fact that there is not too much urgency about the matter, I have discussed it with Senators on both sides of the aisle and they have agreed to an extension of time.

Mr. President, I ask unanimous consent that the Committee on Finance have

until September 15 to report on this measure.

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

BILLS AND JOINT RESOLUTION INTRODUCED

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

By Mr. HANSEN:

S. 2357. A bill to amend the Internal Revenue Code of 1954 with respect to returns and deposits of the excise taxes on gasoline and lubricating oils; to the Committee on Finance.

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

By Mr. PERCY (for himself, Mr. JAVITS and Mr. PROUTY):

S. 2358. A bill to amend chapter 34 of title 38, United States Code, to authorize additional educational entitlement under such chapter for eligible veterans who have to take refresher courses in order to effectively continue their education or training after service in the Armed Forces; to the Committee on Labor and Public Welfare.

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

By Mr. BARTLETT (for himself and Mr. MORSE):

S. 2359. A bill to amend section 27 of the Merchant Marine Act, 1920, as amended; to the Committee on Commerce.

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

By Mr. BARTLETT (by request):

S. 2360. A bill to amend section 613(b) of the Merchant Marine Act, 1936, as amended; to the Committee on Commerce.

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

By Mr. SPARKMAN:

S. 2361. A bill to provide for the conveyance of certain public land held under color of title to Mrs. Jessie L. Gaines of Mobile, Ala.; to the Committee on Interior and Insular Affairs.

By Mr. COTTON:

S. 2362. A bill for the relief of Charles F. Leahy; to the Committee on Post Office and Civil Service.

By Mr. COTTON (for himself, Mr. MCINTYRE, Mr. KENNEDY of Massachusetts, and Mr. BROOKE):

S. 2363. A bill to authorize the Secretary of the Interior to establish the Bunker Hill National Historic Site in the city of Boston, Mass., and for other purposes; to the Committee on Interior and Insular Affairs.

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

By Mr. SPARKMAN (by request):

S. 2364. A bill to extend the same privileges, protections, and immunities to insured State banks as are available to national banks doing business across State lines; to the Committee on Banking and Currency.

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

By Mr. RIBICOFF:

S. 2365. A bill to authorize the Secretary of the Interior, in cooperation with the States, to protect, preserve, restore, develop and make accessible the Nation's estuarine areas and their natural resources, and for other purposes; to the Committee on Commerce.

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

By Mr. INOUYE:

S. 2366. A bill for the relief of Lam Tuk Man;

S. 2367. A bill for the relief of Wong Yau Mei;

S. 2368. A bill for the relief of Lam Fuk Lee; and

S. 2369. A bill for the relief of Chung Kwa Chow; to the Committee on the Judiciary.

By Mr. BREWSTER:

S. 2370. A bill for the relief of Dr. Shi-Shung Huang; to the Committee on the Judiciary.

By Mr. HILL:

S. 2371. A bill for the relief of Dr. Herman J. Lohmann; to the Committee on the Judiciary.

By Mr. MOSS:

S. 2372. A bill for the relief of Chau Chim, Lap Wo Tsang, Chun Hi Wong, Shu Kwong Chan, Wai Sum Cheng, and Wei Lun Lai; to the Committee on the Judiciary.

By Mr. BARTLETT:

S. 2373. A bill to revise section 4400 of the Revised Statutes, as amended (46 U.S.C. 362), to notify passengers of safety standards on foreign and domestic passenger vessels; to the Committee on Commerce.

By Mr. BARTLETT (by request):

S. 2374. A bill for the relief of Cheng Sze Cheuk, Au Tin Chok, Wah Kam Ng, Kam Lin Wong, and Fo Au Lo; to the Committee on the Judiciary.

By Mr. DIRKSEN (by request):

S. 2375. A bill to incorporate Recovery, Inc.; to the Committee on the Judiciary.

By Mr. TOWER (for himself, Mr. BENNETT, Mr. CANNON, Mr. CARLSON, Mr. CLARK, Mr. CURTIS, Mr. DODD, Mr. DOMINICK, Mr. ERVIN, Mr. HARRIS, Mr. HOLLAND, Mr. HOLLINGS, Mr. INOUYE, Mr. MCCARTHY, and Mr. YOUNG of North Dakota):

S. 2376. A bill to amend chapter 37 of title 38, United States Code, to provide relief for certain veterans purchasing homes with assistance under such chapter who have been recalled to active duty; to the Committee on Banking and Currency.

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

By Mr. MCCARTHY (for himself, Mr. CASE, Mr. HARTKE, Mr. KENNEDY of New York, Mr. METCALF, Mr. MONDALE, Mr. JAVITS, Mr. MCGEE, Mr. WILLIAMS of New Jersey, Mr. HART, Mr. MORSE, Mr. RANDOLPH, and Mr. BYRD of West Virginia):

S. 2377. A bill to extend and improve the Federal-State unemployment compensation program; to the Committee on Finance.

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

By Mr. KENNEDY of Massachusets:

S.J. Res. 110. Joint resolution to authorize a study and investigation of information service systems for State and localities designed to enable such States and localities to participate more effectively in federally-assisted programs and to provide Congress and the President with a better measure of State and local needs and performance under these programs; to the Committee on Government Operations.

(See the remarks of Mr. KENNEDY of Massachusetts when he introduced the above joint resolution, which appear under a separate heading.)

CONCURRENT RESOLUTION

OFFICIAL RECOGNITION OF 150TH ANNIVERSARY OF THE ADMISSION OF THE STATE OF ILLINOIS TO THE UNION

Mr. DIRKSEN (for himself and Mr. PERCY) submitted a concurrent resolution (S. Con. Res. 43) to officially recognize the 150th anniversary of the admission of the State of Illinois to the Union, which was referred to the Committee on the Judiciary.

(See the above concurrent resolution printed in full when submitted by Mr. DIRKSEN, which appears under a separate heading.)

RESOLUTIONS

AUTHORIZATION OF A STUDY OF THE EDUCATION AND RELATED PROBLEMS OF INDIAN CHILDREN

Mr. KENNEDY of New York, from the Committee on Labor and Public Welfare, reported an original resolution (S. Res. 165) to authorize a study of the education and related problems of Indian children, which was referred to the Committee on Rules and Administration.

(See the above resolution printed in full when reported by Mr. KENNEDY of New York, which appears under the heading "Reports of Committees.")

KEEN JOHNSON AND CATHERINE JOHNSON REDANS

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported an original resolution (S. Res. 166) to pay a gratuity to Keen Johnson and Catherine Johnson Redans, which was placed on the calendar.

(See the above resolution printed in full when reported by Mr. JORDAN of North Carolina, which appears under the heading "Reports of Committees.")

ERNEST E. WILES

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported an original resolution (S. Res. 167) to pay a gratuity to Ernest E. Wiles, which was placed on the calendar.

(See the above resolution printed in full when reported by Mr. JORDAN of North Carolina, which appears under the heading "Reports of Committees.")

AMENDMENT OF THE INTERNAL REVENUE CODE OF 1954

Mr. HANSEN. Mr. President, I introduce, for appropriate reference, a bill to amend the Internal Revenue Code of 1954 with respect to returns and deposits of the excise taxes on gasoline and lubricating oil.

This bill would allow petroleum jobbers and suppliers to pay their Federal excise tax on fuels every 30 days instead of every 15 days as the recently imposed regulations of the Treasury Department now require. Thus it would relieve what could be, in the case of the small petroleum jobber, an undue strain on capital.

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

The bill (S. 2357) to amend the Internal Revenue Code of 1954 with respect to returns and deposits of the excise taxes on gasoline and lubricating oils, introduced by Mr. HANSEN, was received, read twice by its title, and referred to the Committee on Finance.

REFRESHER COURSES

Mr. PERCY. Mr. President, another generation of veterans will soon be coming home. They follow heroically in the paths of their brothers and fathers who returned from World War II and Korea.

In the late 1940's and early 1950's, these veterans filled our colleges and universities in quest of an education, and the GI bill was born to help them in this search. This same bill has been reenacted for our military men in Vietnam.

However, there are certain deficiencies in the GI bill. I am introducing a bill today to provide that veterans who return to college and discover they have to take refresher courses to keep up with their classmates will not lose any educational entitlement for time spent in refresher courses.

President Johnson alluded to this in his Veterans Message, January 31 when he said:

> The present G.I. Bill makes no special provision for a returning serviceman who needs to finish high school or take a "refresher" course before he can enter college. In fact, it works in just the opposite way. For each month the veteran pursues a high school education under the G.I. Bill, he loses a month of eligibility. This situation must be changed. I recommend legislation to provide full G.I. Bill payments to educationally disadvantaged veterans so that they can complete high school without losing their eligibility for follow-on college benefits.

Mr. Johnson came close but not far enough to recommend what I have in mind.

In a day when college curricula include such courses as space science, econometrics, and differential equations, it is almost impossible for the veteran to resume his education at the point he left off a couple years earlier.

This bill would permit a veteran who had to drop out of college through no fault of his own to take a minimum number of refresher courses at no loss of his educational entitlement.

There are now about 355,000 veterans taking training under the GI bill. This number may swell to 500,000 with the influx of Vietnam veterans.

It is estimated that perhaps 10,000 of these would need to take refresher courses. The total cost of this program would range from about $3.3 million to $4.6 million per year.

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

The bill (S. 2358) to amend chapter 34 of title 38, United States Code, to authorize additional educational entitlement under such chapter for eligible veterans who have to take refresher courses in order to effectively continue their education or training after service in the Armed Forces, introduced by Mr. PERCY (for himself, Mr. JAVITS, and Mr. PROUTY), was received, read twice by its title, and referred to the Committee on Labor and Public Welfare.

TRANSPORTATION OF STEVEDORING EQUIPMENT

Mr. BARTLETT. Mr. President, on behalf of myself and Mr. MORSE, I introduce, for appropriate reference, a bill to amend section 27 of the Merchant Marine Act, 1920, to allow stevedoring equipment moved on to a foreign flag vessel for the purpose of loading or unloading that vessel to be left on board as the ship moves from harbor to harbor for further loading and unloading.

Section 27, Merchant Marine Act 1920—46 United States Code 883—known as the Jones Act, provides:

> That no merchandise shall be transported by water, or by land and water . . . between points in the United States . . . in any other vessel than a vessel built in and documented under the laws of the United States and owned by . . . citizens of the United States . . . or vessels to which the privilege . . . is extended by Section 18 or 22 of this Act . . .

The above prohibition of the Jones Act is administered by the Customs Bureau of the Treasury Department. From time to time—and most recently on October 19, 1966—Customs has seized stevedoring equipment which was initially placed on board a foreign flag vessel for use in loading and unloading at the vessel's first port of American call and thereafter left on board for further use in loading or unloading at subsequent American ports. Customs claims such transportation to be a violation of the Jones Act, subjecting the gear to seizure and forfeiture. Remitted penalties and forfeitures have been paid under protest by the stevedoring companies.

In fact, however, such transportation of gear is not for hire and is solely for the convenience of the vessel and the stevedoring company in facilitating the movement of commerce. Moreover such gear can be and is so handled on American vessels qualified for intercoastal trade under similar circumstances.

This bill will allow the same method of handling stevedoring equipment now in use on U.S. vessels to be used on vessels of foreign registry or otherwise prohibited from the intercoastal trade.

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

The bill (S. 2359) to amend section 27 of the Merchant Marine Act, 1920, as amended, introduced by Mr. BARTLETT (for himself and Mr. MORSE), was received, read twice by its title, and referred to the Committee on Commerce.

REMOVAL OF LIMITATION ON OCEAN CRUISES

Mr. BARTLETT. Mr. President, I introduce, for appropriate reference, a bill to amend section 613(b) of the Merchant Marine Act of 1936, as amended, to remove certain limitations on ocean cruises to aid American-flag passenger vessels.

This bill proposes the following changes in law:

Under the so-called cruise bill, which became section 613 of the Merchant Marine Act of 1936, American vessels were permitted to cruise but only up to one-third part of each year. It has been found by experience that the one-third limitation is too restrictive to take care of the longer time that the American vessels are not needed for berth services. Accordingly, it is proposed that the one-third limitations be removed.

Section 613 also provides that permissible cruises must commence and terminate at U.S. ports on the same seacoast. This has prevented longer cruises, such as round the world, and so forth, where it is desired to embark and disembark passengers on different seacoasts.

Section 613 also provides that when cruising, American vessels may not carry mail and/or cargo except between ports on the regular berth service of the operator. It is proposed that this restriction also be removed, provided only that such carriage will not adversely affect the service of another existing American operator.

If these suggestions are adopted, American passenger vessels would be permitted greater opportunity to serve the rapidly expanding cruise trade where it would seem that as many American vessels as possible should be employed, and such vessels would not be restricted in major part to making berth voyages where the port to port traffic is rapidly giving way to air, and the ship operators are incurring substantial losses.

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

The bill (S. 2360) to amend section 613(b) of the Merchant Marine Act of 1936, as amended, introduced by Mr. BARTLETT, by request, was received, read twice by its title, and referred to the Committee on Commerce.

ESTABLISHMENT OF BUNKER HILL NATIONAL HISTORIC SITE, BOSTON, MASS.

Mr. COTTON. Mr. President, I introduce, for appropriate reference, a bill on behalf of myself and my distinguished colleagues, Mr. MCINTYRE, Mr. KENNEDY of Massachusetts, and Mr. BROOKE, to establish the Bunker Hill National Historic Site in Boston, Mass.

This bill would authorize the Secretary of the Interior to accept the donation by the Commonwealth of Massachusetts, pursuant to a memorialization of Congress by the Commonwealth's general court in 1966, of approximately 4 acres of land and improvements in the district of Charlestown, city of Boston, known as Bunker Hill Monument, and to administer, protect, and develop such in accordance with existing law.

There can be no doubt but that Bunker Hill stands as a symbol of national importance and should be recognized as such. It was there that revolutionary patriots struck a convincing blow for freedom. As one historian puts it:

> Concord and Lexington proved that we would fight, Bunker Hill proved we could fight.

And fight they did, with American irregulars throwing back superior numbers of the best regular infantry then known in the world. Those farmer-soldiers demonstrated throughout the colonies that the British were not invincible and that liberty could be won by men of determination and spirit. Indeed, had they failed on that June day in 1775, it is entirely conceivable that the rebellion would have been lost in its infancy. Quite literally,

Bunker Hill may well represent a turning point in the history of mankind.

I am proud to say that New Hampshire played a major role in the events that transpired that day. It is little realized or appreciated that of the 1,580 soldiers known to have participated, fully 1,000 or nearly two-thirds were from New Hampshire, with Massachusetts, including Maine, and Connecticut supplying the rest. The only two complete regiments on the field that day were those of New Hampshire's Col. John Stark, with a strength of 506 men, and Col. James Reed with 405. Another 90 to 100 New Hampshire soldiers were attached to Colonel Prescott of Pepperell, Mass., including 60 men of Capt. Reuben Drew's company from Hollis, N.H. It is worthy to note that Hollis lost eight men in the course of the fighting, more than any local community in the colonies. It is with real and I hope justifiable pride that we in New Hampshire feel our men played a major role in forging the American will to win and thereby to secure the liberties of all our people.

Mr. President, we are nearing the 200th anniversary of that historic day, and but a few months later will celebrate our 200th year of national independence. As it happens, the distinguished junior Senator from Massachusetts and myself were appointed this year by the President as members of the American Revolution Bicentennial Commission, to plan proper commemoration of our successful struggle for independence. We believe, as do our distinguished colleagues, that no more fitting action could be taken than to give proper and lasting recognition to the patriotism that was so well and effectively demonstrated by a handful of American fighting men on June 17, 1775. We hope that the Senate will move expeditiously to make Bunker Hill a national historic site in order that it may be established as a monument belonging to all Americans and thereby take its rightful place in our national bicentennial observance.

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

The bill (S. 2363) to authorize the Secretary of the Interior to establish the Bunker Hill National Historic Site in the city of Boston, Mass., and for other purposes, introduced by Mr. COTTON (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

EXTENSION OF CERTAIN PRIVILEGES TO INSURED STATE BANKS

Mr. SPARKMAN. Mr. President, at the request of Mr. Frank Wille, superintendent of banks of the State of New York and newly elected chairman of the legislative committee of the National Association of State Banks, I introduce a bill entitled "To extend the same privileges, protections, and immunities to insured State banks as are available to National banks doing business across State lines."

I ask unanimous consent that the letter of Mr. Frank Wille, along with an explanatory memorandum, be printed in the RECORD.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the letter and memorandum will be printed in the RECORD.

The bill (S. 2364) to extend the same privileges, protections, and immunities to insured State banks as are available to national banks doing business across State lines introduced by Mr. SPARKMAN, by request, was received, read twice by its title, and referred to the Committee on Banking and Currency.

The letter and memorandum, presented by Mr. SPARKMAN, are as follows:

STATE OF NEW YORK,
BANKING DEPARTMENT,
New York, N.Y., July 19, 1967.

HON. JOHN SPARKMAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SPARKMAN: In doing business across State lines, State-chartered banks and savings and loan associations operate at a serious competitive disadvantage as compared to National banks and Federal savings and loan associations. The extent of this disadvantage is outlined briefly in the two page summary which is enclosed. For the convenience of your staff, I have also enclosed two copies of this summary, two copies of a proposed bill and two copies of a more detailed memorandum which was sent to Senator Robertson last September on the same subject.

The New York State Banking Department has come to the conclusion that the only means by which these competitive disparities can be promptly eliminated is through Congressional action, and to this end, the Department has prepared the suggested bill which is enclosed. In essence, the bill would provide that a state bank or savings and loan association doing business across state lines shall enjoy the same privileges, protections and immunities as a national bank or federal savings and loan association doing such business.

The enactment of such a bill would reaffirm past expressions of Congressional intent that there be a basic equality of competitive opportunity within the dual banking system, irrespective of whether the institution concerned operates under Federal or State charter. Its enactment would also serve to strengthen state banking systems throughout the country.

If you see any merit in resolving this imbalance by an act of Congress, I would be most appreciative if you would sponsor such a bill and if you would urge your associates on the Senate Committee on Banking and Currency to give it their early consideration.

Sincerely yours,

FRANK WILLE.

JULY 19, 1967.

INTERSTATE BUSINESS DISPARITIES BETWEEN STATE-CHARTERED AND FEDERALLY CHARTERED FINANCIAL INSTITUTIONS

State-chartered commercial banks, savings banks and savings and loan associations doing business across state lines are at a serious competitive disadvantage when compared with national banks and Federal savings and loan associations doing the same kinds of business.

The disadvantages for State-chartered institutions relate primarily to—

1. The necessity for compliance with "doing business" laws in other states.

2. The imposition of taxes by other states.

In addition, state-chartered banks encounter a third important disparity: they can be sued wherever they "do business," but Federal law (12 U.S.C. § 94) permits national banks to be sued only in their headquarters state.

1. COMPLIANCE WITH "DOING BUSINESS" LAWS

When a business corporation which is not a financial institution "does business" across state lines, it runs the risk that its contracts may be held void or unenforceable in the courts of other states. This disability can usually be overcome by meeting statutory qualification requirements, which generally include (i) initial license fees, (ii) a continuing liability for state and local taxes, and (iii) the designation of some public official for local service of process.

National banks and Federal savings and loan associations are generally treated as though they are exempt from such qualification requirements. The theory of these exemptions is that both types of institutions are, by virtue of their Federal charters, "federal instrumentalities" entitled to the same exemptions from state regulation as the Federal Government itself.

State-chartered banks and savings and loan associations enjoy no such exemptions when they do business across state lines. Unless they comply with local "doing business" laws—and some states do not permit compliance by banks or savings and loan associations—they may find themselves unable to collect on defaulted loans and unable to enforce their security interest in loan collateral.

2. TAXATION BY OTHER STATES

Federal and state courts, again treating Federally-chartered financial institutions as agencies of the Federal Government itself, have held that national banks and Federal savings and loan associations can be taxed by the states only as Congress has specifically permitted (e.g., in 12 U.S.C. § 548 for national banks, and 12 U.S.C. § 1464h for Federal savings and loan associations). Under this line of reasoning, they have held invalid license taxes, personal property taxes, and sales and use taxes levied on national banks. State-chartered banks and savings and loan associations have no such immunity from taxation in nondomiciliary states.

* * * * *

The proposed bill requires equality of treatment for State-chartered financial institutions in these situations, without (i) limiting the power of Congress to change the exemptions now accorded to national banks and Federal associations, or (ii) conferring any powers on State-chartered banks or associations which have been denied them by their chartering State.

PRESERVATION OF THE NATION'S ESTUARINE AREAS AND THEIR NATURAL RESOURCES

Mr. RIBICOFF. Mr. President, I introduce, for appropriate reference, a bill to protect and restore the Nation's estuarine areas. My proposal builds on the hearings held this session in the House of Representatives under the able leadership of Congressman JOHN DINGELL. They respond also to the views of the Interior Department which has carefully studied how the estuaries of our shores should be protected and which will administer any legislation in this field. I am also happy to acknowledge the initiative of the senior Senator from Massachusetts [Mr. KENNEDY], who earlier this session introduced similar legislation and the senior Senator from Washington [Mr. MAGNUSON], who cosponsored the Kennedy bill and whose committee will consider these proposals.

Estuaries form where rivers run into the sea. They create and attract vital biological, scientific, recreational, and economic resources. Cities are built near most estuaries, intensifying land use and

the consequent pollution and destruction risks. My bill tries to take account of the unique nature of our estuaries and to find the proper balance between their protection and restoration and their use and development for the largest number of people.

These sea and land complexes create rich marine resources. At least 65 percent of our Nation's commercial fish and shellfish resources inhabit the estuarine areas during all or part of their life cycles. Many of our valuable waterfowl use these areas as nesting and wintering sites. People use them too, for swimming, boating, bird watching, hiking, or for an opportunity to enjoy the beauty of natural resources along coastal areas. Scientists study and expand our knowledge of the wonderful variety of animal and plant life around the estuaries.

It is not only the coastal States, like Connecticut, which will benefit from this proposal. For our seashores are a national trust for all to use and enjoy.

Many of our priceless shore resources have already been lost. Others can be saved if we act soon, as this bill proposes. In my own State, nearly 50 percent of Connecticut's coastal marshes had been destroyed by 1965. At the existing rate of destruction, by the year 2000 there would be no tidal marshes left.

The principal causes of this manmade destruction are careless filling, usually from dredging and waste disposal. Both of these hazards will be controlled under this legislation.

This bill will help determine the state of our natural estuarine resources as a first step to preserving what is left. After this survey by the Secretary of the Interior, a more detailed study will see what can be done to preserve and enhance the important estuarine areas.

It also empowers the Interior Secretary to acquire and develop national estuarine areas but only after separate authorization by Congress. He can also, without further authorization, develop national estuarine areas by cooperative agreements with local and State authorities, with whom he will share the cost of administration and development.

Dredging, filling, and excavation in estuaries would be allowed only when these activities did not impair the natural resources or lower water quality unreasonably. Similarly, commercial, industrial, and other development within national estuarine areas would be reviewed and approved by the Secretary of the Interior under these criteria.

These provisions would not prohibit or unreasonably restrict these activities. They would insure that an authority charged with the protection and development of natural resources reviewed such projects before they are undertaken.

My legislation encourages States to protect their own estuarine resources and water quality by establishing or improving plans to regulate dredging and related activities, when the plans are approved by the Interior Department. In such States, there would be no direct Federal control of these activities.

Federal responsibility must be exercised, for presently most States do not have effective controls to protect their estuaries. The Interior Department estimates that only three or four States have effective plans now in operation.

Dumping refuse of all kinds—except oil and sewage which are covered now by law—in our estuaries would be subject to regulation by the Interior Department or by States with adequate protection plans to guard these waters from further pollution.

Finally, Mr. President, this bill requires the Interior Department and the Army Corps of Engineers to work together to authorize dredging, excavation, filling and other work along our shores, under the principles cited above, to eliminate duplication and to insure that a balance is maintained between legitimate conservation and development interests.

The principles involved in this legislation are sound. They seek a more fruitful protection and development of our shore resources. By encouraging communities and States to consider their own estuarine resources and to cooperate in their protection and improvement, I believe we have found the proper balance between conservation and growth and between local initiative and Federal responsibility to insure that our natural resources are devoted to the greatest common good.

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

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

The bill (S. 2365) to authorize the Secretary of the Interior, in cooperation with the States, to protect, preserve, restore, develop, and make accessible the Nation's estuarine areas and their natural resources, and for other purposes, introduced by Mr. RIBICOFF, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 2365

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress finds and declares that the Nation's estuarine areas are endowed with a variety of natural resources of recreational, commercial, esthetic and scientific value to the present and future generations of Americans, and that any modification of these areas directly and indirectly affects their natural values; that many of these areas have been irreversibly altered or destroyed; and that it is the policy of Congress to protect, preserve, restore, develop and make these estuarine areas accessible for multiple compatible uses, which give priority to maximum benefits for the widest number of people and which can be continued without destruction, or undue alteration or diminution of their natural resources.

SEC. 2. For the purposes of this Act—

(a) The term "Secretary" means the Secretary of the Interior;

(b) The term "person" means any individual, partnership, corporation, association, or political subdivision of a State;

(c) The term "estuary" or "estuaries" means part or all of the tidal portion of the navigable waters in the United States up to the mean high water line, including, but not limited to, any bay, sound, lagoon, or channel, and the lands underlying all such waters;

(d) The term "national estuarine area" means an environmental system composed of an estuary or estuaries and adjacent lands which together is determined by the Secretary to constitute a manageable unit and which has national significance; and

(e) The term "national resources" includes, but is not limited to, sport and commercial fishes and other aquatic life, wildlife, esthetic, and recreational values.

SEC. 3. (a) The Secretary, in consultation and in cooperation with the States and other Federal agencies, shall conduct directly or by contract, an inventory of the Nation's estuaries that are (1) unspoiled or undisturbed by the technological advances of man, including, but not limited to, pollutants, and (2) partially spoiled or disturbed by such advances but which should be protected from further adverse effects. For the purpose of this inventory, the Secretary shall consider, among other matters, the resource value of these areas, including, but not limited to, the economic and recreational potential, their ecology, their value for navigation, flood, hurricane, and erosion control, the effects of exploration for subsurface minerals, their value to the marine, anadromous, and shell fisheries, the present and future urban and industrial effects upon such areas, their esthetic value, and the most effective means for preserving these areas and for orderly development within them, if he determines such development consistent with the goals listed in the first section of this Act. The Secretary shall also take cognizance of the results of the study authorized by section 5 (g) of the Federal Water Pollution Control Act, as amended, the nationwide recreation plan, plans developed pursuant to the Water Resources Planning Act and river basin planning, statewide outdoor recreation plans prepared pursuant to the Land and Water Conservation Fund Act of 1965, and other applicable studies.

(b) The Secretary shall give particular attention to whether any estuary or areas adjacent to any estuary should be acquired or administered by the Secretary or by a State or local subdivision thereof, or whether such areas and estuaries may be protected adequately through local laws or other methods without Federal land acquisition or administration.

(c) The Secretary shall submit annually to the Congress through the President a report of the inventory conducted pursuant to this section, including recommendations with respect to the designation of any estuary and adjacent areas as a national estuarine area to be acquired by him. Each recommendation of the Secretary for such designation shall become effective only if so provided by subsequent Act of Congress. Recommendations made by the Secretary shall be developed in consultation with the States, municipalities, and other interested Federal agencies. Each such recommendation shall be accompanied by (1) expressions of any views which the States, municipalities, and other Federal agencies may submit within ninety days after having been notified of the proposed recommendation, (2) a statement setting forth the probable effect of the recommended action on any comprehensive river basin plan that may have been adopted by Congress or that is serving as a guide for coordinating Federal programs in the basin wherein each estuary is located, (3) in the absence of such a plan, a statement indicating the probable effect of the recommended action on alternative beneficial users of the resources of the proposed national estuarine area, and (4) a discussion of the major economic, social, and ecological trends occurring in such area.

(d) There is authorized to be appropriated not to exceed $500,000 for the first fiscal year beginning after enactment of this Act and for four succeeding fiscal years not to exceed $1,000,000 annually to carry out the provisions of this section.

SEC. 4. (a) The Secretary may acquire lands and waters or interests therein, in-

cluding land use easements, within any national estuarine area, approved by Congress or established pursuant to section 5 of this Act, by purchase with appropriated or donated funds, donation, or exchange. He shall not acquire any lands or waters or interests therein which are owned by a State or by any political subdivision thereof and which are adequately protected and preserved by a State or political subdivision thereof in accordance with any State plan approved by the Secretary pursuant to section 9 of this Act. In the exercise of his exchange authority, the Secretary may accept title to any non-Federal property and in exchange therefor the Secretary may convey to the grantor of such property any federally owned property under his jurisdiction which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(b) Notwithstanding any other provision of this Act, the Secretary shall not acquire by condemnation any land or interests therein within any national estuarine area if such land is being used primarily for hunting, sport fishing, or other purposes which are compatible with the purposes of this Act. The Secretary may exclude from the provisions of this subsection any beach or waters, together with so much of the land adjoining such beach or waters for public access thereto, as he deems necessary to carry out the purposes of this Act.

(c) Any lands, waters, or interests therein within a national estuarine area which are acquired by the Secretary under this section or administered under section 5 of this Act, shall be managed and developed primarily for the purposes of sport and commercial fishing, wildlife conservation, outdoor recreation, and scenic beauty, and for such other purposes as the Secretary determines are compatible with the purposes of this Act.

(d) Any Federal land located within any national estuarine area may, with the consent of the head of the agency having jurisdiction thereof, be transferred to the Secretary for administration as part of said area.

SEC. 5. (a) The Secretary may enter into an agreement, containing such terms and conditions as are mutually acceptable, with any State or political subdivision or agency thereof for the permanent management, development, and administration of any land or interests therein within the area of an estuary and adjacent lands which are owned or thereafter acquired by a State or by any political subdivision thereof. Such agreement shall, among other things, provide that the State or a political subdivision or agency thereof and the Secretary shall share equally in the cost of managing, administering, and developing such areas. State hunting and fishing laws and regulations shall be applicable to such areas to the extent they are now applicable.

(b) Any area covered by an agreement entered into pursuant to this section shall be deemed a national estuarine area for the purposes of this Act.

(c) In furtherance of the effective administration of any area covered by an agreement entered into under this section, the Secretary may acquire in accordance with the provisions of section 4(a) of this Act not to exceed one thousand acres within the boundaries of said area and such acquired land shall be subject to said agreement.

SEC. 6. In order to carry out the purposes of this Act, the Secretary may—

(a) construct, operate, install, and maintain buildings, devices, structures, recreational facilities, access roads, and other improvements on property acquired by him or covered by an agreement entered into pursuant to this Act, and

(b) enter into agreements with any person or public or private agency or organization through negotiation for the provision of public accommodations.

SEC. 7. (a) The Secretary shall permit hunting and fishing on lands and waters within any national estuarine area approved by Congress in accordance with applicable State laws and regulations, except that the Secretary may by regulation designate zones where, and establish periods when he may close the area to public uses, or limit public uses. Except in emergencies, any regulations of the Secretary under this section shall be effective only after consultation with the State agency responsible for hunting and fishing activities. Nothing in this Act shall limit or interfere with the authority of the States to permit or regulate the fish, shellfish and wildlife resources in any waters within an estuarine area administered by the Secretary. Nothing in this Act shall affect the authority of the Secretary under other provisions of law to regulate migratory birds.

(b) No person shall knowingly violate any regulation of the Secretary relating to the public use of any national estuarine area, or injure, remove, or destroy any property or improvement of the United States therein.

(c) Any person authorized by the Secretary to enforce the provisions of this section may, without a warrant, arrest any person violating this section in his presence or view, and may execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this section, and may, with a search warrant, search for and seize any property taken, used, or possessed in violation of this section. Any property seized, with or without a search warrant, shall be held by such person or by the United States marshal pending disposition thereof by the court.

(d) Any person who violates the provisions of this section or any regulation issued thereunder shall be fined not more than $500 or be imprisoned not more than six months, or both.

SEC. 8. (a) Except as provided in section 9 of this Act, before any person conducts any dredging, filling, or excavation work within any estuary such person shall file with the Secretary prior to initiating such work a notice of intention to conduct such work together with such plans, specifications, and other information relative to such work as the Secretary may require by regulation. No such work shall be commenced until authorized by the Secretary. After receipt of such notice the Secretary shall, within a reasonable time, authorize such person to commence the work in accordance with such terms and conditions as the Secretary deems desirable, unless he determines, in his discretion, (1) that such work will unreasonably impair the natural resources of the estuary, or (2) that such work will reduce the quality of the waters of the estuary below applicable water quality standards, except that, notwithstanding the adverse effect such work will have on natural resources, the Secretary shall permit such work whenever he determines that it is in the public interest to do so. The Secretary may at the request of any Federal, State, or local agency or any interested person or on his own motion hold public hearings relative to whether such work should be commenced. The Secretary shall not authorize such work if the Governor of the State or States wherein the estuary is located notifies the Secretary that he objects to such work.

(b) The Secretary shall establish regulations to govern the dumping of dredgings, earth, garbage, or other refuse materials of every kind or description, except refuse materials flowing from streets or sewers in a liquid state, or oil as defined in the Oil Pollution Act, 1924, into any estuary or into any other waters which would have a detrimental effect on any estuary. Such regulations shall be designed to conserve and protect the natural resources in such estuaries, and to prevent the pollution therein, including pollution by leaching from dumping in adjacent areas.

(c) In carrying out the provisions of this section, the Secretary is authorized to conduct directly or by contract such studies and investigations as he deems desirable in accordance with the applicable provisions of the Fish and Wildlife Act of 1956, as amended, and to accept and use for this purpose funds made available by anyone, including persons seeking to conduct such work in an estuary.

(d) If the Secretary believes that any person is violating or is about to violate, with or without knowledge, the provisions of this section, or any regulations issued thereunder or any condition in any notice issued thereunder, he may request the Attorney General to seek appropriate relief in the United States district court where such person resides or is doing business to abate such actual or threatened violation.

(e) Any person who knowingly violates any provision of this section or any regulations issued thereunder or any condition in any notice issued thereunder shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $2,500, or imprisoned for not more than one year, or both.

(f) In accordance with the policy established by Congress in the Act of August 31, 1951 (63 Stat. 290), the Secretary shall, to the greatest extent practicable, recover from persons seeking to conduct any dredging, filling, or excavation work in any estuary all reasonable costs incurred by him in administering this section, and all sums received to cover such costs shall be credited to the appropriation from which payments for the administration of this section were made.

(g) Nothing in this section shall be construed as affecting the authority of the Secretary of the Army to issue permits for dredging, filling, or excavation work in any estuary under any other provisions of law. The Secretary of the Interior and the Secretary of the Army shall, prior to the effective date of this section, enter into such agreements as may be appropriate to avoid duplication of effort and to insure the expeditious handling of requests for dredging, filling, and excavation work.

(h) The Secretary shall provide, by regulation, that the provisions of subsection (a) of this section shall not apply in the case of any work to be initiated by the owner of a single-family residence if such work relates solely to the use and enjoyment of said residence by such owner or his tenant.

(i) The provisions of this section and regulations issued pursuant to this section shall be effective after one hundred and eighty days following the date of enactment of this Act, except that (1) the Secretary's authority to issue such regulations shall become effective on such date, and (2) the Secretary may by notice published in the Federal Register postpone the effective date of such provisions and regulations but not beyond an additional one hundred and eighty days.

SEC. 9. (a) Section 8 of this Act, other than subsections (c) and (g) thereof, shall not apply in any State which the Secretary determines has a system for the protection and conservation of estuaries which will adequately and effectively carry out the purposes of this Act. For the purpose of making this determination, the Governor of each State shall submit to the Secretary, within ninety days after the effective date of this Act or at such times thereafter as the Secretary may prescribe, for his approval a State plan for the protection and conservation of estuaries. The State plan shall:

(1) require any person, before conducting any dredging, filling or excavation work within any estuary, to file with the appropriate State authority a notice of intention to conduct such work together with such plans, specifications, and other information relative to such work as the State authority may require by regulation, and provide that no such work shall be commenced until author-

ized by such State authority in accordance with such terms and conditions as the State authority deems necessary to assure that such work will not unreasonably impair the natural resources of the estuary or will not reduce the quality of the waters of the estuary below applicable water quality standards, except that notwithstanding the adverse effect such work will have on natural resources, the State authority may permit such work whenever it determines that it is necessary in the public interest;

(2) provide, for the purposes set forth in section 8(b), for the regulation of the dumping of dredgings, earth, garbage, or other refuse materials of every kind or description, except refuse materials flowing from streets or sewers in a liquid state, or oil as defined in the Oil Pollution Act, 1924, into any estuary in such State or into any other waters in such State which would have a detrimental effect on any estuary in or outside of such State;

(3) provide for the administration or supervision of the plan by a State department, commission, or agency exercising primary administration over the natural resources therein;

(4) identify all the estuaries located in whole or in part in such State;

(5) set forth the criteria and standards to be followed in determining whether dredging, filling, or excavation work will be permitted in any estuary located in whole or in part in the State;

(6) set forth the plans, policies, and methods to be followed in carrying out the State plan;

(7) provide an enforceable regulatory system for the purposes of clauses (1) and (2) and for ascertaining the views and recommendations of interested persons and public agencies in establishing provisions required by such clauses; and

(8) provide that such department, commission, or agency shall make reports in such form and containing such information as the Secretary may from time to time reasonably require to carry out his functions under this Act.

(b) (1) Whenever the Secretary, after notice and an opportunity for a hearing, determines (A) that the approved State plan or amendments thereto have been so changed that they no longer comply with the requirements of subsection (a) of this section, or (B) that, in administering said plan, there is a failure to comply substantially with such requirements, he shall notify the Governor of the State that section 9 shall apply to the estuaries located therein until he is satisfied that such deficiencies have been corrected.

(2) In any case in which the Secretary determines that irreparable damage may result to any national estuarine areas from any such change or failure, the Attorney General at the request of the Secretary shall bring a civil action in the appropriate district court of the United States for the purpose of obtaining such preventive relief, including a permanent or temporary injunction, restraining order or other order, as may be necessary to prevent such damage.

SEC. 10. For the purposes of sections 8 and 9 of this Act, the terms "estuary" and "estuaries" include inshore waters of the Great Lakes, their connecting waterways, and their associated marshes up to the ordinary high water mark.

SEC. 11. In planning for the use or development of water and land resources, all Federal agencies shall give consideration to estuaries and their natural resources, and all project plans and reports submitted to the Congress shall contain a discussion by the Secretary of such areas and such resources and the effects of the project on them and his recommendations thereon.

SEC. 12. The Secretary shall encourage States and local subdivisions thereof to consider, in their comprehensive planning and proposals for financial assistance under the Federal Aid in Wildlife Restoration Act (50 Stat. 917), as amended (16 U.S.C. 669 et seq.), the Federal Aid in Fish Restoration Act (64 Stat. 430), as amended (16 U.S.C. 777 et seq.), the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), the Commercial Fisheries Research and Development Act of 1964 (78 Stat. 197), and the Anadromous Fish Conservation Act of October 30, 1965 (79 Stat. 1125), the needs and opportunities for protecting and restoring estuaries in accordance with the purposes of this Act. In approving grants made pursuant to said laws for the acquisition of all or part of an area surrounding an estuary by a State, the Secretary shall establish such terms and conditions as he deems desirable to insure the permanent protection of such area, including a provision that the lands or interests therein shall not be disposed of by sale, lease, donation, or exchange without the prior approval of the Secretary.

SEC. 13. Nothing in this Act shall restrict or extend such jurisdiction as the States now have with respect to State water laws, nor be construed as an express or implied claim or denial on the part of the United States as to exemption from State water laws.

SEC. 14. Nothing in this Act shall be construed to affect the authority of the Secretary of the Army or the Chief of Engineers to carry out any Federal project heretofore or hereafter authorized, except that, in the case of any national estuarine area authorized by Congress or established by agreement with a State pursuant to this Act the authority of the Secretary of the Army or the Chief of Engineers to undertake or contribute to shore erosion control, dredging, filling, or beach protection measures within the boundaries of such area shall be exercised in accordance with a plan that is mutually acceptable to the Secretary of the Army and the Secretary of the Interior and that is consistent with the purposes of this Act.

RELIEF FOR CERTAIN VETERANS PURCHASING HOMES

Mr. TOWER. Mr. President, on behalf of myself and Senators BENNETT, CANNON, CARLSON, CLARK, CURTIS, DODD, DOMINICK, ERVIN, HARRIS, HOLLAND, HOLLINGS, INOUYE, MCCARTHY, and YOUNG of North Dakota, I introduce, for appropriate reference, a bill to amend chapter 37 of title 38, United States Code, with respect to the benefits afforded veterans purchasing homes with the assistance of Veterans' Administration guaranteed loans.

This bill represents an effort to bring about some measure of relief for a situation that is frequently faced by veterans who have sold their homes on a loan assumption basis. I am sure that most if not all Senators have had this problem posed to them at one time or another, and that is that instance whereby a veteran who has originated a mortgage loan guaranteed by the Veterans' Administration subsequently sells his property to a purchaser who agrees to assume his loan and at some time subsequent to such sale the assuming purchaser allows the mortgage loan originated by the veteran to fall into a condition of default. In all too many of these instances, the veteran is apprised of such a situation when it is too late for him to take steps to protect his interests, if indeed he is even aware of such default at all.

The situation giving rise to the severest hardship on the veteran is where the mortgage lender has been compelled to initiate foreclosure proceedings against such a defaulting subsequent purchaser to protect its interests and has sold the property formerly owned by the veteran at public sale for an amount that is not sufficient to cover the outstanding balance owing on the mortgage loan and the mortgage lender has resorted to the Veterans' Administration guarantee to make up the resulting deficit. In such instances, the Veterans' Administration usually exercises its right to proceed against the original veteran-mortgagor for the amount that it has paid the mortgage lender under the loan guarantee; it is also at this point in many cases that the veteran first has any awareness of the default status of the mortgage loan he originally initiated, and he not only is belatedly confronted with the default crisis, but also must face the usually disastrous situation of being called upon to repay the Veterans' Administration an amount that could in some situations be thousands of dollars. This is not only potentially disastrous to the veteran from the viewpoint of having to come up with a substantial amount of money to cure an unwarranted obligation, but also the veterans' credit standing in his community is placed in a state of jeopardy and possible ruination.

The shock and irony of this situation is particularly compounded in those cases where the veteran has felt compelled by existing market circumstances to literally give his equity to the subsequent purchaser in return for such party agreeing to continue the veteran's monthly loan payments until the outstanding mortgage balance is paid off.

In many such resale situations, the veteran mistakenly believes that he has relieved himself of any future obligation under the terms of his mortgage by simply procuring a purchaser who is willing to contract to assume the outstanding mortgage indebtedness. This is not the case unless the mortgage lender is willing to release the veteran from such liability and substitute the purchaser in his place. However, this aspect is a matter of personal contract between the veteran and the mortgage lender, and is not within the purview of this bill. I am only addressing myself to the relationship between the veteran and the Veterans' Administration, and not that of the veteran and the mortgage lender.

Mr. President, my bill would amend the existing law as it relates to two situations where a veteran-mortgagor requests the Veterans' Administration to release him from liability under its guarantee when he sells his property to a purchaser willing to assume full responsibilty for the repayment for the outstanding balance of his loan. Such requests for waiver of liability are usually granted only in those instances where the subsequent purchaser contracts to assume such loan in form satisfactory to the Administrator and is deemed by the Administrator to possess adequate financial strength. The bill requires the Administrator to grant the veteran a release from his continuing liability to the Veterans' Administration in those instances where the veteran sells

his property as a direct result of being called to active duty in any branch of the armed services for purposes other than training, or if in connection with active duty service the veteran is transferred by official orders from one duty station to another. This would simply seek to set apart these two deserving circumstances where the Administrator should be required to relieve the veteran from the fear and apprehension of being held personally liable for any possible future default of a subsequent purchaser of his property. Of course, such subsequent purchaser would still have to contract for the assumption of the loan in form satisfactory to the Administrator.

In those instances where the veteran is called to active duty by the armed services or is transferred from one duty station to another, and as a result is compelled to sell his property to a purchaser willing to assume his Veterans' Administration guaranteed loan, I feel that the law should recognize that the veteran would not have disposed of his property but for the fact that the Government has directed his removal to an area other than where he then resided, and accordingly, he should not be confronted with the possibility, however remote, of a deficit claimed against him under his Veterans' Administration guarantee.

Additionally, my bill would amend that portion of the law relating to loan default procedures and would expand the applicable section to allow the Administrator of the Veterans' Administration, if he finds that a veteran's loan has fallen into default as a result of these particular circumstances, to extend the time for the curing of any such default for such period as the Administrator determines to be necessary and desirable, or would allow the Administrator to modify the terms of such loan for the purpose of changing its amortization provisions, thus making a veteran's mortgage loan more livable in deserving situations. At present, the Administrator can extend such relief in those instances where he determines that a loan has fallen into default as a result of the closing in whole or in part of a Federal installation. The expansion of these already existing prerogatives to include the two situations I have outlined would provide relief for the hardship involved where the veteran finds it difficult to continue making payments on his loan under its then existing terms.

Mr. President, I know that there are two sides to every coin and that every fact situation has to be closely scrutinized before an objective and fair stand can be taken on any given problem, particularly in an area as complex as this. However, I for one feel inclined to give the veteran the reasonable benefit of every doubt in the situations which I have described, particularly when close inquiry would seem to indicate that somewhere in the process of administering this program there lies an area of harshness that is in most instances construed against the very person that the veteran's loan program is intended to benefit, that is, the veteran. In fairness to both the program and the veteran, we should make every possible effort to eliminate areas of possible misunderstanding and insure that the program is administered as fairly and consistently as possible.

The record of the veteran's loan program has been extremely outstanding and I do not in any way mean to imply that the administering of the program in these foreclosure situations has been intentionally weighed against the best interests of the veteran. To the contrary, the veteran usually has been provided help and guidance in his efforts to resolve his difficulties. However, I, as I am sure is the case of all Senators, want to be receptive to all means and suggestions whereby we can anticipate such areas of difficulty and thus hold to a minimum these conflicting situations between the veteran and his Government. I would also emphasize that it is not intended that the veteran's responsibility as a borrower should be any less than that of any other person. Rather, I would propose that we endeavor to improve upon the procedures involved in these foreclosure situations so as to assist, and help make possible, the exercise of such responsibility by the veteran.

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

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

The bill (S. 2376) to amend chapter 37 of title 38, United States Code, to provide relief for certain veterans purchasing homes with assistance under such chapter who have been recalled to active duty, introduced by Mr. TOWER (for himself and other Senators), was received, read twice by its title, referred to the Committee on Banking and Currency, and ordered to be printed in the RECORD, as follows:

S. 2376

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1816(b) of title 38, United States Code, is amended by inserting after "a Federal installation," the following: "or was due to exigencies arising out of the fact that prior to such default such veteran had been ordered to active duty (for purposes other than training) in any branch of the armed forces of the United States, or in the United States Coast Guard,".

SEC. 2. Section 1817 of title 38, United States Code, is amended by adding at the end thereof the following: "The Administrator shall issue such release to any such veteran, without regard to the requirements set forth in clause (2), if he determines that the veteran (i) has been ordered to active duty (for purposes other than training) in any branch of the armed forces of the United States, or in the United States Coast Guard, (ii) is being, or has been, transferred from the area in which such residential property is situated as the result of orders received in connection with such active duty, and (iii) has disposed, or contracted to dispose, of such property as the result of such orders to active duty or transfer."

SOCIAL SECURITY AMENDMENTS OF 1967—AMENDMENT

AMENDMENT NO. 295

Mr. RIBICOFF. Mr. President, I send to the desk an amendment to H.R. 12080, the Social Security Amendments of 1967, to amend title II of the Social Security Act to continue to exclude firemen from the insurance system, except where such system is made available as a supplement to fire department pension systems, and ask that it be printed.

In 1954, when Congress made social security available to State and municipal employees, it specifically excluded firefighters and policemen who were under State or local retirement plans from coverage under the insurance system. The exclusion is provided for in section 218 (d) (5) (A), and is generally known as the exclusion clause.

The nature of the duties of firefighters is such that it requires retirement at a far earlier age than that provided for under social security. This work demands physical strength, agility, coordination, stamina, and endurance. Most men begin to lose a good part of these characteristics after they reach age 50, thus reducing their effectiveness on the job. Early retirement for such workers is, therefore, necessary in order to maintain efficiency in the firefighting service.

By the same token, the rigors of firefighting have an increasingly damaging impact on the health of fire department members with each succeeding year after age 45. Medical science has established that advancing age and the work of firefighters frequently is the reason why such men suffer from heart disease. If we are to afford reasonable health protection to the men engaged in this hazardous occupation, firefighters must be permitted to retire at an early age.

If social security were made available to firefighters without being accompanied by adequate safeguards to protect the integrity of their State or local retirement systems, such systems would be placed in jeopardy. Where we have liberal benefits and early retirement, quite often it is only the exclusion clause which prevents municipal administrators from integrating social security with, or substituting social security for the local retirement system.

Further, the unqualified availability of social security would serve as a bar against improving those retirement systems which do not measure up to the retirement standards required in firefighting.

Both of these points have been clearly established by a 1965 survey of 463 fire department retirement plans in the United States. The survey conducted by the research department of the International Association of Fire Fighters shows the following: 92 percent permit retirement at age 55 or less; 92 percent retire at 50 percent of salary at their minimum retirement age; 94 percent have on-duty disability coverage; 92 percent have nonduty disability coverage; and 91 percent have duty and nonduty survivor benefit coverage.

Only 13 percent of the cities surveyed reported that they covered their firefighters in whole or in part under social security. With the exception of those in New York, where there is a State constitutional provision which prohibits any diminution of the retirement benefits of public employees, virtually all of such cities indicated that their benefits were adversely affected thereby.

There are those who argue that the

firefighters have nothing to fear; that the referendum provisions of the Federal statute protect them against being forced under social security against their will.

Unfortunately this theory ignores the fact that section 218(d)(6)(C) now permits 18 States to divide their retirement system so that a single fire department member can compel every future member of his department to come under social security.

Section (a) of my amendment continues the clause which excludes from the old-age and survivors' insurance system firemen who are covered by a retirement system. However, this exclusion clause notwithstanding, the insurance system may be made available to such firemen, provided that it is extended to such employees as a supplement and an addition to the benefits which such employees are entitled to receive under their retirement systems.

Firemen have strongly resisted efforts to repeal the exclusion clause because such repeal would give the State the right to unilaterally determine the conditions under which the insurance system would be made available or forced upon them. They view this as a direct threat to their own retirement systems which are better designed than social security to cope with the peculiar needs of the safety services.

On the other hand, those who have argued that social security should be made available to firemen have said that it is not their intent to weaken or impair local retirement systems. As evidence of this, they point to the declaration of policy by Congress which states that such retirement systems shall not be impaired as the result of, or in anticipation of an agreement which extends social security to State or municipal employees.

Unfortunately, this declaration has no legal effect on States or municipalities. Therefore, in order to make absolutely certain that the intent of this declaration is fulfilled with respect to firemen, the amendment provides that the only terms under which social security can be made available to such employees is as a supplement and an addition to their own retirement systems.

This does not prevent a State or municipality from changing the retirement systems of its firemen. It simply means that they cannot integrate social security with, or substitute social security for the retirement system. Instead, it can only be extended to firemen in those States which by statute require social security to be a supplement and an addition to their retirement systems.

This subsection also provides that social security cannot be made available to firemen unless it is approved by a majority of such employees in the retirement system. Voting in such a referendum would be limited to firemen.

It further protects the retirement systems of firemen to the extent that social security will not be made available where any such system, in effect on the effective date of this proposed act, or in effect 3 years prior to a referendum, is diminished or impaired.

This subsection does not affect firemen in those States which have been exempted from the exclusion clause.

Subsection (b) of this amendment removes firemen from the section of the Social Security Act—section 218(d)(6)(C)—which permits certain States to conduct a referendum on a divided vote basis. Under this system, a single fireman could bring social security to an entire department, even though the remainder of the department voted to be excluded.

Subsections (c) and (d) are technical amendments designed to bring certain other sections of the Social Security Act into conformity with the basic provisions of the amendment.

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

The PRESIDING OFFICER. The amendment will be received, printed, and appropriately referred; and, without objection, the amendment will be printed in the RECORD.

The amendment (No. 295) was referred to the Committee on Finance, as follows:

On page 46, after line 23, add a new section 119 to read as follows:

"SEC. 119 (a) subparagraph (A) of section 218(d)(5) is amended by striking out the period at the end of the sentence and by adding thereto: 'covered by a retirement system, except, this notwithstanding, such insurance system may be extended to such service in any fireman's position in any State which has a statute requiring that such insurance system shall be a supplement and an addition to such retirement system, as it applies to such fireman's position, provided that such extension shall be in compliance with paragraph (3), and provided that no agreement with a state may be made applicable to such service, if the protection afforded any such fireman under his retirement system, in effect on the effective date of this act, or in effect three years prior to the holding of a referendum in accordance with paragraph (3), is diminished or impaired. For purposes of the preceding sentence, a retirement system which covers—and

"'(i) positions of firemen and other positions, shall be deemed to be a separate retirement system with respect to the positions of such firemen and no positions of other persons may be included in any such separate retirement system."

nothing herein shall effect any agreement authorized by paragraph (p).'

"(b) Subparagraph (C) of section 218(d)(6) is amended by adding thereto:

"'Nothing herein shall apply to service in any fireman's position.'

"(c) Subparagraph (D) of section 218(d)(8) is amended by striking out 'agreements with interstate instrumentalities' and inserting in lieu thereof 'agreements authorized by section 1 of this act.'

"(d) Paragraph (3) of section 218(k) is repealed."

SOCIAL SECURITY AMENDMENTS OF 1967—AMENDMENT

AMENDMENT NO. 296

Mr. RIBICOFF. Mr. President, I send to the desk an amendment to H.R. 12080, the Social Security Amendments of 1967, to allow States, under Federal-State agreements, to provide hospital coverage under medicare for certain State and local employees whose services are not otherwise covered by social security and ask that it be printed. It is designed to fill a gap in our medicare coverage effecting State and local employees and is identical to S. 1071.

On July 1, 1966, hospitalization coverage under medicare began for nearly 20 million Americans age 65 or over. All Americans who reach age 65 before 1968 will be similarly covered, whether they are eligible for social security retirement benefits or not. But, after January 1, 1968, a person must be covered by the social security retirement system to be eligible for medicare hospitalization insurance. Although generally equitable, this creates a severe problem for employees of State and local governments.

Although most employees in the United States are now automatically covered by social security, this is not true with regard to employees of State and local governments. Social security coverage involves a tax on employers as well as on employees. In this case, however, the employer is a State or local government. The Congress, not wanting to be in the position of attempting to tax a State or local political unit, excluded their employees from compulsory participation in the social security system.

The law does allow, however, for voluntary agreements for the coverage of most State and local employees. Whether or not services to a State or local government are to be covered depends on the State, which must work out a coverage agreement with the Secretary of Health, Education, and Welfare. Members of local retirement systems, however, must approve coverage by referendum.

As of January 1965, approximately 2.6 million positions in State and local employment were not covered by social security. Thus, the individuals in these positions will not be eligible for the hospitalization insurance provisions of medicare unless they have attained social security coverage in other employment. These are employees who are not covered by Federal-State agreements bringing them under social security. In most cases, they are covered by retirement systems of their own. These public employees, although members of State or local retirement systems, do not have programs similar to the hospital insurance program available to them. Many are willing to pay for such insurance, but under present law, are precluded from doing so unless the State brings them under the social security retirement system as well.

I am particularly concerned about this gap in medicare's hospital insurance coverage because among those excluded are over 689,000 public school teachers across the Nation. These are teachers who have devoted their lives to educating the children in a dozen States across the Nation—States which have excellent retirement systems—but they will be excluded from medicare's hospital insurance. My amendment will allow them to elect to participate in the hospital insurance program as long as they are willing to pay their own way. Nothing could be fairer than that.

I ask that there be printed in the RECORD at this point a table showing the States whose teachers are not covered by social security as a result of their employment as teachers.

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

Area:	*Instructional personnel*
California	181,200
Colorado	24,240
Connecticut	29,750
Florida	58,212
Illinois	95,532
Kentucky	29,500
Louisiana	36,100
Maine	10,380
Massachusetts	53,200
Missouri	41,798
Nevada	5,030
Ohio	97,000
Puerto Rico	19,860
Rhode Island	7,891
Total	689,693

Mr. RIBICOFF. Mr. President, there is no reason why these employees should not be brought under the basic hospital insurance program without requiring them to participate in the social security retirement program. The basic hospital insurance program is financed by a payroll tax completely separate from the regular social security tax. Income from the hospital insurance payroll tax will go into a separate trust fund to pay the benefits and administrative expenses of the hospital insurance program. It is a completely separate insurance program. Allowing these public employees to participate in the hospital insurance program will actually improve that program by broadening the number of persons covered.

My amendment provides that those State and local employees not now included under an agreement providing social security coverage may be covered by hospital insurance only. The agreement provisions under which a State may make hospital insurance available in the referendum provisions to accomplish coverage are similar to those now in effect for social security retirement coverage of State and local employees. A majority of the employees in the coverage group in question must vote for coverage. The amendment covers only those employee groups which may currently be subject to Federal-State agreements. Thus, there should be no unknown administrative problems connected with implementation.

The employees and their employers will pay for the coverage of hospital insurance according to the schedule now set out in the law. Thus, these employees will in no way be getting a free ride. They and their employers will pay their own way. The payments would go into the separately established hospital insurance trust fund, which is, of course, completely separate from the OASDI trust fund.

The enactment of this legislation will bring another large group of Americans under the protective provisions of the hospitalization insurance program. This is beneficial to the program as well as to these employees.

The PRESIDING OFFICER. The amendment will be received, printed, and appropriately referred.

The amendment (No. 296) was referred to the Committee on Finance.

REVISION OF FEDERAL ELECTION LAWS—AMENDMENT

AMENDMENT NO. 297

Mr. COOPER submitted an amendment, intended to be proposed by him, to the bill (S. 1880) to revise the Federal election laws, and for other purposes, which was ordered to lie on the table and to be printed.

SOCIAL SECURITY AMENDMENTS OF 1967—AMENDMENT

AMENDMENT NO. 298

Mr. KENNEDY of Massachusetts. Mr. President, the Social Security Amendments of 1967, recently passed by the House, are comprehensive changes in existing law. They do not, however, include certain changes which I think should be made. I am today proposing one amendment to H.R. 12080, which I send to the desk and ask to be printed.

I have previously this session discussed the subject matter of this amendment, and I refer my colleagues' attention to the CONGRESSIONAL RECORD of May 2, 1967.

The PRESIDING OFFICER. The amendment will be received, printed, and appropriately referred.

The amendment (No. 298) was referred to the Committee on Finance.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

Mr. MILLER. Mr. President, I ask unanimous consent that at the next printing of S. 2053, to amend title II of the Social Security Act to provide for periodic cost-of-living increases in monthly benefits payable thereunder, the names of the following Senators be added as cosponsors: Mr. BAKER, Mr. BOGGS, Mr. BROOKE, Mr. CARLSON, Mr. HRUSKA, Mr. JAVITS, Mr. JORDAN of Idaho, Mr. KUCHEL, Mr. MURPHY, Mr. SCOTT, Mr. THURMOND, Mr. TOWER, and Mr. YOUNG of North Dakota.

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

Mr. BARTLETT. Mr. President, I ask unanimous consent that at the next printing of S. 2067, to provide for the protection of the public health from radiation emissions from electronic products which are in commerce or are imported into the United States, that the junior Senator from Rhode Island [Mr. PELL] be added as a cosponsor.

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

Mr. FONG. Mr. President, I ask unanimous consent that, at its next printing, my name be added as a cosponsor of the joint resolution (S.J. Res. 106) regarding the status of the Trust Territory of the Pacific Islands.

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

Mr. TOWER. Mr. President, I ask unanimous consent that, at its next printing, the names of the Senator from California [Mr. MURPHY], and the Senator from New York [Mr. JAVITS] be added as additional cosponsors of the joint resolution (S.J. Res. 104) to establish an advisory commission to study and report on the adequacy of the U.S. merchant marine fleet.

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

ADDITIONAL COSPONSOR—S. 2140

Mr. COTTON. Mr. President, I ask unanimous consent that my name be added as a cosponsor to S. 2140, to authorize the exchange of certain vessels for conversion and operation in nonsubsidized service between the west coast of the United States and the territory of Guam, at the next printing of the bill.

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

Mr. COTTON. Mr. President, this bill, introduced by the distinguished Senator from Alaska [Mr. BARTLETT], would authorize the Secretary of Commerce, acting through the Maritime Administration, to trade out in exchange for obsolete vessels two C–4-type ships for the purpose of conversion and operation in nonsubsidized service between the United States and the Territory of Guam.

Basic authority for this proposal is contained in section 510(i) of the Merchant Marine Act of 1936. This section, known as the Vessel Exchange Act, was designed, as the Senator from Alaska so ably pointed out, to upgrade that portion of the U.S.-flag fleet not operating under construction differential subsidy. The legislative intent is clear, that traded out vessels would not be eligible for operating subsidy and would be used only in nonsubsidized service. Obviously, this was intended to prevent the subsidized lines from avoiding their contractual ship replacement obligations.

It is also clear, however, that the peculiar situation to which this bill is directed was not contemplated at the time, or at such later times as the act was under consideration. In brief, this involves the unusual exception to the general rule, where a subsidized company directly operates a nonsubsidized service between the west coast of the United States and the Territory of Guam. While this service has been completely unsubsidized for many years, the fact that the operating company receives subsidy for service other than to Guam raises some question as to its eligibility under the Vessel Exchange Act which should be clarified. The need for modernized equipment in this service is apparent. Aside from the unfortunate loss of one of the existing vessels by collision earlier this year, the trend toward containerization and the growing needs of the Guam community make it imperative that replacement vessels be made available as soon as possible. In support of this contention, I quote the text of a telegram from the Honerable Manuel F. L. Guerrero, Governor of Guam, which emphasizes the existing need:

Government of Guam urges favorable consideration Pacific Far East Lines application for two C–4 ships under Vessel Exchange Act. These ships to be converted to containerization and will greatly improve Lines West Coast to Guam service which vital to Territory's economy. Commercial tonnage handled here, discharged and loaded, increased from 246,854 in FY64 to 274,990 in FY66. Gross

volume commercial business activity up from $124.7 million to $136.2 million same period. Government investing $16 million in new commercial port and containerization would cut costs in serving our fast-expanding civilian population which increased from 44,892 to 53,744 last three years.

It is my strong feeling that this legislation is badly needed and that it is not inconsistent with the original objectives of the act. Accordingly, it is my hope that it will receive favorable consideration at the earliest possible time.

AFRICAN WILDLIFE IN DANGER—ADDITIONAL COSPONSOR OF CONCURRENT RESOLUTION

Mr. YARBOROUGH. Mr. President, I ask unanimous consent that the name of the junior Senator from New York [Mr. KENNEDY] be added as a cosponsor of Senate Concurrent Resolution 41, expressing the sense of Congress with respect to the need for worldwide conservation of wildlife, calling of the convening of an international conference for the preservation of endangered species of wildlife, which was introduced on Monday of this week.

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

Mr. YARBOROUGH. Mr. President, 2 days ago I introduced a concurrent resolution (S. Con. Res. 41), calling for the United States to take the initiative in promoting a worldwide conference on the conservation of wild animals.

I have introduced this legislation three times, in the last three Congresses. On each occasion it has received the support of the Department of State and the Department of the Interior.

Public interest in the fate of wild animals facing extinction is now beginning to be awakened, largely through the efforts of certain parts of the news media which have grasped the urgency of the problem. The most recent of the efforts is a two-page article which appeared in a Newsweek article the day after I introduced the resolution. The article is a well researched and compelling argument for the conservation of the magnificent animals of Africa before it is too late to save them. Articles like this will help the public to realize that, as the great conservationist William Hornaday said:

> The wildlife of the world is not ours, to dispose of wholly as we please. We hold it in trust, for the benefit of ourselves and for equal benefits to those who come after us.

The situation, as Newsweek demonstrates so vividly, is critical. I hope that responsible journalism such as this will help the public and the Senate to realize it.

Mr. President, I ask unanimous consent that an article from the Newsweek of September 3, 1967, entitled, "Can Africa's Wildlife Be Saved?" be inserted at this point in the RECORD.

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

CAN AFRICA'S WILDLIFE BE SAVED?

From Kenya to the Congo, the great migrant herds of wildlife that once roamed East Africa's 700,000 square miles of savanna-land and forest have all but disappeared. Some authorities, in fact, estimate that it has taken man less than 50 years to reduce the region's game population to a tenth of its former size. Now he is trying to keep that last remnant from vanishing altogether.

Decimated by poachers and dispossessed by livestock, the surviving herds have to a large degree become refugees in East Africa's thirteen national parks and its 91,000 square miles of game reserves. Here, to the casual tourist, there seems to be no end to the game. But ecologists and wardens involved in wildlife-management projects know better. They know that the sanctuaries alone offer scant protection. Indeed, in some cases, the parks themselves must be saved from the game. As the migration of wildlife into preserves increases, so does the pressure on the food supply of the animals already there. Last year, at Uganda's Murchison Falls Park, wardens were forced to "cull" (conservationese for kill) no fewer than 2,900 elephants and 2,000 hippopotamuses. A hippo can put away 150 pounds of grass in one night.

Land Settlement: The problems begin with man: quite simply, he is outbreeding and outranging the beasts. Since 1915, Uganda has given up three-quarters of its wildlife range to human habitation, cultivation and grazing. By the year 2000, its 8-million population will have more than doubled and gobbled up 20 million more acres of game land. In Kenya, where man currently requires a quarter of the land, half will be needed in 30 years—most of it for agricultural settlements and squatters practicing subsistence farming. And in Southeast Tanzania increased land settlement has resulted in what game warden Brian Nicholson calls a "straightforward clash between man and beast."

The very mention of an East African wildlife crisis once conjured up an image of the white hunter, armed with a high-powered rifle and an insatiable lust for blood. But today, the 100 professional hunters operating in East Africa are ardent—and admired—defenders of wildlife. The tradition began with the late Philip H. Percival, who escorted Teddy Roosevelt in 1910 and Ernest Hemingway 23 years later, on safaris, then spent his final years as East Africa's first game warden. But while professional hunters have been solicitous of wildlife, many Africans have not.

Official estimates of the number of animals killed each year by poachers in East Africa run as high as 300,000. Most of the lawbreakers are driven by hunger and habit. The Wakamba and Wasukuma, for example, come from an ancient line of proud—and protein-starved—hunters. But others, encouraged by traders on the coast, poach purely for profit. Their targets range from the black rhino, nearly extinct because its horn fetches $28 a pound on the Asian aphrodisiac market, to leopards, whose skins are worth thousands of dollars on the furrier's rack.

"The business of poaching is run like the opium trade," explains Nairobi white hunter Bill Ryan. "It's as tight as a drum." But so are the poaching penalties, which have become much harsher since *Uhuru*—Independence. The penalty in some areas: a $2,800 fine or five years in prison. In Kenya's sprawling Tsavo National Park, once a favorite haunt of elephant and rhino poachers, the government has practically eliminated the problem by hiring the most notorious game killers as control hunters.

By far the greatest single danger to Africa's wildlife comes in the form of nothing more sinister than scrawny herds of tick-ridden cattle competing with wildlife for grazing space across the scrubby grasslands. As long as disease and drought kept their stock to a minimum, East Africa's pastoral tribes traditionally shared these semi-arid regions with the game. But modern veterinary science has upset the balance. "It's all the white man's fault," says Tanzania National Parks planning adviser Philip Thresher "We've taught Africans how to increase their herds without teaching them how to control their stock rationally. Now there's the devil to pay."

In Uganda, the cattle population has doubled since 1930. Understandably, as domestic herds increase, tribal pastoralists become less willing to coexist with the wildlife. Animal husbandry has taught them that game can infect their stock with such diseases as anthrax and rinderpest.

Facing Spears: When Tanzania's Ngorongoro Crater was separated from the Serengeti National Park and demoted to conservation-area status in 1959, Masai tribesmen were allowed to graze cattle there. Crater conservator S.A. ole Saibull, a Masai himself, still manages to maintain a proper cattle-game ratio. But, as another Tanzanian park official told NEWSWEEK's Curt Hessler: "What if we have a drought? Masai from all around will bring their cattle into the area for water. Who's going to face those spears and say 'get out'?"

If cattle pose a danger to wildlife, they also represent disaster to the land itself. Where game is selective in feeding and rarely overgrazes, livestock will nibble pastureland to dust. Their hooves destroy the porous structure of the soil, compact it, expose it to erosion by wind or rain. The Great Rift Valley, running from the Red Sea to South Africa, was once lush forest and fertile plain. But indiscriminate overgrazing has reduced it to a dry, raw scar in the landscape. It may well be beyond reclaim.

Knowledge Gap: The production of field crops also complicates East Africa's delicate ecology and has noticeably increased the African's disdain for wildlife. Elephants trample his maize, buffalo batter his fences and chattering armies of baboons uproot any crop in their path. Yet most African farmers fail to understand why there are so many baboons to contend with. It rarely occurs to them that the answer might be related to the extirpation of leopard and cheetah that naturally prey on baboon and keep the ape's numbers in balance. "Somehow," says Robert Casebeer of the U.N.'s Food and Agriculture Organization, "we've got to show the tribes that most wildlife is valuable to them."

This is no small task. A surprising number of Africans know little or nothing about the great mammals with which they have shared a continent for centuries. A recent survey shows that eight out of ten Kenyan schoolchildren cannot even distinguish between a leopard and a hyena.

To close the knowledge gap, most of the national parks offer extensive education programs financed by U.S. and European foundations. The Washington-based African Wildlife Leadership Foundation (AWLF), for example, contributes a half-million dollars each year to conservation-education centers, including the 40-mile-square Nairobi National Park. Last year, 19,000 student visitors to this park were exposed to AWLF's message: wildlife is Africa's No. 1 asset.

Tanzania has fielded perhaps the most aggressive game-management and conservation programs. Since independence, the country has created no fewer than four national parks and such ambitious projects as the College of Wildlife Management at Mweka, high on the slopes of Mount Kilimanjaro. Founded in 1964 with a $25,000 grant from AWLF, the college is training 57 students from ten African countries to serve as park wardens and game officials. Though the U.N.'s FAO administers the college with a five-year grant of a half million dollars, funds and scholars also come to Mweka from the U.S. and West Germany.

The curriculum at Mweka ranges from elementary biology to a course in animal-population dynamics taught by 39-year-old Patrick Hemingway, son of the late chronicler of Africa's green hills. Hemingway

spends half of each month in the field, teaching his students the practical aspects of game management, map interpretation, wildlife identification and "control" shooting. Despite their demonstrated desire and ability to learn some students would prefer to pursue a different profession. "Let's face it," says on Mweka instructor. "Africans want to get out of the bush and into the cities."

For the game, time may be running out unless more Africans than Mweka can train decide that wildlife deserves a share of the range. One way may be through Africa's ever growling stomach.

Most nutrition experts agree that humans require an average of 30 grams of animal protein daily—six times more than is being consumed by East Africans. Yet recent experiments show that many game animals may yield half again as much lean meat as livestock of equal weight. Moreover, many agriculturalists point out that East African pasture land can support game animals more productively than cattle. Says S. O. Ayoda, Kenya's Minister for Tourism and Wildlife: "The government is becoming convinced that a high production of animal protein can be maintained from wildlife on lands that might deteriorate under other forms of use."

The FAO, for another, is convinced that wildlife may yield a solution to the African's chronic hunger. For several years, Zambian wardens in the Lambwe Valley have been "cropping" wildlife for food. The carcasses are butchered in mobile abattoirs and transported to *dukkas* (markets) in the nearby Copper Belt.

Canned Gazelle: Even Hemingway foresees a need for a wildlife-canning industry in East Africa. Says Hemingway: "Our own experiments with home tinning of Thomson's gazelle meat have shown its quality to be quite comparable to the finest tinned tuna." But the "game as meat" concept is challenged by Dr. Igor Mann, former chief animal-industry officer for Kenya. "I've yet to see a self-supporting game-ranching scheme," says Mann. "Game meat isn't going to make anyone rich."

Perhaps not, but tourism—largely dependent on wildlife—does. It already ranks as Tanzania's fourth largest industry and Kenya's second largest. By 1970, it will be East Africa's biggest industry, grossing $75 million annually in Kenya alone. Clearly, Africa cannot afford to jeopardize the future of its wildlife—a resource that is every bit as vital to its economy as the copper mines of Katanga or the diamond fields at Kimberley. "Now is the critical time for African wildlife," says AWLF director Frank Minot, "the time when everything should be done at once."

NUCLEAR DESALTING PLANTS TO PROVIDE FRESH WATER FOR THE MIDDLE EAST—ADDITIONAL COSPONSORS

Mr. BAKER. Mr. President, I have the pleasure today to announce the cosponsorship of Senate Resolution 155 by the following distinguished Senators and to ask unanimous consent for the addition of their names at the next printing of the resolution.

The list consists of Senators MANSFIELD, DIRKSEN, HANSEN, SCOTT, BENNETT, CARLSON, COOPER, DOMINICK, JAVITS, PEARSON, PERCY, ALLOTT, CURTIS, FANNIN, GRIFFIN, HATFIELD, HRUSKA, HICKENLOOPER, KUCHEL, MILLER, TOWER, BOGGS, BROOKE, AIKEN, MORTON, MURPHY, FONG, JORDAN of Idaho, SMITH, THURMOND, PROUTY, COTTON, RANDOLPH, HOLLINGS, DODD, MUSKIE, TYDINGS, MCGEE, CLARK, BAYH, HARTKE, INOUYE, EASTLAND, LONG of Missouri, SPONG, KENNEDY of Massachusetts, JACKSON, MCINTYRE, RIBICOFF, KENNEDY of New York, and BYRD of West Virginia.

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

Mr. BAKER. Mr. President, it is indeed gratifying to me to have such broad bipartisan support for this resolution, which would make it the sense of the Senate to urge adoption of the Eisenhower plan for nuclear desalting plants to provide fresh water for the Middle East. I feel that the concept involved here—the use of nuclear energy to make peace instead of war, to create rather than destroy—is basic to world survival.

We all know the destructive force of the atom and nuclear power. From the moment of the explosion of the first atomic bomb in the New Mexican desert in 1945, the world has lived under the fearful shadow of a mushroom cloud of nuclear destruction. Those early bombs which unleased such horror on the Japanese cities of Nagasaki and Hiroshima have paled into insignificance in relation to the terrible new weapons of atomic destruction which have been devised.

We know that the wholesale destruction of civilization is no farther away than the push of a button.

But this does not have to be. At the same time that we have developed more powerful weapons of nuclear destruction, our scientists have been working diligently to harness nuclear energy for man's betterment.

President Eisenhower made great strides in this direction during his administration. Under his guidance, the nations of the world sat down together for the first time to learn how to pool their efforts to use atoms for peace. From this was formed the International Atomic Energy Agency which this year celebrates its 10th anniversary. Here we have the world's great nuclear scientists meeting and searching for ways to cooperate in using the power of the atom to make the world a better place to live in.

General Eisenhower has again come forth with a proposal in line with his unswerving belief that the atom can be used for peace.

General Eisenhower has suggested that the full force of nuclear energy as we know it today be applied to solving the differences between the Arab and Israeli peoples in the Middle East. He points out that the most crucial problem in that strife-torn area of the world is water. By applying our nuclear technology, we can, from the first plant to be built, supply more water than flows from the three principal tributaries of the historic Jordan River, the area's principal water source. In doing so we will provide work for thousands of refugees and we will turn arid desert land into fertile fields on which these people can live and work in peace.

It is a significant point in our development of nuclear power, I feel, that we can now discuss ways to move into an area of conflict and, instead of using the atom to blast the belligerents into submission, use it to erase their differences by providing them a base of cooperation and mutual interest.

The author of the forward-reaching plan sponsored by General Eisenhower was Adm. Lewis Strauss, the distinguished former Chairman of the Atomic Energy Commission, who, like the former President, has worked tirelessly to see that nuclear energy ceases to be a threat to civilization and becomes the promise of humanity. Tomorrow, I will have the high privilege and honor of going to Gettysburg, Pa., to meet with General Eisenhower and Admiral Strauss to discuss their plan in further detail. I would like now to outline briefly some of the pertinent parts of this plan.

The plan is based on the finding that, if sufficient quantities of fresh water can be furnished to the arid lands of the Middle East, the chronic shortages of an adequate food supply and meaningful work for residents and refugees alike can be alleviated. Admiral Strauss' vast experience, as a former Chairman of the Atomic Energy Commission, has led him to conclude that three very large nuclear desalting plants are both technically feasible and economically attractive as the means to provide the tremendous quantities of fresh water which the plan envisions. Two of the installations would be located at appropriate points on the Mediterranean coast of Israel and a smaller one at the northern end of the Gulf of Aqaba in either Jordan or Israel, as the most suitable terrain may dictate. The first plant would be designed to produce daily the equivalent of some 450 million gallons of fresh water—more than the combined flow of the three main tributaries which make up the Jordan River. It would also produce an amount of power which, though in excess of the present needs of the area, would attract industry and would be used to pump the fresh water into the water-starved areas of Israel, Jordan, and other Arab countries—perhaps even including part of Egypt east of the Nile Valley. Operation of the plants would be made the responsibility of the International Atomic Energy Agency, of which Agency each of the major belligerents, fortunately, is a member.

With respect to financing the project, Admiral Strauss proposes that a corporation be formed with a charter resembling that of Comsat, with the Government subscribing to half of that stock, the balance to be offered for public subscription in the security markets of the world. The amount to be raised, say $200,000,000, would be used to begin construction of the first of the three plants. The cost of the plants, beyond the sum raised by subscription, would be financed by an international marketing of convertible debentures bearing no interest for the first few years while the plant is being built.

The plan provides other benefits. It will, in a very practical sense, force upon the Israel and Arab Governments the need for cooperation in order to, for example, allocate water and power produced by the plants. Moreover, the plan provides a tangible means of further demonstrating the desire of the United States to find peaceful solutions to areas of conflict.

Mr. President, a possible acronym and name for this international corporation would be MEND—Middle East Nuclear

Desalting Corporation. I think this name would be particularly significant since the purpose of the company would be to mend the differences between these two great peoples of the Middle East and give them reason to live together in peace and harmony.

The distinguished chairman of the Foreign Relations Committee, Mr. FULBRIGHT, has been kind enough to indicate consideration of early hearings on this matter. I am very grateful for his interest and concern.

(At this point, Mr. BYRD of West Virginia took the chair as Presiding Officer.)

ARCHIE MOORE SPEAKS OUT—LAUNCHES OPERATION GARDENER

Mr. LAUSCHE. Mr. President, in Hamilton, Ohio, there is published the Butler County American. Its masthead states that it is "Negro edited, speaking for rights of all—majorities and minorities."

In its August 19 issue, there is published and article entitled "Guide or Misguide, Archie Moore Points Way by Launching Operation Gardener."

At the head of the column there is an editor's note, which reads as follows:

Archie Moore, internationally known San Diegan and retired light heavyweight boxing champion of the world, told friends yesterday he feels that "everybody must take a stand in this time of internal crisis. A man who stands neutral stands for nothing." He then wrote the following statement and submitted it to The San Diego Union, which is printing it verbatim.

Mr. President, I want to read a few excerpts from Mr. Moore's statement. They are so apropos and pertinent to the times that they are worthy of the deepest consideration by every one of us:

The devil is at work in America, and it is up to us to drive him out. Snipers and looters, white or black, deserve no mercy. Those who would profit from their brother's misfortunes deserve no mercy, and those who would set fellow Americans upon each other deserve no mercy.

I'll fight the man who calls me an "Uncle Tom." I have broken bread with heads of state, chatted with presidents and traveled all over the world. I was born in a ghetto, but I refused to stay there. I am a Negro, and proud to be one. I am also an American, and I'm proud of that.

Mr. President, this is a ringing statement, apropos of the times, and bespeaks, in my opinion, the true thinking of the Negro in the United States as distinguished from the rabble rousers who have a greater love for foreign countries than they have for the land of their birth.

Mr. Moore further states:

The young people of today think they have a hard lot. They should have been around in the '30s when I was coming up in St. Louis. We had no way to go, but a lot of us made it. I became light heavyweight champion of the world. A neighbor kid down the block, Clark Terry, became one of the most famous jazz musicians in the world. There were doctors, lawyers and chiefs who come out of that ghetto. One of the top policemen in St. Louis came from our neighborhood.

Mr. President, that is a breath of wholesome, fresh air. In my judgment, it describes the honest thinking of the Negroes of our country who are devoted to the cause of the United States and who recognize that the United States has provided a more abundant life for the poorest Negro than is enjoyed by millions of people around the world.

I ask unanimous consent to have the complete article written by Mr. Moore printed in the RECORD.

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

GUIDE OR MISGUIDE: ARCHIE MOORE POINTS WAY BY LAUNCHING OPERATION GARDENER

(EDITOR'S NOTE: Archie Moore, internationally San Diegan and retired light heavyweight boxing champion of the world, told friends yesterday he feels that "everybody must take a stand in this time of internal crisis. A man who stands neutral stands for nothing." He then wrote the following statement and submitted it to The San Diego Union, which is printing it verbatim.)

(By Archie Moore)

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The young people of today think they have a hard lot. They should have been around in the '30s when I was coming up in St. Louis. We had no way to go, but a lot of us made it. I became light heavyweight champion of the world. A neighbor kid down the block, Clark Terry, became one of the most famous jazz musicians in the world. There were doctors, lawyers and chiefs who came out of that ghetto. One of the top policemen in St. Louis came from our neighborhood.

We made it because we had a goal, and we were willing to work for it. Don't talk to me of your "guaranteed national income." Any fool knows that this is insanity. Do we bring those who worked to get ahead down to the level of those who never gave a damn? The world owes Nobody—black or white—a living. God helps the man who helps himself!

Now then, don't get the idea that I didn't grow up hating the injustices of this world. I am a staunch advocate of the Negro revolution for the good of mankind. I've seen almost unbelieveable progress made in the last handfull of years. Do we want to become wild beasts bent only on revenge, looting and killing and laying America bare? Hate is bait, bait for the simple-minded.

Sure, I despised the whites who cheated me, but I used that feeling to make me push on. If you listen to the professional rabble-rousers, adhere to this idea of giving up everything you've gained in order to revenge yourself for the wrongs that were done to you in the past—then you'd better watch your neighbor, because he'll be looting your house next. Law and order is the only edge we have. No man is an island.

Granted, the Negro still has a long way to go to gain a fair shake with the white man in this country. But believe this: if we resort to lawlessness, the only thing we can hope for is civil war, untold bloodshed, and the end of our dreams.

We have to have a meeting of qualified men of both races. Mind you, I said qualified men, not some punk kid, ranting the catch phrases put in his mouth by some paid hate-monger. There are forces in the world today, forces bent upon the destruction of America, your America and mine. And while we're on the subject, do you doubt for a minute that communism, world communism, isn't waiting with bated breath for the black and white Americans to turn on each other full force? Do you want a chance for life, liberty and the pursuit of happiness in the land of your birth, or do you want no chance at all under the Red heel?

AFRICA'S A GREAT PLACE TO VISIT

There are members of the black community who call for a separate nation within America. Well, I do not intend to give up one square inch of America. I'm not going to be told I must live in a restricted area. Isn't that what we've all been fighting to overcome? And then there is the element that calls for a return to Africa.

For my part, Africa is a great place to visit, but I wouldn't want to live there. If the Irishmen want to go back to the Emerald Isle, let them. If the Slavs want to return to the Iron Curtain area, OK by me. But I'm not going to go to any part of Africa to live. I'm proud of ancestry, and of the country that spawned my forefathers, but I'm not giving up my country. I fought all my life to give my children what I'm able to give them today; a chance for development as citizens in the greatest country in the world.

I do not for a moment think that any truly responsible Negro wants anarchy. I don't think you'll find intelligent—no, let's rephrase that—mature Negroes running wild in the streets or sniping at total strangers. God made the white man as well as the black. True, we haven't acted as brothers in the past, but we are brothers. If we're to be so many Cains and Abels, that's our choice. We can't blame God for it.

TEACH THAT "ANY BOY CAN"

Something must be done to reach the Negroes and the whites in the ghettos of this country, and I propose to do something.

As a matter of plain fact, I have been doing something for the past several years. I have been running a program which I call the ABC—Any Boy Can. By teaching our youth, black, white, yellow and red, what dignity is, what self respect is, what honor is, I have been able to obliterate juvenile delinquency in several areas.

I would now expand my program, change scope. If any boy can, surely any man can. I want to take teams of qualified people, top men in their fields, to the troubled areas of our cities. I know that the people who participated in the recent riots, who are participating and who will participate, are misguided rather than mad.

If some bigot can misguide, then I can guide. I've spent too much of my life building what I've got to put it to torch just to satisfy some ancient hatred of a man who beat my grandfather. Those men are long dead. Do we have to choke what could be a beautiful garden with weeds of hate? I say No! And I stand ready to start "Operation Gardener." I invite the respected Negro leaders of our country to join me.

UPSTREAM WATERSHED JURISDICTIONAL DISPUTE

Mr. MUNDT. Mr. President, we have in the Senate a newly created subcommittee of the Committee on the Judiciary. This subcommittee was formed to examine into the separation of powers among the three branches of our Government. The new subcommittee has of recent days been holding hearings on the jurisdiction question of project work plan approval under the upstream watershed program.

One of the members of this subcommittee is the distinguished Senator from my neighboring State, Nebraska [Mr. HRUSKA]. On August 21, Senator HRUSKA addressed the Northern Plains Area

meeting of the National Association of Soil and Water Conservation Districts. He used the occasion to report on what he had learned at the hearing held by our new subcommittee.

I think other Members of the Senate will find interest in his report. Therefore, I ask unanimous consent to have printed in the RECORD extracts from the remarks of our Nebraska colleague on that occasion.

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

EXTRACTS FROM THE REMARKS OF SENATOR ROMAN L. HRUSKA BEFORE THE NATIONAL ASSOCIATION OF SOIL AND WATER CONSERVATION DISTRICTS, AREA V, NORTHERN PLAINS AREA, OMAHA, NEBR., AUGUST 21, 1967

The subject I would like to discuss with you tonight might well be comic were the consequences not measured in human lives and millions of dollars in property damage.

We might all get a jolly laugh at the absurdity of a Mexican standoff between the Congress of the United States and the President of the United States.

We might find amusement in the fact that a lively debate can be constructed between the same man—Senator Lyndon B. Johnson and President Lyndon B. Johnson.

Instead the subject is a serious one. It has to do with the President's refusal to proceed with the development and construction of ten watershed projects, all of which have been proposed to the Congress by the Department of Agriculture, all of which have high benefit-cost ratios, all of which are assured of adequate funding.

Why has the President ordered the Bureau of the Budget to freeze funds for these projects? He maintains that the system under which the Senate and House committees for the past 13 years have been approving such projects is unconstitutional, that they "dilute and diminish the authority and powers of the President. . . . I do not want the Legislative (Branch) through two committees—to encroach upon the responsibilities of the Presidency."

This assertion by the President led Congressman Bill Cramer of Florida to comment, "For Johnson to accuse Congress of trying to usurp his powers is like accusing a herd of steers of trying to take over his spread."

Many of us in the Congress—I think I can safely say most of us—reject the President's reasoning. Our position is that the Congress can, if it chooses, delegate its functions to its appropriate committees. It does so every day and so long as the action has the approval of the Congress itself, it really is not the business of the Executive Branch.

So that—somewhat oversimplified—is what the contest is all about.

It happens that two of these frozen projects—Papillion Creek on which Milton Fricke and his associates have labored for so long, and an equally needed project on Clatonia Creek—are in Nebraska. So I would be intensely interested in this subject even if I were not a member of the Senate Subcommittee which handles the appropriations bills for the Department of Agriculture. And I would be further interested because I am a member of a newly created subcommittee of the Senate Judiciary Committee which was formed to examine this very problem of the separation of powers among the three branches of our government.

This subcommittee, chaired by Senator Sam Ervin of North Carolina and composed on the Democratic side of Senators John McClellan of Arkansas and Quentin Burdick of North Dakota and on the Republican side of Senator Dirksen and myself, has already held a number of hearings on this particular contest between the Executive and Legislative Branches.

Before I discuss those hearings and the prospects for the future, let me develop the historical perspective of the controversy and then point out some possible solutions.

To many of you this will be old hat and I seek your indulgence. But I think even those of you who have lived with this program since its inception may find the recital instructive.

Let's go back to 1953. The date is February 13. A Senator named Lyndon Johnson, speaking of the need for federal assistance in the area of small watershed projects, said this:

"At present there is no authority for direct local-federal cooperation on flood prevention programs in small upstream watershed areas. I introduce for appropriate reference a bill which is designed to close that gap. It is similar to legislation sponsored in the House of Representatives by my good friend, the Honorable W. R. Poage."

That, of course, was the bill that later became Public Law 566, the Small Watershed Act of 1954. Let's take a look at Section 5 of Senator Lyndon Johnson's bill:

"Before such installation involving federal aid is commenced, the Secretary of Agriculture shall transmit a copy of the plan and the justification therefor, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate for their consideration. Unless either committee by resolution disapproves of the plan, the Secretary may proceed with participation in the installation of works of improvement."

That, ladies and gentlemen, is the so-called "committee veto," about which you have heard so much. It was written into his bill, S. 877, by *Senator* Johnson in 1953 and today is denounced by *President* Johnson as unconstitutional and an invasion of the powers of the Presidency.

Well, you say, perhaps that was just some "boilerplate" language that the bill drafter stuck in and perhaps Senator Johnson overlooked it. Let's take a closer look.

Since the Senate and House versions of the Johnson and Poage bills differed, there was a conference committee. The conferees approved language which required the submission of watershed plans to the Congress 45 days before construction began and barred appropriations for these projects without approval of the appropriate committees in each house—Agriculture committees for the smaller projects, Public Works for the larger ones.

It is well to remember that prior to this time, Congress authorized each individual watershed project by separate legislation. This was, obviously, a cumbersome procedure and the Act was designed largely to delegate authority to the Executive Branch to formulate and implement small watershed projects without the necessity for legislation for each project.

But the Congress made it clear that it wanted to maintain legislative oversight of the program, hence the requirement for a 45-day notice by the Executive Branch and approval by the appropriate committees before appropriations could be made.

Now, let's move ahead to July 13, 1956. The scene is again the Senate chamber and the speaker is again Lyndon B. Johnson. I can testify personally to this because I was also in the chamber. This is what Mr. Johnson said as he called up for consideration the bill numbered H.R. 11873:

"This bill will shorten the (congressional) review period from 45 days to 15 days, and thus eliminate a substantial delay, *while still maintaining the principle of and the opportunity for congressional review of each individual project.*"

So, you see, again Lyndon Johnson who now finds this congressional review so objectionable not only reaffirmed it in 1956, but stressed its importance.

It is well to recall that President Eisenhower raised no question of constitutionality when he signed P.L. 566 in 1954 or when he twice signed into law subsequent amendments two years later.

In fact, in May of 1961, after *Senator* Johnson became *Vice President* Johnson, the General Counsel of the Department of Agriculture, in expressing his opinion as to the constitutionality of the congressional review procedure, cited P.L. 566 as a valid constitutional precedent.

Now, as you all know, this program and this System of congressional review of the watershed projects worked well for a dozen years. Then in July of last year, the acting Director of the Bureau of the Budget, sent to the Congress a list of some 37 watershed projects and said this:

"Since the review procedure established by Section 2 of this act has been in effect for a number of years, the President has approved the submission of these projects to the Congress despite his view that this procedure represents an unwarranted encroachment of the authority of the executive." The letter went on to say that the President has directed that "no further projects be transmitted under that procedure after this session."

Actually, as you know, 11 projects were sent up this year, but although ten of them have been approved by the Congress, the funds, as I noted, have been frozen.

So that's where the matter rests. At the moment there are many more questions than there are answers. There are questions like these:

"With looting and rioting and murder in our streets, with a costly war in Vietnam, with a budget that threatens to break the bonds of manageability, how can the President find the time, much less the inclination, to upset a program which saves lives and prevents property damage in order to defend some abstract principle of protecting the authority of the Presidency?

"When a program has worked so well and so beneficially for so many years, why stop it?"

"What effect will the freeze on watershed projects have in states like Nebraska which this Spring alone counts its flood losses in the tens of millions of dollars?"

I don't know whether there even *are* any answers to those questions. What we are trying to do in our work on the Subcommittee on Separation of Powers is to focus on several points which have been raised in testimony thus far:

1. For 13 years, the Small Watershed Program has operated well. So long as the constitutional issue raised by the President remains and so long as he insists on freezing the funds, the effective operation of the program is in jeopardy.

2. No constitutional challenge was raised when the original act was signed into law.

3. When the law was amended in 1956, no constitutional question was raised.

4. Even with the advent of the Kennedy Administration, the chief legal officer of the Department of Agriculture was defending the system now attacked by the President.

5. The Constitution, in Article I, Section 5, says: "Each House may determine the rules of its proceedings."

6. It was not until last year, 12 years after the original enactment, that the constitutional issue was raised.

7. The President's refusal to enforce a particular section of a statute constitutes an item veto, which is unconstitutional. For a President to refuse to enforce a provision enacted a dozen years ago is an *ex post facto* item veto.

Under the able chairmanship of Senator Ervin, a former judge and a recognized constitutional scholar, we have had several days of hearings on this matter. Additional hearings will be held starting tomorrow and that is why I must hurry back to Washington.

We have already heard from the chairman of the House and Senate Agriculture Committees. Let me capsulize their testimony for

you. Here is what Chairman Poage of the House Committee said:

"I think it is clearly a procedural matter for each house. I do not think the Executive has any right to interfere with either procedural matters in the House or the Senate."

And here is what Senator Ellender, chairman of the Senate Committee told us:

"Since the legislative branch is the one that appropriates these funds, and since we more or less have control and responsibility for them, we are making it possible for someone to object, in the event they choose to do so, to a project that has not been authorized. It is purely and simply a legislative matter, and one that does not encroach upon the Executive."

So far, two suggestions have been offered as solutions to the impasse. One would be a notice provision in the act, just as Senator Lyndon Johnson offered in February of 1953. It would provide that before these projects are to be considered by the appropriate committees, there must be advance notice of 30 days or perhaps 60 days. This would mean that all the projects could be reviewed before any money was appropriated.

The other suggestion is for an omnibus watershed act. This would mean the Congress would enact a long bill authorizing a couple of hundred projects. The advantage here would be that the President could not take only the projects he wants; he must take them all or veto the whole list.

Neither of these proposals has met any great encouragement by the Executive. The ultimate solution may be something like one or the other of these, or perhaps a combination with other features for congressional review.

Regardless of what kind of solution is reached, it should be attained soon. The losers in this somewhat unseemly contest are the people of America, and, in a larger sense, the people of the world.

With two billion people on the face of this earth, there is a vital need for food. Imagine the contribution in wheat alone that can be made by the six states which make up your Area V. We call ourselves America's breadbasket, as indeed we are. We can offer the poor and hungry nations of the world life's most precious gift—survival.

But we cannot make this contribution if we fail to make the maximum use of our God-given resources—the soil and the water with which we are richly endowed.

Since 1954, a total of 813 watershed projects have been approved. No one can calculate the benefits of this work. An additional 500 projects are in the administrative planning state.

Is all this momentum to be lost? Is atrophy to replace progress? Will we turn backward in stubborn defiance of logic and common sense?

Ladies and gentlemen, I hope not.

Fervently, I hope not.

In the remainder of the time allotted to me, I want to visit with you about my work as a member of the Senate Agriculture Appropriations Subcommittee with particular reference to our annual review of the Administration's budget request to fund soil and water conservation activities.

As you know, the financial climate in which the Congress has considered the President's budget this year has not been bright. There is increased spending to finance the newly established "Great Society" programs and, to a lesser extent, the war in Vietnam. The latest responsible estimates place the deficit for the current fiscal year at almost $30 billion. The President has sent to Congress his recommendations for a 10 percent surtax charge to raise revenues in an effort to avert a record flow of red ink.

It is in this setting that the Congress has considered the budget request of the President. We have been under very heavy pressure to remove the fat wherever possible. The bill covering the Department of Agriculture has now passed both the House and Senate. It will shortly be the subject of negotiations between the House and Senate conferees.

It has been my privilege for almost a decade now to serve as a member of the Senate Agriculture Appropriations Subcommittee. This year I became the ranking Republican member. I had thought I had gained some knowledge and background into the myriad of details involved in consideration of the agriculture budget in my previous experience. But this year for the first time I began really to grasp the full ramifications and meaning of this complex budget. It has been a sobering and enlightening experience. I want to pay tribute to the dedication, honesty and complete integrity of the chairman of our Subcommittee, Senator Spessard Holland of Florida. He is a true friend of agriculture, a true friend of conservation.

Now a word about the specifics of the action so far as it affects the Soil Conservation Service. On balance, it appears that so far the Service has done quite well in securing funds necessary to continue its vital work. This is due, in no small measure, to the "educational activities" which your group has conducted and your persuasive efforts in convincing members of Congress of the continuing worth and value of your efforts.

CONSERVATION OPERATIONS

For technical assistance to farmers and ranchers and cooperators in the Soil and Water Conservation Districts for developing plans and applying conservation treatments, the House provided about $113 million. This was about a half million dollars more than the appropriations for the preceding fiscal year, but about a $1 million less than the budget request. The Senate Committee, fully convinced of the value of this effort, provided the full amount of the budget request—about $114 million. The Senate action will provide almost $1 million for part-time help to existing Soil Conservation Districts, an item denied by the House, and about a half million dollars for technical assistance to the new Soil and Water Conservation District expected to be formed in the current fiscal year.

WATERSHED PROTECTION

In this item, there was substantial agreement as to the level of expenditures. The budget request, the House and the Senate action were all $70,400,000. This is an increase of about one quarter million dollars over the previous fiscal year. This money, of course, provides funds for actual construction of works of improvement in approved watersheds.

I want to call your attention to one particular item which the Senate Committee added this year which will effectively increase the money available for watershed construction by $5 million, making a total of more than $75 million available for watershed protection. This action, for which I must take some responsibility, permits a loan limitation of $5 million to be financed directly from loan funds available in the Direct Loan Account of the Farmers Home Administration using the vehicle of the so-called Participation Sales. Thus, the Senate has provided for the acceleration of construction on approved projects, and I want to emphasize this point strongly. In a time when there are severe pressures for budgetary restraint, a substantial increase was provided.

WATERSHED PLANNING

In contrast to the substantial increase provided for watershed protection, the Senate Subcommittee has decreased slightly funds available for watershed planning. For this we have received some criticism. In my view, this criticism is not justifiable. Consider the facts. In fiscal 1967, $6,340,000 was appropriated for watershed planning. For fiscal 1968, the current fiscal year, the budget requested a slight increase to $6,377,000. The House provided this amount. The Senate cut back to $6 million even, or a reduction of $377,000.

Our action was prompted by the fact that there was about a half million dollar carry-over from funds previously appropriated that will be available. In addition, there will be almost $4 million contributed by state and local communities for this purpose, thus making more than $10 million available for watershed planning during fiscal 1968. The Senate Committee, in its report, specifically called attention to the failure of the budget estimate to include sufficient funds to balance construction work with planning activity. As a result, plans drawn up with cooperation and hopes of local and state groups have bogged down in a quagmire of futility while waiting for years and years to be funded for construction. We were fully cognizant of the desire for planning but recognized as well the results and additional program costs when the planned projects do not move in an orderly manner on through to advanced engineering and final completion due to lack of funds for construction. We recommended that new planning starts be limited to no more than 80 during the current fiscal year for this reason. Construction should be allowed to catch up, or at least make substantial progress in that direction.

To be completely candid, I must inform you that I am not at all optimistic about the chances of the Senate cut holding up in the Conference Committee, but at least we are on record expressing our dissatisfaction with the wide gap developing between planning and construction on watershed projects.

GREAT PLAINS CONSERVATION

Another major action affecting conservation was our funding of the Great Plains Conservation Program. In fiscal 1967, $18.5 million was appropriated after the Senate had substantially increased the amount of the original budget request. For fiscal year 1968 the budget request was for only $16.3 million and the House provided this amount. The Senate Committee has added a little over $2 million to bring the amount back to the money appropriated in fiscal 1967. We did this because we were acutely aware of the strong interest and participation of those farmers and cooperators in the Great Plains and the useful and constructive results that have been obtained.

AGRICULTURAL CONSERVATION PROGRAM

The last item of major interest, one which is not found in the budget of the Soil Conservation Service, but rather the Agricultural Stabilization and Conservation Service is that of the Agricultural Conservation Program.

I don't need to remind you that each year, for the past several years, the Administration has proposed deep cuts in the $220 million that has been appropriated for this purpose. This year was no exception. A cut of $120 million was advocated. But as usual, there was an immediate protest from thousands of interested farmers and others who know firsthand the value of this program. Reaction in Congress was predictable. The Administration's requested cut was flatly and totally rebuffed and the full amount of $220 million was provided by the House and by the Senate. I might observe that one of my Republican colleagues for whom I have the greatest respect, but who was misguided in this instance, moved to restore the Administration cut on the Senate floor during the full Senate's consideration of the Agriculture Appropriations Bill. He was motivated from a desire to economize. It became my assignment to defend the program on the Senate floor, as did Chairman Holland. The final result was convincing, to say the least. On a rollcall vote, the Senate approved the full $220 million request by a vote of 82 to 10. Thus, adequate funds are assured—assuming that the President

will direct the Bureau of the Budget to release them for expenditures—for another year.

CONCLUSION

Many years ago now Congress enacted into law a provision which says in part:

"That it is hereby recognized that the waste of soil and moisture resources on farm grazing, and forest lands of the Nation, resulting from soil erosion, is a menace to the national welfare and that it is hereby declared to be the policy of Congress to provide permanently for the control and prevention of soil erosion and thereby to preserve natural resources, control floods, prevent impairment of reservoirs, and maintain the navigability of rivers and harbors, protect public health, public lands and relieve unemployment."

That statement, as well as any I know, expresses to me the reasons why we are here at this gathering. It is an extract from the Soil Conservation and Domestic Allotment Act of 1935, enacted by a Democratic Congress and signed by a Democratic President. It is a statement of policy to which all of us can subscribe regardless of party affiliation.

I suggest that we take this occasion to rededicate ourselves to the principles and practices of good management and conservation of our God-granted resources of soil and water.

PRESIDENT CONGRATULATED ON PRESENTATION OF DRAFT TREATY CONTROLLING SPREAD OF NUCLEAR WEAPONS

Mr. ANDERSON. President Johnson is to be congratulated for his persistent pursuit of a worldwide nuclear nonproliferation treaty. His efforts have been rewarded by joint American-Russian presentation of a draft treaty to the Geneva Disarmament Conference.

This treaty does not mark a nuclear millenium. The draft still lacks a clause on adequate inspections. Yet it is a remarkable document and a remarkable step forward toward world peace.

The two great super powers have agreed in writing, despite their differences, to halt the dangerous and rapid spread of nuclear arms. Through this draft, in the President's challenging words, man "still retains a capacity to design his fate, rather than be engulfed by it."

The nations of the world can live up to the President's challenge by completing the treaty.

I ask unanimous consent to have printed in the RECORD editorials from the Chicago Daily News, the Philadelphia Bulletin, and the Chicago Sun Times supporting the President.

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

[From the Chicago Daily News, Aug. 26, 1967]

NUCLEAR TREATY PROGRESS

Though it lacks an enforcement clause, the proposed nuclear nonproliferation treaty submitted to the Geneva disarmament conference is still a remarkable document. As it now stands, the joint U.S.-Soviet draft would be a notable achievement if only because the two major nuclear powers were finally able to reduce their points of agreement to writing. Of overriding significance is the fact that it was produced at a time when events in Vietnam and the Middle East have sharply increased tensions between Moscow and Washington.

That they could overcome such obstacles to arrive at a mutually acceptable draft attests to the great weight the two nations attach to the project. The treaty so far is concerned mainly with prohibiting signatory nations from supplying nuclear arms or weapons know-how to non-nuclear countries. However, all signatories would be entitled to information they need about nuclear power for peaceful purposes.

The latter provision may not go far enough to satisfy some of the non-nuclear countries that want access to nuclear force for blasting canals and for other big earth-moving undertakings. But these and other points may be clarified in the forthcoming debate on the draft treaty.

A final treaty, with an inspection clause acceptable to all signatories, looks to be a year or more away. But now that Russia and the United States have gone this far, with Britain acquiescing, it is just barely possible that work on the inspection feature can be speeded up.

Though neither France nor China intends, at least at this point, to subscribe to such a treaty, its adoption would tend to isolate them from the rest of the world community. In the long run, they too may recognize that international control is the best way of averting nuclear disaster.

[From the Evening Bulletin, Philadelphia, Pa., Aug. 26, 1967]

A HOPEFUL SIGN

The United States and the Soviet Union have agreed on the text of a treaty to limit the spread of nuclear arms. Since the consent of Britain is virtually assured, three of the five powers possessing these mighty weapons seem ready to take a solemn engagement not to provide them to other nations.

There is a conspicuous omission in the treaty text. Article III—International Control—is still blank. This, of course, was and is one of the chief stumbling blocks at the Geneva Disarmament Committee meetings. Discussions lasting over two years have failed to find a satisfactory formula for inspection and control within the territories of the nuclear powers and their respective allies.

Without the guarantees offered by complete disclosure, under impartial supervision, the treaty must remain seriously defective.

In addition, two nuclear powers will have nothing to do with any nonproliferation agreement. France has consistently refused to take the seat reserved for her at Geneva, and shows no interest in limiting in any way the employment of her small nuclear arsenal. And Red China, the newest member of the club, is not likely to relinquish the advantage she has gained against her Asian neighbors.

From other angles, the non-nuclear nations are assured that nothing in the treaty need hamper the peaceful uses of atomic power, the material for which can be supplied them at reasonable cost without infringing the basic agreement. But the corollary to their self-denying withdrawal from the nuclear arms race should be, they think, an international undertaking to protect them from nuclear aggression or its threat. This guarantee is also missing from the treaty in its present form.

So much remains to be done to make a truly effective agreement that this preliminary version can hardly justify wild jubilation. The nuclear millennium is still some distance away.

On the other hand, the fact that the Soviet Union was willing to join the United States in this hesitant first step toward nonproliferation is a legitimate occasion for hope that a crack has appeared in the ice floes of the cold war. With patience and good will that crack may widen and disclose open waters.

[From the Chicago Sun Times, Aug. 27, 1967]

TO LIMIT THE A-BOMB

The United States and Russia have agreed in principle on a draft treaty to halt the spread of nuclear weapons, a notable diplomatic achievement that recognizes their common interest in preventing atom bombs from becoming part of the arsenal of smaller nations.

They submitted the draft treaty to a 17-nation disarmament conference and the U.S. hopes the treaty can be signed next year. But the road is still a rocky one. France and Red China, two nuclear powers, were not present but they are not expected to pass out bombs to other nations. The hitch in the future negotiations is to fill in a section left blank under the heading "International Control."

Nuclear nations would agree not to pass on nuclear weapons or know-how to smaller ones. Non-nuclear countries would agree not to acquire or make atom arms but some method of inspection must be devised to be sure they live up to the agreement. No agreement has been reached on that or on Romania's demand that the big powers be inspected, too.

Moreover, some smaller powers still must be convinced that being deprived of A-bombs or peaceful nuclear explosions (for earth-moving, for example) will not subject them to blackmail.

Much, obviously remains to be done, but, as President Johnson said, the issue is not whether some nations have nuclear weapons and some do not but whether a bad situation becomes worse.

HENRY J. KAISER

Mr. JACKSON. Mr. President, I wish to join with many of my colleagues in the House and Senate in expressing our sadness on learning of the death last Thursday of the eminently successful industrialist, Henry J. Kaiser.

We of the State of Washington take particular pride in the success story of Henry Kaiser. His first construction jobs were road paving contracts in my State. He was once a resident of my hometown, Everett, Wash., and he long maintained his membership in the Everett Elks Lodge.

His son, Edgar, was born in Spokane, where Henry Kaiser first staked his future in the West by taking a job with a hardware company. Another son, the late Henry Kaiser, Jr., was born in Everett. Oldtimers in Everett remember Henry Kaiser and his small truck embarking on his first small job, working on streets in nearby Marysville.

There are monuments to the genius of Henry Kaiser throughout my State. He was the chairman of a joint venture of contractors who constructed the mighty Grand Coulee Dam on the Columbia River. He was a builder of Bonneville Dam, upstream from Vancouver and Portland.

His big Kaiser Aluminum plants in Spokane and Tacoma contribute greatly to the economic well-being of those communities. Kaiser Cement has a sizable operation in Seattle.

Those who remember Henry Kaiser and his first wheelbarrow in Marysville may also remember his candid remark:

Contractors are all alike. They start out broke, with a wheelbarrow and a piece of hose. Then suddenly they find themselves in the money. Everything's fine. Ten years later they are back where they started from—

with one wheelbarrow, a piece of hose, and broke. So, before you work yourself out of the last job, line up a bigger one to pull yourself out.

Always lining up a bigger job, Henry Kaiser developed a massive industrial empire. The son of immigrants, Henry Kaiser proved the limitless opportunities of this country.

We of the State of Washington are proud that our State had a role in his life, and we thank him for his structures there that will contribute to our well-being for years to come.

My deepest sympathies go to Mrs. Kaiser and all of the Kaiser family.

INTERNATIONAL DRUM AND BUGLE CORPS WEEK

Mr. PROUTY. Mr. President, our Nation next week will celebrate International Drum and Bugle Corps Week in honor of the more than 1 million persons who participate in the drum and bugle corps annually. I salute this meritorious and character-building activity for the youth of today.

I am confident that this generation of young people, which holds the destiny of our country in its hands, will make significant efforts toward making the Nation and the world a better place in which to live. The drum and bugle corps plays a significant role in instilling in its members and the American public the ideals and traditions that have put America at the forefront of the world community.

I am sure that we are all aware of the service that the drum and bugle corps performs all across the country in its cities, towns, and villages. It is particularly fitting that we pay tribute to these distinguished bodies next week. Drum and bugle corps throughout the land will be marching in Labor Day parades and performing at local concerts and community-sponsored events. I look forward to hearing these enthusiastic young Americans engaging in constructive and patriotic public service. We all owe the drum and bugle corps our warmest-felt thanks for devoting their time to the glory and honor of our Nation.

Mr. President, I urge all Americans to turn out and support their local corps during the week we are dedicating to it. It is inspiring for me to see today's youth participating in this rewarding activity, and next week the drum and bugle corps will undoubtedly renew America's faith in its youth and in the virtues of its past.

AN ANALYSIS OF RIOTS AND OTHER CRITICAL URBAN PROBLEMS

Mr. MONDALE. Mr. President, in the furor which has been raised over the riots in our cities—some of this furor justified, some of it misdirected, some of it plainly irrational—it is refreshing to read a sane and sensible analysis of this and other critical urban problems. In the New York Times of August 20, the text of an interview with the Vice President of the United States by Robert B. Semple was published. In it, Vice President HUMPHREY probes the administrative, fiscal, program, and psychic dimensions of the Nation's urban dilemma.

I commend this timely, thoughtful, and purposive interview to the Senate and ask unanimous consent that it be printed in the RECORD.

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

HUMPHREY ON HIS "MARSHALL PLAN"

(NOTE.—An interview with Vice President HUBERT H. HUMPHREY by Robert B. Semple Jr. of The New York Times Washington bureau. It took place in Mr. Humphrey's Washington office last week prior to President Johnson's announcement . . . offer no new urban ideas this year.)

Q. Mr. Vice President, in a speech Aug. 2 in Detroit, following the riots there, you suggested a "Marshall Plan" for slum areas. So far, however, the President has proposed no new programs to deal with the cities. The question has been asked, therefore, whether you were not in fact asking for something greater than the Administration was willing to pay for. Is there any difference of opinion in the Administration on what should be done about the cities?

Mr. HUMPHREY. I don't think there's any difference of opinion. One of the pitfalls of public speaking is that when you use an analogy based upon something that happened in the past—such as the Marshall Plan—you are subject to misinterpretation.

Q. What did you mean by "Marshall Plan" when you used that phrase?

Mr. HUMPHREY. I, of course, was referring to the plan of action that had been used successfully to carry out the recovery of Europe after World War II. I was suggesting the present-day need of applying a similar concept to the problems of our cities.

Q. Do we have that same concept?

Mr. HUMPHREY. Yes. I made that point very clearly in my speech. I pointed out that the President's Model Cities Program, for example, embodies much of the same concept. It offers Federal money, but that money will only be available if the local government proves that it has a sound plan to rehabilitate slum areas. It calls for a massive infusion of both public and private capital. It calls for local initiative, local decisions on where the Federal money should be spent. And it calls for coordination. I think the real secret of success in the Marshall Plan lay in the fact that the Europeans themselves set up in Paris a coordinating mechanism so that when the funds came in they were not just splashed around the continent. They were carefully directed with a sense of priority to those areas where they would have the greatest impact and mobilize the greatest number of existing resources.

Moreover—and perhaps most important—the Model Cities Program calls for a massive long-term, public-supported commitment to the solution of a particular problem.

Q. How much did we spend on the post-war Marshall Plan?

Mr. HUMPHREY. About $14-billion over a five-year period.

Q. Is this more or less than we are spending on urban problems now?

Mr. HUMPHREY. Less. The President originally requested $2.3-billion for the first six years of the Model Cities Program alone. Congress reduced that request to $900-million for two years, of which the President has asked full funding of $662-million for this year. Over-all, the Administration has requested for fiscal 1968 some $25.6-billion for programs to aid people below the poverty line. This is double the expenditure in 1963. As for cities, we have requested $10.3-billion for use in urban development and general improvement of urban living conditions. [Editor's Note: This consists mainly of aid-to-education funds, urban renewal, welfare payments, highway expenditures, and the anti-poverty program.]

Q. In other words, your Detroit suggestion of a "Marshall Plan" represented in effect a plea for a commitment to programs that Congress has already decided we can afford—programs already authorized?

Mr. HUMPHREY. In a large part, except for this one caveat. I wanted very much to alert the American people to the necessity of understanding that the problem we have in the cities is not one that is subject to piecemeal approaches or to Federal effort alone. You have to mobilize your national resources, public and private. You must make a long-term commitment, as we did in Europe. And you must have local planning, local participation.

In other words, when I link the Marshall Plan with our Model Cities Program I am talking not only in terms of money but also in terms of concept—particularly the concept of the "total rehabilitation" of an area. The Model Cities Program, like the Marshall Plan, is not piecemeal; it is comprehensive.

Q. But what happens when we compare our urban commitment with our commitment to national defense? Senator Fulbright has said that since 1946 we have spent $904-billion, or 57 per cent of the nation's budget, on military power but only $96-billion, or 6 per cent, on social programs.

Mr. HUMPHREY. I am not sure of those figures, but in any case I think it's not a very helpful comparison, with all due respect to Senator Fulbright. That would be like saying if you had illness in the family, that you were spending too much of your budget taking care of the ill, and too little caring for the well. The fact is that there has been "sickness" in this world in these post-World War II years which we have not had the luxury of ignoring.

Moreover, to use these figures as a way of saying that we've done too little in our social programs is to misrepresent the case. I think we ought to do more on the domestic front. I thought so all during the 1950's when I served in Congress.

The recent record has been better. We have almost tripled the aid to our cities in the last six years, and in the last two years alone added $3-billion. So when I hear people say that we haven't done enough, all I can say is: Well, we've done more than anybody else has done previously. This doesn't mean we've done all we should. All I wish is that we'd had a little more help earlier in the game when some of us stood there as a rather beleaguered little group in Congress.

Q. You've mentioned the words alienation and motivation. Is it true—as some have suggested—that one of the main causes of these disturbances is this sense of alienation among the bottom fifth of the population, the have-nots, who have been left behind by the surging prosperity of the rest of the country?

Mr. HUMPHREY. I don't believe we really know what causes the riots. There are those who believe the riots are caused by poverty. I mean they put it that simply. I'm sure poverty plays a heavy role.

But the fact is that a number of the participants in the riots were people who had good jobs. It may very well be that the fact that things are getting better has produced some of its own turbulence. Rising expectations are never realized fast enough. When some light is let into the dark chambers of poverty and hopelessness, this in itself may generate forces of expectancy and anticipation—which means that we may very well be going through a turbulent period for some time.

No. I don't think that conditions in which the bottom fifth of the nation live alone cause riots. Because if that were the case, there should have been more riots ten years ago, and fewer now.

Q. I gather that you don't think there's one easy solution—such as the various programs of income maintenance suggested in some quarters, the guaranteed annual income, the family allowances, the negative income tax?

Mr. HUMPHREY. One of the ways in which you can relieve the pain of poverty is by simply writing a check, by handing out money. That will eliminate poverty, but does it really get at the problems of despair, uselessness, apathy, alienation, indifference, hostility? We're not dealing with men who simply want money handed to them. We're dealing with people who are nonparticipating, isolated members of society—who need to feel they have a place in the scheme of things. I don't think we should reject the negative income tax proposal, or similar proposals, out of hand. But money alone is not going to bring people back into our society.

Q. If direct money payments are not the whole answer, what are the components of what you have described as the total approach? And, what can we do now?

Mr. HUMPHREY. To begin with we must use those weapons that are readily available now. Local governments can do a much better job of providing services to the ghetto areas—enforcing building codes, providing proper street lighting and police protection, collecting the garbage, for instance.

State governments, meanwhile, have been very inactive in meeting most of these ghetto and urban problems, even though the city is a creature of the state, and often has no more power than the state constitution or state law gives it.

Second, private resources—scientific, managerial, academic and financial—must be mobilized and brought to bear on the slum problem—to create jobs; to provide training; to attempt to profitably meet public needs; to enter, for example, the $50-billion market for low-cost housing.

Let me repeat the task today is not merely to pass the program before Congress—as desirable as that is—but it is to mobilize the entire American community. Our nation needs to get a sense first of all, of moral outrage—outrage over what has happened and the conditions within these ghetto areas.

Q. Can we successfully come to grips with the problems of the cities and fight the war in Vietnam as well?

Mr. HUMPHREY. I've addressed myself to this and I believe we can. Let me be very candid with you. I would be the happiest man in the world, and the President would be even happier, if we were in a world of peace. But we cannot back away from the role that history has given us. Even if the struggle in Southeast Asia were brought to a quick and final conclusion, tomorrow we would be faced with a world in which there was tension and mass suffering.

We don't have easy choices any longer. I can only say this: We will have to keep our economy growing in order to develop the resources to do the job here as well as abroad—and keep reviewing all the time our allocation of resources and priorities in both places. And we will have to have the vision and the courage to stick it out through some difficult times ahead.

WORDS OF CAUTION FOR THOSE WHO WOULD RECOGNIZE RED CHINA

Mr. MUNDT. Mr. President, some of our fellow citizens who have been urging that the United States recognize Red China and favor her admittance to the United Nations must be wearing very red faces these days. In fact, many in Great Britain must be favoring the same facial color as they read about the manner in which the once proud and haughty British Empire is being booted about like a former African colony by the Communists in Red China.

Articles published recently in the New York Times and the Chicago Tribune under foreign datelines are typical of the news stories emanating from China in these troubled times. I ask unanimous consent that excerpts from these articles be printed at this point in the RECORD.

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

CHINA

New York Times, August 23, 1967, Peking dateline (Agence France-Presse):

"Red Guards invaded the British diplomatic compound here last night, hurled gasoline cans into the buildings and set them afire, destroying the chancery and damaging the home of Britain's chargé d'affaires.

"The chargé d'affaires, Donald C. Hopson, and a number of other Britons were beaten by the Red Guards, who were angered by Mr. Hopson's rejection of a Chinese ultimatum. It had demanded that Britain lift an order closing three leftist newspapers in Hong Kong.

"Most of the British diplomats and their families had taken refuge in the compound during the last few days as the dispute over Hong Kong intensified."

* * * * *

"At dawn today, members of the British diplomatic community left the compound to seek haven with friends or in other foreign embassies.

"All were pale and disheveled. Some were covered with blood. Mr. Hopson, Britain's highest ranking diplomat in China, wore a bandage on his head and a bloodstained coat.

"The fleeing Britons agreed that the policemen and soldiers who surrounded the British compound had tried to protect them from the Red Guards. Some of the policemen were wounded trying to stem the fury of the crowd, the British said."

* * * * *

"Earlier in the day, members of the Chinese staff employed by the mission read the ultimatum to Mr. Hopson on the lawn of the British compound.

"Mr. Hopson rejected the ultimatum and a demand by the Chinese staff members that he hold his head bent low—an admission of guilt as well as a sign of humiliation—during the reading of the protest."

* * * * *

At 10:45 p.m., the precise time when the Chinese ultimatum expired the crowd erupted into overt violence, according to diplomats living near the British compound.

Arthus Veysey, Chicago Tribune, August 23, 1967 (London dateline):

"Britain immediately forbade all Chinese officials here from leaving the country.

"Britain, in effect, is holding the Chinese, who number between 50 and 60, as hostages for the safety of the 25 British diplomats and their wives and children in Peking.

"The British clampdown includes members of the Chinese embassy, the Chinese news agency, the Bank of China, and all official trade missions."

New York Times, August 23, 1967, edition:

"The crucial questions about the Hong Kong crisis must be these: Are Peking's Communist leaders any longer capable of rational behavior? Is China still a functioning country?

"There is no rational reason why Peking should force a showdown with Britain over the closing of three obscure Hong Kong Communist newspapers and the arrest on sedition charges of five of their executives,"

* * * * *

"Yet, Communist riots have erupted regularly in Hong Kong since May 11 and have increased in ferocity recently with constant verbal and occasional physical support from China. The sacking of the British mission in Peking and the attempted humiliation of its personnel yesterday after London's rejection of an ultimatum on Hong Kong brings the situation to the acute stage.

"What is Mao's game? Or is Mao really in charge, calling the shots that not only have provoked crisis with Britain but strained relations with Moscow almost to the breaking point? When the demonstrations began, Western experts believed Peking's goal was to wrest from the British as many as possible of the concessions it had earlier extorted from the Portuguese Government of Macao. Now the question must be asked whether the Chinese objective is not the destruction of the Crown Colony.

"An aging Mao might see in this drastic act a means of reuniting Chinese and alleviating the internal convulsion caused by the cultural revolution. It might even be that the anarchic situation inside China—the fact that it is not 'a functioning country'—could bring on a move by extremists against Hong Kong that Mao could not prevent.

"The trouble is that the West simply cannot fathom the action of China's Communist leaders at this critical juncture, much less know that rational calculations play any part in their behavior. Predicting Peking's course is as hazardous in Hong Kong as it is in Vietnam."

Mr. MUNDT. Mr. President, for those who still believe—although their numbers are rapidly decreasing—that the Chinese Communists are simply "agrarian reformers," as we were once told by high authority, I would recommend a steady diet of reading the news reports describing how China's so-called Western friends are being treated in Peking and other mainland cities of China. Having done that, they can then return to their collateral lines of trying to convince Americans that aggressive communism has changed its form in Russia and that the global plans of the men in the Kremlin should be respected as sincere expressions of good will while we ignore the military support the Russian Communists are providing our enemy in Vietnam and to Egypt and other aggressive Arab States in the Mideast.

FIRST STEPS TOWARD ARAB-ISRAEL RECONCILIATION

Mr. McINTYRE. Mr. President, while the crisis in the Middle East is in no way over, there are signs that the Arabs and Israelis are beginning to take the first small steps toward some form of reconciliation.

It would be naive to predict that the recent war in the Middle East and the humiliating defeat of the Arabs will, by some miracle, bring about a new era of harmony and "togetherness," but both sides do appear to be arriving at the conclusion that there are mutual advantages to some form of cooperation.

The barrage of propaganda and name calling will no doubt continue. But if peace is ever to come to the Middle East, both sides must seek new ways to settle their differences, acknowledge the territorial integrity of Israel, and work together to solve problems which are common both to the Israelis and the Arabs.

An editorial published in this morning's New York Times reports on some of the first small signs that the Israelis and the Arabs are beginning to move toward some areas of reconciliation.

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

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

MELTING ICE IN THE MIDEAST

The Middle East seems to be beginning the long, hard, devious process of settling down after the war in June. The positions of Arabs and Israelis in those early weeks, at first unbridgeable and inflexible, are thawing just a little.

Now the Israelis are going to allow some Jordanian refugees to return after the original deadline, which had been set for tomorrow. This seems to apply only to those whose applications have already been approved—some 10,000 out of a total that must be well over 100,000. The Israelis are afraid of letting in resistance fighters. However, having taken this first sensible and humanitarian step, Israel may be induced to take others later.

Meanwhile, leaders from all thirteen Arab states are meeting in Khartoum. The split between the moderate and extremist states is shown by the fact that the hardline countries of Syria and Algeria, as well as the moderate Tunisia and Morocco, have not sent their heads of state. The agenda is a tough one: "To erase the consequences of Israeli aggression" and to take steps to retaliate against "Israeli's Western friends."

All the same, there is much talk of offering a peace plan, although it is still a long distance from Israel's terms. At least the Arabs no longer talk of fighting a "second round." There are persistent reports of an approaching settlement between Egypt and Saudi Arabia on the war in Yemen. The oil-producing states—Kuwait, Saudi Arabia and Libya—clearly do not want to keep up the embargo against the West which is more costly to the Arabs than to Europe. It is not at all costly to the United States.

Economic pressures on every country concerned are very severe. Egypt, for instance, is losing her vitally needed revenues from Suez Canal tolls and tourism. Israel's economy is in extremely bad shape. In fact, it was in bad shape before the cost of the recent war was added.

Peace is not in sight, but extreme positions are beginning to be abandoned. Neither surrender nor revenge are possible. A *modus vivendi* can gradually be worked out as passions and fears subside. The heartening feature of current developments is that compromises are being considered and some timid, groping steps are being taken toward ultimate agreement.

Mr. McINTYRE. Mr. President, there are many areas in which all the nations of the Middle East can work together to solve many age-old problems.

I am pleased today to join the distinguished Senator from Tennessee [Mr. BAKER] in sponsoring a resolution encouraging the nations of the Middle East to work together on a water desalinization project.

This project can bring great benefits to all the nations of the Middle East and help to provide the solution to a problem that has plagued the Middle East since the dawn of recorded history.

NEW YORK 4–H PROGRAMS FOR THE DISADVANTAGED

Mr. JAVITS. Mr. President, I have before me the progress report of the New York State 4–H programs with disadvantaged youth. It describes the great efforts made by our 4–H organizations in bringing opportunity and hope to underprivileged young people. New York State is fortunate in having the fastest growing program of any State in the Nation, and it is always a pleasure to report contributions made by voluntary, private groups in helping the deprived economically. Mr. President, I am personally gratified to see that the 4–H organization will be intensifying its activity in New York, and has already inaugurated a plan of action to carry out its successful program this year. I ask unanimous consent that the report be printed in the RECORD, so that other organizations across the country may consider following this fine example.

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

PROGRAMS WITH DISADVANTAGED YOUTH IN THE 4–H PHASE OF COOPERATIVE EXTENSION, NEW YORK STATE

(By Wilbur F. Pease, presented at Cornell Extension Club, April 3, 1967)

Before reporting to you regarding the growth and something of the nature of program efforts with disadvantaged youth, I think you will be interested to know that as measured by the number of youth participating, the 4–H program in New York State is the fastest growing program of any state in the nation. In 1966, the 4–H enrollment exceeded 100,000 for the first time with a total of 103,042 youth enrolled. This represents a gain of about 19,000 over 1965. In addition, another 45,000 youth were served by a variety of short-term educational experiences, representing an increase of about 5,000 over 1965. Also in 1966, there were 13,701 adults serving as volunteer 4–H leaders, a gain of about 1400 over 1965. The educational programs conducted with these adults indicate that 4–H is making a fairly sizeable contribution to adult education as well as to youth education.

SCOPE OF PROGRAM EFFORTS WITH DISADVANTAGED YOUTH

The time allotted limits this to a progress report of total 4–H effort with disadvantaged youth, presented broadly rather than with specifics. Recent reports received from 52 of the 55 countries indicate that youth are being reached in 29 counties through what we might call the on-going 4–H program and in 23 counties in which one or more program efforts are being directed toward more specifically identified problems, needs and situations of such youth. Since 1964, when programs were offered low income youth in only 18 cities of 16 different counties, we reached the point in 1966 when low income youth were participating in 4–H programs in 24 cities of 20 counties.

A total of 12,110 low income youth were participating in the 4–H program, nearly 50% of whom are farm and rural non-farm youth. A little better than one out of every nine 4–H members in 1966 were low income youth. So much for the growth in scope of 4–H program efforts with the disadvantaged.

REACHING AND RECRUITING DISADVANTAGED YOUTH

In general, counties reported that impersonal contacts by such means as flyers, brochures, and letters are relatively ineffective in recruiting disadvantaged youth. Repeated and personal contacts are necessary. Such contacts are time consuming and agents have developed some methods which take a minimum amount of time on their part. Among the apparently most effective are:

(a) Reaching children where they are—through the schools, settlement houses, youth centers, and the like.

(b) Using other people to make the contacts—VISTA workers in three counties, school teachers, Welfare workers, an organizational volunteer leader, a community committee for the involvement of youth.

(c) Reaching youth through agent contacts with adult groups of a community on whom is then placed the responsibility for recruiting youth. Once some youth are reached, frequently they become the best recruiters of other youth.

REACHING DISADVANTAGED YOUTH IN THE ONGOING 4–H PROGRAM

Even though we might like to see more specifically designed programs, the value of such an approach should not be discounted. Indeed, as regards farm youth and rural nonfarm youth in counties of fairly low incidence of poverty, or in counties where the low income rural families are fairly well interspersed among other families, to reach such youth in the ongoing progam may be the only, or at least the most effective way. One value of this approach is that it brings into close association youth of diverse economic situations thus promoting understanding of individuals different than oneself and hopefully teaching youth to make judgments on the basis of individual worth.

SOME LEARNING EXPERIENCES OFFERED

As with individuals of any segment of our society, there are individual differences among disadvantaged youth and their homes and families, but in general, their lives are characterized by a lack of variety and a quality of stimuli which would aid their intellectual and social development. So one purpose of work with disadvantaged youth is to increase the variety and improve the quality of such stimuli. In an action oriented educational program, we call these stimuli learning experiences.

a. Cultural arts and inter-cultural experiences

In 19 counties over 500 youth and nearly 100 parents were provided such experiences. In 18 of the counties, $1000.00 of Sears-Roebuck Foundation funds financed these programs. In 10 counties, intercultural experiences were provided at county 4–H camps. In one of these, a special program in remedial reading was provided. In another county the camp experience took the form of a family day at camp, with disadvantaged youth and their parents participating in the program for one day. Eight counties included one disadvantaged youth in their delegations attending the Northern New York Youth Conference. One county sent two disadvantaged youth with a group from the county attending the Citizenship Short Course at the National 4–H Center; and another county sent two leaders to a leadership forum at the National 4–H Center.

Cultural arts experiences included visits to various kinds of museums and historical buildings; attending musical concerts, folk and ballet dance productions, stage plays, lectures at colleges, and having a dinner at a fine restaurant. In many cases, other than disadvantaged youth also attended This illustrates what I believe is a value of the 4-H program, namely, it provides a natural way for both co-educational and intercultural experiences.

In Buffalo, dramatic arts was an important part of the summer program in 1966. A college major in drama was employed as leader. Since interpersonal conflicts cause problems for these youth, and problems in conducting an educational program with them, a major purpose of the program was to provide interesting and real-life experiences in which success was dependent upon cooperative effort. There were many evidences that many of the youth gained satisfactions from such effort and changed behavior has been noted through the year.

b. Flower growing and community beautification

This is one of the most commonly offered programs, particularly in the cities. In addition to the subject matter learned and the skills required, one of the great value of this program is bringing youth into contact with a wide range of adults—men and women of garden clubs and of service clubs, city government officials and employees, florists, nurserymen, greenhouse operators, college extension faculty. It is quite a stimulating experience for most of these youth to

come to realize that such adults are really interested in them. They respond favorably and are learning something about people different than themselves. Many adults have been noted to start plantings after observing the results of youth plantings and in other ways to evidence greater pride in, and a sense of responsibility for their properties and for the neighborhood. This is another value of this program. For arousing community interest and support, it is probably the best program we have to start with in a disadvantaged area.

C. Training Neighborhood Youth Corps workers

One county, with the assistance of a College of Home Economics Extension Faculty member, conducted a four-weeks course in Money Management for 110 youth in the Neighborhood Youth Corps. In another county, the 4–H staff assisted the director of the Youth Corps in developing an overall training program. In a number of counties, Youth Corps workers have been assigned to assist with the 4–H program. In every instance, the directors of the Youth Corps have been more than pleased with the on-the-job training provided by the 4–H staff and the kinds of assignments and experiences given the youth which aid their own growth and development. For the most part these experiences are in working with younger boys and girls.

D. Job readiness program

In one county, a 12-weeks job readiness program is conducted with high school girls in a low-income area. In this, some basic nutrition is related to health, appearance and the getting and holding of a job. Similarly, the work in textiles and clothing, personal appearance and grooming is related to employment. In addition, women employed in a variety of occupations and a variety of levels of position are brought in to talk with the girls. These ladies have different levels of educational achievement and have gained their education and training different ways. So the girls learn more about more employment possibilities, the education needed and of educational and training opportunities beyond high school. Employment Service people tell of their services and work with the girls on preparing for and conducting onself at an employment interview. Thus the girls learn some of the means for seeking employment and the skills for applying for employment.

e. The 4–H project work

For youth reached in the on-going 4–H program and for most of the more specifically designed program efforts, 4–H projects are the major core around which are built a variety of meaningful learning experiences. Even more than other children and youth of similar ages, these disadvantaged youth learn best through physical activity which includes the manipulation of objects. This is essential to stimulating intellectual activity. Among the many other values, the 4–H projects provide such activity. In general, fewer and more carefully selected projects are offered to these youth. For farm and rural youth, projects which add to the family food supply, or which add to the improvement or the beauty of the home both inside and out-of-doors, or which may be income producing, or which may save the family money, are most commonly offered. For older farm and rural youth, projects which may provide some employable skills, such as the tractor and the automotive safety and care projects, are offered.

Popular projects with the city youth include those of the floriculture and ornamental horticulture program, the Handyman or woodworking, electrical, entomology, incubation and embryology. Because of their direct relationship to employment opportunities, some work in electronics and Junior Chefs are offered middle and older teenage youth. The photography project also is important in this respect. The foods and clothing projects are popular. It takes more skill in selling home improvement work and even more the management projects even though the management of their present resources is one of their greatest needs. We cannot report much progress in this area yet.

PEOPLE IN THE PROGRAM

In my judgment, the lack of competent leadership in adequate numbers is the most important factor in limiting program efforts with the disadvantaged. At present we are still experimenting with different types of leadership and no one pattern has yet proven to be most effective. Indeed, I believe we will need to continue to have many kinds of people involved. Among those presently involved in leadership roles are some indigenous adults, indigenous older youth who are either 4–H members or are Neighborhood Youth Corps workers, special resource persons of special competencies who are brought in to teach one or more lessons, older 4–H members and leaders of the middle class group, VISTA workers, and in Buffalo and Syracuse, some paid non-professional workers who are indigenous to the neighborhood. We have found that frequently to obtain indigenous volunteer leaders, adults must first be taught before they will accept leadership. This certainly is understandable because no one accepts leadership without the security of knowing that one can do the job. To see the development of some of these adults is as thrilling as the development of youth.

THE NEXT STEPS

The survey responses from counties indicate that we may expect two major developments: (1) continuing increase in the numbers of youth participating; (2) more program efforts designed to meet specific needs in many of the counties now reaching such youth only through the on-going 4–H program. I doubt if there will be any marked increase in size of county staff to conduct program efforts with disadvantaged youth, or at least not any rapid increase. So we need to help agents incorporate some special and more meaningful learning experiences as a part of their on-going program efforts. As you can tell from this report, we are in the process of identifying some successful and effective programs, learning experiences, methods and the like. These need to be disseminated and discussed with county staff members. We need to develop plans for in-service educational programs. There are other needs which must be met to carry us forward with such program efforts but I have indicated those which seem to me should have the highest priority during the next 12 months.

UNITED NATIONS CONSIDERATION OF THE WAR IN VIETNAM

Mr. MONDALE. Mr. President, a number of Senators have suggested during the past few days that the United Nations should take up the question of the war in Vietnam as soon as possible after this coming Sunday's elections. I commend this initiative, and I wish to join it today.

Early in June, I wrote to Ambassador Arthur J. Goldberg to express my hope that the climate created by a successful cease-fire effort in the Middle East could lead to a similar resolution for Vietnam. As a result of the current discussion of possible U.N. involvement in the Vietnam crisis, I have written again to Ambassador Goldberg to suggest that U.N. discussions might help create a climate in which a means could be found to allow this new South Vietnamese Government to develop without the tragic environment of war.

I know that there are great problems to be solved if productive discussions on Vietnam are to take place in the United Nations. But our private initiatives remain unproductive, and the danger of international catastrophe has increased since June. I believe we ought to make another attempt in the United Nations.

Mr. President, I ask unanimous consent that the text of my letter to Ambassador Goldberg dated today be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., August 30, 1967.

HON. ARTHUR GOLDBERG,
U.S. Ambassador to the United Nations, New York, N.Y.

DEAR AMBASSADOR GOLDBERG: Early in June, at the time of the successful United Nations resolution to end hostilities in the Middle East, I wrote to you to urge your effort to bring about a U.N. cease-fire in Vietnam as well. I appreciated your kind response and assurance that you would remain alert to any possibilities which might develop.

During the past week, a number of my colleagues in the Senate have urged that the United Nations take up the question of the war in Vietnam as soon as possible after the new South Vietnamese government takes office. While I recognize the many difficulties that such consideration would face in the Security Council or the General Assembly, I do want to repeat my own feeling that this conflict deserves attention in the highest available forum.

Even inconclusive debate in the body which represents the world's hope for peace through law would add something, I believe, to consideration of this vital question. But I remain hopeful that a formal hearing before an independent forum might create a climate in which a means could be found to allow this new South Vietnamese government to develop without the terrible and tragic environment of pitched battle.

I also understand the risk that weeks or months of mutual recrimination might worsen the cleavage that presently exists. But I believe we must be prepared to take that risk, since private initiatives continue to be unproductive in results.

I suggested in my previous letter that the overriding consideration is the necessity to avert world catastrophe. I also indicated my belief that an agreement to end the fighting in Southeast Asia in the name of world peace would be an enormous contribution to the safety of the world. The danger has increased since then, and so, therefore, has the potential contribution of U.N. consideration to world safety.

With warmest regards.

Sincerely,

WALTER F. MONDALE.

VIETNAM AND THE UNITED NATIONS

Mr. SYMINGTON. Mr. President, last Monday, the majority leader jointly with a dozen other Senators strongly urged that the United Nations assume its responsibilities in connection with the war in Vietnam. I was unable to be on the floor of the Senate at that time because my attendance was required at an important committee hearing; however, I want to join the majority leader and my other colleagues in this significant effort.

I fully and wholeheartedly endorse this position. An initiative by the United Na-

tions in Vietnam would be entirely consistent with the mission of the United Nations, designed as it is to bring parties together in an effort to maintain the peace in the world. Submission of the issue to the United Nations by the United States or by any other nation with the backing of the United States would demonstrate anew the desire of this country to utilize any and every channel—to bring about peace in Southeast Asia.

I do not agree that the possible failure of the United Nations to act or to resolve the problems of Southeast Asia is an effective argument against making the effort. If the United Nations does act and interested parties are brought together to discuss the problem, such activity surely would be beneficial.

I have never known of harm or disadvantages arising from people agreeing to talk. The very fact that parties do agree to talk about their problems or difficulties in itself would seem a sign of progress.

If the United Nations is unable to get the issue joined becaused of the refusal of affected or interested parties to participate, it would still be of value, because it would demonstrate to the world the genuine desire of this country for a peaceful resolution of the war in Vietnam; and that the difficulty of getting the issue to the talking stage lay elsewhere in the world.

Let me congratulate the majority leader and other Senators for raising this timely issue.

THE CONDUCT OF THE WAR IN VIETNAM

Mr. COTTON. Mr. President, a letter dated August 4 was received by me from the mother of one of New Hampshire's young men who was killed in action in Vietnam during June.

The letter is as follows:

AUGUST 4, 1967.

DEAR SENATOR COTTON: I realize that to many, perhaps, this should hardly be the time to write regarding the war in Viet Nam, but our wound is still fresh and for me there is no better time.

As I wrote you before, I feel very strongly that either we fight to win or get out. President Johnson has said that our policy is to bring to bear the ground, naval and air strength required to achieve our objectives. Whoever has heard of a limited war with limited objectives? The Defense Department says that the basic objective of our selective bombing is to reduce the level of infiltration into the South. This is a long, long way from being accomplished as witnessed by the continual numbers of Allied Forces casualties. The Defense Department also states that all-out bombing is not considered as an end in itself nor will it guarantee achievement of our objectives in the South. Would it not be wiser to stop the flow into the South of both men and material instead of restricted bombing? Would it not be better than deploying our troops into areas that are known to be highly concentrated with Viet Cong and North Vietnamese?

What a degrading and humiliating way to fight this undeclared war by a country as great as ours! If the North Vietnamese and Viet Cong are not our enemies, then who is? The U.S. restraint in applying its modern military powers has given the enemy time to build up defenses in North Vietnam, to develop and exploit lines of communications to the South and to supply and reinforce his offensive forces in South Vietnam. I am sure the military did not foresee the acceptance of higher and higher combat losses while permitting the enemy to increase and strengthen his offenses. All this without effective U.S. obstruction? General Westmoreland and his advisors are most capable and well-trained career men. Is their advice to be disregarded and go unheeded?

Even the most uneducated knows that the quickest way to destroy an enemy is to cut off the supply line and as in every war, the civilian casualties are high—but so are the military. The sooner this undeclared war is over, the sooner the casualty list will become extinct; the sooner the supply lines are destroyed at their origin, the sooner peace will come, and on *our* terms.

I think the time is long overdue when President Johnson, Secs. Rusk and particularly McNamara, gave the Americans some honest answers on this "no-win" war. It is past time! Let them discard all of their political half-truths. Is this too much to expect from our government since we are paying for their political football game in lives as well as money?

I pray God that all the young men who have died and will die, who have been and will be wounded in this undeclared war will not have been sacrificed on this altar of political intrigue and half-truths.

Most sincerely,

Mr. President, the political implications in the next to the last paragraph of this letter may or may not be entirely justified, but a bereaved mother is certainly justified in expressing them.

I am placing this letter in the RECORD because I believe it to be a remarkably clear and logical indictment of the conduct of the war, considering that it was written by a mother under the terrible stress of recent bereavement. I have received many other communications from those who have lost loved ones, as I am sure every Senator has, and most of them have expressed similar feelings.

Mr. President, I share the sentiments expressed by this mother. At last we have a real inkling of the judgment of our military leaders on the conduct of this war. I hope the President intends to follow their judgment regardless of what Secretary McNamara may recommend and that we may have a real test to find out whether the war can be fought to a speedy and successful conclusion if it is not too late. It has been and is increasingly evident that we must determine, and determine quickly, whether we can achieve victory or bring the enemy to the negotiating table.

Certainly, as this New Hampshire mother says, "We should either fight to win or get out."

FULL AND TIMELY FUNDING OF IMPACTED AREAS PROGRAM URGENT AND VITAL

Mr. KUCHEL. Mr. President, when the impacted areas program was established by the Congress in 1950, it became the declared policy of the United States to assist local educational agencies upon which our Federal Government has placed financial burdens. Local school districts providing education for children residing on Federal property or whose parents are employed on Federal property have received substantial assistance through this program. In these so-called federally impacted areas the homeowner and the taxpayer are thereby relieved of the obligation of supporting the education of children brought into their community by Federal action.

This has been a particularly important program in the State of California. My State has long been the scene of major Federal activity. Now, for the second time since the impacted areas program was established, it is a major staging area for our Armed Forces engaged in defense of free nations of the Pacific Basin.

On August 2 of this year, the Senate passed the Labor-HEW appropriation bill for fiscal year 1968. It provided an appropriation of $450 million for the impacted areas program, $33.8 million more than allowed by the House of Representatives. The Senate action will permit the funding of 97 percent of entitlements throughout the United States for the coming year. Expansion of the number of children who would qualify for the benefits of the impacted areas program has made this increase a necessity. Without it school authorities in many States would have to face a significant reduction in funds available as compared with last year. In my own State of California, the total loss would amount to more than $4 million.

Today the Labor-HEW appropriations legislation for the coming year is deadlocked in conference with the House of Representatives on a number of items. I believe that the Senate must make it indelibly clear that it will insist on the necessary increase in funds for the impacted areas program. In the 27 years of its history, the Senate has regularly responded to the needs of schools throughout our Nation with full and timely funding. It is already late in the year. School districts have made their financial plans for the fall semester. Even now it is too late for these valuable Federal contributions to have their maximum effect because of the delay in planning which the tardiness of this important legislation has caused. These funds are absolutely essential for education programs throughout our Nation. The Senate must adamantly stand by its commitment to full provision of the requirements of the law.

NATIONAL CONSENSUS ON NEED TO SLOW RURAL MIGRATION

Mr. PEARSON. Mr. President, on July 21, the distinguished Senator from Oklahoma [Mr. HARRIS] and I introduced the Rural Job Development Act of 1967—S. 2134. We have been encouraged by the fact that 28 other Senators from all regions of the country and of all shades of political persuasion have joined as cosponsors of this bill.

In addition to this expression of support in the Senate, I have been gratified and deeply impressed by the favorable public reaction to the proposal. I have received a great volume of mail commenting favorably on the proposal. The letters have come from all parts of the country and from all types of individuals; from Texas to New York, from rural residents to corporation executives. I know that the Senators who joined as cosponsors of the measure have also received similar expressions of support.

In addition to the support indicated by the heavy volume of mail, the proposal has received favorable review by numerous newspaper editors from all parts of the country, from the small town weeklies to the metropolitan dailies.

In my statement introducing the bill, I said that we must now begin to question the old proposition that the great rural-to-urban migration was both inevitable and desirable. The public reaction to our proposal suggests that much of the Nation is now beginning to do precisely this.

Thus the most immediate contribution of the Rural Job Development Act is that its introduction has served to stimulate and expand the growing national debate on the necessity of better controlling those forces which continue to depopulate the countryside and small towns and at the same time add to the pressures of our already overcrowded cities.

Mr. President, another indication of this growing national consensus is the favorable publicity and editorial comments that have accompanied the proposals and statements by other public officials and groups. For example, the Secretary of Agriculture, Orville Freeman, who made a contribution in helping to initiate this debate several months ago and who has continued to argue the necessity of achieving a better rural-urban balance has received solid editorial endorsements from around the country.

Another very encouraging development was the action by the Republican coordinating committee in producing their report "Revitalizing Our Rural Areas," on August 24. The coordinating committee properly pointed out the necessity of a broad-based program to achieve the economic development of our rural areas, and I was particularly pleased to note that the report called for measures by the Federal Government to stimulate the creation of new jobs in rural areas along the lines provided by the Rural Job Development Act.

This report by the Republican coordinating committee has received a generous editorial review, thus again indicating the scope and depth of the national consensus on the need to stimulate the development of rural areas for the purpose not only of improving economic and social conditions in those areas, but also as an important aspect of our efforts to deal with the crisis of the cities.

Thus, Mr. President, Senator HARRIS and I and our colleagues who joined in cosponsoring this measure believe that a significant contribution has already been made. But the very fact of this favorable public reaction to this proposal means that we must now take steps to translate this proposal into law. Therefore, I would hope that the appropriate committees in both the House and the Senate would be able to initiate hearings on this proposal as soon as possible.

I would also hope that the administration will not allow political factors to influence the position that it takes on this proposal. Secretary Freeman has already endorsed the general concept of tax incentives to encourage new job-creating industries in rural areas. It would be most unfortunate, indeed, if the stress of political competition would cause the administration to now take an adverse position on this proposal.

Mr. President, I ask unanimous consent that the following sampling of editorials and columns on the Rural Job Development Act be printed in the RECORD: the Kansas City Times editorial of July 26; the Washington Daily News editorial of July 28; the Charleston Gazette editorial of July 31; the Parsons Sun editorial of July 22; and the column written by Paul Hope published in the Evening Star of July 31, 1967.

Mr. President, I ask unanimous consent that an editorial in the Washington Post of August 13 commenting on one of Secretary Freeman's speeches urging the necessity of achieving a better urban-rural balance, an editorial in the Christian Science Monitor of August 26 commenting on the report by the Republican coordinating committee and the Washington Post editorial of August 27 on the urban-rural imbalance also be printed in the RECORD. Finally, Mr. President, I ask unanimous consent that the report of the Republican coordinating committee be printed in the RECORD.

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

[From the Kansas City Times, July 26, 1967]

A PROPOSAL TO REDUCE RURAL MIGRATION

The rural job development bill proposed by Sen. James B. Pearson (R-Kans.) is promising because it approaches a set of social problems from the basis of economic reality. No one can say for sure that it would work. But no federal attack on poverty has been completely successful, to say the least.

The Pearson plan to slow down migration from small towns and rural areas in general is not a scheme to keep 'em down on the farm. Even the most sentimental agriculturalists have given up on that. One farm worker now can produce for himself and 38 other persons, compared to the one worker who was needed in 1910 to produce food for seven persons. Agricultural techniques and the machine age simply have combined to create conditions of productivity that cannot be challenged.

People do not live where they cannot find work. Over the decades, the agricultural revolution has rippled through the small cities and villages that traded with the farmer. Beyond that, the centuries-old reputation of the city as a place for the better life has been a factor.

But, as Senator Pearson observes, the bland assumption by the poor that the move from the country to the city assures a "step up the ladder of economic advancement" has not always been borne out. Thus his plan of tax incentive for industrial development and more jobs in the rural regions is based on a valid premise. People who leave the country for opportunity and the "better life" of the city do not always find those conditions.

Whether the urban magnet could be neutralized significantly by a deliberate tax incentive plan will be argued. The urban pull has been strong for reasons other than economic, and this has been true for a long time. Moreover, manufacturing and other commercial operations establish themselves in specific locations for reasons other than taxes.

But Senator Pearson's proposal to look at poverty and the rural-urban migration from another point of view is worth serious thought. The economic and social problems of the country are not going to be resolved by any one effort or program. The Kansas senator is offering one approach that would join many others.

[From the Washington (D.C.) Daily News, July 28, 1967]

A GOOD PLAN

Senator James B. Pearson has introduced a bill in Congress which would grant tax incentives to encourage new job-creating industries in rural areas.

Pearson has been studying the lack of jobs in rural areas which has contributed to a continual decline in population.

This bill is one idea he has come up with to try to stem the flow of people from farming communities to big cities.

As provided in the bill, business enterprises wishing to locate in rural areas designated deficient would receive a tax credit for 14 percent against machinery, a seven percent credit on investment in buildings, an accelerated depreciation on equipment and extra deductions for wages paid to low-income people.

In return, the business must create at least 10 new jobs and hire half of its working force from the local community.

Pearson and Sen. Robert Kennedy cosponsored a bill introduced last week which would do somewhat the same thing for slum areas in large cities.

Pearson said: "The great challenge is not simply to make the cities more efficient and more livable for more and more people, but how to keep more and more people from crowding into them.

"The rural to urban migration bleeds the countryside and smaller cities of their best human talent and most productive economic resources, making it increasingly difficult for many of these communities to survive."

As everyone who has tried knows, attracting industry to rural areas is next to impossible under present conditions.

Pearson's bill, which has attracted much favorable comment from fellow senators, would help the situation, making rural areas much more attractive to industry.

[From the Charleston Gazette, July 31, 1967]

BILL MAY SLOW TREK TO CITIES

"For too long," warns Sen. James B. Pearson, R-Kan., "we have watched the poor migrate from the country to the city, blandly assuming that this migration was the first step up the ladder of economic advancement. But in far too many instances the individual hasn't gained and consequently, society has lost.

"Inadequately educated, and unfamiliar with city life, they pile up in slums where they become entrapped by their own lack of skills and by the pressures from the surrounding higher economic classes who seek to isolate the slum population in physical ghettos."

It's to stem this unfortunate migration to the metropolitan areas that Sen. Pearson, along with a Democratic colleague (Sen. Fred R. Harris, D-Okla.), has introduced tax credit legislation for industries locating plants in predominantly rural regions.

The measure would provide an $80,000 federal tax credit to a firm investing at least $1 million in a new plant that hires 50 workers, including 33 economically deprived people, in areas specifically designated by the secretary of agriculture.

These designated areas would be defined under criteria set forth in Sen. Pearson's bill. Such areas couldn't be part of a standard metropolitan area, nor could they contain a city of more than 50,000 population. Counties in which 15 per cent or more of the families had incomes of less than $3,000 or with sharply declining employment would also be eligible to qualify.

Sen. Pearson's approach deserves careful appraisal from the Johnson administration and from Congress.

Events taking place this summer make it clear beyond doubt that anyone moving to a metropolitan area in the fond expectation

his living standards will be substantially improved is in for the disappointment of his life. In fact, his life may well be forfeited.

Yet, all demographic studies and forecasts reveal that the steady trek to the cities will continue in spite of the unattractiveness and perils of urbanized existence.

If Sen. Pearson's bill could impede the march to megalopolis, it should have been enacted the day before yesterday.

[From the Parsons Sun, July 22, 1967]

HOPE AND PEARSON

Kansas has become increasingly aware of the fact that it has an able and imaginative young senator on the job in Washington in the person of James B. Pearson.

Just how resourceful may be gauged by legislation introduced by Pearson in the Senate Friday. Mark well the date of July 21, 1967. It could well prove a reversal point in the discouraging economic downturn of the nation's rural areas and a turn to better, brighter days.

Pearson's Rural Development Act of 1967 moves away from federal programs stifled by complexities and red tape, and blends government tax incentives with private enterprise.

Specifically, generous income tax incentives on machinery, building and employment will be provided existing or new firms who establish manufacturing plants in rural areas which have suffered economic declines as a result of decreasing farm population.

Counties with no cities of more than 50,000 population and where at least 15 per cent of the families have incomes of less than $3,000 will be eligible to participate. Also will counties where the closing of a defense installation, with resultant migration of people, will cause economic setbacks.

"For too long," Pearson said in introducing the bill, "we have watched the poor migrate from the country to city, blandly assuming that this migration was the first step up the ladder of economic advancement. But in far too many instances the individual has not gained and consequently society has lost.

"The rural exodus is not composed only of the poor. The city's promise also attracts the talented youth, the highly trained and those with wealth or the potential for amassing it.

"The smaller cities and rural communities are bled of much of their best human talent and most productive resources in a cycle that continually feeds upon itself . . .

"Rural communities are stretched to the limit to provide the public resources to educate their children, but after they have been educated the children move to other areas because of a lack of local economic opportunity."

Pearson accurately describes southeast Kansas, and most of Kansas, to the last detail. While many have talked of the problem—and the "brain drain" from Kansas is a subject in every political campaign—no one has suggested a really effective or even possible remedy until now.

It is one thing to introduce a bill in Congress, and another to get it passed. Many are offered, few finally survive the legislative mills.

Pearson's plan doubtless has a long way to go. But consider these encouraging facts:

A co-sponsor is Sen. Fred Harris of Oklahoma, one of the Senate's rising young Democratic members.

Eleven other senators, Republican and Democratic, from Vermont to Oregon and states between, immediately joined as other co-sponsors.

And Majority leader Mike Mansfield of Montana told the Senate upon introduction of the bill that he will support it and urge immediate hearings by the Senate Finance Committee.

Kansas' already high esteem of Pearson will rise higher with this demonstration of creative thinking and action. It will go far higher upon passage of the bill, as further testimony to his effectiveness as a legislator.

[From the Evening Star, July 31, 1967]

A MOVE FROM SLUMS TO COUNTRY?

(By Paul Hope)

Twenty-three senators believe that given the chance to make a living in the country, a lot of slum dwellers would gladly trade the smoke and smog and riotous surroundings of the city for a place they could go to sleep to the sound of whipporwills.

They have introduced a bill called the Rural Job Development Act aimed at stemming the movement of rural poor to overcrowded city ghettos and to entice back some of those who already have gone.

It sounds like a good plan to sink a little money in—and compared to some of the other federal programs aimed at eliminating poverty, a little is all it would take.

Not only is it relatively cheap but its implementation depends on private enterprise rather than government initiative. What it amounts to is a tax incentive for industries and businesses to locate in rural areas.

The sponsors figure that if the government can underwrite a 27½ percent depletion allowance for oil and mineral exploration and can tax capital gains at only half the normal rate to encourage long-term investments, it ought to be able to provide a tax break to stimulate job growth in rural America.

Sen. James Pearson, R-Kans., said when he introduced the bill a few days ago that it is time to "stop treating the social and economic problems of rural and urban areas as separate and distinct."

And one of the long list of co-sponsors, Sen. Fred Harris, D-Okla., said it's time that "we in America began to ask whether it is inevitable that more and more people must be packed into less and less living space."

The advance of technology on the farm is creating a rapid exodus of out-of-work farmhands who seek their fortunes in the cities. It has been estimated that 1,000 displaced farm workers pour into the Watts area of Los Angeles every month, most of them from the South.

Approximately 70 percent of the nation's population is packed into 1 percent of the land area and it's going to get worse.

A Gallup poll a few months ago indicated that 50 percent of Americans prefer to live on farms or in small towns. The way Sen. George McGovern, D-S.D., another co-sponsor, figures it, that means that 20 percent of the people are being deprived of a chance to live and raise their children where they would like.

The legislation would offer tax incentives to enterprises providing at least 10 new jobs in areas where there is no city with a population of more than 50,000 and where at least 15 percent of the families have incomes under $3,000 or where employment has declined at a rate of more than 5 percent in the past 5 years.

Enterprises meeting the qualifications would be allowed a 14 percent investment credit on machinery instead of the normal 7 percent; an additional 7 percent credit on the cost of the building; an accelerated depreciation allowance on machinery, equipment and buildings; and an extra 25 percent tax deduction above the normal 100 percent for wages paid to low-income persons for three years.

The sponsors believe the loss to the government from the tax credits would be more than offset by taxes generated from increased economic activity.

Not only that, they see these other benefits: A strengthening of the economy through a more geographical distribution of industry; substantial social benefits from strengthening of rural communities; a reduction in the public costs of unemployment and welfare payments and for other public services, such as police protection, as the flow of rural people to the urban slums is slowed.

Aside from the tax credits, the bill provides for appropriations of $250,000 to the Department of Agriculture to disseminate information about the program, and $20 million the first year to the Manpower Development and Training Administration to train workers for jobs which would be created.

No one claims the legislation is a cure-all, but for a nation struggling to find solutions to its urban crisis it seems worth a try.

As Sen. Mike Monroney, D-Okla., another of the co-sponsors, put it: "Let us face the unpleasant and discouraging fact that far too many people are now being forced to stay in neighborhoods where family life is virtually impossible and where brotherhood and good-will have been stifled, where disease and hunger have encouraged discontent . . . We should encourage industry to grow in the unspoiled smaller communities across the nation where the pursuit of happiness has not become a rat race."

[From the Washington Post, Aug. 13, 1967]

DEMOGRAPHIC COLLISION

A little-noticed speech by Secretary Freeman the other day to the National League of Cities contains what may well prove to be, in the long reach of our national evolution, the wisest words yet spoken on our current malaise. Mr. Freeman sees the violence of recent weeks as a collision of man with his environment. Its origin runs back at least 50 years when millions of young men in rural America were uprooted by World War I. They began what Mr. Freeman calls "the 50-year march to the cities" which has now produced so much misery, disillusionment and violence.

While this great migration has been taking place the country has given far too little thought to it. Nearly 600,000 persons a year have been flowing into the cities, most of them displaced from the countryside, as Secretary Freeman acknowledges, by the revolution in agricultural technology. They have gone to the cities in search of a better life, but what they have usually found has been poverty, slums and only the dregs of urban living. In a very real sense they are refugees from a rapidly changing economy.

The result is that 70 per cent of our people are jammed into 1 per cent of our land—the 1 per cent that is largely covered by macadam, houses, factories and places of business. Many have found jobs but largely of the low-income varieties because the newcomers usually lack the skills that most industrial employment requires. So the glamor of the city that once lured them fades into the sodden dullness of ghettos, smog and social decay.

For some years the country has been vaguely aware of this demographic revolution but has done very little about it. Further concentration of people has seemed inevitable. But what will happen if this trend is allowed to run its course until the turn of the century when the country will have another 100 million persons to house and to absorb into its social structure? Will they, too, be crowded into our five vast strip cities?

It is this prospect of "an airless, waterless, joyless—and perhaps hopeless—existence" in a metamegalopolis of the year 2000 that frightens Secretary Freeman. And so he has pointedly raised the basic question: "Should we try to check the accelerated movement of people from country to city?"

Six members of the Cabinet are sponsoring a symposium designed to bring together "the best minds in the world" to discuss this problem in Washington next December. As for Mr. Freeman, he has already committed himself to pursuit of an urban-rural balance that will save the cities from destroying themselves. He is not of course recommending that the rural refugees be sent back to the farm where they have been displaced by machinery. But he does see a brighter future for

these rootless millions in towns and small cities where industrial jobs can be provided without the high costs, the congestion and the social overheating that have become so common in the large cities.

The Secretary suggests giving "a high investment priority to building up opportunity in rural America" and points to what some small cities have accomplished. But the chief significance of his speech does not lie in any specific recommendations. Rather, it is to be found in his impressive call for a change of direction. It is not necessary for this rich, resourceful and powerful country to strangle itself in its own congestion. The warning signals that have been sounded in one large city after another should set the whole country to thinking about ways and means of getting off this collision course with our environment.

[From the Christian Science Monitor, Aug. 26, 1967]

JOBS IN THE COUNTRY

In its newly announced program to stem migration from rural areas to the big cities (latest estimates speak of a million or more yearly) the Republican Party's National Coordinating Committee is giving welcome support to policies of widely accepted value.

Many of the most troublous problems in big cities around the world result from the increasing flow of unprepared rural poor into city slums. It is plain common sense for a country to do what it can to increase job opportunities within the rural areas for those who want to stay.

The measures proposed by the Republican committee are, in the broad outlines, widely acceptable: providing economic incentives for factories to locate in poor rural areas; aid to rural schools to provide more vocational-technical training; extension of city employment services to rural centers.

A report just published by the Manpower Commission of the United States Department of Labor makes some strikingly similar recommendations. The report urges expansion of existing programs that have proved effective where tried.

The Republican committee likewise favors increased support for certain tested programs. It is asking for expansion of the Economic Development Administration which Congress established under Democratic leadership two years ago. This approach is helpful.

The Republican committee expresses interest in promoting better coordination generally between government and private industries in revitalizing rural communities. Its insistence on close relationship between the two can be helpful. The stakes are big: In the last two decades a population equal to that of all California packed up and moved to crowded cities from rural areas. And—ready or not—they keep coming.

[From the Washington Post, Aug. 27, 1967]

URBAN-RURAL IMBALANCE

Both the major parties are now seeking a better balance between urban and rural population. Last week the Republican Coordinating Committee, composed of the top leaders of the GOP, came out for a five-point effort to revitalize rural areas. Its statement follows a very similar warning by Secretary of Agriculture Freeman that the rush of people into overcrowded central cities is creating a grave imbalance.

The main burden of the Republican complaint is that little has been done to create job opportunities, in the rural areas, for people who have been displaced by the agricultural revolution. Two decades ago 18 per cent of our people were required to produce food and fiber. Now the same tasks are performed by 6 per cent of the population, and most of the workers no longer useful on the farm have flocked into big cities where some of them are very poorly prepared to cope with the problems of urban life.

The cost of this brain and brawn drain from the countryside is enormous. Most of the migrants leave in their teens and early twenties, at the beginning of their productive years, after heavy investments have been made in their upbringing and education. Don Paarlberg, chairman of the Coordinating Committee's Task Force on Job Opportunities, estimates that "this human investment is a contribution from the rural areas that runs about $12 billion a year, several times the total of all subsidies to agriculture."

Rural America is in no position to make such a contribution to the economic prosperity of the remainder of the country. The disadvantaged position of the rural areas stands out in every test that is made. The President's manpower report of 1967 shows a farm unemployment rate last year of 6.5 per cent compared to the 3.4 per cent urban rate. The farm population has 33.1 per cent of its families below the poverty level compared to 14.4 for urban families. Schooling for farm youths averaged 8.7 years compared to 12.2 years in the cities. These figures doubtless explain a very large part of the "Urban crush" which has created such grave problems for the big cities.

No progress toward righting the urban-rural imbalance can be expected until these inequalities are corrected. Families who wish to live in the country should at least have job opportunities, health and education services and some of the amenities of life that are available to urban residents. Nothing can be said for policies which tend to drive people into congested and smog-bound ghettos for want of equal public services and economic opportunities in a more congenial environment.

The GOP policy-makers call for more educational aid, vocational training, economic incentives for the establishment of rural industries and the channeling of defense and supply contracts into such areas when feasible. One specific recommendation is aimed at great expansion of the Economic Development Administration which seeks to utilize local resources and provide part- or full-time employment in rural communities. Another aim is to give rural workers employment services equal to those provided in the cities.

Much remains to be done by way of shaping programs and policies, but the objective is highly commendable. The forecast that 80 per cent of our people will live in "five super strip-cities" by the year 2000 is frightening to everyone concerned. Reversal of that trend has become one of our urgent national necessities.

REVITALIZING OUR RURAL AREAS

(Adopted by the Republican Coordinating Committee July 24, 1967.

(Presented by the Task Force on Job Opportunities and Welfare.

(Prepared under the direction of: Republican National Committee, Ray C. Bliss, Chairman, Washington, D.C.)

"Ill fares the land, to hastening ills a prey . . ." was written of the English countryside nearly 200 years ago. But it might be written of rural America today.

Our rural areas are being depleted of people. From 1950 to 1960 the rural population—farm plus non-farm—declined by 400,000; the urban population increased by 28 million. These trends have continued. The Department of Agriculture anticipates further outmigration to the year 1970.

About one-fourth of the rural population consists of farm people. The others are part of the rural non-farm population, living in the countryside or in small villages. Since 1960 the farm population has been declining at an annual rate of about 6 percent, an accelerated pace.

Most of those who migrate from the rural areas leave in their teens and twenties, when on the verge of their productive years. They carry with them the investment in their upbringing and education. Conservatively estimated at $15,000 per person, this human investment is a contribution from the rural areas that runs about $12 billion a year, several times the total of all subsidies provided to agriculture.

What becomes of these people? They move into our great cities. Without necessarily desiring it and almost by default, we are becoming an urban society. Seventy percent of our people now cluster in cities that cover one percent of our land area. If present trends continue unchecked, by the year 2000, 80 percent of our people will be living in metropolitan areas and most of them will be crammed into five super strip-cities.

And will these be alabaster cities, gleaming, "undimmed by human tears"? Not likely. The migrants concentrate, unassimilated, in Detroit, in Cleveland, in the South Side of Chicago, in Watts, in Harlem, in Indianapolis and in a hundred other cities. Smog, congestion, water pollution, law enforcement and other problems of the megalopolis beset them and their uneasy neighbors. By generating a kind of "urban crush," they create a problem in the cities to which they go. By depopulating the countryside, they create a problem in the rural areas from which they come.

But move they must, if there are no nearby jobs.

And why are there so few jobs in the rural areas?

For several important reasons.

First, because of the agricultural revolution. The mechanization of agriculture has so multiplied the productivity of human beings that the production of our food and fiber is now accomplished by 6 percent of our population, as compared with about 18 percent only two decades ago. There simply are not as many farm jobs as there were. These revolutionary changes have by no means run their course. The Department of Agriculture says that from 1965 to 1980 farm employment will experience an additional decline of more than one-third.

Second, because imagination has been lacking. Little has been done to create job opportunities, in the rural areas, for people forced out of agriculture. Rural people do very well at off-farm jobs if the jobs are there and if they have the necessary education. They have manual dexterity and they know how to work. They do not want to live on a dole. If off-farm jobs are available within driving distance, they continue to live in their accustomed surroundings, among their friends and families, benefiting from increased incomes, providing improved education for their children and utilizing the services of the local community. But without such jobs they must go on relief or move to the city.

Seemingly, almost everything has conspired to prevent the creation of jobs in rural areas:

Federal farm programs have cut our cotton crop to 10 million acres, compared with 43 million acres before the programs began. Tobacco acreage is now only half as great as 35 years ago.

Local communities have not provided the services and utilities needed to attract industry.

Wage policies have discouraged industry from expanding into areas of abundant labor.

Industry, which has been urban-minded, has not sufficiently sought to decentralize.

The rural labor force lacks the federal employment services available to urban workers.

Educational policies have discriminated against the poorer areas. For example, the Elementary and Secondary Education Act of 1965 provides more than twice as much help per pupil to the counties ranking *highest* on the index of rural well-being as it does

to those ranking *lowest* ($350 as against $157). (Manpower Report of the President, April 1967, page 116.)

Farm programs, largely designed by the Democratic party, have continually sought parity of prices as an objective, when they should have sought parity of opportunity. For more than 30 years these programs have been commodity-oriented, when they should have been people-oriented.

The following statistics vividly describe the disadvantaged position of rural areas. All are taken from the President's Manpower Report of 1967:

	Farm	Urban
Unemployment rate, 1966 (percent)	6.5	3.4
Percent of population below $3,000 income per family, 1965	33.1	14.4
Median years of schooling, male, 1966	8.7	12.2
Percent of people with activity limitations because of health, 1963–65	6.4	4.7

These things need not be so.

It has been fashionable to point critically at the hardships which resulted from the Industrial Revolution of the nineteenth century and to find fault with those who could have alleviated these difficulties.

Now, in the twentieth century, we confront an Agricultural Revolution which creates problems and opportunities in some ways similar to those of the Industrial Revolution. There is no reason to accept, unquestioned, the social and economic consequences of this Revolution. Conscious efforts should be made to determine and assert the public interest.

The American people want some balance between the rural and the urban sectors. There should be some opportunity for those who wish to live in the country to find decent work there, to have access to reasonably good education and health services, and to pursue a way of living that gives diversity and balance to our economy.

What the American people really want and will work for, they can have. We are not the helpless objects of blind economic forces, we are capable of helping to shape the institutions which in turn help shape us.

These things can and should be done:

(1) *Locate more of our new factories in rural areas.* This can be done by local, state and national tax policies to provide realistic economic incentives. It can be done by providing better roads, better schools, and better public utilities in the rural areas. Factories may now be operated successfully in areas where this was formerly not possible. At an earlier time, when transportation was poor and the emphasis was on heavy industry, a factory had to be close to its raw materials or to its markets. This is far less true today. The Federal-Interstate Highway Program, established by a Republican Administration, has greatly facilitated transportation. For some industries a plant can now be established almost wherever a trained labor supply and the necessary supporting services are available.

(2) *Provide better education for rural people.* This means better education of all kinds, at all levels: elementary, secondary and advanced; vocational, technical and academic; continuing education for adults, apprenticeship, retraining and all the rest. It means on-the-job training as proposed in the previous Job Opportunities Task Force report entitled "The Human Investment," and it means Technical Education for the Future, also previously recommended by this Task Force. It means equal educational opportunities for the nonwhites, who comprise about one-fourth of the rural poor. Education is a great adjuster; people who are making great changes are in greater-than-ordinary need for it. Rural young people move freely across state and county lines. The sharing of the cost of education on a national basis is appropriate in view of the fact that we are concerned here with a national problem. The need is greatest where the taxable wealth is most scarce.

What is here proposed is not a blueprint for the economy, with a certain calculated number of people on farms or a carefully computed balance between rural and urban areas. Rather, we propose to redress the imbalance in education and opportunity which has worked to the disadvantage of the rural areas and threatens to make us almost totally urban.

To undertake the actions here offered does not introduce a rural bias; rather, it would remove an urban bias, largely unintended, that has been allowed to develop. We propose to provide the equality of opportunity which will give our people a chance to develop the kind of society they want. If this is done, we can safely leave with the people themselves the decision as to the balance between rural and urban living.

This is not a new idea. It was first proposed by President Eisenhower in his Special Message on Agriculture of January 11, 1954. In 1956, a Republican Administration launched the Rural Development Program, the first coordinated assault on this problem.

In attempting to find possible solutions to these root problems, Republicans realize there is no panacea. There is no one-shot, sure-fire, cure-all solution to rural unemployment, underemployment, and general rural underdevelopment. There are, however, a variety of programs, policies, and procedures that singly and in combination can help to mitigate the consequences of this rural stagnation. What is required is a multipronged attack on the numerous ills that beset our rural areas. The recommendations here offered are in keeping with the Rural Development Program launched under President Eisenhower's pioneering effort in 1956.

SPECIFIC PROPOSALS TO IMPLEMENT THE TASK FORCE PAPER

1. Encourage state and federal legislation which would identify rural areas in which unemployment and underemployment are critical problems and give these areas preference:

(a) In educational assistance, including various vocational training programs.

(b) By providing economic incentives to industrial firms that establish new plants in these areas.

(c) By contracting in these areas for the manufacture of defense materials and other government supplies and by building new government installations therein when feasible.

2. Push for enactment of Rural Community Action Programs under Title V of the Republican-sponsored "Opportunity Crusade Act of 1967," H.R. 10682.

3. Push the work of the Economic Development Administration in rural areas of low income.

4. Change the focus of the Vocational Education Act of 1963 so as to increase the number of area vocational-technical schools in rural areas.

5. Provide the rural areas with the same kind of employment services as are offered to urban workers.

APPENDIX

TABLE 1.—POPULATION IN URBAN AND RURAL TERRITORY, 1790–1960

[In thousands of people]

Year	Rural	Urban	Percent urban
1790	3,727	201	5.1
1800	4,986	322	6.1
1810	6,714	525	7.25
1820	8,945	693	7.19
1830	11,738	1,127	8.76
1840	15,224	1,845	10.81
1850	19,648	3,543	15.28
1860	25,226	6,216	19.77

APPENDIX—Continued

TABLE 1.—POPULATION IN URBAN AND RURAL TERRITORY, 1790–1960—Continued

[In thousands of people]

Year	Rural	Urban	Percent urban
1870	28,656	9,902	25.68
1880	36,026	14,129	28.17
1890	40,841	22,106	35.12
1900	45,834	30,159	39.69
1910	49,973	41,998	45.66
1920	51,552	54,157	51.23
1930	53,820	68,954	56.16
1940	57,246	74,424	56.52
1950	[1] 54,230	[1] 96,468	64.01
1960	[1] 54,054	[1] 125,269	69.86

[1] New urban definition.

Source: Historical Statistics of the United States, Colonial Times to 1957, p. 14; and Statistical Abstract of the United States, 1965, p. 15.

GROWING DANGER TO THE ECONOMY

Mr. SYMINGTON. Mr. President, throughout history, the strength of a country has often been judged exclusively on the size and quality of its Military Establishment, but the strength of its economy is equally important.

In this connection, I would hope that every Member of the Senate would read excerpts from a letter that I received from one of the Nation's foremost practical financial experts. I ask unanimous consent that they be printed in the RECORD.

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

AUGUST 19, 1967.

As you well know, I am a loyal and dedicated Democrat who feels he must express to you his feelings concerning the state of the nation with particular emphasis on the fiscal policy and its ramifications. If this were a partisan or political motivation, it could be discounted, but in view of what I think is a general feeling among the business community, it should be evaluated in its proper light.

Without question there has been creeping inflation for many, many years, but I now feel that the elements are present which are causing and will cause an unrestrained and rampant inflationary economy with all of its unfortunate "fall out." Every day one reads of a major industry that is raising prices materially which, of course, will be passed on either directly or indirectly to the consumer. I must quickly add that, in most cases, industry price increases are absolutely necessary because of inflationary wage settlements, increasing cost of borrowed money, etc. One only needs to look at the current decreasing profit margins of industry to determine that they are necessary. It becomes a vicious circle so that a wage increase is followed by a price increase and a price increase by a wage increase.

The most unfortunate result of this is that the people who live on fixed incomes, either now or in the future, are being unmercifully squeezed by the dimunition of their purchasing power. I am referring to those who are either living on pensions or will live on pensions, to those who depend on life insurance proceeds now or in the future, to those who carefully saved for annuities and many others in similar categories. These people have no recourse and have no protection against this squeeze. I am not concerned about myself or people in similar situations who are reasonably sophisticated and can take some measure of protection through their investment approach.

I do not profess to know the answers, but would like to offer several comments. Governments, like people, must live within their budget, not necessarily in any single year, but certainly over a period of time. This has not been done for many, many years. This country cannot afford a Viet Nam and all the requirements that are vital to a fair and proper domestic situation at the same time.

Therefore, the hard decisions must be made in such areas as a solution in Viet Nam, a restriction or deferment on unnecessary domestic spending, a proper fiscal posture with relation to taxes, etc. I believe that, when action is to be taken, it should be taken promptly and firmly. I fear that the tax increase is coming too late and probably too little; the too little does not necessarily mean the percentage increases, but could mean certain amendments to existing inequities.

It is obvious that an economic weakening of this country, such as is taking place now, is just as weakening as a military defeat. This problem is going to have to be faced sooner or later and the sooner the better.

A LESS HAZARDOUS CIGARETTE

Mr. MOSS. Mr. President, last week the Committee on Commerce, under the leadership of its chairman, the distinguished Senator from Washington [Mr. MAGNUSON], conducted hearings on the health consequences of smoking, and on progress being made toward developing a less hazardous cigarette.

One of the most important contributions to the discussion was made by Dr. William H. Stewart, the Surgeon General of the Public Health Service, who brought the committee up to date on the most recent research conducted by the Service on the impact of smoking on health.

Because I am confident that what Dr. Stewart said will be of interest to all Senators and to the public at large, I ask unanimous consent that his speech be printed in the RECORD.

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

STATEMENT OF WILLIAM H. STEWART, M.D., SURGEON GENERAL, U.S. PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, BEFORE THE SUBCOMMITTEE ON THE CONSUMER, COMMITTEE ON COMMERCE, U.S. SENATE, AUGUST 25, 1967

Mr. Chairman, and Members of the Subcommittee, I am grateful for the opportunity to appear before you today to discuss problems and progress in the development of a less hazardous cigarette.

Just a month ago, Secretary Gardner sent to the Congress a report on the health consequences of smoking, as required by Federal Cigarette Labelling and Advertising Act. That report, as you know, not only strengthened the conclusions of the 1964 Surgeon General's Report on Smoking and Health, but expanded and extended our knowledge of the effect of cigarette smoking and early deaths and excess sickness and disability. Last week, we released a report summarizing 3½ years of research, including data used for the report sent to you a month ago.

Our present state of knowledge on these health consequences are summarized in this new report as follows:

"1. Cigarette smokers have substantially higher rates of death and disability than their nonsmoking counterparts in the population. This means that cigarette smokers tend to die at earlier ages and experience more days of disability than comparable nonsmokers.

"2. A substantial portion of earlier deaths and excess disability would not have occurred if those affected had never smoked.

"3. If it were not for cigarette smoking, practically none of the earlier deaths from lung cancer would have occurred; nor a substantial portion of the earlier deaths from chronic bronchopulmonary diseases (commonly diagnosed as chronic bronchitis or pulmonary emphysema or both); nor a portion of the earlier deaths of cardiovascular origin. Excess disability from chronic pulmonary and cardiovascular diseases would also be less.

"4. Cessation or appreciable reduction of cigarette smoking could delay or avert a substantial portion of deaths which occur from lung cancer, a substantial portion of the earlier deaths and excess disability from chronic bronchopulmonary diseases, and a portion of the earlier deaths and excess disability of cardiovascular origin."

Despite the hazards, 42 percent of the adult population or 49 million men and women continue to smoke, and more than a million young people take up the habit each year. Half the boys and girls in this country become cigarette smokers by the time they are 18. These figures represent the size of the problem before us—one of the most difficult we have ever faced in preventive medicine and public education.

The Department recognizes that if the death rate associated with cigarette smoking is to be reduced, and if cigarette-related diseases are to be controlled, we must pursue, as we are now doing, a three pronged remedial program:

First, to reduce the number of persons now smoking;

Second, to encourage young people not to smoke;

Third, to support the development of a less hazardous cigarette for smokers who never will be willing or able to give up smoking, and at the same time, to help create a climate of opinion so that when such a cigarette is developed it will be acceptable.

Although the three points must be interrelated in a total approach to the problem, I shall stress the third point, which the Committee has designated as the area for discussion at these hearings.

In recent years, the harmful effects of tar and nicotine in cigarette smoke have been the subject of intensive scientific research here and abroad. There is evidence that "tar"—the general term for smoke solids minus moisture—is many times more potent in its cancer-producing properties than any of the substances isolated from it. Among the studies reported in the 1964 Surgeon General's Report were animal experiments which showed that tars extracted from cigarette smoke regularly induced skin cancer in mice and that cigarette smoke impaired the cleaning mechanism of the bronchial tract. It has been shown, also in animal experiments, that the tumor-producing capacity of cigarette smoke can be reduced by altering the cigarette to reduce tar and nicotine content.

The Public Health Service has for some time encouraged research in this area. The National Cancer Institute has supported and is supporting investigations on the nature of several carcinogenic and co-carcinogenic components of tobacco and tobacco smoke. The purpose of these studies is to provide a foundation for future studies so that specific or differential removal of the harmful ingredients may be accomplished by several means, including filtration, the development of tobacco strains low in toxic elements and treatment of tobacco leaves.

Cooperation with the Department of Agriculture on the agronomic aspects of tobacco research was begun a few weeks after issuance of the 1964 Surgeon General's Report, and this research is continuing.

To further explore the significance of tar and nicotine content, 14 prominent scientific investigators met in Washington at my invitation to review medical knowledge on this subject. The group reported:

"The preponderance of scientific evidence strongly suggests that the lower the 'tar' and nicotine content of cigarette smoke, the less harmful are the effects."

The implications of this judgment and the suggested course of action are clear. For those smokers who cannot quit—and we must accept the fact that there are a great many who will never do so—we must help them to lessen their risks by reducing the level of exposure to harmful ingredients in cigarette smoke. These are the people who make up such a large percentage of early deaths associated with cigarette smoking, and who suffer from premature disability of heart disease and chronic respiratory disease. Studies have shown that smokers who have turned to cigarettes with lower tar and nicotine content, show a significant reduction in symptoms of coughing and shortness of breath compared to those who continue to use cigarettes with higher tar and nicotine content. It is reasonable to assume that lessening exposure to cigarette smoke may also decrease the chances of developing cancer and other diseases; just as smoking fewer cigarettes per day entails a lower risk than smoking many cigarettes per day.

To reduce the risk, changes in the cigarette itself must be accompanied by other changes. One change involves acceptance of the less hazardous cigarette when it is developed. If it is found deficient in qualities which give the average smoker the gratification to which he is accustomed, it will inevitably fail of its purpose. Smokers also could protect themselves if they could be persuaded—if they must smoke—to change their way of smoking by inhaling less and smoking less of each cigarette.

The overall aim is to reduce the total exposure to cigarette smoke to such a low level of total dosage that the health risks are at a level which the average knowledgeable smoker might be willing to tolerate. It would remain for research, however, to determine what would be the "tolerable" level for different kinds of people.

The task of persuading smokers to change their ways of smoking such as encouraging them to take fewer puffs and to consume less of their cigarette—will not be easy in the face of the cigarette industry's latest innovation—the longer cigarette. As research findings continue to confirm and to strengthen the scientific evidence incriminating cigarettes as a health hazard, it is unconscionable that the cigarette industry should introduce and heavily promote the 100 mm cigarette which cannot but help increase the hazard. The advertisements now feature the cigarette that "smokes longer because it is longer," and the cigarette "you can't knock it off in a fast five minutes; you have got to give it at least seven." What the ads do not say is that the longer cigarette also increases the smoker's total dosage and thereby increases his exposure to the harmful effects of smoking.

The longer smoke clearly means longer profits for the cigarette industry. When the 100 mm cigarettes were introduced last year they captured 2% of the market; this year the estimate is they will get as much as 15%. If this trend continues the effect will be to negate whatever benefits might accrue from a shift to a lower tar and nicotine cigarette. Previous evidence indicates that the smoker who turns to a longer cigarette tends to continue to smoke as many cigarettes and more of each cigarette than before.

Cigarette packages are required by law to carry the warning that smoking may be hazardous to health. It is not in the public interest to add to that hazard by influencing the smoker to increase his intake of injurious ingredients. I would urge the cigarette industry to reconsider its course with respect to the longer cigarette and cigarette adver-

tising in light of these conclusions from the Surgeon General's report sent to Congress last month:

(1) Of men between the ages of 35 and 60, approximately one-third of all deaths are "excess" deaths in the sense they would not have occurred as early as they did if cigarette smokers had the same death rates as non-smokers.

(2) Cigarette smoking is now the most important cause of chronic bronchopulmonary disease and greatly increases the risk of dying from these diseases.

(3) Men who smoke cigarettes have a death rate from coronary heart disease 70 percent higher than that of non-smokers. This increases to 200 percent and even higher in the presence of other known "risk factors" such as high blood pressure and high serum cholesterol.

(4) "Seventy-seven million days of work are lost each year in the United States which would not have been lost if cigarette smokers had the same rates of illness as non-smokers." This represents almost 20 percent of the entire annual work loss in the United States which results from illness.

(5) A relationship between cigarette smoking and death rates from ulcer has been confirmed, and data now suggests that a similar relationship exists between cigarette smoking and morbidity.

It is clear we are paying dearly for the cigarette habit in terms of early deaths, sickness and disability and the cost to the Nation of the lost services of millions of men and women. We would hope that the cigarette industry would recognize the growing seriousness of the problem and make meaningful effort to help prevent a bad situation from growing worse. Removal of the long cigarette from the market and the promotion of moderation in cigarette use in the advertising would be steps in this direction. An example of moderation in advertising would be to encourage smokers not to smoke far down on each cigarette. Studies have shown that the last third of a cigarette when smoked contains almost 50% of the total condensate recoverable from the smoke, whereas the condensate from the first third contains about 25%. In other words, as more of the cigarette is smoked down to a shorter length, the dosage of smoke condensate, including known carcinogens, increases.

I believe that disclosure of tar and nicotine on cigarette packages and in advertisements, and the responsible promotion of those cigarettes low in tar and nicotine would be constructive and helpful steps to the extent they provide the smoker with as much information as possible on the risks of smoking and enables him to make his own decision as to the amount of dosage he will accept. Public opinion backs such action. A Public Health Service survey shows that 77 percent of people who were interviewed felt that cigarette companies should be required to list tar and nicotine content on packages; among cigarette smokers, 71 percent favored such action. As other substances are found in cigarette smoke which contribute to the health hazard of smoking, the identity and quantity of such substances, should be included along with tar and nicotine in the package labeling and in advertising.

The question is: will tar and nicotine disclosure on cigarette packages and in advertisements encourage wider use of the brands with lower levels? I believe that a progressive reduction of tar and nicotine levels result from such action because of public demand.

The phenomenal increase in sales of filter cigarettes from only 2% in 1952 to nearly 70% today reflects the average smoker's concern in protecting himself as much as possible against the hazards of smoking. Since it is obvious that self-protection is much of the motivation for switching to filters, it is important to insure that filters are effective in reducing the harmful ingredients of the cigarette smoke. It is reasonable to assume that health-conscious smokers will shift to an acceptable low tar and nicotine cigarette in the same, and or greater, proportion as they have switched to filter cigarettes.

In the period when tar and nicotine content was not publicized in advertisements and in labels, there was no incentive to reduce these harmful ingredients. On the contrary, the tendency was to produce cigarettes with *higher* tar and nicotine content. It is my opinion that the identification of tar and nicotine levels would be in the interest of better health. It should be recognized that not all consumers will choose a lower tar and nicotine cigarette, but previous experience and the attitudes currently expressed by smokers lead me to believe that many will do so if given the opportunity.

Some doubts have been expressed that the lower tar and nicotine cigarette can in the long run reduce the hazards of smoking, and these dissenting views have been considered by an expert committee of scientists. They have taken into account, for example, the argument that the smoker who turns to a lower tar and nicotine cigarette may smoke his cigarette further down and smoke more of them. But there is evidence that this does not occur; it has been found that the smoker who takes up the lower tar and nicotine cigarette tends to smoke the same number, or fewer, cigarettes than he did before the change.

It has also been argued that promotion of a low tar and nicotine cigarette might lull the smoker into believing that he could smoke this cigarette without any accompanying risk. But there are three factors that should minimize this likelihood, in the opinion of the expert committee of scientists: (1) the warning label, which the Department feels should be strengthened; 2) control over advertising statements which are permitted, and 3) the continuing educational efforts.

Education is basic to all aspects of the program. Education is as essential in creating acceptance for a low tar and nicotine cigarette as it is in encouraging young people not to smoke and in helping smokers to quit smoking. Cigarette smoking presents a special problem in health education because it is unique and complex. For one thing, there is no sudden course between cause and effect; between the time a person takes up smoking and the time when he becomes ill. For another thing, cigarette smoking is easy to start and hard to stop.

Our educational efforts have been modest and in effect for a short period of time. There have been significant gains, but not as many as we would like. Our latest surveys indicate that we have reached what amounts to a stalemate. Health-conscious adults are giving up smoking at the rate of 1,000,000 a year, but this is being compensated for by the taking up of smoking by young people at approximately the same rate. The proportion of men who smoke continues to decrease yet the number of women who smoke continues to increase. We appear to be at a standoff.

This is not to imply that the educational program has not been effective. The total proportion of smokers has not increased as much as the promoters of cigarettes would have liked it to. In 1966 smokers consumed about 25 percent fewer cigarettes than would have been the case if cigarette consumption had continued to increase since the early 1950's as they had in the five years immediately preceding the first awareness in the general public of the scientific evidence linking cigarette smoking to lung cancer.

Education remains our strongest weapon in the overall effort to reduce the hazards of smoking, and we shall use it increasingly to help people act intelligently to protect themselves from one of the most serious health hazards of our time.

AFRICAN WILDLIFE IN DANGER, NEWSWEEK WARNS

Mr. YARBOROUGH. Mr. President, 2 days ago I submitted a concurrent resolution, Senate Concurrent Resolution 41, calling for the United States to take the initiative in promoting a worldwide conference on the conservation of wild animals.

I have introduced this proposal three times in the last three Congresses. On each occasion it has received the support of the Department of State and the Department of the Interior.

Public interest in the fate of wild animals facing extinction is now beginning to be awakened, largely through the efforts of certain parts of the news media which have grasped the urgency of the problem. The most recent of the efforts is a two-page article which appeared in a Newsweek article the day after I submitted the concurrent resolution. The article is a well-researched and compelling argument for the conservation of the magnificent animals of Africa before it is too late to save them. Articles like this will help the public to realize that, as the great conservationist William Hornaday said:

> The wildlife of the world is not ours, to dispose of wholly as we please. We hold it in trust, for the benefit of ourselves and for equal benefits to those who come after us.

The situation, as Newsweek demonstrates so vividly, is critical. I hope that responsible journalism such as this will help the public and the Senate to realize it.

Mr. President, I ask unanimous consent that an article entitled "Can Africa's Wildlife Be Saved?" published in Newsweek for September 4, 1967, be printed in the RECORD.

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

CAN AFRICA'S WILDLIFE BE SAVED?

From Kenya to the Congo, the great migrant herds of wildlife that once roamed East Africa's 700,000 square miles of savannaland and forest have all but disappeared. Some authorities, in fact, estimate that it has taken man less than 50 years to reduce the region's game population to a tenth of its former size. Now he is trying to keep that last remnant from vanishing altogether.

Decimated by poachers and dispossessed by livestock, the surviving herds have to a large degree become refugees in East Africa's thirteen national parks and its 91,000 square miles of game reserves. Here, to the casual tourist, there seems to be no end to the game. But ecologists and wardens involved in wildlife-management projects know better. They know that the sanctuaries alone offer scant protection. Indeed, in some cases, the parks themselves must be saved from the game. As the migration of wildlife into preserves increases, so does the pressure on the food supply of the animals already there. Last year, at Uganda's Murchison Falls Park, wardens were forced to "cull" (conservationese for kill) no fewer than 2,900 elephants and 2,000 hippopotamuses. A hippo can put away 150 pounds of grass in one night.

Land Settlement: The problems begin with man: quite simply, he is outbreeding and outranging the beasts. Since 1915, Uganda has given up three-quarters of its wildlife range to human habitation, cultivation and grazing. By the year 2000, its 8-million popu-

lation will have more than doubled and gobbled up 20 million more acres of game land. In Kenya, where man currently requires a quarter of the land, half will be needed in 30 years—most of it for agricultural settlements and squatters practicing subsistence farming. And in Southeast Tanzania increased land settlement has resulted in what game warden Brian Nicholson calls a "straightforward clash between man and beast."

The very mention of an East African wildlife crisis once conjured up an image of the white hunter, armed with a highpowered rifle and an insatiable lust for blood. But today, the 100 professional hunters operating in East Africa are ardent—and admired—defenders of wildlife. The tradition began with the late Philip H. Percival, who escorted Teddy Roosevelt in 1910 and Ernest Hemingway 23 years later, on safaris, then spent his final years as East Africa's first game warden. But while professional hunters have been solicitous of wildlife, many Africans have not.

Official estimates of the number of animals killed each year by poachers in East Africa run as high as 300,000. Most of the lawbreakers are driven by hunger and habit. The Wakamba and Wasukuma, for example, come from an ancient line of proud—and protein-starved—hunters. But others, encouraged by traders on the coast, poach purely for profit. Their targets range from the black rhino, nearly extinct because its horn fetches $28 a pound on the Asian aphrodisiac market, to leopards, whose skins are worth thousands of dollars on the furrier's rack.

"The business of poaching is run like the opium trade," explains Nairobi white hunter Bill Ryan. "It's as tight as a drum." But so are the poaching penalties, which have become much harsher since *Uhuru*—Independence. The penalty in some areas: a $2,800 fine or five years in prison. In Kenya's sprawling Tsavo National Park, once a favorite haunt of elephant and rhino poachers, the government has practically eliminated the problem by hiring the most notorious game killers as control hunters.

By far the greatest single danger to Africa's wildlife comes in the form of nothing more sinister than scrawny herds of tick-ridden cattle competing with wildlife for grazing space across the scrubby grasslands. As long as disease and drought kept their stock to a minimum, East Africa's pastoral tribes traditionally shared these semi-arid regions with the game. But modern veterinary science has upset the balance. "It's all the white man's fault," says Tanzania National Parks planning adviser Philip Thresher. "We've taught Africans how to increase their herds without teaching them how to control their stock rationally. Now there's the devil to pay."

In Uganda, the cattle population has doubled since 1930. Understandably, as domestic herds increase, tribal pastoralists become less willing to coexist with the wildlife. Animal husbandry has taught them that game can infect their stock with such diseases as anthrax and rinderpest.

Facing Spears: When Tanzania's Ngorongoro Crater was separated from the Serengeti National Park and demoted to conservation-area status in 1959, Masai tribesmen were allowed to graze cattle there. Crater conservator S.A. ole Saibull, a Masai himself, still manages to maintain a proper cattle-game ratio. But, as another Tanzanian park official told NEWSWEEK's Curt Hessler: "What if we have a drought? Masai from all around will bring their cattle into the area for water. Who's going to face those spears and say 'get out'?"

If cattle pose a danger to wildlife, they also represent disaster to the land itself. Where game is selective in feeding and rarely overgrazes, livestock will nibble pastureland to dust. Their hooves destroy the porous structure of the soil, compact it, expose it to erosion by wind or rain. The Great Rift Valley, running from the Red Sea to South Africa, was once lush forest and fertile plain. But indiscriminate overgrazing has reduced it to a dry, raw scar in the landscape. It may well be beyond reclaim.

Knowledge Gap: The production of field crops also complicates East Africa's delicate ecology and has noticeably increased the African's disdain for wildlife. Elephants trample his maize, buffalo batter his fences and chattering armies of baboons uproot any crop in their path. Yet most African farmers fail to understand why there are so many baboons to contend with. It rarely occurs to them that the answer might be related to the extirpation of leopard and cheetah that naturally prey on baboon and keep the ape's numbers in balance. "Somehow," says Robert Casebeer of the U.N.'s Food and Agriculture Organization, "we've got to show the tribes that most wildlife is valuable to them."

This is no small task. A surprising number of Africans know little or nothing about the great mammals with which they have shared a continent for centuries. A recent survey shows that eight out of ten Kenyan schoolchildren cannot even distinguish between a leopard and a hyena.

To close the knowledge gap, most of the national parks offer extensive education programs financed by U.S. and European foundations. The Washington-based African Wildlife Leadership Foundation (AWLF), for example, contributes a half-million dollars each year to conservation-education centers, including the 40-mile square Nairobi National Park. Last year, 19,000 student visitors to this park were exposed to AWLF's message: wildlife is Africa's No. 1 asset.

Tanzania has fielded perhaps the most aggressive game-management and conservation programs. Since independence, the country has created no fewer than four national parks and such ambitious projects as the College of Wildlife Management at Mweka, high on the slopes of Mount Kilimanjaro. Founded in 1964 with a $25,000 grant from AWLF, the college is training 57 students from ten African countries to serve as park wardens and game officials. Though the U.N.'s FAO administers the college with a five-year grant of a half-million dollars, funds and scholars also come to Mweka from the U.S. and West Germany.

The curriculum at Mweka ranges from elementary biology to a course in animal-population dynamics taught by 39-year-old Patrick Hemingway, son of the late chronicler of Africa's green hills. Hemingway spends half of each month in the field, teaching his students the practical aspects of game management, map interpretation, wildlife identification and "control" shooting. Despite their demonstrated desire and ability to learn, some students would prefer to pursue a different profession. "Let's face it," says one Mweka instructor. "Africans want to get out of the bush and into the cities."

For the game, time may be running out unless more Africans than Mweka can train decide that wildlife deserves a share of the range. One way may be through Africa's ever growling stomach.

Most nutrition experts agree that humans require an average of 30 grams of animal protein daily—six times more than is being consumed by East Africans. Yet recent experiments show that many game animals may yield half again as much lean meat as livestock of equal weight. Moreover, many agriculturalists point out that East African pasture land can support game animals more productively than cattle. Says S. O. Ayoda, Kenya's Minister for Tourism and Wildlife: "The government is becoming convinced that a high production of animal protein can be maintained from wildlife on lands that might deteriorate under other forms of use."

The FAO, for another, is convinced that wildlife may yield a solution to the African's chronic hunger. For several years, Zambanian wardens in the Lambwe Valley have been "cropping" wildlife for food. The carcasses are butchered in mobile abattoirs and transported to *dukkas* (markets) in the nearby Copper Belt.

Canned Gazelle: Even Hemingway foresees a need for a wildlife-canning industry in East Africa. Says Hemingway: "Our own experiments with home tinning of Thomson's gazelle meat have shown its quality to be quite comparable to the finest tinned tuna." But the "game as meat" concept is challenged by Dr. Igor Mann, former chief animal-industry officer for Kenya. "I've yet to see a self-supporting game-ranching scheme," says Mann. "Game meat isn't going to make anyone rich."

Perhaps not, but tourism—largely dependent on wildlife—does. It already ranks as Tanzania's fourth largest industry and Kenya's second largest. By 1970, it will be East Africa's biggest industry, grossing $75 million annually in Kenya alone. Clearly, Africa cannot afford to jeopardize the future of its wildlife—a resource that is every bit as vital to its economy as the copper mines of Katanga or the diamond fields at Kimberley. "Now is the critical time for African wildlife," says AWLF director Frank Minot, "the time when everything should be done at once."

THE ELECTION IN VIETNAM

Mr. INOUYE. Mr. President, the birth of a child—or a nation—can be an agonizing experience and one fraught with danger.

As we approach the eve of the national presidential elections in Vietnam, there are signs that we are ill at ease in the role of the midwife.

Yet many thousands of young Americans—and countless South Vietnamese—have fought and died to bring this child into the world, a lusty young democracy in Southeast Asia.

As Americans who have yet to perfect our own society after nearly two centuries of independence, I trust that the great body of the American people will demonstrate a sense of compassion and understanding in these critical hours.

More than a century ago, Alexis de Tocqueville, that perceptive observer of the American scene, made this comment:

> Democratic nations care little for what has been, but they are haunted by visions of what will be; in this direction their unbounded imagination grows and dilates beyond all measure.

As the children of Jefferson, Jackson, and Lincoln, I trust that we in this century can still have visions of what can be in South Vietnam.

I am, therefore, deeply dismayed by the attitudes of many distinguished Americans who would write off the coming elections as devoid of any real meaning. The cry of "fraud" has been heard before a single vote has been cast.

It was President Kennedy, recalling an ancient Chinese proverb, who said:

> A journey of a thousand miles must begin with a single step.

In a nation which has suffered the excruciating agonies of two decades of civil war, which has known the iron fist of repression and the insatiable greed of corrupt politicians, we cannot expect too much.

But I have been encouraged by the progress which has been made toward a

representative government in South Vietnam.

Two years ago South Vietnam had no democratic constitution.

It has one today.

Two years ago South Vietnam had no popularly elected National Assembly.

It has one today.

In a country fighting for its very life, I call this remarkable progress, solid achievements which deserve our commendations.

South Vietnam will soon have a House of Representatives and a Senate whose members will have been chosen by the people.

Have we forgotten the doubts and anxieties which beset our own people when we undertook to become the cradle of liberty?

Let us not abandon hope for democracy in South Vietnam before it is even born into this world.

As the people of South Vietnam begin to move down the path toward freedom, there is a real need for patience, sympathy and encouragement on the part of the citizens of our Nation for we have already shed our blood in their cause.

As a Nation which has known its share of election scandals—with their stuffed ballot boxes, fraudulent vote counts, and bought and paid for candidates—this is indeed a time for discretion on the part of our people.

I speak as one having great faith in the people of South Vietnam who, rent by internal dissensions and ravaged by the enemy from the north, have nevertheless fought on by our side these many years.

These people know that in our hearts we seek no jurisdiction over their land, and we come not as economic exploiters to exhaust their great natural resources.

They have seen our young, battle-hardened combat veterans extend tender hands of mercy to the wounded women in the village square and they have seen them play quietly with their children as they awaited another deadly nightfall.

Yet I know that these same people look to the day when we shall be gone and that peace, which one entire generation has not known, will once again be theirs in the villages and the rice paddies.

We share this hope for it is the desire of our own troops in Vietnam—and the desire of the American people—that they should return home as soon as possible to resume their peaceful pursuits.

If we are able to leave behind a proud young nation carefully nurturing a democratic society into full flower in Southeast Asia, our efforts will not have been in vain.

TIME TO CLOSE THE LOOPHOLES

Mr. SYMINGTON. Mr. President, for many years, I have been voting to close the loopholes that exist in our tax structure; and I will continue to support measures designed to contribute to the goal of an equitable tax system.

In considering the administration's proposal for a 10 percent surcharge tax on individual and corporate incomes, it is hoped Congress will also give careful attention to plugging the tax loopholes which reportedly cost the Federal Government billions of dollars in uncollected revenues yearly.

In view of a mounting deficit and inflationary tendencies, primarily due to rising costs incident to our activities in Southeast Asia, a tax surcharge may prove to be necessary. However, the surcharge tax has been proposed as a temporary measure; whereas steps taken to plug loopholes in the existing tax structure should insure not only an important immediate increase in revenue for the Government, but also a far more equitable sharing of the tax burden in the years ahead.

In that connection, a thought-provoking editorial entitled "Something Smells" was published in the Springfield, Mo., Leader and Press, of August 16. I ask unanimous consent that the editorial be printed in the RECORD.

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

[From the Springfield Leader and Press, Aug. 16, 1967]

SOMETHING SMELLS

It has been proposed before, now it appears inevitable: taxing Americans on the taxes they already pay. A tax on a tax is irritant enough, but even more irritating is it to know how unfair, how unnecessary this monstrosity, the surtax, actually is. The proof? Right from those who should know best, the U.S. Treasury Department.

Most of us are just "little guys," working for wages or salaries with nary a chance to fudge on taxes. So we are in a position to resent some of the things the Treasury Department has disclosed: That at least 15 Americans with incomes of more than $500,000 a year pay no income taxes at all; that at least five others with incomes exceeding $5 million paid no income tax last year; that dozens more with incomes ranging from $1 million to $5 million pay as little as 24 percent—about what most of us pay—instead of the 70 percent the law demands.

This is legal because of loopholes the wealthy have always managed to hire written into tax laws. Failure to tax paper profits properly is costing at least $13 billion annually, tax experts say.

And that is only one of several areas of loopholes. Another is the depletion allowance to firms extracting minerals from the earth. In 1965, for example, America's 20 largest, wealthiest oil companies paid corporate taxes averaging only 6.3 percent. Contrast this with the 24 percent or more you pay, with the 48 percent most corporations pay.

Standard Oil of New Jersey, America's biggest in the oil game, paid income taxes of $82 million in 1965. Sounds like a lot? Not on a profit of $1.7 billion that year—actually somewhat less than 5 percent. Perhaps even worse, a few smaller oil companies instead of paying taxes, actually collected refunds we were taxed to pay.

Ironically, foreign countries aren't so sympathetic to our wealthy companies: Standard paid foreign taxes of $562 million in 1965—about six and a half times what it paid to its own country.

The unholy depletion allowance, enacted about 40 years ago, grants oil companies 27½ percent for exhausting resources purchased for the sole purpose of depletion for profit. This allowance lined the pockets of the rich, cost Uncle Sam—all the rest of us—more than $4 billion in 1965.

While the depletion allowance is only for the few, others in big business get their cuts too: tax free foundations, gifts of stock and property, executive salaries, capital gains escapes, etc. As one illustration, the case of one tycoon is cited: He donated $21.6 million in stocks that had cost him $400,000 to a foundation he established and controlled. As a gift, he could write off the whole $21.6 million from taxes, yet continue to live on it.

This capital gains loophole is costing Uncle Sam nearly $7 billion this year, experts claim.

These are only some of the multitude of tax loopholes available to all who can take advantage. But alas, less than 5 percent of all taxpayers can take advantage, even in a small way.

Of course Uncle Sam must have money to stay in business. Of course the war has vastly increased revenue needs. Of course we must pay.

Closing these loopholes would raise far more than the surtax now being debated in Congress. And conversely, all revenues lost through loopholes must be made up elsewhere—not just anywhere, but by us common folk.

No use crying about it, since we modern Americans cry only to each other—seldom in the concerted lament that could drive Congress to act as it should have acted years ago.

If we're unwilling to cry where our wails will do some good, we'd better just grin and bear it—keep on keeping our millionaires and billionaires happy. And can you see any reason why they should be unhappy about the present tax setup?

THE UNITED STATES AND SOUTH VIETNAM: A BOLD ADVENTURE IN DEMOCRACY

Mr. McGEE. Mr. President, the eye of the world is focused on the Vietnam elections.

Next week, millions of free South Vietnamese citizens will choose their national leaders in a remarkable display of the democratic process, under the most adverse conditions.

This event—no matter what its outcome—marks a resounding success for the Vietnam policies of the Johnson administration.

For without the U.S. military and civilian presence in Vietnam, this election could never have taken place.

One thing we know—even though some of the press and others just discovered the South Vietnam elections last week: There are no elections in North Vietnam, there is no constitution drafted by a constituent assembly in the north, there are no candidates wheeling around the hustings in Hanoi attacking each other and the government in what has become a Western-style open election.

The critics seeing this happening in the south cry "fraud."

But it is not a fraud. It is one of the fruits of President Johnson's restrained and forward-looking policy of stopping communism from taking over militarily, while actively encouraging the birth, growth, and flowering of democratic institutions in South Vietnam.

Does anyone seriously doubt that there would be elections if the U.S. military and economic presence for 2 years had not helped Vietnam carry on?

Does anyone seriously believe that there would be a national entity today known as the Republic of South Vietnam without half a million American troops engaged there?

Does anyone seriously believe the United States "discovered" free elections in South Vietnam last week or last month, and is now trying desperately to hurry them along?

For almost 2 years, President Johnson and the U.S. Government have been engaged day in, day out, in a public and private campaign to encourage the birth and growth of democratic elections, democratic institutions, and representative government in Vietnam.

President Johnson and every one of his advisers—in Washington and on the spot in Saigon—have never lost sight of the vital importance of democracy in South Vietnam.

With our encouragement in January 1966, Prime Minister Ky announced his Government's plan to develop a constitution and hold national elections.

At the Honolulu Conference only a month later, the Vietnamese Government pledged in the Honolulu Declaration, "to formulate a democratic constitution" and "to create on the basis of elections rooted in that constitution, an elected government."

In the summer of 1966, American technicians and advisers met hundreds of times with those drafting Vietnam's basic electoral law.

In September 1966, a Constituent Assembly was elected with American and foreign officials observing, and the world press corps reporting fully.

At the Manila Conference in October, President Johnson again urged the Vietnamese to hold open and fair elections at the earliest possible date.

Between January and March 1967, many visiting American officials took pains to stress to the Vietnamese the importance of broad civilian representation in any new government; the importance of honest and free elections; the importance of developing truly representative political institutions. Again, I emphasize that this was long before most of the present-day critics were even aware that elections were going to be held.

At the Guam Conference in March 1967, Prime Minister Ky presented the President with a copy of the completed South Vietnamese Constitution—a milestone in that country's democratic progress.

Within recent weeks, Vice President HUMPHREY repeated to South Vietnamese officials the President's deep concern for the development of democratic elections and institutions in South Vietnam.

Secretary McNamara—under instructions from the President—told Vietnamese leaders in July, in unmistakable terms, of the importance the United States placed on free and fair elections.

The presidential team of Clark Clifford and General Maxwell Taylor repeated this same theme in their visits to Vietnam within the month.

So, Mr. President, the administration chronology and record on democratic elections is crystal clear.

But another point is just as crystal clear: They are not our elections, they are Vietnam's elections. As President Johnson has said, over and over again, "We cannot pose impossible standards for a young nation at war" in holding a democratic election. "But given our concern and our commitment, we can—and we should—expect of that nation every effort to make the elections truly representative of the people's will."

President Johnson has done everything humanly possible to encourage a fair campaign and election in South Vietnam.

The people of the world have seen our efforts. The press has reported them. We have, in my opinion, done our best.

Ambassador Elsworth Bunker, our distinguished Chief of Mission in Saigon, recently told the press there:

> The United States supports no single candidate and we oppose none.

Indeed, we do not. We are supporting democracy and opposing dictatorship in South Vietnam. That is what it is all about.

All the evidence of the past 2 years points to the fact that our faith in democracy will be sustained by the people of South Vietnam in the days ahead.

A bold democratic venture shared by the United States and South Vietnam is already beginning to succeed.

But, this is again a prelude to the future democracy in South Vietnam. The work will not be done just because the press turns to other headlines. The day-to-day work of making democracy work in South Vietnam lies before us.

And as we see it work; as we see free people building their country and their institutions and standing with us against the onslaught of Communists whose ruthlessness is unparalleled—we might well use the words of Churchill to describe what President Lyndon Johnson has achieved: This will indeed be one of our finest hours.

DRAFT NUCLEAR TREATY SEEN AS MAJOR ACHIEVEMENT FOR JOHNSON ADMINISTRATION

Mr. PELL. Mr. President, the Johnson administration is to be congratulated for a "major diplomatic achievement" in securing Russian agreement to a draft treaty to halt the spread of nuclear weapons.

The draft treaty prohibits the nuclear powers from transferring or assisting any nation in acquiring nuclear weapons and prescribes their manufacture or acquisition by nonnuclear powers. Nonnuclear powers are allowed to develop the atom for peaceful purposes.

President Johnson in a statement upon presentation of the draft treaty, was eloquent in expressing the world's desire to halt the spread of nuclear weapons.

He said:

> The issue is not whether some have nuclear weapons while others do not. The issue is whether the nations will agree to prevent a bad situation from becoming worse.

Much remains to be done. Patience and trust will be required from all nations. Yet, this draft treaty gives us reason to hope that the world is prepared to take a step to prevent its own self-destruction. We must encourage it to make that step and, in the President's words, "pass on a great gift to those who follow us."

I ask unanimous consent that several excellent editorials on the subject in the Washington Post, the Des Moines Register, the Washington Star, and the Christian Science Monitor, be printed in the RECORD.

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

[From the Washington Post, Aug. 25, 1967]

HALTING THE NUCLEAR PLAGUE

The presentation of a draft treaty to prevent the spread of nuclear weapons is unquestionably a major diplomatic achievement for the Soviet Union and the United States. The two countries must now turn their mutual boon into a general global benefit by filling in the blank inspection section and by securing the agreement of other nations to the completed document.

The prospect of a nuclear-free world disappeared, of course, in the mushroom cloud over Hiroshima. Given postwar tensions, it was perhaps inevitable that other nations moved to claim the protection and prestige they imagined nuclear capacity to confer. With the expansion of the nuclear club, however, came a growing fright that there were too many nuclear powers and that sooner or later there would come a terrible, final war. This is the chief impluse behind the great-power efforts to halt nuclear spread.

The draft treaty satifies that impluse as well as the national interests of the United States and Soviet Union allow. It is not—it could not be—a perfect document. But, we are convinced, it offers the world a larger measure of security and a broader promise of peace than does the unchecked spread of nuclear arms.

To be sure, it is easy for the nuclear powers to preach nuclear abstinence for others while not practicing it themselves; they already have the weaponry, the peaceful nuclear potential and the status which they are asking the others to forgo.

But the incentives open to nonnuclear countries are very considerable. Not only can they spare themselves the expense of national bomb programs and the skewing of their economic development. They also have President Johnson's pledge to "make available nuclear explosive services for peaceful purposes on a nondiscriminatory basis," at nominal cost. The Soviet government ought to make a similar public pledge. It is the treaty's "intention" that no country foreswearing bombs will thereby lose economic advantage. (Since most peaceful uses of atomic energy do not involve explosions, all countries will be free to explore them.)

The critical issue is security guarantees, which are not mentioned by the draft. Unfortunately the Soviet and American governments are a long way from agreeing to protect nonnuclear signers from nuclear blackmail, even though they both realize that no country could abandon the right of self-protection without a firm guarantee.

American officials point to President Johnson's unelaborated pledge of 1964: "The nations that do not seek national nuclear weapons can be sure that if they need our strong support against some threat of nuclear blackmail, then they will have it." Although this pledge is not among the State Department's recent listing of "United States Defense Commitments and Assurances," other countries would be mistaken to conclude that it is without meaning. The record of United States' involvement in the world underlies the President's words. The whole purpose of postwar American policy has been to create conditions in which local conflicts can be peacefully resolved and, beyond that, to stand behind victimized lands. It must be considered, too, that a given countrys' signing of the treaty would harden the United States' inclination to go to its aid.

To the American people and doubtless to the Soviet people too, it is comforting that their governments have moved toward a diplomatic agreement at a time of great tension over Vietnam. Now that the draft treaty is on the table, world public opinion can, hopefully, propel it along. Vision, patience

and trust will be required from all countries, big and small, to make the treaty a reality.

[From the Des Moines Register, Aug. 26, 1967]

NUCLEAR PACT MIRACLE

"You have heard the sound of two hands clapping," runs a Zen Buddhist riddle, "but what is the sound of one hand clapping?"

One answer is the draft treaty to halt the spread of nuclear weapons, laid before the 17-nation Disarmament Conference at Geneva, Switzerland, Aug. 24 by Russia and the United States.

Russia and the United States agree on this draft—but there's a blank where Article 3 should be. They have not succeeded in agreeing on "verification." Britain agrees, too—but that's only three of the five nuclear powers, and a good many non-nuclear powers have serious reservations about the agreed parts of the draft.

The amount of agreement reached so far is a miracle of patient negotiation over five years—but months or years of negotiation remain before the treaty can be a reality.

And if a treaty is signed, sealed and ratified eventually, that will still be only "one hand clapping." The nuclear powers and many non-nuclear powers are worried at the spread of nuclear weapons and want to check it—but can the present five realistically expect a permanent monopoly of weapons so deadly?

Non-proliferation makes sense only as a first step toward nuclear arms limitation, nuclear arms reduction, international control, abolition, and these resounding goals make sense only in combination with strengthening the peace-keeping capacities of the United Nations.

Non-nuclear powers may be reluctant to take this particular first step without some more solid commitment by the nuclear powers to proceed to these other steps. All United Nations members are committed to them "in principle"—but in diplomacy, commitment in principle means next to nothing. Not quite nothing, but next to nothing. And nuclear China is not in the United Nations.

Five years' labor by the mountainous superpowers has brought forth part of a mouse—no teeth yet, and no eyes.

Like any birth, though, even this is a miracle, and the world rightly rejoices that it has lived to see this day.

[From the Washington Star, Aug 28, 1967]

HOPE AND NONPROLIFERATION

There are two encouraging aspects to the Soviet-American agreement on a draft treaty to prevent the further spread of nuclear weapons. One is that it constitutes a gratifying measure of how our two countries can cooperate despite bitter differences over such dangerous issues as Vietnam. And the other is that it holds out the promise of a possible breakthrough toward a trustworthy system or arms control and disarmament.

The promise, however, still is hedged about by many big "ifs," "buts" and "maybes." To begin with, Charles de Gaulle's France and Mao Tse-tung's China flatly refuse to go along with the world's three other nuclear powers—Britain, Russia and America—in accepting the treaty's ban against transferring atomic-hydrogen weapons or know-how to any nonnuclear country. Indeed, the Gaullists and the Maoists condemn the whole idea as a fraud calculated to give the Soviet Union and the United States overwhelming permanent superiority in the field of the atom, military and nonmilitary.

At the same time, more than a few of the nonnuclear countries—some of them already equipped with reactors and the capability of making A and H weapons—take a reserved view of the implications of nonproliferation. These countries—including India, Japan, West Germany, Italy, Brazil, Israel and Egypt—have two major concerns in mind. First, if they sign the treaty and thus give up their sovereign right to proceed with their own nuclear development, will the pact's provisions really safeguard them against becoming "have-nots" required to go hat in hand to the "haves" for help in harnessing the atom for their peaceful progress? And second, will they be able to count on absolutely certain guarantees (the Indians against the Chinese, for example) to protect them from nuclear blackmail?

These questions make clear that the United States and the Soviet Union face a long and difficult job in selling their proposals to many nonnuclear nations around the world. Beyond that, and perhaps most important of all, they face the crucial task of selling each other on mutually acceptable terms to fill out the blank space under Article III of the pact. As long as this article—which is supposed to cover international controls—has no words in it, the treaty itself will remain at best a dream. Certainly, until there is an effective global system of inspection and verification against the danger of violations and evasions, all talk about nonproliferation will be nothing but that—just talk. And progress toward a policing agreement will be further frustrated if the Russians go all-out in building an antiballistic missile system.

Nevertheless, although obstacles abound, the mere fact that a substantial Soviet-American understanding has been reached nourishes the hope that the draft treaty will be strengthened in due course and that the great majority of nations will sign it. In that case instead of drifting willy-nilly toward a nuclear holocaust, the world will have a chance to enrich itself by putting arms under tight control and exploiting the atom's enormous potential for good.

[From the Christian Science Monitor, Aug. 28, 1967]

CAUSE FOR HOPE

No matter how imperfect, any agreement between the United States and the Soviet Union helps the world sleep better nights. Whenever these two greatest powers can lay aside their rivalries and disagreements long enough to join efforts for the preservation of peace and security, men everywhere take new heart. And with submission of a joint American-Soviet resolution to prevent the spread of nuclear weapons, a great step towards a safer, saner, sounder world has been made.

This resolution, when adopted by all the necessary signatories, will bar the world's five nuclear powers (America, Britain, China, France and Russia) from either transferring nuclear weapons or nuclear explosive devices to nations not having them or from helping such nations in producing nuclear weapons.

Although neither France nor Communist China is expected to sign the treaty, nonetheless the American-Russian resolution is of the highest importance. It pledges these two world leaders to do all in their power to restrict the nuclear threat. It places France and China under great pressure to do likewise. It will help galvanize world opinion in favor of whatever further steps will be necessary to guarantee that atomic power be used only for peaceful purposes.

This joint United States-Soviet move is heartening proof of men's sanity and rationality. It encourages us to recognize the operation of a law of intelligence in the affairs of mankind. It is proof that when men acknowledge the essential and fundamental unity and brotherhood of mankind, they are led into paths which point towards peace and progress rather than towards war and poverty.

It will be noted that not even Moscow's strong disagreement with Washington over Vietnam prevented the Kremlin from joining hands with the White House in this important move. And it is to be hoped that this American-Russian accord on nuclear weapons will somehow, someday make it that much easier for Washington and Moscow to cooperate in ending the strife in Southeast Asia. There, too, a putting aside of distrust on behalf of a greater goal could open the way to the stopping of a war which no longer is wanted by anyone or serves anyone.

It is likely that one of the reasons for Moscow's willingness at this time to sign such an accord is the Soviet Union's concern over its relations with Communist China. If so, it is but one further proof of Moscow's recognition that, at an ever-increasing number of points, its interests coincide with those of the United States, and that these interests are fundamentally directed towards the preservation of peace.

The danger of nuclear war has not disappeared. It will not do so until all men everywhere recognize that such insanity must be put aside forever. Yet the joint American-Soviet move at Geneva is a long step in this direction. As such it is a cause for legitimate rejoicing and greater hope everywhere.

WATER CARRIER LEGISLATION

Mr. MAGNUSON. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial entitled "Send the Baby Back?" published in the August 24, 1967, issue of the Journal of Commerce.

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

SEND THE BABY BACK?

It seems only yesterday that the air was resounding with the vigorous controversy over the proposal in Congress sponsored by President John F. Kennedy to remove economic regulation of railroad rates on agricultural and bulk commodities. The proposal failed by a whisker, chiefly because some railroads broke ranks at the last moment.

Whether they had thought it through to its ultimate conclusion or not, the railroads had a most attractive argument. A lot of traffic by water and by highway is exempt from regulation. The railroads are fully regulated. Either regulate everybody or remove regulation from the railroads, they said. With that simple idea, they enlisted a great deal of powerful support, including that of the administration.

The last kind word for regulation was probably said by Senator Burton K. Wheeler in 1940. The railroads were regulated in 1887, the truckers in 1935, the airlines in 1938 and the water carriers in 1940. But enthusiasm for regulation was running out by 1940 and the water carriers were only partly regulated. Exemptions for various types of traffic were written into the bill.

Since then the pendulum has been swinging against regulation. The railroads have taken out ads to complain about their problems with the ICC. On the whole, they have won powerful support for the idea that regulation is a bad thing. Hence it is not likely that the alternative of regulating everything will win many friends.

At one time, not many years ago, the railroads, the water carriers and the truckers were about to join together and advocate extending regulation, but too much mud had been thrown at the regulatory process for that strategy to work.

The alternative of regulation turned out to have some serious hidden problems. President Kennedy has said in his message that "to prevent the absence of minimum rate regulation under the above three proposals from resulting in predatory and discriminatory trade practices or rate wars reflecting monopolistic ambitions rather than true efficiency, the Congress should make certain that such practices by carriers freed from minimum rate regulations would be covered

by existing laws against monopoly and predatory trade practices."

This meant to most people that the rate bureaus had to go. Without the ICC as a referee, the carriers could not be allowed to meet together to set rates. On that issue the railroads broke ranks. Helpful as minimum rate deregulation might be, it did not seem worth giving up the rate bureaus. A number of western railroads added their weight to the opposition to the bill and the whole deregulation idea failed.

To this day no one knows the right answer. If rates are deregulated, the antitrust laws must apply. And yet the rate bureaus are believed to be essential to the proper conduct of rate adjustments.

Now, three years after the last sounds of this battle have died away, come the common water carriers asking for an amendment to modernize their bulk exemptions. New technology has made possible large-volume tows. The economical tows can only be assembled by mixing barges of regulated and unregulated commodities in a single tow, a practice forbidden by the ICC.

But the ICC does not want to force an artificial increase in costs and rates on the barge lines. Hence they do not object to a change in the law to permit them to mix and so achieve the volume necessary for economical operation. The DOT supports the change, so does the Department of Agriculture and a blue ribbon list of industry, farm and labor organizations.

The railroads say: what about this bigger problem?

The water carriers say: no one yet knows the answer to the bigger problem. Let's solve the minor problem of permitting continued efficiencies of water service. The efficiencies have been developed and the reductions in rates have already been passed along to the consumers and shippers living along the rivers.

It does remind us of A. Lawrence Lowell's comment on the immigration laws. A Chinese woman had been permitted to land at San Francisco with a child born on the voyage. "The immigration officer asked the authorities in Washington whether the child, having no permit to land, must be sent back to China. In view of the statute refusing immigration without a permit the legal question *might* have presented difficulties, and the answer was appropriate: 'Don't be a damn fool.'"

This is the kind of answer the Congress ought to give in the case of the barge line problem. In effect, don't let's be so foolish as to send back the baby or cancel out technological benefits just because we can't think of an answer to the big problem.

But the railroads also have a point. Someone, perhaps the railroads themselves first, should begin thinking again about an answer to the big problem. It may even be that we should all take another look at the merits of extending regulation after so many years of throwing rocks at the ICC and the CAB.

Mr. MAGNUSON. This editorial discusses the controversy over extending regulation or deregulation to the various modes, and also the necessity of passing S. 1314, a bill which I introduced to modernize the water carrier exemption in the Interstate Commerce Act.

As the editorial correctly points out, Congress cannot stop action on needed transportation legislation while the new Department of Transportation prepares recommendations on the major problems facing our national transportation system.

One measure needed now is S. 1314. Unless prompt passage of S. 1314 is achieved, technological progress on the waterways will be brought to a standstill under the restrictive wording of the exemption in section 303(b). The Interstate Commerce Commission has fixed a compliance date of January 1, 1968. I am hopeful that action can be taken by then to avoid an increase in water carrier transportation costs and, as a consequence, a sharp increase in rates.

The Department of Transportation supports passage of S. 1314 as consistent with sound operating practices and with the realistic economics of modern water carrier transportation. The recommendation of the Department in support of S. 1314 should be followed, and action should not await overall transportation recommendations which may at some future date be submitted to Congress.

INTERNATIONAL MONETARY REFORM—INTERNATIONAL MONETARY FUND

Mr. JAVITS. Mr. President, after 4 years of some of the most complex and politically charged negotiations, agreement has been reached on August 26 on a historic step forward in the international monetary system. Agreement was reached among the 10 most advanced industrialized nations of the non-Communist world. The plan agreed upon is a contingency plan which would come into being should existing international reserves prove insufficient to the world's trade and economic growth.

While the plan agreed upon is not so far-reaching as some would like—including myself—the principle of deliberate reserve creation by an international body has been established, and this is of overwhelming importance to the future progress of the world economy.

There are several other reasons why this agreement is of tremendous importance.

First of all the agreement signifies that an apparently irreconcilable conflict between France and the United States was successfully resolved to the mutual satisfaction of both.

Second, the successful conclusion of these negotiations, coming right after the successful Kennedy round of trade negotiations, is dramatic proof that the industrialized nations of the non-Communist world are determined to proceed with and strengthen their cooperation in the economic and monetary sphere.

Third, the new international monetary machinery agreed upon has been placed within the International Monetary Fund thereby bringing that institution closer to being an effective international central bank.

Finally, approval of this standby plan should discourage further speculation in gold by those who were betting that either the dollar or the pound sterling world be devalued.

This historic agreement is especially gratifying to me, as I have fought hard for the United States to take a leading role in these negotiations and have worked hard to increase public awareness of the importance of international monetary reform. I take this opportunity to congratulate Secretary of the Treasury Henry Fowler, who led the American negotiators during the most difficult phase of the negotiations, for a historic accomplishment.

Under the plan each member of the IMF will be issued special drawing rights in relation to its fixed participation in the IMF. The United States share of the IMF's present $21 billion pool of gold and hard currencies is 24.5 percent. So, if $1 billion in special drawing rights were created, the United States could draw $245 million. A debtor nation then could use this new asset to pay its debts instead of using its gold or dollar reserves.

The plan agreed upon in London is a standby plan so that it will not go into effect until a shortage of international reserves appears in the judgment of the IMF's Board of Governors with at least 85 percent of the total voting power in the Fund. This means that the European Economic Community with 17 percent of the vote as well as the United States with 25 percent of the vote will have a veto over the timing and amount of the use of this new facility. Initially the plan will operate for 5 years. It must be approved by next month's annual meeting of the IMF's Board of Governors and subsequently must be ratified by Congress and the other legislative bodies concerned.

I ask unanimous consent that news items dealing with this event be printed in the RECORD.

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

[From the Journal of Commerce, Aug. 28, 1967]

CLIMAXES 4 YEARS OF WORK—MONETARY REFORM ACCORD HAILED

LONDON, Aug. 27.—The world's 10 richest nations reached agreement over the weekend on the outlines of a plan to make money more readily available in the world for the improvement of international trade.

The finance ministers of the "Group of 10"—consisting of the most advanced industrial nations today—met in London's Lancaster House in nonstop negotiations Saturday lasting more than 12 hours into midnight. The talks climaxed four years of hard work before agreement was reached on the formula to be presented for the approval of International Monetary Fund (IMF) executive directors' (governors) meeting in Rio de Janeiro late next month.

CALLED HISTORIC DAY

The first reaction from the weary negotiators emerging from the meeting came from James Callaghan, the British Chancellor of exchequer, who called it a "historic day."

And Henry Fowler, the U.S. secretary of the treasury, said it was "one of the great days in the history of international financial cooperation."

The key problem tacked was that of a "special drawing right" for IMF member countries with a balance of payments deficit, and the degree to which the proposed extra credits would have to be repaid by the drawing countries.

FRANCE GIVES GROUND

France had reportedly been insisting on the strictest possible repayment conditions but had to give ground in the end when the ministers agreed borrowing countries would be obliged to repay 30 per cent of the amount drawn under the "special right" in five years.

On a subsidiary issue, the ministers agreed that a majority of 85 per cent of the total voting power of an IMF governors meeting would be required in decisions concerning the period, timing, amount and rate of special credit to a needing country.

Some minor points of disagreement still

remained but they were expected to be hammered out in time for the plan's approval by the governor's meeting in September.

LIMITS ON BORROWING

A final communique Saturady night said the principle rule for repayment should be that a members's net average use of new borrowing rights should not exceed 70 per cent of its total allocation over any period of five years.

"Decisions on the basic period for, timing of and amount and rate of allocation of the new drawing rights should be taken by the board of governors of the International Monetary Fund by a majority of 85 per cent of the total voting power," the communique said.

The 85 per cent majority was sought by European Economic Community members, which have a 17 per cent vote in the IMF, ensuring them of veto power to ensure that they can prevent the debtor nations activating any emergency program for their own benefit.

In layman's terms, Mr. Callaghan said, what was being done was to create assets—or drawing rights—that would supplement existing reserve assets of the IMF countries, that is, gold and dollars.

He said that under the outline agreement, countries were expected to use their special drawing rights only for balance of payments needs.

MORE THAN "OUTLINE" ACCORD

Although the communique spoke of an "outline agreement," Mr. Callaghan said it was much more than that.

"We have got a lot of flesh on it," he said. "It it is a plan which has got to be translated into legal language."

The outline now will be considered by the executive directors of the fund, who are expected to approve it and then to include it in the resolution at the meeting in Brazil.

Mr. Callaghan said the scheme then would have to be ratified by the various governments, which he guessed should be completed by the end of 1968 and that the scheme then probably would become operative in 1969.

The communique said the ministers, who were accompanied by their central bank governors, "also considered ways of bringing rapidly to a conclusion the studies to be made in parallel with a view to making such changes and improvements in the present rules and practices of the IMF as would appear appropriate in the light of experience."

The countries represented in the Group of 10 include Britain, France, West Germany, Italy, Holland, Belgium, Sweden, Japan, Canada and the United States.

Switzerland, not a member of the IMF though closely associated with it, was represented by an observer.

The agreement came after more than four years had been spent working on it.

[From the New York Times, Aug. 28, 1967]

AGREEMENT ON MONEY—OUTCOME OF RESERVE TALKS MATCHES KENNEDY ROUND'S SUCCESS ON TRADE

(By Edwin L. Dale, Jr.)

WASHINGTON, August 27.—As recently as last spring, even though the flowers had begun to bloom and hope was supposedly springing, it was difficult to find and official or an informed independent observer who was confident that the two great international economic negotiations then nearing their climax would both succeed.

They have succeeded. The Kennedy round of trade negotiations produced in May the largest tariff reductions ever among the industrial nations. The international monetary negotiations among the Group of Ten, the world's leading financial powers, have just produced in London a plan for a new kind of world money, to supplement gold.

The result, in the view of individuals in many fields on both sides of the Atlantic, is that the amazing prosperity of the industrial nations since about 1950 has a good chance of continuing. The prosperity—particularly its duration without a serious slump—has been unequaled since the industrial revolution began 175 years ago, though the problem of the poor countries remains.

In both negotiations—trade and money—France had the opportunity to play the role of wrecker. She did not do so in the end, even though she has readily played that role under President de Gaulle, in some noneconomic areas. The reason may be that France, too, has learned to enjoy postwar prosperity and recognizes that it cannot be entirely the province of a single nation.

At issue has been the flow of goods and money among nations. In both negotiations the United States achieved essentially what it wanted, though not all it wanted.

In the year 1967, while governments continue to differ on such matters as troop levels in the North Atlantic Treaty Organization, not to mention Vietnam, international traders are shipping goods to one another in the unheard of volume of $200-billion. Thanks to the intricate system of international finance, a Dutch importer can buy Italian chemicals and pay in dollars. A Swede buying Japanese television sets can borrow something called Eurodollars from a British bank to finance the transaction.

The entire system, established in essence soon after World War II, has been based on three principles, all of which were at stake in the two negotiations that now have succeeded.

The first principle is a gradual liberalization of old-fashioned trade barriers—chiefly tariffs. On industrial goods these barriers will be reduced through the Kennedy round to modest proportions, though the same is not true for agricultural products.

The economic principle is fixed exchange rates for currencies. Since the wave of European devaluations in 1949, led by Britain, the values of all the major currencies have remained unchanged except for the small—and disruptive—upvaluation of the German mark and the Dutch guilder in 1961. Traders and citizens in the advanced countries know what their money is worth.

The third principle is increasing freedom to convert one currency into another, at the fixed rate of exchange, for imports or tourism or purchase of stocks or any other transaction among nations. An American has long been free to do almost anything he wants with his money. And this is now largely true of a German or a Belgian or a Frenchman.

Behind the second and third principles—fixed-value, convertible currency in the leading nations—is the existence in each national treasury or central bank of international monetary "reserves." Their underlying purpose has always been to settle the swings when a country's outpayments exceed its inpayments with other nations. Without ample reserves, convertability of a nation's currency into other currencies is impossible. And without convertability there can be no freedoms of transactions.

Gold has always been the ultimate reserve. And it will continue to be important. But the decision of this weekend in London means that for the first time, the nations are agreed in principle to create deliberately new reserves, backed by the main currencies, to supplement gold. Thus, total reserves can continue to grow, even though gold reserves do not.

Like the Kennedy round, the monetary agreement can be regarded as more important for what it averted than for what it created. The system has been working well. But on both trade and monetary fronts there had emerged—or seemed to emerge—important differences among the leading nations.

"What we really had to show," a high official today said, "was a joint commitment to the present system. Progress was necessary to avoid suspicion and doubt. Now the monetary system and trading system can go on working, without a lot of fears about a breakdown.

"Not all problems were solved. Britain still has its troubles, and the United States still must cope with the deficits in its balance of payments. But I think we have shown we are all really in the boat together and that our prosperity is worth saving, even if some of us had to give in on some of our theories."

HIGH-SPEED GROUND TRANSPORTATION

Mr. TYDINGS. Mr. President, I strongly supported the Department of Transportation Act of 1966 because of its objective to stimulate technological advances in transportation and to provide leadership in solving transportation problems.

In the short time that the Department has been in existence it has provided that leadership. A project close to my own heart is the high-speed ground transportation program in the Northeast corridor, which is a true pioneering effort toward solving the transportation problems of megalopolis.

That program and, indeed, the entire rail research program, has been threatened by what seem to be excessive budget cuts in the other body. An editorial from Traffic World of August 12 explains what those cuts will mean if they are not overturned in the Senate. I ask unanimous consent that the editorial be printed in the RECORD.

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

[From Traffic World, Aug. 12, 1967]

DETOURS ON AVENUE TO TRANSPORT PROGRESS

Two of the objectives that Congress had in mind when it passed the bill that is now the Department of Transportation Act of 1966 (80 Stat. 931), as set forth in one of the provisions of the statute itself, were "to stimulate technological advances in transportation" and "to provide general leadership in the identification and solution of transportation problems." President Johnson, in his message to Congress calling for enactment of legislation to create a Department of Transportation, said that the "role" of the department would include the bringing of "new technology to a total transportation system, by promoting research and development in cooperation with private industry."

In furtherance of the above stated objectives the DOT has carried forward, and would like to continue its work on, a number of transportation research and demonstration projects, including several that were started when transport research programs were among the activities of the office of the Under Secretary of Commerce for Transportation, prior to the establishment of the DOT.

Three of the research and/or demonstration undertakings that appear to us to be of special interest and potential value to the American public and on which good starts have been made are: (1) The so-called high-speed ground transportation research and development program, including the Northeast Corridor project, for the development of which four specially designed test cars, capable of speeds of 150 miles an hour, have been acquired by the DOT with a view to placing them and a number of similar cars in operation experimentally on the New Haven and Pennsylvania Railroads, between Boston, Mass., and Washington, D.C., some time in the autumn of 1968; (2) the tracked air

cushion vehicle project in which, operating on or between two vertical surfaces (either in the center or at either side of the guideway) against which positive force, in the form of powerful blasts of air ("vertical air cushions") can be extended to propel the vehicle, and (3) the auto-train project, described in an illustrated article on page 27 of the August 5 issue of TRAFFIC WORLD—an article in which the proposed air-cushion vehicle also was pictured and described.

Before it passed the appropriation bill for the Department of Transportation for fiscal year 1968 and sent the bill to the Senate, the House of Representatives in Congress made some big cuts in the budget estimates for research and development ("R & D") work of various "offices" and "administrations" in the department, including those requested for the Office of High-Speed Ground Transportation, which attends to programs directed separately by the Federal Railroad Administration and the Assistant Secretary of Transportation for Research and Technology (yet to be appointed). The director of the Office of High-Speed Ground Transportation is Robert A. Nelson, who was appointed to that position by Secretary of Transportation Alan S. Boyd in 1965 when the latter was Under Secretary of Commerce for Transportation. Mr. Nelson was professor of transportation at the University of Washington for 10 years before he came to Washington, D.C., and before that he was professor of economics at Boston University.

For the High-Speed Ground Transportation activities for fiscal year 1968 (the year ending June 30, 1968), the budget requests totaled $18.6 million, of which $9,611,000 was for high-speed ground transport (HSGT) demonstrations, $8 million was for "R & D," and $989,000 was for administration. Allowing $5,650,000, $3,850,000 and $800,000 for those three items respectively, the House cut the total for the Office of High-Speed Ground Transportation to $10.3 million, thus deleting $8,850,000 from the total amount requested for that office. For the "Northeast Corridor" part of the HSGT demonstration outlay proposed, $2,500,000 was the amount of the budget estimate. The House cut that by $250,000, to $2,250,000. (We won't weep about that one; this part of the research HSGT research program fared fairly well in the House.)

Unenviable is the situation in which House and Senate appropriation committees find themselves when budget requests to finance essential government activities are placed before them at a time when federal expenditures far exceed federal revenues and when many of the legislators' constituents are complaining about already high levels of taxes. The answer to the inevitable question faced by the appropriations committee members (and, later, by all their colleagues in the House and Senate), "How and where can we trim these proposed costs of government?", is seldom easy to find. Probably the line of least resistance for the legislators in their search for ways to cut the budget estimates is the reduction of money requests for "research and development," since it's often difficult for research advocates to prove that the need for allotment of funds for "R & D" projects *is* urgent and that work done on such projects *will* result in savings and other public benefits great enough to justify the cost.

In the cases of the tracked air cushion vehicle project and the auto-train demonstration (the latter already scheduled for experimental operation on the Seaboard Coast Line Railroad between Washington, D.C., and Jacksonville, Fla., some time next year), we believe that failure of Congress to provide adequately for continuance of the DOT research and demonstration work would be regrettable and not in the public interest. The tracked air cushion vehicle studies and experimental operations hold promise of pointing the way to solution of the present problem of slow surface travel to and from airports and the continuing problem of providing adequate transportation for commuters and relieving urban-area traffic congestion. Equally important as a means of maintaining the transportation progress that the United States can and should maintain, among the nations of the world, is the financing of the auto-train project, that promises to make it possible for long-distance travelers by automobile to reach their destinations quickly, safely and comfortably, at very reasonable cost, riding in or with their automobiles aboard specially built railroad cars and thus relieving the constantly growing traffic on the nation's highways. At the rate of population growth of this country, all available means of transportation will be needed, and all possible steps should be taken to keep the highways from being so densely occupied by vehicles that attainment of anything like a fairly reasonable speed becomes almost impossible.

RESPONSIBLE NEWS MEDIA COVERAGE OF THE RECENT RIOTS

Mr. MAGNUSON. Mr. President, many thoughtful people, both within the Congress and outside of it, have been concerned with the coverage of the recent riots by the news media and particularly, because of its unique immediacy, and impact, by television. I, too—and many other Senators—have been deeply interested in this matter.

Freedom of the press, including all the media of information and expression, is a basic, constitutionally guarded right in this country. Without it, none of our institutions would long be safe. Abuses and excesses by the press are always possible. They are part of the risks that are the price of freedom. It is easy to believe in freedom of the press when things are going well. It is more difficult and far more important to believe in it when the going gets rough.

In the case of the riots, however, I think that occurrences of such abuses and excesses were minimal. The major news media generally seemed to me to act with a high sense of responsibility, carrying out with promptness and thoroughness their primary job—which is to report to the American people the events that are happening, forthrightly and without trying to soften them. That the events in the case of the riots were ugly, that they were dangerous, that they were profoundly disturbing—all this is obvious. But they were not the creation of the news media, who, on the whole, amid incredible difficulties, strove to tell the whole story, with balance, objectivity, and without the condescension of trying to protect the public from the true dimensions of some grim episodes.

However, I have seen and read accounts of some broadcast newsmen who failed to meet their responsibility to see that their reporting did not inflame an already explosive situation. Undue attention to raving rabble rousers and their attempts to add drama, tension, and fury to reports are not in the best interests of the public nor true to the mission of the broadcast newsman who strives to be an unbiased observer and recorder of events which are presented in context and perspective. Some of these examples should not detract from the generally admirable service the broadcast media performed during the urban disorders.

I was glad to see my impression of the responsible nature of the television coverage confirmed by the responses, to a letter from the distinguished junior Senator from Pennsylvania, of the three national networks, copies of which were released to the public. These communications revealed attitudes of responsibility and an obvious awareness of the effects of how they perform their duties that fully justify the American insistence on a free press in fact and not merely in name.

The evidence contained in the letter from CBS, for example, as to the proportion of time given to the voices of law and order and moderation on the one hand, and to those advocating violence on the other, is most reassuring. To cite a single fact, during the 3 weeks of the most intense rioting, on news broadcasts on the CBS television network, militants appeared 15 times, and moderates and Government officials appeared 66 times. Other statistics are comparable.

It is also reassuring to learn that most television reporters and cameramen, on the initiative of the management of their news divisions, voluntarily took steps to avoid the possible unintentional escalating of the uprisings, such as using unmarked cars, omitting the use of lights for cameras, and using inconspicuous hand-held equipment. There were also very clear indications that news reporting procedures, in this sensitive area where rumors can be easily confused with fact, were disciplined, cautious, and vigilant.

In general, Mr. President, the television coverage of the riots seems to me to have served the national interest in a way best summarized by a frequently severe critic of the medium, Jack Gould, in the New York Times of August 13, 1967. Mr. Gould wrote, referring to some of those who seemed apprehensive about the coverage:

> The reality they overlook is that in all probability TV was the medium which made them aware of the severity of conditions on the home front. In any number of documentaries prior to the disturbances, TV had enabled the set owners to be an eye-witness to the misery of the ghettos, but all the warnings of explosions went blithely unheeded.
>
> Whatever the room for improvement in TV coverage and other media, the home screen served an essentially constructive purpose in showing the riots quickly. The policy has focused attention on the causes of the disturbances; more information, be it disturbing or reassuring, is the first step toward elimination of riots.

Mr. President, in a democratic society, by the common consent of all political parties, the free press is an absolute essential. Its job is not always easy. The lines of its responsibilities in emergencies are not always clear. There may at times be an uneasiness that full and open reporting might create temporary difficulties. But over the long haul, if we are to recognize defects in our national life and remedy them, there is no alternative to disclosure as complete as the freely competing news media can make it. And of this we can be certain: as Thomas Jefferson insisted, during a period of internal national stress perhaps no less severe than that today, you can always better trust the judgment of the people for the correction of evils, once

they have had the essential information, than rely on restraining or restricting the full reporting and free discussion of those evils.

VITAL ISSUES DISCUSSED BY WESTERN STATES DEMOCRATIC CONFERENCE

Mr. MOSS. Mr. President, at a Western States Democratic Conference held in Los Angeles, Gov. Calvin L. Rampton, of Utah, identified some of the vital issues which face the Nation and discussed the task of the President in dealing with them.

I believe that the Governor's brief but candid remarks will interest the Senate. I ask unanimous consent that they be printed in the RECORD.

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

REMARKS OF GOV. CALVIN RAMPTON, OF UTAH, WESTERN STATES DEMOCRATIC CONFERENCE, AUGUST 26, 1967, LOS ANGELES, CALIF.

I listened to the newscast this evening. It described the early sessions today. And as usual, the newscasters described this as a dull convention. Which means one thing to me, and that is: we're finally getting united and we're not giving them anything to pick at.

So, gentlemen of the press, we regret very much that we are not giving you news copy here. But as long as we're getting the work done for which we came, we prefer that we don't make news copy.

Coming down on the plane, I picked up a copy of Time magazine for the last week. The lead article under the section that's entitled "The Nation," and the sub-section, "The Presidency," is entitled "A Failure of Communications." It is not a kind article to the President, as you read it through. It is not kind in every sense.

But if you read it and ponder what is said you come up with one conclusion—that even this rather critical writer had—and that is that in both the domestic field and the foreign field the President is doing an excellent job and the only defect is the fact that he is not communicating just how well he is doing to the American people.

As an executive of a small unit of government I can have some insight into the problem which the President faces. I know how alone he can be. I can know how impossible it is for a chief executive of this nation to be chief policy maker and at the same time his own chief advocate.

If communication is to be established, and it must be established if we're to win the election in 1968, it can't be done by the President alone. It cannot be done by the ablest press corps that could be assembled. We can't expect that the press itself is going to give the kind of communication we need.

Newspapers and television programs are tailored to the public image. This must necessarily be so, and if it were not so, they would have little appeal.

And other than an occasional columnist who sees fit to do research on a particular government program, and to tell the people just exactly what this program is accomplishing, it makes much better reading to criticize—to show the defects of an Administration—than to give the positive and constructive side of what is being accomplished.

It makes much better reading for the public that a Black Power advocate was able to infiltrate a Head Start program somewhere in the midwest than it does to say to the people how many hundreds of children that the transition from a substandard home to the public school was made easier.

Certainly we can't expect the political opposition to make the communication for us. They have a vested interest in pointing up the defects—and probably not only a vested interest, but also a duty—as the loyal opposition, in pointing up the defects in any governmental program.

So if there is to be the kind of communication that is to be necessary to take the program of this Democratic Congress and this Democratic President to the people of this country in a fair and impartial light, that task must be undertaken by you and me. Those of us in this room and those whom we work with in the district, in our home state.

The President of the United States at the present time is facing and has faced for the past 2 years one of the most difficult times faced by any President in the history of this Nation. Both in foreign policy and on the domestic front. We are engaged in a war which is not popular among many of our people in this country. When the Japanese attacked Pearl Harbor in 1941—that immediately collected the opinion of the public behind President Roosevelt.

But there have been no dramatic events such as this to point up to the people of this country what I believe to be the case of our national security, national honor, and our national interest—they are just as much involved, though less obviously so, in Viet Nam as they were in the island of the South Pacific or on the continent of Europe.

There are many in our own Party who on the one hand feel the President's policy of containing communism and preventing the exportation of the communist doctrine by force of arms does not justify intervention in the domestic affairs of other countries. There are many in our own Party, on the other hand, who believe the President is being unduly restrictive of the military and is not pursuing as vigorously as they feel he should the objectives of immediate and ultimate victory in the battle field in Viet Nam. And, of course, as might be expected, we have the same division in the other party.

The problem is that the President does not have the united support of those in his own party; and those of the opposite party have bracketed him so they will have a man prepared to move into the popular position, whatever that popular position proves to be, during the primaries next spring and as we approach the election in 1968.

Senator Percy, Senator Morton, and Senator Hatfield are criticizing the President for carrying on the war at all. On the other hand we have the Minority Leader of the Senate and the Minority Leader of the House who criticize him because he is not carrying on the war more vigorously. And we have a former resident of my home state who is evidently trying to make up his mind right now as to which position he will take. Your guess is as good as mine.

On the domestic front, we likewise have the critics of the Administration. We have those who say the Great Society programs—the Office of Economic Opportunity—is a give-away, a political boondoggle. On the other hand, we have those on both sides of the political fence who maintain that we're doing too little in this field, and we must accelerate our efforts. Besieged as he is on both sides, the President must make a decision. I feel that the decisions he has made in both fields in the last 2 years are right and that history will prove them right.

And I feel that you and I can justify them at the present time. If we will only do so. I've had many opportunities in the past 2 years to sit with the President and talk with him. And to observe him. And to know the responsibilities which he bears. And I can say from this rather close association, albeit not nearly so close as that of the Postmaster General, I can say that I thank God in a time of crisis such as this that the leadership directing this country is in the hands of a man who has the wisdom and courage and faith of Lyndon Johnson.

I have known in various capacities the last five Presidents of the United States. I went to Washington in 1936 as a law student, served as Administrative Assistant to the Congressman from my district, and there observed the accomplishments of the second term of Franklin Roosevelt. And I had an opportunity to be involved indirectly in the formation of some of these policies. I knew, as most of you have known, and loved, and admired, and respected, Harry Truman. I served as a very, very junior staff officer with the SHAPE Headquarters in France during the war, and had an opportunity to observe and learn to admire and respect Dwight Eisenhower. I thrilled, as you did, to the vigorous and vital young President, who went into the White House in the early winter months of 1961. I loved, as you did, John Kennedy.

But I first came to know Lyndon Johnson when I first went to Washington in 1936 and he was a freshman Congressman. And the preceding year he had been, as I was then, an Administrative Assistant, he to Congressman Kleberg from Texas as I was to Will Robinson from Utah.

You knew when you met this young freshman Congressman Johnson that here was a man of considerable ability. And while I think few of us can say that at that time we could see how far he would go, I'm sure that those of us who knew him then and watched his progress since then have been surprised at no step of it.

I believe that based upon his experience, based upon his strength and his wisdom, this is the ablest man to sit in the White House in this generation.

THE CONVERSION TO METRIC MEASURE

Mr. PELL. Mr. President, recently, the Washington Evening Star carried an excellent editorial on the studies of the Defense Department to determine what it would cost to convert two of its weapons systems to metric measure.

As this country continues to remain one of the last few nations not on the metric system, I am pleased to hear the new thinking in the Defense Department on this matter. I certainly hope it will spread to more and more sections of the country and will ultimately result in passage of the metric study bill, which I introduced both this year and last. The purpose of this bill is to examine the possibilities of switching the United States to the metric system; to estimate the costs of such a changeover; and to suggest a blueprint on how to do so.

Mr. President, I ask unanimous consent that the Star editorial be printed in the RECORD.

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

DEFENSE TESTS METRIC SWITCH

(By Orr Kelly)

The United States and its archaic, illogical system of measurements are like a man and a wife who can't stand each other, but can't afford a divorce.

In fact, no one even knows how much it would cost for the United States to divorce itself from its awkward inches, feet, yards, miles, pints and quarts and switch over, like most of the rest of the world, to the simple logic of the metric system. Estimates of what a switchover would cost have ranged up to $40 or $50 billion, but no one really knows.

Now, instead of just talking about how

nice it would be to get in step with the rest of the world, someone is taking a first, tentative step in that direction.

Dr. Finn J. Larsen, deputy director of defense research and engineering, told in an interview about studies to determine how much it would cost to build two new weapons system—the Air Force's Maverick air-to-ground missile and the Army's XM179 155 mm. self-propelled, armored howitzer—on the metric system.

"We are trying to find out very precisely what it does entail," he said. "What are the real problems? We have heard so much talk about how difficult it would be, we decided to find out."

The assumption is that a switch to the metric system will cost something extra, but the added cost might turn out to be a relatively small price to pay for the knowledge that would be gained. It is the purpose of the preliminary studies that are now beginning to try to estimate the added cost.

The two weapons systems on which the switchover might be tried are small enough to be manageable, Larsen said, but complicated enough to give some realistic information about what it would cost for the country to make a major transition to the metric system.

The Maverick would indicate the problems in building missile electronics, rocket nozzles and motors. The howitzer program would provide information about the problems in machining engines, transmissions, suspensions, and hulls.

Whatever the results, Larsen said, the Defense Department is not setting out to change the country over to the metric system singlehandedly. Whatever is done as a result of the studies, he said, will be designed to meet the needs of the Defense Department.

But the military services have long been concerned with the problems raised by the discrepancy between the size of U.S. weapons and those of her allies. Metric units—or the equivalent of metric units—have long been used for some military purposes. The bores of Army artillery pieces have been measured in metric units ever since the United States bought French 75 mm. guns in World War I, and U.S. artillerymen measure ranges in meters.

But serious problems have persisted. It took years of negotiations before the United States and its allies in the North Atlantic Treaty Organization agreed on a standard 7.62 mm. rifle bullet—which happens to be the same as our .30 caliber bullet. The agreement means that, if they should get into a war, all NATO soldiers would be firing the same size bullet, simplifying supply problems and eliminating the danger that soldiers would find themselves with bullets that didn't fit their rifles.

The problems become much more complicated when the United States tries to get together with another country on the production of a major weapon like the MB70 tank, on which the United States and West Germany are now working.

Ironically, Larsen said, one of the biggest problems is in the "fasteners"—which means nuts, bolts and screws. Screw threads used by countries on the metric system are a different shape than those used in the United States and this complicates the problem, for example, of fitting a U.S.-made engine into a European vehicle.

Two bills have been introduced in this session of Congress—one in the Senate by Sen. Claiborne Pell, D-R.I., that would authorize the secretary of commerce to study the advantages and disadvantages of increased use of the metric system in the United States.

Now that Britain, where the inch was born (the length of three grains of barley laid end to end, lengthwise), is switching over to the metric system, the United States is the last big industrial nation still sticking to the English system.

It might just be that the Defense Department studies will show that it wouldn't be too costly, after all, for the United States to get in step with the rest of the world.

TREASURY ASSISTANT SECRETARY TRUE DAVIS RECEIVES VETERANS OF FOREIGN WARS 1967 AMERICANISM AWARD — RESPONDS WITH CONSTRUCTIVE SPEECH ON "DEMOCRACY — A CONTINUOUS LIVING PROCESS"

Mr. RANDOLPH. Mr. President, last week, at the annual convention of the Veterans of Foreign Wars of the United States, this vigorously American organization honored one of the outstanding citizens and public officials of our country. It presented the 1967 Americanism Award to Hon. True Davis, Assistant Secretary of the Treasury and U.S. Executive Director of the Inter-American Development Bank. In so doing a deserved honor was given to an able leader in public affairs, whose achievements and service are noteworthy. Mr. Davis gave a challenging speech at the convention on "Democracy: A Continuous Living Process."

The award was made by VFW Commander in Chief Leslie M. Fry during the August 23, 1967, session of the organization's national meeting in the Hotel Roosevelt, New Orleans, La. From Washington Secretary of the Treasury Henry H. Fowler appropriately commented:

We in the Treasury are especially pleased that the Veterans of Foreign Wars have honored Assistant Secretary of the Treasury True Davis by presenting him their 1967 Americanism Award.

The late Adlai Stevenson once wrote that patriotism "is not short, frenzied bursts of emotion, but the tranquil and steady dedication of a lifetime." Mr. Davis' life as a businessman, Ambassador to Switzerland, Assistant Secretary of the Treasury and our country's Executive Director to the Inter-American Development Bank, reflects the tranquil and steady dedication of an American citizen to the principles of democracy and to the strengthening of our cultural institutions that give meaning and substance to these principles.

Mr. Davis has personally identified himself in private and public life with the problems of his community, his State of Missouri, and our country. To these problems he has brought not only an intelligence based upon maturity of judgment, but a philosophy nurtured by humanitarianism. In successfully fulfilling a lifetime of numerous public and private responsibilites, he has helped enrich our common heritage.

Mr. President, I have known Mr. Davis for a number of years and I am completely in accord with Treasury Secretary Fowler's appraisal of this outstanding citizen from St. Joseph, Mo. He is truly a leader among Americans who thoroughly merited the 1967 Americanism Award bestowed on him by the Veterans of Foreign Wars.

There is no better depiction of his Americanism than his speech accepting the VFW award—an address in which he discussed "Democracy: A Continuous Living Process."

Mr. President, I ask unanimous consent to have printed in the RECORD the text of Mr. Davis' remarks of August 23 to the VFW convention in New Orleans.

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

DEMOCRACY: A CONTINUOUS LIVING PROCESS

(Remarks by the Honorable True Davis, Assistant Secretary of the Treasury, and U.S. Executive Director of the Inter-American Development Bank, before the Veterans of Foreign Wars of the United States on accepting the 1967 Americanism Award of the VFW, Hotel Roosevelt, New Orleans, La., August 23, 1967)

The honor that the Veterans of Foreign Wars have bestowed upon me is one that I shall deeply cherish. In accepting the Veterans of Foreign Wars 1967 Americanism Award, I am conscious both of the names of distinguished Americans who have received it in the past, and of the breadth and depth of their activities that merited their selection. To have my name added to this panel of eminent leaders in American business, finance, labor, public service, and the arts, is a great honor. My name is there, I feel, not for service already rendered but rather for service yet to be accomplished. So I look to the future, rather than to the past, to participating in those activities which will help perpetuate the democratic principles of government that are the strength of our free society and a goodly portion of the strength of the free world. By your gracious act you have given me an assignment that will occupy my attention the rest of my life—and for this I am grateful.

My presence with you this morning and the award you have generously bestowed indicate your continued concern with the nurturing of those principles of government and those characteristics of our people that contribute to the enlightened concept of Americanism that most citizens hold. It is appropriate, I believe, that we take time, not occasionally, but frequently, to reflect upon the substance of our beliefs, to evaluate them in the world arena of political thought, and to examine ourselves to see if we are fulfilling the personal commitments that democracy imposed upon each of us—as individuals, as groups working together in common interests, and as a people moving together toward the fulfillment of national goals.

The history of our country records many conflicts. Secretary of War Weeks, for example, listed 56 wars in which we were engaged from 1776 to 1922. These are recognized and officially recorded in the historical annals of our government. But there are other conflicts of an entirely different nature that only an historical awareness of our country's development and growth reveal: these are the conflicts dealing with human rights—conflicts of a religious, social, economic and political nature with which successive generations of Americans have dealt in their efforts to evolve a living democracy in accordance with the principles explicitly stated and guaranteed in our Constitution and the Bill of Rights.

Over the years—less than 200 years—we have succeeded rather well, both as a people and as a government, in our efforts to solve the numerous conflicts that have arisen. Where we *have* failed in human relations we have acknowledged these failures and attempted to rectify our errors of judgment. Our Constitutional amendments—in fact, our entire repository of jurisprudence—is testament to our continual concern that our democratic principles of government should be viable instruments of action in human relations with each other and with other peoples.

Nowhere have we so carefully exercised this maturity of judgment than in Vietnam. Never in the history of the world has so powerful a nation—with the most devastating instruments of destruction ever created at its disposal—exercised such tact and restraint and concern for human life in the

pursuit of military objectives. This is not a sign of weakness. This is a manifestation of majority—as a government and as a people.

One ingredient of maturity is patience. We have exercised patience in the pursuit of military and pacification objectives in Vietnam. We have simultaneously exercised patience in our efforts to arrange a peaceful settlement with the enemy, in our countless overtures to sit down at a conference table and negotiate our differences so that we can all get about with the more serious business of helping the people of Southeast Asia build a better world in which to live. We shall continue to be patient in the future, as we have in the past, not only in Vietnam, but in other parts of the world where maturity of judgment is essential in approaching and appraising complex problems between diverse peoples that affect our, as well as their, welfare and security.

On August third President Johnson announced that another forty-five thousand men will be added to our fighting forces in Vietnam. At the same time he called upon Congress to enact a temporary surcharge of ten percent on individual tax liabilities and a similar levy on corporate taxes. He asked the Congress to apply these surcharges on corporations effective July 1 this year, and on individuals effective October 1.

The President emphasized that these are surcharges on taxes, not on incomes, and that they are a small price to pay considering the distasteful and dangerous alternatives of inflation—the sneak thief that can pick our pockets without our knowing it.

Meanwhile, the President has encouraged the Congress to cut non-essential funds from pending appropriation bills, and he has pledged that the Executive Branch would cooperate fully with the Congress by eliminating or deferring unnecessary expenditures.

The careful application of our national power in Vietnam reflects coordinated teamwork of the highest order. It is now time for those of us here who, in overwhelming numbers, are enjoying the benefits of our great prosperity to back-up our fighting men and build a strong and prosperous nation by paying for some of these expenditures as they occur. Most of us from time-to-time at home or in business must assess the future in the harsh light of reality. We then cut back on our expenditures, defer "nice to have" luxuries until a later time, and avoid assuming onerous debts and debt service. To meet our obligations to our men in Vietnam, as well as to protect the prosperity of all of us, the President has recommended a series of coordinated actions by the Executive and the Congress, a vital ingredient of which is a temporary tax increase. These actions deserve your attention, your evaluation, and your approval.

Enactment of the proposed temporary tax increase coupled with prudent fiscal management means that the burdens of financing the war and the carrying on of essential domestic programs will be shouldered more evenly by the many elements that contribute to the vitality of our economy. Last year the highest interest rates in four decades and the resulting tightening of money applied unfair pressures on certain groups. Mortgage money commanded a high premium. Many people couldn't buy homes, and the construction industry took a belting. The rate of new construction is improving, but there is much ground to recover. Insurance companies loaned millions to their policy holders who were unable to find money at the normal sources. The squeeze affected most of us, but some of us more than others.

Although these dislocations hurt, the average person enjoyed great prosperity. Real wages were the highest in history; total after-tax real income of Americans rose five percent; net income per farm rose nine percent, even after adjusting for higher prices the farmer paid, and our gross national product, valued in constant prices, advanced nearly six percent.

You have honored me with your 1967 Americanism Award. I accept it with humility and a deep sense of obligation. My obligation demands that I ask you now to project the spirit of Americanism—a fundamental value of this great body of veterans—beyond any artificial or preconceived limitations. I ask each of you to support, by your willingness to pay an additional portion of your existing tax liability, the financing of the fighting in Vietnam. It is a small price for us to pay. As you know, we seek a just and honorable conclusion to the hostilities. But we are veterans of foreign wars, and we know in our hearts that if we had not fought wars abroad we would have—long ago—been fighting them on our soil.

It is correct and desirable that the Congress study deliberately the President's recommendations and that the Congress evaluate the alternatives. But undue delay would be harmful. "Failure to raise taxes," the President said, "would not avoid the burdens of financing a war. ***But, instead of sharing those burdens equitably and responsibly—as an income tax surcharge would do—inflation, tight money and shortages would tax the American people cruelly and capriciously." This, the President added, "would haunt America and its people for years to come."

Earlier I said that, as a nation, we have exercised maturity and judgment in the application of tremendous power against our adversaries in Vietnam. An essential ingredient of maturity is patience. Our patience will be sorely tried in summoning the staying-power required to set the stage for an honorable conclusion of our commitment in Vietnam. And our patience will be tried when our incomes are taxed to help pay the large sums required to back up our fighting forces around the world.

Our American ideals required the repeated infusion of patience and work in strengthening our democratic institutions. Each of us here must take extra time to study and comprehend the requirements of our national commitments, here and abroad. We must be patient with the special pleadings of the faint-hearted, and press forward to solutions for the many problems facing us in our communities, in our great cities, our States and the Nation. To the extent that each of us participates in local and national efforts toward the resolution of these problems, to that extent will we insure the perpetuation of our liberties. Let us remember we strive to strengthen our democratic processes and our national institutions not only for ourselves but for those who will inherit them next year, the next decade, the next generation.

Working together—in every community and every State—there is no problem that we cannot solve, no goal that we cannot reach, no objective that we cannot fulfill.

This is Americanism.

VIETNAM

Mr. LAUSCHE. Mr. President, on Monday last, when the subject of exercising our efforts to get the solution of the war in Vietnam before the United Nations was discussed, I was in Ohio and therefore could not be in the Chamber.

I should now like to make a few remarks on that subject.

I subscribe to the efforts and to the suggestion made by the Senator from Montana [Mr. MANSFIELD] as to the need for our Government to exercise every effort within its power to get this dispute before the United Nations.

We have done so in the past. The President of the United States and United Nations Ambassador Goldberg have tried to get the United Nations to take jurisdiction of the matter. We failed for precise reasons which I cannot identify—primarily, I believe, because Soviet Russia did not subscribe to the proposal.

Now, however, Soviet Russia and the United States have agreed upon a compact controlling nuclear weapons that would seem to be a very important lessening of tensions, and it may be the establishment of a new ground which will at this time give encouragement to the effort to bring the matter to the United Nations for decision.

Mr. President, the people of the United States are not calloused; nor are the people of the world. Distress is being manifested everywhere by the injuries to, and death of, individuals on the battlefield in both South and North Vietnam. In spite of the fact that we want our men to win, one's heart would have to be made of stone if he rejoiced in the knowledge of death and the maiming of bodies being imposed upon any people.

Our people want this war brought to an end. They want it brought to an end, however, in an honorable way.

Let us now explore the proposition of what would occur if the war were brought to an end through a withdrawal. Would that be the end? Would carnage of the anti-Communists in South Vietnam follow? If we pulled out, what would happen in Thailand and Laos? What would happen in Indonesia? What would become of the encouraged thinking of Communists all over the world, that they have a clear way in destroying freedom and establishing communism?

However, if the United Nations took jurisdiction of the matter, a peace would be achieved that, in all probability, would prevent the horrible and undesirable consequences that might follow in South Vietnam, Thailand, Laos, Cambodia, Indonesia, Malaysia, and in all Southeastern Asia.

It is for those reasons that I join with Senator MANSFIELD and other Senators in urging our Government to exercise every power it has, to get the United Nations to take jurisdiction, and bring the dispute to the table of negotiation, where peace may be achieved.

The problem is perfectly fitting to the avowed purposes of the United Nations that disputes should be settled through negotiation and not war.

The failure of the United Nations to be effective in bringing this war to an end does not reflect favorably on its ability to achieve the primary objectives for which it was created.

THE PROPOSED TAX INCREASE

Mr. WILLIAMS of Delaware. Mr. President, the consideration of President Johnson's proposed 10-percent tax increase and the question of cutting Government expenditures should be given top priority by both the House and the Senate.

Thus far the administration's zig-zag approach both to the question of raising taxes and curtailing expenditures has already had a disrupting influence on our economy.

Labor negotiations, business plans, interest rates, and bond prices are all geared to the unknown factor of tax rates and Government-spending policies.

This extended uncertainty is creating confusion in financial circles.

Will or will not Congress approve President Johnson's request to raise taxes, the amount of the increase if enacted, the effective date, who will be affected, and so forth, are questions which should be answered promptly.

Already there has been too much dilly-dallying. President Johnson, in his January message to Congress, said he would propose a 6-percent surtax effective July 1, 1967.

Four weeks later, Secretary Fowler was testifying before the Finance Committee supporting an administration proposal for a $2 billion tax reduction and said that the administration had not actually decided on the question of how much if any tax increase it would require.

Again in June, Secretary Fowler repeated that statement; namely, that the administration had not reached a decision on taxes but that when the decision was made it would ask that congressional action on its request be placed behind action on the social security bill.

In August, President Johnson finally made his decision and submitted a request to Congress for a 10-percent surtax on both corporation and individuals, but the administration still stands by its earlier decision that Congress not act upon this proposed tax increase until it has disposed of the social security bill.

Hearings on the social security bill are scheduled through the third week of September, and this means that Senate action on the Johnson tax increase cannot possibly be brought before the Senate until late October or early November.

In my opinion these delays are deliberately planned for two reasons:

First, to hold the tax increase bill back until the appropriation bills are all passed. The administration realizes that if the question of a large tax increase is pending on the Senate calendar efforts to cut appropriations will have much more public support.

Second, by holding back the proposed tax increase until late in the session, they can create an atmosphere of urgency and thereby forestall efforts to close some of the glaring loopholes in our existing tax structure.

Mr. President, to eliminate this uncertainty in our business communities as to both our future tax and our spending policies I am suggesting that the administration have the chairman of the Committee on Finance introduce the administration's tax increase proposal and that the Finance Committee proceed to schedule its hearings promptly after the Labor Day recess. In this matter we can be ready to act on the bill soon after House action.

If the chairman of the Finance Committee does not favor the administration's request, then some other administration spokesman should introduce the President's tax increase bill, and if it develops that no member of the President's party will introduce his tax bill, then let us face it and let the American people know where they stand.

There is ample precedent for this procedure. I realize that changes in our tax structure must originate in the House, but so, too, do appropriation bills. The Senate Appropriations Committee always starts hearings before the House acts, and it is thus ready to report a bill soon after House action. Just this week the chairman of the Finance Committee introduced a bill regulating quotas on oil, and hearings are to be scheduled in the Senate committee on this measure before House action.

Mr. President, unless these delaying tactics on the decision of taxes and spending cuts are reversed the administration must take sole responsibility for the consequences of the continued uncertainty in our economy.

Let there be no misunderstanding: The delay in action on the question of a tax increase has been a part of an administration plan.

Mr. LAUSCHE. Mr. President, I would like to take up briefly the fiscal problems confronting our country.

We have, on the one hand, the proposal of the President to increase revenues by imposing a 10-percent surtax. On the other hand, we have the problem of determining whether the Federal Government will reduce, continue at the present level, or expand the spending program.

Based on the bill that was recommended by the Committee on Labor and Public Welfare yesterday, it appears that the spending is to be expanded. The President requested $2 billion for the city aid program; the committee recommended an expenditure of $5 billion to meet the problems of the big cities resulting from the riots that have occurred.

Frankly, my opinion is that the massive, extravagant spending by the Federal Government will not achieve the objectives contemplated by those Members of Congress who are promoting the $5 billion program.

This $5 billion is $3 billion in excess of what the President asked for. Spending of that nature will only sharpen the desires of the rioters to get more money out of the Federal Treasury.

At a conference of Socialist scholars in New York in 1966, the theme of discussion was that welfare recipients should increase their demands to such proportions that the weight of those demands would blow out the fuses of governmental treasuries.

Reading what took place at that conference of Socialist scholars is frightening. It called upon the recipients of welfare to continue their demands for increased allowances until they reached the point of blowing out the fuse of the Treasury, especially the city of New York, and finally of the United States.

How shall we approach the problem of increased taxation, on the one hand, and either increased or reduced spending on the other?

Should we pass appropriation bills first, and then decide what to do with the President's proposal to impose the 10-percent surtax?

I submit that the proper procedure is to determine first how much money will be available for spending. When we know that, then we can proceed to design a program of spending.

I therefore suggest that the 10-percent surtax proposed by the President be passed on before the appropriation bills—still unfinished at present—come before this body for consideration.

If we allow appropriation bills to be passed—for instance, the one that contemplates the $5 billion of spending to help urban communities, instead of the $2 billion recommended by the President—where will we find ourselves?

The deficit for 1968 without the 10-percent surtax is anticipated to be $29 billion.

I propose that the Congress make its first order of business, action upon the President's proposal for the 10-percent surtax. If that is either passed or defeated, the Appropriations Committee will be better advised as to what it should do.

Mr. WILLIAMS of Delaware. Mr. President, will the Senator from Ohio yield?

Mr. LAUSCHE. I yield.

Mr. WILLIAMS of Delaware. I join the Senator from Ohio in his comments on this subject. I spoke earlier suggesting that Congress give immediate consideration toward making its decision as to whether it will or will not raise taxes, and if so, how much.

At the same time—as the Senator from Ohio has just pointed out—we can decide whether we are going to cut appropriations. If we do not cut spending and do not increase taxes, we will, of course, be going into another deficit spending era and borrowing money, thereby promoting additional inflation.

As we approach this question, it is well for all Members of Congress to take notice that a bill was reported yesterday by the Committee on Labor and Public Welfare embracing $5 billion, $3 billion more than the budget called for. On the average, each 1-percent surtax increase will provide approximately $1 billion in revenue. Mathematically that means that if Congress approves the bill as reported yesterday by the Labor and Public Welfare Committee, with the extra $3 billion over the budget request, 3 percent of that 10-percent tax increase will be required to pay for the extra expenditures on that one bill alone.

By the same token, the administration, testifying before the Finance Committee, asked it to add another $3.25 billion to the expenditures of the so-called social security and welfare bill over and above what was provided in the House bill.

If we do accept the recommendation of the administration for that increase it will take 3 more percentage points out of the so-called 10-percent tax increase to pay for those extra benefits.

Then the report of the Joint Committee on Reduction of Nonessential Expenditures shows that the administration has added 105,000 extra employees in civilian agencies of the Government since last September, which is the date of the President's Executive order supposedly freezing employment. That will cost $800 million extra and will take 1 percent more out of the proposed 10-percent surtax.

Therefore, we have 70 percent of that proposed 10-percent increase already whittled away by the Great Society's measures now pending before the Senate. These are expenditures over and above

what was contemplated even as recently as 3 months ago.

Where is this going to stop?

If we are going into that extravagant rate of spending let us face it: we will be setting the stage for some really wild inflation in this country.

Therefore, we should decide first whether Members of Congress have the courage to vote for the necessary tax increase to cover these expenditures. If they do not have that courage then let them stop voting for all these increases in appropriations.

I think that Congress—and the Senate in particular—should consider all these bills together so that when a Member of Congress votes for these increases in appropriations his constituents will know at the same time that he is, in effect, voting for a tax increase.

I am getting a little impatient and disgusted at some of those who go around saying, "I am against a tax increase. I pity the poor taxpayers." Yet they vote for every single appropriation that comes before the Senate. They are often the wildest spendthrifts.

I should like to see the question of cutting expenditures first, and then we can consider the necessary tax. Then the rollcall will show just how much hypocrisy there is in Congress and the administration. I do not think we can get this true picture until we get them together.

Just the other day the administration, with its tongue in cheek, declared its concern that Congress was lagging in acting on the President's request for a tax increase.

The reason Congress is lagging is that the administration itself has asked Congress to delay action on the bill until late October or sometime in November. The administration specifically asks that its tax bill be held back until after the social security bill has been disposed of, which means late October. It is the height of hypocrisy for them to say that they are trying to reduce expenditures when they make their speeches when, at the same time they are advocating more and more spending, which automatically means more taxes or more borrowing. When the chips are down they do not have the guts to vote for the tax increase and tell the American people just how much these Great Society boondoggles are going to cost them. Yet they advocate and support increased spending while postponing the effective date of all tax increases until after the election in 1968.

This is political hypocrisy.

This Congress and this administration ought to face up to it, and if they have not got the courage to tell the American people what these programs are costing them they should stop spending so much.

Mr. LAUSCHE. Mr. President, it is my opinion that good housekeeping of Federal finances, particularly at this time when there is fiscal stringency, requires that we first learn what the income of the Federal Government will be, and after we know what that income will be, then we should fit our spending as nearly as is reasonably possible to the available moneys.

Mr. LONG of Louisiana. Mr. President, will the Senator yield?

Mr. LAUSCHE. I yield.

Mr. LONG of Louisiana. One good thing about the Social Security System, and particularly about the members of the House Ways and Means Committee when they handle that bill, is that they will not vote for additional social security benefits without a tax to pay for them.

It is very joyous and pleasant to vote to provide additional benefits, such as pay raises or veterans' benefits, but when one has to vote for taxes to pay for them, a bill that has been a very popular bill suddenly becomes, on balance, a very unpopular bill.

My guess is that very few people are opposed to providing additional retirement benefits or requested welfare assistance for people who need it, but if they are going to have to vote for additional taxes to pay for them in order to do that, that is a different matter.

Mr. LAUSCHE. The Senator from Louisiana is now talking about the social security tax. I am talking about the $5 billion that has been recommended to be spent out of the General Treasury without earmarking funds to be collected to support the expenditures.

Mr. LONG of Louisiana. The President's original recommendation was a tax that would bring in $5 billion. He has increased his sights since that time. The original recommendation was a 6-percent surtax. The bill reported by the Labor and Public Welfare Committee provides for a $3 billion increase in cost to a $2 billion bill, and the bill in its totality would completely consume all of the amount of money that would be raised by the tax increase originally proposed by the President. Of course, as I have said, he has raised his sights since that time. I believe the President has asked for more than $6.5 billion as increases to programs already going on in the area of domestic spending. This was increased over prior years. The Labor Committee has increased that $6.5 billion by another approximately $3 billion, so it is now $9.5 billion more. I think if the American people were asked if they favor a tax increase to finance such programs, they would say, "No."

Mr. LAUSCHE. That is why I say we should pass on the tax bill first. The Government should do what every family has to do—establish what its income is, and then fit its spending to that income in the maximum degree possible. It is now proposed, however, that we do our spending and later find out how much money we shall have. I cannot subscribe to that policy.

I thank the Senator from Louisiana for his comments.

Mr. WILLIAMS of Delaware. Mr. President, will the Senator yield?

Mr. LAUSCHE. I do not want to delay the Senator from South Carolina [Mr. THURMOND].

Mr. THURMOND. I yield.

Mr. WILLIAMS of Delaware. I merely would like to point out that this trend to vote for benefits, as the Senator from Louisiana has pointed out, is popular, whether it be social security or other programs of that kind; but what about the tax consequences? As proposed by the administration the social security benefits would go into effect 1 year before the election. The full tax impact to pay for it would go into effect 60 days after the votes are counted.

In my opinion the necessary tax to pay for the benefits should go into effect on the same day as the benefits and I shall offer an amendment accordingly. If any Member of Congress wants to vote for the increased benefits and then go home and boast to his constituents how much he is giving them let him add, "I also voted for the tax increase to pay for the program."

I am getting impatient with having this group of free-wheeling spenders who are voting to spend all this money and then depending upon another group to vote for the taxes to pay for it. I want to see if they have the nerve—and I do not think they have—to tell the American people how much it is going to cost.

The Johnson administration, with all of its talk about economy, has the greatest record of deficit spending in the history of our country. During his term of office he has, on an average, been spending about $1 billion per month more than our income. These deficits have been financed by increasing the national debt to be paid for by the future generations.

SENATOR CLARK ADVOCATES PROGRAM FOR STRENGTHENING SOCIAL SECURITY

Mr. RANDOLPH. Mr. President, Members of the Senate are learning from their mail and from the visits of constituents that there is extremely widespread interest in strengthening the Social Security Act this year.

Considerable support has come from a large variety of organizations for the administration's bill in the House, H.R. 5710. This bill, however, was replaced by H.R. 12080, which drastically alters the administration's proposals and represents in the opinion of many, a legislative regression. Consequently, Members of the Senate are being urged to support the administration's bill and reject H.R. 12080.

This is advocated by the newly formed National Organization for Welfare Rights which was established by a national convention in Washington on August 26. The NOWR statement declared:

> The present welfare system has driven 8,500,000 Americans into fifth-class citizenship and makes it impossible for us to live in decency and with dignity. The present welfare system castrates and destroys our family life and family unity. We, the welfare recipients of America, deserve, need and demand justice, dignity and an adequate income.

According to the NOWR, H.R. 12080 will deny assistance to hundreds of thousands of additional children and their families by first, unconstitutionally freezing aid to absent-parent families under aid to families with dependent children; second, forcing mothers to leave their children and search for work; third, setting up work incentive programs which will prevent most of our families from

escaping poverty; fourth, adding a tangle of new eligibility requirements which will deny desperately needed aid to thousands of families; and, fifth, encouraging the States to further harass our families.

Mr. President, on August 28, the gentleman from Pennsylvania [Mr. CLARK] addressed the Pennsylvania delegates to the National Organization for Welfare Rights, and discussed with them his views on the need for strengthening our social security legislation. Senator CLARK's statement provides comprehensive comment on the type of legislation he advocates. It is vital, Mr. President, that our national economy be made stronger and the Nation's aged and welfare recipients be afforded the opportunity for a fuller and better life. I ask consent that Senator CLARK's address be inserted at this point in the RECORD.

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

THE THIRD FREEDOM

(Address by Senator JOSEPH S. CLARK)

A few days ago here in Washington we marked the 32nd anniversary of the signing of the Social Security Act.

Perhaps President Franklin D. Roosevelt knew, as he signed the bill into law on August 14, 1935, that the Social Security Act would prove to be the most important and far-reaching of all New Deal measures. It was in the midst of the Great Depression, but FDR proclaimed, "This generation has a rendezvous with destiny."

More than any other piece of legislation enacted during President Roosevelt's 13 years in office, it was the Social Security Act that had the rendezvous with destiny. I say that for two reasons. First, more than any other single law the Social Security Act set the tone of moral and economic responsibility for the decades and the Presidencies to come. And second, Social Security became the parent of many subsequent welfare undertakings. Even today's great, pioneering anti-poverty programs have their roots in the Social Security Act.

The flowering of the philosophy that produced and nourished the Social Security System contributed fundamentally to the historic Four Freedoms, as World War II began. We tend, perhaps, to forget that the third of the Four Freedoms enunciated by President Roosevelt was "freedom from want"—and FDR held this out as a realizable aspiration not just for Americans but for all people of the world.

"Freedom from want" a generation later—has given this generation, the generation of the 1960's, a new rendezvous with destiny. It will be this generation's destiny, I hope, to finally achieve freedom from want, to eradicate from the face of America for once and for all the ancient spectres of penury and hunger.

Today Social Security is a central fortress in the war on poverty, and in the opinion of many of us it should play a larger and larger role in our continuing battle for economic justice.

You are here today because of your deep and active interest in strengthening the Social Security System and safeguarding it from sabotage.

I want to welcome you here for that purpose, but I want to say something more. We never would have had a Social Security law in 1935 had it not been for people like you; we never would have won the magnificent protections of Medicare if it had not been for people like you; and we will not strengthen the Social Security law this year without people like you.

You are here because you disagree with the Social Security bill passed by the House of Representatives two weeks ago. I am here because I also disagree with the bill and agree with you.

I made this clear on the floor of the Senate last Tuesday. I spelled out in some detail the reasons for my discontent with the House measure, the reasons I feel it woefully inadequate to meet today's needs. Here are the major improvements on the House measure which I advocated:

First, minimum benefits should be raised from the House-approved increase of 12½% to at least the 15% hike urged by President Johnson. This would elevate minimum benefits for single persons from the $50-a-month approved by the House to $70, and to $105 for couples. In addition, the Administration Bill carries a special increase in the minimum benefit for retired individuals and couples with 25 years of covered employment. Individuals would receive a minimum of $100-a-month and couples $150. The House bill does not even touch this area of benefits.

Second, we should raise the earning level on which both benefits and contributions are computed to $10,800 compared with the $7600 proposed in the House Bill.

Third, Medicare coverage should be expanded to benefit the disabled.

Fourth, we should enlarge public assistance payments which are now wholly inadequate, and also provide day-care programs for children of families on assistance where the mother is participating in training programs.

Fifth, we should establish controls to hold down excessive hospital charges and physicians fees paid under Medicare.

Sixth, Medicaid should be made available to the medically needy who cannot afford adequate health care.

Seventh, we should strengthen the possibility of poor families remaining together by requiring states to make assistance available where the father is in the home until he can obtain work for which he is qualified.

There are other improvements in the law and in the House proposals which I and other Senators will advocate. These are improvements that I feel sure your organizations will support as will other religious and fraternal groups, labor and civic associations. For example:

On the question of benefits for disabled widows, the House bill would limit benefits to women 50 and over. We prefer to extend Social Security benefits to all seriously disabled widows.

For older people not previously covered but brought under Social Security last year, special benefits under the House bill would be raised from the present $35 to $40 for individuals and to $60 for couples. Under the far more realistic Administration bill these special payments would be lifted from $35 to $50 for individuals and from $52.50 to $75 for couples.

Now we come to an area of Social Security benefits and protections of particular concern to our Council—Aid to Families with Dependent Children. You are aroused and rightly so. This is an area in which the House bill does not merely stand still; it moves backward. In fact, it seems to retreat toward the last century and to a relatively primitive set of social attitudes toward mothers and children.

The House bill provides no improvement in assistance levels for families with dependent children. Instead, with the supposed purpose of reducing public welfare rolls, the bill makes eligibility requirements much stricter and also requires mothers with children to participate in training programs. To back up these training programs, day-care facilities would be expanded.

The Administration bill contains no such regression. Instead it would require states to increase their cash benefits to welfare recipients to a level which the state itself specifies as a subsistence minimum. In addition, these standards would have to be modernized every year.

The National Social Welfare Assembly condemns the change proposed by the House bill as "punitive," and this is accurate because it could and would punish children for the supposed sins of their parents. I see its effects the way the Social Welfare Assembly sees them:

The change would require, first, that all adults on assistance rolls, including mothers and out-of-school youths over 16, to work or take training (unless specifically exempted) as a condition of receiving assistance. This work or training would be a required part of the state plan but could be administered directly by the public welfare agency or could be delegated to voluntary or profit-making organizations. Maximum wage requirements would not prevail and no consideration is given to the possibility of a recipient being required to work despite a strike or picketing.

Penalties can be extremely harsh for refusing work or training assignments without good cause. For example,

Recipients could be dropped from assistance rolls entirely;

Grants could be cut by eliminating adults from calculation of the family budget;

Children could be removed from the home by court order and placed in foster care.

The House bill professes an effort to reduce the number of illegitimate or deserted children on assistance rolls by the following measures:

1. Mandatory family planning. Compulsion is not extended to the family, as the Social Welfare Assembly points out, but states are required to report the numbers to whom it has been offered and the extent to which it has been accepted. The requirement that all states establish programs to combat illegitimacy and the financial penalties imposed for failure invite coercion.

2. Cooperation with law enforcement agencies is required to determine paternity and locate absent fathers, and even Social Security records would be divulged for this purpose.

There are serious questions involved here as to whether the Constitutional rights of actual or potential recipients of assistance are not infringed.

These Constitutional issues which bother me and doubtless you too include such questions as these:

Can illegitimate or deserted children in need be treated differently from other children without violating the anti-discrimination provisions of the 14th Amendment?

Can poor families receiving or applying for assistance be subject to a discriminatory application of child-neglect laws?

Does this altered provision invade the right of privacy?

Can assistance recipients be compelled to work as provided by this new clause without infringing the 13th Amendment protections against involuntary servitude?

In a social program based on need, can a different standard of eligibility be applied to recipients and applicants for aid by exempting earned income of those already on the rolls while denying supplementary assistance to those with lower earned incomes?

There is a great deal at stake here—a great deal in terms of social and economic principles and a great deal in terms of humaneness, humanitarianism and the next generation. Last year under the AID To Families With Dependent Children program there were 4½ million recipients, children and adult. We cannot risk warping the lives of children and young people, as the consequences of this section of the House bill might warp them. Especially is this possible when we realize that nearly 64% of all AFDC children live in father-absent homes.

While the AFDC problem, as I mentioned, may be your primary concern, I hope you will interest yourself also in such other provisions

as Medicare and Medicaid. I don't need to tell you how these protections affect the welfare of families and the physical and mental well-being of youngsters.

There is also, for example, the too-often-overlooked problem of Social Security increases being wiped out by the reduction in pensions and other forms of retirement incomes. In the not-too-distant past, when labor-management pensions were getting underway in the 1940's, employers frequently slashed their workers' pensions by whatever amounts Congress raised Social Security benefits. By doing so they were countering the intention of Congress to increase the income of retirees because of rising living costs. That practice has pretty much been eliminated in labor-management pension programs but it continues in others.

For example, my colleagues on the Senate Special Committee on Aging which my esteemed colleague, Senator Jennings Randolph serves as chairman, warned a week ago today that this year's Social Security increases could again become the trigger for reduction in other retirement benefits unless safeguards are imposed. They pointed out that the hardest hit can be veterans on pensions and recipients of Old-Age Assistance. We should amend the Socal Security law, in my opinion, to prevent as completely as we possibly can the practice of using Social Security increases as an excuse for slashing other retirement benefits.

Let me repeat. The safeguarding of our Social Security System and its improvement depend on people like you, on your alert understanding and active advocacy of better and sounder legislation.

President Franklin Roosevelt, during the period he was urging Congress to approve the first Social Security Act in 1935, told Secretary of Labor Frances Perkins, "From the cradle to the grave, the American people ought to be in a social insurance system."

Gradually that goal is being approached. And gradually, in the months and years to come, we will approach fulfillment of the third of the Four Freedoms—Freedom From Want.

EXECUTIVE SESSION

Mr. HART. Mr. President, I ask unanimous consent that the Senate return to executive session.

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

NOMINATION OF THURGOOD MARSHALL TO BE ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT

Mr. ERVIN. Mr. President, before making my remarks, I ask unanimous consent that a statement prepared by the able distinguished Senator from Mississippi [Mr. STENNIS], in opposition to the confirmation of the nomination of Thurgood Marshall to be Associate Justice of the Supreme Court, be printed in the RECORD.

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

The statement by Mr. STENNIS is as follows:

A seat on the Supreme Court of the United States is one of the most powerful positions in our system of government. It is also one least subject to democratic control. The people are virtually powerless to check abuses of the great authority vested in the Supreme Court and its individual members. The Constitution and customs surround the Court with many barriers against outside influences or interference.

Justices on the Court are appointed for life and their salaries cannot be reduced. Moreover, the people rightly feel a deep respect for the judiciary and will patiently bear its occasional errors out of deference to the institution. These characteristics of our people and our system have both their good side and their bad. On the one hand, they give the Court the freedom to follow the law without fear of reprisal. On the other hand, they enable the Court to ignore the law with impunity. Which course the Court will follow depends almost entirely on the men who make up its membership.

The selection of these men, therefore, is one of the gravest responsibilities entrusted to the Senate. In considering a nominee to the Supreme Court, the Senate has a different and much heavier responsibility than it usually has in passing on nominations submitted by the President for confirmation. In this matter the Senate is not merely approving an administrator to help the President carry out his executive duties during his limited term. In voting on a nomination to the Supreme Court the Senate, on behalf of the people, is choosing for a lifetime the highest representatives of a co-equal branch of the government. The error of an unwise choice will survive long after our action and will forevermore influence the future of our country.

Consequently, the nominee must be measured not only by the ordinary standards of merit, training, and experience, but his basic philosophy must be carefully examined. Indeed this is perhaps the most important consideration of all. Unfortunately, judicial restraint has become an outworn virtue among the judiciary. Stare decisis is a cast off principle. Consistent application of the law is scorned as "mechanical jurisprudence." Many judges feel they must be "creative", they must be "activists." They look not to the law for guidance in decision making but to their own personal philosophy. It is incumbent upon the Senate therefore, to insure that the nominee's philosophy is sound and that it accords with the sentiments of the people upon whom it will be forced for many years to come.

In the pending matter, however, the nominee not only refuses to explain his philosophy but even denies the Senate the right, through its Judiciary Committee, to question him about it. Thus he would begin his new judicial career with the establishment of a bad precedent. Even before he takes his position on the Court he has interpreted his own sense of "propriety" to supercede the constitutional authority of the Senate to examine the qualifications of a nominee to the Supreme Court.

This is not a matter of declining to answer hypothetical questions or to comment on pending cases. It is not even a matter of evading complicated legal questions. It is a matter of flatly refusing to answer simple factual questions. To illustrate what I mean, I quote a typical example from page 55 of hearings on this nomination before the Judiciary Committee:

"Senator ERVIN. I am not asking you about the *Miranda* case; I am not asking you what you would do about the *Miranda* case.

"I am just asking a question as one lawyer to another. Did not the Supreme Court of the United States hold from June 15, 1790, until the *Miranda* case that these words of the fifth amendment did not apply to a voluntary confession, for three reasons:

"First, because a voluntary confession is not compelled testimony; second, because a person, a suspect, or any other person in the custody of a police officer, when interrogated by the officer, is not testifying as a witness; and in the third place, that when he is merely being interrogated by an officer, there is no case?

"Was that not the uniform holding of the Court?"

"Judge MARSHALL. I respectfully say it would be improper for me to comment on it."

This is a simple question on legal history. It was asked in all earnestness by a United States Senator charged with a constitutional duty to satisfy himself as to the nominee's fitness to hold one of the highest judicial offices in the land before approving his appointment. The Senator doubtlessly thought the question important and desired an answer or he would not have asked it. Moreover, he was not asking for his own benefit alone, but on behalf of all Senators who have the grave responsibility under the Constitution to pass on the qualifications of the nominee. A straightforward answer could in no way embarrass the nominee in the subsequent performance of his judicial duties. His successful refusal to respond, however, has deprived the Senate of information which some members desired, and has denied the right of the Senate as a whole even to require such information.

The haughty and overly guarded answer of the nominee would be amusing were it not such a bold affront to the authority of the Senate. Supposedly one of the great checks on the judicial branch is the power of the Senate to confirm appointments. How is this power to be effectively exercised, however, if the Senate cannot obtain the information necessary to judge the qualifications of the appointee? If the Senate must be content to act on broad generalizations and vague assurances, then its consent to the appointment is nothing but an empty ceremony, rubberstamping a decision of the executive. The Senate ought not to confirm any nomination under these conditions. If we do so, we not only run the risk of making a bad appointment, we are absolutely certain to suffer a further encroachment on the constitutional powers of the Senate.

Despite the nominee's attempt to hide his views from the Senate, enough is known of them to demand the strongest opposition to his confirmation. His conduct before the Committee and his reluctance to express himself, reveals his basic philosophy more clearly than anything he could have said. It displays a dangerous contempt for the legislative branch and suggests a philosophy so repugnant to most Americans and a majority of the Senate, that it cannot be revealed until the nominee is safely installed on the Court.

Because of the foregoing fact and for the foregoing reasons, I most strongly oppose the confirmation of Thurgood Marshall and urge the Senate to refuse its consent to his appointment to the Supreme Court.

Mr. ERVIN. Mr. President, the good and wise men who fashioned the Constitution had earth's most magnificent dream.

They dreamed they could enshrine the fundamentals of the government they desired to establish and the liberties of the people they wished to secure in the Constitution, and safely entrust the interpretation of that instrument according to its true intent to a Supreme Court composed of mere men.

They knew that some dreams come true and others vanish, and that whether their dream would share the one fate or the other would depend on whether the men chosen to serve as Supreme Court Justices would be able and willing to lay aside their own notions and interpret the Constitution according to its true intent.

They did three things to make their dream come true.

They decreed that Supreme Court Justices should be carefully chosen. To this end, they provided that no man should be elevated to the Supreme Court until his qualifications for the office had been twice scrutinized and approved, once by the President and again by the Senate.

They undertook to free Supreme Court

Justices from all personal, political, and economic ambitions, fears, and pressures which harass the occupants of other public offices by stipulating that they should hold office for life and receive for their service a compensation which no authority on earth could reduce.

They undertook to impose upon each Supreme Court Justice a personal obligation to interpret the Constitution according to its true intent by requiring him to take an oath or make an affirmation to support the Constitution.

It is no exaggeration to say that the existence of constitutional government in America hinges upon the capacity and willingness of a majority of the Supreme Court Justices to interpret the Constitution according to its true intent. In consequence, no more awesome responsibility rests upon any Senator than that of determining to his own satisfaction whether or not a Presidential nominee to the Supreme Court possesses this capacity and this willingness.

In expressing my views concerning the President's nomination of Judge Thurgood Marshall to be a Supreme Court Justice, I shall ignore these words of advice which were reputedly spoken by Mark Twain: "Truth is precious, use it sparingly."

I shall tell some fundamental truths about the Constitution and some tragic truths about the Supreme Court as it is now constituted. Moreover, I shall state with candor the basis for my sincere conviction that the addition of Judge Marshall to that Court would bode little good for constitutional government in the United States.

I know that in so doing I lay myself open to the easy, but false, charge that I am a racist. I have no prejudice in my mind or heart against any man because of his race. I love men of all races. After all, they are my fellow travelers to the tomb.

But I also love the Constitution. I know that apart from its faithful observance by Congress, the President, and the Supreme Court, neither our country nor any single human being within its borders has any security against anarchy or tyranny.

For this reason I will not let any false charge or any other consideration deter me from my abiding purpose to do everything within my limited power to save the Constitution for all Americans of all generations.

Let us recur to the dream of the Founding Fathers.

If we are to understand why the Founding Fathers had this dream and how they undertook to make it a reality, we must know what was in their minds and hearts, and analyze their handiwork in the light of such knowledge.

The Founding Fathers had suffered many wrongs at the hands of a centralized and distant government, whose arbitrary actions they were powerless to check or restrain. Their tragic experience had implanted in their minds a fear of centralized and distant government and instilled in their hearts a love of freedom.

To them, freedom was not an intellectual abstraction, or an empty word to adorn an oration upon an occasion of patriotic rejoicing. It was an intensely practical reality, which was capable of concrete enjoyment in a multitude of ways in daily life. It meant the power to determine one's own actions and live one's own life free from governmental tyranny. As a consequence, it is not surprising that the Founding Fathers stated in its preamble that they wrote the Constitution to preserve the blessings of liberty for themselves and their posterity.

The Founding Fathers did not rely solely upon the practical wisdom gained by them from their own experience in framing the Constitution. They were profound students of history. As such, they were well versed in the heartbreaking lesson taught by the story of man's fight against governmental tyranny in all generations and in all lands for the simple right to govern himself and live in freedom. This lesson is epitomized in these words of Woodrow Wilson:

> Liberty has never come from the government. Liberty has always come from the subjects of it. The history of liberty is a history of the limitation of governmental power, not the increase of it. When we resist therefore the concentration of power, we are resisting the processes of death, because concentration of power is what always precedes the destruction of human liberties.

The Founding Fathers were also familiar with the political philosophy of Thomas Hobbes, John Locke, and Baron Montesquieu. They accepted as an absolute verity the aphorism of Hobbes that "freedom is political power divided into small fragments." Indeed, one of their number, James Madison, elaborated upon it in this way:

> The accumulation of all powers legislative, executive, and judiciary in the same hands, whether of one, few, or many, and whether heredity, self-appointed or elective, may justly be pronounced the very definition of tyranny.

Like Locke, they knew that no man is free if he is subject to the inconstant, uncertain, unknown, and arbitrary will of other men; and like Daniel Webster, they knew that "whatever government is not a government of laws is a despotism, let it be called what it may."

The Founding Fathers had meditated much upon their own experience, history, and political philosophy, and had discovered this shocking but everlasting truth: Nothing short of tyranny can put an end to the insatiable hunger of government for power; and in its ardor to expand and multiply its power, government will extinguish the right of men to govern themselves and live in freedom, unless it is restrained from so doing by basic law which it alone can neither repeal nor amend.

For these reasons, the world has never known any other group of men as well qualified as the Founding Fathers to write a Constitution for a nation dedicated to the proposition that its people are entitled to govern themselves and live in freedom.

What has been said makes it plain that the Founding Fathers purposed in their minds and hearts to create a nation which would be ruled by the dictates of laws rather than the wills of men and in which the people would have the right to control government and live in freedom. To this end, they wrote a constitution, which they intended to last for an indefinite time and constitute "a law for rulers and people" alike at all times and under all circumstances (*Ex Parte Milligan*, 4 Wall. 2, 18 L. ed. 281). This Constitution became effective as the supreme law of the land upon its subsequent ratification by the States.

The Founding Fathers set out in the Constitution the fundamentals of the Government they desired to establish and the liberties of the people they wished to secure. Their chief object in so doing was to put these fundamentals and these liberties beyond the reach of impatient public officials, temporary majorities, and the varying tides of public opinion and desire (*Ex Parte Milligan*, 4 Wall. 2, 18 L. ed. 281; *South Carolina* v. *United States*, 199 U.S. 437; 50 L. ed. 261; Thomas M. Cooley's "Constitutional Limitations.")

They undertook to further this object by inserting in article VI the requirement that all legislators, all executive officers, and all judges, Federal and State, "shall be bound by oath or affirmation to support this Constitution." By this requirement, the Founding Fathers clearly meant to impose upon all occupants of Federal and State offices the absolute obligation to perform their official duties in conformity with the intent of those who framed and ratified the Constitution as expressed in that instrument (*Gibbons* v. *Ogden*, 9 Wheat. 1, 6 L. ed. 23; *Ex Parte Bain*, 121 U.S. 1, 30 L. ed. 849; *Lake County* v. *Rollins*, 130 U.S. 662, 32 L. ed. 1060).

The Founding Fathers knew, however, that "useful alterations" of the Constitution would "be suggested by experience." Consequently, they made provision for amendment in one way, and one way only, for example, by the concurrence of Congress and the States as set forth in article V (James Madison: The Federalist, No. 43).

Since the Constitution is a written instrument, its meaning does not change, unless its wording is altered by an amendment adopted in the manner prescribed by article V (*South Carolina* v. *United States*, 199 U.S. 437, 50 L. ed. 437). Those who assert the contrary merely seek ostensible reasons to justify disobedience to the Constitution's commands and evasion of its prohibitions.

These considerations moved Judge Thomas M. Cooley to declare in his great work on Constitutional Limitations that "a court or a legislature which should allow a change in public sentiment to influence it in giving to a written Constitution a construction not warranted by the intention of its founders would be justly chargeable with reckless disregard of official oath and public duty."

Let us consider what additional things the Constitution does to make the Federal Government a government of laws and not of men, and to secure to the people the right to control such government and live in freedom.

First. The Constitution divides the powers of government between the Federal Government and the States by delegating enumerated powers to the former and reserving all remaining powers to the latter. By so doing, the Constitution enables the Federal Government to perform its limited functions as a central

government, and leaves to the States the authority to regulate their internal affairs. This division of powers has inestimable values for a country as big in area and population as the United States. It lessens the danger of tyranny inherent in concentrating power in a distant government, and recognizes the truth that "local processes of law are an essential part of any government conducted by the people." Manifestly, "no national authority, however benevolent, that governs over" 190 million people in 50 States "can be as closely in touch with those who are governed as the local authorities in the several States and their subdivisions." (*Bute* v. *Illinois*, 333 U.S. 640, 92 L. ed. 986). This division of the powers of government inspired Chief Justice Chase to make this terse and accurate analysis of our organic laws:

The Constitution, in all its provisions, looks to an indestructible union composed of indestructible states. (*Texas* v. *White*, 7 Wall, 700, 19 L. ed. 227).

Second. The Constitution distributes all the powers delegated by it to the Federal Government to the legislative, executive, and the judicial departments of that government to prevent "the accumulation of all powers in the same hands." (James Madison: The Federalist, No. 47.) In so doing, it vests the power to make laws in Congress, the power to enforce laws in the President, and the power to interpret laws in the Supreme Court and such inferior courts as Congress might establish.

Third. The Constitution limits the powers of the Federal and State Governments in various ways. For example, it forbids them to pass bills of attainder and ex post facto laws, or to deprive any person of life, liberty, or property without due process of law.

Fourth. The Constitution secures to each person specific liberties, which he is entitled to assert against government itself. For example, it secures to him the right to freedom of speech and religion, the right to earn his livelihood in any lawful calling, the right to acquire, use and dispose of property, and the right to do such things and enter into such contracts as may be necessary to the exercise of the liberties secured to him.

Fifth. The Constitution confers upon the people the direct power to elect Senators and Representatives and the indirect power to select the President. But neither the States nor the people have anything to do with the appointment of Supreme Court Justices or other Federal judges, although such Justices and judges have power to adjudicate their rights and responsibilities under the Constitution and the laws. Such Justices and judges are nominated by the President and confirmed by the Senate, and for this reason are independent of the States and the people.

Sixth. The Constitution establishes the principle that in all cases involving the interpretation of the Constitution, the Supreme Court has final authority, and its interpretation is binding on Congress, the President, the States, and the people. This is an awesome authority because upon its proper exercise hangs the existence of constitutional government in the United States.

Seventh. The Founding Fathers were acutely aware of this, and took strong measures for men bent on establishing a republic to induce Supreme Court Justices to decide cases in accordance with the Constitution and to use its provisions as the sole tests for determining the validity of congressional, Presidential, and State action. To this end, they undertook to make the Justices independent of Congress and the President and immune to State and political pressures by providing in the Constitution itself that they are to hold their offices for life and receive for their services a compensation which cannot be diminished.

Eighth. The power to interpret the Constitution, which is assigned to the Supreme Court, and the power to amend the Constitution, which is vested in the Congress and the States acting concurrently, are vastly different. The power to interpret the Constitution is the power to ascertain its meaning, and the power to amend the Constitution is the power to change its meaning. Justice Cardozo put the distinction between the two powers tersely when he said:

We are not at liberty to revise while professing to construe (*Sun Printing and Publishing Ass'n* v. *Remington Paper and Power Co.*, 235 N.Y. 338, 139 N.E. 470).

Justice Sutherland elaborated upon the distinction in this way:

The judicial function is that of interpretation: it does not include the power of amendment under the guise of interpretation. To miss the point of difference between the two is to miss all that the phrase "supreme law of the land" stands for and to convert what was intended as inescapable and enduring mandates into mere moral reflections (*West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379, 404, 81 L. ed. 703, 715).

Ninth. Since it is a judicial tribunal, the Supreme Court acts as the interpreter of the Constitution only in a litigated case whose decision of necessity turns on some provision of that instrument. As a consequence, the function of the Supreme Court in the case is simply to ascertain and give effect to the intent of those who framed and ratified the provision in issue. If the provision is plain, the Court must gather the intent solely from its language, but if the provision is ambiguous, the Court must place itself as nearly as possible in the condition of those who framed and ratified it, and in that way determine the intent the language was used to express. For these reasons, the Supreme Court is obligated to interpret the Constitution according to its language and history.

The Founding Fathers did not put their sole reliance in these things to keep Congress and the President in bounds. They incorporated in the Constitution a system of checks and balances to deter them from improvident and unconstitutional behavior. But they did not devise a single positive provision other than the requirement of an oath or affirmation to safeguard the country against the danger that the Supreme Court might abuse its power to interpret the Constitution, and amend that instrument while professing to interpret it.

Chief Justice Harlan F. Stone had this omission in mind when he stated this truth concerning Supreme Court Justices:

While unconstitutional exercise of power by the executive and legislative branches of the government is subject to judicial restraint, the only check upon our exercise of power is our own sense of self restraint (*U.S.* v. *Butler*, 297 U.S. 1).

The omission of the Constitution to provide any real check upon unconstitutional behavior on the part of the Supreme Court was not overlooked during the contest over ratification.

Elbridge Gerry, George Mason, and others opposed ratification on this ground. Let me quote what they had to say on the subject.

Elbridge Gerry asserted:

There are no well defined limits of the Judiciary Powers, they seem to be left as a boundless ocean, that has broken over the chart of the Supreme Lawgiver, *thus far shalt thou go and no further*, and as they cannot be comprehended by the clearest capacity, or the most sagacious mind, it would be an Herculean labour to attempt to describe the dangers with which they are replete.

George Mason made this more specific objection:

The judiciary of the United States is so constructed and extended as to absorb and destroy the judiciaries of the several states.

Others declared, in substance, that under the Constitution the decisions of the Supreme Court of the United States would "not be in any manner subject to revision or correction," that "the power of construing the laws" would enable the Supreme Court of the United States "to mould them into whatever shape it" should "think proper;" that the Supreme Court of the United States could "substitute" its "own pleasure" for the law of the land; and that the "errors and usurpations of the Supreme Court of the United States" would "be uncontrollable and remediless."

Alexander Hamilton overcame these arguments, however, to the satisfaction of the ratifying States by giving them this emphatic assurance:

The supposed danger of Judiciary encroachments . . . is, in reality, a Phantom.

He declared, in essence, that this was true because the men selected to serve as Supreme Court Justices would "be chosen with a view to those qualifications which fit men for the stations of judges" and that they would give "that inflexible and uniform adherence" to legal precedents and rules, which is "indispensable in the courts of justice." He added that these qualifications could be acquired only by "long and laborious study."—Hamilton: The Federalist, Nos. 78, 81.

By these statements, Alexander Hamilton correctly declared that no man is qualified to be a judge unless he is able and willing to subject himself to the self-restraint, which is an essential ingredient of the judicial process in a government of laws.

Two questions arise: What is the self-restraint which constitutes an essential ingredient of the judicial process in a government of laws? How is it acquired?

Alexander Hamilton's statement furnishes answers for these questions.

Self-restraint is the capacity and the willingness of the qualified occupant of a judicial office to lay aside his personal

notions of what a constitutional provision ought to say and to base his interpretation of its meaning solely upon its language and history. In performing his task, he does not recklessly cast into the judicial garbage can the sound precedents of his wise predecessors.

This self restraint is usually the product of long and laborious legal work as a practicing attorney or long and laborious judicial work as a judge of an appellate court or a trial court of general jurisdiction. It is sometimes the product of long and laborious work as a teacher of law.

One does not come into possession of self restraint, however, by occupying executive or legislative offices or by rendering aid to a political party or by maintaining a friendly relationship with a President or by adhering to a particular religion or by belonging to a particular race. And, unhappily, some men of brilliant intellect and good intentions seem incapable of acquiring it or unwilling to exercise it. Daniel Webster undoubtedly had these men in mind when he said:

> Good intentions will always be pleaded for every assumption of power . . . It is hardly too strong to say that the Constitution was made to guard the people against the dangers of good intentions. There are men in all ages who mean to govern well, but they mean to govern. They promise to be good masters, but they mean to be masters.

I have discussed in detail the sound doctrine that self restraint on the part of judges is an essential ingredient of the judicial process in a government of laws.

This inquiry naturally arises: Why is this so? This inquiry is especially pertinent at a time when judicial activists declare by their actions, if not by their words, that it is permissible for them to revise or update the Constitution according to their personal notions while they are professing merely to interpret it.

Justice Benjamin N. Cardozo answered this inquiry tersely and conclusively in his illuminating book on the "Nature of the Judicial Process." In demolishing the basic premise of judicial activists that the judge is always privileged to substitute his individual sense of justice for rules of law, Justice Cardozo said:

> That might result in a benevolent despotism if the judges were benevolent men. It would put an end to the reign of law.

What has been said makes this obvious: The Founding Fathers intended that the Constitution should operate as an enduring instrument of government whose meaning could not be changed except by an amendment made by Congress and the States in conformity with article V. The contention to the contrary is necessarily founded on the assumption that George Washington and the other good and wise men who fashioned the Constitution were mendacious nitwits who did not mean what they said.

Chief Justice Marshall undertook to entomb this contention forever in his great opinion in *Gibbons* v. *Ogden,* 22 U.S. 1. He declared in that case:

> The enlightened patriots who framed our Constitution and the people who ratified it must be understood . . . to have intended what they said.

Since the true meaning of a provision of the Constitution always remains the same unless it is altered by an amendment under article V, it should receive a consistent interpretation, and not be held to mean one thing at one time and another thing at another time, even though circumstances may have so changed as to make a different rule seem desirable.

Chief Justice Edward Douglas White, one of the ablest lawyers and wisest judges ever to grace the Supreme Court Bench, made some sage comments on this subject in his famous dissenting opinion in *Pollock* v. *Farmers' Loan and Trust Co.,* 157 U.S. 429, 651–652. He said:

> In the discharge of its function of interpreting the Constitution, this Court exercises an august power. . . . It seems to me that the accomplishment of its lofty mission can only be secured by the stability of its teachings and the sanctity which surrounds them. . . . The fundamental conception of a judicial body is that of one hedged about by precedents which are binding on the court without regard to the personality of its members. Break down this belief in judicial continuity, and let it be felt that on great constitutional questions this court is to depart from the settled conclusions of its predecessors, and to determine them all according to the mere opinion of those who temporarily fill its bench, and our Constitution will, in my judgment, be bereft of value and become a most dangerous instrument to the rights and liberties of the people.

What has been said does not deny to the Supreme Court the power to overrule a prior decision in any instance where proper judicial restraint justifies such action. A sound criterion for determining when proper judicial restraint justifies a judge in overruling a precedent is to be found in the standard which Judge Learned Hand says his friend and colleague, Judge Thomas Swan, set for his own guidance:

> He will not overrule a precedent unless he can be satisfied beyond peradventure that it was untenable when made; and not even then, if it has gathered around it the support of a substantial body of decisions based on it.

In ending this phase of my remarks, I emphasize that precedents set by the Supreme Court on constitutional questions were tenable when made if they conformed to the intention of those who framed and adopted the constitutional provisions involved, no matter how inconsistent they may be with the views of Justices subsequently ascending the Bench.

For several generations, the people of America had no reason to doubt Alexander Hamilton's assurance concerning the kind of men who would be selected to sit upon the Supreme Court. With rare exceptions, Presidents appointed to the Court men who had long and laboriously participated in the administration of justice either as practicing lawyers or as judges of State courts or as judges of Federal courts inferior to the Supreme Court, and who possessed and exercised the self-restraint which constitutes an essential ingredient of the judicial process in a government of laws. As a consequence, they performed their judicial labors in obedience to the principle that it is the duty of Supreme Court Justices to interpret the Constitution, not to amend it.

Candor compels me to say, however, that these things are no longer true, and that a substantial number of recent appointees to the Supreme Court are judicial activists who seek to rewrite the Constitution in their own images by adding to that instrument things which are not in it and by subtracting from that instrument things which are in it.

I shall not make any dogmatic assertion as to why this is so. But I will have the temerity to suggest that too many political appointments have been made of late to these judicial offices.

The task at hand compels me to tell the truth about the Supreme Court.

I know it is not popular in some quarters to tell the truth about the Supreme Court. Admonitions of this character come to us daily from such quarters:

> When the Supreme Court speaks, its decisions must be accepted as sacrosanct by the bench, the bar and the people of America, even though they constitute encroachments on the constitutional domain of the President or the Congress, or tend to reduce the States to meaningless zeros and the nation's map. Indeed, the bench, the bar, and the people must do more than this. They must speak of the Supreme Court at all times with a reverence akin to that which inspired Job to speak thus of Jehovah—"Though He slay me, yet will I trust Him."

To be sure, all Americans should obey the decrees of the Supreme Court in cases to which they are parties, even though they may honestly and reasonably deem such decrees unwarranted. But it is sheer intellectual rubbish to contend that Americans are required to believe in the infallibility of Supreme Court Justices, or to make mental obeisance to their aberrations or usurpations. Americans have an inalienable right to think and speak their honest thoughts concerning all things under the sun, including the decisions of Supreme Court majorities. It is well this is so because the late Chief Justice Harlan F. Stone spoke truly when he said:

> Where the courts deal, as ours do, with great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action and fearless comment upon it.

As one who has spent much of his energy and days in the administration of justice as a practicing lawyer, and trial and appellate judge, I have the abiding conviction that "tyranny on the bench is as objectionable as tyranny on the throne," and that my loyalty to the Constitution requires me to oppose it.

I do not enjoy expressing my disapproval of actions of the Supreme Court. My father, who practiced law at the North Carolina bar for 65 years, taught me at an early age to venerate the Supreme Court. One of the most treasured memories acquired by me as a small boy is that of the day he took me to the old Supreme Court Chamber, showed me the busts of great jurists of the past, and said to me in a tone of reverential awe: "The Supreme Court will abide by the Constitution, though the heavens fall."

I regret to say, however, that the course of the Supreme Court in recent years has been such as to cause me to ponder the question whether fidelity to fact ought not to induce its members to remove from the portal of the building which houses it the majestic words,

"Equal justice under law," and to substitute for them the superscription, "Not justice under law, but justice according to the personal notions of the temporary occupants of this building."

In saying this, I am not a lone voice crying in the wilderness. I call the attention of the Senate to what the late Justice Robert H. Jackson said of the Court of which he was then a member in his concurring opinion in *Brown* v. *Allen* (344 U.S. 643).

I quote Justice Jackson's word:

> Rightly or wrongly, the belief is widely held by the practicing profession that this Court no longer respects impersonal rules of law but is guided in these matters by personal impressions which from time to time may be shared by a majority of the Justices. Whatever has been intended, this Court also has generated an impression in much of the judiciary that regard for precedents and authorities is obsolete, that words no longer mean what they have always meant to the profession, that the law knows no fixed principles.

Justice Jackson closed his observations on this score with this sage comment:

> I know of no way we can have equal justice under law except we have some law.

I hold in my hand many documents revealing that Supreme Court Justices, judges of Federal courts inferior to the Supreme Court, State judges, lawyers, and journalists have charged that during recent years a majority of the Supreme Court has repeatedly rendered decisions incompatible with the language and the history of the Constitution. To substantiate their charges, I ask unanimous consent that several of these documents, which are marked exhibit A, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit A.)

Mr. ERVIN. One of these documents is a resolution which was adopted by the chief justices of the States of Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming, at Pasadena, Calif., on August 23, 1958.

This resolution is an astounding document without precedent in the annals of our country. The 36 State chief justices who adopted it loved the Constitution and were qualified by legal learning and judicial experience to appraise aright what the judicial activists on the Supreme Court are doing to the system of government that instrument was ordained to establish. In this resolution, these State chief justices cited many recent decisions of the Supreme Court inconsistent with the powers allotted or reserved by the Constitution to the States, and implored the Supreme Court to "exercise one of the greatest of all judicial powers—the power of judicial self-restraint—by recognizing and giving effect to the difference between that which, on the one hand, the Constitution may prescribe or permit, and that which, on the other, a majority of the Supreme Court, as from time to time constituted, may deem desirable or undesirable, to the end that our system of federalism may continue to function with and through the preservation of local self-government."

The tragic truth is that in recent years, the Supreme Court has repeatedly usurped and exercised the power of the Congress and the States to amend the Constitution while professing to interpret it.

On some occasions it has encroached upon the constitutional powers of the Congress as the Nation's legislative body. On other occasions it has stretched the legislative powers of Congress far beyond their constitutional limits. On occasions too numerous to mention, it has struck down State action and State legislation in areas clearly committed by the Constitution to the States.

In so doing, the Supreme Court has overruled, repudiated, or ignored many precedents of earlier years. Its prodigality in overruling previous decisions prompted one of its recent members, the late Justice Owen J. Roberts, to make this comment in his dissenting opinion in *Smith* v. *Allwright*, 321 U.S. 649, 669:

> The reason for my concern is that the instant decision, overruling that announced about nine years ago, tends to bring adjudications of this tribunal into the same class as a restricted railroad ticket, good for this day and train only.

Supreme Court Justices attempt to justify their action in attributing new meanings to the Constitution in these ways:

First. Supreme Court decisions are binding on all persons except Supreme Court Justices. The reason for this distinction is that Supreme Court Justices must be free to consider and decide anew all constitutional questions coming before the Court. Otherwise, the Constitution will be frozen in the pattern which one generation gave it, and government will be seriously handicapped, notwithstanding the powers granted by the Constitution to the United States and the powers allotted or reserved by that instrument to the States extend into the illimitable future. Since the doctrine of stare decisis, that is, the principle that judges stand by the decisions of their own courts, would handicap Supreme Court Justices in considering and deciding anew all constitutional questions, the doctrine has become obsolete and must be disregarded, despite the fact that such a course of action will rob constitutional interpretations of their continuity and stability and leave public officials and people without meaningful constitutional rules to govern their conduct.

Second. The due process clauses of the fifth and 14th amendments empower Supreme Court Justices to strike down as unconstitutional any Federal or State laws or procedures which do not comport with their undefined notions of decency, fairness, or fundamental justice.

Third. As the majority opinion in *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663, states:

> Notions of what constitutes equal treatment for purposes of the Equal Protection Clause do change.

When the "notions" of Supreme Court Justices change, the meanings of constitutional provisions change accordingly.

One comment on the Harper case seems to be appropriate. If the Constitution is to change its meaning to match the fluctuating notions of Supreme Court Justices, America is in for an uncertain unconstitutional future. This is true because the dictionary says that notions are "more or less general, vague, or imperfect conceptions or ideas."

Time does not permit me to analyze or even enumerate all of the decisions which sustain what I have said.

I wish to cite at this point three decisions which reveal that the Supreme Court has encroached upon the constitutional powers of the Congress as the Nation's legislative body.

Congress was told by the Court in the Girouard (328 U.S. 61) and Yates (354 U.S. 298) cases that it really did not mean what it said in plain English when it enacted statutes to regulate the naturalization of aliens and to punish criminal conspiracies to overthrow the Government by force. Congress was told by the Court in the Watkins case (454 U.S. 178) that its committees must conduct their investigations according to rules imposed by the Court which make it virtually certain that no information will ever be obtained from an unwilling witness.

Two recent cases, *U.S.* v. *Guest*, 383 U.S. 745, and *Katzenbach* v. *Morgan*, 384 U.S. 641, demonstrate the readiness of the Supreme Court, as now constituted, to stretch the legislative powers of Congress far beyond their constitutional limits by attributing a newly invented meaning to section 5 of the 14th amendment. Section 5 confers upon Congress the power to enforce by appropriate legislation the provision of the first section of the 14th amendment, which forbids any State to deny to any person within its jurisdiction the equal protection of the laws.

A majority of the Supreme Court Justices gave Congress the gratuitous assurance by way of dicta in the Guest case that they would vote to hold future congressional legislation making the acts of private individuals Federal crimes under this provision of the 14th amendment, notwithstanding the language of the equal protection of the laws clause applies only to State action, and notwithstanding the Court has held without variation in a multitude of cases that Congress has no power to legislate under that clause in respect to the acts of private individuals.

It is passing strange for judges to announce in advance how they will decide a case which may never arise under a law which may never be enacted.

The Court squarely held, however, in the Morgan case that the fifth section of the 14th amendment empowers Congress to supplant a nondiscriminatory State voter qualification with a newly created Federal voting qualification, notwithstanding the State voting qualification is in complete harmony with the equal protection of the laws clause, and

notwithstanding articles I and II and the 10th and 17th amendments confer the power to prescribe voting qualifications upon the States and deny such power to the Congress.

Another recent case indicating the willingness of the Supreme Court, as now constituted, to stretch the powers of Congress far beyond their constitutional limits by devising new meanings for constitutional provisions is *South Carolina* v. *Katzenbach* (383 U.S. 301). In this case the Court held that in the exercise of its power to enforce the 15th amendment by appropriate legislation, Congress can condemn the election officials of six Southern States of violating the 15th amendment without affording them a judicial trial, and on that basis suspend the undoubted constitutional power of those States under article I, section 2, of the 10th and 17th amendments to use a nondiscriminatory voting qualification, notwithstanding the guarantee of due process of the fifth amendment, the prohibition upon congressional enactment of bills of attainder of article I, and the sound decision of ex parte Milligan that—

> The Constitution of the United States is a law for rulers and people * * * at all times and under all circumstances and no doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government.

The novel method of interpretation by which the Court reaches its decisions in the Guest, Morgan, and South Carolina cases is without parallel in our judicial annals.

It belies the essential principle that all provisions of the Constitution are of equal dignity and none must be so interpreted as to nullify or impair the others. Instead of interpreting the Constitution as a harmonious instrument in these cases, however, the Court views it as a self-destructive document consisting of mutually repugnant provisions of unequal dignity. By so doing, the Court reaches the astounding conclusion that section 5 of the 14th amendment and section 2 of the 15th amendment authorize Congress to do these things: First, to nullify constitutional powers clearly allotted or reserved to the States by article I, and article II, the 10th amendment and the 17th amendment; and, second, to pass congressional acts which the provisions allotting or reserving those constitutional powers to the States and the substantive provisions of the 14th amendment forbid it to enact.

This method of interpretation, which sanctions the use of one provision of the Constitution to nullify some other provisions, may be pleasing to judicial activists. It bodes ill, however, for the future of constitutional government.

What the judicial activists on the Supreme Court have done to the powers allotted or reserved by the Constitution to the States beggars description.

A study of the decisions invalidating State action and State legislation compels the conclusion that these Supreme Court Justices now deem themselves to be the final and infallible supervisors of the desirability or wisdom of all State action and all State legislation.

This is tragic, indeed, because there is nothing truer than the belief attributed to the late Justice Louis D. Brandeis by Judge Learned Hand:

> The States are the only breakwater against the ever pounding surf which threatens to submerge the individual and destroy the only kind of society in which personality can survive.

Time does not suffice for me to analyze or even enumerate the cases past numbering in which the Supreme Court, as now constituted, has struck down State action and State legislation in fields clearly committed to the States by the Constitution. Consequently, I shall mention only a few of them.

Seventeen States and the District of Columbia were told by the Court in the *Brown* (347 U.S. 483) and *Bolling* (347 U.S. 497) cases that the equal protection clause of the 14th amendment and the due process clause of the fifth amendment had lost their original meanings because the state of "psychological knowledge" had changed. California was told by the Court in the *Lambert* case (355 U.S. 225) that it cannot punish its residents for criminal offenses committed within its borders if such residents are ignorant of the statutes creating such criminal offenses. California was told by the Court in the first *Konigsberg* case (353 U.S. 252) that it cannot resort to cross-examination to determine the fitness or qualifications of those who apply to it for licenses to practice law in its courts. New Hampshire and Pennsylvania were told by the Court in the *Sweezey* (354 U.S. 234) and *Nelson* (350 U.S. 497) cases that they cannot investigate or punish seditious teachings or activities within their borders. New York was told by the Court in the *Slochower case* (350 U.S. 551) that it cannot prescribe standards of propriety and fitness for the teachers of its youth. North Carolina was told by the Court in the first *Williams* case (317 U.S. 287) that it cannot determine the marital status of its own citizens within its own borders.

Twenty-four States were told by the Court in the *Mapp* case (367 U.S. 643) that the fourth amendment had somehow lost its original meaning 170 years after its ratification, and that in consequence they no longer had the power which they possessed in times past to regulate the admissibility in their own courts of evidence obtained by searches and seizures. Virginia was told by the Court in the *Button* case (371 U.S. 415) that the NAACP and its attorneys were immune to prosecution or punishment for violating its law against barratry, champerty, and maintenance.

Virginia was told by the Court in the *Harper* case (383 U.S. 663) that its law requiring the payment of a polltax as a qualification for voting violated the Constitution because it is more difficult for a poor man than it is for an affluent man to pay an annual tax equal to the amount which one can earn by working 72 minutes out of the entire year at the minimum wages established by the Fair Labor Standards Act. And California was told by the Court in the Reitman case, which was handed down on May 29, 1967, that its new law repealing its open occupancy law and giving all Californians of all races freedom of choice in the sale or rental of their residential property constituted an unconstitutional discrimination against nonwhites.

For some reason too deep to fathom, the Supreme Court, as now constituted, has a solicitude for persons charged with crime which blinds it to the truth that society and the victims of crime are as much entitled to justice as the accused.

It has manifested this solicitude by repeatedly overruling State courts in criminal cases simply because it disliked their appraisal of facts on conflicting evidence. In so doing, it has ignored the obvious truth that the best judges of the trustworthiness of human testimony are the trial judges who see the witnesses, and that the evidence of a George Washington and that of an Ananais look exactly alike when reduced to cold print.

Other decisions of the Court sanction a practice by which the lowest court in the Federal Judicial System, that is, the U.S. district court, can set at naught the decisions of the highest court of a State, even in cases where the Supreme Court itself has refused to grant certiorari to review the State court decisions. Under this practice the doctrines of *res adjudicata* is virtually abolished, and the States are unable to obtain judgments having finality insofar as the accused are concerned. To minimize the chaos which this practice entails, the States have been compelled to enact statutes providing for postconviction hearings which in plain English permit the accused to try State courts after State courts have tried them.

In addition to these things the Supreme Court has recently erected some new artificial rules of evidence which apply to criminal trials in both Federal and State courts, and which greatly handicap the efforts of the prosecution to procure convictions.

The self-incrimination clause of the fifth amendment, which declares that "no person shall be compelled in any criminal case to be a witness against himself," became a part of the Constitution on June 15, 1790. From that date until June 13, 1966, the U.S. Supreme Court interpreted these words to mean what they said, that is, to have no possible application to voluntary confessions made outside court.

On June 13, 1966, the Supreme Court handed down *Miranda* v. *Arizona* (384 U.S. 346) which held that the self-incrimination clause had suddenly acquired a new meaning, and by virtue thereof it was unconstitutional under such clause for either Federal or State trial courts to admit in evidence any confession made by a suspect to a police officer having him in custody, no matter how voluntary it might be, unless such police officer first gave the suspect certain warnings which did not even exist until the decision was made.

According to the testimony of Federal and State judges, prosecuting attorneys, and law-enforcement officers before the Judiciary Subcommittee on Criminal Laws and Procedures, Federal and State courts throughout our land are being compelled to permit self-confessed murderers, rapists, burglars, robbers, and other felons to go unwhipped of justice as a consequence of the Miranda case.

On June 12, 1967, the Supreme Court handed down Gilbert against California, Stovall against Denno, and United States against Wade. In these cases the Supreme Court held for the first time that a provision, which has been in the sixth amendment since June 15, 1790, made it unconstitutional for the victim or eyewitness of a crime to look at a suspect in custody for identification purposes at any time between the commission of the crime and the trial of the case unless an attorney representing the suspect is present, and that positive testimony given by the victim or eyewitness of the crime upon oath in open court at the trial on the merits to the effect that the witness saw the crime committed and based his identification of the accused as its perpetrator solely upon what he observed at that time, would have to be excluded from consideration by the jury or court trying the facts, unless the presiding judge conducted a preliminary inquiry, and ascertained by clear and convincing evidence that the psychological certainty of the witness that the accused was the person he saw commit the crime was not influenced in any way by the unconstitutional view he had of the prisoner.

For all practical purposes, the Supreme Court Justices who joined in the Miranda, the Gilbert, the Stovall, and the Wade cases made voluntary confessions that they were amending rather than interpreting the Constitution by holding that these decisions had no retroactive effect.

In closing this phase of my remarks, I will take note of one other case, the *Board of Trust* case (353 U.S. 230) in which the Supreme Court undertook to rewrite the will of Stephen Girard, who had slumbered "in the tongueless silence of the dreamless dust" for 126 years, and who entertained the sound belief while he walked earth's surface that disposing of private property by will is a matter for its owner rather than for judges.

In making the foregoing remarks, I have been conscious of the inadequacy of language. I have necessarily used the term Supreme Court or the term Supreme Court Justices to signify members of the Court who were responsible for the decisions I have mentioned. I have not overlooked the fact, however, that most of these decisions were handed down by a sharply divided court, and that in many of them there were strong dissents by some of the Justices who asserted in no uncertain terms that the majority decisions were incompatible with the Constitution.

Complete candor compels the identification of the judicial activists now serving on the Supreme Court. While some other Justices may on occasion follow Homer's bad example and nod, the judicial activists now occupying the Supreme Court Bench are Chief Justice Warren and Justices Douglas, Brennan, and Fortas. Add to them a fifth judicial activist, and the American people will be ruled throughout the foreseeable future by the personal notions of the five rather than by the precepts of the Constitution.

What has been said makes these things as clear as the noonday sun in a cloudless sky:

First. Apart from faithful observance of the Constitution by Congress, the President, and the Supreme Court, neither our country nor any human being within its borders has any security against anarchy or tyranny.

Second. The Supreme Court can compel Congress and the President to observe the Constitution. But no authority external to themselves can compel Supreme Court Justices to observe their constitutional obligation to base their interpretation of the Constitution upon its language and history.

Third. It is idle to suggest that Congress and the States can redress the consequences of judicial usurpations by exercising their power to amend the Constitution. In the first place, the Constitution cannot be amended fast enough to redress the consequences of wholesale judicial usurpations; and in the second place, it is absurd to expect that Supreme Court Justices who do not observe the language and history of existing constitutional provisions will abide by the language and history of newly adopted amendments.

Fourth. This being true, the only restraint on unconstitutional behavior on the part of Supreme Court Justices is their own sense of self-restraint.

Fifth. No matter how great his qualifications in other respects may be, no man is fit to be a Supreme Court Justice if he lacks a sense of self-restraint or is unwilling to exercise it. The presence of such Justices on the Supreme Court imperils our most precious right—the right to be governed by the Constitution. They are invariably judicial activists, who seek to rewrite the Constitution according to their personal notions while professing to interpret and love it. Unlike the foreign conqueror, they do not rob us of our rights in one fell swoop. No. They nibble them away one by one and case by case. But the end result is the same: The destruction of constitutional government. In his Farewell Address to the American people, George Washington warned us not to travel the road which the judicial activists would have us take. He said:

> If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. . . . But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil, any partial or transient benefit which the use can at any time yield.

Sixth. This is no time to add another judicial activist to the Supreme Court. The Court, as now constituted, has already taken us a long way down the road which George Washington told us not to travel. As a consequence, words of the Constitution no longer mean what they have always meant, history and precedents are disregarded, and decisions on crucial constitutional questions are based on personal notions which a majority of the Justices happen to share from time to time.

These things mean little or nothing to those who would as soon have our country ruled by the arbitrary, uncertain and inconstant wills of judges as by the certain and constant precepts of the Constitution. But they mean everything to those of us who love the Constitution and believe it evil to twist its precepts out of shape even to accomplish ends which may be desirable.

If desirable ends are not attainable under the Constitution as written, they should be attained in a forthright manner by an amendment under article V and not by judicial alchemy which transmutes words into things they do not say. Otherwise the Constitution is a meaningless scrap of paper.

I shall now apply what I have said to the pending question: Should the Senate advise and consent to the President's nomination of Judge Thurgood Marshall to be a Supreme Court Justice?

It is clearly a disservice to the Constitution and the country to appoint a judicial activist to the Supreme Court at any time. The present composition of the Supreme Court renders the gravity of such disservice greater today than it has ever been.

In consequence of these considerations, my duty to my country compels me to vote to reject any Presidential nominee for a Supreme Court Justiceship if I have reason to believe he would be a judicial activist, who would seek to add to the Constitution things which are not in it or to subtract from the Constitution things which are in it.

Our want of clairvoyance disables us to view in advance the future behavior of another. In the nature of things, we are compelled to judge what another's behaviour will be by his past conduct and the philosophy it reflects. This being true, it is folly to assume that a Supreme Court Justice will put off his practices and philosophy of a lifetime when he puts on his judicial robes.

In a sincere effort to be fair to the nominee and faithful to my country, I have diligently studied and seriously considered Judge Marshall's past activities as a lawyer and circuit judge and the philosophy those activities reflect, and have been impelled by them to this conclusion: Judge Marshall is by practice and philosophy a legal and judicial activist, and if he is elevated to the Supreme Court, he will join other activist Justices in rendering decisions which will substantially impair, if not destroy, the right of Americans for years to come to have the Government of the United States and the several States conducted in accordance with the Constitution.

My conclusion on this score is shared by eminent commentators on the national scene. To corroborate this statement, I offer this limited documentary evidence:

First. An editorial from the Washington Star of June 14, 1967, entitled "Dr. King's Conviction."

Second. An editorial from the Washington Star of June 15, 1967, entitled "Mr. Marshall's Nomination."

Third. An article by Dana Bullen from the Washington Star of July 21, 1967, entitled "Marshall Leaves Questions Open."

Fourth. An article by Clayton Fritchey from the Washington Star of June 23,

1967, entitled "Marshall Appointment to Court Greeted Quietly."

Fifth. An article by James J. Kilpatrick from the Washington Star of June 18, 1967, entitled "Marshall's Appointment Upsets Court Balance."

Sixth. An article by David Lawrence from the Washington Star of June 16, 1967, entitled "Why Not a Woman on High Court?"

Seventh. An article by William S. White from the Washington Post of June 19, 1967, entitled "Marshall to the Court. Can Moderation Survive?"

I ask unanimous consent that copies of these editorials and articles, which I have marked exhibit B, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit B.)

Mr. ERVIN. Mr. President, I digress slightly to comment on the cliches of those who champion or seek to justify judicial activism. They assert with glibness that the Constitution is a living document which the Court must interpret with flexibility.

When they say the Constitution is a living document, they really mean that the Constitution is dead, and that activist Justices as its executors may dispose of its remains as they please. I make an additional observation on this subject: If the Constitution is, indeed, a living document, its words are binding on those who pledge themselves by oath or affirmation to support it.

What of the cliche that the Supreme Court should interpret the Constitution with flexibility? If those who employ this cliche meant by it that a provision of the Constitution should be interpreted with liberality to accomplish its intended purpose, they would find me in hearty agreement with them. But they do not employ the cliche to mean this. On the contrary, they use the cliche to mean that the Supreme Court should bend the words of a constitutional provision to one side or the other to accomplish an object the provision does not sanction. Hence, they use the cliche to thwart what the Founding Fathers had in mind when they fashioned the Constitution.

The genius of the Constitution is this: The grants of power it makes and the limitations it imposes are inflexible, but the powers it grants extend into the future and are exercisable on all occasions by the departments in which they are vested. In consequence, Congress may change at any time the laws governing any matter the Constitution commits to the Federal Government. Like observations apply to the powers the Constitution allots or reserves to the States.

I now return from my slight digression. In so doing, I wish to make emphatic a statement in William S. White's article of June 19, 1967, which declares in a nutshell what I have been trying to say with a multitude of words. I quote Mr. White:

> Still, the probabilities of the future can only be rationally estimated by the known and certain past. By this standard it is likely that Marshall's elevation will only aggravate an already profound imbalance by which an already disproportionate majority of liberal justices has for years been acting not as detached arbiters but as lawmakers, not as interpreters of the Constitution but as amenders of the Constitution to suit their own notions.

It is not strange that Judge Marshall should be a legal and judicial activist. Indeed, it would be little short of miraculous if he were not.

His activities as a practicing lawyer were calculated to make any man a constitutional iconoclast.

For years he devoted virtually all his efforts to the trial of cases in which he sought to persuade courts to attribute to the 14th and 15th amendments new meanings incompatible with the intent of those who fashioned their provisions. In so doing, he urged the courts to repudiate or ignore all history and all precedents which stood in the way of the rulings he desired.

Judge Marshall argued some of these cases with singular success before the Supreme Court, which repudiated or ignored the history of the 14th and 15th amendments, overruled or misconstrued or ignored former decisions interpreting the amendments in accord with the purpose of those who framed and ratified them, and attributed to the amendments new meanings implementing the notions of its members.

The cases in which the Supreme Court took this action are fairly familiar, and for this reason I omit any detained detailed discussion of them.

When he abandoned the practice of law for the post of judge of the U.S. Court of Appeals for the Second Circuit, Judge Marshall carried his philosophy as a constitutional iconoclast to the bench.

As a member of the court of appeals, Judge Marshall made these things manifest:

First. He accepts the thesis that the due process clause of the 14th amendment makes Supreme Court Justices and other Federal judges day-to-day Constitution-makers, and empowers them to strike down as unconstitutional any State law, procedure, or practice inconsistent with their undefined notions of decency, fairness, and fundamental justice.

Second. When "misty ideals collide with the grim realities of law enforcement," his solicitude for the accused aligns him with the judicial activists who create without constitutional warrant so-called constitutional rules of criminal procedure which handicap society in its struggle to protect law-abiding people against crime and to bring lawbreakers to justice.

The validity of these conclusions is demonstrated by *United States* v. *Wilkins*, 348 F. 2d 844, where Judge Marshall undertook to apply the fifth amendment's guaranty against double jeopardy to State criminal cases, despite contrary rulings by the Supreme Court itself; and United States against Denno, an unreported case, in which a panel of the Second Circuit Court consisting of Judge Marshall and Judge Friendly undertook to establish a new exclusionary rule allegedly based on the right-to-counsel clause of the sixth amendment, which was without support in the language of the clause and which was contrary to rulings and practices throughout the United States during the preceding 175 years.

Judge Marshall concurred in Judge Friendly's decision in the Denno case that the right-to-counsel clause of the sixth amendment had suddenly acquired a new meaning, and that by virtue thereof it was unconstitutional for the eyewitness of a crime, who happened also to be one of its victims, to look at a suspect in custody with a view to identifying or disavowing him as the perpetrator of the crime unless an attorney representing the suspect was present.

The novel holding of this panel evidently outraged the majority of the judges of the second circuit, who met en banc and reversed this ruling by a decision recorded in 355 F. 2d 731.

The Supreme Court subsequently reviewed the Denno case under the title Stovall against Denno. The court handed down the decision in the case on June 12, 1967—the same day on which it announced the Constitution-amending decisions in United States against Wade and Gilbert against California.

By the Wade and Gilbert cases, the Supreme Court decreed by a vote of 5 to 4 that subsequent to June 12, 1967, the right-to-counsel clause of the sixth amendment must be interpreted by all courts, Federal and State, to forbid the eyewitness to any crime, even though he may be its sole surviving victim, to look at any suspect in custody for identification purposes in the absence of an attorney representing the suspect.

Although it thus adopted the new constitutional concept initially conceived by Judge Marshall and Judge Friendly in the Denno case, the Supreme Court affirmed the result of the ruling of the circuit court sitting en banc, which rejected that concept, on the paradoxical ground that words, which had been in the Constitution since June 15, 1790, meant one thing before June 12, 1967, and another thing thereafter.

The fact that the Justices sitting in the Wade and Gilbert cases approved and implemented by a bare majority of one Judge Marshall's views in respect to the right-to-counsel clause of the sixth amendment emphasizes the unwisdom of adding him to the Court as it is now constituted.

This is so because it enhances the probability that if he becomes a Justice, the Supreme Court will be manned for years to come by a cohering majority of judicial activists who distrust human testimony, and for that reason invent new artificial and unrealistic rules to restrict the right of society to present and the opportunity of the jury to hear and consider in both Federal and State criminal proceedings the most reliable human testimony; that is, the voluntary confession of the accused that he committed the crime with which he stands charged, and the testimony of the eyewitness that he saw the accused commit the crime with which he stands charged.

This probability is not lessened a whit by words attributed to Judge Marshall while serving as Solicitor General which indicate that he thinks society should not be permitted to employ to detect crime the eavesdropping devices which criminals employ to prey on society.

The Senate Judiciary Committee con-

ducted hearings on the Marshall nomination. On those hearings, members of the committee put to Judge Marshall questions designed to elicit from him his philosophy of the Constitution. He was understandably reluctant to answer many of those questions.

Nevertheless, his answers to some of them did implant in my mind the indelible impression that he endorses and approves the drastic canon of construction invented by some of the Justices in the Guest, South Carolina, and Morgan cases that the Constitution is a self-destructive instrument composed of mutually repugnant provisions of unequal dignity, and that the limited power to legislate vested in Congress by section 5 of the 14th amendment and section 2 of the 15th amendment empowers Congress to legislate virtually without limitation in areas clearly committed by the Constitution to the States and thus nullify the provisions of the Constitution which forbid Congress to so legislate. The threat which this drastic canon of construction poses to the Constitution and the system of government it was fashioned to establish cannot be overmagnified. By it, the Court undertakes to vest in Congress authority to transfer to a centralized national government the powers the Constitution allots or reserves to the States and the people.

As I pass from this phase of my remarks, I ask unanimous consent that the decision in the Wilkins case, the unreported decision of the panel in the Denno case, the decision of the circuit court sitting in banc in the Denno case, and the opinions of the several Justices in Stovall against Denno be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit C.)

Mr. ERVIN. I love the Constitution. I love the Constitution with all my mind and all my heart. I love the Constitution with all my mind and all my heart because I know it was fashioned to secure to all Americans of all generations the right to be ruled by a government of laws rather than by a government of men.

I know, moreover, that apart from the faithful observance of the precepts of the Constitution by the Congress, the President, and the Supreme Court, neither our country nor any single human being within its far-flung borders has any security against anarchy on the one hand and tyranny on the other.

I have considered with diligence, and I believe with objectivity, the career of Judge Marshall and the philosophy it reflects, and I have been driven by my consideration of these things to the abiding conviction that Judge Marshall is by practice and philosophy a constitutional iconoclast, and that his elevation to the Supreme Court at this juncture of our history would make it virtually certain that for years to come, if not forever, the American people will be ruled by the arbitrary notions of Supreme Court Justices rather than by the precepts of the Constitution. I use the words "if not forever" deliberately, because history teaches that a right once lost is seldom regained. For these reasons, my duty to my country forbids me to advise and consent to Judge Marshall's appointment to the Supreme Court.

I love the Constitution. I love the Constitution with all my mind and all my heart. I am convinced that a great Senator, Daniel Webster, who also loved the Constitution with all his mind and all his heart, spoke tragic truth when he said these things 135 years ago:

> Other misfortunes may be borne, or their effects overcome. If disastrous wars should sweep our commerce from the ocean, another generation may renew it; if it exhaust our treasury, future industry may replenish it; if it desolate and lay waste our fields, still, under a new cultivation, they will grow green again, and ripen to future harvests.
>
> It were but a trifle even if the walls of wonder Capitol were to crumble, if its lofty pillars should fall, and its gorgeous decorations be all covered by the dust of the valley. All of these may be rebuilt.
>
> But who shall reconstruct the fabric of demolished government?
>
> Who shall rear again the well-proportioned columns of constitutional liberty?
>
> Who shall frame together the skillful architecture which unites national sovereignty with State Rights, individual security, and Public prosperity?
>
> No, if these columns fall, they will be raised not again. Like the Coliseum and the Parthenon, they will be destined to a mournful and melancholy immortality. Bitterer tears, however, will flow over them than ever were shed over the monuments of Roman or Grecian art; for they will be the monuments of a more glorious edifice than Greece or Rome ever saw—the edifice of constitutional American liberty.

Mr. President, I now yield the floor. But, Mr. President, in yielding the floor I make this pledge to all Americans: As long as God gives me a mind to think, a tongue to speak, and a heart to love the Constitution, I shall never yield in my purpose to do everything within my limited power to prevent the Supreme Court as well as the Congress and the President from selling your constitutional birthright for the pottage of tyranny.

EXHIBIT A

HUGO BLACK SPEAKS UP FOR JUDICIAL RESTRAINT

(By James J. Kilpatrick)

One of these days, when a definitive biography is written of Justice Hugo Black, it may well be said that June 12 was his finest single day on the bench. In the twilight of his long career, the Alabamian is laying down some superlative law.

Most of us who sit in judicial bleachers, watching their eminences perform on the basepaths, have tended to classify Black as a liberal activist on the court. Whatever may have supported that appraisal in the past, the judgment plainly demands review and modification. It is a mischievous thing to say so—and Black will fume at seeing the thought in print—but he appears to be pursuing the same course that Felix Frankfurter pursued in his last years on the court. By the time he retired in 1962, Frankfurter had become a great conservative bulwark. Black moves in the same direction.

One of the landmark cases of June 12 was United States vs. Wade, in which a majority of the court (a) laid down the rule that a defendant is entitled to counsel at the time of a police lineup, and (b) prescribed new standards for State courts on the admissibility of certain evidence of a defendant's identification. Black went along with the first rule. He dissented strongly on the second.

"There is no constitutional provision upon which I can rely that directly or by implication gives this Court power to establish what amounts to a constitutional rule of evidence to govern, not only the Federal government, but the States in their trial of State crimes under State laws in State courts. The Constitution deliberately reposed in States very broad power to create and to try crimes according to their own rules and policies."

In Black's view, his brothers not only were whittling away at sound principles of federalism, but also were rewriting the due process clause of the Fourteenth Amendment. For his own part, "I have never been able to subscribe to the dogma that the due process clause empowers this court to declare any law, including a rule of evidence, unconstitutional which it believes is contrary to tradition, decency, fundamental justice, or any of the other wide-meaning words used by judges to claim power under the due process clause. I had an abiding idea that if the Framers had wanted to let judges write the Constitution on any such day-to-day beliefs of theirs, they would have said so instead of so carefully defining their grants and prohibitions in a written constitution."

In the companion case of Stovall vs. Denno, Black expanded on his theme. His colleagues were laying down a constitutional formula which substitutes "this Court's judgment of what is right for what the Constitution declares shall be the supreme law of the land." They were asserting power "to determine what the Constitution should say instead of determining what the Constitution does say."

Black's dedication to strict construction appeared most eloquently in the masterful dissent he filed in Berger vs. New York. This was the case in which a five-man majority held that New York's carefully drawn wiretapping law was unconstitutional. It was the single worst decision of the 1966–67 term.

"As I see it," wrote Black, "the differences between the Court and me in this case rest on different basic beliefs as to our duty in interpreting the Constitution. This basic charter of our government was written in few words to define governmental powers generally on the one hand, and to define governmental limitations on the other. I believe it is the court's duty to interpret these grants and limitations so as to carry out as nearly as possible the original intent of the framers. But I do not believe that it is our duty to go further than the framers did on the theory that the judges are charged with responsibility for keeping the Constitution 'up to date.'"

In still another case, this one involving an interpretation of the National Labor Relations Act, Black again spoke up for judicial restraint. His activist brothers, he thought, were usurping the responsibilities of Congress. If the rulers of labor relations were to be changed, in order to give fresh weapons to weak unions, it was not the court's job to do it.

Yet Black was being entirely consistent, in Gilbert vs. California, when he asserted his own conviction that a "liberal construction should always be given to the Bill of Rights." His point was that when the Constitution lays down a positive, unequivocal commandment, that commandment must be obeyed all the way. An accused person cannot be compelled to incriminate himself. In Black's view, there is an end to it. Nothing more needs to be said.

Black's reputation as a judicial liberal, after 30 years on the bench, is too firmly entrenched to be easily upset. In the popular view, he doubtless will remain so classified. But through most of this term, and especially on June 12, Black was expounding the soundest conservative doctrine. With Thurgood

Marshall about to come on the court, Black's latter-day conversion—if that is what it is—merits a round of applause.

[From the CONGRESSIONAL RECORD, Aug. 10, 1964]

THE COURT OF THE UNION OR JULIUS CAESAR REVISED

Mr. ERVIN. Mr. President, on February 29, 1964, Prof. Philip B. Kurland of the Law School of the University of Chicago made a most illuminating address before a conference upon the so-called Court of the Union Amendment at the Law School of the University of Notre Dame. He entitled his address "The Court of the Union or Julius Caesar Revised."

I have been privileged from time to time to read addresses and comments of Professor Kurland upon various constitutional and legal subjects. Such reading has convinced me that Professor Kurland possesses in the highest degree an understanding of the supreme values inherent in the primary purposes of our Constitution and the dangers posed to these primary purposes by impatient officials who would sacrifice their supreme values in their zeal to accomplish in haste temporary ends which they desire. For this reason, anything which Professor Kurland may say upon constitutional subjects merits wide dissemination and deep consideration by all persons interested in constitutional government.

As a consequence, I ask unanimous consent that Professor Kurland's speech be printed at this point in the body of the RECORD.

There being no objections, the speech was ordered to be printed in the RECORD, as follows:

"THE COURT OF THE UNION OR JULIUS CAESAR REVISED

"(By Philip B. Kurland, professor of law, the University of Chicago Law School)

"(NOTE.—The paper which follows was delivered as a conference, held at the Law School of the University of Notre Dame on February 29. It will appear in a forthcoming issue of the Notre Dame Lawyer, and appears here with the permission of the editors of that journal and of the author.)

"Dean O'Meara's subpena was greeted by honest protests from me that I had nothing to contribute to the great debate over the proposed constitutional amendments that are the subject of today's conference. The dean apparently of the belief that suffering might help this audience toward moral regeneration, suggested that I come anyway. I proceed then to prove my proposition and to test his hypothesis."

I have chosen as a title for this small effort: "Julius Caesar Revised." "Revised" because, unlike Mark Antony, I have been invited here not to bury Caesar but to praise him. Our Caesar, the Supreme Court, unlike Shakespeare's Julius, does not call for a funeral oration, because the warnings of lions in the streets—instead of under the throne—were timely heeded as well as sounded. Caesar was thus able to rally his friends to fend off the death strokes that the conspirators would have inflicted. The conspiratorial leaders were the members of the Council of State Governments. The daggers they proposed to use were the chief justices of the various high State courts, to whom they would entrust, under the resounding label of "the Court of the Union," the power to review judgments of the Supreme Court of the United States whenever that tribunal dared to inhibit the power of the States. It should be made clear that the chief justices of the States would be the instruments of the crime and not its perpetrators. You will recall that when these chief justices spoke through their collective voice, the Conference of Chief Justices, in condemnation of some of the transgressions of the Supreme Court, they asked only that the physician heal himself. They did not propose any organic changes, however little they like the Court's work. Their report stated: [1]

"When we turn to the specific field of the effect of judicial decisions on Federal-State relationships we come at once to the question as to where power should lie to give the ultimate interpretation to the Constitution and to the laws made in pursuance thereof under the authority of the United States. By necessity and by almost universal common consent, these ultimate powers are regarded as being vested in the Supreme Court of the United States. Any other allocation of such power would seem to lead to chaos."

Even in the absence of Caesar's murder, however, it is possible to pose the issue raised by Brutus: whether our Caesar has been unduly ambitious and grasping of power? And implicit in this question is a second: If Caesar's ambitions do constitute a threat to the republic, is assassination the appropriate method for dealing with that threat?

The second question is easier of answer than the first. Whether Caesar be guilty or not, it would seem patently clear that his murder, as proposed, must be resisted. Its consequences could only be costly and destructive civil conflict resulting in the creation of a new Caesar in the place of the old one, a new Caesar not nearly so well-equipped to perform the task nor even so benevolent as Julius himself.

It is probably because of the obvious absurdity of the method chosen for limiting the Supreme Court's powers that there is today even more unanimity in opposition to the proposal than existed when Caesar was last attacked—not by the current self-styled patricians, but by the plebeians under the leadership of Franklin Delano Roosevelt. For then it was only the conservatives that came to the defense of the Court; the liberals were prepared to destroy it. Today, as Prof. Charles Black has made clear, even if in rather patronizing tones, the conservatives are solidly lined up in defense of an institution many of whose decisions are repugnant to them.[2] The conservatives would seem to be concerned with the preservation of the institution; the liberals with the preservation of the benefits that the current Court has awarded them. For the latter the contents of Caesar's will appears to make the difference.

It would seem, therefore, that only those close to the lunatic fringe, the Birchers and the White Citizens Councils and others of their ilk, are prepared to support the purported court-of-the-union plan. Even in the Council of State Governments the proposed amendment was supported by a majority of only one vote. The few legislatures that have voted in support of this amendment are those normally concerned with their war on Robin Hood and similarly dangerous radicals. I do not mean to suggest that the Court is not in danger of being restrained. But I do think that the proposed method of destruction is not a very real threat unless this country is already closer to Gibbon's Rome than to Caesar's.

On the other hand, to say that the plan for a Court of the Union is an absurdity is not to answer the question whether Caesar suffers from an excess of ambitions. The great debate called for by the Chief Justice at the American Law Institute meeting last May has not really concerned itself with this problem. The great debate has taken the form of rhetorical forays. Each side argues that the proposed limitation on the powers of the Court would result in the removal of national power and the enhancement of the power of the States. The forces of Cassius and Brutus argue that this is a desirable result because the dispersal of government power is the only means of assuring that individual liberty will not be trodden under the tyrannous boots of socialist egalitarianism. Antony contends that the adoption of the proposal would be to return us to fragmented confederation impotent to carry on the duties of government in the world of the 20th century. Roosevelt's words about a "horse and buggy era" are this time used in defense of the Court. With all due respect, I submit that the essential question remains unanswered. The Talmud tells us that ambition destroys its possessor. Does the Court's behavior invite its own destruction?

In what ways is it charged that this Caesar seeks for power that does not belong to him? Some such assertions can be rejected as the charges of disappointed suitors. But there are others that cannot be so readily dismissed on the ground of the malice of claimant. Allow me to itemize a few of the latter together with some supporting testimony:

Item. The Court has unreasonably infringed on the authority committed by the Constitution to other branches of the Government.

Listen to one of the recent witnesses:

"The claim for judicial relief in this case strikes at one of the fundamental doctrines of our system of government, the separation of powers. In upholding the claim, the Court attempts to effect reforms in a field in which the Constitution, as plainly as can be, has committed exclusively to the political process.

"This Court, no less than all other branches of the Government, is bound by the Constitution. The Constitution does not confer on the Court blanket authority to step into every situation where the political branch may have fallen short. The stability of this institution ultimately depends not only upon its being alert to keep the other branches of Government within constitutional bounds but equally upon recognition of the limitations on the Court's own functions in the constitutional system."

This is not the charge of a Georgia legislator. These are the words of Mr. Justice Harlan, spoken as recently as last February 17, in *Wesberry* v. *Sanders*.[3]

Item. The Supreme Court has severely and unnecessarily limited the power of the States to enforce their criminal laws.

Thus one recent critic had this to say:

" 'The rights of the States to develop and enforce their own judicial procedures, consistent with the 14th amendment, have long been recognized as essential to the concept of a healthy federalism. Those rights are today attenuated if not obliterated in the name of a victory for the 'struggle for personal liberty.' But the Constitution comprehends another struggle of equal importance and places on (the Supreme Court) the burden of maintaining it—the struggle for law and order. I regret that the Court does not often recognize that each defeat in that struggle chips away inexorably at the base of that very personal liberty which it seeks to protect. One is reminded of the exclamation of Pyrrhus: 'One more such victory * * * and we are utterly undone.' "

This, I should tell you, is not the conference of Chief Justices complaining about the abuses of Federal habeas corpus practices; it is Mr. Justice Clark expressing his dissatisfaction in *Fay* v. *Noia*.[4]

Item. The Court has revived the evils of "substantive due process," the cardinal sin committed by the Hughes Court, and the one that almost brought about its destruction.

Here another expert witness has said:

"Finally, I deem this application of 'cruel and unusual punishment' so novel that I suspect the Court was hard put to find a way to ascribe to the framers of the Constitution

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[1] Report of the committee on Federal-State Relationships as Affected by Judicial Decisions, August 1958.

[2] Black, The Occasions of Justice 80 (1963).

[3] 376 U.S. xxx, at xxx (1964).

[4] 372 U.S. 391, 446–47 (1963).

the result reached today rather than to its own notions of ordered liberty. If this case involved economic regulation, the present Court's allergy to substantive due process would surely save the statute and prevent the Court from imposing its own philosophical predilections upon State legislatures or Congress. I fail to see why the Court deems it more appropriate to write into the Constitution its own abstract notions of how best to handle the narcotics problem, for it obviously cannot match either the States or Congress in expert understanding."

This is the hand as well as the voice of Mr. Justice White in *Robinson* v. *California*.[5]

Item. The Court has usurped the powers of the National Legislature in rewriting statutes to express its own policy rather than executing the decisions made by the branch of Government charged with that responsibility.

Listen to two deponents whose right to speak to such an issue is not ordinarily challenged.

"What the Court appears to have done is to create not simply a duty of inspection, but an absolute duty to discovery of all defects; in short, it has made the B. & O. the insurer of the conditions of all premises and equipment, whether its own or others, upon which its employees may work. This is wholly salutary principle of compensation for industrial injury incorporated by workmen's compensation statutes, but it is not the one created by the FELA, which premises liability upon negligence of the employing railroad. It is my view that, as a matter of policy, employees such as the petitioner, who are injured in the course of their employment, should be entitled to prompt and adequate compensation regardless of the employer's negligence and free from traditional commonlaw rules limiting recovery. But Congress has elected a different test of liability which, until changed, courts are obliged to apply."

No, those are not the words of Mr. Justice Frankfurter, but those of this successor, Mr. Justice Goldberg, in *Shenker* v. *Baltimore & Ohio R. Co.*[6]

Listen to the same criticism in even more strident tones:

"The present case * * * will, I think, be marked as the baldest attempt by judges in modern times to spin their own philosophy into the fabric of the law, in derogation of the will of the legislature."

Here we have Mr. Justice Douglas in dissent from the opinion of Mr. Justice Black in *Arizona* v. *California*.[7]

Item. The Court writes or rewrites law for the purpose of conferring benefits on Negroes that it would not afford to others.

I offer here some testimony endorsed by Justices Harlan, Clarke, and Stewart, in *NAACP* v. *Buttons:*[8]

"No member of this Court would disagree that the validity of State action claimed to infringe rights assured by the 14th amendment is to be judged by the same basic constitutional standard whether or not racial problems are involved. No worse setback could befall the great principles established by *Brown* v. *Board of Education*, 347 U.S. 483, than to give fairminded persons reasons to think otherwise. With all respect, I believe that the striking down of this Virginia statute cannot be squared with accepted constitutional doctrine in the domain of State regulatory power over the legal profession.

Item. The Court disregards precedents at will without offering adequate reasons for change.

Mr. Justice Brennan puts his charge in short compass in *Pan American Airways* v. *United States:*[9]

"The root error, as I see it, in the Court's decision is that it works an extraordinary and unwarranted departure from the settled principles by which the antitrust and regulatory regimes of law are accommodated to each other."

Item. The Court uses its judgments not only to resolve the case before it but to prepare advisory opinions or worse, advisory opinions that do not advise.

The testimony here includes the following:

"The Court has done little more today than to supply new phrases—imprecise in scope and uncertain in meaning—for the habeas corpus vocabulary for district court judges. And because they purport to establish mandatory requirements rather than guidelines, the tests elaborated in the Court's opinion run the serious risk of becoming talismanic phrases, the mechanistic invocation of which will alone determine whether or not a hearing is to be had.

"More fundamentally, the enunciation of an elaborate set of standards governing habeas corpus hearings is in no sense required, or even invited, in order to decide the case * * * and the many pages of the Court's opinion which set these standards forth cannot, therefore, be justified even in terms of the normal function of dictum. The reasons for the rule against advisory opinions which purport to decide questions not actually in issue are too well established to need repeating at this late date."

This is not the plea by academic followers of Herbert Wechsler for principled decisions nor even an argument by Wechsler's opponents for ad hoc resolutions. It is the view of Mr. Justice Stewart in *Townsend* v. *Sain*.[10]

Item. Not unrelated to the charge just specified is the proposition that the Court seeks out constitutional problems when it could very well rest judgment on less lofty grounds.

Here is the Chief Justice himself speaking in *Communist Party* v. *Subversive Activities Control Board:*[11]

"I do not believe that strongly felt convictions on constitutional questions or a desire to shorten the course of this litigation justifies the Court in resolving any of the constitutional questions presented so long as the record makes manifest, as I think it does, the existence of nonconstitutional questions upon which this phase of the proceedings should be adjudicated. I do not think that the Court's action can be justified."

Item. The Court has unduly circumscribed the congressional power of investigation.

The testimony I offer here is not that of the chairman of the House Un-American Affairs Committee nor that of the Birch Society. It derives from Mr. Justice White's opinion in *Gibson* v. *Florida Investigation Committee:*[12]

"The net effect of the Court's decision is, of course, to insulate from effective legislation the time-proven skills of the Communist Party in subverting and eventually controlling legitimate organizations. Until such a group, chosen as an object of Communist Party action, has been effectively reduced to vassalage, legislative bodies may seek no information from the organization under attack by duty-bound Communists. When the job has been done, and the legislative committee can prove it, it then has the hollow privilege of recording another victory for the Communist Party, which both Congress and this Court have found to be an organization under the direction of a foreign power, dedicated to the overthrow of the Government if necessary by force and violence."

Item. I will close the list with the repeated charge that the due process clause of the 14th amendment as applied by the Court consists only of the "evanescent standards" of each judge's notions of natural law." The charge is most strongly supported by the opinions of Mr. Justice Black in *Adamson* v. *California*[13] and *Rochin* v. *California*,[14] to which I commend you.

I close the catalog not because it is exhausted. These constitute but a small part of Brutus' indictment and an even smaller proportion of the witnesses prepared to testify to the Court's grasp for power. These witnesses are impressive, however, for they are not enemies of the Court but part of it. Moreover, their depositions may be garnered simply by thumbing the pages of the recent volumes of the U.S. Reports, which is exactly the way that my partial catalog was created.

Let me make clear that this testimony does not prove Caesar's guilt, but only demonstrates that these charges cannot be dismissed out of hand. The fact that they are endorsed by such irresponsible groups as would support the proposed constitutional amendment does not add to their validity. But neither does such support invalidate them.

What then of Antony's defenses of Caesar?

First is the proposition that our Caesar has done no more than perform the duties with which he is charged. We have it from no less eminent an authority than Paul Freund that the Court has not exceeded its functions and he defines them thus:[15]

"First of all, the Court has a responsibility to maintain the constitutional order, the distribution of public power and the limitation on that power.

"A second great mission of the Court is to maintain a common market of continental extent against State barriers or State trade preferences.

"In the third place, there falls to the Court a vital role in the preservation of an open society, whose government is to remain both responsive and responsible. Responsive government requires freedom of expression; responsible government demands fairness of representation."

And so, Professor Freund suggests, the Court has done no more than its duty and he predicts that we shall be grateful to it:[16]

"The future is not likely to bring a lessening of governmental intervention in our personal concerns. And as science advances into outer and inner space—the far reaches of the galaxy and the deep recesses of the mind—as physical controls become possible over our genetic and our psychic constitutions, we may have reason to be thankful that some limits are set by our legal constitution. We may have reason to be grateful that we are being equipped with legal controls, with decent procedures, with access to the centers of decisionmaking, and participation in our secular destiny, for our days and for the days we shall not see."

It is not clear to me that the second defense is really different from the first. Here we are met with the proposition that the Court, politically the least responsible branch of government, has proved itself to be morally the most responsible. In short, the Court has acted because the other branches of government, State and National have failed to act. And a parade of horribles would not be imaginary that marched before us the abuses that the community has rained on the Negro; the evils of McCarthyism and the continued restrictions on freedom of thought committed by the National Legislature; the refusal of the States and the Nation to make it possible for the voices of the disenfranchised to be

[5] 370 U.S. 660, 689 (1962).
[6] 374 U.S. xxx, at xxx (1963).
[7] 374 U.S. xxx, at xxx (1963).
[8] 371 U.S. 415, 448 (1963).
[9] 371 U.S. 296, 319 (1963).
[10] 372 U.S. 293, 327 (1963).
[11] 367 U.S. 1, 116 (1961).
[12] 372 U.S. 539, 585 (1963).
[13] 332 U.S. 46, 68 (1947).
[14] 342 U.S. 165, 174 (1952).
[15] Freund, The Supreme Court Under Attack, 25 U. Pitt. L. Rev. 1, 5–6 (1963).
[16] Id., at 7.

heard, either by preventing groups from voting, or by mechanisms for continued control of the legislature by the politically entrenched, including gerrymandering, and subordination of majority rule by the filibuster and committee control of Congress; the police tactics that violate the most treasured rights of the human personality, police tactics that we have all condemned when exercised by the Nazis and the Communists. This list, too, may be extended almost to infinity. There can be little doubt that the other branches of Government have failed in meeting some of their essential obligations to provide constitutional government.

The third defense is that which I have labeled the defense of Caesar's will. It is put most frankly and tersely by Prof. John Roche in this way.[17]

"As a participant in American society in 1963—somewhat removed from the abstract world of democratic political theory—I am delighted when the Supreme Court takes action against bad policy on whatever constitutional basis it can establish or invent. In short, I accept Aristotle's dictum that the essence of political tragedy is for the good to be opposed in the name of the perfect. Thus, while I wish with Professors Wechsler and Kurland, inter alios, that Supreme Court Justices could proceed on the same principles as British judges, it does not unsettle or irritate me when they behave like Americans. Had I been a member of the Court in 1954, I would unhesitatingly have supported the constitutional death sentence on racial segregation, even though it seems to me that in a properly ordered democratic society this should be a task for the legislature. To paraphrase St. Augustine, in this world one must take his breaks where he finds them."

There then are the pleadings. I do not pretend to a capacity to decide the case. It certainly isn't ripe for summary judgment or judgment on the pleadings. I am fearful only that if the case goes to issue in this manner, the result will be chaos whichever side prevails. For, like Judge Learned Hand, I am apprehensive that if nothing protects our democracy and freedom except the bulwarks that the Court can erect, we are doomed to failure. Thus, I would answer the question that purports to be mooted today, whether the court-of-the-union amendment should be promulgated, in the words of that great judge: [18]

"And so, to sum up, I believe that for by far the greater part of their work it is a condition upon the success of our system that the judges should be independent; and I do not believe that their independence should be impaired because of their constitutional function. But the price of this immunity, I insist, is that they should not have the last word in those basic conflicts of 'right and wrong—between those whose endless jar justice resides.' You may ask then what will become of the fundamental principles of equity and fairplay which our constitutions enshrine; and whether I seriously believe that unsupported they will serve merely as counsels of moderation. I do not think that anyone can say what will be left of those principles; I do not know whether they will serve only as counsels; but this much I think I do know—that a society so riven that the spirit of moderation is gone, no court can save; that a society where that spirit flourishes, no court need save; that in a society which evades its responsibility by thrusting upon the courts the nurture of that spirit, that spirit in the end will perish."

I find then that I have come neither to praise nor to bury Caesar. I should only remind those who would destroy Caesar of the self-destruction to which the noble Brutus was brought; nor can the Antonys among us—who would use Caesar for their own ends—rejoice at his ultimate fate. For Caesar himself, I should borrow the advice given Cromwell by Wolsey: "I charge thee, fling away ambition: By that sin fell the angels."

[17] Roche, The Expatriation Cases: "Breathes There the Man With Soul So Dead?" 1963 Supreme Court Review, 325, 326 n. 4.

[18] Hand, The Spirit of Liberty 164 (2d ed. 1953).

[From U.S. News & World Report, Mar. 7, 1958]

FAMOUS JUDGE REBUKES SUPREME COURT

(By David Lawrence)

Judge Learned Hand, now retired, is one of the most eminent men ever to sit on the federal bench. For many years he presided over the Second Circuit Court of Appeals in New York, and his opinions were usually accepted by the Supreme Court of the United States. Indeed his opinions came to be regarded by the legal profession as among the most persuasive expositions of "the law of the land."

Recently Judge Hand delivered a series of three lectures before the students at Harvard Law School. He dealt with the widely debated concept that the Supreme Court may "legislate" at will.

These lectures have just been published by the Harvard University Press. While they are written in dispassionate and restrained phrases, the lesson contained therein is unmistakable. It is one of sharp rebuke of the Supreme Court for a tendency to set itself up as a "third legislative chamber."

Judge Hand issues a warning as to what the American citizen faces whenever the Supreme Court not only restricts the right of legislative bodies to legislate but itself assumes a legislative function.

Judge Hand does not confine his criticism merely to the present-day Supreme Court. He points out that an 1894 opinion of the Court foreshadowed current trends. He quotes the Court's declaration at that time that a State Legislature's "determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

Judge Hand observes that "such a definition leaves no alternative to regarding the court as a third legislative chamber." He then notes the subsequent disavowals of such a doctrine by the Supreme Court and cites a 1952 opinion which says:

"Our recent decisions make plain that we do not sit as a superlegislature to weigh the wisdom of legislation, nor to decide whether the policy which it expresses offends the public welfare."

Judge Hand remarks: "One would suppose that these decisions and the opinions that accompanied them would have put an end—at least when economic interests only were at stake—to any judicial review of a statute because the choice made [by Congress or the State Legislatures] between the values and sacrifices in conflict did not commend itself to the Court's notions of justice."

Judge Hand finds, however, that the Supreme Court recently has not only proceeded to impose its own view of what is wise or unwise legislation, irrespective of constitutional powers, but seems to have applied hostile rules where "property" was involved and softer rules where "liberty" was at issue. He says:

"I cannot help thinking that it would have seemed a strange anomaly to those who penned the words in the Fifth [Amendment] to learn that they constituted severer restrictions as to Liberty than Property, especially now that Liberty not only includes freedom from personal restraint, but enough economic security to allow its possessor the enjoyment of a satisfactory life.

"I can see no more persuasive reason for supposing that a legislature is a *priori* less qualified to choose between 'personal' than between economic values; and there have been strong protests, to me unanswerable, that there is no constitutional basis for asserting a larger measure of judicial supervision over the first than over the second."

Judge Hand puts his finger on the cases that today transcend all others as examples of usurpation of power by the Supreme Court. He says:

"The question arose in acute form in 'The Segregation Cases.' In these decisions did the Court mean to 'overrule' the 'legislative judgment' of States by its own reappraisal of the relative values at stake? Or did it hold that it was alone enough to invalidate the statutes that they had denied racial equality because the [Fourteenth] Amendment inexorably exempts that interest from legislative appraisal?

"It seems to me that we must assume that it did mean to reverse the 'legislative judgment' by its own appraisal. It acknowledged that there was no reliable inference to be drawn from the congressional debates in 1868 and it put its decision upon the 'feeling of inferiority' that 'segregation' was likely to instill in the minds of those who were educated as a group separated by their race alone.

"There is indeed nothing in the discussion [by the Supreme Court] that positively forbids the conclusion that the Court meant that racial equality was a value that must prevail against any conflicting interest, but it was not necessary to go to such an extreme. *Plessy* v. *Ferguson* [the 1896 case approving 'separate but equal' facilities] was not overruled in form anyway; it was distinguished [differentiated] because of the increased importance of education in the 56 years that had elapsed since it was decided.

"I do not see how this distinction can be reconciled with the notion that racial equality is a paramount value that State Legislatures are not to appraise and whose invasion is fatal to the validity of any statute.

"Whether the result would have been the same if the interests involved had been economic, of course, I cannot say, but there can be no doubt that at least as to 'Personal Rights' the old doctrine seems to have been reasserted.

"It is curious that no mention was made of Section Three [of the Fourteenth Amendment], which offered an escape from intervening, for it empowers Congress to 'enforce' all the preceding sections by 'appropriate legislation.'

"The Court must have regarded this as only a cumulative corrective, not being disposed to divest itself of that power of review that it has so often exercised and as often disclaimed.

"I must therefore conclude this part of what I have to say by acknowledging that I do not know what the doctrine is as to the scope of these clauses; I cannot frame any definition that will explain when the Court will assume the role of a third legislative chamber and when it will limit its authority to keeping Congress and the States within their accredited authority."

Judge Hand says he "has never been able to understand" on what basis other than as a *"coup de main"* the Supreme Court adopted the view that it may actually legislate. By *"coup de main,"* he means, of course, arbitrary usurpation of power.

Should we establish a "third legislative chamber"? This is the penetrating question asked by Judge Hand, but he adds quickly: "If we do need a third chamber it should appear for what it is, and not as the interpreter of inscrutable principles."

But Judge Hand doubts the wisdom of letting a judge "serve as a communal mentor" and deems inexpedient any such wider form of review based on the "moral radiation" of court decisions. He gives these reasons for his view:

"In the first place it is apparent, I submit, that in so far as it is made part of the

duties of judges to take sides in political controversies, their known or expected convictions or predilections will, and indeed should, be at least one determinant in their appointment and an important one.

"There has been plenty of past experience that confirms this; indeed, we have become so used to it that we accept it as a matter of course.

"No doubt it is inevitable, however circumscribed his duty may be, that the personal proclivities of an interpreter will to some extent interject themselves into the meaning he imputes to a text, but in very much the greater part of a judge's duties he is charged with freeing himself as far as he can from all personal preferences, and that becomes difficult in proportion as these are strong.

"The degree to which he will secure compliance with his commands depends in large measure upon how far the community believes him to be the mouthpiece of a public will, conceived as a resultant of many conflicting strains that have come, at least provisionally, to a consensus.

"This sanction disappears in so far as it is supposed permissible for him covertly to smuggle into his decisions his personal notions of what is desirable, however disinterested personally those may be.

"Compliance will then much more depend upon a resort to force, not a desirable expedient when it can be avoided."

Those last words could apply to the use of troops at Little Rock, which certainly was "not a desirable expedient" and could have been avoided.

There seems no doubt that Judge Hand would like to see the Supreme Court adhere to its basic function of interpreting legislation without adding laws not written by the people's legislatures. He evidently deplores the tendency to vest political power in the Supreme Court of the United States whose Justices are appointed for life. He concludes:

"For myself it would be most irksome to be ruled by a bevy of Platonic Guardians, even if I knew how to choose them, while I assuredly do not. If they were in charge, I should miss the stimulus of living in a society where I have, at least theoretically, some part in the direction of public affairs.

"Of course I know how illusory would be the belief that my vote determined anything; but nevertheless when I go to the polls I have a satisfaction in the sense that we are all engaged in a common venture."

Judge Hand has rendered a great service to contemporary understanding of the true limits of the Supreme Court's powers. For there are limits, and the Congress, acting for the people, can and should impose such limits lest we fall victim to absolutism in our own institutions.

[From U.S. News & World Report, Oct. 24, 1958]

How U.S. Judges Feel About the Supreme Court

(A critical attitude toward the Supreme Court is now found to exist among federal judges. This is revealed in a poll by "U.S. News & World Report." The poll asked federal judges whether they agreed with a report adopted recently by 36 State chief justices. That report criticized the Supreme Court for playing a "role of policy maker." Of federal judges who expressed an opinion, 54 per cent agreed with that criticism. Replying to the poll were 128 judges representing all regions of the country.)

A poll of judges in federal courts indicates that a majority of the judges who expressed an opinion are critical toward the Supreme Court of the U.S.

This majority agreed with the conclusion of a report by 36 State chief justices that the Supreme Court "too often has tended to adopt the role of policy maker without proper judicial restraint."

A minority of judges who replied disagreed with that conclusion.

There are 351 judges, active and retired, on U.S. district courts and U.S. circuit courts of appeals. These were asked by "U.S. News & World Report," in a mail questionnaire, whether they agreed or disagreed with conclusions in a report approved by the Conference of Chief Justices of State Supreme Courts.

This report, critical of the Supreme Court of the U.S., was approved, 36 to 8, in a formal vote by the Chief Justices of State Supreme Courts at their annual meeting last August. Four justices were not present at the vote; two abstained.

Full text of the report itself, more than 11,000 words, was mailed by "U.S. News & World Report" along with the questionnaire to all federal judges.

Each federal district and circuit judge was asked simply to mark an "X" before the statement "I agree" or "I disagree" with the conclusions of the report adopted by the Conference of State Chief Justices. This report did not directly concern itself with the issue of segregation of races in schools, nor did it mention the Supreme Court decision in the desegregation cases. It did criticize the Supreme Court for lack of "proper judicial restraint" in rulings that deal with the "extent and extension of federal power, and the supervision of State action by the Supreme Court by virtue of the Fourteenth Amendment."

In the poll by "U.S. News & World Report," replies were received from 128 judges, or 36.5 per cent of those polled. Replies were representative of all regions and of the full membership of judges of the U.S. district courts as well as of judges of U.S. circuit courts of appeals.

Of all those who answered the questionnaire:

Forty-six per cent expressed agreement with the conclusions of chief justices of State supreme courts.

Thirty-nine per cent disagreed with the State chief justices.

Fifteen per cent preferred not to express any view.

Of all those who did express an opinion:

Fifty-four per cent agreed with the report of the State chief justices, which said that the Supreme Court of U.S "too often has tended to adopt the role of policy maker without proper judicial restraint."

Forty-six per cent disagreed with this conclusion.

By regions, the judges voted this way:

From Washington, D.C., replies were received from 38.5 per cent of the 26 judges sitting on U.S. district courts and U.S. circuit courts of appeals.

Of those in Washington, D.C., who replied:

Eighty per cent agreed with the chief justices of the State supreme courts in their criticism of the Supreme Court of U.S.

Twenty per cent disagreed.

There were no replies received from the "no opinion" category.

It is in the nation's capital that judges are most closely in contact with the Supreme Court of U.S.

In the South, 50 per cent of the federal judges replied.

Of those who replied from the South:

Fifty-five and one-half per cent agreed with the report of the State chief justices that the Supreme Court of U.S. has acted without proper judicial restraint.

Twenty-eight per cent of judges in the South disagreed.

Sixteen and one-half per cent mailed back the questionnaire but preferred not to express a view.

(States of South: Ala., Ark., Fla., Ga., La., Miss., N.C., S.C., Tenn., Tex., Va.)

Outside the South, 33 percent of the judges replied.

Of those who replied from outside the South:

Forty-two and four-tenths per cent agreed with the report of the State chief justices in their criticism of the Supreme Court of U.S.

Forty-three and one-half percent disagreed.

Fourteen and one-tenth per cent who replied preferred not to express a view.

Of those outside the South who did express their views:

Forty-nine and four-tenths per cent agreed with the State chief justices.

Fifty and six-tenths per cent disagreed.

Gallup appraisal. A response of 36.5 per cent to a mail poll is rated by those whose business it is to conduct polls as "very good indeed."

George Gallup, Director of the American Institute of Public Opinion, when asked prior to the completion of the above poll to evaluate mail questionnaires generally, said this:

"A mail return which receives from 20 to 30 per cent of replies is about average. Anything from 30 to 40 per cent is very good.

"A questionnaire to which the recipient can give an offhand reply will get better results than a questionnaire which requires the recipient to read any lengthy document before replying. If you get a 30 to 40 per cent return, therefore, when there is a lengthy document accompanying the questionnaire, to be read by the recipient, I should say the results would be very good, indeed."

A mail poll drawing replies from 36.5 per cent of all federal judges other than those on the Supreme Court of U.S. itself is described by professional samplers of opinion as providing a fair measure of opinion of all the judges polled.

What the poll tells. The poll of U.S. district judges and judges on the U.S. circuit courts of appeals, as a result, shows this:

A majority of federal judges participating in the poll are agreed that the Supreme Court "too often" has not exercised "proper judicial restraint" in exercising its power to make policy.

This majority approved the statement of the 36 chief justices of State supreme courts that "in the light of the immense power of the Supreme Court and its practical nonreviewability in most instances, no more important obligation rests upon it, in our view, than that of careful moderation in the exercise of its policy-making role."

A majority of federal judges participating likewise agrees with the report of the chief justices of State supreme courts when it says: "We are not alone in our view that the Court, in many cases arising under the Fourteenth Amendment, has assumed what seem to us primarily legislative powers."

The poll made by "U.S. News & World Report" was conducted by mail to determine whether or not federal judges agreed or disagreed with the formal poll of State chief justices in the view expressed in their report that the Supreme Court is extending the power of the Federal Government at expense of the individual States "without proper judicial restraint."

Critics of criticism. The New York "Times" is reported to have made an effort through its own reporters to dissuade judges from participating in the poll. "Times" reporters called by telephone a number of judges and, some of these judges say, argued with them that they would not reply.

While the poll by "U.S. News & World Report" was in progress, the New York "Times" printed a story under a headline: "Judges Angered by Poll on Court, More Than a Score Express Indignation over Magazine Survey on Critical Report." This story said that New York "Times" reporters had "sampled" federal judges in "several cities." The article expressed the opinion that not a quarter of those polled would reply. In Washington another newspaper, the "Post and Times Herald," also polled some of the federal judges about the "U.S. News & World Report" poll. The "Post and Times Herald" predicted

that "less than a 20 per cent return" would be received.

The "U.S. News & World Report" poll was conducted in confidence, and judges were not asked to sign their names. A substantial number, nonetheless, did sign their names after checking the answer.

The Supreme Court of U.S. many times in the past, as now, has been a center of controversy over the use of its power. The report of chief justices of State supreme courts and the poll of judges on federal courts below the Supreme Court reveal a strong undercurrent of criticism of the Supreme Court among judges themselves. The report of the State chief justices was printed in full text in the October 3 issue of "U.S. News & World Report."

[From U.S. News & World Report, Oct. 3, 1958]

WHAT 36 STATE CHIEF JUSTICES SAID ABOUT THE SUPREME COURT

(For the first time, here is full text of historic report. The chief justices of 36 States recently adopted a report critical of the Supreme Court of the United States, declaring that the Court "has tended to adopt the role of policy maker without proper judicial restraint." This report, approved by the chief justices of three-fourths of the nation's States, found that the present Supreme Court has abused the power given to it by the Constitution. The Court is pictured as invading fields of Government reserved by the Constitution to the States. Full text of this historic document has not previously been given wide distribution. It is printed below, together with the formal resolution of approval by the Conference of State Chief Justices.)

[The Conference of Chief Justices, meeting in Pasadena, Calif., on Aug. 23, 1958, adopted a resolution submitted by its Committee on Federal-State Relationships as Affected by Judicial Decisions. Vote on the resolution was 36 to 8, with 2 members abstaining and 4 not present.]

Resolved:

1. That this Conference approves the Report of the Committee on Federal-State Relationships as Affected by Judicial Decisions submitted at this meeting.

2. That, in the field of Federal-State relationships, the division of powers between those granted to the National Government and those reserved to the State Governments should be tested solely by the provisions of the Constitution of the United States and the Amendments thereto.

3. That this Conference believes that our system of federalism, under which control of matters primarily of national concern is committed to our National Government and control of matters primarily of local concern is reserved to the several States, is sound and should be more diligently preserved.

4. That this Conference, while recognizing that the application of constitutional rules to changed conditions must be sufficiently flexible as to make such rules adaptable to altered conditions, believes that a fundamental purpose of having a written Constitution is to promote the certainty and stability of the provisions of law set forth in such a Constitution.

5. That this Conference hereby respectfully urges that the Supreme Court of the United States, in exercising the great powers confided to it for the determination of questions as to the allocation and extent of national and State powers, respectively, and as to the validity under the Federal Constitution of the exercise of powers reserved to the States, exercise one of the greatest of all judicial powers—the power of judicial self-restraint—by recognizing and giving effect to the difference between that which, on the one hand, the Constitution may prescribe or permit, and that which, on the other, a majority of the Supreme Court, as from time to time constituted, may deem desirable or undesirable, to the end that our system of federalism may continue to function with and through the preservation of local self-government.

6. That this Conference firmly believes that the subject with which the Committee on Federal-State Relationships as Affected by Judicial Decisions has been concerned is one of continuing importance, and that there should be a committee appointed to deal with the subject in the ensuing year.

FULL TEXT OF THE COMMITTEE'S REPORT AS APPROVED BY THE STATE CHIEF JUSTICES

Foreword

Your Committee on Federal-State Relationships as Affected by Judicial Decisions was appointed pursuant to action taken at the 1957 meeting of the Conference, at which, you will recall, there was some discussion of recent decisions of the Supreme Court of the United States and a resolution expressing concern with regard thereto was adopted by the Conference. This Committee held a meeting in Washington in December, 1957, at which plans for conducting our work were developed. This meeting was attended by Sidney Spector of the Council of State Governments and by Professor Philip B. Kurland of the University of Chicago Law School.

The Committee believed that it would be desirable to survey this field from the point of view of general trends rather than by attempting to submit detailed analyses of many cases. It was realized, however, that an expert survey of recent Supreme Court decisions within the area under consideration would be highly desirable in order that we might have the benefit in drafting this report of scholarly research and of competent analysis and appraisal, as well as of objectivity of approach.

Thanks to Professor Kurland and to four of his colleagues of the faculty of the University of Chicago Law School, several monographs dealing with subjects within the Committee's field of action have been prepared and have been furnished to all members of the Committee and of the Conference. These monographs and their authors are as follows:

1. "The Supreme Court, the Due Process Clause, and the In Personam Jurisdiction of State Courts," by Professor Kurland;

2. "Limitations on State Power to Deal with Issues of Subversion and Loyalty," by Assistant Professor [Roger C.] Cramton;

3. "Congress, the States and Commerce," by Professor Allison Dunham;

4. "The Supreme Court, Federalism, and State Systems of Criminal Justice," by Professor Francis A. Allen; and

5. "The Supreme Court, the Congress and State Jurisdiction Over Labor Relations," by Professor Bernard D. Meltzer.

These gentlemen have devoted much time, study and thought to the preparation of very scholarly, interesting and instructive monographs on the above subjects. We wish to express our deep appreciation to each of them for his very thorough research and analysis of these problems. With the pressure of the work of our respective courts, the members of this Committee could not have undertaken this research work and we could scarcely have hoped, even with ample time, to equal the thorough and excellent reports which they have written on their respective subjects.

It had originally been hoped that all necessary research material would be available to your Committee by the end of April and that the Committee could study it and then meet for discussion, possibly late in May, and thereafter send at least a draft of the Committee's report to the members of the Conference well in advance of the 1958 meeting; but these hopes have not been realized.

The magnitude of the studies and the thoroughness with which they have been made rendered it impossible to complete them until about two months after the original target date and it has been impracticable to hold another meeting of this Committee until the time of the Conference.

Even after this unavoidable delay had developed, there was a plan to have these papers presented at a seminar to be held at the University of Chicago late in June. Unfortunately, this plan could not be carried through, either.

We hope, however, that these papers may be published in the near future with such changes and additions as the several authors may wish to make in them. Some will undoubtedly be desired in order to include decisions of the Supreme Court in some cases which are referred to in these monographs, but in which decisions were rendered after the monographs had been prepared. Each of the monographs as transmitted to us is stated to be in preliminary form and subject to change and as not being for publication.

Much as we are indebted to Professor Kurland and his colleagues for their invaluable research aid, your Committee must accept sole responsibility for the views herein stated. Unfortunately, it is impracticable to include all or even a substantial part of their analyses in this report.

Background and perspective

We think it desirable at the outset of this report to set out some points which may help to put the report in proper perspective, familiar or self-evident as these points may be.

First, though decisions of the Supreme Court of the United States have a major impact upon federal-State relationships and have had such an impact since the days of Chief Justice Marshall, they are only a part of the whole structure of these relationships. These relations are, of course, founded upon the Constitution of the United States itself. They are materially affected not only by judicial decisions but in very large measure by acts of Congress adopted under the powers conferred by the Constitution. They are also affected, or may be affected, by the exercise of the treaty power.

Of good practical importance as affecting federal-State relationships are the rulings and actions of federal administrative bodies. These include the independent-agency regulatory bodies, such as the Interstate Commerce Commission, the Federal Power Commissions, the Securities and Exchange Commission, the Civil Aeronautics Board, the Federal Communications Commission and the National Labor Relations Board.

Many important administrative powers are exercised by the several departments of the executive branch, notably the Treasury Department and the Department of the Interior. The scope and importance of the administration of the federal tax laws are, of course, familiar to many individuals and businesses because of their direct impact, and require no elaboration.

Second, when we turn to the specific field of the effect of judicial decisions on federal-State relationships, we come at once to the question as to where power should lie to give the ultimate interpretation to the Constitution and to the laws made in pursuance thereof under the authority of the United States. By necessity and by almost universal common consent, these ultimate powers are regarded as being vested in the Supreme Court of the United States. Any other allocation of such power would seem to lead to chaos. See Judge Learned Hand's most interesting Holmes Lectures on "The Bill of Rights" delivered at the Harvard Law School this year and published by the Harvard University Press.

Third, there is obviously great interaction between federal legislation and administrative action on the one hand and decisions of the Supreme Court on the other, because of the power of the Court to interpret and apply acts of Congress and to determine the validity of administrative action and the permissible scope thereof.

Fourth, whether federalism shall continue to exist and, if so, in what form is primarily a political question rather than a judicial question. On the other hand, it can hardly be denied that judicial decisions, specifically decisions of the Supreme Court, can give tremendous impetus to changes in the allocation of powers and responsibilities as between the federal and State governments. Likewise, it can hardly be seriously disputed that on many occasions the decisions of the Supreme Court have produced exactly that effect.

Fifth, this Conference has no legal powers whatsoever. If any conclusions or recommendations at which we may arrive are to have any effect, this can only be through the power of persuasion.

Sixth, it is a part of our obligation to seek to uphold respect for law. We do not believe that this goes so far as to impose upon us an obligation of silence when we find ourselves unable to agree with pronouncements of the Supreme Court—even though we are bound by them—or when we see trends in decisions of that Court which we think will lead to unfortunate results.

We hope that the expression of our views may have some value. They pertain to matters which directly affect the work of our State courts. In this report we urge the desirability of self-restraint on the part of the Supreme Court in the exercise of the vast powers committed to it. We endeavor not to be guilty ourselves of a lack of due restraint in expressing our concern and, at times, our criticisms in making the comments and observations which follow.

Problems of federalism

The difference between matters primarily local and matters primarily national was the guiding principle upon which the framers of our national Constitution acted in outlining the division of powers between the national and State governments.

This guiding principle, central to the American federal system, was recognized when the original Constitution was being drawn and was emphasized by De Tocqueville [Alexis de Tocqueville, author of "Democracy in America"]. Under his summary of the Federal Constitution he says:

"The first question which awaited the Americans was so to divide the sovereignty that each of the different States which compose the union should continue to govern itself in all that concerned its internal prosperity, while the entire nation, represented by the Union, should continue to form a compact body and to provide for all general exigencies. The problem was a complex and difficult one. It was as impossible to determine beforehand, with any degree of accuracy, the share of authority that each of the two governments was to enjoy as to foresee all the incidents in the life of a nation."

In the period when the Constitution was in the course of adoption, the "Federalist"—No. 45—discussed the division of sovereignty between the Union and the States and said:

"The powers delegated by the Constitution to the Federal Government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation and foreign commerce. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the internal order and prosperity of the State."

Those thoughts expressed in the "Federalist," of course, are those of the general period when both the original Constitution and the Tenth Amendment were proposed and adopted. They long antedated the proposal of the Fourteenth Amendment.

The fundamental need for a system of distribution of powers between national and State governments was impressed sharply upon the framers of our Constitution not only because of their knowledge of the governmental systems of ancient Greece and Rome. They also were familiar with the government of England; they were even more aware of the colonial governments in the original States and the governments of those States after the Revolution.

Included in government on this side of the Atlantic was the institution known as the New England town meeting, though it was not in use in all of the States. A town meeting could not be extended successfully to any large unit of population, which, for legislative action, must rely upon representative government.

Local Government: "a vital force"

But it is this spirit of self-government, of local self-government, which has been a vital force in shaping our democracy from its very inception.

The views expressed by our late brother, Chief Justice Arthur T. Vanderbilt [of the New Jersey Supreme Court], on the division of powers between the national and State governments—delivered in his addresses at the University of Nebraska and published under the title "The Doctrine of the Separation of Powers and Its Present-Day Significance"—are persuasive.

He traced the origins of the doctrine of the separation of powers to four sources: Montesquieu and other political philosophers who preceded him; English constitutional experience; American colonial experience; and the common sense and political wisdom of the Founding Fathers. He concluded his comments on the experiences of the American colonists with the British Government with this sentence:

"As colonists they had enough of a completely centralized government with no distribution of powers and they were intent on seeing to it that they should never suffer such grievances from a government of their own construction."

His comments on the separation of powers and the system of checks and balances and on the concern of the Founding Fathers with the proper distribution of governmental power between the nation and the several States indicates that he treated them as parts of the plan for preserving the nation on the one side and individual freedom on the other—in other words, that the traditional tripartite vertical division of powers between the legislative, the executive and the judicial branches of government was not an end in itself, but was a means toward an end; and that the horizontal distribution or allocation of powers between national and State governments was also a means towards the same end and was a part of the separation of powers which was accomplished by the Federal Constitution. It is a form of the separation of powers with which Montesquieu was not concerned; but the horizontal division of powers, whether thought of as a form of separation of powers or not, was very much in the minds of the framers of the Constitution.

Two major developments in the federal system

The outstanding development in federal-State relations since the adoption of the National Constitution has been the expansion of the power of the National Government and the consequent contraction of the powers of the State governments. To a large extent this is wholly unavoidable and, indeed, is a necessity, primarily because of improved transportation and communication of all kinds and because of mass production.

On the other hand, our Constitution does envision federalism. The very name of our nation indicates that it is to be composed of States. The Supreme Court of a bygone day said in Texas v. White, 7 Wall. 700, 721, (1868): "The Constitution, in all its provisions, looks to an indestructible Union of indestructible States."

Second only to the increasing dominance of the National Government has been the development of the immense power of the Supreme Court in both State and national affairs. It is not merely the final arbiter of the law; it is the maker of policy in many major social and economic fields. It is not subject to the restraints to which a legislative body is subject. There are points at which it is difficult to delineate precisely the line which should circumscribe the judicial function and separate it from that of policy making.

Thus, usually within narrow limits, a court may be called upon in the ordinary course of its duties to make what is actually a policy decision by choosing between two rules, either of which might be deemed applicable to the situation presented in a pending case.

But, if and when a court in construing and applying a constitutional provision or a statute becomes a policy maker, it may leave construction behind and exercise functions which are essentially legislative in character, whether they serve in practical effect as a constitutional amendment or as an amendment of a statute. It is here that we feel the greatest concern, and it is here that we think the greatest restraint is called for. There is nothing new in urging judicial self-restraint, though there may be, and we think there is, new need to urge it.

It would be useless to attempt to review all of the decisions of the Supreme Court which have had a profound effect upon the course of our history. It has been said that the Dred Scott decision made the Civil War inevitable. Whether this is really true or not, we need not attempt to determine. Even if it is discounted as a serious overstatement, it remains a dramatic reminder of the great influence which Supreme Court decisions have had and can have.

As to the great effect of decisions of that Court on the economic development of the country, see Mr. Justice Douglas's Address on *"Stare Decisis"* [to stand by decided matters], 49 Columbia Law Review 735.

Sources of national power

Most of the powers of the National Government were set forth in the original Constitution; some have been added since. In the days of Chief Justice Marshall, the supremacy clause of the Federal Constitution and a broad construction of the powers granted to the National Government were fully developed and, as a part of this development, the extent of national control over interstate commerce became very firmly established.

The trends established in those days have never ceased to operate and, in comparatively recent years, have operated at times in a startling manner in the extent to which interstate commerce has been held to be involved, as for example in the familiar case involving an elevator operator in a loft building.

From a practical standpoint, the increase in federal revenues resulting from the Sixteenth Amendment—the income tax amendment—has been of great importance. National control over State action in many fields has been vastly expanded by the Fourteenth Amendment.

We shall refer to some subjects and types of cases which bear upon federal-State relationships.

The general welfare clause

One provision of the Federal Constitution which was included in it from the beginning but which, in practical effect, lay dormant for more than a century, is the general-welfare clause. In United States v. Butler, 297 U.S. 1, the original Agricultural Adjustment Act was held invalid. An argument was advanced in that case that the general-welfare clause would sustain the imposition of the tax and that money derived from the tax could be expended for any purposes which would promote the general welfare.

The Court viewed this argument with

favor as a general proposition, but found it not supportable on the facts of that case. However, it was not long before that clause was relied upon and applied. See Steward Machine Co. v. Davis, 301 U.S. 548, and Helvering v. Davis, 301 U.S. 690. In those cases the Social Security Act was upheld and the general-welfare clause was relied upon both to support the tax and to support the expenditures of the money raised by the Social Security taxes.

Grants-in-aid

Closely related to this subject are the so-called grants-in-aid which go back to the Morrill Act of 1862 and the grants thereunder to the so-called land-grant colleges. The extent of grants-in-aid today is very great, but questions relating to the wisdom as distinguished from the legal basis for such grants seem to lie wholly in the political field and are hardly appropriate for discussion in this report.

Perhaps we should also observe that, since the decision of Massachusetts v. Mellon, 262, U.S. 447, there seems to be no effective way in which either a State or an individual can challenge the validity of a federal grant-in-aid.

Doctrine of pre-emption

Many, if not most, of the problems of federalism today arise either in connection with the commerce clause and the vast extent to which its sweep has been carried by the Supreme Court, or they arise under the Fourteenth Amendment. Historically, cases involving the doctrine of pre-emption pertain mostly to the commerce clause.

More recently the doctrine has been applied in other fields, notably in the case of Commonwealth of Pennsylvania v. Nelson, in which the Smith Act and other federal statutes dealing with Communism and loyalty problems were held to have pre-empted the field and to invalidate or suspend the Pennsylvania antisubversive statute which sought to impose a penalty for conspiracy to overthrow the Government of the United States by force or violence. In that particular case it happens that the decision of the Supreme Court of Pennsylvania was affirmed. That fact, however, emphasizes rather than detracts from the wide sweep now given to the doctrine of pre-emption.

Labor-relations cases

In connection with commerce-clause cases, the doctrine of pre-emption, coupled with only partial express regulation by Congress, has produced a state of considerable confusion in the field of labor relations.

One of the most serious problems in this field was pointed up or created—depending upon how one looks at the matter—by the Supreme Court's decision in Amalgamated Association v. Wisconsin Employment Relations Board, 340 U.S. 383, which overturned a State statute aimed at preventing strikes and lockouts in public utilities. This decision left the States powerless to protect their own citizens against emergencies created by the suspension of essential services, even though, as the dissent pointed out, such emergencies were "economically and practically confined to a [single] State."

In two cases decided in May 28, 1958, in which the majority opinions were written by Mr. Justice Frankfurter and Mr. Justice Burton, respectively, the right of an employe to sue a union in a State court was upheld. In International Association of Machinists v. Gonzales, a union member was held entitled to maintain a suit against his union for damages for wrongful expulsion. In International Union, United Auto, etc. Workers v. Russell, an employe, who was not a union member, was held entitled to maintain a suit for malicious interference with his employment through picketing during a strike against his employer. Pickets prevented Russell from entering the plant.

Regardless of what may be the ultimate solution of jurisdictional problems in this field, it appears that, at the present time, there is unfortunately a kind of no-man's land in which serious uncertainty exists. This uncertainty is in part undoubtedly due to the failure of Congress to make its wishes entirely clear. Also, somewhat varying views appear to have been adopted by the Supreme Court from time to time.

In conection with this matter, in the case of Textile Union v. Lincoln Mills, 353 U.S. 448, the majority opinion contains language which we find somewhat disturbing. That case concerns the interpretation of Section 301 of the Labor-Management Relations Act of 1947.

Paragraph (a) of that section provides: "Suits for violation of contracts between an employer and a labor organization representing employes in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Paragraph (b) of the same section provides in substance that a labor organization may sue or be sued as an entity without the procedural difficulties which formerly attended suits by or against unincorporated associations consisting of large numbers of persons. Section 301 (a) was held to be more than jurisdictional and was held to authorize federal courts to fashion a body of federal law for the enforcement of these collective-bargaining agreements and to include within that body of federal law specific performance of promises to arbitrate grievances under collective-bargaining agreements.

What a State court is to do if confronted with a case similar to the Lincoln Mills case by no means clear. It is evident that the substantive law to be applied must be federal law, but the question remains: Where is that federal law to be found? It will probably take years for the development or the "fashioning" of the body of federal law which the Supreme Court says the federal courts are authorized to make. Can a State court act at all? If it can act and does act, what remedies should it apply? Should it use those afforded by State law, or is it limited to those which would be available under federal law if the suit were in a federal court?

It is perfectly possible that these questions will not have to be answered, since the Supreme Court may adopt the view that the field has been completely pre-empted by the federal law and committed solely to the jurisdiction of the federal courts, so that the State courts can have no part whatsoever in enforcing rights recognized by Section 301 of the Labor-Management Relations Act. Such a result does not seem to be required by the language of Section 301 nor yet does the legislative history of that section appear to warrant such a construction.

Professor Meltzer's monograph has brought out many of the difficulties in this whole field of substantive labor law with regard to the division of power between State and federal governments. As he points out, much of this confusion is due to the fact that Congress has not made clear what functions the States may perform and what they may not perform. There are situations in which the particular activity involved is prohibited by federal law, others in which it is protected by federal law, and others in which the federal law is silent. At the present time there seems to be one field in which State action is clearly permissible. That is where actual violence is involved in a labor dispute.

State law in diversity cases

Not all of the decisions of the Supreme Court in comparatively recent years have limited or tended to limit the power of the States or the effect of State laws. The celebrated case of Erie R.R. v. Tompkins, 304 U.S. 64, overruled Swift v. Tyson and established substantive State law, decisional as well as statutory, as controlling in diversity [of citizenship] cases in the federal courts. This marked the end of the doctrine of a federal common law in such cases.

In-personam jurisdiction over nonresidents

Also, in cases involving the in-personam [against the person] jurisdiction of State courts over nonresidents, the Supreme Court has tended to relax rather than tighten restrictions under the due-process clause upon State action in this field. International Shoe Co. v. Washington, 326 U.S. 310, is probably the most significant case in this development.

In sustaining the jurisdiction of a Washington court to render a judgment in personam against a foreign corporation which carries on some activities within the State of Washington, Chief Justice Stone used the now-familiar phrase that there "were sufficient contacts or ties with the State of the forum to make it reasonable and just, according to our traditional conception of fair play and substantial justice, to enforce the obligation which appellant has incurred there."

Formalistic doctrines or dogmas have been replaced by a more flexible and realistic approach, and this trend has been carried forward in subsequent cases leading up to and including McGee v. International Life Insurance Co., 355 U.S. 220, until halted by Hanson v. Denckla, 357 U.S. decided June 23, 1958.

Taxation

In the field of taxation, the doctrine of intergovernmental immunity has been seriously curtailed partly by judicial decisions and partly by statute. This has not been entirely a one-way street. In recent years, cases involving State taxation have arisen in many fields. Sometimes they have involved questions of burdens upon interstate commerce or the export-import clause, sometimes of jurisdiction to tax as a matter of due process, and sometimes they have arisen on the fringes of governmental immunity, as where a State has sought to tax a contractor doing business with the National Government. There have been some shifts in holdings. On the whole, the Supreme Court seems perhaps to have taken a more liberal view in recent years toward the validity of State taxation than it formerly took.

Other fourteenth amendment cases

In many other fields, however, the Fourteenth Amendment has been invoked to cut down State action. This has been noticeably true in cases involving not only the Fourteenth Amendment but also the First Amendment guarantee of freedom of speech or the Fifth Amendment protection against self-incrimination. State antisubversive acts have been practically eliminated by Pennsylvania v. Nelson, in which the decision was rested on the ground of pre-emption of the field by the federal statutes.

The Sweezy case—State legislative investigation

One manifestation of this restrictive action under the Fourteenth Amendment is to be found in Sweezy v. New Hampshire, 354 U.S. 234.

In that case, the State of New Hampshire had enacted a subversive-activity statute which imposed various disabilities on subversive persons and subversive organizations. In 1953, the legislature adopted a resolution under which it constituted the attorney general a one-man legislative committee to investigate violations of that act and to recommend additional legislation.

Sweezy, described as a non-Communist Marxist, was summoned to testify at the investigation conducted by the attorney general, pursuant to this authorization. He testified freely about many matters but refused to answer two types of questions: (1) inquiries concerning the activities of the Progressive Party in the State during the 1948

campaign, and (2) inquiries concerning a lecture Sweezy had delivered in 1954 to a class at the University of New Hampshire.

He was adjudged in contempt by a State court for failure to answer these questions. The Supreme Court reversed the conviction, but there is no majority opinion. The opinion of the Chief Justice, in which he was joined by Justices Black, Douglas and Brennan, started out by reaffirming the position taken in Watkins v. United States, 354 U.S. 178, that legislative investigations can encroach on First Amendment rights. It then attacked the New Hampshire Subversive Activities Act and stated that the definition of subversive persons and subversive organizations was so vague and limitless that they extended to "conduct which is only remotely related to actual subversion and which is done free of any conscious intent to be a part of such activity."

Then followed a lengthy discourse on the importance of academic freedom and political expression. This was not, however, the ground upon which these four Justices ultimately relied for their conclusion that the conviction should be reversed. The Chief Justice said in part:

"The respective roles of the legislature and the investigator thus revealed are of considerable significance to the issue before us. It is eminently clear that the basic discretion of determining the direction of the legislative inquiry has been turned over to the investigative agency. The attorney general has been given such a sweeping and uncertain mandate that it is his discretion which picks out the subjects that will be pursued, what witnesses will be summoned and what questions will be asked. In this circumstance, it cannot be stated authoritatively that the legislature asked the attorney general to gather the kind of facts comprised in the subjects upon which petitioner was interrogated." Four members of the Court, two in a concurring opinion and two in a dissenting opinion, took vigorous issue with the view that the conviction was invalid because of the legislature's failure to provide adequate standards to guide the attorney general's investigation.

Mr. Justice Frankfurter and Mr. Justice Harlan concurred in the reversal of the conviction on the ground that there was no basis for a belief that Sweezy or the Progressive Party threatened the safety of the State and, hence, that the liberties of the individual should prevail.

Mr. Justice Clark, with whom Mr. Justice Burton joined, arrived at the opposite conclusion and took the view that the State's interest in self-preservation justified the intrusion into Sweezy's personal affairs.

In commenting on this case Professor Cramton says:

"The most puzzling aspect of the Sweezy case is the reliance by the Chief Justice on delegation-of-power conceptions. New Hampshire had determined that it wanted the information which Sweezy refused to give; to say that the State has not demonstrated that it wants the information seems so unreal as to be incredible. The State had delegated power to the attorney general to determine the scope of inquiry within the general subject of subversive activities.

"Under these circumstances, the conclusion of the Chief Justice that the vagueness of the resolution violates the due-process clause must be, despite his protestations, a holding that a State legislature cannot delegate such a power."

Public-employment cases

There are many cases involving public employment and the question of disqualification therefor by reason of Communist Party membership or other questions of loyalty.

Slochower v. Board of Higher Education, 350 U.S. 551, is a well-known example of cases of this type. Two more recent cases, Lerner v. Casey, and Beilan v. Board of Public Education, both in 357 U.S. and decided on June 30, 1958, have upheld disqualifications for employment where such issues were involved, but they did so on the basis of lack of competence or fitness.

Lerner was a subway conductor in New York and Beilan was a public-school instructor. In each case the decision was by a 5-to-4 majority.

Admission to the bar

When we come to the recent cases on admission to the bar, we are in a field of unusual sensitivity. We are well aware that any adverse comment which we may make on those decisions lays us open to attack on the grounds that we are complaining of the curtailment of our own powers and that we are merely voicing the equivalent of the ancient protest of the defeated litigant—in this instance the wail of a judge who has been reversed. That is a prospect which we accept in preference to maintaining silence on a matter which we think cannot be ignored without omitting an important element on the subject with which this report is concerned.

Konigsberg v. State Bar of California, 353 U.S. 252, seems to us to reach the high-water mark so far established by the Supreme Court in overthrowing the action of a State and in denying to a State the power to keep order in its own house.

The majority opinion first hurdled the problem as to whether or not the federal question sought to be raised was properly presented to the State highest court for decision and was decided by that court. Mr. Justice Frankfurter dissented on the ground that the record left it doubtful whether this jurisdictional requirement for review by the Supreme Court had been met and favored a remand of the case for certification by the State highest court of "whether or not it did in fact pass on a claim properly before it under the due-process clause of the Fourteenth Amendment." Mr. Justice Harlan and Mr. Justice Clark shared Mr. Justice Frankfurter's jurisdictional views. They also dissented on the merits in an opinion written by Mr. Justice Harlan, of which more later.

The majority opinion next turned to the merits of Konigsberg's application for admission to the bar. Applicable State statutes required one seeking admission to show that he was a person of good moral character and that he did not advocate the overthrow of the National or State Government by force or violence. The committee of bar examiners, after holding several hearings on Konigsberg's application, notified him that his application was denied because he did not show that he met the above qualifications.

The Supreme Court made its own review of the facts.

On the score of good moral character, the majority found that Konigsberg had sufficiently established it, that certain editorials written by him attacking this country's participation in the Korean War, the actions of political leaders, the influence of "big business" on American life, racial discrimination and the Supreme Court's decision in Dennis v. United States, 341 U.S. 494, would not support any rational inference of bad moral character, and that his refusal to answer questions, "almost all" of which were described by the Court as having "concerned his political affiliations, editorials and beliefs" (353 U.S. 269), would not support such an inference either.

Meaning of refusal to answer

On the matter of advocating the overthrow of the National or State Government by force or violence, the Court held—as it had in the companion case of Schware v. Board of Bar Examiners of New Mexico, 353 U.S. 232, decided contemporaneously—that past membership in the Communist Party was not enough to show bad moral character. The majority apparently accepted as sufficient Konigsberg's denial of any present advocacy of the overthrow of the Government of the United States or of California, which was uncontradicted on the record. He had refused to answer questions relating to his past political affiliations and beliefs, which the bar committee might have used to test the truthfulness of his present claims. His refusal to answer was based upon his views as to the effect of the First and Fourteenth Amendments. The Court did not make any ultimate determination of their correctness, but—at 353 U.S. 270—said that "prior decisions by this Court indicated" that his objections to answering the questions—which we shall refer to below—were not frivolous.

The majority asserted that Konigsberg "was not denied admission to the California bar simply because he refused to answer questions."

In a footnote appended to this statement it is said, 353 U.S. 259:

"Neither the committee as a whole nor any of its members even intimated that Konigsberg would be barred just because he refused to answer relevant inquiries or because he was obstructing the committee. Some members informed him that they did not necessarily accept his position that they were not entitled to inquire into his political associations and opinions and said that his failure to answer would have some bearing on their determination whether he was qualified. But they never suggested that his failure to answer their questions was, by itself, a sufficient independent ground for denial of his application."

A "convincing" dissent

Mr. Justice Harlan's dissent took issue with these views—convincingly, we think. He quoted lengthy extracts from the record of Konigsberg's hearings before the subcommittee and the committee of the State bar investigating his application. 353 U.S. 284–309. Konigsberg flatly refused to state whether or not at the time of the hearing he was a member of the Communist Party and refused to answer questions on whether he had ever been a Communist or belonged to various organizations, including the Communist Party.

The bar committee conceded that he could not be required to answer a question if the answer might tend to incriminate him; but Konigsberg did not stand on the Fifth Amendment and his answer which came nearest to raising that question, as far as we can see, seems to have been based upon a fear of prosecution for perjury for whatever answer he might then give as to membership in the Communist Party.

We think, on the basis of the extracts from the record contained in Mr. Justice Harlan's dissenting opinion, that the committee was concerned with its duty under the statute "to certify as to this applicant's good moral character"—p. 295—and that the committee was concerned with the applicant's "disinclination" to respond to questions proposed by the Committee—p. 301—and that the committee, in passing on his good moral character, sought to test his veracity—p. 303.

The majority, however, having reached the conclusion above stated, that Konigsberg had not been denied admission to the bar simply because he refused to answer questions, then proceeded to demolish a straw man by saying that there was nothing in the California statutes or decisions, or in the rules of the bar committee which had been called to the Court's attention, suggesting that a failure to answer questions "is *ipso facto* a basis for excluding an applicant from the bar, irrespective of how overwhelming is his showing of good character or loyalty or how flimsy are the suspicions of the bar examiners."

Whether Konigsberg's "overwhelming" showing of his own good character would have been shaken if he had answered the relevant questions which he refused to answer, we cannot say. We have long been under the impression that candor is required

of members of the bar and, prior to Konigsberg, we should not have thought that there was any doubt that a candidate for admission to the bar should answer questions as to matters relating to his fitness for admission, and that his failure or refusal to answer such questions would warrant an inference unfavorable to the applicant or a finding that he had failed to meet the burden of proof of his moral fitness.

Let us repeat that Konigsberg did not invoke protection against self-incrimination. He invoked a privilege which he claimed to exist against answering certain questions. These might have served to test his veracity at the committee hearings held to determine whether or not he was possessed of the good moral character required for admission to the bar.

The majority opinion seems to ignore the issue of veracity sought to be raised by the questions which Konigsberg refused to answer. It is also somewhat confusing with regard to the burden of proof. At one point—pp. 270–271—it says that the committee was not warranted in drawing from Konigsberg's refusal to answer questions any inference that he was of bad moral character; at another—p. 273—it says that there was no evidence in the record to justify a finding that he had failed to establish his good moral character.

Also at page 273 of 353 U.S., the majority said: "We recognize the importance of leaving States free to select their own bars, but it is equally important that the State not exercise this power in an arbitrary or discriminatory manner nor in such way as to impinge on the freedom of political expression or association. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important to society and the bar itself that lawyers be unintimidated—free to think, speak and act as members of an independent bar."

The majority thus makes two stated concessions—each, of course, subject to limitations—one, that it is important to leave the States free to select their own bars and the other, that "a bar composed of lawyers of good character is a worthy objective."

Avoiding "a test of veracity"

We think that Mr. Justice Harlan's dissent on the merits, in which Mr. Justice Clark joined, shows the fallacies of the majority position. On the facts which we think were demonstrated by the excerpts from the record included in that dissent, it seems to us that the net result of the case is that a State is unable to protect itself against admitting to its bar an applicant who, by his own refusal to answer certain questions as to what the majority regarded as "political" associations and activities, avoids a test of his veracity through cross-examination on a matter which he has the burden of proving in order to establish his right to admission to the bar.

The power left to the States to regulate admissions to their bars under Konigsberg hardly seems adequate to achieve what the majority chose to describe as a "worthy objective"—"a bar composed of lawyers of good character."

We shall close our discussion of Konigsberg by quoting two passages from Mr. Justice Harlan's dissent, in which Mr. Justice Clark joined. In one, he states that "this case involves an area of federal-State relations—the right of States to establish and administer standards for admission to their bars—into which this Court should be especially reluctant and slow to enter." In the other, his concluding comment—p. 312—says: "[W]hat the Court has really done, I think, is simply to impose on California its own notions of public policy and judgment. For me, today's decision represents an unacceptable intrusion into a matter of State concern."

The Lerner and Beilan cases, above referred to, seem to indicate some recession from the intimations, though not from the decisions, in the Konigsberg and Slochower cases. In Beilan, the schoolteacher was told that his refusal to answer questions might result in his dismissal, and his refusal to answer questions pertaining to loyalty matters was held relevant to support a finding that he was incompetent. "Incompetent" seems to have been taken in the sense of unfit.

State administration of criminal law

When we turn to the impact of decisions of the Supreme Court upon the State administration of criminal justice, we find that we have entered a very broad field. In many matters, such as the fair drawing of juries, the exclusion of forced confessions as evidence, and the right to counsel at least in all serious cases, we do not believe that there is any real difference in doctrine between the views held by the Supreme Court of the United States and the views held by the highest courts of the several States.

There is, however, a rather considerable difference at times as to how these general principles should be applied and as to whether they have been duly regarded or not. In such matters the Supreme Court not only feels free to review the facts, but considers it to be its duty to make an independent review of the facts. It sometimes seems that the rule which governs most appellate courts in the view of findings of fact by trial courts is given lip service, but is actually given the least possible practical effect.

Appellate courts generally will give great weight to the findings of fact by trial courts which had the opportunity to see and hear the witnesses, and they are reluctant to disturb such findings. The Supreme Court at times seems to read the records in criminal cases with a somewhat different point of view. Perhaps no more striking example of this can readily be found than in Moore v. Michigan, 355 U.S. 155.

In the Moore case, the defendant had been charged in 1937 with the crime of first-degree murder, to which he pleaded guilty. The murder followed a rape and was marked by extreme brutality. The defendant was a Negro youth, 17 years of age at the time of the offense, and is described as being of limited education—only the seventh grade—and as being of rather low mentality.

He confessed the crime to law-enforcement officers and he expressed a desire to plead guilty and "get it over with." Before such a plea was permitted to be entered, he was interviewed by the trial judge in the privacy of the judge's chambers and he again admitted his guilt, said he did not want counsel and expressed the desire to "get it over with," to be sent to whatever institution he was to be confined in, and to be placed under observation. Following this, the plea of guilty was accepted and there was a hearing to determine the punishment which should be imposed.

About 12 years later the defendant sought a new trial, principally on the ground that he had been unfairly dealt with because he was not represented by counsel. He had expressly disclaimed any desire for counsel at the time of his trial. Pursuant to the law of Michigan, he had a hearing on this application for a new trial. In most respects his testimony was seriously at variance with the testimony of other witnesses. He was corroborated in one matter by a man who had been a deputy sheriff at the time when the prisoner was arrested and was being questioned.

The trial court, however, found in substance that the defendant knew what he was doing when he rejected the appointment of counsel and pleaded guilty, that he was then calm and not intimidated, and, after hearing him testify, that he was completely unworthy of belief. It accordingly denied the application for a new trial. This denial was affirmed by the Supreme Court of Michigan, largely upon the basis of the findings of fact by the trial court.

The Supreme Court of the United States reversed.

The latter Court felt that counsel might have been of assistance to the prisoner, in view of his youth, lack of education and low mentality, by requiring the State to prove its case against him—saying the evidence was largely circumstantial—by raising a question as to his sanity, and by presenting factors which might have lessened the severity of the penalty imposed. It was the maximum permitted under the Michigan law—solitary confinement for life at hard labor.

The case was decided by the Supreme Court of the United States in 1957. The majority opinion does not seem to have given any consideration whatsoever to the difficulties of proof which the State might encounter after the lapse of many years or the risks to society which might result from the release of a prisoner of this type, if the new prosecution should fail. They are, however, pointed out in the dissent.

Another recent case which seems to us surprising, and the full scope of which we cannot foresee, is Lambert v. California, 355 U.S., decided Dec. 16, 1957. In that case a majority of the Court reversed a conviction under a Los Angeles ordinance which required a person convicted of a felony, or of a crime which would be a felony under the law of California, to register upon taking up residence in Los Angeles.

Lambert had been convicted of forgery and had served a long term in a California prison for that offense. She was arrested on suspicion of another crime and her failure to register was then discovered and she was prosecuted, convicted and fined.

The majority of the Supreme Court found that she had no notice of the ordinance, that it was not likely to be known, that it was a measure merely for the convenience of the police, that the defendant had no opportunity to comply with it after learning of it and before being prosecuted, that she did not act willfully in failing to register, that she was not "blameworthy" in failing to do so, and that her conviction involved a denial of due process of law.

"A deviation from precedents"

This decision was reached only after argument and reargument. Mr. Justice Frankfurter wrote a short dissenting opinion in which Mr. Justice Harlan and Mr. Justice Whitaker joined. He referred to the great number of State and federal statutes which imposed criminal penalties for nonfeasance and stated that he felt confident that "the present decision will turn out to be an isolated deviation from the strong current of precedents—a derelict on the waters of the law."

We shall not comment in this report upon the broad sweep which the Supreme Court now gives to habeas-corpus proceedings. Matters of this sort seem to fall within the scope of the Committee of this Conference on the Habeas Corpus Bill which has been advocated for some years by this Conference for enactment by the Congress of the United States, and has been supported by the Judicial Conference of the United States, the American Bar Association, the Association of Attorneys General and the Department of Justice.

We cannot, however, completely avoid any reference at all to habeas-corpus matters because what is probably the most far-reaching decision of recent years on State criminal procedure which has been rendered by the Supreme Court is itself very close to a habeas-corpus case. That is the case of Griffin v. Illinois, 351 U.S. 12, which arose under the Illinois Post Conviction Procedure Act.

The substance of the holding in that case may perhaps be briefly and accurately stated in this way: If a transcript of the record, or its equivalent, is essential to an effective appeal, and if a State permits an appeal by

those able to pay for the cost of the record or its equivalent, then the State must furnish without expense to an indigent defendant either a transcript of the record at his trial, or an equivalent thereof, in order that the indigent defendant may have an equally effective right of appeal. Otherwise, the inference seems clear, the indigent defendant must be released upon habeas corpus or similar proceedings.

Probably no one would dispute the proposition that the poor man should not be deprived of the opportunity for a meritorious appeal simply because of his poverty. The practical problems which flow from the decision in Griffin v. Illinois are, however, almost unlimited and are now only in course of development and possible solution. This was extensively discussed at the 1957 meeting of this Conference of Chief Justices in New York.

We may say at this point that, in order to give full effect to the doctrine of Griffin v. Illinois, we see no basis for distinction between the cost of the record and other expenses to which the defendant will necessarily be put in the prosecution of an appeal. These include filing fees, the cost of printing the brief and of such part of the record as may be necessary, and counsel fees.

The Griffin case was very recently given retroactive effect by the Supreme Court in a *per curiam* [by the court as a whole] opinion in Eskridge v. Washington State Board of Prison Terms and Paroles, 78 S. Ct. 1061. In that case the defendant, who was convicted in 1935, gave timely notice of an appeal. His application then made for a copy of the transcript of the trial proceedings to be furnished at public expense was denied by the trial judge.

A statute provided for so furnishing a transcript if "in his (the trial judge's) opinion, justice will thereby be promoted." The trial judge found that justice would not be promoted, in that the defendant had had a fair and impartial trial, and that, in his opinion, no grave or prejudicial errors had occurred in the trial.

The defendant then sought a writ of mandate from the Supreme Court of the State, ordering the trial judge to have the transcript furnished for the prosecution of his appeal. This was denied and his appeal was dismissed.

In 1956 he instituted habeas-corpus proceedings which, on June 16, 1958, resulted in a reversal of the Washington court's decision and a remand "for further proceedings not inconsistent with this opinion." It was conceded that the "reporter's transcript" from the trial was still available. In what form it exists does not appear from the Supreme Court's opinion. As in Griffin, it was held that an adequate substitute for the transcript might be furnished in lieu of the transcript itself.

Justices Harlan and Whitaker dissented briefly on the ground that "on this record the Griffin case decided in 1956 should not be applied to this conviction occurring in 1935." This accords with the view expressed by Mr. Justice Frankfurter in his concurring opinion in Griffin that it should not be retroactive. He did not participate in the Eskridge case.

Just where Griffin v. Illinois may lead us is rather hard to say. That it will mean a vast increase in criminal appeals and a huge case load for appellate courts seems almost to go without saying. There are two possible ways in which the meritorious appeals might be taken care of and the nonmeritorious appeals eliminated.

One would be to apply a screening process to appeals of all kinds, whether taken by the indigent or by persons well able to pay for the cost of appeals. It seems very doubtful that legislatures generally would be willing to curtail the absolute right of appeal in criminal cases which now exists in many jurisdictions.

Another possible approach would be to require some showing of merit before permitting an appeal to be taken by an indigent defendant at the expense of the State.

Whether this latter approach, which we may call "screening," would be practical or not is, to say the least, very dubious. First, let us look at a federal statute and Supreme Court decisions thereunder. What is now subsection (a) of Section 1915 of Title 28, U.S.C.A. contains a sentence reading as follows: "An appeal may not be taken *in forma pauperis* [as a poor man] if the trial court certifies in writing that it is not taken in good faith."

This section or a precursor thereof was involved in Miller v. United States, 317 U.S. 192, Johnson v. United States, 352 U.S. 565, and Farley v. United States, 354 U.S. 521, 523. In the Miller case the Supreme Court held that the discretion of the trial court in withholding such a certificate was subject to review on appeal, and that, in order that such a review might be made by the Court of Appeals, it was necessary that it have before it either the transcript of the record or an adequate substitute therefor, which might consist of the trial judge's notes or of an agreed statement as to the points on which review was sought.

Similar holdings were made by *per curiam* opinions in the Johnson and Farley cases, in each of which the trial court refused to certify that the appeal was taken in good faith. In each case, though perhaps more clearly in Johnson, the trial court seems to have felt that the proposed appeal was frivolous, and hence not in good faith.

The Eskridge case, above cited, decided on June 16, 1958, rejected the screening process under the State statute there involved, and appears to require, under the Fourteenth Amendment, that a full appeal be allowed—not simply a review of the screening process, as under the federal statute above cited. The effect of the Eskridge case thus seems rather clearly to be that, unless all appeals, at least in the same types of cases, are subject to screening, none may be.

It would seem that it may be possible to make a valid classification of appeals which shall be subject to screening and of appeals which shall not. Such a classification might be based upon the gravity of the offense or possibly upon the sentence imposed. In most, if not all, States, such a classification would doubtless require legislative action. In the Griffin case, it will be recalled, the Supreme Court stated that a substitute for an actual transcript of the record would be acceptable if it were sufficient to present the points upon which the defendant based his appeal. The Supreme Court suggested the possible use of bystanders' bills of exceptions.

It seems probable to us that an actual transcript of the record will be required in most cases. For example, in cases where the basis for appeal is the alleged insufficiency of the evidence, it may be very difficult to eliminate from that part of the record which is to be transcribed portions which seem to have no immediate bearing upon this question. A statement of the facts to be agreed upon by trial counsel for both sides may be still more difficult to achieve even with the aid of the trial judge.

The danger of swamping some State appellate courts under the flood of appeals which may be loosed by Griffin and Eskridge is not a reassuring prospect. How far Eskridge may lead and whether it will be extended beyond its facts remain to be seen.

CONCLUSIONS: THE JUSTICES SUM UP

This long review, though far from exhaustive, shows some of the uncertainties as to the distribution of power which are probably inevitable in a federal system of government. It also shows, on the whole, a continuing and, we think, an accelerating trend toward increasing power of the National Government and correspondingly contracted power of the State governments.

Much of this is doubtless due to the fact that many matters which were once mainly of local concern are now parts of larger matters which are of national concern. Much of this stems from the doctrine of a strong, central Government and of the plenitude of national power within broad limits of what may be "necessary and proper" in the exercise of the granted powers of the National Government which was expounded and established by Chief Justice Marshall and his colleagues, though some of the modern extensions may and do seem to us to go to extremes. Much, however, comes from the extent of the control over the action of the States which the Supreme Court exercises under its views of the Fourteenth Amendment.

We believe that strong State and local governments are essential to the effective functioning of the American system of federal government; that they should not be sacrificed needlessly to leveling, and sometimes deadening, uniformity; and that, in the interest of active, citizen participation in self-government—the foundation of our democracy—they should be sustained and strengthened.

As long as this country continues to be a developing country and as long as the conditions under which we live continue to change, there will always be problems of the allocation of power depending upon whether certain matters should be regarded as primarily of national concern or as primarily of local concern. These adjustments can hardly be effected without some friction. How much friction will develop depends in part upon the wisdom of those empowered to alter the boundaries and in part upon the speed with which such changes are effected. Of course, the question of speed really involves the exercise of judgment and the use of wisdom, so that the two things are really the same in substance.

We are now concerned specifically with the effect of judicial decisions upon the relations between the Federal Government and the State governments. Here we think that the over-all tendency of decisions of the Supreme Court over the last 25 years or more has been to press the extension of federal power and to press it rapidly.

There have been, of course, and still are, very considerable differences within the Court on these matters, and there has been quite recently a growing recognition of the fact that our government is still a federal government and that the historic line which experience seems to justify between matters primarily of national concern and matters primarily of local concern should not be hastily or lightly obliterated. A number of Justices have repeatedly demonstrated their awareness of problems of federalism and their recognition that federalism is still a living part of our system of government.

The extent to which the Supreme Court assumes the function of policy maker is also of concern to us in the conduct of our judicial business. We realize that in the course of American history the Supreme Court has frequently—one might, indeed, say customarily—exercised policy-making powers going far beyond those involved, say, in making a selection between competing rules of law.

We believe that, in the fields with which we are concerned and as to which we feel entitled to speak, the Supreme Court too often has tended to adopt the role of policy maker without proper judicial restraint. We feel this is particularly the case in both of the great fields we have discussed—namely, the extent and extension of the federal power, and the supervision of State action by the Supreme Court by virtue of the Fourteenth Amendment. In the light of the immense power of

the Supreme Court and its practical nonreviewability in most instances, no more important obligation rests upon it, in our view, than that of careful moderation in the exercise of its policy-making role. We are not alone in our view that the Court, in many cases arising under the Fourteenth Amendment, has assumed what seem to us primarily legislative powers. See Judge Learned Hand on the Bill of Rights.

We do not believe that either the framers of the original Constitution or the possibly somewhat less gifted draftsmen of the Fourteenth Amendment ever contemplated that the Supreme Court would, or should, have the almost unlimited policy-making powers which it now exercises.

It is strange, indeed, to reflect that, under a Constitution which provides for a system of checks and balances and of distribution of power between national and State governments, one branch of one government—the Supreme Court—should attain the immense and, in many respects, dominant power which it now wields. We believe that the great principle of distribution of powers among the various branches of government and between levels of government has vitality today and is the crucial base of our democracy.

We further believe that, in construing and applying the Constitution and laws made in pursuance thereof, this principle of the division of power based upon whether a matter is primarily of national or of local concern should not be lost sight of or ignored, especially in fields which bear upon the meaning of a constitutional or statutory provision, or the validity of State action presented for review. For, with due allowance for the changed conditions under which it may or must operate, the principle is as worthy of our consideration today as it was of the consideration of the great men who met in 1787 to establish our nation as a nation.

"Doubt" in recent decisions

It has long been an American boast that we have a government of laws and not of men. We believe that any study of recent decisions of the Supreme Court will raise at least considerable doubt as to the validity of that boast. We find first that, in constitutional cases, unanimous decisions are comparative rarities and that multiple opinions, concurring or dissenting, are common occurrences.

We find next that divisions in result on a 5-to-4 basis are quite frequent. We find further that, on some occasions, a majority of the Court cannot be mustered in support of any one opinion and that the result of a given case may come from the divergent views of individual justices who happen to unite on one outcome or the other of the case before the Court.

We further find that the Court does not accord finality to its own determinations of constitutional questions, or for that matter of others. We concede that a slavish adherence to *stare decisis* could at times have unfortunate consequences; but it seems strange that under a constitutional doctrine which requires all others to recognize the Supreme Court's rulings on constitutional questions as binding ajudications of the meaning and application of the Constitution, the Court itself has so frequently overturned its own decisions thereon, after the lapse of periods varying from 1 year to 75, or even 95 years. See the tables appended to Mr. Justice Douglas's address on *"Stare Decisis,"* 49 Columbia Law Review 735, 756–758.

The Constitution expressly sets up its own procedures for amendment, slow or cumbersome though they may be.

These frequent differences and occasional overrulings of prior decisions in constitutional cases cause us grave concern as to whether individual views of the members of the Court as from time to time constituted, or of a majority thereof, as to what is wise or desirable do not unconsciously override a more dispassionate consideration of what is or is not constitutionally warranted. We believe that the latter is the correct approach, and we have no doubt that every member of the Supreme Court intends to adhere to that approach, and believes that he does so.

It is our earnest hope, which we respectfully express, that that great Court exercise to the full its power of judicial self-restraint by adhering firmly to its tremendous, strictly judicial powers and by eschewing, so far as possible, the exercise of essentially legislative powers when it is called upon to decide questions involving the validity of State action, whether it deems such action wise or unwise. The value of our system of federalism, and of local self-government in local matters which it embodies, should be kept firmly in mind, as we believe it was by those who framed our Constitution.

At times the Supreme Court manifests, or seems to manifest, an impatience with the slow workings of our federal system. That impatience may extend to an unwillingness to wait for Congress to make clear its intention to exercise the powers conferred upon it under the Constitution, or the extent to which it undertakes to exercise them, and it may extend to the slow processes of amending the Constitution which that instrument provides.

The words of Elihu Root on the opposite side of the problem, asserted at a time when demands were current for recall of judges and judicial decisions, bear repeating: "If the people of our country yield to impatience which would destroy the system that alone makes effective these great impersonal rules and preserves our constitutional government, rather than endure the temporary inconvenience of pursuing regulated methods of changing the law, we shall not be reforming. We shall not be making progress, but shall be exhibiting that lack of self-control which enables great bodies of men to abide the slow process of orderly government rather than to break down the barriers of order when they are struck by the impulse of the moment." Quoted in 31 "Boston University Law Review" 43.

We believe that what Mr. Root said is sound doctrine to be followed toward the Constitution, the Supreme Court and its interpretation of the Constitution. Surely, it is no less incumbent upon the Supreme Court, on its part, to be equally restrained and to be as sure as is humanly possible that it is adhering to the fundamentals of the Constitution with regard to the distribution of powers and the separation of powers, and with regard to the limitations of judicial power which are implicit in such separation and distribution, and that it is not merely giving effect to what it may deem desirable.

We may expect the question as to what can be accomplished by the report of this Committeee or by resolutions adopted in conformity with it. Most certainly some will say that nothing expressed here would deter a member or group of members of an independent judiciary from pursuing a planned course.

Let us grant that this may be true. The value of a firm statement by us lies in the fact that we speak as members of all the State appellate courts with a background of many years' experience in the determination of thousands of cases of all kinds. Surely there are those who will respect a declaration of what we believe.

And it just could be true that our statement might serve as an encouragement to those members of an independent judiciary who now or in the future may in their conscience adhere to views more consistent with our own.

REPORT ON HIGH COURT: WHO WROTE IT, WHO APPROVED IT

These 10 State justices were members of the committee which drew up the report on the Supreme Court:

Frederick W. Brune, Chief Judge of Maryland, Chairman.

Albert Conway, Chief Judge of New York.

John R. Dethmers, Chief Justice of Michigan.

William H. Duckworth, Chief Justice of Georgia.

John E. Hickman, Chief Justice of Texas.

John E. Martin, Chief Justice of Wisconsin.

Martin A. Nelson, Associate Justice of Minnesota.

William C. Perry, Chief Justice of Oregon.

Taylor H. Stukes, Chief Justice of South Carolina.

Raymond S. Wilkins, Chief Justice of Massachusetts.

Also voting to approve the report were chief justices from 26 other States: Alabama, Arizona, Colorado, Delaware, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, South Dakota, Tennessee, Virginia, Washington, Wyoming.

Voting against the report were chief justices from seven States, one territory: California, New Jersey, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, Hawaii.

Abstaining: Nevada, North Dakota.

Not present: Arkansas, Connecticut, Indiana, Puerto Rico.

[From U.S. News & World Report, Dec. 12, 1958]

WHAT A STATE CHIEF JUSTICE SAYS ABOUT THE SUPREME COURT

(From a noted jurist comes a warning about the U.S. Supreme Court. A group of Justices, he says, is using judicial decisions to rewrite the Constitution. The trend of their decisions is described as creating a dangerous concentration of power in Washington. John R. Dethmers was chairman of the recent Conference of State Chief Justices which adopted a resolution criticizing the Court.)

(By John R. Dethmers, Chief Justice, Supreme Court of Michigan)

The role of the courts in tomorrow's America is foreshadowed by their performance yesterday and today. Awareness of where we started, where we now are and the trends which brought us there brings prescience of our destination if those trends continue unabated.

In all history no other people has enjoyed the equal of American liberty and freedom of opportunity. The Founding Fathers planned it so. They determined that here the state should exist for man, not man for the state.

To achieve that end they knew it would not be enough to establish majority rule, a government by the people, for at times no other tyranny can match that of an unfettered, shifting majority, which Jefferson termed an "elective despotism." To safeguard against this eventuality a written Constitution was adopted, limiting the powers of the majority for the protection of the individual and spelling out guarantees of personal rights.

A further protection of human freedom against the dangers inherent in a high concentration of governmental powers was contrived by separation of those powers in three branches of Government and a division of powers between the national and State governments. The rights of the people were believed, by our forebears, to be safest under a retention of the highest possible degree of local self-government.

Having provided for this by express constitutional terms, they undertook to forestall an enhancement, through judicial construction, of the national powers at the expense of State and local governments or the people by adopting the Tenth Amendment reserving to the States and the people all powers not delegated to the United States

by the Constitution nor prohibited by it to the States.

Sir William Gladstone said of the American Constitution that it is the "most wonderful work ever struck off at a given time by the brain and purpose of man." Throughout the years a great reverence for it has developed in the American people. They have come to regard it as the guardian of their liberties. What a thrilling experience it is to view the original document, under glass, at the National Archives Building in Washington!

The glow of that experience soon gives way, however, to the sobering thought that an inanimate parchment, however noble the sentiments inscribed thereon cannot be self-executing. For that, some human agency is required. Lawyers and judges need not be told, but all too often laymen must, that it is the courts which breathe the breath of life into its provisions and make its guarantees meaningful.

How often, at the instance of the humblest citizen, have the courts upheld the constitutional rights and privileges of persons by denying validity and enforcement to legislative enactments violative thereof or by prohibiting the invasion or curtailment of them by administrative officials. The courts are the final bastion of our liberties. As in the past, so in tomorrow's America their role will be vital.

In the exercise of that all-important role, the courts proceed on no express constitutional authority. That they should do as they do is, however, implicit in Anglo-American jurisprudential tradition. How can courts decide cases before them involving some claimed right under a statute or some grievance flowing from official action unless they determine first the issue whether such statute or action squares with constitutional rights, guarantees or limitations?

When, some decades ago, Brazil desired to establish a new form of government, its people adopted a Constitution and, under it, established a federal union of States, both almost duplicating our own. Despite the similarity, while we have continued to enjoy government by the people, Brazil's history has been one of recurrent dictatorships. What was lacking in Brazil, but present here, to make the constitutionally guaranteed rights of the people effective? The answer appears to be the tradition here that courts may decide cases against the Government and for persons to enforce their rights.

A tradition such as this can survive only so long as it is sustained by public opinion. And it is so with the courts decisions, upholding the constitutional rights of persons against infringement by Government. The courts are possessed of no armed constabulary to enforce their judgments. Their decisions are given vitality and effectiveness only by the force of public opinion, which even those in Government dare not, for long, to defy. There can be no doubt that, in past decades, the majority of the people have favored court decisions protecting the rights of individuals and has wanted the courts to perform in that fashion. Once the public becomes disinterested or withdraws its support, court decisions will lose their force and we will have witnessed the beginning of the end of ordered liberty and our free institutions.

One must experience some concern for our liberties, then, in noting an apparent diminution of public confidence in the judicial process stemming from nation-wide attacks currently being leveled at our courts and, particularly, the Supreme Court of the United States.

This, of course, has happened before. It goes back, at least, to 1803 and the case of Marbury v. Madison, in which the Court declared its power to pass on the constitutionality of acts of Congress. Presidential wrath was incurred, congressional threats to impeach the Justices ensued, and it was vigorously asserted that each branch of the Government should determine for itself the constitutionality of its acts, without overlordship by the courts.

Then came McCulloch v. Maryland, announcing the doctrine of federal supremacy and the power of the United States Supreme Court to hold State action volative of the Federal Constitution. It was urged then that the Court be deprived of its power to reviewed the acts of States.

The Dred Scott decision of a century ago is still remembered as a contributing factor to the furor which culminated in the Civil War. In the 1930s a hue and cry was raised against "the nine old men," traveling in the horse-and-buggy days, thwarting the will of a determined Chief Executive with respect to social legislation.

Present-day attacks, perhaps more virulent and widespread than ever before, emanate from a number of sources: from the halls of Congress, where it is felt that Court decisions have impinged on congressional powers; from States which see in the decisions a sapping of their powers and a gathering of them into the National Government; from sectional groups which view certain decisions as destructive of their social structures; and from persons everywhere who are fearful that decisions are enlarging the national power to constrict the right of law-abiding people and, yet, are weakening our defenses against the enemies of our free institutions. Whether justified of not, these feelings, beliefs, views and fears have produced a combined outburst of criticism which cannot be ignored.

With the criticism have come proposals to curb the Court. These go to the very roots of our system. One would make the Justices subject to periodic reconfirmation by the Senate and another would empower the Senate to withdraw confirmation whenever the judicial work of a Justice does not comport with the Senate's views as to what is "good behavior," fixed by the Constitution as a condition to continued tenure.

Lost would be judicial independence and destroyed our system of checks and balances between the three branches of Government, leaving a Court dependent on legislative favor and approval for performance of its role as protector of the rights of the people against governmental encroachment.

LIMITING THE "POWER OF REVIEW"

By another measure, Congress would strip the Supreme Court of the power to review in several areas of the law. If the powers of the Court to determine constitutional questions were, thus, to be limited, the constitutional rights of individuals and minorities could be made to depend on the will of the majority as reflected in Congress. That would mark the beginning of parliamentary, and the end of constitutional, government in the United States.

In view of the unlikelihood of success for such proposals, however, it must be concluded that, for our liberties, the most serious consequence of the present controversy inheres in the unbridled attacks on the intelligence, integrity and motives of the Justices and on the Court as an institution of Government. Subversives and those bent on the destruction of our system have as a prime objective the undermining of public confidence in the courts, knowing full well that, without the support of public opinion, courts can avail nothing in defense of the constitutional rights of persons. As earlier observed, when that day comes we will have reached a parting of the ways with our cherished freedoms.

In warning of the dangers of intemperate attacks on the Court as an institution of government and the guardian of our liberties, I do not suggest that the Court's decisions may not be criticized or differences therewith expressed. Dissenting members of the Court do so with apparent relish and regularity. Citizens under a government by the people may and ought to do no less, if that system is to be maintained. That was a major object of the First Amendment guarantee of freedom of speech, designed to insure a Government sensitive and responsive to the expressed public will and wish.

On this subject, Mr. Chief Justice Stone said:

"I have no patience with the complaint that criticism of judicial action involves any lack of respect for the courts. When the courts deal, as ours do, with great public questions, the only protection against unwise decisions and even judicial usurpation, is careful scrutiny of their actions and fearless comment upon it."

STATE JUDGES' VIEW OF COURT

This brings us to consideration of that portion of the subject matter which, I apprehend, prompted the invitation to me to speak on this occasion. As is well known, the Conference of Chief Justices, assembled in Pasadena last August, adopted a report prepared by its Committee on Federal-State Relationships as Affected by Judicial Decisions.

At the outset, permit me to make these observations:

1. Neither that committee, its report or the conference presumed then, nor do I now, to criticize the Supreme Court's decisions in the troublesome segregation cases.

2. It was not questioned that, with government under a Constitution made by its own terms the supreme law of the land, someone must interpret that Constitution and declare its meaning. It was acknowledged, and I reiterate with conviction, that no body is better suited to the task than the Supreme Court and no process is better adapted than the judicial process to the function of determining constitutional meaning and making constitutional limitations and guarantees effective.

3. The conference's expressed alarm, and mine, at the noticeable trend toward increased national powers accompanied by a diminishing of the powers of States and local governments relates not to mere sectional or selfish interests but springs from the same concern as that of our Founding Fathers that liberty's cause may be lost in too high a concentration of powers in the National Government, and from the conviction that safety for the rights of man inheres in a diffusion of those powers and maintenance of the highest possible degree of local self-government compatible with national security and well-being.

So long as we adhere to the determination of the Fathers that the state, the Government, exists for man and not man for the state, our lodestar in the consideration of every proposed extension or withholding of governmental power must always be, "How will the cause of freedom best be served, how the rights of man advanced?"

That there has been a trend toward centralization in Washington can scarcely be gainsaid. Challenged at mileposts along the way, it has advanced under the green light of judicial decisions. Time will not permit mention of them all nor a thorough analysis of any. The first relates to the rule long adhered to by the Court and redeclared as recently as 1936 that neither the federal nor State government may tax the income of officials or employes of the other, on the principle that a tax on income is a tax on its source and that the one Government may not levy a tax which will impose a burden on the governmental activities of the other.

This was overruled by a 1938 decision. That a burden was imposed upon the States by this judicial change in the law is evidenced by the subsequent necessity for increasing the salaries of State employes in an amount commensurate with the resultant tax exaction.

Of more recent vintage is the Supreme Court holding that Congress has pre-empted the field, leaving no room for the State anti-subversive laws found in the statute books of 42 States, and a companion decision emasculating a State statute empowering its

attorney general to investigate subversion and examine witnesses in that connection.

Two others upset State action denying admission to the bar to two applicants who refused to answer questions concerning Communist affiliation. Lawyers are officers of the State courts, admitted by them and under their control. The manner of this recent invasion of that relationship by the federal court has proved startling to members of the bench and bar as well as the public.

RULING AGAINST A SCHOOL BOARD

Equally disturbing to those concerned about local government is the action of the Supreme Court upsetting a local school board's dismissal of an employe for invoking the Fifth Amendment and refusing to answer questions put to him in an authorized inquiry concerning Communist activities.

A number of fairly recent cases construing the interstate-commerce clause disclose a judicial shift from the original position that the regulatory power of Congress extends only to goods moving and persons actually engaged in interstate commerce. The later holdings are that that control extends to anything or anyone engaged in that which affects interstate commerce. Accompanied by new decisions applying the pre-emption doctrine also to the field of labor relations, the result is that we now find national action controlling, and State action excluded, where formerly the Court had held, either directly or in effect, to the contrary, namely in such areas as production or processing of goods before entering commerce and, as well, after having come to rest following movement in commerce.

The Court also upset a long line of its decisions by holding in 1944 that the writing of insurance is commerce subject to federal control under the commerce clause. Thereafter Congress passed an act restoring a measure of State control over the industry. Then, there is the case holding, in effect, that a farmer's raising of wheat for consumption on his own farm is commerce, subject to federal regulation.

Federal law even has been held to extend to the relations between a local automobile dealer and his repair-shop employes, excluding the power of State courts, acting under State law, to enjoin unlawful picketing designed to compel the employer to force his employes into a union.

A State statute aimed at preventing strikes and lockouts in public utilities has been upset, leaving States powerless to protect their own citizens against emergencies resulting from suspension of essential services, even though such emergency be economically and practically confined to one State.

Even the employment of a window washer in a building in which office space is leased by a tenant engaged in interstate commerce may, by reason of the latter fact, be subject to federal labor law to the exclusion of State control.

Interpretation of the Fourteenth Amendment has opened up whole new vistas for federal judicial review of criminal convictions in State courts, in a manner and to an extent until recently unknown to legal and judicial thinking in this country and with interminable resulting delays in bringing the wrongdoer to final justice. State convictions may be and now are upset in Washington for too-speedy justice, for nonappointment of counsel for the defense, for failure to provide the accused, on appeal, with a transcript of the trial at public expense, etc.

As the ambit of federal judicial authority is thus constantly widened, we may get a glimpse of things to come. Already, in lower federal courts, it has been urged and those courts have considered whether a State law prohibiting public employes from belonging to unions is violative of the due-process, privileges-and-immunities and equal-protection clauses of the Fourteenth Amendment or abridges the freedom of expression and association guarantees of the Federal Constitution; or whether treaties of the U.S., made by the Constitution the supreme law of the land, may supersede State and local law governing matters of local concern; or whether a State may proceed with removal proceedings against the mayor of one of its cities for malfeasance while criminal proceedings on the same grounds are pending against him.

These are part of the body of decisions giving rise to a concern that, by judicial construction, national powers are being too greatly and dangerously enlarged and State and local power correspondingly contracted. Of this trend, the Conference of Chief Justices and many others have spoken with consternation. Great judicial self-restraint in this critical field of federal-State relationships was enjoined upon the Supreme Court by the members of the conference. I concur.

If Jefferson were to reappear on the American scene today, would he feel impelled to say, "I told you so," pointing to his language of 1823:

". . . there is no danger I apprehend so much as the consolidation of our government by the noiseless, and therefore unalarming, instrumentality of the Supreme Court."

WHY COURT DECISIONS CHANGE

What, you may ask, accounts for this change in judicial holdings with its resultant change in federal-State relationships? If, as commonly supposed, courts follow precedents how can these latter-day decisions be explained? In this connection, comments of Mr. Justice Owen J. Roberts in 1944 are pertinent. Said he:

"I have expressed my views with respect to the present policy of the Court freely to disregard and to overrule considered decisions and the rules of law announced in them. This tendency, it seems to me, indicates an intolerance for what those who have composed this Court in the past have conscientiously and deliberately concluded, and involves an assumption that knowledge and wisdom reside in us which was denied to our predecessors. . . .

"The reason for my concern is that the instant decision, overruling that announced about nine years ago, tends to bring adjudications of this tribunal into the same class as a restricted railroad ticket, good for this day and train only."

At root of the problem is a difference in concept of the proper function and role of the Supreme Court. The Court is divided into two competing judicial philosophies. Let us examine a bit of the thinking of each.

First, there is the language of John Marshall, who said:

"Courts are the mere instruments of the law, and can will nothing. . . . Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law."

Mr. Justice Frankfurter recently wrote:

"The Constitution is not the formulation of the merely personal views of the members of this Court. . . ."

Mr. Chief Justice Hughes said:

"Extraordinary conditions do not create or enlarge constitutional power."

The great constitutional authority, Judge Thomas N. Cooley wrote:

"What a court is to do, therefore, is to declare the law as written, leaving it to the people themselves to make such changes as new circumstances may require. The meaning of the Constitution is fixed when it is adopted, and it is not different at any subsequent time when a court has occasion to pass upon it."

Similar views often were expressed by the Court in the past. So, in 1889, it said of the object of constitutional interpretation that it "is to give effect to the intent of its framers, and of the people adopting it." In 1905, the Court declared:

"The Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted it means now. . . . Those things which are within its grants of power, as those grants were understood when made, are still within them, and those things not within them remain still excluded."

In 1936, Mr. Chief Justice Hughes wrote:

"If the people desire to give Congress the power to regulate industries within the State, and the relations of employers and employes in those industries, they are at liberty to declare their will in the appropriate manner, but it is not for the Court to amend the Constitution by judicial decision."

These statements are expressive of the traditional concept of the rule governing Court construction of constitutional provisions, held by an earlier Court and perhaps still shared by some of its present members. This represents the doctrine of judicial restraint.

THEORY OF A "POLITICAL" COURT

In opposition are those on the Court, with disciples notably among the writers and professors of law, dedicated to judicial activism. The theme of this group has been succinctly stated by one of the professors. It is this, "The Court cannot escape politics; therefore, let it use its political power for wholesome social purposes." They seize upon the statement of Hughes, in his 1907 Elmira speech, that the Constitution is what the judges say it is. Can it be concluded from this that the Constitution may be made, by judicial fiat, to mean whatever the Justices want it to mean?

That was not the import of the Hughes statement or speech nor does it comport with his judicial writings. It is the position of the judicial activists that the Court is free to interpret the Constitution in the light of current philosophies, psychology and political and social doctrines regardless of the original intent of its framers and adopters. One of the Justices of this group has written, *"Stare decisis,"*—that is, the rule of following precedent in the decision of cases—"must give way before the dynamic components of history."

The dean of a noted law school has written:

"It will not do to say that, in construing these provisions of the Constitution, the Court should be limited to the meaning the terms had when they were written. . . . The scope and meaning of the provisions of the Bill of Rights evolve, like the meaning of other constitutional terms, and other terms in law. They are stages in the organic process by which ideas flourish or languish as new generations find for themselves new and valid meanings for the old words."

The late Professor Thomas Reed Powell wrote of the differing approach to the law of the two schools of thought, that the difference between them is in their conceptions of the proper scope of the judicial function, the one having a leaning for getting the result in the particular case as if it were a legislative choice, but the other, on the contrary, having a leaning to respect the outlines and many of the details of an established legal system.

Gentlemen, in our consideration of the role of the courts in tomorrow's America we have noted, as suggested at the outset, the place of our constitutional beginnings and our present position, observed trends which brought us there, and gained a glimpse of the destiny to which their continuation may bring us. Shall the trends be continued, retarded or arrested? Shall it be held again, as the Court once said, that "The Constitution, in all its provisions, looks to an indestructible union of indestructible States"?

THREAT TO "PERSONAL RIGHTS"

You, the American people, must make the final judgments on these matters. As you do, mark well what the philosophy of the judicial activists may portend for the liberties of the people and our free institutions. If the Court is to have wide latitude in deter-

mining constitutional meaning and, as some suggest, may find it elsewhere than in the language of the Constitution itself or may ascribe a new meaning thereto not intended by the framers; if, as urged, the Court is to exert a political power to achieve the social ends it deems expedient, what will remain of constitutional restraints on Government and constitutional guarantees of personal rights and liberties?

Shall not these be left, then, to the whim and caprice or, at best, the good intentions of men, be they judges, legislators or administrators of the law? It was not for this that our forefathers fought nor for this they framed the Constitution and its Bill of Rights.

One of the chief responsibilities of citizenship, essential to survival of a government by the people, is to become informed about government, to arrive at conclusions, form convictions, and then make a worthy contribution to the great body of public opinion which ultimately makes itself felt in the halls of Government. So, if perchance there be courts with ears to the ground, even there may the voice of an informed people be heard. Thus may the issues here considered be resolved and thus may government and constitutional rights in the future be what you, the people, want.

Let me conclude with a repetition. If the courts are to continue performing their greatest role of preservers of the people's liberty and freedom, they must have the support of an informed and understanding public opinion. As Charles S. Rhyne, immediate past president of the American Bar Association, has said: "Our system of government is no stronger than our courts, and our courts are no stronger than the strength of the public's confidence in them." There is no greater claim on citizenship. Gentlemen, an awesome obligation is yours. The role of the courts in tomorrow's America, and the future of America itself depend on what you and Americans everywhere do about it.

[From the American Bar Association Journal, December 1957]

CONSTRUING THE CONSTITUTION: THE NEW SOCIOLOGICAL APPROACH

(By Thomas Raeburn White of the Pennsylvania Bar—Philadelphia)

(Mr. White declares that the Supreme Court of the United States has adopted a new approach in construing the Constitution. Consciously or unconsciously, he writes, the Court is now following what Mr. Justice Cardozo once called the method of sociology in determining the extent of Federal and State powers: the inquiry is not what the Constitution meant at the time it was adopted, but what the Constitutional Convention would have done if it had known present conditions. Mr. White examines in detail cases from the past 20 years to show why he thinks the Court is now using this approach to constitutional problems.)

Decisions of the Supreme Court of the United States in recent years have had the effect of greatly increasing the power of the central Government by sustaining as valid congressional legislation in certain fields beyond the limits previously held to exist, and in other instances have relaxed restrictions on State power by approving State laws which under earlier decisions would have been held to be unconstitutional.

This study has been undertaken in the hope that it may throw some light upon the question as to how these great changes have come about.

Ever since *McCulloch* v. *Maryland* [1] it has been held that the Constitution should be adapted to new conditions as they arise. But while the Supreme Court has faithfully followed Marshall's opinion in that case and has been liberal in construing the power of Congress to use means necessary and proper in the execution of its express powers, it has never until recently assumed to change the construction of the Constitution to meet new conditions. That it has done so, however, is apparent from some of its decisions and it is reasonable to conclude that a different theory of the proper method of construing the Constitution has been followed by the Court. This method, whether consciously adopted or not, is evidently the method of sociology which was well explained by the late Justice Cardozo before his appointment to the Supreme Court.[2]

He refers to judicial interpretation of statutes in France, pointing out that the inquiry is not what the legislator willed when the law was passed but what he would have willed had he known present conditions,[3] and says that he has no doubt that this method of construing a statute will be applied "with increasing frequency" in the future "to fix the scope and meaning of the broad precepts and immunities in State and National constitutions." [4]

It appears to be the opinion of the author that by the "method of sociology," a constitution, in the light of conditions found to exist at the time, may be construed to have a meaning different from that which it had when adopted by the people, in order to sustain as valid a law which in the Court's opinion accomplishes a desirable object, provided it is not such that "right-minded men and women" would regard it as arbitrary and oppressive.[5]

One of the grievances of the people at the time the Constitution of the United States was adopted was price-fixing by law of commodities in common use. The extent to which this was done is indicated by some references in the margins.[6]

Such practices were strongly disapproved as early as 1784,[7] and Judge Cooley says that since the Revolution price-fixing of ordinary commodities has been considered to be inconsistent with constitutional liberty.[8]

The only exception made to this rule was in cases where prices were fixed in connection with a business affected with a public interest: *Munn* v. *Illinois*.[9]

In *Chas. Wolff Packing Company* v. *Court of Industrial Relations*,[10] the Supreme Court said: "It has never been supposed, since the adoption of the Constitution, that the business of the butcher, or the baker, the tailor, the wood chopper, the mining operator or the miner was clothed with such a public interest that the price of his product or his wages could be fixed by State regulation."

Other cases which sustain the same principle are cited in the margin.[11]

Nevertheless, in *Nebbia* v. *New York*,[12] the Supreme Court upheld a New York statute fixing the price at which milk might be sold; it was conceded that the transaction before the court was not one in which the public had an interest in the sense in which that phrase had been used in earlier cases, but it was held against a strong dissent by four justices that the statute was valid. The only reason given for departing from the settled doctrine, reaffirmed only 2 years before,[13] was the disclosure of facts (based in part upon a legislative report) said to show that the milk business in New York was in a bad way and that the welfare of the community required that it be regulated.

The rule that the price of a commodity could not be fixed, except in a case in which the business was one affected with a public interest, was put aside. In distinguishing *Munn* v. *Illinois*, supra, and the long line of cases following it, the Court said that the phrase " 'affected with a public interest' can, in the nature of things, mean no more than that an industry for adequate reason, is subject to control for the public good." [14] It is clear, therefore, under this decision, that whenever an act of legislation fixes the price at which a commodity of any kind may be sold, the law will be sustained if the Court decides that it was passed for the "public good," a phrase which can neither be defined nor limited. As the enactment of the law is in effect a declaration that it is for the public good, the Court is not likely to decide otherwise. To borrow a phrase from Mr. Justice Holmes, "there would be hardly any limit but the sky."

Nebbia v. *New York* is a typical instance of applying the method of sociology to the construction of the Constitution. The law had been settled by many decisions, one within a very short time. They were not expressly overruled but because of conditions disclosed to the Court which were thought to make a change desirable, the earlier decisions were disregarded and a new construction adopted.

A NEW DOCTRINE: FREEDOM OF CONTRACT

The doctrine of liberty of contract has undergone considerable modification in other respects in recent years. The early cases, while recognizing that freedom of contract is a qualified and not an absolute right,[15] were inclined to restrict legislative interference with the right to contract to a greater extent than later decisions which recognize that changed conditions make some modifications of the previous rule important, if not necessary. *Adkins* v. *Children's Hospi-*

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[1] 4 Wheat, (U.S.) 316 (1819).

[2] Cardozo, "The Nature of the Judicial Process," p. 76 et seq. (1921).

[3] Id. at 84.

[4] Id. at 85.

[5] Id. at 91.

[6] In the laws agreed upon in England, as quoted in the Duke of Yorke's "Book of Laws" (1676–82), it is provided (ch. 33, p. 115) that "Strong beer and ale, made of barley malt, shall be sold for not above 2 pennies, sterling, a full Winchester quart; and all beer or drink made of molasses shall not exceed 1 penny a quart."

In ch. 99, id. at 139, so-called "ordinaries" were required to be licensed for the accommodation of travelers and "* * * no such keeper of an ordinary shall demand above 7½ pence a meal by the head; which meal shall consist of beef or pork, or such like produce of the country, and small beer; and of a footman, he shall not demand above 2 pennies a night for his bed; and of a horseman nothing, he paying sixpence a night for his horses hay or grass," and "If any one shall presume to ask more than is herein expressed, shall forfeit 5 shillings for every such offense."

In the preparation of this article I have drawn freely upon other articles I have written, particularly those published in the University of Pennsylvania Law Review, which has very kindly given me permission to use them.

[7] See report of the council of censors, as reported in the proceedings relative to calling the [Pennsylvania Constitutional] Conventions of 1776 and 1790, pp. 86–87 (1825).

[8] Cooley, "Constitutional Limitations," 870 (7th ed. 1903).

[9] 94 U.S. 113 (1876).

[10] 262 U.S. 522, 537 (1923).

[11] *Tyson & Brother* v. *Banton*, 273 U.S. 418 (1927): *Fairmount Creamery Co.* v. *Minnesota*, 274 U.S. 1 (1927); *Ribnik* v. *McBride*, 277 U.S. 350 (1928); *Williams* v. *Standard Oil Co. of Louisiana*, 278 U.S. 235 (1929); *New State Ice Company* v. *Liebmann*, 285 U.S. 262 (1932).

[12] 291 U.S. 502 (1934).

[13] *New State Ice Co.* v. *Liebmann*, 285 U.S. 262 (1932).

[14] 291 U.S. at 536.

[15] *Chicago B. & Q.R. Co.* v. *McGuire*, 219 U.S. 549, 567 (1911).

tal,[16] holding that a law fixing minimum wages of women in the District of Columbia was unconstitutional, was overruled by *West Coast Hotel Company* v. *Parrish*,[17] after one judge changed his vote. Also in the matter of contracts to exclude persons from employment, because they were or were not members of labor unions, there has been a decided modification of earlier decisions holding that interference with such contracts was an invasion of constitutional liberty.[18] These cases have in effect been overruled by *Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Company*,[19] which referred to the "Allgeyer-Lochner-Adair-Coppage constitutional doctrine" [20] as being deliberately discarded [21] and an amendment of the Nebraska constitution making void and unenforceable contracts between an employer and an employee to exclude persons from employment, because they were or were not members of labor unions, commonly known as "yellow dog contracts," was held valid. This case was followed and approved by *American Federation of Labor* v. *American Sash & Door Co.*[22]

These changes, which came about gradually, may possibly be ascribed to an adaptation of the Constitution to new conditions rather than to a change of interpretation. This cannot be said to be the case, however, when the Court enlarged and extended by construction the power of Congress to regulate commerce with foreign nations and among the several States.

In *Carter* v. *Carter Coal Co.*[23] the Court held void the Bituminous Coal Conservation Act of 1935 because it attempted to regulate the production of coal on the theory that this was a regulation of interstate commerce. In holding the act unconstitutional, the Court quoted and followed Chief Justice Marshall's opinion in *Gibbons* v. *Ogden* [24] holding that, as used in the Constitution, the word "commerce" is the equivalent of intercourse and does not include transactions wholly internal, such as manufacturing or production.

Chief Justice Hughes filed a separate concurring opinion, in which he said: "* * * the power to regulate commerce among the several States is not a power to regulate industry within the State." [25] Justice Cardozo filed a dissenting opinion in which Justice Brandeis and Stone joined.

In *Sunshine Anthracite Coal Co.* v. *Adkins* [26] the Carter case was in effect overruled, it being held that regulation of coal production was "within the power of Congress under the commerce clause of the Constitution." [27]

This is clearly another case in which the "method of sociology" was used. It was deemed necessary to correct conditions said to exist in the coal mining industry, and it was concluded that the Constitution should be so construed as to permit Congress to provide a remedy, although this involved a change in the construction of the Constitution as previously understood, a change as to the scope and meaning of the power of Congress to regulate interstate commerce.

In *A. L. A. Schechter Poultry Corp.* v. *United States* [28] it was held that the National Industrial Recovery Act, which established codes for regulating the conduct of almost every business in the country was unconstitutional in that it involved unconstitutional delegation of power to the President and attempted to regulate intrastate transactions that lay outside the authority of Congress. The Chief Justice, answering the contention that Congress had the power to regulate such activities because they affected interstate commerce, said: [29]

"Where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of State power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government."

The doctrine that the power to regulate interstate commerce does not extend to activities which only indirectly affect such commerce did not long survive.

In *United States* v. *Darby* [30] the Court sustained an act prohibiting shipment in interstate commerce of lumber manufactured by employees whose wages and hours did not conform to a prescribed standard. The Court said that the power of Congress [31] "extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce. * * * [32]

"While manufacture is not of itself commerce, the shipment of manufactured goods interstate is such commerce and the prohibition of such shipment by Congress is indubitably a regulation of the commerce." [33]

In so deciding the Court held that articles prohibited from shipment need not be in themselves of an illegal or deleterious character, overruling *Hammer* v. *Dagenhart*,[34] which had held otherwise.

INTERSTATE, INTRASTATE—A NEGLIGIBLE DIFFERENCE

Under the present view of the Court, Congress may prohibit or control activities wholly intrastate because of their effect on interstate commerce even when the effect may be indirect and so slight as to be almost negligible.[35] That this involves a changed construction of the Constitution is obvious.

In the Labor Board cases, beginning with *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*,[36] it was held that under the power to regulate interstate commerce Congress can stipulate labor practices which must be followed by manufacturers whose product is ultimately to become a part of interstate commerce. The dissenting opinion [37] said:

"If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government. * * *

"Almost anything—marriage, birth, death—may in some fashion affect commerce." [38]

The Court's opinions were by the Chief Justice and are clearly inconsistent with what he said in *Carter* v. *Carter Coal Co.*, that production is not commerce.

In *United States* v. *Appalachian Electric Power Co.*[39] it appeared that a private company was planning to make use of a small stream called New River for the development of electric power and had begun the construction of a dam. This was opposed by the national administration which desired to use the stream for the development of electric power for public use, and on the theory that the stream was navigable and under the control of Congress brought suit to compel the removal of the work already begun by the power company. The question involved, as the Court said at the beginning of its opinion, was whether the stream was navigable. Both the lower courts had held that it was not navigable, which was of course a finding of fact, and under all former decisions of the Court such a finding was held to be binding on the Supreme Court if supported by substantial evidence, as it clearly was in this case.

This was a high hurdle for the Court to cross, even if it felt, as it evidently did, that it would be in the public interest for the stream to be under congressional control, but the Court surmounted the obstacle, holding that it could examine for itself the question whether the stream was navigable, and found that it was, not because in its present condition it was in fact navigable but because it could be made so by a reasonable expenditure, a conclusion which Professor Corwin finds to be absurd as entirely outside of the Court's prerogative.[40]

This is another good illustration of the method of construing the Constitution so as to accomplish what was believed to be a laudable purpose, although it involved departing from all previous rulings.

This decision calls to mind an unreported decision of a municipal court judge of Philadelphia (now dead), who was presiding at a juvenile court hearing which concerned a boy who had committed some youthful indiscretion. The point was made that he had no jurisdiction, because the boy was not under the age of 16, which was the limit of the age of children subject to the juvenile court. The judge, however, was equal to the occasion. He said, "Well, I'll declare him under 16," and proceeded with the case. He probably had never heard of the method of sociology but was using it to good advantage nevertheless.[41]

THE POWER TO TAX—A COERCIVE WEAPON

The power to tax and spend is a weapon which can be used to force compliance with regulations laid down by Congress. The obvious method is to tax those who do not

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[16] 261 U.S. 525 (1923).

[17] 300 U.S. 379 (1937).

[18] See *Allgeyer* v. *Louisiana*, 165 U.S. 578 (1897); *Lochner* v. *New York*, 198 U.S. 45 (1905); *Adair* v. *United States*, 208 U.S. 161 (1908); and *Coppage* v. *Kansas*, 236 U.S. 1 (1915).

[19] 335 U.S. 525 (1949).

[20] Id. at 536.

[21] Id. at 537.

[22] 335 U.S. 538 (1949). See also *Railway Employees' Department* v. *Hanson*, 351 U.S. 225 (1956), sustaining a provision of the Railway Labor Act of Congress permitting union shop agreements.

[23] 298 U.S. 233 (1936).

[24] 9 Wheat (U.S.) 1, 189–190 (1824).

[25] 298 U.S. at 317. See also Hughes, "The Supreme Court of the United States," 234 (1928).

[26] 310 U.S. 381 (1940).

[27] Id. at 393.

[28] 295 U.S. 495 (1935).

[29] Id. at 546.

[30] 312 U.S. 100 (1941).

[31] Id. at 118.

[32] Id. at 118.

[33] Id. at 113.

[34] 247 U.S. 251 (1918).

[35] See *Wickard* v. *Filburn*, 317 U.S. 111 (1942), in which the Court held that Congress could regulate the production of wheat so as to affect prices, even in a case where the wheat was consumed on the premises where grown and was not shipped in interstate commerce: and *Mabee* v. *White Plains Publishing Co.*, 327 U.S. 178 (1946), where a daily newspaper was published entirely within a State but one-half of 1 percent of its circulation was without the State. See also *Oklahoma Press Publication Co.* v. *Walling*, 327 U.S. 186 (1945).

[36] 301 U.S. 1 (1937).

[37] Id. at 96.

[38] Id. at 99.

[39] 311 U.S. 377 (1940).

[40] Corwin, Constitutional Revolution, Limited, p. 77.

[41] Although unreported, this decision was well known to the bar, including the author.

comply with regulations and exempt those who do. This method of forcing compliance with regulations with respect to the growing of crops as set forth in the Agricultural Adjustment Act of 1933 was condemned in *United States* v. *Butler* [42] as:

"A statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the Federal Government. [43]

"A resort to the taxing power to effectuate an end which is not legitimate, not within the scope of the Constitution, is obviously inadmissible." [44]

In *Mulford* v. *Smith*,[45] however, title 3 of the said act, regulating and limiting production of tobacco, was sustained as a regulation of interstate commerce, although a similar device was used to force compliance with the regulations.

In *Steward Machine Co.* v. *Davis*,[46] it was held that the Social Security Act which laid a tax upon the employers of labor and provided that such employers would be credited with similar taxes paid under a State social security or unemployment act which had been approved by the Federal authorities was valid, although it in effect coerced the States to pass unemployment relief acts or social security laws which were approved by Federal authority.

This case was followed by *Helvering* v. *Davis*.[47] It may be noted in passing that in this case, as in many others, the decision was based very largely upon statistics gathered by committees and commissions whose reports were not admitted in evidence, nor could they be.

The method of changing the construction of the Constitution so as to permit legislation to afford relief from alleged hardship has been used even in the case where specific provisions of the Constitution appear to be violated.

In *Home Building & Loan Association* v. *Blaisdell*,[48] an act of the State of Minnesota was under consideration which made certain changes in judicial proceedings with respect to foreclosure of mortgages and execution sales of real estate. The Court did not deny the finding of the court below that the obligations of the mortgage contracts were impaired by the act under consideration but held: [49]

"If it be determined, as it must be, that the contract clause is not an absolute and utterly unqualified restriction of the State's protective power, this legislation is clearly so reasonable as to be within the legislative competency."

There was a strong dissent by four Justices who did not subscribe to the view that unusual conditions could permit a change in the construction of the Constitution. Mr. Justice Sutherland in his dissenting opinion said: [50]

"A provision of the Constitution, it is hardly necessary to say, does not admit of two distinctly opposite interpretations. It does not mean one thing at one time and an entirely different thing at another time. * * * This view, at once so rational in its application to the written word, and so necessary to the stability of constitutional principles, though from time to time challenged, has never, unless recently been put within the realm of doubt by the decisions of this Court."

It would, of course, be impossible in one article to discuss all cases decided on the points above mentioned, nor is it necessary, as enough has been said to illustrate the method the Court has used to sustain laws which under previous rulings would have been held invalid. It is not meant to suggest that many of these laws were not honestly passed in an earnest effort to relieve public distress nor that the court failed to use its best judgment in an effort directed to the same end, but the principle of stare decisis was ignored and for the most part the beneficent results sought could have been accomplished in a legal manner without interfering with the powers of the States.

An influence which it is widely believed may have had an effect upon the changes in construction above referred to was the impact upon the Court of the New Deal, or in other words, the Roosevelt administration. When this administration came into power the country was in the depths of the depression. It was a question whether the Constitution, which in quiet times "sails upon a summer sea," [51] could ride out the storm under the conditions that then existed. Undoubtedly the cries of the distressed, the rumblings of discontent, the demands of the agitator and the politician penetrate like the sound of many waters, even into the quiet of the judicial chamber, and it cannot be doubted affect the minds of the judges.

The New Deal administration was impatient that there should be any interference with its program of reform and strenuously insisted that laws believed to be beneficial should be sustained by the Supreme Court as constitutional. This insistence vigorously expressed had its influence, but there was also severe criticism of the Court and in fact of our constitutional system by the New Deal administration and its adherents. President Roosevelt is reported to have complained that in an emergency all laws passed by Congress had to be constitutional, and Senators Norris, of Nebraska,[52] and Frazier, of North Dakota,[53] as reported in the public press, both advocated depriving the Supreme Court of the power to declare laws unconstitutional.

President Roosevelt even went so far as to claim that what he called the Supreme Court fight caused the Court to change its decisions.[54]

These changes necessarily involved a change of view by some individual Justices. Chief Justice Hughes had a hard enough task to administer the Court under conditions then existing, and it is not surprising that in some respects he felt bound to modify opinions which he had previously expressed. In his book entitled "The Supreme Court of the United States," he said:

"Stability in judicial decisions is of no little importance in obtaining respect for the Court's work." [55]

Referring to the Legal Tender cases,[56] he said:

"There can be no objection to a conscientious judge changing his vote, but the decision of such an important question by a majority of one after one judge had changed his vote aroused a criticism of the Court which has never been entirely stilled." [57]

In later paragraphs he said:

"While the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise. But although a degree of elasticity is thus imparted not to the meaning, but to the application of constitutional principles, statutes and ordinances, which, after giving due weight to the new conditions, are found clearly not to conform to the Constitution, of course, must fall." [58]

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"It must be remembered that production—coal mining, for example—is not interstate commerce and the power of Congress does not extend to its regulation as such." [59]

The Chief Justice expressed the same view in *Carter* v. *Carter Coal Company*.[60] In his concurring opinion, he said [61] "the power to regulate commerce among the several States is not a power to regulate industry within the States," and that "Congress may not use this protective authority [to regulate interstate commerce] as a pretext for the exertion of power to regulate activities and relations within the States which affect interstate commerce only indirectly. Otherwise, in view of the multitude of indirect effects, Congress in its discretion could assume control of virtually all the activities of the people to the subversion of the fundamental principles of the Constitution. If the people desire to give Congress the power to regulate industries within the State, and the relations of employers and employees in those industries, they are at liberty to declare their will in the appropriate manner, but it is not for the Court to amend the Constitution by judicial decision." [62]

That this is sound law is scarcely to be questioned, but the Chief Justice considerably modified his views thereafter as shown by later cases, in which he voted with the majority. See *Sunshine Anthracite Coal Company* v. *Adkins*,[63] in which the Carter case was in effect overruled, and other cases, to some of which reference has been made, holding that production having an indirect and in some instances an extremely tenuous effect on interstate commerce, could be regulated under the interstate commerce power.

It is also to be noted that in *New State Ice Company* v. *Liebmann* [64] the Chief Justice, together with Mr. Justice Roberts voted with a majority of the Court holding that the manufacture of ice cannot be regulated by law, and said: [65]

"Here we are dealing with an ordinary business, not with a paramount industry upon which the prosperity of the entire state in large measure depends. It is a business as essentially private in its nature as the business of the grocer, the dairyman, the butcher, the baker, the shoemaker, or the tailor."

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[42] 297 U.S. 1 (1936).
[43] Id. at 68.
[44] Id. at 69.
[45] 307 U.S. 38 (1939).
[46] 301 U.S. 548 (1937).
[47] 301 U.S. 619 (1937).
[48] 290 U.S. 398 (1934).
[49] Id. at 447.
[50] Id. at 448–449.

[51] 1 Bryce, "The American Commonwealth," 310 (1899).
[52] Philadelphia Record, June 3, 1935.
[53] Philadelphia Inquirer, Mar. 3, 1936. The distinguished Senator reminded the public that judges who declared an act of the English Parliament to be unconstitutional and void were beheaded.
[54] In Colliers for September 1941, appears an article entitled "The Fight Goes On" in which he wrote concerning the changed attitude of the Court: "The Court yielded. The Court changed. The Court began to interpret the Constitution instead of torturing it. It was still the same Court with the same Justices. No new appointments had been made. And yet beginning shortly after the message of Feb. 5, 1937 (proposing the Court packing plan). What a change * * * it would be a little naive to refuse to recognize some connection between these decisions (overturning earlier decisions) and the Supreme Court fight."
[55] Hughes, "The Supreme Court of the United States," 53 (1928).

[56] 12 Wall. (U.S.) 457 (1872).
[57] Hughes, "The Supreme Court of the United States," 54 (1928).
[58] Id. at 197–198.
[59] Id. at 234.
[60] 298 U.S. 238 (1936).
[61] Id. at 317.
[62] Id. at 317–318.
[63] 310 U.S. 381 (1940).
[64] 285 U.S. 262 (1932).
[65] Id. at 277.

Whereas in *Nebbia* v. *New York*,[66] both of these Justices voted that the business of the dairyman could be regulated and the prices of his products fixed by law.

The change of vote which has been most criticized is that of Mr. Justice Roberts on the validity of a law regulating the wages of women and children in industry. Such a law was held to be unconstitutional in *Adkins* v. *Children's Hospital*.[67] The question again came before the Court in *Morehead* v. *New York ex rel. Tipaldo*,[68] decided June 1, 1936. In this case the Court with four dissents affirmed the rule as announced in *Adkins* v. *Children's Hospital*, Justice Roberts voting with the majority. Ten months later a similar law was involved and its validity sustained in *West Coast Hotel Co.* v. *Parrish*,[69] decided March 29, 1937; *Adkins* v. *Children's Hospital* was overruled, Justice Roberts having changed his vote.

JUSTICE ROBERTS EXPLAINS THE REASON

In the meantime the New Deal had been overwhelmingly approved at the election in November 1936, and the President's court-packing plan had been announced. This naturally led to the question whether Justice Roberts' change had been influenced by these facts. He evidently felt the criticism, for he prepared a memorandum in explanation of his action, which, having been left with Justice Frankfurter, was by him made public after Roberts' death.[70]

Justice Roberts' explanation is that he voted for affirmance in the Morehead case under the impression that the only point being decided was that there was no distinction between it and the Adkins case, although the opinon in the Morehead case fully reaffirmed the doctrine of the Adkins case.

In the opinion for the Court in the Parrish case, the Chief Justice gave the same explanation for the Court's change of decision within so short a time. This explanation is apparently accepted as satisfactory by Dean Griswold of the Harvard Law School[71] but not by Robert H. Jackson (afterward Mr. Justice Jackson), who says that the Chief Justice disposed of the New York case[72] "by asserting that the New York attorneys had not asked the Court to reconsider the constitutional questions decided in the Adkins case and that, therefore, those questions were closed to the Court's inquiry in the case of the previous June. This doctrine that the Court would apply bad constitutional law to a case unless the lawyers asked it specifically to correct itself was a bit of face saving for the Court."

Prof. Thomas Reed Powell, in "Some Aspects of American Constitutional Law",[73] says that the Chief Justice's explanation of the change of decision "is a story that should bring blushes to those who joined in the official narration."

These caustic comments make further comment unnecessary.

The decisions, some of which have been mentioned above, departing from views believed to be settled by many former decisions of the Court, have led to a great increase in the legislative power of the Central Government, especially in the particulars above indicated and in some instances of the States also.

Political pressure such as above described was of course the very thing warned against by the makers of the Constitution, and which caused them to establish the judicial department in such a manner that, as they thought, it could be independent. There were some, however, who doubted. Mr. Justice Gibson, one of Pennsylvania's greatest judges, as far back as 1825 said in a dissenting opinion in *Eakin* v. *Raub*:[74]

"Once let public opinion be so corrupt, as to sanction every misconstruction of the Constitution, and abuse of power, which the temptation of the moment may indicate, and the party which may happen to be predominant, will laugh at the puny effort of a dependent power to arrest it in its course."

The danger was well understood when the Constitution was under consideration. James Wilson said:[75]

"Nothing is more to be dreaded than maxims of law and reasons of state blended together by judicial authority. Among all the terrible instruments of arbitrary power, decisions of Courts, whetted and guided and impelled by considerations of policy, cut with the keenest edge, and inflict the deepest and most deadly wounds."

It was of course recognized that such influences could be resisted only by uncommon fortitude on the part of the judges "where legislative invasions of it [the Constitution] had been instigated by the major voice of the community."[76]

In Story, "Commentaries on the Constitution of the United States,"[77] it is said:

"Few men possess the firmness to resist the torrent of public opinion; or are content to sacrifice present case and public favor in order to earn the slow rewards of the conscientious discharge of duty; the sure but distant gratitude of the people; and the severe but enlightened award of posterity."

The serious question which confronts us now is whether constitutional government has broken down. Whether the American theory that tried and true principles of government may be enshrined in a written constitution and entrusted to the courts for their protection has proved to be illusory. Although Chief Justice Hughes said in *Carter* v. *Carter Coal Co.*, as quoted above:[78] "It is not for the Court to amend the Constitution by judicial decisions," he later went along with decisions which had that effect, and the late Justice Jackson asserts that the Court does in fact amend the Constitution by its decisions.[79] An excellent statement of the opposing view is contained in the dissenting opinion of Mr. Justice Sutherland in *West Coast Hotel Co.* v. *Parrish*,[80] as follows:

"It is urged that the question involved should now receive fresh consideration, among other reasons, because of the economic conditions which have supervened; but the meaning of the Constitution does not change with the ebb and flow of economic events. We frequently are told in more general words that the Constitution must be construed in the light of the present. If by that it is meant that the Constitution is made up of living words that apply to every new condition which they include, the statement is quite true. But to say, if that be intended, that the words of the Constitution mean today what they did not mean when written—that is, that they do not apply to a situation now to which they would have applied then—is to rob that instrument of the essential element which continues it in force as the people have made it until they, and not their official agents, have made it otherwise."

If it be admitted that the Court may change the Constitution by construction whenever it sees a need therefor, constitutional government as we have known it and as it was visualized by its founders has indeed ceased to exist.

Under the pretense of regulating interstate commerce or of taxing for the general welfare, Congress under the present view of the Supreme Court may regulate or even prohibit the activities of substantially any business within the United States.[81]

The reputation of the Supreme Court has suffered certainly in the opinion of the legal profession and probably more generally by reason of its instability as shown by the frequent overruling of its own recent decisions, caused largely by changes of opinion of individual judges, its disregard of precedents which were believed to have settled the law, and most of all by a method of construing the Constitution to attain a desired object, although in effect the Constitution is amended and the balance of power between the Federal Government and the States seriously disturbed.

It is not for this writer to say that these decisions of the Supreme Court are wrong, but it is respectfully suggested that a method of construing the Constitution so as to make it apply to a desired object may be carried too far.

"COURT REWRITES CONSTITUTION IN ITS OWN IMAGE"

(By Alfred J. Schweppe, member, Board of Editors, American Bar Association "Journal," former dean of the University of Washington Law School, and former president of the Bar Association of the State of Washington)

I absolutely reject the idea that the Supreme Court has the power to rewrite the Constitution according to its concepts of sociological or economic change. That is what the amendatory process is for. I do not accept Justice Douglas's blunt view that the amendatory process is "too slow" as anything but a violation of the oath to support the Constitution in all of its parts.

In an address before the New York City bar in 1949, attempting to defend the Court's wholesale overruling of prior decisions, he calmly said: "It must be remembered that the process of constitutional amendment is a long and slow one."

The obvious answer is, of course, that the people have amended the Constitution fast or slowly, or not at all, as in their judgment the circumstances required. Since when has the judicial power of the Supreme Court been extended to passing on the competence of the people to frame their own government in their own good time? With all due respect, such an attitude must be regarded as a self-arrogation of superior paternal wisdom which would have left the Founding Fathers stunned.

My view was shared by Washington, Jefferson, Jackson and others, some of them are

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[66] 291 U.S. 502 (1934).
[67] 261 U.S. 325 (1923).
[68] 298 U.S. 587 (1936).
[69] 300 U.S. 379 (1937).
[70] See 104 U. of Pa. L. Rev., 314–315 (1955).
[71] See U. of Pa. L. Rev., 340–342 (1955), in which Dean Griswold also mentions other cases in which Justice Roberts changed his mind but without criticizing him.
[72] Jackson, "The Struggle for Judicial Supremacy," 208 (1941).
[73] Hav. L., Rev. 529, 549 (1942).
[74] 12 S. & R. 330, 355 (Pa. 1825).
[75] I am indebted to my friend, Theodore W. Reath, Esq., for this statement of James Wilson, which was made in a lecture at the Law School of the University of Pennsylvania in 1792.
[76] Hamilton, "The Federalist," No. 78 (Hallowell's ed. 1831, at 389).
[77] Vol. II, par. 1619.
[78] Note 62, supra.
[79] Jackson, "The Supreme Court in the American System of Government," 56–58 (1955): "Only those heedless of legal history can deny that in construing the Constitution the Supreme Court from time to time makes new constitutional law or alters the law that has been. * * * The difficulties of amendment are such that many look to interpretation rather than amendment as a means of change."
[80] 300 U.S. 379, at 402.
[81] See the earlier views of the late Chief Justice Hughes as expressed in his book, "The Supreme Court of the United States," pp. 39–40.

held up as great beacon lights of liberalism. I think legal recognition of sociological and economic changes should come by way of constitutional amendment, or congressional action, whichever is appropriate.

In my opinion, once the Court has constructed a constitutional provision, that construction should stand until changed by amendment, unless later evidence is found of *the intent of the framers* of the provision which shows the first construction to have been erroneous. That, of course, is why Madison's "Notes," Elliott's "Debates," and the "Federalist" are so valuable.

Any other approach seems to me to lead to the inevitable conclusion that the Constitution is the plaything of the judges at any time in office, which is, of course, the Warren-Black-Douglas concept, initiated by Holmes in Missouri v. Holland, where he said that the case "must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago."

In so stating, Holmes rejected the Jefferson-Taney view of the treaty power, accepted and blessed by strong judicial statements for over a hundred years. Following Holmes, the idea of a "rubber Constitution," with the Court acting not as judges but as policy makers, though piously disavowing the role, has become accepted almost as normal constitutional doctrine.

My objection is to the reckless manner in which the present Court flouts the precedents laid down by the great Courts ahead of it and, glibly bypassing the constitutional-amendment process of Article V, rewrites the Constitution in its own image.

From a lawyer's standpoint the segregation decisions, which are deemed by many to be tender legal ground that should be avoided, will serve my purpose as well as any I am dealing now, not with a sensitive sociological problem, but solely with the adjudication processes of the present Court in those cases, which leave one almost breathless with amazement.

When the Court, in the first Brown v. Board of Education school-segregation case, in 1954, found the history of the Fourteenth Amendment to be "inconclusive"—which was I believe, an understatement—one would think that a Court, *acting judicially*, would have said that, "there being no persuasive evidence of intent of the framers of the Amendment that the prior decisions of the Court are wrong, those decisions must stand, with the subject matter left to Congress or the amendatory process, as the Court has so often heretofore said about policy matters."

Just a few words about the prior decisions to illustrate my point. There were a number of applicable earlier precedents, the first in 1896, the last in 1950.

By way of concrete example, in the Gong Lum case of 1927—a school case from the State of Mississippi, in which both the question of equal protection of the laws per se and the separate-but-equal question under the Fourteenth Amendment were directly raised—the Supreme Court, then composed of Chief Justice Taft and Justices Holmes, Brandeis, Stone, Van Devanter, McReynolds, Sutherland, Butler and Sanford, *unanimously* decided both questions in favor of the segregated schools provided for by the constitution of the State of Mississippi (see detailed comments, CONGRESSIONAL RECORD, vol. 104, pt. 11, pp. 14380–14384).

Indeed, Chief Justice Taft, writing the opinion of the *unanimous* Court said: "Were this a new question it would call for very full argument and consideration, but we think that it is the same question which has been many times decided to be within the constitutional power of the State legislature to settle without intervention of the federal courts under the Federal Constitution."

Thus in 1954 the present Supreme Court reversed precedents upholding segregated-school legislation not written alone in 1896, although the Court in Plessy v. Ferguson was much closer in time to the intent of the Fourteenth Amendment than it was 60 years later, but a decision rendered unanimously in 1927 by a great Court headed by Chief Justice Taft, and including among its membership Justices Holmes, Brandeis and Stone, whose names are commonly associated with a liberal view of the Constitution in the field of individual rights.

It will be especially noted that the distinguished 1927 Court considered itself bound by the long-established precedents, and that it was not within judicial competence to upset a constitutional interpretation so long settled.

There is no question that the decisions in the Brown and Bolling cases in May of 1954, giving a completely new meaning to the Constitution, were a violent shock to those who believe in constitutional stability and constitutional precedent, and who look upon the judges of the Supreme Court as declarers of law rather than as social engineers, since changes in the social order, insofar as they fall within the federal domain, seem clearly to have been left to Congress or the amendment process by those who wrote the Constitution and its various added provisions.

Chief Justice John Marshall said in the great case of Marbury v. Madison: "It is emphatically the province and duty of the judicial department to say what the law is."

There is no doubt what the law was at 11:59 a.m. on May 17, 1954. It had been definitely settled in Gong Lum in 1927, and in other cases. In 1938, Chief Justice Hughes, speaking for a majority of himself and Justices Brandeis, Stone, Black, Reed and Roberts, had said in Missouri *ex rel* Gaines v. Canada:

"The State has sought to fulfill that obligation by furnishing equal facilities in separate schools, *a method the validity of which has been sustained by our decisions.* Plessy v. Ferguson (163 U.S. 537, 544); McCabe v. Atchison, Topeka and Santa Fe Railway Co. (235 U.S. 151, 160); Gong Lum v. Rice (275 U.S. 78, 85, 86). Compare Cummings v. Board of Education (175 U.S. 528, 544, 545)."

In fact, in Sweatt v. Painter, the identical Court that decided the Brown case in 1954—substituting only Chief Justice Vinson for Chief Justice Warren—namely, Justices Black, Reed, Frankfurter, Douglas, Jackson, Burton, Clark and Minton, rested the decision squarely on the separate-but-equal doctrine.

But on May 17, 1954, at 1 p.m., all this was changed—changed by a judicial amendment of the Constitution—by a Court that, instead of declaring "what the law is," declared what, in the personal opinion of the then-incumbent judges, the law ought to be, in spite of a hundred years of federal and State legislation to the contrary, and contrary to judicial decisions long accepted by the Court itself as conclusive.

Moreover, in so doing, the Court did not even take notice of the long-established criteria for determining whether there has been a violation of the equal-protection clause of the Fourteenth Amendment, namely, that legislative classifications are valid unless without any rational basis whatsoever, so that reasonable men cannot differ (see American Bar Association "Journal," April, 1956, pp. 313, 316–17).

How far the Court went overboard in 1954 is most luridly demonstrated in the companion case—Bolling v. Sharpe, a case amazingly overlooked most of the time by Court critics—in which the Court flagrantly amended the due-process clause of the Fifth Amendment by converting it into an equal-protection clause.

SCHOOL CASE "WAS STARTLING"

If the Brown v. Board of Education case was startling, the companion Bolling case, invalidating the segregated-school statutes of Congress in the District of Columbia almost 100 years old, was even more startling.

The Court decided the Brown case under the equal-protection clause of the Fourteenth Amendment, saying:

"We hold that the plaintiffs and others similarly situated, for whom the actions have been brought, are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion, whether such segregation also violates the due-process clause of the Fourteenth Amendment."

But in the companion case of Bolling v. Sharpe, decided the same day with reference to the District of Columbia's segregated-school statutes enacted by Congress, the Court faced the dilemma that the Federal Constitution contains no equal-protection clause as a limitation on the Federal Government. The Fourteenth Amendment contains both a due-process and an equal-protection clause, the due-process clause having been taken over verbatim from the Fifth Amendment, and adds purposefully an equal-protection clause, because that concept was deemed and construed not to be embraced in due process (see Hurtado v. California). But the Fifth Amendment, applicable to the Federal Government, contains only a due-process clause.

However, the Court that had made the psychological ruling in the Brown Case was equal to the dilemma that it faced in the Bolling Case. It held that the due-process clause of the Fifth Amendment should be deemed also an equal-protection clause as respects the Federal Government—a clear case of judicial amendment of the Constitution.

When the Fifth Amendment was adopted in 1791, at the instance of the very first Congress, importation of slaves was expressly protected in the Federal Constitution until 1808—Art. 1, Sec. 9—and slaves were then considered property protected by the due-process clause of the Fifth Amendment.

Thus a provision of the Federal Constitution which when adopted in 1791 did not prohibit but protected slavery, is now construed in 1954 to prohibit segregation in the public schools of the District of Columbia. The present Court no longer concerns itself with the intent of the Founding Fathers or the framers of the Fourteenth Amendment, but substitutes its own (see Ralph T. Catterall, "Judicial Self-Restraint," American Bar Association "Journal," September, 1956, page 829).

While I can agree with Bancroft that a Court decision that violates the Constitution is just as void as an act of Congress that violates the Constitution, who will settle the question? The Bolling case, for example, in my opinion *flagrantly* and by illogical and ludicrous reasoning violates the Constitution and indelibly highlights how far the Court was making policy in the Brown case and changing the Fifth Amendment to conform to the Fourteenth in the Bolling case (see comments printed in the CONGRESSIONAL RECORD, vol. 104, pt. 11, pp. 14380–14384).

Obviously the Court, having made up its collective mind to outlaw State statutes and constitutional provisions, did not face up to the completely different constitutional situation in the District; so the judges closed their eyes to the text and history of the due-process clause of the Fifth Amendment—and as interpreted in the Fourteenth—and completely rewrote it, I think, inexcusably. But will Congress or the Executive defy this unconstitutional decision? Apparently not. The Jacksonian attitude toward unpalatable Supreme Court decisions no longer prevails: "John Marshall wrote it; let him enforce it."

EXTENDING "JUDICIAL POWER"

The purely legislative pronouncements of the new Chief Justice, then scarcely one year and nine months in office, in the second Brown case in 1955 bring shudders to any student of constitutional law who knows that the judicial power of the United States extends only to individual cases and controversies. He said:

"All provisions of federal, State, or local law requiring or permitting such discrimination must yield to this principle."

By the time the next school case from some individual State or city comes to the Court involving some segregation statute, the whole present Court could conceivably have disappeared in an epidemic or other major catastrophe, and a new Court wipe out the judicial extravaganzas entitled Brown and Bolling, by returning to Plessy, Gong Lum, Gaines and other cases.

Such a new Court would require no precedents for so doing other than the Brown and Bolling cases and an earnest desire to restore the Court to its proper place in the constitutional scheme.

Of course, I am sure that there would be much shouting in certain circles that the new Court had violated the sacred rules of judicial precedent. Why the more experienced judges on the Court signed their names to such a judicially indefensible statement as that just quoted above one can only conjecture. Under the Constitution, the ruling could apply only to the cases then before the Court, and no others whatsoever.

There is no doubt that Congress has a major responsibility for what the Court has done in many areas. Prodded by some Chief Executives, Congress has passed laws that have put great strains on the Court, which, in turn, has put great strains on the Constitution. For those results Congress and Executives who announce that no doubts as to constitutionality should deter Congress from passing Executive-requested bills are at least in part responsible.

However, in those judicial areas where the Court is under no such legislative and executive pressures, the Court is alone responsible; and it ought to proceed always with the classic judicial restraint which some of its greatest members have so often expressed.

It is in those areas where the Court, without needing to do so, has upset long-established lines of decisions, struck down State statutes or unnecessarily interpreted federal statutes to exclude State action such as in the subversion and labor-relations fields, or has taken over the administration of State criminal laws by novel Fourteenth Amendment pronouncements, that the criticism has been strongest and ever mounting and, in my judgment, rightly so.

It cannot, it seems to me, be successfully gainsaid that the present Court, though officially denying it, has taken on the role of federal policy making properly belonging elsewhere. Furthermore, there seems little doubt that, to the present Court, Article V of the Constitution governing its amendment is essentially a dead letter.

The fact is that Jefferson's fears of what the Supreme Court would do to the Constitution have been realized. The concept of limited and delegated powers is practically gone. That concept went out of the window with Helvering v. Davis, in which the majority, rejecting Madison's and accepting Hamilton's alleged view, held that Congress had unlimited spending power for "the general welfare," with Congress being the judge of the "general welfare." This unlimited spending power is, of course, bound to obscure the line between State and federal functions in many fields and to reduce the States to mere pawns.

With its power of condemnation and unlimited spending, the Federal Government can bring on socialism overnight, if it chooses. I personally favor a constitutional amendment to embody Madison's view of the spending power, but I don't expect one ever to be adopted. The writers of the "Federalist" said that agriculture was, as a classic illustration, a subject solely within the purview of the States; but now we sustain federal legislation, punishing farmers for raising wheat for their own use only, without a federal quota, under the guise of regulating commerce. How intellectually off base can people get?

Of course, Attorney General Rogers' political-legal views on segregation, if correctly publicized, will not bear analysis. Anybody has the right to resist Supreme Court decisions by all lawful means. Congress has corrected the Court many times. When the Court held the first Agriculture Adjustment Act unconstitutional, for example, Congress promptly passed a new one and dared the Court. It caved. There are numerous other illustrations.

The State schools are created and maintained by the States at their pleasure. They can abolish them tomorrow and the Supreme Court cannot do anything about it within any rational constitutional concept. Closing them completely as public schools certainly violates no concept of equal protection because they are closed as to all. The States have a right to pass any laws or do any acts that will legally bypass the Court's decisions, difficult as that may be with a Court that is now "on the spot" to defend its novel policies on a case-by-case basis.

However, possibly this political Court *which has, in my view, lost all proper sense of place in the constitutional scheme,* may grant a mandamus or mandatory injunction to open the schools on the theory that free public education at State expense is now one of the freedoms protected by the Fourteenth Amendment!

I personally have never had any opposition to integration, which I have lived with happily on a small scale all my life; but I have never believed in a legal compulsion of the South—especially by the Court. The South lives in a situation which, until the Warren Court, was deliberately held to be solely within the purview of the States and not of the federal courts except as to equal treatment, and at the federal level primarily in Congress. I have never believed that the Southern situation should be settled by those who don't have it, but only by those who live with it. Apparently history has taught some of us nothing.

[From the U.S. News & World Report, June 20, 1966]

IN THE 13TH YEAR OF THE "WARREN REVOLUTION"—HOW SUPREME COURT IS CHANGING UNITED STATES

(NOTE.—Sweeping changes in the habits and customs of the nation have been brought about by "judicial activism" of the Warren Court in recent years. Federal judges have ventured into controversial areas affecting millions. Examples: education, religion, race relations, morals, politics, subversion, States' rights, and law enforcement. However, many issues remain unsettled, such as de facto segregation in schools and housing. Now, with crime and lawlessness mounting in the country, questions are being asked. Is it time to moderate the trend of judicial change in America? Here is the dramatic story of what has occurred in the "Warren Revolution.")

WHO'S WHO ON SUPREME COURT

Usually on "liberal" side:

Earl Warren, 75, Chief Justice since 1953; Republican nominee for Vice President in 1948 and candidate for presidential nomination in 1952; former Governor and State attorney general of California, onetime district attorney of Alameda County (Oakland).

Hugo Lafayette Black, 80, Associate Justice since 1937; former "New Deal" Democratic U.S. Senator from Alabama and onetime police-court judge.

William Orville Douglas, 67, Associate Justice since 1939; former Yale law professor and member of Securities and Exchange Commission under President Roosevelt; Democrat; from Washington State.

William Joseph Brennan, Jr., 60, Associate Justice since 1956; former Newark lawyer and judge of the New Jersey State supreme court; Democrat.

Usually on "conservative" side:

Tom C. Clark, 66, Associate Justice since 1949; former U.S. Attorney General under President Truman and Justice Department lawyer during the Roosevelt Administration; Democrat; from Texas.

John Marshall Harlan, 67, Associate Justice since 1955; former Manhattan lawyer and judge of U.S. court of appeals in New York; Republican.

Potter Stewart, 51, Associate Justice since 1958; former Cincinnati lawyer and judge of U.S. court of appeals in Ohio; Republican.

Byron Raymond White, 49, Associate Justice since 1962; Deputy Attorney General under Kennedy; all-American football player at University of Colorado; Democrat.

Newcomer, not yet on record in enough decisions to be identified with either side:

Abe Fortas, 55, Associate Justice since 1965; former Washington lawyer and Under Secretary of the Interior in the Roosevelt "New Deal" regime; Democrat.

In the thirteenth year of what is being called the "Warren Revolution," it now appears that Earl Warren, Chief Justice of the United States, and the Supreme Court over which he presides may be inclined to slow the rapid tempo of court-directed changes in America.

On May 18, speaking to the American Law Institute in Washington, the Chief Justice exhibited misgivings about the growth of "federalism" in the country, and a withering of State and local responsibility in the field of law enforcement.

Referring to new civil-rights bills pending in Congress to change the manner of selecting juries—mostly aimed at considerations of race, sex, or color—Mr. Warren expressed concern lest some "ill advised" legislation might be enacted.

Some of these bills, he said "go a long way, and would radically change the relationship between our federal and State governments."

There are other indications that the Supreme Court may be pausing to consider the consequences of some of its edicts, in particular a series of recent decisions striking blows at law-enforcement procedures.

At the same time, the Court has ventured into broad new fields, where many questions remain unsettled, including race relations; *de facto* segregation in the schools, in homes, in jobs, and at social events; censorship of allegedly obscene books, magazines, and movies; the rights of suspected criminals aaginst the police, and the role of television in the courts of the nation.

The upheaval in America that started in 1954 under the Warren Court has been characterized by legal scholars as the most "daring and revolutionary" period of "judicial activism" in constitutional history.

The judiciary has intervened in the most controversial areas, dealing with such things as education, religion, morals, politics, citizenship, suffrage, passports, the postal power, sedition and subversion, communications, labor-management relations, and local law and order.

A record of dissent

With exception of the decisions in the school-segregation cases, which were unanimous, most of the major decisions of the Warren Court have been with sharply dissenting opinions, often in 5-to-4 or 6-to-3 divisions among the nine Justices.

Never in any year has the degree of unanimity among the Justices reached as high as half the cases decided by the Court with written opinions.

The number of unanimous opinions on the bench has ranged from a low of 23 per

cent of all full-opinion decisions in 1959–60, to a high of 42 per cent in 1963–64, according to an annual compilation by "The Harvard Law Review."

[Source "the Harvard Law Review"]

"RECORD OF DISSENT

"In a 12-year period, 1953 to 1965, the Supreme Court handed down full-opinion decisions in 1,264 major cases.

"*Of these decisions:*

"432, or 34.2 per cent, were by unanimous opinion of the Court.

"832, or 65.8 per cent, were with dissenting opinions by one or more of the nine Justices.

"*This means:*

"*The Warren Court has differed in judgment on nearly two thirds of all major cases.*"

Yet the actions of the Court have influenced the daily lives of almost all Americans including more than 50 million schoolchildren and their parents; 20 million Negroes; millions of businessmen and union members; millions of churchgoers; members of Congress and State legislatures; thousands of federal, State, and local-government employees; the apparatus of the Communist Party, and an untold legion of the criminal underworld.

The Supreme Court has waited until the closing day of its term each year to hand down decisions in some of the most difficult and controversial cases.

Here are some of the most significant areas of judicial activity by the Warren Court:

RACE RELATIONS

Starting with the epochal school-desegregation decree of 1954, the "Warren Revolution" began in the universal field of race relations, aimed at bringing about equality among the races.

Subsequently, in one case after another, the Court knocked down racial barriers in transportation, "peaceful demonstrations," registration and voting, boxing matches, as well as other athletic or entertainment events, and access to public accommodations such as hotels, motels, bars, restaurants, parks, playgrounds, theaters, swimming pools, beaches and golf courses.

Meanwhile, new federal laws advancing and protecting Negro rights were passed by Congress in 1957, 1960, 1964 and 1965, with additional legislation now being considered.

Last year the Supreme Court quickly upheld the 1964 Civil Rights Act as a valid exercise of congressional power to regulate interstate commerce; knocked down Virginia's poll tax under the new 24th Amendment; and threw out, by a 5-to-4 decision, trespass conviction of Negro "sit-in" demonstrators which had occurred before the 1964 Civil Rights Act became law.

Where Court is silent

The Court has never ruled, however, on the fundamental question of whether State and local government is required not only to abstain from segregation, but to promote affirmatively racial integration in schools, housing, hospitals, employment and other areas.

Nor was the Court willing to hear an appeal by Negroes who claimed that they were discriminated against by a labor union in employment and seniority.

Schools remain largely segregated in Northern suburbs, and many areas of the South. Integration, so called, is token. The flight of white populations to the suburbs in the North has, in fact, increased *de facto* segregation in the central cities.

The big question now: Will the Court, using judicial power, try to force "integration"—balancing schools by racial quotas, forcing children to be bused long distances to mix the races in schools, breaking up suburban neighborhoods, knocking down the lines of political jurisdiction that separate the suburbs from the central cities?

SUBVERSION

In a series of split decisions in 1956 and 1957, the Court curbed federal and State action aimed at Communist subversive activities.

Sedition laws of 42 States were invalidated on the ground that the Federal Government had "pre-empted" this field with the 1940 Smith Act, making it a crime to advocate overthrow of the Government by force and violence.

Federal convictions of alleged Communists were overturned; investigating powers of Congress and state legislatures were restricted; an act of Congress to bar "security risks" from Government jobs were held not to apply to "non-sensitive" positions.

The Court in 1951, under Fred M. Vinson as Chief Justice, upheld Smith Act convictions of 10 top Communists. The Warren Court of 1957 revoked convictions of 14 "second string" Communists under the same law. Recently, the Warren Court, in a 5-to-4 decision, held unconstitutional as a "bill of attainder" a section of the 1959 Labor-Management Act prohibiting any person from serving as a union official who had been a member of the Communist Party at any time during five preceding years.

The Vinson Court in 1950 sustained against a bill-of-attainder attack a section of the 1947 Taft-Hartley law, denying access to the National Labor Relations Board for unions whose officers refused to sign non-Communist affidavits.

Communist mail freed

Last year, in another 5-to-4 decision, the Supreme Court overruled a section of the 1962 Postal Act authorizing the Postmaster General to detain and destroy mail determined to be "communist propaganda."

The Post Office Department had argued that it should not have to subsidize distribution of mail from Communist countries which refuse to sign reciprocal agreements to deliver American political literature.

More than 70 bills were introduced in Congress between 1956 and 1958 to undo various Court decisions. These bills included House bill HR 3, aimed at ending the "judge-made" doctrine of "pre-emptive federalism."

The latter measure was endorsed in principle by the American Bar Association, the Governors' Conference, and the National Association of Attorneys General. The chief justices of the 48 States in 1958 adopted, 36 to 8, a resolution condemning the U.S. Supreme Court for making hasty decisions "without proper judicial restraint," and with acting as a "policy maker" in national affairs.

PASSPORTS

Asserting jurisdiction over the passport authority of the executive branch, the Court held, 5 to 4, in 1958 that the State Department could not withhold passports from suspected Communists because of their "beliefs or associations."

By a 6-to-3 vote in 1964, a section of the Subversive Activities Control Act was held unconstitutional because it might prevent "innocent members" of the Communist Party from going abroad for "innocent purposes."

In 1965, however, the Court upheld, 6 to 3, a ban on travel to Castro's Cuba under the 1952 Immigration and Nationality law. This case was distinguished from previous rulings on the ground that it did not inhibit "freedom of expression or associations."

Government security agencies contend they have been hampered in the investigation, control, and restriction of movement of subversive agents by various Court rulings.

RELIGION

The Supreme Court closed its term in 1962 by holding that recitation of an optional, nondenominational devotional known as the "Regents' Prayer" was unconstitutional in New York public schools under the "establishment of religion" clause of the First Amendment. The next year, the Court banned reading of Bible passages and the Lord's Prayer as devotionals in public schools of Pennsylvania and Maryland.

More than 150 resolutions were introduced in Congress to reverse the edicts. Governors, mayors, and State legislatures sent petitions calling for a constitutional amendment.

Belief-in-God ruling

In 1961 the Court held that a public official cannot be required to take an oath affirming his belief in God. The same year, the tribunal upheld "Sunday closing laws" in various States.

Last year, in three separate cases, the jurists gave a lenient interpretation to a section of the Selective Service Act exempting "conscientious objectors" from military duty where they profess a belief in a Supreme Being.

"The Harvard Law Review" commented:

"The Court has now so broadly construed the test for conscientious objectors that the 'establishment' issue will probably remain dormant until a party who flatly declares that he does not believe in a Supreme Being seeks conscientious-objector classification."

For years the Court avoided coming to grips with Connecticut's 1879 law prohibiting use of birth-control devices. Last year, by a 7-to-2 decision, the Justices found the statute in violation of at least six provisions of the Constitution.

APPORTIONMENT

After 175 years of government, the Supreme Court held in 1962 for the first time—by a 6-to-2 decision in the landmark case of Baker v. Carr—that federal courts have a right and duty to oversee political apportionment of seats in the 50 State legislatures.

Two years later, by 6 to 3, the Court extended its decree to cover apportionment of the House of Representatives in Congress—a co-ordinate branch of the Federal Government.

At the same time, in another 6-to-3 decision, the Justices held that both houses of a State legislature must be based solely on population—"one person, one vote."

The Baker v. Carr edict was widely regarded as overturning a 1946 ruling in which the late Justice Felix Frankfurter said a dispute over congressional districts in Illinois was too political to be "justiciable."

Senate seeks reversal

A majority of the U.S. Senate voted on two occasions—in 1965 and 1966—to reverse the Court, but the resolution failed to muster the two-thirds majority needed for a constitutional amendment.

By mid-May of 1966, according to the Council of State Governments, 37 States had reapportioned one or more houses of their legislatures under court orders.

Twelve other States were in litigation, or awaiting approval, or operating under temporary plans. Minnesota was listed as the only State which had not adopted any "effective plan."

Twenty-seven States, with a total of 258 House seats, had reapportionment congressional districts. No action was expected in other States until after the 1970 census.

In these and other areas, many officials claim States' rights have been eroded by federal-court decisions to a point where State governments are largely pawns and administrative agencies for federal programs such as for schools, hospitals, highways, agriculture and relief.

CENSORSHIP

For some time, the Court has been trying to write a self-executing definition of "obscenity"—which could be applied by State and local censors—to get around "free speech"" provisions of the Constitution.

By a 6-to-3 opinion in 1957, the jurists held material dealing with sex is not protected if it is "without redeeming social im-

portance," and "appeals to the prurient interest," or what Justice Potter Stewart later termed "hard-core pornography."

In three cases this year, by 5-to-4 decision that aroused the ire of "liberals," Chief Justice Warren said that material not otherwise objectionable could be banned if it is advertised and promoted in a lewd way, or in a way that amounts to what he called "pandering."

Justice John M. Harlan pointed out that "no stable approach to the obscenity problem has yet been devised by this Court. . . . I do not see how the Court can escape the task of reviewing obscenity decisions on a case-by-case basis."

"The Wall Street Journal" commented:

"The Supreme Court . . . may be ready for a great new crusade—protecting the nation's morals from corruption by books and magazines and movies."

CRIME

The judiciary today seems inclined to be on the defensive in trying to assure the public that court protection of the "rights" of suspected criminals has not been carried so far as to tip the scales of justice against society as a whole.

Crime on the streets and subways of big cities, public parks unsafe after dark, attacks on women in the business districts or downtown apartment areas—these are symptoms of a national problem, recognized by the White House in a special message to Congress.

Chief Justice Warren told the American Law Institute:

"One matter above all others which we face as a profession, which is of most concern to the American people today, is the problem of crime."

Some critics "take the easy approach of placing the blame for our high rate of crime on our courts and our system of law enforcement," he noted.

Crime, Mr. Warren said, is a problem whose root causes "go deep into the whole fabric of our civilization, and into our moral, social, and economic systems."

Fears arise

Many public officials, nevertheless, are disturbed by the trend of recent Supreme Court decisions which, they think, makes it harder for police to make arrests, and easier for criminals to go free on technicalities.

Vincent L. Broderick, former New York police commissioner, told a Northwestern University conference April 29:

"We in law enforcement, and many others throughout the land, are concerned—greatly concerned—with a rising pattern of violent crimes—crime which has grown at a rate far greater than our population. Those in law enforcement are concerned that they retain the means to cope with it. And they see, in recent Supreme Court decisions, inroads or potential inroads upon their capacity."

The Warren Court has expanded its domain over the State judiciary, requiring it to comply with federal rules of procedure, and applying to the States most of the strictures of the Bill of Rights in the Federal Constitution.

Many authorities feel that the Bill of Rights—the first 10 Amendments—was drafted as a protection against the abuse of autocratic power by the Federal Government, and was not intended by the founders of the Republic to apply to the several States.

Various rulings

In recent years—usually with dissenting opinions—the Supreme Court has held:

States must provide legal counsel and free trial records for all indigent defendants in criminal felony cases. The Court has not yet made it clear at what point in a police inquiry the "right to counsel" obtains, or whether the principle will be extended to misdemeanors.

Suspicion alone is no ground for arresting anyone—even though a suspect may be caught red-handed with incriminating evidence.

A prisoner must be arraigned "without unnecessary delay" in a federal case; any confession obtained in the meanwhile, whether voluntary or not, is inadmissible in court.

The Fifth Amendment privilege against self-incrimination is now applicable to State, as well as federal, criminal proceedings.

In the landmark case of Mapp v. Ohio, in 1961, by a 5-to-4 opinion, the Supreme Court ruled that evidence of a crime obtained contrary to federal standards under the Fourth Amendment's provisions against illegal search and seizure is "inadmissible in a State court."

When it appeared that hundreds of convicts, already serving time, would seek reviews of their cases, the Court in 1965 announced that its Mapp rule would apply "for prospective operation only."

In another 5-to-4 decision, Escobedo v. Illinois, in 1964, the Court held that a confession obtained from a suspect during police interrogation—before he had been accused of a crime—could not be used as evidence, unless the suspect had been warned of his rights and permitted to see his lawyer.

At the Northwestern University conference April 29, Chief Judge Charles S. Desmond of New York State cited Justice White's dissent in the Escobedo case, that the decision appeared to be another step in the goal of barring from evidence "all admissions obtained from an individual suspected of crime, whether involuntarily made or not."

Judge Desmond said the Mapp rule "does not provide any protection for the ordinary average citizen who never needs it. What the rule does is to immure and safeguard the professional criminal, especially the narcotic dealer and gambler.

"It has the everyday practical effect—just as the new rules on confessions—of depriving the public, not just the prosecutors and the police, of reliable, convincing real evidence."

Growth of crime

FBI reports show 2.75 million "serious crimes" occurred in the United States last year, or a 58 per cent increase in the last seven years.

Most of these crimes were committed by "repeaters"—criminals previously arrested for other serious offenses. The great majority are offenses under State laws or municipal ordinances—not the Federal Code. Lawyers say 10 or 15 times as many criminal cases arise in State courts as in federal courts.

Police claim that statements obtained during interrogation of witnesses or suspects are vital to the solution of a majority of all criminal cases.

Michael Murphy, former New York City police commissioner, told the New York District Attorneys Association:

"To arrive at the truth, it is incumbent upon the police to question the suspect in order to obtain necessary evidence, and sometimes—even more importantly—to exonerate him, if the evidence so warrants."

Mr. Broderick said: "The stark fact will always remain that the municipal police officer is called upon to take action alone, on the street, in the fact of violently developing situations, without law books, without ready authorities, without legal advice, and quite often in an atmosphere of latent or overt hostility, in which his own life, and that of others, may be in danger."

How taxpayer is affected

Under new Supreme Court rules, the taxpayers are going to have to pay for the legal defense of all indigent defendants in felony cases in both federal and State courts. Court records indicate that 60 per cent of the defendants in criminal cases cannot afford to provide their own lawyers. Many plead guilty, and are sentenced without a jury trial, hoping to obtain clemency from the judge.

The Criminal Justice Act of 1964 provided compensation for court-appointed lawyers in federal cases.

Chief Justice Warren said 12,383 lawyers have been appointed so far by the federal courts. He estimated the total would not exceed 20,000 a year, "unless the statute is amended to cover postconviction proceedings and other cases not now included."

What is the practical effect of all this? A federal judge observed:

"I'm a strong believer in everyone having at least one appeal, a review to make sure there has been no substantial error. But that doesn't mean unlimited reviews of the same case. It's these postconviction jobs that are causing trouble.

"A case goes through all of the appellate procedures. Then the defendant files a habeas corpus, and it starts all over again. He gets another court-appointed counsel, and another free copy of the trial record. Some of these cases come back six or seven times.

"Now we're getting a rash of these State cases. Some of these defendants are guilty as can be. They admit it. But they claim error in the trial, or some other technicality, as a means of getting off. There's no end to it."

That's the record of the "Warren Revolution" affecting race relations, religion, education, crime, morals, politics, citizenship and the Communist conspiracy in America.

Where will it all end? Who knows? But there are indications that the High Court is taking another look at federal-State relations in the field of law enforcement. Perhaps the new note of caution will extend to other areas as well.

SOME CRITICISMS OF THE COURT

Prof. Philip B. Kurland of the University of Chicago law school, 1964:

"The Justices have wrought more fundamental changes in the political and legal structure of the United States than during any similar span of time since the Marshall Court [early in the history of the Republic] . . . .

"First and foremost . . . has been the emerging primacy of equality as a guide to constitutional action. . . . The egalitarian revolution in judicial doctrine has made dominant the principles to be read into the 'equal-protection clause' rather than those that have been read into the 'due-process clause' of the Fourteenth Amendment.

"The second major theme has been the effective subordination, if not the destruction, of the federal system. The two are not disparate, but related notions, for each is a drive toward uniformity and away from diversity. Uniformity cannot exist if there are multiple rulemakers. Therefore, the objective of equality can be achieved only by elimination of authorities not subordinate to central power.

"The third theme . . . is enhancement of judicial dominion at the expense of the power of the other branches of government, national as well as State.

"A fourth element courses through the opinions of the Court . . . the absence of workmanlike product, the absence of right quality."

Prof. Henry M. Hart, Jr., of Harvard law school, 1959:

"It has to be said that too many of the Court's opinions are about what one would expect could be written in 24 hours. . . . Few of the Court's opinions—far too few—genuinely illuminate the area of the law with which they deal."

Prof. Alfred H. Kelly of Wayne State University, Detroit, 1965:

"Much of the history that the recent Court has produced is of the law-office variety. It fails to stand up under the most superficial scrutiny by a scholar possessing some knowledge of American constitutional development.

"The present use of history by the Court

is a Marxist-type perversion of the relationship between truth and utility. It assumes that history can be rewritten to serve the interests of libertarian idealism."

Prof. Robert G. McCloskey of Harvard University, 1966:

"In some notable cases, the Warren Court has, with more or less frankness, created constitutional rules out of whole cloth. Whether they were 'good' constitutional rules is not here in question. The point is that they were patently judge-made, and modern awareness of this fact may detract from the priestly authority that clothed the Court in the past. . . ."

During the last four terms, "the remarkable extent of the Warren Court's will-to-govern becomes fully manifest. . . . The Justices chipped away at doctrinal roadblocks to a judicially defined good society."

Dean Erwin N. Griswold of Harvard law school, 1960:

"When decisions are too much result-oriented, the law and the public are not well served."

Prof. Robert Braucher of Harvard, 1955:

"The judicial power extends to cases and controversies; it is for Congress and the President to make laws, to take care that the laws be faithfully executed, and otherwise to administer the Government. . . . Judges are supposed to focus on the case, rather than law-making or public administration."

Every Chief Justice in recent years, from Charles Evans Hughes through Harlan Fiske Stone to Fred M. Vinson, has espoused a philosophy of "judicial restraint."

Chief Justice Warren, however, during his years on the Court, has pursued a doctrine of "judicial activism."

Justice Felix Frankfurter commented in 1958:

"It is not the business of this Court to pronounce policy. . . . Self-restraint is of the essence of the judicial oath, for the Constitution has not authorized the judges to sit in judgment on the wisdom of what Congress and the executive branch do."

Justice John M. Harlan, in Mapp v. Ohio, 1961:

"The Court, in my opinion, has forgotten the sense of judicial restraint which . . . is one element that should enter into deciding whether a past decision of this Court should be overruled."

Justice Frankfurter, in Baker v. Carr, 1962:

"The Court today reverses a uniform course of decisions established by a dozen cases, including one by which the very claim now sustained was unanimously rejected only five years ago. . . .

"Such a massive repudiation of the experience of our whole past in asserting destructively novel judicial power demands a detailed analysis of the role of this Court in our constitutional scheme."

Justice Harlan, in Reynolds v. Sims, 1964:

" . . . No thinking person can fail to recognize that the aftermath of these cases . . . will have been achieved at the cost of a radical alteration in the relationship between the States and the Federal Government, more particularly the federal judiciary. . . .

"Finally, these decisions give support to a current mistaken view of the Constitution and the constitutional functions of this Court. This view, in a nutshell, is that every major social ill in this country can find its cure in some constitutional 'principle,' and that this Court should 'take the lead' in promoting reform when other branches of government fail to act. The Constitution is not a panacea for every blot upon the public welfare, nor should this Court, ordained as a judicial body, be thought of as a general haven for reform movements."

Justice Hugo Black, in Jackson v. Denno, 1964:

"There is no constitutional provision which gives this Court such lawmaking power. . . . I think the New York law here held invalid is in full accord with all guarantees of the Federal Constitution, and that it should not be held invalid by this Court because of a belief that the Court can improve on the Constitution."

Justices Frankfurter, Harlan, and Tom C. Clark, in Konigsberg v. California, 1957:

"What the Court has really done is to simply impose on California its own notions of public policy and judgment. . . .

"Today's decision represents an unacceptable intrusion into a matter of State concern."

Justice Byron White, in Escobedo v. Illinois, 1964:

"The decision is another major step in the direction of the goal which the Court seemingly has in mind—to bar from evidence all admissions obtained from an individual suspected of crime, whether involuntarily made or not.

"Today's decision cannot be squared with other provisions of the Constitution which define the system of criminal justice which this Court is empowered to administer."

Justices Black and Potter Stewart, in Griswold v. Connecticut, 1965, a birth-control case:

"There is no provision of the Constitution which either expressly or implicitly vests power in this Court to sit as a supervisory agency over acts of duly constituted legislative bodies. . . .

"The adoption of such a loose . . . standard for holding laws unconstitutional will amount to a great unconstitutional shift of power to the courts, which . . . will be bad for the courts, and worse for the country."

Justice Harlan, in Hamm v. Rock Hill, 1964:

"The Court holds that these State trespass convictions, occurring before passage of the Civil Rights Act of 1964, must be set aside by virtue of the federal doctrine of criminal abatement. This remarkable conclusion finds no support in reason or authority. . . ."

[From the Reader's Digest, July 1967]

Is the Supreme Court Really Supreme?

(By Eugene H. Methvin)

(Recent controversial rulings by the High Bench raise anew the troubling issue: Who is the ultimate arbiter of the Constitution? Our founding fathers provided a foresighted answer.)

Fifty-two percent of the American people rate the Supreme Court's performance as "only fair" or "poor," according to a recent Louis Harris opinion poll. "The Justices are stretching the judicial process to try to translate their notion of an ideal society into reality," says Prof. Philip B. Kurland, editor of the University of Chicago Law School's *Supreme Court Review*. From legal scholars to the man in the street, from Congress to the Justices themselves, this most revered of our governmental institutions is today drawing stinging criticism.

Some of the most eloquent protests have come from within the Court itself. In 1962, when the Supreme Court invaded the political ticket of legislative reapportionment, the late Justice Felix Frankfurter denied that the Court had constitutional authority for its move. He accused his colleagues of "a massive repudiation of the experience of our whole past."

In another case last year, Justice Byron R. White charged the Supreme Court with laying down specific rules that have "no significant support" in the history of the Constitution.

Justice John M. Harlan has despairingly proclaimed that recent Court decisions amount "to nothing less than an exercise of the amending power by this Court."

DIRECTION BY DECISION

Repeatedly in recent years the Court has claimed vast new powers to change by judicial decree the shape of our constitutional system. A narrow majority of "activist" Justices, spearheaded by Chief Justice Earl Warren and Justice William O. Douglas, has increasingly taken away from juries and legislatures—the two authentic voices of the people—crucial decisions affecting the order and direction of American life.

Consider the Court's decisions in three vital areas:

School prayer

The Court has declared that reading the Bible or saying the Lord's Prayer (or even a non-sectarian prayer) in voluntary classroom religious exercises is unconstitutional. It has relied on the theory that the First Amendment ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof") somehow requires the Court to impose a wall of separation between religion and any sort of governmental activity.

This notion is "sheer invention," say many distinguished law scholars, among them Dean Erwin Griswold of Harvard Law School. We have, Griswold says, "a spiritual and cultural tradition of which we ought not to be deprived by judges carrying into effect the logical implications of absolutist notions not expressed in the Constitution, and surely never contemplated by those who put the constitutional provisions into effect."

Reapportionment

In one stroke, in June 1964, the Court rendered "unconstitutional" the legislatures of most of the 50 states. The action boldly asserted a judicial power never before claimed. It was based on the 14th Amendment. The dictum that "no state shall deny to any person the equal protection of the laws" means, said Chief Justice Warren, that states cannot adopt "Little Federal" plans, in which one house of the legislature is apportioned like the U.S. Senate, to accommodate other factors (historic, economic or geographic) than population. The states must, instead, elect *both* houses on a "one man, one vote" basis.

Justices Potter Stewart and Tom Clark objected sharply. They called the Court's action "the fabrication of a constitutional mandate" and said, "The Draconian pronouncement finds no support in the words of the Constitution, in any prior decision of this Court, or in the 175-year political history of our Federal Union."

The quarrel arose because many state legislatures had failed to reapportion their districts as people moved from country to city and from city to suburbs Other states, however, had reapportioned conscientiously—Colorado, for one. In 1962, Coloradans went to the polls to choose between two reapportionment plans and voted 305,700 to 172,725 in favor of a "Little Federal" plan which gave Colorado's lightly populated western mountains and eastern wheatlands a few more members in the state senate than their population warranted. A majority in every county, including urban Denver, supported this plan.

Justices Clark and Stewart pleaded with the Court to avoid destroying such local initiative and decision. Under the "equal protection" clause, they said, federal courts might properly void any systems which prevent ultimate majority rule. "Beyond this there is nothing in the federal Constitution to prevent a state from choosing any electoral legislative structure it thinks best suited." Colorado simply "sought to provide that no identifiable minority shall be completely silenced or engulfed," an aim that "fully comports with the letter and spirit of our constitutional traditions." The Justices pleaded in vain.

Criminal procedure

Historically, the administration of criminal justice has been left to the states. The Constitution originally gave the federal government no authority whatever to intervene in ordinary criminal matters. However, the 14th

Amendment forbids states to deny a person "due process of law," and the Court has now been using this language as reason to impose a new set of detailed, and controversial, rules of its own making on state law enforcement.

In 1961, for example, five Justices asserted that "due process" requires a state judge to keep physical evidence from the jury until he finds any legal fault with the police search that obtained it. That overruled long-standing Supreme Court decisions and nullified contrary rules in 26 states. Then, in 1964, five Justices prohibited the century-old practice in 15 states of letting the jury decide whether a confession has been coerced. Justice Clark protested: "Dependence on jury trials is the keystone of our system of criminal justice, and I regret that the Court lends its weight to the destruction of this great safeguard to our liberties."

In June 1966, Chief Justice Warren and four fellow Justices imposed on all states a new rule, never before followed in any state: Judges must also keep a confession from the jury unless police can prove beyond doubt that they warned the suspect of his rights, and even furnished him a lawyer throughout interrogation if he wished.

There is mounting evidence that the Court's massive federalization of criminal justice has grievously crippled law enforcement. FBI statistics show that, since the 1966 ruling, the rate at which police are solving reported crimes—a rate which had held steady for years, has dropped by almost ten percent. In New York City, after last year's ruling on interrogations, the proportion of unsolved murders increased by 40 percent. Indeed, the Supreme Court's rulings have compelled the freeing of many apprehended and confessed criminals.

Last September, for example, a woman stood before Brooklyn Judge Michael Kern. She had confessed to taping her four-year-old son's mouth and hands and beating him to death with a broomstick and a rubber hose. Nevertheless, because of the new Supreme Court ruling, her signed confession, the state's only evidence, had to be thrown out.

"Thank you, your honor," the woman said.

"Don't thank me," the judge replied icily. "Thank the United Supreme Court. You killed the child and you ought to go to jail."

CONFLICTING PHILOSOPHIES

These highly controversial decisions reflect a titanic clash of judicial philosophies in today's Supreme Court. Justices Harlan, White and Stewart are currently the chief representatives of the philosophy of judicial restraint propounded by the great jurist Oliver Wendell Holmes: In a democratic society, judges who never face the discipline of the ballot box must defer to elected legislators in policy choices—and leave it to the voters to discipline the legislators at the polls if the legislators' decisions are bad. A judge should declare a legislative act unconstitutional only when he is certain that reasonable men could not disagree. Otherwise, said Holmes, even though the legislators have decided unwisely, a judge is obligated to say, "Damn 'em, let 'em do it!"

On the other side in today's Court, Chief Justice Warren, Justice Douglas and usually Justice Hugo L. Black represent the activist philosophy, or what is sometimes called "political jurisprudence." This school holds that constitutional claims coming to the Supreme Court involve, primarily, conflicting values and interests. There may be no express law relevant to today's conditions. So, in weighing conflicting interests, the Justices must impose their own "social preferences." This philosophy sees the Justices as the modern interpreters of the values expressed in "our living Constitution."

Last year, for example, the Court outlawed Virginia's poll tax—even though it had unanimously upheld a similar tax 29 years before. Even Justice Black denounced this change by judicial decree as "an attack on the concept of a written constitution which is to survive unless changed through the amendment process."

But do we want the Court to be such a lawgiving body? Carried very far, this philosophy would mean in effect abandoning our written Constitution. The High Bench would become not a court of law but a Grand Policy Council, a "Big Brother Club," as one law professor irreverently dubbed the activists.

From the first, men like Thomas Jefferson feared the federal judiciary as a dangerous, fundamentally antidemocratic power. Their fears have proved valid. For half a century (between 1890 and 1937), reactionary "activists" on the Court virtually destroyed the nation's legislative ability to cope with the industrial revolution, to regulate wages and working conditions, child labor, utilities, railroads, labor-management wars. They nullified 52 acts of Congress and 228 state laws. Ultimately, in the "limited constitutional revolution" of 1937, President Franklin D. Roosevelt, Congress and public pressure persuaded three activist Justices to retire or switch, thus allowing needed social legislation to stand.

Today, the Court is again exhibiting judicial "activism"—only this time designed to impose radical change instead of a freeze. "When in the name of interpretation, the Court *adds* something to the Constitution that was deliberately excluded from it," warns Justice Harlan, "the Court in reality substitutes its view of what should be so far the amending process."

TO GUARD THE GUARDIANS

Who *is* the ultimate arbiter of our Constitution? *Does* the Constitution limit the Justices as well as the legislators and the President?

The founding fathers, understanding the tendency of all men to grasp ever more power, labored to subject every branch of government to checks and balances. They specifically included the Supreme Court. To the ancient question, "Who will guard these guardians?" they answered emphatically, *"The people—through their elected representatives."* And, historically, we have asserted that authority on many occasions.

For example, one powerful check on the Court is the President's power of appointment. In 1870, President Ulysses S. Grant filled two vacancies. The votes of these new Justices made it possible to reverse a recent crucial decision, which declared that Congress had no power to issue paper money. Last June's crucial five-four decision on criminal confessions could not have been made had not President Johnson's first appointee, Justice Abe Fortas, promptly lined up with the activists. Since Justice Clark, a moderate, has recently retired, and since several Justices are over 65, Presidential appointments may completely reshape the Court in the next few years.

The Constitution also plainly specifies two major ways in which Congress can check the Court:

The 14th Amendment—under which the Supreme Court has dictated state legislative apportionments and criminal procedures—specifically names Congress as the protector of the rights it creates. While Congress cannot reverse a Supreme Court decision in a specific case, it *can* write new remedies which the Court is then obligated to apply in resolving such cases in the future. Last year, for example, Chief Justice Warren specifically acknowledged that Congress may, by simple statute, write rules different from those that the Court handed down for police interrogations.

Article III empowers Congress to make "exceptions and regulations" to the Court's appellate jurisdiction. Thus the Constitution explicitly makes *our elected legislators* the supreme judges—by simple majority vote—of what types of cases the Court may decide. Says Herbert Wechsler, Columbia Law School professor and director of the American Law Institute, "The plan of the Constitution was quite simply that Congress would decide from time to time how far the federal judicial institution should be used. Congress has the power, by enactment of a statute, to strike at what it deems judicial excess."

Thus the judges are *not* the sole arbiters of the Constitution. The framers of the Constitution laid on Congress a duty to define the rights it provided, and to act as a counterweight to the Court.

"BEYOND THE BOUNDS"

Though it has acted at other times—for example, in 1868, when it stripped the Court of power to hear appeals in habeas corpus cases—Congress has failed so far to rein in the present Court. In 1964, the House did vote 218–175 to forbid the Court to interfere in state legislative apportionments. This simple majority vote was, under Article III, sufficient. But in the Senate, an attempt was made to seek passage of the measure as a constitutional amendment, and it missed—by seven votes—the required two-thirds majority. An amendment to permit voluntary school prayer also failed by a narrow margin. Both goals might well have been accomplished, by a simple majority vote, under Article III and the 14th Amendment.

Some scholars are convinced that the present Supreme Court would have declared any such effort unconstitutional. Others argue, however, that if the Court had gone to that extreme, Congress could then have retaliated by restricting the Court's future jurisdiction in cases of the kind under Article III.

In the absence of such an effort to check the Court, five Supreme Court Justices, in alliance with one third of either House or Senate, are—by "interpretation"—radically amending our Constitution. Yet amendment is supposed to require a two-thirds vote of Congress and ratification by three fourths of the state legislatures.

The great liberal Justice Benjamin N. Cardozo wrote: "Judges have, of course, the power, though not the right, to travel beyond the bounds set to judicial innovation by precedent and custom. Nonetheless, by that abuse of power, they violate the law."

The founding fathers named Congress as the referee to guard the bounds beyond which the Justices should not go. The time has come for our elected representatives to blow the whistle.

EXHIBIT B

[Editorial from the Washington (D.C.) Evening Star, June 14, 1967]

DR. KING'S CONVICTION

The Supreme Court's majority opinion affirming the conviction of Dr. Martin Luther King Jr. and seven other ministers for contempt of court after they had deliberately violated an injunction issued by a Birmingham judge in 1963 rests upon what strikes us as a sound legal doctrine.

Speaking for the court Justice Stewart said: "The rule of law that Alabama followed in this case reflects a belief that in the fair administration of justice no man can be judge in his own case, however exalted his station, however righteous his motives and irrespective of his race, color, politics or religion. This court cannot hold that (Dr. King and the others) were constitutionally free to ignore all the procedures of the law and carry their battle to the streets. * * * Respect for judicial process is a small price to pay for the civilizing hand of law which alone can give abiding meaning to constitutional freedom."

Justice Stewart was joined in this by Justices Black, Harlan, White and Clark, who has now stepped down from the bench. The dissenters were Chief Justice Warren and Justices Brennan, Douglas and Fortas.

In three opinions they bitterly attacked the majority holding. The details cannot be spelled out in this space. But the essence of the dissents was that the majority by af-

firming the convictions for violating the injunction, had in effect closed the door to a challenge of a "patently" unconstitutional Birmingham ordinance regulating parades and street demonstrations. The majority, of course, thought otherwise. They said the defendants should have challenged the legality of the injunction before willfully defying it.

We would like to think that the principle announced by the majority would be controlling in the future. But this would be a very dubious assumption in view of the President's nomination of Thurgood Marshall to replace Justice Clark. When a suitable case comes along after the Solicitor General takes his seat on the court, there is a high probability that the holding in the case of Dr. King will be overruled by a new 5 to 4 decision.

[Editorial from the Washington (D.C.) Evening Star, July 15, 1967]

MR. MARSHALL'S NOMINATION

A few years ago, the appointment of a Negro to the Supreme Court would have been a sensational, not to say controversial, development. President Johnson's nomination of Thurgood Marshall, however, has produced scarcely a ripple of excitement. This is a measure of our national progress toward maturity, and cause for modest gratification.

The merit of this particular appointment is another question.

There has been some hope, though not much, that the President, in choosing a successor to Justice Clark, would try to bring the Court into better balance. His nomination of the Solicitor General, however, suggested that this hope can be filed and forgotten.

No Supreme Court Justice can be fitted neatly into any category. Occasionally the most liberal or the most conservative, using this term in its relative sense, will jump the tracks. On the whole, however, Tom Clark was a "swing man," sometimes siding with one bloc, sometimes with the other. If any descriptive term is applicable to his service on the bench, it is that he has been a moderate.

We do not think this can be said of Thurgood Marshall, although few things in this life are more hazardous than trying to predict what positions a man will take after he joins the court. Our guess is, however, that Marshall generally will join the "liberal" wing consisting of the Chief Justice and Justices Douglas, Brennan, and Fortas. If so, the "liberals" will be in firm control, and this is considerably less than reassuring with respect to many of the vital areas of public interest that are affected by the court's rulings.

[From the Washington (D.C.) Evening Star, July 21, 1967]

MARSHALL LEAVES QUESTIONS OPEN

(By Dana Bullen)

Thurgood Marshall's reluctance to discuss current criminal law issues at the hearing on his nomination to the Supreme Court leaves this side of his future judicial personality something of a question mark.

Most observers feel he will be liberal-minded, possibly joining Chief Justice Earl Warren and Justice William J. Brennan Jr. on the central side of the court's liberal bloc. Marshall's years of work championing equal rights for Negroes supports this view.

On certain criminal law issues, however, the signals are confusing.

As judge of the 2nd U.S. Court of Appeals in New York prior to becoming U.S. solicitor general, Marshall dealt infrequently with deep criminal law issues. As solicitor general, he was the government's advocate, and it is unclear which views also were personal ones. At the Senate hearings, many such questions went unanswered.

* * * * *

The main clues given the Senators were, first, that Marshall, the first Negro ever named for the Supreme Court, insists that efforts to fight crime stay within constitutional limits and, second, that a brief filed by him in the Miranda group of confession cases contained personal as well as government views.

The first statement probably will not greatly encourage conservative-minded Senators who seem to think that the current Supreme Court shapes the Constitution to fit the cases it finds before it.

Marshall, himself, feels as do most constitutional scholars that the Constitution was meant to be a "living document."

Asked by Senator Sam J. Ervin Jr., D–N.C., what he meant, Marshall said that the framers intended that the Constitution's provisions should be interpreted and applied as of the particular time that a question presents itself.

Such a view permits a flexibility that supporters of the present Supreme Court believe is essential, but that critics of the justices deplore.

The 59-year-old nominee's second statement, however, started a small run on Justice Department and Supreme Court file rooms to find out just what the Justice Department's brief on the confession question said.

* * * * *

In light of Marshall's statement that it reflected his personal views, too, it makes interesting reading.

"We start from the premise," the brief stated, "that it is essential to the protection of society that law-enforcement officers be permitted to interrogate an arrested suspect."

"An inflexible constitutional rule turning on the presence or absence of counsel or on the recitation or omission of a warning may be easier to apply, but we believe it will, more often than not, cast out the baby with the bath," it said.

Generally the position taken by Marshall before the court was that the totality of the circumstances, rather than any single factor, should be decisive in determining whether a confession is usable.

The Supreme Court, of course, went beyond the government's approach making effective warnings about the right to silence and to counsel the key to police use of statements made by suspects.

With the new ruling on the books, it now is unlikely that any new justice could, or would, launch a drive to overturn it.

Marshall's brief, then, may merely indicate greater awareness of law enforcement problems and needs than critics of the court feel liberal-minded justices currently are displaying.

Even this, though, could be important. The number of 5-to-4 decisions by the court underscores the impact a single justice can have.

If it is hazardous to try to predict how a justice will turn out, then it is doubly so when, as in Marshall's case, the signs point in conflicting directions.

While a judge on the 2nd U.S. Court of Appeals some of Marshall's opinions reflected a liberal image that may clash with the language in his brief for the government in the Miranda cases.

In one decision, Marshall virtually applied the 5th Amendment's guarantee against double jeopardy to state proceedings although the Supreme Court itself has yet to go so far.

* * * * *

It was Marshall, too, who as solicitor general last year urged the high court to clear the way for new trials in cases in which government evidence was based upon bugging.

The one thing that is certain, it seems, is that a justice does not shed the views of a lifetime when he mounts the bench—whatever those views may be.

Marshall won the 1954 school desegregation case as counsel for the NAACP Legal Defense Fund.

The instincts developed during his 23 years in the legal battle for equal rights for Negroes surely will assert themselves in some way on the court even though strictly civil rights cases are becoming less frequent now.

[From the Washington (D.C.) Evening Star, June 23, 1967]

MARSHALL APPOINTMENT TO COURT GREETED QUIETLY

(By Clayton Fritchey)

In the light of the surprisingly mild reaction to Thurgood Marshall's appointment to the Supreme Court, his confirmation by the Senate now seems a foregone conclusion. There has not been much grumbling even in the South; and in the Negro community the applause, while generous, has not been deafening.

The unruffled acceptance of what would have been a breath-taking appointment a few years ago, is impressive proof of how much the racial climate has changed in the United States; it also is another demonstration of President Johnson's adroitness in conditioning the public for what he intends to do. He made the choice of Marshall seem obvious. It was almost taken for granted before it happened.

On balance, the President is not likely to gain or lose much politically by the appointment. Certainly such criticism as there has been is nothing for him to worry about. It comes down to two complaints. One is that all appointments to the court should be made on "merit," irrespective of race or religion; the other is that Marshall is not a legal scholar.

As to the first, has there ever been a time when race was not a factor? For 170 years the court has deliberately been all white. Johnson's appointment of Marshall is not a case of introducing race as a consideration, but an effort to break away from it, and eliminate it as a bar to serving on the court. For much of its long history, the court has been a WASP (White Anglo-Saxon Protestant) institution, and it still is to a large extent.

As to Marshall's legal distinction, this is raised against nearly every appointee, but the new justice's experience as solicitor general and circuit court of appeals judge gives him a legal background superior to most of his new colleagues at the time they joined the court.

When the novelty of Marshall's appointment wears off, interest will begin to focus on the effect it will have on the future trend of the court, for there is little doubt that it is going to change the delicate and often unpredictable balance of the last few years.

The day before Marshall was named, the court closed out its present session in an extraordinary flurry of 5–4 decisions. Generally, especially in civil rights and civil liberties cases, Warren, Black, Douglas and Fortas come down on the liberal side. Retiring Justice Tom Clark on occasion voted with them, but frequently not.

Many appointees have surprised even their best friends after going on the court, so it is hazardous to anticipate how any new member will act. On the basis of past performance, however, it seems certain that the liberal bloc will now have a consistent new ally. Certain types of cases that have recently commanded a 5–4 conservative majority, will in the future probably go the other way by 5–4.

In recent decisions the liberal bloc managed a 5–4 majority by picking up a vote from Clark in one case and from White in another. But from now on there will probably be a built-in liberal majority. Since Black, White and Stewart, swing over to the

liberal side on close cases from time to time, there are not likely to be many conservative rulings in the foreseeable future.

Certainly the Rev. Martin Luther King and eight other clergymen might not be going to jail if Marshall had been on the court last week when it upheld contempt convictions of the ministers for their part in desegregation demonstrations in Alabama. Tom Clark cast the deciding vote in this 5–4 decision.

Every new appointment inspires nostalgic longings for the day when the court was filled with learned, objective justices cooly expounding the law free of any personal point of view or any personal feelings. Like Camelot, there never was such a court, and probably never will be. Maybe it is just as well.

[From the Washington (D.C.) Evening Star, June 18, 1967]

MARSHALL'S APPOINTMENT UPSETS COURT BALANCE

(By James J. Kilpatrick)

The nomination of Thurgood Marshall to the Supreme Court has produced cries of jubilation within the liberal left. On the conservative side of the fence, the prospect produces only a sharp dismay. Where goes the Constitution now?

The big news in Marshall's nomination, of course, is that he is the first Negro ever to be named to the court. In the larger view, the matter of his race is immaterial. The overriding fact is that in choosing Marshall to replace the retiring Tom Clark, President Johnson deliberately has moved to upset the rough balance of liberalism and conservatism that recently has prevailed upon the high tribunal. Next term, the forces of judicial restraint will be represented only by Harlan, Stewart, and White, with an occasional vote from Black. The judicial activists will be in full control.

To either view—conservative or liberal—the consequences of this replacement cannot be emphasized enough. When the founding fathers created the Supreme Court in the Constitution of 1787, it was widely supposed that the court always would be the weakest branch of the central government. The driving force of the court's first Mr. Justice Marshall—Chief Justice John—changed all that. By a process of evolution, culminating dramatically in the Warren Court, the tribunal has become the most powerful authority in the whole of our federal system. Its members, serving for life, are in a commanding position to shape national policies as they please. These days, they often are pleased to turn the Constitution into wax.

Nothing that is said is intended as criticism of Thurgood Marshall, the man. He is an immensely attractive fellow, as charming as his predecessor of 150 years ago. During a decade of bitter litigation on civil rights issues, Southern attorneys developed an abiding respect and affection for him. At one time, it might have been possible to oppose his nomination by reason of Marshall's total concentration on the narrow field of Negro rights, but his service on the United States Second Circuit and his experience as Solicitor General have removed that objection. Beyond cavil, he is qualified for the high court—more qualified, in truth than many of his predecessors.

Neither is this intended to say that Clark was a wholly consistent conservative on the bench, or that members of the high court in every case follow predictable lines. Clark had his activist relapses, as in the reapportionment cases; he was not above using his high office to vent his personal spleen, as in the Toilet Goods Association case of May 22. Most judges jump the philosophical traces now and then.

Nevertheless, the briefest glance at key cases of this past term will make the point.

In Adderley v. Florida, Clark was one of five who voted to sustain the convictions of 32 Negro students who undertook to trespass upon the Leon County jail in the name of civil rights. The opinion put a brake on some of the excesses of racial demonstrations. How would Marshall have voted in that case?

This past Monday in Walker v. Birmingham, Clark was one of five who voted to sustain the conviction of Martin Luther King for putting his own view of the law above the order of a court. Would Marshall have voted to send Martin Luther King to jail?

In Fortson v. Morris, Clark was one of five who upheld the power of the Georgia legislature to name a governor when no candidate obtained a majority in the popular election. Nothing in the Fourteenth Amendment, said the majority, prevents a state from so ordering its own affairs. But Marshall's whole record demonstrates a doctrinaire view of the Fourteenth; he reads into "equal protection" all sorts of provisions the framers of that amendment never intended.

In Cooper v. California, and again in McCray v. Illinois, Clark was one of five who voted to strengthen the hand of police officials in securing evidence of crime. The two decisions served to bring some common sense back to the law of Fourth Amendment searches. How would Marshall have voted in these critically important cases? It is a fair surmise that he would have voted with Warren, Douglas, Brennan and Fortas to reverse.

What the court and country will be getting in Marshall will be a more congenial Fortas, a less truculent Goldberg, a more disarming Brennan. The appointment is a great tribute to Marshall's own skill and industry; he is the grandson of a slave, the the son of a Pullman waiter. No critic would wish to take away from the heartwarming success story that came to its climax Tuesday. All the same, in any conservative view of the workings of the court, the nomination is something worse than net no-gain. This was bad news—almost disastrous news—and we shall be living with it for the next ten years at least.

[From the Washington (D.C.) Evening Star, June 16, 1967]

WHY NOT A WOMAN ON HIGH COURT?

(By David Lawrence)

Theoretically, when a vacancy occurs among the nine justices of the Supreme Court of the United States, the President should ask the American Bar Association and the governors of the states to give him privately the names of two or three persons who are best qualified for that office. Instead, one name is submitted to the bar association by the Department of Justice for each vacancy, to ascertain if there is anything unfavorable that can be cited. Before making his selection, a President nowadays looks around for a man of integrity and ability who happens also to be suitable politically—but the country rarely gets the best-qualified men with judicial experience.

However satisfactory the record of Thurgood Marshall, the new appointee, may be, President Johnson could have found at least a dozen men on the federal bench who are better equipped to sit on the Supreme Court of the United States, Johnson, of course, knows what the political customs are. To satisfy blocs of voters, there apparently has to be on the high court representatives of the Catholic, Protestant and Jewish faiths. It used to be that Presidents took account also of geographical factors and tried to equalize the number of justices from different parts of the country.

Significant as is the appointment of "the first Negro"—as the headlines have just emphasized—to membership on the Supreme Court, many people are asking why no Negro was appointed before. An even more pertinent question is: Why hasn't a woman been appointed to the Supreme Court of the United States?

There are many women who have served on the bench in federal and state courts, and have made excellent reputations. Women have been elected as governors and to the Senate and the House of Representatives, and have made notable contributions to public service. About 35 years ago, Frances Perkins became the first woman member of the President's cabinet. If the failure heretofore to appoint a Negro has been a discrimination, it may also be argued that the absence of a woman on the highest court is a kind of discrimination, too.

Thurgood Marshall was for many years general counsel for the Advancement of Colored People, and played a leading role in winning the school-desegregation cases before the Supreme Court in 1954. He also served on the U.S. Circuit Court of Appeals for three years before coming to the Department of Justice as solicitor general in 1965.

While Marshall will doubtless be confirmed by the Senate, the real concern among lawyers is not related so much to his possible participation in cases involving "civil rights" as to the question of where he will veer toward the group on the court which believes in an unwritten constitution rather than toward those who want to preserve the Constitution as written.

This same issue has been plaguing the Supreme Court since President Franklin Roosevelt, 30 years ago, sought to have the membership of the high court enlarged so as to enable him to appoint men who would side with his views on public questions. While the "court-packing" move was defeated in the Senate, Roosevelt had an opportunity later, as vacancies occurred, to name to the Supreme Court nine justices, at least five of whom were of his own school of thought. Since then there have been some exceptions, but for the most part appointees have come from the ranks of those who believe that the Constitution can be rewritten at will by the Supreme Court.

Persons who know Thurgood Marshall's philosophy think he will furnish a surprise and will be found in the middle-of-the-road category. His decisions inevitably will attract a lot of attention.

Unfortunately, there are many who feel that Marshall was appointed solely because of his color and that the President, in effect, "discriminated" against some white men at present on the federal bench who might have been chosen. But if there is "discrimination," the realistic fact is that in the entire history of the Supreme Court of the United States, no woman has ever been appointed. The women eligible to vote outnumber the men. Maybe they just haven't "demonstrated" enough!

[From the Washington Post, June 19, 1967]

MARSHALL TO THE COURT—CAN MODERATION SURVIVE?

(By William S. White)

All who value poise and objectivity in the Supreme Court—qualities already sadly and often absent from its decisions—must look with deep anxiety upon President Johnson's nomination of Thurgood Marshall to the high bench.

It is, of course, neither wise nor fair to impute as inevitabilities certain attitudes to Thurgood Marshall even before he has put on his black robes. Still, the probabilities of the future can only be rationally estimated by the known and certain past. By this standard it is likely that Marshall's elevation will only aggravate an already profound imbalance by which an already disproportionate majority of liberal justices has for years been acting not as detached arbiters but as lawmakers, not as interpreters of the Constitution but as amenders of that Constitution to suit their own notions.

It is an interesting and even a stirring circumstance, to be sure, that Thurgood Marshall is the first Negro in history to reach the high court. So far as all this goes it is well

and good. But all this is not the point. The point is not the color of Marshall's skin, which is irrelevant, but the cast of Marshall's mind. And thus far this has been the mind of an undoubtedly honest but also undeniably zealous liberal advocate, notably in civil rights, that is not the proper equipment for service upon a tribunal supposed to act in aseptic impartiality upon the grand issues of a Nation.

Before Justice Tom Clark retired from the court to make room for this appointment, moderate and conservative and tradition-respecting opinion in this country was on its best days rarely represented by more than four justices out of nine. Clark himself was no conservative as such. But he never automatically sided with those Justices who have steadily been destroying legitimate states' rights and legitimate police powers to deal with both ordinary crime and racial disorders.

Now, there is grave reason to fear that the old 5 to 4 steamroller which has in effect made new law and judge-dictated amendments to the Constitution, may rise to 6 to 3. The basically tradition-minded justices—John Marshall Harlan, Potter Stewart and Byron White, with an occasional assist from the venerable Hugo Black—are likely now to be even more lonely and even more powerless to halt an often patently emotional spirit of unchecked reformism which is casting aside those standards of an evenhanded justice, remote from the clamors of politics and the pressures of interest groups, which once distinguished the Supreme Court of the United States as the most lofty home of dispassionate justice in all the world.

No one argues, of course, that the court should be structured ideologically, with so many "liberals" confronting so many "conservatives" like some congressional committee partisanly divided between Democrats and Republicans. All the same, it is idle to pretend that the court has not long since plunged hip-deep into politics. This being the reality there is every demand in simple fairness not to allow the "conservatives" to be totally overwhelmed.

Yet Marshall has been nominated and Marshall will be confirmed by the Senate. What has been done cannot be undone, nor should it be undone at the human cost of denying an honorable man the approval of the Senate. Thus, the outcome must depend upon Marshall alone. He will have it in his power to drive civilized moderation and conservatism—not some mad "far-right-wingism"—right out of the ultimate hall of justice. Or, by self restraint and sensitive regard for fair play, he can become a voice calmly insistent upon hearing both sides of every story.

EXHIBIT C

[In the U.S. Court of Appeals, Second Circuit—No. 373, Docket 29104]

UNITED STATES OF AMERICA EX REL. GEORGE HETENYI, REALTOR-APELLANT, *v.* WALTER H. WILKINS, WARDEN OF ATTICA STATE PRISON, ATTICA, N.Y., RESPONDENT-APPELLEE

(Argued Mar. 12, 1965, decided July 13, 1965)

Habeas corpus proceeding. The United States District Court for the Western District of New York, John O. Henderson, J., 227 F. Supp. 460, denied application and appeal was taken. The Court of Appeals, Marshall, Circuit Judge, held that where accused in first trial had been convicted of second-degree murder, in second trial had been convicted of first-degree murder and there was reasonable possibility that accused was prejudiced in his third trial by fact that he was indicted, prosecuted and charged with first-degree murder, third trial was constitutionally inadequate and deprived accused of his liberty without due process of law, even though he was convicted of second-degree murder.

Reversed.

Metzner, District Judge, dissented.

1. Constitutional Law ⇐260

Due process clause of Fourteenth Amendment imposes some limitations on state's power to reprosecute an individual for the same crime. U.S.C.A. Const. Amends. 5, 14.

2. Constitutional Law ⇐260

Certain reprosecutions by a state are incompatible with due process of law. U.S.C.A. Const. Amends. 5, 14.

3. Courts ⇐282(15)

Federal courts are entrusted with responsibility and power to decide which reprosecutions by a state violate basic notions of justice. U.S.C.A. Const. Amends. 5, 14.

4. Constitutional Law ⇐274

Under doctrine of selective incorporation, certain guarantees of Bill of Rights, those that are fundamental, are absorbed by due process clause of Fourteenth Amendment and are thus made applicable to the states. U.S.C.A. Const. Amend. 14.

5. Constitutional Law ⇐260

Guarantee against double jeopardy is a fundamental right within doctrine of selective incorporation, whereby certain guarantees of Bill of Rights, those that are fundamental, are absorbed by due process clause of Fourteenth Amendment and are thus made applicable to the states. U.S.C.A. Const. Amends. 5, 14.

6. Constitutional Law ⇐260

State's reprosecution of accused for first-degree murder following completion of first trial, in which he was prosecuted for first-degree murder and jury returned verdict of guilty of second-degree murder, constituted transgression of the federal constitutional limitations on state's power to reprosecute an individual for the same crime. U.S.C.A. Const. Amends. 5, 14.

7. Criminal Law ⇐193½

It was fundamentally unjust to reprosecute accused for first-degree murder after completion of first trial at which he was found guilty of second-degree murder and such reprosecution was cruel and inhuman. U.S.C.A. Const. Amends. 5, 14.

8. Criminal Law ⇐161

Standards of fairness and justice to be applied in criminal cases with respect to reprosecution by state of accused for same crime are not merely personal standards but impersonal standards of society which alone judges, as organs of the law, are empowered to enforce.

9. Criminal Law ⇐189, 192

Where errors contributed to success of prosecution in obtaining second-degree murder conviction in state court and could have had no effect on prosecution's lack of success in obtaining first-degree murder conviction, all legitimate interests served by permitting reprosecution following reversal or successful collateral attack upon conviction were satisfied by restricting reprosecution to second-degree murder charge.

10. Constitutional Law ⇐251

In applying fundamental fairness standard, courts are required to re-evaluate prior interpretations of due process clause in light of changing concepts as to minimum standards of fairness. U.S.C.A. Const. Amends. 5, 14.

11. Constitutional Law ⇐260
Criminal Law ⇐162

To extent that sections of New York Code of Criminal Procedure authorize reprosecution of defendant for first-degree murder following completion of first trial at which he was convicted of second-degree murder, they are inconsistent with due process clause of Fourteenth Amendment to United States Constitution. Code Cr. Proc. N.Y. §§ 464, 544; Penal Law N.Y. § 32; U.S.C.A. Const. Amends. 5, 14.

12. Constitutional Law ⇐260

Neither first reprosecution of accused for first-degree murder by state court after he had been found guilty of second-degree murder, nor fact that it resulted in conviction for that degree of murder, nor fact that conviction was successfully appealed by accused removed constitutional restrictions against reprosecuting him for first-degree murder following completion of first trial. U.S.C.A. Const. Amends. 5, 14.

13. Criminal Law ⇐193

Where defendant was convicted of second-degree murder, conviction was reversed, he was convicted of first-degree murder and that conviction was successfully appealed, state was forbidden by constitution from prosecuting defendant again for first-degree murder for same crime. U.S.C.A. Const. Amends. 5, 14.

14. Habeas Corpus ⇐31

Issue of double jeopardy can be raised by habeas corpus proceeding.

15. Constitutional Law ⇐260

In view of fact that state was constitutionally forbidden to prosecute accused for first-degree murder following completion of first trial at which he had been convicted of second-degree murder and there was reasonable possibility that conduct of third trial and deliberations of jury were affected by fact that third trial had been for first-degree murder, accused, who was convicted of second-degree murder at third trial, was being held in custody in violation of due process. U.S.C.A. Const. Amends. 5, 14.

16. Constitutional Law ⇐260

In determining whether accused was denied due process in reprosecution in state court question was not whether he had been actually prejudiced, but whether there was reasonable possibility that he had been prejudiced. U.S.C.A. Const. Amends. 5, 14.

17. Habeas Corpus ⇐113(12)

Where District Court did not call for or examine transcript of trial and did not conduct evidentiary hearing in habeas corpus proceeding or engage in any other factual inquiries, there was no basis for deferring to declaration of District Court that it appeared that procedure complained of had not resulted in any hardship to relator, even if considered a finding.

18. Habeas Corpus ⇐113(13)

Where accused was improperly charged with first-degree murder after obtaining reversal of conviction for second-degree murder and prosecution focused on obtaining conviction of first-degree murder, there was no rational basis for concluding that it was not reasonably possible that accused had been prejudiced by the unconstitutionally broad scope of prosecution and no legitimate interest would be served by remanding case to nonappellate court for finding as to whether there was reasonable possibility that conduct of trial or deliberations were affected by range of prosecution and charge. U.S.C.A. Const. Amends. 5, 14.

19. Criminal Law ⇐1165(1)

Where state violated accused's constitutional rights by reprosecuting him for first-degree murder after he had been convicted of second-degree murder and conviction had been reversed because of errors of state, New York Penal Law providing that whenever crime is distinguished into degrees, jury, if they convict prisoner, must find degree of crime of which he is guilty was not sufficient basis for excluding possibility of prejudice to accused who in subsequent trial was again convicted of second-degree murder. Penal Law N.Y. § 30; U.S.C.A. Const. Amends. 5, 14.

20. Constitutional Law ⇐260

Prosecution for first-degree murder and submission to jury of first-degree murder charge violated accused's constitutional right not to be prosecuted for first-degree murder following completion of first trial at which he had been convicted of second-degree murder for same crime. U.S.C.A. Const. Amends. 5, 14.

21. Constitutional Law ⇐257

Accused has not been afforded due process of law when his federal constitutional rights have been violated and conduct which violated his constitutional rights created reasonable possibility of prejudicing him. U.S.C.A. Const. Amends. 5, 14.

22. Constitutional Law ⇐82

Individual's federal constitutional rights are among those that are most fundamental.

23. Courts ⇐282(1)

Federal court is able to vindicate and protect individual's federal constitutional rights.

24. Constitutional Law ⇐260

Concept of due process of law embodied in Fourteenth Amendment not only imposes substantive limitations on power of states to reprosecute individual for same crime, it also entitles accused, as condition of depriving him of his liberty, to a trial where there is no reasonable possibility that violation of his constitutional rights has worked to his prejudice. U.S.C.A. Const. Amends. 5, 14.

Ernest J. Brown, Cambridge, Mass., for realtor-appellant.

Michael H. Rauch, Deputy Asst. Atty. Gen. (Louis J. Lefkowitz, Atty. Gen., of New York, on the brief), (Samuel A. Hirshowitz, First Asst. Atty. Gen., Mortimer Sattler, Asst. Atty. Gen., and Brenda Soloff, Deputy Asst. Atty. Gen., of counsel), for respondent-appellee.

Before Smith and Marshall, Circuit Judges, and Metzner, District Judge.*

Marshall, Circuit Judge.

George Hetenyi is presently imprisoned in Attica, New York, by the State of New York under a sentence of from forty years to life that was imposed after a jury found him guilty of murder in the second degree. He applied to the United States District Court for the Western District of New York for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, claiming that he is being held in custody in violation of the federal Constitution. The District Court denied his application on the merits, and this is an appeal from that order. We reverse.

On or about April 22, 1949 Hetenyi's wife was shot to death. Approximately one month later, on May 19, 1949, Hetenyi was indicted by the Grand Jury of Monroe County, New York, for murder in the first degree, and he was thrice tried on this same indictment.[1] At all three trials the evidence supporting the charge was circumstantial.

The first trial took place during December 1949 in the Monroe County Court. The trial judge gave the jury the alternatives of finding Hetenyi guilty of first degree murder,[2] guilty of second degree murder,[3] guilty of first degree manslaughter[4] or not guilty. *The jury returned a verdict of guilty of second degree murder, and in January 1950* Hetenyi received a sentence of from fifty years to life. He appealed to the Appellate Division, Fourth Department, and that court unanimously reversed the judgment of conviction and granted a new trial. 277 App. Div. 310, 98 N.Y.S. 2d 990 (1950). The Appellate Division noted "that the verdict is supported by sufficient evidence," yet it found error affecting "the substantial rights of the defendant" in the charge relating to venue, in the admission of certain evidence, and in certain comments by the District Attorney on some of this evidence. Specifically, reversible error was found in the trial court's refusal to charge the jury, as requested by defendant, "that they must find as a fact in this case that this killing occurred in the County of Monroe before they can find a conviction," in the trial court's charge that "it makes no difference as to where those shots [killing his wife] were fired," and in charging that finding her body "within the confines of the County of Monroe, is sufficient as a presumption of law that the shots were fired in the County of Monroe * * *" The Appellate Division also held that the trial judge had committed reversible error by admitting into evidence a leather holster found near the place where the body of the deceased was discovered and by allowing the District Attorney to argue in his summation that the holster belonged to defendant and "that without question it includes the gun." There was no direct evidence that this holster was the one claimed to have been seen in Hetenyi's car some months prior or that Hetenyi ever owned a gun. Hetenyi also sought reversal because the prosecution had used an article in a magazine relating to the paraffin nitrate test. At the trial, the subject of the test was brought up by the District Attorney on direct examination of a police officer; on cross-examination, Hetenyi's counsel read from a textbook on the subject; and on re-direct the article from the magazine was read, apparently to contradict the textbook. The Appellate Division concluded that since "[n]o such test was made of defendant's hands," "the whole matter was irrelevant and incompetent" and "[i]t was error to permit the reading of either the text-book or the article." It was on the basis of all of these errors, held to affect "defendant's substantial rights," that the Appellate Division reversed and ordered a new trial. The State appealed from this reversal but the order of the Appellate Division was unanimously affirmed by the Court of Appeals of New York without opinion. 301 N.Y. 757, 95 N.E.2d 819 (1950).

Following this reversal, the same District Attorney proceeded to try Hetenyi *for the second time under the same indictment charging first degree murder. The trial took place in April and May of 1951 in the Monroe County Court. The jury returned a verdict of guilty of murder in the first degree and Hetenyi* was sentenced to be executed. Hetenyi appealed directly to the Court of Appeals, and a closely-divided court reversed the judgment of conviction and ordered a new trial. 304 N.Y. 80, 106 N.E.2d 20 (1952). The Court of Appeals held that there was no error in charging the jury that the place of the killing need not be proved beyond a reasonable doubt. The Court also held that the admission into evidence of the holster introduced into evidence in the first trial was not "a material error" requiring reversal because the District Attorney's statement that was found so objectionable in the appeal from the first trial was lacking, and the trial judge had instructed the jury that even if they believed that this holster was the one previously seen in Hetenyi's car, "they may not draw from that the inference that he possessed the gun which it accommodated." However, the Court found that certain other conduct of the District Attorney had deprived Hetenyi of a fair trial and on the basis of those errors reversed. The Court viewed the "District Attorney's repeated accentuation of the defendant's failure to testify" as sufficient to make the trial unfair; and it held that the District Attorney's attack on Hetenyi's character in which the changes in Hetenyi's religious affiliations were emphasized and Hetenyi was accused of being a "renegade," "a man to whom religion is a fraud, who engages in it purely and simply for selfish reasons," violated a "rule of fundamental fairness in the protection of the individual against unjust prosecution." A new trial was ordered.

Hetenyi was then tried for the third time. This third trial took place in March, 1953 in the Onondaga County Court, as Hetenyi had obtained a change in venue. Once again he was tried upon the same 1949 indictment charging him with first degree murder; and as was done in the other two trials, the trial judge gave the jury the alternatives of returning a verdict of guilty of first degree murder, guilty of second degree murder, guilty of first degree manslaughter, or not guilty. The jury returned a *verdict of guilty of second degree murder,* and Hetenyi was sentenced to prison for forty years to life. He appealed to the Appellate Division, Fourth Department, and that court affirmed the judgment in a *per curiam opinion.* 282 App. Div. 1008, 125 N.Y.S.2d 689 (1953). The Appellate Division noted that the verdict "is amply supported by the evidence" and that "[t]hroughout the trial the Court exercised extreme care in protecting the rights of the defendant," and concluded that the record "contains no errors which so adversely affect the substantial rights of the defendant as to warrant reversal of the judgment and a new trial." Leave to appeal to the New York Court of Appeals was denied.

Hetenyi is presently being held in custody pursuant to a warrant of commitment issued by the Onondaga County Court upon this judgment of conviction. *He claims that it was unconstitutional for the State to prosecute him for first degree murder subsequent to the first trial, and that the prosecution for first degree murder so tainted the third trial as to render it constitutionally inadequate.*

This is not the first instance that Hetenyi claimed his detention is unlawful. Hetenyi sought a writ of habeas corpus from the New York courts, but the court of general jurisdiction dismissed the writ and this dismissal was affirmed by the Appellate Division, Third Department, 10 A.D. 2d 121, 198 N.Y.S. 2d 18, reargument denied, 12 A.D. 2d 574, 209 N.Y.S. 2d 287 (1960), leave to appeal denied, 8 N.Y. 2d 706, 202 N.Y.S. 2d 1025, 168 N.E. 2d 395, appeal dismissed, 8 N.Y. 2d 913, 204 N.Y.S. 2d 158. The Appellate Division found Hetenyi's claim to be without merit under the state and federal Constitutions, and added "one last point not raised by the briefs": the relator at neither his second nor his third trial raised the question of double jeopardy or entered such a plea and therefore he "waived his right to the defense of double jeopardy" under both federal and state constitutional standards. Without attempting to assess the sufficiency of the Appellate Division's conclusion, it should be noted that the factual premise appears incorrect. The petition in the present proceeding alleges that in both the second and third trials Hetenyi entered a plea of *autrefois acquit.* Respondent

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*Sitting by designation.

[1] The indictment read:

"The Grand Jury of the County of Monroe by this Indictment accuse the Defendant, George Hetenyi, of the crime of Murder in the First Degree, in violation of § 1044, Subdivision 1 of the Penal Law of New York, McKinney's Consol Laws, c. 40, committed as follows:

"The Defendant, on or about April 22, 1949, in the County of Monroe, State of New York, willfully, feloniously, and from a deliberate and premeditated design to effect the death of Jean Gareis Hetenyi, killed the said Jean Gareis Hetenyi by shooting her twice in the body with a firearm, thereby inflicting injuries which resulted in and caused her death."

[2] N.Y. Penal Law § 1044. "Murder in first degree defined

"The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed * * * from a deliberate and premeditated design to effect the death of the person killed, or of another * * *."

[3] N.Y. Penal Law § 1046. "Murder in second degree defined

"Such killing of a human being is murder in the second degree, when committed with a design to effect the death of the person killed, or of another, but without deliberation and premeditation."

[4] N.Y. Penal Code § 1050. "Manslaughter in first degree

"Such homicide is manslaughter in the first degree, when committed without a design to effect death * * * in the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon."

did not put that allegation into controversy below, and quite understandably the District Court did not make any finding as to its truth. We are nevertheless prepared to view the allegation as true, and thus to reject all factual basis for the waiver argument. In the course of argument before this Court, relator's counsel supported the allegation by reference to the trial transcript of the third trial, he explained that reargument was sought from the Appellate Division in order to correct its factual inaccuracy, and he suggested that reargument was denied by the Appellate Division not because there was no factual error, but because the waiver argument resting on this factual inaccuracy was offered only as an alternative ground for affirming the order dismissing the writ. Respondent did not take issue with this offer of proof and explanation. We thus have no reason to disbelieve the allegation in the present habeas petition that the plea of *autrefois acquit* was entered but disallowed in the second and third trials.

Nor is this the first instance in which Hetenyi presented his constitutional claim to a federal court. After his application for the state habeas writ was dismissed, Hetenyi applied to a federal district court for a writ, though this time his claim was formulated solely on the basis of the federal Constitution. On January 4, 1963 the District Court denied the application without prejudice and without reaching the merits. Darr v. Burford, 339 U.S. 200, 70 S.Ct. 587, 94 L.Ed. 761 (1950), was held controlling and the habeas application was denied because Hetenyi had failed to file a petition for a writ of certiorari in the United States Supreme Court seeking review of the denial of his previous habeas application in the state courts. The District Court denied Hetenyi's application for a certificate of probable cause and Hetenyi applied to this Court for a certificate. This Court denied that certificate on May 8, 1963, even though Fay v. Noia, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed. 2d 837 (1963) overruled Darr v. Burford some two months earlier and thus removed the procedural obstacle that had prevented the District Court from reaching the merits. Following this Court's denial of the certificate of probable cause, Hetenyi petitioned the Supreme Court for a writ of certiorari. On January 6, 1964 that petition was denied, with Mr. Justice Douglas noting that he was "of the opinion that certiorari should be granted." 375 U.S. 980, 84 S.Ct. 495, 11 L.Ed. 2d 426.

Hetenyi persisted and renewed his application to a federal district court for the writ of habeas corpus. That court—at last—turned to the merits, but denied the application without a hearing[5] and unjustifiably refused to grant a certificate of probable cause. We granted the certificate and Hetenyi's constitutional claim is now before us.

I

[1–3] The Due Process Clause of the Fourteenth Amendment imposes *some* limitations on a state's power to reprosecute an individual for the same crime. Abhorrence to successive reprosecutions is deeply rooted in our common law traditions, and the Bill of Rights' curb on the power of the federal government to reprosecute is ample recognition of how central this abhorrence is to our constitutional concept of justice. Similar limitations have been placed on each of the states by their own constitutions and laws,[6] and this reveals a societal understanding that certain reprosecutions by a state are incompatible with due process of law. To hold, as we do, that the Due Process Clause of the Fourteenth Amendment imposes some restrictions on a state's power to reprosecute, thereby spanning the gap between the Fifth Amendment's double jeopardy prohibition and a similar prohibition derived from state laws, is to preserve this societal understanding and to read the Fourteenth Amendment as entrusting the federal courts with a responsibility and power to decide which reprosecutions by a state violate our basic notions of justice.

[4] The Supreme Court has not, to this day, invalidated any conviction obtained in the state courts on the ground that the state has transgressed the federal constitutional limitations of its power to reprosecute an individual for the same crime. Yet authority for our initial proposition that some such limits do exist can be derived, first, from the premises and presumptions revealed in those Supreme Court cases in which a double jeopardy claim was interposed against a state, and, secondly, from the doctrine of selective incorporation, supported by a majority of the present Supreme Court, according to which certain guarantees of the Bill of Rights, those that are fundamental, are absorbed by the Due Process Clause of the Fourteenth Amendment and are thus made applicable to the states.

In 1902 Mr. Justice Harlan writing for the Court in Dreyer v. State of Illinois, 187 U.S. 71, 85–86, 23 S.Ct. 28, 47 L.Ed. 79, considered it an open question whether the Due Process Clause of the Fourteenth Amendment imposed any restrictions on the power of a state to reprosecute. In that case it was claimed that Illinois had transgressed those restrictions by reprosecuting the complainant after the first jury, having failed to agree, was discharged. The Court held that even under Fifth Amendment standards, as established by United States v. Perez, 22 U.S. (9 Wheat.) 579, 6 L.Ed. 165 (1824), the claim of double jeopardy was ill founded, and that therefore it could "pass this important question [of whether the Due Process Clause of the Fourteenth Amendment curbed the power of the states to reprosecute] without any consideration of it upon its merits." This same question was similarly avoided in a like fashion in another case involving a reprosecution by a state following a hung-jury, Keerl v. State of Montana, 213 U.S. 135, 138, 29 S.Ct. 469, 53 L.Ed. 734 (1909); and perhaps Mr. Justice Harlan's opinion in Shoener v. State of Pennsylvania, 207 U.S. 188, 195–196 (1907) (trial on second indictment after first indictment dismissed on appeal as not charging a crime), could be read as employing the same technique of avoidance, although in Shoener it was necessary to determine as an original proposition that the Fifth Amendment standard was not violated, that the second prosecution did not place the complainant in double jeopardy, before it could "avoid" the question of whether any state reprosecutions would violate the Due Process Clause of the Fourteenth Amendment.[7]

The next important step occurred in 1937 in *Palko* v. *State of Connecticut*, 302 U.S. 319, 58 S. Ct. 149, 82 L.Ed. 288. The mode of analysis employed by Mr. Justice Harlan in Dreyer v. State of Illinois, which enabled that Court to avoid the question whether the Due Process Clause of the Fourteenth Amendment had any double jeopardy content, was unavailable to the Court in Palko, see 302 U.S. at 322–323, 58 S.Ct. 149, 150. The complainant in Palko challenged the power of a state to appeal from a judgment of conviction for a lesser degree of homicide than that charged in the indictment and to reprosecute him for the greater degree upon obtaining a reversal. Mr. Justice Cardozo read Kepner v. United States, 195 U.S. 100, 24 S.Ct. 797, 49 L.Ed. 114 (1904), as holding that such reprosecution would fall within the pale "of the prohibition of double jeopardy in federal prosecutions" and he "assumed for the purpose of the case at hand" that Kepner was still good law. Thus unable to employ the technique of avoidance fashioned in Dreyer v. State of Illinois, he sought to avoid the broader question of whether the Due Process Clause of the Fourteenth Amendment imposed any restrictions on a state's power to reprosecute an individual for the same crime by delineating the narrower question whether this particular "kind of double jeopardy" exceeded the limits imposed upon the states by the Due Process Clause of the Fourteenth Amendment. 302 U.S. at 328, 58 S.Ct. 149. However, in dealing with this narrower question it was necessary to articulate the "rationalizing principle" of the Due Process Clause and this principle was cast in such terms as to provide the foundation for an affirmative answer to the broader question. Drawing his most immediate guidance from Twining v. State of New Jersey, 211 U.S. 78, 29 S.Ct. 14, 53 L.Ed. 97 (1908), Mr. Justice Cardozo perceived the principle in these terms: the Due Process Clause of the Fourteenth Amendment prohibited the states from enforcing their criminal laws at the cost of violating some fundamental precept of justice, of imposing a "hardship so acute and shocking that our policy will not endure it."

The next intellectual step, the realization that a reprosecution by a state, simply because it was a reprosecution, could violate a fundamental precept of justice, was of no moment, and was accomplished without formal notice. *In a series of cases commencing ten years after Palko, an assumption, certainly of the persuasion of a holding, gradually arose that the Due Process Clause of the Fourteenth Amendment did impose some restrictions on the power of a state to reprosecute an individual for the same crime.*

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[5] Unfortunately the transcripts of the three trials have not been made part of the record in this collateral proceeding. Nevertheless, in order to verify the presumptions concerning the alternatives posed to the jury in the charge, we have examined the transcript of the charge in each trial. For the first two trials we had access to the trial transcript incorporated in the records on appeal to the Appellate Division, Fourth Department and for the third trial, the Clerk of the Onondaga County Court has forwarded a certified copy of those portions of the trial transcripts containing the charge. We have pursued this extraordinary course of taking judicial notice of these public documents because further delay in reaching the merits of Hetenyi's claim would be painfully unjust and it would not serve either the interests of the accused or the State.

[6] Brock v. State of North Carolina, 344 U.S. 424, 435 nn. 5 & 6, 73 S. Ct. 349, 97 L. Ed. 456 (1953) (Vinson, C. J., dissenting); which must be updated by reference to Article I, section 9 of the Constitution of Alaska, and Article I, section 8, of the Constitution of Hawaii. See also Bartkus v. State of Illinois, 359 U.S. 121, 152–155, 79 S. Ct. 676, 3 L. Ed. 684, (1959) (Black, J., dissenting).

[7] See also McDonald v. Com. of Massachusetts, 180 U.S. 311, 313, 21 S. Ct. 389 (1901) and Graham v. State of West Virginia, 224 U.S. 616, 631, 32 S. Ct. 583, 56 L. Ed. 917 (1912), avoiding the related question of whether the Due Process Clause of the Fourteenth Amendment places any limitation on a state's power to impose multiple punishment, by relying on the fact that the multiple-offender statutes in controversy would not violate such limitations placed on the federal government by the Double Jeopardy Clause of the Fifth Amendment. However, in an earlier case, Moore v. Missouri, 159 U.S. 673, 677, 16 S. Ct. 179, 40 L. Ed. 301 (1895), the Court did not make this distinction and simply held that a multiple offender statute did not punish an individual more than once for "the first offense" but only increased the punishment on "the last offense" and hence an accused sentenced according to the statute was "not twice put in jeopardy for the same offense." Cf. Carlesi v. New York, 233 U.S. 51, 34 S. Ct. 576, 58 L. Ed. 843 (1914).

In State of Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 462–463,. 67 S.Ct. 374, 375–376, 91 L.Ed. 422 (1947), the case of an unsuccessful execution, Mr. Justice Reed, writing for himself, Chief Justice Vinson, Mr. Justice Black and Mr. Justice Jackson declared that "[o]ur minds rebel against permitting the same sovereignty to punish an accused twice for the same offense," and concluded, *inter alia*, not that the Due Process Clause has no double jeopardy content, but that there is "no double jeopardy here which can be said to amount to a denial of federal due process in the proposed execution." Mr. Justice Frankfurter, concurring in the judgment to form the majority, explicitly stated that the Due Process Clause, viewed as prohibiting fundamentally unfair state procedures, had some double jeopardy content, see infra footnotes 8 and 9, while the dissenters did not concern themselves with double jeopardy, but only with the claim that a second attempt to execute the prisoner would be a cruel and unusual punishment. Then followed Gryger v. Burke, 334 U.S. 728, 732, (1948), where a unanimous Court held, without reserving the question of whether the Due Process Clause of the Fourteenth Amendment had any double jeopardy content, that a multiple offender statute does not subject "petitioner to double jeopardy," since the sentence as a multiple offender is not "viewed as either a new jeopardy or additional penalty for the earlier crimes." See supra footnote 7. *The Court was not unanimous in Brock v. State of North Carolina, 344 U.S. 424, 73 S.Ct. 349 (1953)*, yet the differences between the Justices arose not so much from the general proposition that the Due Process Clause places some limits on the power of a state to reprosecute, but from the application of this proposition to the particular reprosecution challenged—the state retried the petitioner after the first trial was halted and a mistrial declared because of the temporary unavailability of testimony by witnesses for the prosecution. The concurring Justice (Frankfurter, J.) and the dissenting Justices (Vinson, C. J. and Douglas, J.) openly embraced this general proposition, and although Mr. Justice Minton, writing for the Court, was less explicit, he did perceive the question presented (using the language of Palko), as whether "that kind of double jeopardy" was "a hardship so acute and shocking that our polity will not endure it." Wade v. Hunter, 336 U.S. 684, 69 S.Ct. 834, 93 L.Ed. 974 (1949), a case under the Double Jeopardy Clause of the Fifth Amendment was used to justify a negative answer to this question in Brock. Similarly in Hoag v. State of New Jersey, 356 U.S. 464, 78 S.Ct. 829, 2 L.Ed.2d 913 (1958) there was ample acknowledgment that certain state reprosecutions would be constitutionally impermissible. The petitioner was alleged to have robbed five persons on the same occasion. He was first tried and acquitted for robbing three of the victims; and the Supreme Court held that a second trial based on an indictment charging him with robbing the fourth victim was not an "impermissible use of multiple trials." Yet its premise was that some uses of multiple trials would be constitutionally impermissible, see 356 U.S. at 467–469, 78 S.Ct. at 833. See also Ciucci v. State of Illinois, 356 U.S. 571, 78 S.Ct. 839, 2 L.Ed.2d 983 (1958) (fragmented prosecution for homicide). Bartkus v. State of Illinois, 359 U.S. 121, 79 S.Ct. 676 (1959), completes this evolution, for in that case all the Justices assumed that there is some double jeopardy content to the Fourteenth Amendment. A state reprosecution following an acquittal in a federal prosecution for the same conduct, robbing a federally insured savings and loan association, was held permissible only because it was viewed as a reprosecution by another sovereignty for a crime against it. See also Abbate v. United States, 359 U.S. 187, 79 S.Ct. 666, 3 L.Ed. 2d 729 (1959). But compare Murphy v. Waterfront Commission, 378 U.S. 52, 84 S.Ct. 1594, 12 L.Ed.2d 678 (1964). The Court's opinion in Bartkus, written by Mr. Justice Frankfurter, contains abundant suggestions that if the successive prosecutions were both conducted by the same sovereignty, such as Illinois, the Due Process Clause of the Fourteenth Amendment would be violated; and Mr. Justice Frankfurter's separate concurrences in State of Louisiana ex rel. Francis v. Resweber, supra, 329 U.S. at 469 [8] 67 S.Ct. at 379 and Brock v. State of North Carolina, supra, 344 U.S. at 429 [9], 73 S.Ct. at 351, need only be recalled to confirm this interpretation. Thus Bartkus firmly establishes that the Due Process Clause of the Fourteenth Amendment does impose some restrictions on the power of a state to reprosecute an individual for the same crime, though we are told, by none other than Mr. Justice Frankfurter, that this proposition had been established more than thirty years prior: "[I]n Palko, the Court ruled that * * * at some point the cruelty of harassment by multiple prosecutions by a State would offend due process." 359 U.S. at 127, 79 S.Ct. at 680, 3 L.Ed. 684.

[5] Authority for this proposition can also be derived from the doctrine of selective incorporation, under which certain guarantees of the Bill of Rights, those that are fundamental, are absorbed by the Fourteenth Amendment and thereby made applicable to the states. This doctrine, which received its most immediate formulation in Mr. Justice Brennan's dissenting opinion in Cohen v. Hurley, 366 U.S. 117, 154, 81 S.Ct. 954, 6 L.Ed.2d 156 (1961) has been firmly adopted, at least in its broad outlines, as part of constitutional law by Pointer v. State of Texas, 33 U.S.L.Week 4306 (U.S. April 5, 1965), if not by Malloy v. Hogan, 378 U.S. 1, 10–11, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964). See also Griffin v. State of California, 85 S.Ct. 1229 (U.S. April 28, 1965); Douglas v. State of Alabama, 85 S.Ct. 1074 (U.S. April 5, 1965); Brennan, The Bill of Rights and the States, 36 N.Y.U.L.Rev. 761 (1961); Henkin, "Selective Incorporation" in the Fourteenth Amendment, 73 Yale L.J. 74 (1963). For this doctrine to lend support to the proposition that the Fourteenth Amendment imposes some restrictions on the power of the states to reprosecute, the judgment need only be made that at least the basic core of that double jeopardy guarantee can be ranked as fundamental. We have no hesitation in so holding. *The Supreme Court has not made this value judgment in the context of applying the doctrine of selective incorporation.* Yet there can be no doubt that "the idea that one trial and one punishment were enough" "was brought to this country by the earliest settlers as part of their heritage of freedom, and * * * it has been recognized here as fundamental again and again," Bartkus v. State of Illinois, supra, 359 U.S. at 153–154, 79 S.Ct. at 697 (Black, J. dissenting) and it has been declared that "the basic idea is part of our American concept of fundamental fairness," Brock v. State of North Carolina, supra, 344 U.S. at 435, 73 S.Ct. at 354 (Vinson, C. J., dissenting). See also, Ex parte Lange, 85 U.S. (18 Wall.) 163, 21 L.Ed. 872 (1874), and the majority and dissenting opinions in Green v. United States, 355 U.S. 184, 198, 78 S.Ct. 221, 2 L.Ed.2d 199 (1957). Moreover, we are led to the same conclusion by comparing the basic core of the double jeopardy provision of the Fifth Amendment to those other guarantees of the Bill of Rights already held by the Supreme Court, at least in effect, to be absorbed—the First Amendment,[10] the Fourth Amendment,[11] the Just Compensation [12] and Self-Incrimination [13] Clauses of the Fifth Amendment, the Right to Counsel [14] and Confrontation Clauses [15] of the Sixth Amendment, and the Eighth Amendment's prohibition against cruel and unusual punishments.[16] It would be indeed difficult to maintain that the basic core of the double jeopardy guarantee is not as fundamental as some of these guarantees and that therefore it should not be included in the universe of those guarantees of the Bill of Rights that are absorbed by the Fourteenth Amendment and made applicable to the states. Palko lends no support to such exclusion.

In Palko Mr. Justice Cardozo noted that certain "privileges and immunities * * * have been taken over from the earlier articles of the Federal Bill of Rights and brought within the Fourteenth Amendment by a process of absorption." He "assumed" that the procedure challenged would be impermissible under the Fifth Amendment standards [17] if it were employed by the federal government rather than a state, and yet held that the procedure did not violate the Due Process Clause of the Fourteenth Amendment. Although Palko, if its authority is presumed to be unimpaired, perhaps means that not all of the double jeopardy guarantee of the Fifth Amendment would be "absorbed" under the doctrine of selective incorporation, it does not mean that no part of the guarantee would be "absorbed," or that the basic core of the guarantee would not be "absorbed." See generally, Henkin, "Selective Incorporation" in the Fourteenth Amendment, 73 Yale L.J. 74, 80–81 (1963). Undoubtedly Mr. Justice Cardozo was much attracted by Mr. Justice Holmes' dissent in Kepner, see Mayers & Yarbrough, Bix Vexari: New Trials and Successive Prosecutions, 74 Harv.L.Rev. 1, 11–12 (1960), and it is clear that he did not regard the basic core of the double jeopardy protection threatened by the Connecticut statute. See 302 U.S. at 328, 58 S. Ct. 149.

There is a serious question as to whether the doctrine of selective incorporation permits two levels of selection—absorption of only those provisions of the Bill of Rights that are fundamental, and then absorption of only that part of the provision that is fundamental, its basic core. Many statements in recent Supreme Court decisions suggest a negative answer to that question, see Cohen v. Hurley, supra, 366 U.S. at 154, 81 S.Ct. 954

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[8] "A State may offend such a principle of justice by brutal subjection of an individual to successive retrials on a charge on which he has been acquitted."

[9] "A State falls short of its obligation when it callously subjects an individual to successive retrials on a charge on which he has been acquitted or prevents a trial from proceeding to a termination in favor of the accused merely in order to allow a prosecutor who has been incompetent or casual or even ineffective to see if he cannot do better a second time."

[10] See, e.g., New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964).

[11] Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961); Ker v. California, 374 U.S. 23, 83 S. Ct. 1623, 10 L. Ed., 726 (1963).

[12] See Chicago, B. & Q. R.R. Co. v. City of Chicago, 166 U.S. 226, 17 S. Ct. 581, 41 L. Ed. 979 (1897).

[13] Malloy v. Hogan, 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964).

[14] Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 799 (1963).

[15] Pointer v. Texas, 85 S. Ct. 1065 (U.S. April 5, 1965).

[16] Robinson v. California, 370 U.S. 660, 82 S. Ct. 1417, 8 L. Ed. 2d 758 (1962); see Malloy v. Hogan, supra, 378 U.S. at 6 n. 6, 84 S. Ct. 1489.

[17] Kepner arose in the Philippine Islands under a statutory prohibition against double jeopardy. But the statutory prohibition and Fifth Amendment employed identical language and apparently Mr. Justice Cardozo did not perceive any difference between that statutory standard and the constitutional standard applied to "federal prosecutions."

(Brennan, J., dissenting); Malloy v. Hogan, supra, 378 U.S. at 11, 84 S.Ct. 1489; Ker v. State of California, 374 U.S. 23 (1963); Griffin v. State of California, 85 S.Ct. 1229 (U.S. April 28, 1965). It is nevertheless possible that the doctrine of selective incorporation may permit two levels of selection at least in relation to the double jeopardy provision of the Fifth Amendment. It has been suggested that certain of the restrictions emanating from this provision are, unlike many of the provisions of the Bill of Rights already absorbed, "technical ramifications," Brock v. State of North Carolina, supra, 344 U.S. at 435, 73 S.Ct. 349 (Vinson, C. J., dissenting) and that some of the cases involving that provision turn on "subtle technical controversies," id. at 428, 73 S.Ct. 349 (Frankfurter, J., concurring), "engendered by technical aspects of double jeopardy as enshrined in the Fifth Amendment," State of Louisiana ex rel. Francis v. Resweber, supra, 329 U.S. at 469, 67 S.Ct. at 379 (Frankfurter, J., concurring). Moreover, Justice Goldberg's concurrence in Pointer v. State of Texas, announcing his acceptance of the process of absorption, finds this process to be conceived in Palko—which is both consistent and suggestive of a version of the doctrine of selective incorporation which permits only the basic core of the Double Jeopardy Clause of the Fifth Amendment to be absorbed by the Fourteenth Amendment.

However, even if this version of the doctrine of selective incorporation be rejected the Supreme Court has three alternatives: (i) holding that the doctrine of selective incorporation does not reach the double jeopardy provision of the Fifth Amendment; (ii) overruling Palko; or (iii) overruling those prior decisions,[18] such as Kepner, that withheld from the federal government the power to conduct reprosecutions that have not been considered to be fundamentally unfair and hence not forbidden to the states. We find the first alternative the most unlikely, primarily because it is predicated on the value judgment that the double jeopardy guarantee of the Fifth Amendment, taken in this instance to be as wide as the provision itself, is not fundamental. Yet even if it be finally determined that the doctrine of selective incorporation does not permit two levels of selection, and further the first alternative set out above is chosen, the conclusion is, in light of Bartkus and its precursors, not that the Due Process Clause of the Fourteenth Amendment imposes no limitations on the power of the states to reprosecute, but rather that those limitations are not structured in terms of the double jeopardy provision of the Fifth Amendment. This might make a difference as to *which* reprosecutions are constitutionally forbidden to the states, but it would not impair our initial proposition that *some* reprosecutions are forbidden.

II

In attempting to formulate the standards for determining *which* state reprosecutions transgress the limitations imposed by the Due Process Clause of the Fourteenth Amendment, we envision three alternative standards:

(1) The Federal Standard. Under this standard the state reprosecution would be tested by the provision of the Fifth Amendment commanding that no person shall be "subject for the same offence to be twice put in jeopardy of life or limb." All the cases applying this clause to federal prosecutions would have the persuasion of precedent, and this inheritance would have the effect of accelerating the usual development of decisional constitutional law. Such a standard would emanate from a holding that the doctrine of selective incorporation reaches the double jeopardy provision of the Fifth Amendment, and further that this provision is absorbed intact, that the doctrine does not permit a second level of selection.

(2) The Basic Core Standard. This standard would stem from the inclusion of the double jeopardy provision of the Fifth Amendment within the doctrine of selective incorporation, with the understanding that the criteria of fundamentality would be applied once again so as to delineate the basic core of that provision; it would be this basic core that is absorbed by the Fourteenth Amendment. Under this standard the state reprosecution would be tested by the Fifth Amendment double jeopardy provision, but there would be a further need to determine, once it is decided that the reprosecution falls within the ambit of that provision, whether such restrictions are fundamental to the provision. Cases applying the provision to federal prosecutions would be of precedential value only after it has been determined that the result did not turn on a technical nuance of the provision.

(3) The Fundamental Fairness Standard. This standard has its roots in a concept of due process that is not structured by the absorption of any specifics of the Bill of Rights and thus it reflects a rejection of both versions of the doctrine of selective incorporation or finds the double jeopardy guarantee not within the reach of that doctrine. To apply this standard, the question is asked whether the state reprosecution challenged is fundamentally unfair and the cases applying the Fifth Amendment to federal prosecutions are not binding, although they, like those cases applying double jeopardy provisions derived from state law, are entitled to weighty consideration.

[6] We find it both undesirable and unnecessary to choose among these alternative standards. This opinion is being written at a moment when this dimension of constitutional law is being reconsidered and refashioned by the Supreme Court and therefore the only advantage to be found from choosing among the standards—guidance for other lower courts—would not be forthcoming, or at the most it would be transitory. Moreover, choosing among the standards would be somewhat pretentious. Choosing would require us to engage in a debate that has sharply divided the Supreme Court, it might involve an implicit if not an explicit overruling of venerable Supreme Court decisions, and it is unnecessary for us to choose among the standards in order to decide the instant case. Under any of the three alternative standards, the conclusion is unavoidable that New York transgressed the federal constitutional limitations on its power to reprosecute an individual for the same crime. The reprosecution of Hetenyi for first degree murder following the completion of the first trial, in which he was prosecuted for first degree murder and the jury returned a verdict of guilty of second degree murder, constitutes such a transgression under any of the three standards.

Green v. United States, 355 U.S. 184, 78 S. Ct. 221, 2 L. Ed. 2d 199 (1957), is decisive on this issue under the federal standard, and it goes a long way toward deciding the issue under the basic core standard. The factual pattern of Green, in its most essential aspects, is identical with that of the instant case, save that it involved reprosecutions by the District of Columbia, thereby making the Fifth Amendment directly applicable. The petitioner in Green was first tried under an indictment charging him with arson and first degree murder. The jury found him guilty of arson and of second degree murder; and he successfully appealed the second degree murder conviction. The Government then reprosecuted him for first degree murder and the Supreme Court held that such a reprosecution violated the double jeopardy provision of the Fifth Amendment. Thus under the federal standard, Green is ample viable precedent in support of Hetenyi's constitutional challenge to the successive reprosecutions for first degree murder. It also appears to be of equal force under the basic core standard, for Green involved more than a "subtle technical controversy" and the decision rested on that aspect of the Fifth Amendment double jeopardy provision that must be ranked as fundamental. This can be gleaned from the tenor and the text of the Court's opinion (see e.g., the concluding paragraph, 355 U.S. at 198, 78 S. Ct. 221, 2 L. Ed. 2d 199), even after some account is taken of the fact that the Justices were closely divided. It can also be supported by the same factors that will be considered in applying the fundamental fairness standard.

Our application of the fundamental fairness standard commences with a disclaimer. We are not proceeding on the factual assumption that when the jury at the first trial returned a verdict of guilty of murder in the second degree it also (impliedly) returned a verdict of not guilty of murder in the first degree. We start from the view that the jury's silence on the first degree murder charge simply meant that the state had tried but failed to obtain a conviction on the first degree murder charge, and we recognize that there are several possible explanations for this failure: (a) An acquittal on the first degree murder charge—the jury unanimously believed that the prosecution had failed to prove beyond a reasonable doubt that Hetenyi killed his wife with a premeditated and deliberate design (although, as seen from the guilty verdict on the second degree murder charge, they believed that the prosecution had proved beyond a reasonable doubt that he intentionally committed the homicide). (b) A failure to agree on the first degree murder charge—the jury could not reach any unanimous judgment as to whether or not the prosecution had proved beyond a reasonable doubt that Hetenyi killed his wife with a premeditated and deliberate design (although they could reach a unanimous judgment on the second degree charge and chose the alternative they all agreed upon). (c) An expression of sympathy—the jury unanimously believed that the prosecution had proved beyond a reasonable doubt that Hetenyi killed his wife with a premeditated and deliberate design, but chose to render a guilty verdict on the second degree murder charge rather than the first degree murder charge because they all "felt sorry for him" or thought the penalties for the greater degree would be "too severe." (d) A nonrational choice—for example, the jury did not understand the difference between the various degrees of homicide or the jury made a choice between the various degrees on the basis of some method of random selection.

There is no way of conclusively deciding now, as a factual matter, which of the above alternatives explains the jury's silence. Certainly, the first alternative set out above—that the silence implied an acquittal—is at least a reasonable possibility. Cf. Green v. United States, supra, 355 U.S. at 190–191, 78 S.Ct. 221. An inconsistency between acquitting him of first degree murder and convicting him of second degree murder might suggest that the silence could be explained as an expression of sympathy or a nonrational choice, see Mayers & Yarbrough, Bis Vexari: New Trials and Successive Prosecutions, 74 Harv.L.Rev. 1, 24 (1960), but there is no inconsistency here. Also the jury was

[18] E.g., compare Brock v. State of North Carolina, 344 U.S. 424, 73 S.Ct. 349, 97 L.Ed. 45 (1953) with Downum v. United States, 372 U.S. 734, 83 S.Ct. 1033, 10 L.Ed.2d 100 (1963) and Gori v. United States, 367 U.S. 364, 81 S.Ct. 1523, 6 L.Ed.2d 901 (1961).

charged [19] not to "reduce the crime charged to a lower degree simply for the purpose of avoiding the performance of an unpleasant duty" and it was charged in such a manner that would make it superfluous for it to add to its verdict finding Hetenyi guilty of second degree murder the words "And we also find him not guilty of first degree murder." However, although there is a reasonable possibility that the first jury's silence on the greater charge was due to its unanimous belief that the prosecution failed to prove that charge beyond a reasonable doubt, this is not the only possibility. The silence permits only one certainty—the state had tried but failed to obtain a conviction for that first degree murder. Starting from this basic datum we conclude that in these circumstances a reprosecution for first degree murder is fundamentally unfair.

[7, 8] Even viewing the four alternative explanations of the jury's silence set out above as equal possibilities, we are of the opinion that it was fundamentally unjust to reprosecute Hetenyi for first degree murder after the completion of the first trial. Such a reprosecution was cruel and inhuman, imposing on the accused a "hardship so acute and shocking that our policy will not endure it" (Palko v. State of Connecticut, 302 U.S. at 328, 58 S.Ct. 149, 153, 82 L.Ed. 288), and we make this judgment with full realization that the "standard of fairness and justice" to be applied are not "merely personal standards but the impersonal standards of society which alone judges, as the organs of Law, are empowered to enforce" (Mr. Justice Frankfurter concurring in State of Louisiana ex rel. Francis v. Resweber, supra, 329 U.S. at 470, 67 S.Ct. 374, 379). The insecurity and anxiety, the opportunity of harassment, and the marginal increase in the probability of convicting the accused of a crime he did not commit by simply trying him again form the basis of our fear and abhorrence of reprosecutions. These evils are all presented by a reprosecution for first degree murder following the jury's silence on that charge. Their presence does not hinge upon whether this silence factually meant that Hetenyi had been acquitted of the charge in contrast to the uncontroverted fact that the state failed to convict Hetenyi of that charge. Cf. Ex parte Lange, supra, 85 U.S. at 169, 21 L.Sd. 872; United States v. Ball, 163 U.S. 662, 669 (1896); Kepner v. United States, supra, 195 U.S. at 130, 24 S.Ct. 797, 49 L.Ed. 114; Green v. United States, supra, 355 U.S at 187, 78 S.Ct. 221; Fong Foo v. United States, 369 U.S. 141, 82 S.Ct. 671 (1962); Downum v. United States, 372 U.S. 734, 83 S.Ct. 1033, 10 L.Ed.2d 100 (1963). There are, at least under the fundamental fairness standard, certain circumstances in which the legitimate societal interest justify a reprosecution, even though it may impose these hardships on the accused, but we are unable to find any such interest in the instant case. In fact, what New York offers as the justification for such reprosecutions turns out to be an additional evil contributing, quite materially, to the fundamental unfairness—that the reprosecution for first degree murder was conditioned upon the accused *successfully* appealing from the second degree murder conviction.[20]

Prior to 1881 the courts of New York held that if an accused was tried for a greater degree of a crime and the jury returned a verdict for a lesser degree and was silent on the greater degree, as it usually is, the State could not reprosecute the accused for the greater degree (regardless of whether the accused successfully appealed his conviction for the lesser degree). Guenther v. People, 24 N.Y. 100 (1861); People v. Dowling, 84 N.Y. 478 (1881). This was ample recognition of the unfairness and injustice of a reprosecution for the greater charge. However, in 1881 the Legislature of New York enacted sections 464 [21] and 544 [22] of the Code of Criminal Procedure, which provide that granting a "new trial places the parties in the same position as if no trial had been had" and the new trial "shall proceed in all respects as if no trial had been had." These sections were interpreted as authorizing reprosecution on the greater degree charged if the conviction on the lesser degree is reversed, and it was also held that such reprosecutions were not forbidden by the state constitutional guarantee against double jeopardy, People v. Palmer, 109 N.Y. 413, 17 N.E. 213 (1888); see also, People v. McGrath, 202 N.Y. 445, 96 N.E. 92 (1911); People v. Ercole, 4 N.Y.2d 617, 152 N.E.2d 77, 176 N.Y.S.2d 649 (1958). Yet it remained the law of New York that if the conviction on the lesser charge was left standing, either because no appeal was taken or the appeal was not successful, a reprosecution for the greater charge, upon which the jury was silent, would be impermissible. In that instance the jury's silence on the greater charge would be "equivalent to a verdict of not guilty" of that charge, People v. McCarthy, 110 N.Y. 309, 314, 18 N.E. 128, 129 (1888); N.Y. Penal Law § 32.[23] Hence, New York conditions the power of the state to reprosecute upon a successful appeal by the accused from the conviction for lesser charge, or, to look at it from the view of the accused, under New York law, his right to appeal from a conviction for the lesser degree can only be exercised at the risk of being reprosecuted for the greater charge as well as the lesser charge if the appeal is successful, even though the state had once failed to obtain a conviction on the greater charge. This places the accused in a dilemma which was described by the Supreme Court in Green v. United States, supra, 355 U.S. at 193, 78 S.Ct. 221, as "incredible," and which is, to be sure, no less incredible because it was devised by New York rather than the federal government. By placing this unconscionable premium upon a successful appeal by an accused, a vital societal interest is threatened—assuring that liberty shall not be deprived without a trial free from legal error prejudicing the accused's substantial rights. Compare Stroud v. United States, 251 U.S. 15, 40 S.Ct. 50, 64 L. Ed. 103 (1919); People v. Henderson, 60 Cal.2d 472, 386 P.2d 677, 686 (1963); see Van Alstyne, In Gideon's Wake: Harsher Penalties and the "Successful" Criminal Appellant, 74 Yale L.J. 606, 623–636 (1965).

It is difficult to understand how the fundamental unfairness inherent in allowing a prosecutor to "do better a second time" (Mr. Justice Frankfurter, concurring in Brock v. North Carolina, supra, 344 U.S. at 429, 73 S.Ct. at 351) is mitigated by conditioning this second chance on a successful appeal by the accused. To suggest that the accused, by appealing the conviction, somehow "agreed" to subject himself to the reprosecution on the greater charge if the conviction for the lesser charge is reversed, thereby rendering such a reprosecution fair, cf. People v. Palmer, supra, is to ignore the elementary psychological realities of the situation, see, Kepner v. United States, supra, 195 U.S. at 135, 24 S.Ct. 797 (Holmes, J. dissenting), Green v. United States, supra, 355 U.S. at 192, 78 S.Ct. 221 and to presume, quite inconsistently with the evolution of our communal values, that a barter theory of fairness operates with no less force in the halls of justice than it does in the market place, see generally, Fay v. Noia, 372 U.S. 391, 83 S.Ct. 322, 9 L.Ed.2d 837 (1963). Nor do we find any merit to the suggestion, cf. People v. Ercole, supra, that the reprosecution for the greater charge following the jury's silence on the greater charge and the reversal of the conviction for the lesser charge, serves the same interest as that served by the reprosecution held to be constitutional in Palko—that the case against the accused "go on until there shall be a trial free from the corrosion of substantial legal error," 302 U.S. at 328, 58 S.Ct. at 153.

In Palko the petitioner was initially tried for first degree murder. The jury returned a verdict of guilty of second degree murder and then the state was allowed to reprosecute petitioner for first degree murder following a reversal. The state had appealed from the judgment of conviction for second degree murder and it attacked, not the con-

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[19] The judge in the first trial charged the jury in part:

"In other words, if you are satisfied beyond a reasonable doubt, based upon all of the evidence in this case, of the defendant's guilt of the crime charged, namely, murder in the first degree, you should not, under those circumstances, reduce the crime as charged to a lower degree simply for the purpose of avoiding the performance of an unpleasant duty.

"I charge you that when it appears from the evidence that a reasonable ground of doubt in which of two or more degrees he is guilty he can be convicted of the lower degree only * * *

"Your verdict in this case may be in one of the four forms: first, Guilty of Murder in the First Degree; second, Guilty of Murder in the Second Degree; third, Guilty of Manslaughter in the First Degree: fourth, Not Guilty." (Record on Appeal to the Appellate Division, Fourth Department, pp. 595–603.)

[20] The possible explanations for the jury's silence on the homicide charge that was less in degree than that for which a conviction was obtained are quite different than the possible explanations for its silence on the charge that was greater in degree than that for which a conviction was obtained, see supra, p. 856. While the silence on the greater degree could be described as a failure to obtain a conviction, this description of the silence on the lesser charge (first degree manslaughter) would be entirely inappropriate; the conviction (for second degree murder) obtained made a conviction for a lesser degree of homicide entirely superfluous. The punishment for the first degree manslaughter is no greater than that for second degree murder; and the elements of the latter crime includes, under the facts of this case, all those of the former. It would not be cruel or inhumane to subject the accused to reprosecution for first degree manslaughter if the State could, in the same circumstances, reprosecute him for a greater degree of homicide (second degree murder); and the risk of being reprosecuted for a charge that was lesser in degree than that for which a conviction was obtained would not put an unconscionable premium on successfully appealing the conviction.

[21] N.Y. Code of Criminal Procedure § 464. "Effect of granting new trial

"The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew; and the former verdict cannot be used or referred to, either in evidence or in argument."

[22] N.Y. Code of Criminal Procedure § 544. "New trial"

"When a new trial is ordered, it shall proceed in all respects as if no trial had been had."

[23] N.Y. Penal Law § 32. "Acquittal or conviction bars indictment for another degree.

"Where a prisoner is acquitted or convicted, upon an indictment for a crime consisting of different degrees, he cannot thereafter be indicted or tried for the same crime, in any other degree, nor for an attempt to commit the crime so charged, or any degree thereof."

viction it had obtained, but the one it had failed to obtain—the silence of the jury on the first degree murder charge.[24] Reversal on the state's appeal meant that the state had been prejudiced by substantial legal error, or to put it another way, the state's failure to obtain a guilty verdict on the first degree murder charge was in part infected by substantial legal error. To permit the state to reprosecute the accused for the greater charge in these circumstances was to provide the state with an opportunity "to do a better second time" only because it had been prejudiced by substantial legal error the first time, not because it simply failed to succeed the first time. The Supreme Court in Palko thought that this could hardly be classified as fundamentally unfair.

In contrast to Palko, in the instant case the state did not appeal and the accused's appeal was, of course, not based on a view that the failure of the state to obtain a conviction for first degree murder was infected by substantial legal error, but rather that the conviction the state had obtained was so infected. The success of Hetenyi's appeal meant that he was prejudiced by substantial legal errors, and there is no basis for supposing that these errors—somehow—corroded the substantial rights of the prosecution and contributed to its failure to obtain a conviction on the first degree murder charge. See supra pp. 846–847. The errors perceived could have only contributed to the success of the prosecution in obtaining a second degree murder conviction, not to the failure of the state to obtain a verdict of guilty of murder in the first degree. To permit the state to reprosecute the accused for the greater charge in these circumstances is to provide the prosecution with an opportunity "to do better a second time," not because it had been prejudiced by substantial legal error the first time, but because the accused had been prejudiced by substantial legal errors and because these errors had been perceived on appeal.

[9] Where, as here, the errors perceived on appeal contributed to the success of the prosecution in obtaining the second degree murder conviction, and could have had no effect on the prosecution's lack of success in failing to obtain a first degree murder conviction, all legitimate interests served by permitting a reprosecution following a reversal of (see United States v. Ball, 163 U.S. 662, 16 S.Ct. 1192, 41 L.Ed. 300 (1896)) or a successful collateral attack upon (see United States v. Tateo, 377 U.S. 463, 84 S.Ct. 1587, 12 L.Ed.2d 448 (1964)) a conviction are satisfied by restricting the reprosecution to the second degree murder charge—the only one the jury found him guilty of on the first trial. By permitting reprosecution on the lesser charge, though barring it in these circumstances on the greater charge, the accused is not, to use the language of Mr. Justice Harlan, writing for the Court in United States v. Tateo, supra, 377 U.S. at 466, 84 S.Ct. at 1589 "granted immunity from punishment because" there were defects "sufficient to constitute reversible error in the proceedings leading to the conviction"; and appellate courts will remain "as zealous as they now are in protecting against the effects of improprieties at the trial or pretrial stage," because the reversal of the conviction for the lesser degree would not "put the accused irrevocably beyond the reach of further prosecution," not any more so than if he did not appeal the conviction for the lesser charge.

Kring v. State of Missouri, 107 U.S. 221, 2 S.Ct. 443, 27 L.Ed. 506 (1882), and Brantley v. State of Georgia, 217 U.S. 284, 30 S.Ct. 514, 54 L.Ed. 768 (1910), do not lead us to a contrary conclusion, although the pattern of reprosecutions in those cases is identical with that in the instant case. Under either the federal standard or the basic core standard, whatever precedential value Kring and Brantley possess is vitiated by the significantly more recent case of Green v. United States, which prohibited the same pattern of reprosecutions. It is true that in footnote 15 of the Green opinion, 355 U.S. at 194, 78 S.Ct. 221, 227, the statement is made that Brantley and Kring "are not controlling here since they involved trials in state courts." But this is merely to distinguish Brantley and Kring, not to approve them. It would not be unfair to say that at the time Green was decided, this distinction was not particularly meaningful to Mr. Justice Black, the author of the Court's opinion in Green, or to Mr. Justice Douglas, who, the very next Term, prefaced their joint dissent in Hoag v. State of New Jersey, supra, 356 U.S. at 477, 78 S.Ct. 829, 837, 2 L.Ed.2d 913 with the statement: "Green v. United States * * *, involving a federal prosecution, provides * * * the standard for every state prosecution as well * * *." And this distinction lost, in effect, all meaningfulness when the doctrine of selective incorporation, the source of the federal and basic core standards, became firmly established as part of our constitutional law in Pointer v. Texas, some eight years after Green.

Moreover, even under the standard of fundamental fairness, we do not regard Kring or Brantley as compelling a conclusion that the state had the power to reprosecute Hetenyi for first degree murder following the conclusion of the first trial.

First, it should be noted that Kring relates to the constitutional claim in this case only by way of a dictum—a vague and conclusory dictum. Prior to 1875 Missouri followed the course similar to that followed by New York until 1881. Then Missouri, like New York, amended its Constitution to abrogate the rule that barred reprosecution for first degree murder where the individual was initially prosecuted for first degree murder, convicted of second degree murder, and he had successfully appealed this conviction. In Kring the Supreme Court did not hold that such a reprosecution satisfied the requirements of the Due Process Clause of the Fourteenth Amendment or that the clause had no double jeopardy content, a question Mr. Justice Harlan viewed as unresolved twenty years later in Dreyer v. Illinois, see supra pp. 850, 851. Instead the court held that the *ex post facto* clause of the federal Constitution prohibited the new procedure from being followed where the crime was alleged to have been commited before the amendment to the Missouri Constitution. It was as a prelude to sustaining this *ex post facto* claim that Mr. Justice Miller declared, without the slightest analysis or elaboration, "There is no question of the right of the state of Missouri, either by her fundamental law or by an ordinary act of legislation, to abolish this rule, and that it is a valid law as to all offenses committed after its enactment," 107 U.S. at 225, 2 S.Ct. at 447.

Secondly, the significance of Brantley, which saved this pattern of reprosecution from a constitutional challenge derived from the Due Process Clause of the Fourteenth Amendment,[25] is somewhat impaired by the fact that it was decided under the regime of Trono v. United States, 199 U.S. 521, 26 S.Ct. 121, 50 L.Ed. 292 (1905), which, if not overruled, was at least reduced to a non-constitutional stature by Green v. United States. Trono involved the same pattern of prosecution, though by the Government of the Philippine Islands, and this was held to be permissible. Trono had been handed down only five years before Brantley, and it was the only case the State of Georgia had cited in its brief to defend its power to reprosecute for the greater charge. Moreover, as late as 1909, one year prior to Brantley the Supreme Court had employed the mode of analysis devised by Mr. Justice Harlan in Dreyer v. State of Illinois, discussed supra, pp. 850, 851 of not deciding whether the Due Process Clause of the Fourteenth Amendment imposed double jeopardy limitations on the states by holding that even under Fifth Amendment standards the claims of double jeopardy were without merit. See Keerle v. State of Montana, supra, 213 U.S. at 138, 29 S.Ct. 469, 53 L.Ed. 734; see also the 1912 case of Graham v. State of West Virginia, supra, 224 U.S. at 631, 32 S.Ct. at 588. Read in this context the final sentence of the short Brantley per curiam, disposing of the constitutional challenge with the words, "It was not a case of twice in jeopardy under any view of the Constitution of the United States," 217 U.S. at 285, 30 S.Ct. at 515 could be fairly interpreted to mean that since Trono would permit the Government of the Philippine Islands, and perhaps even the federal government in general, to reprosecute the accused for the greater charge in such circumstances, there would be little basis for maintaining that a state would be barred by the Fourteenth Amendment from conducting such a reprosecution. Trono thus emerges as the linchpin of Brantley. Without Trono the Supreme Court might have reached the same result. But if Trono had been decided the other way, or, to express the same idea somewhat differently, if Green rather than Trono had been the antecedent to Brantley, the result in Brantley might have been quite different, even if the fundamental fairness standard were applied to determine whether the reprosecution were constitutionally permissible. Green not only construed the Double Jeopardy Clause of the Fifth Amendment; it also perceived and articulated the unfairness in such reprosecutions.[26] The fact

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[24] This is why certain commentators read Palko as permitting reprosecutions following a successful appeal by the State from an acquittal. See, e.g., Mr. Justice Frankfurter's parenthetical statement in Bartkus v. Illinois, supra, 359 U.S. at 131, 79 S.Ct. as 682. "It is worth noting that Palko sustained a first degree murder conviction returned in a second trial after an appeal by the State from an acquittal of first degree murder."

[25] The opinion in Brantley suggests, as a possible basis for distinction, that there the state reprosecution was challenged on the basis of the Fifth Amendment rather than the Due Process Clause of the Fourteenth Amendment: "This writ of error was sued out, and plaintiff in error contended that the judgment of the supreme court of Georgia was in violation of the 5th Amendment of the Constitution of the United States * * *" 217 U.S. at 285, 30 S.Ct. at 515. However, this appears to be a misstatement of the Constitutional claim (perhaps reflecting of the mode of analysis discussed in the text infra). The brief for the plaintiff-in-error clearly frames the constitutional challenge to the reprosecution in terms of the Due Process Clause of the Fourteenth Amendment, and, in fact, the brief reads: "It is not contended that the defendant is protected by * * * [the double jeopardy] clause of the Fifth Amendment * * *, for it is recognized that by a long line of decisions the first ten Amendments are not operative on the states" (pp. 2–3). Mr. Justice Frankfurter also interpreted Brantley as being "concerned [with] the Due Process Clause," Green 1. United States, supra, 355 U.S. at 213, 78 S.Ct. at 236 and presumably he meant the Fourteenth Amendment's Due Process Clause.

[26] For the educative impact of Green, see, e.g., Gomez v. Superior Court 50 Cal.2d 640, 328 P.2d 976 (1958); State v. Williams, 30 N.J. 105, 152 A.2d 9 (1959); State v. Schoel, 54 Wash.2d 388, 341 P. 2d 481 (1959); reaching a similar result under state constitutions. Contrast Blanton v. Commonwealth, 320 S.W.2d 626 (Ky.1958); State v. Thomas, 88 Ariz. 269, 356 P.2d 20 (1960). For the state law prior to Green, see generally, Annot. 61 A.L.R.2d 1141 (1958).

that our constitutional understanding is now dominated by Green rather than Trono impairs the significance of Brantley.

[10] Thirdly, and perhaps most significantly, the authority of Brantley and the Kring dictum (even if the latter be read to reach the instant double jeopardy claim) has been tarnished by the gradual but certain evolution of our constitutional understanding of justice and fairness. *Mr. Justice Frankfurter, the most eloquent and ardent contemporary advocate of the fundamental fairness standard, consistently maintained that in applying this standard the courts are permitted, nay are required, to re-evaluate prior interpretations of the Due Process Clause in light of "changing concepts as to minimum standards of fairness,"* Green v. United States, supra, 355 U.S. at 215, 78 S.Ct. at 238 (dissenting opinion); see also, e. g., Malinski v. New York, 324 U.S. 401, 414, 65 S.Ct. 781, 89 L.Ed. 1029 (1945) (concurring opinion); Louisiana ex rel. Francis v. Resweber, supra, 329 U.S. at 466–467, 67 S.Ct. 377–378; Rochin v. California, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183 (1952); *and with this view there could be little dispute. What was regarded as fair in one epoch of our history as a nation may be regarded as fundamentally unfair in the next, even though the judgment is "not ad hoc and episodic but duly mindful of reconciling the needs of continuity and of change in progressive society,"* id. at 172, 72 S.Ct. at 209. Kring (1882) and Brantley (1910) reached the Supreme Court at a time when the precepts of justice emanating from the Due Process Clause of the Fourteenth Amendment were rudimentary and insensitive to outrageous imperfections in the state criminal processes. To mention but two examples, it was not until the 1930's that a state conviction was invalidated under the Due Process Clause because it rested solely "upon confessions shown to have been extorted by officers of the state by brutality and violence," Brown v. State of Mississippi, 297 U.S. 278, 279, 56 S.Ct. 461, 462, 80 L.Ed. 682 (1936), or because an accused in a capital case was denied the effective assistance of counsel, Powell v. State of Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932); and it would be naive to suppose that in the seventy year period between the adoption of the Fourteenth Amendment and these decisions, no such defects existed or were complained of. Kring and Brantley arose during this lull in the Supreme Court's concern for constitutionally protected human rights, and, even if Kring and Brantley be read as declaring that this type of reprosecution is not so fundamentally unfair as to amount to a denial of due process of law, we would decline to follow them in applying the fundamental fairness standard, not merely because of their half century antiquity, but because we would not be faithful to the evolution of our societal values if we reached any other conclusion.

[11] New York was constitutionally forbidden to reprosecute Hetenyi for first degree murder following the completion of the first trial and to the extent that sections 464 and 544 of the N. Y. Code of Criminal Procedure authorize such a reprosecution, they are inconsistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

III

[12, 13] The judgment of conviction under which Hetenyi is presently imprisoned was entered after a third trial. In the second trial he was found guilty of first degree murder and sentenced to death, but that judgment of conviction was reversed by the New York Court of Appeals. Neither this first reprosecution for first degree murder, nor the fact that it resulted in a conviction for that degree of murder, nor the fact that the conviction was successfuly appealed by the accused removed the constitutional restrictions against reprosecuting him for first degree murder following the completion of the first trial. What was forbidden after the first trial remained so for the third trial, notwithstanding the intervention of the second trial and that appeal.

[14] If the third trial had resulted in a verdict of guilty of first degree murder and Hetenyi were presently imprisoned under that conviction, and the legality of that detention were challenged by a habeas petition, the writ would surely be granted. To deny the State the authority to reprosecute him for first degree murder is to deny it the authority of convicting him of that charge, of "succeeding" in that reprosecution. Cf. Ex parte Lange, 85 U.S. (18 Wall.) 163, 21 L.Ed. 872 (1874). We cannot find any sense to the suggestion "that the issue of double jeopardy can not be raised by a habeas corpus proceeding," Barker v. State of Ohio, 328 F.2d 582, 585, rehearing denied, 330 F.2d 594 (6 Cir. 1964). True, certain of the evils created by such reprosecutions, for example, the harassment and anxiety inflicted by the retrial itself, cannot be remedied by the habeas writ. But that would be true of any post-conviction relief, including direct appeal, which was employed by the Supreme Court in Green v. United States, to mention only one instance. This inadequacy of post-conviction relief is amply compensated by the fact that it can remedy some evils created by reprosecutions, such as the increased probability of obtaining a conviction by merely trying again, and it enables a court other than that which conducted the trial to vindicate and to protect the federal constitutional right.

[15] However, unlike the accused in Green v. United States, Hetenyi does not stand convicted of first degree murder. On the third trial, the jury found him guilty of second degree murder, and, as another jury had done on the first trial, it remained silent on the first degree murder charge. The State was not denied the authority to reprosecute him for second degree murder following the completion of the first trial, and thus there may be a conceptual difficulty in maintaining it was denied the authority to convict him of that charge. Yet we believe that Hetenyi is being held in custody in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution because (1) there was a reasonable possibility that the conduct of the trial and the deliberations of the jury were affected by the fact that Hetenyi was indicted, prosecuted and charged with first degree murder and (2) the State was constitutionally forbidden to prosecute him for first degree murder following the completion of the first trial. Both the existence of this possibility of prejudice and the fact that it arises from a violation of the accused's constitutional rights render the process which resulted in his detention constitutionally inadequate, less than that which is constitutionally due.

[16] The question is not whether the accused was actually prejudiced, but whether there is *reasonable possibility* that he was prejudiced. Fahy v. State of Connecticut, 375 U.S. 85, 86–87, 84 S.Ct. 229, 11 L.Ed.2d 171 (1963) (illegally seized evidence); see also Glasser v. United States, 315 U.S. 60, 76, 62 S.Ct. 457, 86 L.Ed. 680 (1942) (denial of right to counsel); Malinski v. New York, 324 U.S. 401, 404, 65 S.Ct. 781, 89 L.Ed. 1029 (1945) (coerced confession); Payne v. State of Arkansas, 356 U.S. 560, 568, 356 U.S. 560, 2 L.Ed.2d 975 (1958) (coerced confession); Spano v. People of State of New York, 360 U.S. 315, 324, 79 S.Ct. 1202, 3 L.Ed.2d 1265 (1959) (coerced confession); cf. Lyons v. State of Oklahoma, 322 U.S. 596, 597 n. 1, 88 L.Ed. 1481, 64 S.Ct. 1208 (1944) (dictum) (coerced confession). The ends of justice would not be served by requiring a factual determination that the accused was actually prejudiced in his third trial by being prosecuted for and charged with first degree murder, nor would the ends of justice be served by insisting upon a quantitative measurement of that prejudice. The energies and resources consumed by such injury would be staggering and the attainable level of certainty most unsatisfactory. There could never be any certainty as to whether the jury was actually influenced by the unconstitutionally broad scope of the reprosecution or whether the accused's defense strategy was impaired by this scope of the charge, even if there were a most sensitive examination of the entire trial record and a more suspect and controversial inquest of the jurors still alive and available.

[17] The District Court below declared: "Being in custody for the crime of Murder in the Second Degree, * * it appears that the procedure complained of has not resulted in any hardship to relator." It is doubtful whether this declaration could be viewed as a finding that the conduct of the trial or the deliberations of the jury could not reasonably have been affected by the fact that the accused was indicted and was being prosecuted for first degree murder and that the jury was given the alternative of finding him guilty of that charge. The mere fact that the accused is in custody for second degree murder, the only reason offered by the District Court to justify its conclusion that "the procedure complained of has not resulted in any hardship to relator," is not sufficient to exclude this possibility, or to make it less than reasonable. However, even if the statement were read as such a finding, it would not be entitled to the slightest credulence. The District Court did not call for or examine the transcript of the third trial, nor conduct an evidentiary hearing. cf. Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963), nor engage in any other factual inquiries, and thus the usual reasons for deferring to the findings of fact of the lower court are entirely lacking.

[18] We are also of the opinion that no legitimate interest would be served by remanding the case to a non-appellate court for a finding as to whether there is a reasonable possibility that the conduct of the trial or the deliberations of the jury were affected by the range of the prosecution and charge. The question as to whether there is a reasonable possibility of prejudice has traditionally been posed and resolved by the appellate courts, as the harmless error statute (28 U.S.C. § 2111) requires, at least in non-constitutional areas; and thus in this instance the accumulated experience to be drawn upon lies with appellate rather than trial judges. Moreover, in this instance, and on the elementary facts established—that the indictment of the third trial charged first degree murder, that the prosecution focused on obtaining a conviction on that charge, and that the jury was given the alternative of finding him guilty of that charge—we hold that there would be no rational basis for concluding that it is not reasonably possible that the accused was prejudiced by the unconstitutionally broad scope of the prosecution.[27]

The sufficiency of the evidence would not by itself be such a rational basis. Fahy v. State of Connecticut, supra, 375 U.S. at 86–87, 84 S.Ct. 229. We would surely hesitate before assuming, or assigning to any other court the responsibility of determining, whether there is ample evidence to support the verdict in a criminal case, especially when that evidence linking the accused with the crimi-

[27] See, by way of illustration State v. Ross, 29 Mo. 32 (1859); State v. Tweedy, 11 Iowa 350, 357–358 (1860); State v. Dennison, 31 La. Ann. 847, 849 (1879); West v. State 55 Fla. 200, 46 So. 93 (1908); People v. Gessinger, 238 Mich. 625 628–629, 214 N.W. 184 185 (1927), reaching similar results under state law. But compare Slaughter v. State, 25 Tenn. (6 Humph.) 410 (1846) and State v. Belden, 33 Wis. 120 (1873).

nal act is entirely circumstantial. That responsibility would require examining every line of testimony and every exhibit, resolving in favor of the accused all conflicts in testimony, and drawing all the inferences urged by the accused—a task that is as subject to abuse as it is monumental. But even if that responsibility were assumed and faithfully discharged, and a court concluded that there was ample evidence to support the verdict finding Hetenyi guilty of second degree murder,[28] that court would not be justified in excluding the reasonable possibility that the accused was prejudiced by the unconstitutionally broad scope of the prosecution. The mere fact that Hetenyi *could* have—logically and legally—been convicted of second degree murder on the basis of all the evidence, does not mean that he *would* have been so convicted if he were not also charged with first degree murder. For example, it is entirely possible that without the inclusion of the first degree murder charge, the jury, reflecting a not unfamiliar desire to compromise might have returned a guilty verdict on the first degree manslaughter charge on the same evidence. There is, of course, no basis for predicting with any confidence, that this would have been the outcome of the third trial if Hetenyi had not been reprosecuted for first degree murder; but neither is there any basis for predicting, with any confidence, that this would not have been the outcome. To make this latter prediction on the basis of the sufficiency of the evidence would be to ignore reality and, in effect, to have judges make the choice entrusted to the jury.

[19] Nor do we find section 30 of the N.Y. Penal Law to be a sufficient basis for excluding the possibility of prejudice. It provides: "Whenever a crime is distinguished into degrees, the jury, if they convict the prisoner, must find the degree of the crime of which he is guilty." Just as it is unrealistic to maintain that the first jury's silence on the first degree murder charge admits of only one possible explanation, that the jury unanimously believed the state had failed to prove all the elements of the charge beyond a reasonable doubt, see supra pp. ——, 856 it would be unrealistic to maintain that the third jury's verdict of guilty of second degree murder admits of only one explanation, that the jury unanimously believed the state failed to prove all the elements of first degree murder beyond a reasonable doubt, although it unanimously believed, without giving any consideration to the fact that the accused was also charged with first degree murder, that the state had proved the elements of second degree murder beyond a reasonable doubt. Cf. Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed. 908 (1964). The point is not that the other explanations are more probable, but merely that they are possible and that they are within the realm of reason rather than fantasy. Although some of the other explanations, such as the jury compromising its verdict, depend on the jury having disobeyed certain commands of state law, this does not mean that they are not reasonably possible. Nor is there any reason not to preserve the accused's opportunity to reap one of the benefits of a new trial (absent the first degree murder charge) that might only be bestowed if the next jury disobeys state law and compromises its verdict. The opportunity to obtain such a benefit is a necessary incident to the accused's right to trial by jury and it would indeed be ironical, not to mention unfair, if the accused were deprived of that opportunity because the state violated his constitutional rights by reprosecuting him in these circumstances for first degree murder.

[20–24] We are not suggesting that whenever the range of the prosecution is improperly broad or a greater charge is improperly submitted to the jury the trial is rendered constitutionally inadequate. We have no occasion to consider that more far-reaching question, for here the impropriety consisted of a violation of a federal constitutional mandate. The breadth of the prosecution and the submission to jury of the first degree murder charge were improper because they violated Hetenyi's constitutional right not to be reprosecuted for first degree murder following the completion of the first trial; his constitutional right was violated regardless of whether the reprosecution resulted in an acquittal or conviction for that crime. See supra, p. 858. The source of the impropriety does not increase the possibility of prejudice, nor does it alter the ways in which the error could work to the prejudice of the accused. See Fahy v. State of Connecticut, supra, 375 U.S. at 95, 84 S.Ct. 229 (dissenting opinion). Instead, its significance is derived from our understanding that an accused is not afforded due process of law when his federal constitutional rights have been violated and the conduct which violated his constitutional rights created a reasonable possibility of prejudicing the accused. This understanding reflects the view that an individual's federal constitutional rights are among those that are most fundamental and it enables a federal court to vindicate and protect those rights. The concept of "due process of law" embodied in the Fourteenth Amendment then not only imposes substantive limitations on the power of the states to reprosecute an individual for the same crime; it also entitles an accused, as a condition of depriving him of his liberty, to a trial where there is no reasonable possibility that violation of his constitutional rights has worked to his prejudice.

We therefore hold: I. The Due Process Clause of the Fourteenth Amendment imposes some limitations on the power of the states to reprosecute an individual for the same crime. II. New York transgressed these limitations by reprosecuting Hetenyi for first degree murder following the completion of the first trial, notwithstanding Hetenyi's successful appeal of the second degree murder conviction obtained in that trial. III. There is a reasonable possibility that Hetenyi was prejudiced in his third trial by the fact that he was indicted, prosecuted and charged with first degree murder; and both this possibility of prejudice and the fact that it was created by conduct that violated the accused's constitutional rights rendered this trial constitutionally inadequate. Hetenyi has been deprived of his liberty without due process of law, and therefore he is being held in custody in violation of the Constitution. The order below denying Hetenyi's applicaton for the writ of habeas corpus is reversed, with instructions that the writ be granted unless, within a reasonable time, New York afford Hetenyi a new trial that conforms to the principles set forth in this opinion.

Assigned counsel for relator on this appeal, Ernest J. Brown, Esq., of Cambridge, Massachusetts, represented his client with eloquency and perception, and we are indeed grateful.

Reversed.

Metzner, District Judge (dissenting):

The question presented here is whether the guarantee contained in the Fifth Amendment against double jeopardy should be absorbed by the Fourteenth Amendment so as to make it applicable to state prosecutions. If the answer be yes, then the full scope of that guarantee as interpreted by the federal courts is applicable to the states. Malloy v. Hogan, 378 U.S. 1, 10, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964).

Many state prosecutions have been challenged in the Supreme Court as volative of the guarantee against double jeopardy, but in none of these has the plea been sustained. These cases are all referred to in the majority opinion.

The leading authority on the subject is Palko 1. State of Connecticut, 302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 288 (1937). Palko presented a much stronger factual case for a determination contrary to the one reached by the Court than is presented here. *Palko had been convicted of the crime of murder in the second degree on an indictment charging murder in the first degree. A sentence of life imprisonment was imposed. After reversal Palko was retried and convicted of murder in the first degree and sentenced to death. The clear refusal by the Court to find an invasion of Palko's guarantee against double jeopardy, as provided by the Fifth Amendment, allowed the death penalty to stand.*

Hetenyi claims that he should have been retried only on a charge of second degree murder. The first retrial resulted in a verdict of guilty of murder in the first degree, but upon reversal and a second retrial he was found guilty of a second degree murder, for which crime he is now incarcerated.

It may well be that, in view of the recent decisions of the Court (Mapp v. State of Ohio, 367 U.S. 643, 81 S.Ct. 168, 6 L.Ed.2d 1081 (1961), search and seizure; Robinson v. State of California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962), cruel and unusual punishment; Gideon v. Wainright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), right to counsel; Malloy v. Hogan, supra, self-incrimination; Pointer v. State of Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965), right to confrontation), either the test enunciated in Palko or the holding of constitutionality of the Connecticut statute involved therein will be overruled. *But see* the concurring opinions of Mr. Justice Harlan and Mr. Justice Goldberg in Pointer v. Texas, supra. However, the incorporation of guarantees of the Bill of Rights into the Due Process Clause of the Fourteenth Amendment at the expense of departing from several long-standing Supreme Court decisions is a step which should only be taken by that Court.

The order should be affirmed.

[In the U.S. Court of Appeals for the Second Circuit, No. 307—September Term, 1964. Argued January 21, 1965 Docket No. 29208]

UNITED STATES EX REL. THEODORE R. STOVALL, APPELLANT *v.* HONORABLE WILFRED DENNO, AS WARDEN OF SING SING PRISON, OSSINING, NEW YORK, APPELLEE

(Before: Moore, Friendly and Marshall, Circuit Judges)

(Appeal from an order of the District Court for the Southern District of New York, Inzer B. Wyatt, *Judge*, denying an application by a state prisoner for a writ of *habeas corpus*. Reversed.)

Leon B. Polsky (Anthony F. Marra, The Legal Aid Society, New York, N.Y.), *for Appellant*.

Henry P. DeVine, Assistant District Attorney (William Cahn, District Attorney, Nassau County), *for Appellee*.

OPINION—MARCH 31, 1965

Circuit Judge FRIENDLY. Theodore Stovall, under sentence of death for the brutal murder of Dr. Paul Behrendt in Nassau County, N.Y., appeals from Judge Wyatt's denial of an application in the District Court for the Southern District of New York, for a writ of *habeas corpus*. The judge granted a certificate of probable cause, 28 U.S.C. § 2253, and leave to appeal *in forma pauperis*, 28 U.S.C.

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[28] On direct appeal from the judgment of conviction entered in the third trial, the Appellate Division declared, without any elaboration, that the verdict "is amply supported by the evidence," see supra, p. 848. It should be noted that under New York standards even if the evidence is sufficient to support the verdict an error could nevertheless be prejudicial and thus require reversal, see the appeal from the judgment of conviction entered on the first trial, supra, p. 847.

§ 1915(a), and reassigned the Legal Aid Society to represent Stovall on appeal, 28 U.S.C. § 1915(d).

We wish to make clear at the outset that the ground which was principally argued to us and on which we are constrained to reverse, although raised in Stovall's handwritten petition in the district court, was not argued to and consequently was not discussed by Judge Wyatt, counsel having relied on a quite different point mentioned at the end of this opinion. We do not at all approve this method of presentation. But since the case is a capital one, and the relevant facts are sufficiently revealed in the state court record, we shall dispose of the appeal on the merits—as, indeed, the Assistant District Attorney has commendably requested.

Late on the night of August 23–24, 1961, Dr. Paul Behrendt was stabbed to death in the kitchen of his home in Garden City, Long Island. His wife, Dr. Frances Behrendt, vainly coming to his assistance, was grievously wounded. The police, who quickly arrived on the scene as the result of a telephone call for medical aid which Mrs. Behrendt had managed to make, found many pieces of telltale evidence. They discovered a key chain with three keys, one of which was to Stovall's locker in a Brooklyn store where he worked. They also found a bloody shirt with the identification tag of a laundry used by Stovall. Further investigation in the morning of August 24 led [fol. 34] the police to a bar which Stovall had visited the previous night. This, in turn, brought them to a man whom Stovall had called by telephone from the bar; he supplied Stovall's name and the address of Stovall's sister in Hempstead, Long Island. Proceeding to this address around 4 P.M., the police found Stovall and also Dr. Behrendt's blood-stained white coat. They arrested him and seized the coat, a pair of trousers owned by Stovall which were stained with blood of Mrs. Behrendt's blood type, and his pork-pie hat. The shirt left in the Behrendt kitchen was similarly stained, but a piece torn from it, found under Dr. Behrendt's armpit, was colored with blood of the Doctor's type. At the trial Stovall's sister and a man who was living with her testified to Stovall's appearance at her room in Hempstead around 12:30 A.M. on the morning of August 24, without the white shirt he had been wearing earlier that evening but with the white jacket and with bloody pants and a smear of blood on his forehead. Mrs. Behrendt identified Stovall at the trial.

With all this identification evidence—and there was a good deal more—it may be wondered what justification can exist for federal interposition. The answer lies in an episode we shall now recount.

On the evening of August 24, Stovall was questioned by the prosecutor at police headquarters; the statement was almost wholly exculpatory. The next morning he was arraigned, on a detective's charge of first degree murder, before a state district court judge. The judge informed Stovall, as required by § 188 of the New York Code of Criminal Procedure, "You have the right to the aid of a lawyer or counsel in every stage of the proceedings and before any further proceedings are had"; asked, "Do you want to get a lawyer?"; and said, "If you do, I'll give you time to get one before we proceed at this particular time." Stovall answered that he did, and on the judge's further [fol. 35] inquiry, "you're getting your own lawyer; is that right?", responded in the affirmative. The judge then announced that he would "put it over to August 31st, next Thursday, for the purpose of getting an attorney," and directed that Stovall be "remanded pending further pleading."

Section 192 of New York's Code of Criminal Procedure prescribes, so far as here pertinent, that "If an adjournment be had for any cause, the magistrate must commit the defendant for examination."[1] and § 193 adds that the commitment shall be to the sheriff, save in New York City where it is to be to the commissioner of correction. We were told at the argument that the sheriff of Nassau County does not have a representative available in the arraigning courts and that responsibility for placing committed defendants in his hands rests with the police. After the arraignment but apparently before Stovall was handed over to the sheriff, two detectives took him, handcuffed to one of them, to the hospital where Mrs. Behrendt had undergone extensive surgery, and into her room. Three high police officers and two prosecutors were also there. One of the police officers asked Mrs. Behrendt whether Stovall was "the man"; she said he was. At some time one of the officers asked Stovall "to say a few words for voice identification"; he did—just what does not appear.

In opening the case at trial the prosecutor said, outlining the People's evidence:

"There will be further evidence that Mrs. Behrendt observed this defendant while she was in the hospital and the defendant was taken to her. She identified him. I don't believe that she has ever seen him since, and whether she will be able to identify him here in [fol. 36] court I do not know at this time. But she will be called and, gentlemen, in short there will be other evidence that will be produced for your consideration."

Defense counsel made no objection or request for a mistrial. When the two detectives were called, before Mrs. Behrendt was asked to testify, defense counsel cross-examined them as to the hospital identification, bringing out, among other things, that the police chiefs and the prosecutors had been with Mrs. Behrendt before Stovall entered in handcuffs, that there was no line-up, and that Stovall was the only Negro in the room. In the course of her testimony Mrs. Behrendt identified Stovall in court and, without objection, stated she had also seen him in the hospital. N.Y. Code of Criminal Procedure § 393–b.

Stovall contends that use of the hospital identification constituted a denial of his right to counsel and a violation of the privilege against self-incrimination, guaranteed respectively by the Sixth and Fifth Amendments, now held to have been made applicable to the states by the Fourteenth, *Gideon* v. *Wainwright*, 372 U.S. 335 (1963); *Malloy* v. *Hogan*, 378 U.S. 1 (1964), and also that the procedure employed at the hospital so prejudiced the identification that its use violated the due process clause of the Fourteenth Amendment. *We need deal only with the first contention.*

New York does not dispute that Stovall's constitutional right to counsel had come into being when he was brought before a judge for arraignment. *Hamilton* v. *Alabama*, 368 U.S. 52 (1961); *White* v. *Maryland*, 373 U.S. 59 (1963). The judge's belief that Stovall was obtaining counsel of his own choosing was understandable, even though, at the adjourned hearing, it turned out that Stovall was without means and wished counsel to be assigned. But a prospect of counsel is not the same as having one, and once the right was attached and has not [fol. 37] been waived, there are means—interrogation being the most obvious—from which, in the absence of waiver, the state no longer can gain incriminating evidence without notice to him, whatever the situation in the "investigatorial" stage. Consistent with this constitutional requirement, New York Code of Criminal Procedure directs that after informing the defendant of "his right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had," § 188, the magistrate must "allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose," and upon defendant's request, must send a peace officer to take a message to counsel, § 189. Here, without awaiting the presence of counsel, New York caused Stovall to be brought before Mrs. Behrendt for identification, and then used that testimony to his detriment at the trial.

The State's first answer is that testimony concerning the hospital identification was initially brought out by the defense in cross-examination, and that at no time did it object to disclosure of the incident to the jury. Normally there could be no valid claim of error if a defendant presented evidence which he could bar and the State followed with a then harmless repetition. However, the prosecutor had unequivocally announced at the start of the trial that Mrs. Behrendt would testify to her earlier identification; in this context, defense counsel's attempt to discredit such evidence in advance, while the detectives were available for cross-examination, rather than having to recall them, cannot fairly be deemed an independent attempt to introduce the identification as part of Stovall's case. The failure to object to the State's announced intention to offer the hospital identification is more troublesome. Although a mistrial could have been sought when the prosecutor first mentioned this in his opening, it would be going too far to insist on so instantaneous [fol. 38] a reaction, with the risk of dramatizing the incident to the jury if the request were denied. But there was time for defense counsel to seek an exclusionary ruling, outside the presence of the jury, before the detectives took the stand. While we see no real excuse for this omission, we doubt that the Supreme Court would permit so demanding a standard in a capital case.[2]

The State also argues that the lack of counsel worked no prejudice since the hos-

[1] Of course, this means *pending* examination of the charge by the magistrate—not examination *of* the defendant.

[2] We have had some concern whether any New York court has ever had an opportunity to consider the objection as to Mrs. Behrendt's identification. Point IV of Stovall's brief in the New York Court of Appeals deals with the hospital identification; in the course of this, it was argued (p. 37) that "What transpired at the hospital was after the defendant had been arraigned, while the defendant was under arrest and while the defendant was without counsel," citing *People* v. *Meyer*, 11 N. Y. 2d 162, 227 N. Y. S. 2d 427 (1962), and *People* v. *Rodriguez*, 11 N. Y. 2d 279, 229 N. Y. S. 2d 353 (1962). The People's brief said in answer (p. 48) only that the testimony complained of was elicited at the trial in cross-examination of one of the detectives. After affirming the conviction on the first degree murder count, 13 N. Y. 2d 1094, 246 N. Y. S. 2d 410 (1963), the Court of Appeals amended its remittitur to state that there were persented, and it had necessarily passed upon, various questions under the Federal Constitution, including appellant's contention "that his rights under the Fifth Amendment of the Constitution of the United States were violated in that appellant was compelled to testify against himself after arraignment." 13 N. Y. 2d 1178, 248 N. Y. S. 2d 56, 57 (1964). In the light of Stovall's brief in the Court of Appeals and the cases there cited, this can be charitably read as including the Sixth Amendment contention as to the same episode. If, on the other hand, it be thought that Stovall never did raise the Sixth Amendment claim in the New York courts, and if we should assume that he would be required now to present this by an available state method, there appears to be no way in which he can raise it now, see *People* v. *Howard*, 12 N. Y. 2d 65, 236 N. Y. S. 2d 39 (1962), cert. denied, 374 U. S. 840 (1963), and *Fay* v. *Noia*, 372 U. S. 391, 434–35, 438–40 (1963), would seem applicable.

pital "show up" did not amount to self-incrimination and therefore counsel could not have prevented it. Quite apart from whether the privilege against self-incrimination covers evidence obtained outside the courtroom and later sought to be introduced, see [fol. 39] 8 Wigmore, Evidence § 2252, at 328 & n. 27 (McNaughton rev. 1961), it is usually said that the privilege does not invest a defendant with immunity from exposing himself to identification, even if this includes some movement, such as going from the jail to the courtroom for trial or rising, if called upon, see *People* v. *Gardner*, 144 N.Y. 119, 127–30 (1894); 8 Wigmore, *supra*, § 2265; Maguire, Evidence of Guilt § 2.04 at 25–33 (1959); and it may well be argued that use of the vocal chords, when these are not employed to produce utterances of testimonial value, stands no differently than that of the arm muscles. See *Holt* v. *United States*, 218 U.S. 245, 252 (1910); 8 Wigmore, *supra*, § 2265 at 396 & n. 9. The bulk of decisions on this subject deal with what testimony can be given when the defendant has taken the action directed or what comment can be made when he has refused to take it—not with what counsel can do to prevent the issue from arising or, if unsuccessful in that, to see to it that the episode takes place in the most benign form. Mr. Justice Holmes made this distinction in the *Holt* case, where the defendant, a soldier under arrest, had put on a blouse on the order of officers constituting a board of investigation, and testimony that it fitted was introduced at the trial: "Moreover, we need not consider how far a court would go in compelling a man to exhibit himself. For when he is exhibited, whether voluntarily or by order, and even if the order goes too far, the evidence, if material, is competent, *Adams* v. *New York*, 192 U.S. 585," 218 U.S. at 253.[3]

The question whether the lack of counsel was prejudicial to Stovall does not turn on whether forbidden self- [fol. 40] incrimination occurred. Assuming that the trip involved no such violation, there were still many things that counsel might have done. He might have persuaded the prosecutor, in the state's own interest, if not to forgo the hospital identification, at least to assure conditions better designed to avoid suggestion. He might have persuaded the judge to direct that Stovall be immediately sent to and then kept in jail pending trial, or be put before Mrs. Behrendt only under fair conditions such as a line-up, or be accompanied by counsel who might question her. See *Commonwealth* v. *Brines*, 29 Pa. Dist. 1091 (C. P. 1920). Or, as a last resort, he might have advised Stovall to refuse to go, or to remain silent if taken by force. Granting all this, it remains true that the chance that counsel's presence would have altered events is considerably less here than in the case of voluntary confessions, where a lawyer's advice can almost insure that none would be forthcoming. Nevertheless, Stovall's transportation to the hospital, his modicum of cooperation in the visit and the nature of the identification procedure, each would have offered counsel an opportunity to intervene; taking them all together, in the context of a capital case, we cannot say his probability of success was so slight that the lack of counsel was harmless.[4] Even if Mrs. Behrendt's condition had been such as to make it imperative that Stovall be taken to the hospital when and as he was, which the record does not indicate, there was no similar compulsion on the [fol. 41] prosecutor to use the evidence against Stovall, and we think the Sixth Amendment precluded this.

Even with our incomplete statement of the massive evidence showing Stovall to have been the killer of Dr. Behrendt, it would be naive not to recognize that the episode of the hospital identification has been overblown to a significance out of all proportion to anything it could have had at the trial. Indeed, at the argument in this court, counsel for Stovall stated, with complete frankness, that at a new trial the defense primarily relied on would be insanity—an issue which was raised and necessarily found against him at the first trial and on which the hospital identification had no bearing. A blunder by the prosecutor in offering the evidence, which had no probable causal relation in the verdict, is thus to result in a new trial on the defense of insanity which Stovall has already had a fair opportunity to establish.[5] We do not find our role in bringing this about a particularly congenial one. But the only principle upon which the relative unimportance of the hospital identification could justify denial of the writ would be the doctrine of harmless error, applied in *United States* v. *Guerra*, 334 F. 2d 138, 144–47 (2 Cir.), cert. denied, 379 U.S. 936 (1964). Here, in contrast to that case, where the unlawfully obtained statement was "an abortive attempt to impeach" the defendant "on a minor issue," the statement was inculpatory on the central question of his presence on the occasion of the crime; indeed, *Mrs. Behrendt's was the only identification that was testimonial rather than circum-* [*fol. 42*] *stantial*,[6] and the jury asked that all her testimony be reread. A claim of harmless error as to a conviction must surmount an exceedingly high hurdle, even on collateral attack, when the error was constitutional and the punishment is death. See *Bruno* v. *United States*, 308 U.S. 287 (1939); *Kotteakos v. United States*, 328 U.S. 750, 764–65 (1946); *Stewart* v. *United States*, 366 U.S. 1, 9–10 (1961); *Hamilton* v. *Alabama*, *supra*, 368 U.S. 52. The hurdle is too high for this case.[7]

In view of this ruling, a brief word on the constitutional point argued to the district judge will suffice. Around 3 P.M. on the afternoon of August 24 police officers, without a search warrant, obtained access to Stovall's own rooms in Jamaica, Long Island, and seized a shirt, a pillow case, and a bed sheet, which had the same laundry marks as the shirt left in Dr. Behrendt's kitchen. Before and during the trial, defense counsel sought a hearing whether these objects, not offered by the People, had led to the seizure of articles of clothing attendant [fol. 43] on Stovall's arrest. The trial judge denied such a hearing, erroneously, see *Wong Sun* v. *United States*, 371 U.S. 471, 484–88 (1963), on the basis that the principle of *Mapp* v. *Ohio*, 367 U.S. 643 (1961), did not extend to fruits of an unlawful search. Judge Wyatt nevertheless overruled the objection since, as he found, "There was a source of information," to wit, the man to whom Stovall had telephoned from the bar, "leading to the arrest of defendant, earlier and entirely independent of the Jamaica search." Not challenging this finding, counsel contends that Stovall was nevertheless prejudiced since a New York judge might have found differently or have been satisfied with a smaller infiltration of poisoned sap, and also because, for reasons not apparent to counsel or to us, Stovall's attorneys in the state trial reacted to the erroneous ruling by themselves displaying to the jury the results of the Jamaica search. We find it unnecessary to resolve these contentions, since we are confident that at a new trial a proper preliminary hearing will be had.

The denial of *habeas corpus* is reversed, with instructions that the writ issue unless, within a reasonable time, New York affords Stovall a new trial.

Circuit Judge Moore (dissenting). Dr. Frances Behrendt concededly (by the majority) greviously wounded was in a hospital where she had undergone extensive surgery. Her husband, Dr. Paul Behrendt, had been killed. *The defendant was arraigned on August 25, 1961 and, having requested an opportunity to get his own lawyer*, the court without proceeding further postponed the case to August 31st. *The only person in the world who could exonerate Stovall and save him from possible execution was Dr. Frances Behrendt.* Her [fol. 44] words, "He is not the man" could have meant life or death to Stovall. Stovall could wait for six days to retain a lawyer. Whether Dr. Frances Behrendt could wait even six hours was conjectural. No amount of subsequent skillful legal advice could replace the need for action while she yet lived—action which required Stovall's immediate presence in the hospital room.

Every defendant in a criminal case is subjected to identification. Even while he is presumed to be innocent, in the presence of the jury he is called the defendant. If the crime was of a violent nature, one or more police officers are present. He rises for identification purposes or a witness places a hand on his shoulder to indicate the person concerning whom testimony is being given.

The majority characterize the prosecutor's action as a "blunder." *I wonder what word they would have used, assuming that Dr. Behrendt had died later that day, had the police immediately lodged Stovall in jail and failed to take him to her room while there was still time.* It is too easy after the event for appellate courts to conjure up all the might-have-been possibilities and the hypothetical steps and maneuvers an attorney might have taken.

I find no error in the identification pro-

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[3] The *Holt* decision antedated the development, in *Weeks* v. *United States*, 232 U.S. 383 (1914), of the federal law as to use of illegally obtained evidence. See the comment on *Adams* v. *New York* in the *Weeks* opinion, 232 U.S. at 394–96.

[4] Our illustrations of what counsel might have done carry no implications whether denial of any such requests would have violated Stovall's federally protected rights. Prejudice exists if lack of counsel resulted in the loss of rights that the state might well have accorded. See *Tomkins* v. *Missouri*, 323 U.S. 485, 489 (1945). We must await further enlightenment whether, once the right to counsel has attached, all further investigational activity involving some cooperating by the defendant must be with counsel's consent or at least on notice to him.

[5] Stovall in fact made little effort to show insanity, the pertinent evidence coming chiefly from the State; but it remains true that a wholly unrelated error now gives Stovall a fresh chance to present a defense otherwise foreclosed.

[6] The case vividly illustrates how much *more* probative a multiple strand of circumstantial evidence may be than a testimonial identification. See 1 Wigmore, Evidence § 26 (3d ed. 1940).

[7] As a constitutional matter, there is no obvious reason why a new trial need to be held on an issue "distinct and separable" from that vitiated by improper evidence or instructions, see *Gasoline Prods. Co.* v. *Champlin Ref. Co.*, 283 U.S. 494, 500 (1931); and if New York law permitted a new trial on the issue of commission excluding insanity, which we seriously doubt, cf. Code of Criminal Procedure, §§ 464, 544, we see no reason why that would not meet federal requirements. Compare *United States* v. *Shotwell Mfg. Co.*, 355 U.S. 233, 245–46 (1957); *Jackson* v. *Denno*, 378 U.S. 368, 395–96 (1964). New York has recently provided that a conviction of first degree murder be followed by further evidence and deliberation by the jury to fix the penalty, and the New York statute provides that error in the latter phase has no effect upon the conviction. N.Y. Penal Law § 1045–a. California now requires that the insanity defense be considered by the jury in murder cases after it has in turn convicted and fixed sentence, but the statute does not speak to the question of partial new trials as between commission and insanity. Cal. Penal Code §§ 190.1, 1026.

cedure or the way it was used upon the trial and, hence, would affirm the denial of the writ.

[United States Court of Appeals, Second Circuit, No. 307, Docket 29208]

UNITED STATES EX REL. THEODORE R. STOVALL, APPELLANT, *v.* HONORABLE WILFRED DENNO, AS WARDEN OF SING SING PRISON, OSSINING, NEW YORK, APPELLEE

Submitted en banc to this Court on May 26, 1965. Argued Jan. 21, 1965. Decided Jan. 31, 1966.

Habeas corpus. From order of the United States District Court for the Southern District of New York, Inzer B. Wyatt, J., denying application, state prisoner appealed. The Court of Appeals, Moore, Circuit Judge, held that defendant who had just been arraigned and had advised court that he wished to obtain his own counsel rather than accept court-appointed counsel was properly taken by police to hospital room of victim to ascertain whether or not she recognized him as her attacker.

Affirmed.

Friendly, Waterman and J. Joseph Smith, Circuit Judges, dissented.

1. Criminal Law ⇐393(1)

After accused had been arraigned and had advised court that he wished to obtain his own counsel rather than accept court-appointed counsel, police in taking him to hospital room of victim to ascertain whether she recognized him as her attacker did not violate constitutional right against self-incrimination. U.S.C.A. Const. Amend. 5.

2. Arrest ⇐70

After accused had been arraigned and court had adjourned any further proceedings for six days for purpose of permitting him to obtain his own counsel, accused remained in lawful custody of police.

3. Criminal Law ⇐393(1)

When defendant had been arraigned and court had adjourned for six days for purpose of permitting defendant to obtain his own counsel, it was incumbent upon police, in whose lawful custody accused was, to have victim of assault view him to identify or disavow him as the culprit.

4. Criminal Law ⇐393(3), 636(1)

Law requires defendant to be present upon his trial and to exhibit his face for identification purposes. U.S.C.A. Const. Amend. 5.

5. Criminal Law ⇐741(2)

Accuracy of identification of accused as attacker of victim made by victim while she was hospitalized was for jury. U.S.C.A. Const. Amend. 5.

6. Criminal Law ⇐339

Method of identification inside or outside courtroom would go to weight to be attributed to identification of accused not to admissibility or constitutionality of testimony relating thereto. U.S.C.A. Const. Amend. 5.

7. Criminal Law ⇐393(3)

It is legal to require accused to stand up in court for purposes of identification. U.S.C.A. Const. Amend. 5.

8. Criminal Law ⇐393(1)

Interests of accused and society alike demand that opportunity for identification of accused by victim be afforded at earliest possible moment and when that moment exists will of necessity be dependent upon facts and circumstances of each particular case. U.S.C.A. Const. Amend. 5.

9. Criminal Law ⇐393(1)

Arrested person may be exhibited for identification to person injured by commission of crime. U.S.C.A. Const. Amend. 5.

10. Criminal Law ⇐393(1)

Prohibition of 5th amendment relating to self-incrimination is prohibition of use of physical or moral compulsion to extort communications from accused, not an exclusion of his body as evidence when it may be material. U.S.C.A. Const. Amend. 5.

11. Habeas Corpus ⇐45.1(1)

Federal court should be loath to interfere with state court evidentiary matters which go primarily to weight of evidence admitted.

12. Constitutional Law ⇐257

State identification procedure could be so unfair as to amount to a violation of 14th Amendment's due process guarantee. U.S.C.A. Const. Amend. 14.

13. Constitutional Law ⇐266

Where victim was confined to hospital, her attacker had remained in her full view in brightly lighted kitchen for considerable period after stabbing her and there was no limitation to cross-examination directed toward weight of her hospital identification testimony, accused was not denied due process on his trail or deprived of Fourteenth Amendment rights by admission of evidence that victim had identified defendant in hospital as her attacker. U.S.C.A. Const. Amend. 14.

14. Criminal Law ⇐641(1)

Where defendant was advised of right to counsel when brought before magistrate, upon stating that he desired to secure his own counsel he was given an opportunity by adjournment of proceedings for six days and on sixth day he informed magistrate that he had not communicated with any relatives to see if they would get a lawyer for him but he had been told in jail that one would be assigned and magistrate assigned well-known criminal defense lawyer, defendant was not denied his constitutional right to counsel. U.S.C.A. Const. Amend. 6, Code Cr. Proc. N.Y § 188

15. Criminal Law ⇐641(1)

Defendant was not deprived of right to counsel on basis that after expressing his desire to obtain his own counsel and adjournment of proceedings for that purpose he had been brought by police to hospital for identification by victim. U.S.C.A. Const. Amend. 6, Code Cr. Proc. N.Y. § 188.

16. Arrest ⇐63(4)
Searches and Seizures ⇐7(27)

Where articles claimed to have been illegally seized from accused were not offered in evidence against him by people, but were marked for identification by defense after district attorney had announced that he would not offer such items, such items did not lead to his arrest under poison fruit doctrine and articles were voluntarily turned over to police by sister of accused, no constitutional rights of accused were violated. U.S.C.A. Const. Amend. 14.

17. Criminal Law ⇐1134(1)

Capital case requires most careful scrutiny.

Leon B. Polsky, New York City (Anthony F. Marra, The Legal Aid Society, New York City), for appellant.

Henry P. DeVine, Asst. Dist. Atty. (William Cahn, Dist. Atty., Nassau County, State of New York), for appellee.

Before Lumbard, Chief Judge, and Waterman, Moore, Friendly, Smith, Kaufman, Hays and Anderson, Circuit Judges.

Moore, Circuit Judge (with whom Judges Kaufman, Hays and Anderson concur; Judge Lumbard concurs in a separate opinion with which Judge Kaufman also concurs; Judge Friendly dissents in a separate opinion with which Judge Waterman concurs; and Judge J. Joseph Smith dissents in a separate opinion):

Theodore Roosevelt Stovall appeals from an order dismissing a writ of habeas corpus. The appeal was argued originally before a panel of this Court (Moore, Friendly and Marshall, C.J.J.), and an opinion was filed on March 31, 1965, reversing the order of the District Court, Moore, C.J., dissenting. Thereafter, this Court *sua sponte* on May 26, 1965, ordered *en banc* consideration of this case and six other cases. Upon such consideration, the order appealed from is affirmed.

Late on the night of August 23–24, 1961, Dr. Paul Behrendt was stabbed to death in the kitchen of his home in Garden City, Long Island. His wife, Dr. Frances Behrendt, vainly coming to his assistance, was grievously wounded. The police, who quickly arrived on the scene as the result of a telephone call for medical aid which Mrs. Behrendt had managed to make, found many pieces of telltale evidence. They discovered a key chain with three keys, one of which was to Stovall's locker in a Brooklyn store where he worked. They also found a bloody shirt with the identification tag of a laundry used by Stovall. Further investigation in the morning of August 24th led the police to a bar which Stovall had visited the previous night. This, in turn, brought them to a man whom Stovall had called by telephone from the bar; he supplied Stovall's name and the address of Stovall's sister in Hempstead, Long Island. Proceeding to this address around 4:00 P.M., the police found Stovall and also Dr. Behrendt's blood-stained white coat. They arrested him and seized the coat, a pair of trousers owned by Stovall which were stained with blood of Mrs. Behrendt's blood type, and his pork-pie hat. The shirt left in the Behrendt kitchen was similarly stained, but a piece torn from it, found under Dr. Behrendt's armpit, was colored with blood of the Doctor's type. At the trial, Stovall's sister and a male friend of the sister testified that when Stovall came to her room in Hempstead at about 12:30 A.M., August 24th, he was not wearing the white shirt he had on earlier but instead appeared with the white jacket, bloody pants and a smear of blood on his forehead.

On the evening of August 24th, Stovall was questioned by the prosecutor at police headquarters; the statement was almost wholly exculpatory. The next morning he was arraigned, on a detective's charge of first degree murder, before a state district court judge. The judge informed Stovall, as required by § 188 of the New York Code of Criminal Procedure, "You have the right to the aid of a lawyer or counsel in every stage of the proceedings and before any further proceedings are had"; he then asked, "Do you want to get a lawyer?"; and said, "If you do, I'll give you time to get one before we proceed at this particular time." Stovall answered that he did, and on the Judge's further inquiry, "you're getting your own lawyer; is that right?", responded in the affirmative. The Judge then announced that he would "put it over to August 31st, next Thursday, for the purpose of getting an attorney," and directed that Stovall be "remanded pending further pleading."

Since Stovall had to remain in police custody pending further proceedings on the adjourned date, he was taken for identification purposes to Mrs. Behrendt's hospital room where Mrs. Behrendt identified Stovall as her attacker. Thereafter he was lodged in jail. Stovall was convicted by the jury of murder in the first degree. The jury did not recommend leniency. Stovall was, therefore, sentenced to death.

The principal point now urged on appeal is the claim (not even presented to the court below) that the taking of Stovall to Mrs. Behrendt's hospital room for possible identification violated his Fifth, Sixth and Fourteenth Amendment rights. No claim is made—nor could any be sustained by the proof—that Stovall's arrest was without probable cause or that there was any delay in his arraignment which occurred the morning following his arrest.

Nor is any claim made that Stovall at any time made a confession or gave any statements which were obtained by coercion, trickery or subterfuge—in fact there were no statements or confessions whatsoever. Thus, the only issue upon this appeal is: can the police, following an arraignment at which the person arraigned advised the court that he was going to get his own lawyer, continue their identification efforts by taking such person to the hospital room of the victim to ascertain whether or not she recognized him

as her attacker? Obviously the victim of the crime, if he or she has had an opportunity to see the attacker at the time of the attack, is the person most likely to be able to confirm or refute the identity of the person arrested. Freedom or further detention may well come from a "yes" or "no" to the simple question: is this the man who attacked you?

FIFTH AMENDMENT (SELF-INCRIMINATION)

Appellant challenges the admissibility in evidence of Mrs. Behrendt's hospital room identification. However, under section 393-b, New York Code of Criminal Procedure, "a witness who has on a previous occasion identified such person may testify to such previous identification."

[1–3] What was Stovall's status at the time he was taken to Mrs. Behrendt's hospital room? Because of appellant's present argument, the spotlight of inquiry must be focused sharply upon this single period of time. Stovall had just been arraigned and had advised the court that he wished to obtain his own counsel rather than accept court-appointed counsel. To give him adequate opportunity to do so, the court adjourned "any further proceedings" for six days for that purpose. No plea was entered, no motions had to be made or waived, no rights were jeopardized. In the meantime Stovall had to remain in the custody of the police. This was lawful custody. To fulfill properly their duty to make sure that they had the right man, it was incumbent upon the police to have the victim of the assault view the suspected attacker to identify or disavow him as the culprit.

Had Mrs. Behrendt not been so seriously injured and hospitalized, Stovall would have been lodged in the local jail and Mrs. Behrendt could have viewed him in a line-up or looked at him through the door or gate of his cell. A photograph of Stovall might have been taken and exhibited to her. However, the police have to deal with situations as they find them and act expeditiously in the light of emergencies which confront them. Here was the only person in the world who could possibly exonerate Stovall. Her words, and only her words, "He is not the man" could have resulted in freedom for Stovall. The hospital was not far distant from the courthouse and jail. No one knew how long Mrs. Behrendt might live. Faced with the responsibility of identifying the attacker, with the need for immediate action and with the knowledge that Mrs. Behrendt could not visit the jail, the police followed the only feasible procedure and took Stovall to the hospital room.[1] Under these circumstances, the usual police station line-up, which Stovall now argues he should have had, was out of the question.

[4, 5] The hospital room identification[2] was not prejudicial to Stovall because Mrs. Behrendt, after she recovered, made positive identification in the courtroom. There is no evidence that her hospital room identification on August 25, 1961, affected or influenced in any way her courtroom identification on May 23, 1962. Any previous identification was but duplicative. She was the only living person who had seen her attacker. Stovall's counsel used his right of cross-examination to the fullest extent in questioning the identification and dwelt upon it in summation. Since the law requires the defendant to be present upon his trial and to exhibit his face for identification purposes, it was for the jury to weigh the accuracy of Mrs. Behrendt's identification.

[6] As a matter of law, the method of identification inside or outside the courtroom would go to the weight to be attributed to the identification; not to the admissibility or constitutionality of testimony relating thereto, People v. Partram, 60 Cal.2d 378, 384 P.2d 1001 (1963), cert. denied, 377 U.S. 945, 84 S. Ct. 1353, 12 L.Ed.2d 308 (1964), (defendant forced to try on hat and coat which did not fit others in line-up); People v. Clark, 28 Ill.2d 423, 192 N.E.2d 851 (1963), (witness saw one of suspects in police station before line-up); People v. Boney, 28 Ill.2d 505, 192 N.E.2d 920 (1963), (wife raped; husband knew four of five in line-up were from State's Attorney office); State v. Hill, 193 Kan. 512, 394 P.2d 106 (1964); Redmon v. Commonwealth, 321 S.W.2d 397 (Ky. 1959), (claim that police pointed out suspect before line-up); Commonwealth v. Downer, 159 Pa.Super. 626, 49 A.2d 516 (1946), defendant alone shown to witness), although there are some decisions to the contrary, People v. Conley, 275 App.Div. 743, 87 N.Y.S.2d 745 (1949), (defendant appeared alone and was forced to wear clothing corresponding to witness' earlier description); Johnson v. State, 44 Okl. Cr. 113. 279 P. 933 (1929) (only defendant produced).

Wigmore on Evidence, Vol. 8, 3d ed., § 2265, p. 374 has written:

"Looking back at the history of the privilege [against compelled self-incrimination] (ante, § 2250) and the spirit of the struggle by which its establishment came about, the object of the protection seems plain. It is the employment of legal process to *extract from the person's own lips* an admission of his guilt, which will thus take the place of other evidence."

* * * * *

"In other words, it is not merely any and every compulsion that is the kernel of the privilege, in history and in constitutional definitions, but *testimonial compulsion.*" (Italics in original.) Thus

"an inspection of the bodily features by the tribunal or by witnesses cannot violate the privilege, because it does not call upon the accused as a witness, i. e., upon his testimonial responsibility."

* * * * *

"What is obtained from the accused by such action is not testimony about his body, but his body itself (ante, § 1150). Unless some attempt is made to secure a communication, written or oral, upon which reliance is to be placed as involving his consciousness of the facts and the operations of his mind in expressing it, the demand made upon him is not a testimonial one."

[7, 8] The law has made and continues to make a definite distinction between testimonial evidence and identification. And for good reason. Physical characteristics such as facial features, color of hair and skin, height, weight and even manner of walk may be observed by all who may be present at the scene of a crime. A person does not become a witness against himself merely by possessing these individual characteristics. When it was discovered that the fingerprints of persons differed one from the other, this form of identification was added to the list of reliable distinguishing features which the police and the prosecution may, without violating the privilege, compel a defendant to reveal. Thus for generations it has been legal to require the accused to stand up in court for purposes of identification, State v. Carcerano, 238 Or. 208, 390 P.2d 923 (1964); People v. Oliveria, 127 Cal. 376, 59 P. 772 (1899). However, the opportunity for courtroom identification may well first be presented many months after the occurrence of the crime. Interests of the accused and society alike demand that this opportunity be afforded at the earliest possible moment. When this "moment" exists will of necessity be dependent upon the facts and circumstances of each particular case. No ironclad rules can be or should be laid down. But what better guides can there be than common sense?[3]

Helpful guides to decision may be found in other cases, which involved federal prosecutions. Most recently (September 9, 1965) the Court of Appeals for the District of Columbia had to deal with an identification after arrest problem (Kennedy v. United States, D.C.Cir., 353 F.2d 462). There police officers informed by radio of a crime arrived at the scene to find a man being forcibly restrained by two men who had heard womanly screams and had seen two men running from a house. The police took the man (Kennedy) into the house where they found two women handcuffed to a stair rail. The women identified Kennedy as one of their assailants. Upon the trial they identified the accused in open court and testified as to their prior identification even as did Mrs. Behrendt here. Upon appeal Kennedy's counsel urged that the complainants should not have been permitted to testify against him because the identification had derived (1) from an arrest without probable cause; (2) from an illegal detention; and (3) that his Sixth Amendment right to counsel had been infringed because he had been without counsel when identified at the scene of the robbery. The court found probable cause for the arrest and that "Appellant [Kennedy] made no confession and there is nothing to suggest a police purpose to elicit a confession." The court noted, after finding that there was probable cause for the arrest, that it is a policeman's "function to try to minimize the incidence of erroneous detentions and charges; taking Appellant into the presence of the complaining witnesses was entirely appropriate. Had the officers not done this Appellant would have been subjected to continued detention, a trip to the station, to booking and lineup processes, unnecessarily if the complainants had said he was not one of the attackers. The police should not have overlooked the possibility of his exoneration, which could be easily and swiftly resolved by 'quick verification' in a confrontation." 353 F. 2d 462.

In Copeland v. United States, 343 F.2d 287 (D.C.Cir. 1965), the appellant after arrest was taken by the police to the Western Union office where the robbery had occurred to be identified by one of the victims. Then taken to the police station, he was identified there by a victim of a different and previous robbery. The conviction was affirmed.

In Caldwell v. United States, 338 F.2d 385 (8 Cir. 1964), the accused had been put in a line-up and identified by eyewitnesses. The court held that there was no self-incrimination, saying at p. 389: "The mere viewing of a suspect under arrest by eyewitnesses does not violate his constitutional privilege because the prisoner is not required to be an unwilling witness against himself. There is a distinction between bodily view and requiring an accused to testify against himself." And in People v. Gardner, 144 N.Y. 119, 128,

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[1] Undoubtedly, if the police had failed to take Stovall to the hospital and had lodged him immediately in jail and Mrs. Behrendt had died, some appellate counsel would now be urging the same acts as a ground for reversal, asserting that he had thus been deprived of a constitutional right.

[2] Voice identification was requested and Stovall complied but this form of identification was not used or referred to in the trial and, hence, is not an issue here.

[3] Kamisar, Criminal Justice in Our Time, Magna Chart Essays (University of Virginia Press 1965), pp. 9–10:

"Here misty ideals collide with the grim 'realities' of law enforcement. Here we are confronted, both with the Constitutional and normative levels, with the most important question, or cluster of questions, in the entire field of criminal procedure today.

"I am not talking about detention for such purposes as fingerprinting, placing in line-ups, confronting victims or witnesses and checking out alibis. Assuming the suspect has been lawfully arrested, such station house screening is both necessary and desirable."

38 N.E. 1003, 1005, 28 L.R.A. 699 (1894) the New York Court of Appeals said: "A murderer may be forcibly taken before his dying victim for identification, and the dying declarations of his victim may then be proved upon his trial for his identification."

[9] The principle that an arrested person "may be exhibited for identification to the person injured by the commission of the crime," Downs v. Swann, 111 Md. 53, 61, 73 A. 653, 655, 23 L.R.A., N.S., 739 (1909) is so consistent with fundamental fairness both to the accused and society that there is little point in further elaboration except to take notice that the law sanctions many methods of identification which do not invade the field of testimonial compulsion such as the use of fingerprints and photographs, including photographs of body scars. See Bartletta v. McFeeley, 107 N.J.Eq. 141, 152 A. 17 (1930); People v. Smith, 142 Cal.App.2d 287, 298 P.2d 540 (1956); State v. Emerson, 266 Minn. 217, 221, 123 N.W.2d 382 (1963); O'Brien v. State, 125 Ind. 38, 25 N.E. 137, 9 L.R.A. 323 (1890).

[10] The accused may even be forced to perform some physical act such as putting on eyeglasses, People v. Tomaszek, 54 Ill.App.2d 254, 204 N.E.2d 30 (1964); submitting to a physical examination, McFarland v. United States, 80 U.S.App.D.C. 196, 150 F.2d 593 (1945); having a handkerchief put over his face to simulate his appearance at the time of the robbery, see Ross v. State, 204 Ind. 281, 182 N.E. 865 (1932) and Key v. State, 33 Okl.Cr. 92, 242 P. 582 (1925); or giving a blood sample. See also Walton v. City of Roanoke, 204 Va. 678, 133 S.E.2d 315 (1963). In summary, as Mr. Justice Holmes said in Holt v. United States, 218 U.S. 245, 31 S.Ct. 2, 54 L.Ed. 1021 (1910), the prohibition of the Fifth Amendment "is a prohibition of the use of physical or moral compulsion to extort communications from him, not an exclusion of his body as evidence when it may be material" (at 252, 31 S.Ct. at 6).

FOURTEENTH AMENDMENT (DUE PROCESS)

[11, 12] Since courtroom identification, which usually takes place many months after the occurrence of the crime, is permissible, interests of the accused and society alike demand that the opportunity to identify be afforded at the earliest possible moment when the likelihood of an accurate identification is greatest. Of course, in the interests of truth and fairness to the suspect, this opportunity should be afforded, where possible, under circumstances most likely to lead to a disinterested decision by the identifier. When a proper moment exists will of necessity be dependent upon the facts and circumstances of each particular case. No ironclad rules can be or should be laid down. Although federal courts should be loath to interfere with state court evidentiary matters which go primarily to the weight of evidence admitted, it may be that an identification procedure could be so unfair as to amount to a violation of the Fourteenth Amendment's due process guarantee.

[13] Here, however, defendant was not deprived of due process. A line-up was out of the question; a show-up could be conducted only where Mrs. Behrendt was then confined—the hospital. She had had more than a fleeting glimpse of the attacker. Although stabbed many times, she was not unconscious and the attacker had remained in full view in the brightly lighted kitchen for a considerable period of time after killing Dr. Behrendt and stabbing her. Upon the trial, there was no limitation to the cross-examination directed towards the weight of her hospital identification testimony. There is no basis for holding that Stovall was not accorded due process on his trial by the State of New York or that he was deprived of Fourteenth Amendment rights.

SIXTH AMENDMENT (RIGHT TO COUNSEL)

[14] Appellant's counsel now argues that at the time of arraignment "his [appellant's] constitutional right to counsel had come into being and that failure of the arraigning Magistrate to adequately advise the defendant resulted in the denial of the right." The charge of failure of duty against a judge warrants factual investigation. When Stovall was brought before the Magistrate on August 25th, he was advised of his right to counsel and was asked whether he had counsel or desired to secure his own counsel. He replied that he did so desire. To give him this opportunity, the Magistrate adjourned further proceedings until August 31st. On that day [August 31st], Stovall informed the Magistrate, in response to the question as to whether Stovall had obtained counsel, that he had not communicated with any relatives to see if they would get a lawyer for him, but that he had been told in the jail that "they" said one would be assigned. The Magistrate then again told Stovall of his rights, "the first of which is the right to the aid of a lawyer." Turning to a well-known criminal defense lawyer, the Magistrate asked, "Counsel George Mulry, would you be willing to help this man protect his rights in this Court at this time?" Counsel agreed. The court told Stovall to confer with him and that "He is a lawyer who will volunteer his services to help you now protect your rights." A short recess was declared after which, through counsel, Stovall demanded a hearing which the court set for the following day "so you [Stovall] could be confronted with the witness and the judge could decide whether or not a crime had been committed." However, on August 31st, Stovall was indicted for first degree murder by the grand jury and the case thereafter came under the jurisdiction of the County Court.

The New York Code of Criminal Procedure § 188 provides that the Magistrate inform the prisoner of "his right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had." He must "allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose." Id. § 189. The Magistrate followed this statute punctiliously. In the light of this record, the charge of failure to advise is completely unsupported by, and quite contrary to, the facts.

[15] Appellant's reference (in his brief) to his situation as amounting to "the release of the accused to his accusers," is equally unwarranted. Stovall was not so released; he had been arrested by the police; was in their custody; and, because of his expression of desire to obtain his own counsel, would remain in their custody until further proceedings were held. While in such custody, the police could have brought in any potential witness for identification purposes, including the victim, except for the fact that she, seriously injured, could not be moved from the hospital room. The only variation because of the necessity of the situation was the hospital room identification instead of a police station identification.

The record completely refutes appellant's statement (in brief) that "from this denial of right [to counsel] (a premise which may be mildly described as inaccurate) the *prosecutor* was enabled to *create* evidence used to secure conviction at the subsequent trial" (italics in original). There was no denial of the right to counsel; the Magistrate in fact honored Stovall's request that he be permitted to obtain his own attorney. Nor did the continuation of police efforts to secure the best evidence of identification before Stovall had an opportunity to engage his own counsel result in any incriminating statements or confessions because he made none.

If Stovall had had counsel, what could counsel have done to thwart the identification? He could not have demanded Stovall's immediate release so that no one might see him. He could not have arranged to have Stovall continuously wear a hood or mask over his face to avoid identification, nor could he have ordered the police forthwith to halt their identification activities. Counsel would not have said "Cease further efforts at identification; Stovall has admitted his guilt" because Stovall had not done so.

Again adverting to the opinion in Kennedy, supra, counsel could not have prevented the hospital room identification because "An accused has no right to be viewed in a line-up rather than singly." Here, as in Kennedy, counsel could not "have altered the course of events" as to identification, and since no confession or "any other evidence respecting which counsel could have rightfully advised Appellant to refuse to yield" was obtained, there was no deprivation of Sixth Amendment rights.

Lastly, appellant contends that he was denied a constitutionally adequate hearing on his motion to suppress. In the New York Court of Appeals to which an appeal from Stovall's conviction had been taken, the remittitur was amended to show that that Court had passed upon the contention that he had been convicted on evidence obtained by unlawful search and seizure. The Court held that his constitutional rights had not been violated (People v. Stovall, 13 N.Y. 2d 1178, 248 N.Y.S. 2d 56, N.E. 2d 543).

[16] The District Court was well aware of the arguments appellant now makes but found that the articles claimed to have been illegally seized, namely, a white jacket, a pair of trousers and a hat, were not offered in evidence against Stovall by the People but were marked for identification by the defense. This action was entirely voluntary and must be attributed to defense strategy rather than a checkmate move because the District Attorney had announced at the opening of the trial that he would offer no items obtained from the allegedly illegal search. Nor could the "poison fruit" doctrine have led to the arrest because there was more than ample evidence to establish an earlier and independent source of information. Furthermore, since, as the Court found, "The proof is convincing that the articles were voluntarily turned over to the police by the sister of Stovall" and were not used by the People, the conclusion that "The record establishes that no constitutional rights of defendant were violated" is sound.

[17] Although a capital case requires the most careful scrutiny, these requirements have been met. The highest court of New York has reviewed his case (13 N.Y.2d 1094, 246 N.Y.S.2d 410, 196 N.E. 2d 65); the District Court considered and weighed the errors complained of, as has this Court. Upon the law and the facts, no infringement of any constitutional right is presented.

Affirmed.

Lumbard, Chief Judge (with whom Judge Kaufman concurs), concurring:

I concur.

I agree with my brother Moore that the hospital room show-up did not violate any of Stovall's constitutional rights. The police found Mrs. Behrendt grievously wounded and in a state of severe shock at about 1:00 A.M. on August 24. At that time, in an incomplete and somewhat confused statement made to a police officer before she was given medical treatment, Mrs. Behrendt indicated that she had seen her attacker. The police were not allowed to interview Mrs. Behrendt on August 24, the day of her extensive surgery, or to present Stovall to her for identification purposes. They were therefore fully justified in continuing their investigation by bringing Stovall to the hospital at 1:00 P.M. on Auguest 25, after Stovall's morning arraignment.

The type of emergency facing the police is relevant to the question of whether the show-up procedure was so unfair as to amount to a denial of due process. I agree with my brother Moore that the method of an identification normally goes to the weight of the evidence. Given the circumstances surrounding the identification, the full op-

portunity afforded defense counsel to cross-examine Mrs. Behrendt at trial, and the positive court room identification made by Mrs. Behrendt, I find no violation of Stovall's right to due process. Likewise, Stovall's Sixth Amendment right to counsel argument has no merit, particularly since counsel could have had little or no effect on what took place in the hospital room.[4] And I agree with the majority's disposition of the Fifth Amendment claim.

Unlike my brother Friendly, I see no need to inquire into whether the police violated New York law when they failed to deliver Stovall to a sheriff immediately after arraignment. Whether or not there may have been a technical violation of New York law is no grounds for reversal here. No objection was made to this procedure at trial. Therefore there was no need for the court to inquire into whether it was proper and appropriate for the police to retain custody of Stovall following his production before the district court judge. Nor is there a federal constitutional right to be committed to a sheriff rather than to the police pending arraignment. Since there was no due process violation in the hospital room identification, the police procedure violated none of Stovall's federal rights.

I differ with my brother Moore's discussion of the prejudicial error issue, although I agree that the use made of the hospital room identification at Stovall's trial did not amount to prejudicial error even if that identification procedure itself violated Stovall's rights.

The Supreme Court has prescribed a rigorous standard of prejudicial error when dealing with police activities that violate fundamental constitutional rights. See, e.g., Fahy v. State of Connecticut, 375 U.S. 85, 84 S.Ct. 229, 11 L.Ed.2d 171, (1963); United States v. Guerra, 334 F. 2d 138, 143–147, (2 Cir.), cert. denied, 379 U.S. 936, 85 S.Ct. 337, 13 L.Ed.2d 346 (1964). Assuming for the moment that the hospital room identification violated Stovall's constitutional rights, testimony as to that identification at trial was reversible error if "there is a reasonable possibility that the evidence complained of might have contributed to the conviction." Fahy v. State of Connecticut, 375 U.S. at 86–87, 84 S.Ct. at 230.

Mrs. Behrendt made a positive court room identification of Stovall, and she indicated that this identification was the product of her recollection of the night of the crime.[5] It seems highly probable that the use made of the hospital room procedure at trial did not influence this court room identification.[6] Under these circumstances, the impact of testimony as to the hospital room incident was cumulative.

Nevertheless, there remains the possibility that Mrs. Behrendt's ability reliably to identify Stovall at trial was in fact psychologically colored by the impact of the previous confrontation in the hospital room. This "prejudice" does not depend upon whether there was testimony as to the hospital room identification. And the only way to eliminate this aspect of prejudice would have been to exclude the hospital room identification *and* to prohibit Mrs. Behrendt from making any identification at trial. I am unwilling to hold that so broad an exclusionary rule should flow from a constitutionally infirm pre-trial identification because the likelihood that an unbiased court room identification can still be made seems great and because eye witness evidence, despite its human frailties, plays a vital role in criminal prosecutions. I am particularly unwilling to exclude all identification in this case because Mrs. Behrendt's testimony seems reliable and because the alleged police improprieties were unintentional and technical. It was proper to admit this evidence and to allow the jury to weigh its reliability.

If Mrs. Behrendt should be permitted to make a court room identification, then use of the hospital room identification becomes cumulative and harmless. More significantly, it is *fairer* to Stovall to *permit* testimony and full cross-examination concerning the hospital room procedure because only then can the jury know that the unequivocal court room identification may be the product of previous police persuasion rather than an accurate recollection of the night of the crime. At Stovall's trial, these considerations are evident: outside of the prosecutor's opening address, the first mention of the hospital incident came during the cross-examination of two policemen who accompanied Stovall to the hospital. And defense counsel concentrated heavily on this incident in his cross-examination of Mrs. Behrendt while the prosecutor only brought it out casually. Consequently, I conclude on the facts of this case that the use made of the hospital room identification not only was harmless error but indeed was the fairest method of handling Stovall's trial.

Friendly, Circuit Judge, with whom Waterman, Circuit Judge, joins (dissenting):

The facts giving rise to the issue here[7] were stated as follows in the panel opinion of March 31, 1965:

"Section 192 of New York's Code of Criminal Procedure prescribes, so far as here pertinent, that 'If an adjournment be had for any cause, the magistrate must commit the defendant for examination,' and § 193 adds that the commitment shall be to the sheriff, save in New York City where it is to be to the commissioner of correction. We were told at the argument that the sheriff of Nassau County does not have a representative available in the arraigning courts and that responsibility for placing committed defendants in his hands rests with the police. After the arraignment but apparently before Stovall was handed over to the sheriff, two detectives took him, handcuffed to one of them, to the hospital where Mrs. Behrendt had undergone extensive surgery, and into her room. Three high police officers and two prosecutors were also there. One of the police officers asked Mrs. Behrendt whether Stovall was 'the man'; she said he was. At some time one of the officers asked Stovall 'to say a few words for voice identification'; he did—just what does not appear."

The panel recognized that "the privilege [of the Fifth Amendment against self-incrimination] does not invest a defendant with immunity from exposing himself to identification, even if this includes some movement, such as going from the jail to the courtroom for trial or rising, if called upon * * * and it may well be argued that use of the vocal chords, when these are not employed to produce utterances of testimonial value, stands no differently from that of the arm muscles."[8] But this truism does not settle whether Stovall was deprived of his Sixth Amendment right to counsel; although the two rights often overlap, they are not congruent. No one would suppose, for example, that because the Fifth Amendment does not protect a defendant from being compelled to stand up in court and try on a garment found at the scene of the crime, the prosecutor could require defense counsel

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[4] Indeed, I wonder whether the right to counsel the doctrines of Escobedo v. Illinois, 378 U.S. 478, 84 S. Ct. 1758, 12 L. Ed. 2d 977 and Massiah v. United States, 377 U.S. 201, 84 S. Ct. 1199, 12 L. Ed. 2d 246 apply to circumstances which do not ultimately involve a danger of self-incrimination. A person lawfully arrested and detained has no right to have his lawyer present to supervise all his activities that come within the realm of prison or detention house administration. Likewise, I should think that the police can search the defendant and his effects in the absence of counsel. Only when police conduct threatens to violate a personal right of the defendant that retains vitality during detention—e.g., the privilege against self-incrimination—or when police practices unfairly prevent the defense attorney from preparing his case—a literal deprivation of the right to counsel—must a court interfere to guarantee that the right is properly preserved. Viewed in this light, common sense finds a clear distinction between the case supposed by Judge Friendly in his dissent, where counsel is excluded from a court room identification at trial, and the failure to appoint counsel to accompany an accused to a pre-trial identification. Cf. United States v. Cone, 354 F. 2d 119, n. 13 (2 Cir. 1965).

[5] Relevant portions of Mrs. Behrendt's direct testimony are as follows:

"Q. What did you observe or what did you hear from that point on? A. I saw he was tall and strong and medium color, a medium brown, and I saw his face clearly because I jumped at him head on, and then a moment later when he stabbed me I fell down and I was already on the floor when my husband—when I saw my husband dead * * *

"Q. Now, this man that you speak of, that you saw, did you ever see him before that night? A. No.

"Q. Have you ever seen him since? A. Yes.

"Q. Are you able to point out who he is? A. Yes.

"Q. Will you do so? A. This Negro sitting there (indicating).

"The Court: Indicating the defendant. A. (Continuing) In the light coat.

"The Court: Indicating the defendant.

"The Witness: What?

"The Court: Indicating the defendant, you say?

"The Witness: Yes.

"Q. Did you ever see him anywheres before you saw him here in court today? A. Yes, in the hospital.

"Q. Do you know who he was accompanied by at that time? A. By several detectives, I think.

"Q. Do you know approximately when this was with relation to the time that you went into the hospital? A. I'm not quite sure. It was a few days after the operation when I was fully conscious. [It was in fact one day.]"

This was the only reference in Mrs. Behrendt's testimony to the hospital room identification until defense counsel's thorough cross-examination on that subject.

[6] Mrs. Behrendt testified that she had not seen Stovall since the hospital room identification. Likewise, the prosecutor in his opening statement mentioned the existence of the hospital room incident but he said that he could only speculate as to whether Mrs. Behrendt would be able to make a court room identification. Since Mrs. Behrendt was excluded from the court room (as a witness) when the incident was brought out during the cross-examination of two policemen, and since no mention was made of it during her direct testimony until after her court room identification, it seems doubtful that the use made of the hospital incident at trial colored her court room identification.

[7] The statement of the majority that this claim was "not even presented to the court below" is not wholly accurate. As the panel opinion explained, it was raised in Stovall's hand-written petition but was not considered by Judge Wyatt since in the district court counsel had relied entirely on the point dealt with in the final paragraphs of this court's opinion. The panel opinion also noted that the Assistant District Attorney commendably had not relied on the failure of Stovall's counsel to argue the point to Judge Wyatt and sought disposition by us on the merits.

[8] The reference to moving the arm muscles was followed by citation of Mr. Justice Holmes' well-known opinion in Holt v. United States, 218 U.S. 245, 252, 31 S.Ct. 2, 54 L.Ed. 1021 (1910).

to absent himself during such an episode. It is beyond dispute that the preliminary hearing was part of a "criminal prosecution," that Stovall had become an "accused," and that he was thus entitled "to have the Assistance of Counsel for his defence." Hamilton v. State of Alabama, 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed. 2d 114 (1961); White v. Maryland, 373 U.S. 59, 83 S.Ct. 1050, 10 L.Ed.2d 193 (1963). This distinguishes Kennedy v. United States, 353 F.2d 462 (D.C.Cir. 1965), and other cases of identification during the investigative stage, on which the majority rely I fail to understand why, in the interval between preliminary hearing and trial, a defendant is not entitled to the assistance of counsel when the state wishes to make use of him to obtain evidence that will have independent testimonial value—particularly when Massiah v. United States, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964), has obliterated any distinction between judicial and extra-judicial action by the police once the "criminal prosecution" has begun.[9]

The majority say that after Stovall's appearance before the state judge he "had to remain in [police] custody" and that his custody was lawful. I see no basis for these statements. New York properly recognizes that, after the preliminary hearing, the prisoner comes under a new legal regime and his lawful custodian is the sheriff, not the police; the only thing the police could properly do with Stovall at that time, see § 193 of the New York Code of Criminal Procedure, was to place him in the hands of the custodial authorities just as soon as possible. Those authorities would have been bound not only to prevent Stovall from removing himself but also to prevent his being removed or molested by anyone else. The assumption, implicit in the court's opinion, that such a prisoner is subject to the beck and call of the police is surely wrong, see Judge Finletter's fine opinion in Commonwealth v. Brines, 29 Pa.Dist. 1091 (C.P.1920). Once Stovall was in the sheriff's custody, the latter could not lawfully release him to the police without an order of the court; if the prosecution had sought such an order, counsel could have been appointed and the difficulty that has here arisen would have been avoided.[10]

Other arguments advanced by the majority are equally unconvincing. They say the police could have taken Stovall to the hospital for identification before arraignment despite the absence of counsel, so why not thereafter? But many things can be done in the absence of counsel in the investigative stage before the "criminal prosecution" begins, which cannot lawfully be done later, as Massiah v. United States, supra, plainly shows. The rhetorical question as to what counsel could have done was answered in the panel opinion many months ago:

"He might have persuaded the prosecutor, in the state's own interest, if not to forego the hospital identification, at least to assure conditions better designed to avoid suggestion. He might have persuaded the judge to direct that Stovall be immediately sent to and then kept in jail pending trial, or be put before Mrs. Behrendt only under fair conditions such as a line-up, or be accompanied by counsel who might question her * * *. Or, as a last resort, he might have advised Stovall to refuse to go, or to remain silent if taken by force."

The case thus bears no resemblance to the recent decision in Rigney v. Hendricks, 355 F.2d 710 (3 Cir. 1965), with which I am in accord, where counsel were notified of the intention to place an accused prisoner in a line-up held under scrupulously fair conditions and with counsel present. We have been told in no uncertain terms that, in dealing with a capital charge, as Stovall's was at the time, we are not to speculate on whether prejudice resulted from the absence of counsel, Hamilton v. State of Alabama, supra 368 U.S. at 55, 82 S.Ct. 157, at 159, here, as there, "the degree of prejudice can never be known."

My brothers also intimate that the police and the prosecutor were confronted with an emergency and that they may have thought the visit to the hospital to be in Stovall's own interest. The latter argument ignores the huge amount of circumstantial identification the excellent police investigation had produced; moreover, if the state officials were motivated by such solicitude, the natural course would have been to ask Stovall whether he wanted to go. The emergency argument fails both on the facts and on the law. Grievous as Mrs. Behrendt's injuries had been, nothing in the record indicates that her life was any longer considered to be in peril when Stovall was brought before her; the presence of five police officers and prosecutors in her hospital room would argue to the contrary—and also tends to negate the suggestion that Stovall had to be brought in alone. If Mrs. Behrendt's condition had been as serious as my brothers suppose, nothing prevented the prosecutor from informing the state district judge at the preliminary hearing that Stovall had to be taken immediately before her, and suggesting that counsel be assigned forthwith for the limited purpose of advising him in that regard—rather than standing silent when Stovall told the judge of his desire to have counsel and then carting him off to a confrontation by the victim which counsel might have done something to mitigate.

My brothers also assert that in any event admission of the hospital identification was cumulative and therefore not prejudicial to Stovall, although they do not altogether agree on the grounds. Addressing itself to this point the panel said:

"The statement was inculpatory on the central question of his presence on the occasion of the crime; indeed, Mrs. Behrendt's was the only identification that was testimonial rather than circumstantial, and the jury asked that all her testimony be reread. A claim of harmless error as to a conviction must surmount an exceedingly high hurdle, even on collateral attack, when the error was constitutional and the punishment is death. See Bruno v. United States, 308 U.S. 287 [60 S.Ct. 198, 84 L. Ed 257] (1939); Kotteakeos v. United States, 328 U.S. 750, 764–65 [66 S. Ct. 1239, 90 L.Ed. 1557] (1946); Stewart v. United States, 366 U.S. 1, 9–10 [81 S.Ct. 941, 6 L.Ed.2d 84] (1961); Hamilton v. State of Alabama, supra, 368 U.S. 52 [82 S.Ct. 157). The hurdle is too high for this case."

Despite the labored attempt to prove the contrary, the hospital identification, featured in the prosecutor's opening, must have had a far greater effect on the jury than the identification in court some months later; common sense supports Dean Wigmore's observation, "After all that has intervened, it would seldom happen that the witness would not have come to believe in the person's identity." 4 Evidence § 1130 at 208 (3d ed. 1940). The self-created dilemma of the concurring opinion, that exclusion of the hospital identification would prevent identification at the trial, is illusory; exclusion of the former would simply have required the prosecutor to rest on Mrs. Behrendt's memory of the night of the dreadful crime and on her courtroom identification. If, in this posture, defense counsel had brought out the hospital identification, as no experienced counsel would, he would have had only himself to blame.

Although there can assuredly be a waiver of the right to counsel between arraignment and trial, no one has seriously suggested that we could find that, when, without any previous discussion, this Negro, of low mental capacity, was taken to the hospital by a detective to whom he was handcuffed. I scarcely regard Stovall as a sympathetic character, and I am glad that the crime was recent enough to permit an effective retrial. But I continue to believe that, in the absence of overriding necessity or consent, a man who has been brought before a judge on a charge of a capital crime, and has expressed his desire for counsel, is entitled under the Constitution to be let alone until he gets one. That is all Judge Marshall and I decided last March, and I adhere to it.

J. Joseph Smith, Circuit Judge (dissenting):

I dissent. I agree with Judge Friendly that "in the absence of overriding necessity or consent, a man who has been brought before a judge on a charge of a capital crime, and has expressed his desire for counsel, is entitled under the Constitution to be let alone until he gets one."

[In the Supreme Court of the United States, No. 254.—October Term, 1966]

THEODORE STOVALL, PETITIONER, *v.* WILFRED DENNO, WARDEN.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[June 12, 1967.]

Mr. Justice Brennan delivered the opinion of the Court.

This federal habeas corpus proceeding attacks collaterally a state criminal conviction for the same alleged constitutional errors in the admission of allegedly tainted identification evidence that were before us on direct review of the convictions involved in *United States* v. *Wade, ante*, and *Gilbert* v. *California, ante*. This case therefore provides a vehicle for deciding the extent to which the rules announced in *Wade* and *Gilbert*—requiring the exclusion of identification evidence which is tainted by exhibiting the accused to identifying witnesses before trial in the absence of his counsel—are to

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[9] I see no basis for Chief Justice Lumbard's "wonder whether the right to counsel doctrines of Escobedo v. Illinois and Massiah v. United States apply to circumstances which do not ultimately involve a danger of self-incrimination." Once it has been held, as these cases clearly did, that the Sixth Amendment may apply outside the courtroom and when, as in Massiah, the accused did not even know of the presence of the police or the prosecutor, I see no escape from the conclusion that, if the right has attached, the accused is entitled to the assistance of counsel when the prosecutor attempts to use him as a means of procuring evidence to be offered at the trial. I cannot believe my brothers would go to the extent of saying that, after arraignment or indictment, counsel could be excluded while the defendant was being subjected to medical examination or blood or handwriting tests. If counsel cannot be excluded from such procedures, common sense does not supply me with a satisfactory answer why he can be barred from an identification which his client is compelled to attend—although no one would dream of excluding him from a less meaningful one in the courtroom; the argument that, although excluded from the former, he will have an opportunity to attack both identifications at trial, does not seem sufficient for preventing him from rendering all possible assistance to the accused before the witness' impression hardens. I fear that my brothers simply have not been able to adjust their sights to the Supreme Court's new concept that the right to the assistance of counsel embraces activities outside the courtroom.

[10] It is unnecessary to decide in this case the manner and extent to which Stovall could have been exposed to viewing in the course of normal jail routine. Cf. Morris v. Crumlish, 239 F.Supp. 498, 499 (E.D.Pa. 1965).

be applied retroactively. See *Linkletter* v. *Walker*, 381 U.S. 618; *Tehan* v. *Shott*, 382 U.S. 406; *Johnson* v. *New Jersey*, 384 U.S. 719.[1] A further question is whether in any event, on the facts of the particular confrontation involved in this case, petitioner was denied due process of law in violation of the Fourteenth Amendment. Cf. *Davis* v. *North Carolina*, 384 U.S. 737.

Dr. Paul Behrendt was stabbed to death in the kitchen of his home in Garden City, Long Island, about midnight August 23, 1961. Dr. Behrendt's wife, also a physician, had followed her husband to the kitchen and jumped at the assailant. He knocked her to the floor and stabbed her 11 times. The police found a shirt on the kitchen floor and keys in a pocket which they traced to petitioner. They arrested him on the afternoon of August 24. An arraignment was promptly held but was postponed until petitioner could retain counsel.

Mrs. Behrendt was hospitalized for major surgery to save her life. The police, without affording petitioner time to retain counsel, arranged with her surgeon to permit them to bring petitioner to her hospital room about noon of August 25, the day after the surgery. Petitioner was handcuffed to one of five police officers who, with two members of the staff of the District Attorney, brought him to the hospital room. Petitioner was the only Negro in the room. Mrs. Behrendt identified him from her hospital bed after being asked by an officer whether he "was the man" and after petitioner repeated at the direction of an officer a "few words for voice identification." None of the witnesses could recall the words that were used. Mrs. Behrendt and the officers testified at the trial to her identification of the petitioner in the hospital room, and she also made an in-court identification of petitioner in the courtroom.

Petitioner was convicted and sentenced to death. The New York Court of Appeals affirmed without opinion. 13 N.Y. 2d 1094, 196 N.E. 2d 65. Petitioner *pro se* sought federal habeas corpus in the District Court for the Southern District of New York. He claimed that among other constitutional rights denied him at his trial, the admission of Mrs. Behrendt's identification testimony violated his rights under the Fifth, Sixth, and Fourteenth Amendments because he had been compelled to submit to the hospital room confrontation without the help of counsel and under circumstances which unfairly focussed the witness' attention on him as the man believed by the police to be the guilty person. The District Court dismissed the petition after hearing argument on an unrelated claim of an alleged invalid search and seizure. On appeal to the Court of Appeals for the Second Circuit a panel of that court initially reversed the dismissal after reaching the issue of the admissibility of Mrs. Behrendt's identification evidence and holding it inadmissible on the ground that the hospital room identification violated petitioner's constitutional right to the assistance of counsel. The Court of Appeals thereafter heard the case *en banc*, vacated the panel decision, and affirmed the District Court. 355 F. 2d 731. We granted certiorari, 384 U.S. 1000, and set the case for argument with *Wade* and *Gilbert*. We hold that *Wade* and *Gilbert* affect only those cases and all future cases which involve confrontations for identification purposes conducted in the absence of counsel after this date. The rulings of *Wade* and *Gilbert* are therefore inapplicable in the present case. We think also that on the facts of this case petitioner was not deprived of due process of law in violation of the Fourteenth Amendment. The judgment of the Court of Appeals is, therefore, affirmed.

I.

Our recent discussions of the retroactivity of other constitutional rules of criminal procedures make unnecessary any detailed treatment of that question here. *Linkletter* v. *Walker*, *supra*; *Tehan* v. *Shott*, *supra*; *Johnson* v. *New Jersey*, *supra*. "These cases establish the principle that in criminal litigation concerning constitutional claims, 'the Court may in the interest of justice make the rule prospective . . . where the exigencies of the situation require such an application' . . ." *Johnson*, *supra*, 384 U.S., at 726–727. The criteria guiding resolution of the question implicate (a) the purpose to be served by the new standards, (b) the extent of the reliance by law enforcement authorities on the old standards, and (c) the effect on the administration of justice of a retroactive application of the new standards. "[T]he retroactivity or nonretroactivity of a rule is not automatically determined by the provision of the Constitution on which the dictate is based. Each constitutional rule of criminal procedure has its own distinct functions, its own background of precedent, and its own impact on the administration of justice, and the way in which these factors combine must inevitably vary with the dictate involved." *Johnson*, *supra*, at 728.

Wade and *Gilbert* fashion exclusionary rules to deter law enforcement authorities from exhibiting an accused to witnesses before trial for identification purposes without notice to and in the absence of counsel. A conviction which rests on a mistaken identification is a gross miscarriage of justice. The *Wade* and *Gilbert* rules are aimed at minimizing that possibility by preventing the unfairness at the pretrial confrontation that experience has proved can occur and assuring meaningful examination of the identification witness' testimony at trial. Does it follow that the rules should be applied retroactively? We do not think so.

It is true that the right to the assistance of counsel has been applied retroactively at stages of the prosecution where denial of the right must almost invariably deny a fair trial, for example, at the trial itself. *Gideon* v. *Wainwright*, 372 U.S. 335, or at some forms of arraignment. *Hamilton* v. *Alabama*, 368 U.S. 52, or on appeal, *Douglas* v. *California*, 372 U.S. 353. "The basic purpose of a trial is the determination of truth, and it is self-evident that to deny a lawyer's help through the technical intricacies of a criminal trial or to deny a full opportunity to appeal a conviction because the accused is poor is to impede that purpose and to infect a criminal proceeding with the clear danger of convicting the innocent." *Tehan* v. *Shott*, *supra*, at 416. We have also retroactively applied rules of criminal procedure fashioned to correct serious flaws in the fact-finding process at trial. See for example *Jackson* v. *Denno*, 378 U.S. 368. Although the *Wade* and *Gilbert* rules also are aimed at avoiding unfairness at the trial by enhancing the reliability of the fact-finding process in the area of identification evidence, "the question whether a constitutional rule of criminal procedure does or does not enhance the reliability of the fact-finding process at trial is necessarily a matter of degree." *Johnson* v. *New Jersey*, *supra*, at 728–729. The extent to which a condemned practice infects the integrity of the truth-determining process at trial is a "question of probabilities." *Ibid.* Such probabilities must in turn be weighed against the prior justified reliance upon the old standard and the impact of retroactivity upon the administration of justice.

We have outlined in *Wade* the dangers and unfairness inherent in confrontations for identification. The possibility of unfairness at that point is great, both because of the manner in which confrontations are frequently conducted, and because of the likelihood that the accused will often be precluded from reconstructing what occurred and thereby from obtaining a full hearing on the identification issue at trial. The presence of counsel will significantly promote fairness at the confrontation and a full hearing at trial on the issue of identification. We have, therefore, concluded that the confrontation is a "critical stage," and that counsel is required at all confrontations. It must be recognized, however, that, unlike cases in which counsel is absent at trial or on appeal, it may confidently be assumed that confrontations for identification can be and often have been conducted in the absence of counsel with scrupulous fairness and without prejudice to the accused at trial. Therefore, while we feel that the exclusionary rules set forth in *Wade* and *Gilbert* are justified by the need to assure the integrity and reliability of our system of justice, they undoubtedly will affect cases in which no unfairness will be present. Of course, we should also assume there have been injustices in the past which could have been averted by having counsel present at the confrontation for identification, just as there are injustices when counsel is absent at trial. But the certainty and frequency with which we can say in the confrontation cases that no injustice occurred differs greatly enough from the cases involving absence of counsel at trial or on appeal to justify treating the situations as different in kind for the purpose of retroactive application, especially in light of the strong countervailing interests outlined below, and because it remains open to all persons to allege and prove, as Stovall attempts to do in this case, that the confrontation resulted in such unfairness that it infringed his right to due process of law. See *Palmer* v. *Peyton*, 359 F. 2d 199 (C. A. 4th Cir. 1966).

The unusual force of the countervailing considerations strengthen our conclusion in favor of prospective application. The law enforcement officials of the Federal Government and of all 50 States have heretofore proceeded on the premise that the Constitution did not require the presence of counsel at pretrial confrontations for identification. Today's rulings were not foreshadowed in our cases; no court announced such a requirement until *Wade* was decided by the Court of Appeals for the Fifth Circuit, 358 F. 2d 557. The overwhelming majority of American courts have always treated the evidence question not as one of admissibility but as one of credibility for the jury. Wall, Eyewitness Identification in Criminal Cases 38. Law enforcement authorities fairly relied on this virtually unanimous weight of authority, now no longer valid, in conducting pretrial confrontations in the absence of counsel. It is, therefore, very clear that retroactive application of *Wade* and *Gilbert* "would seriously disrupt the administration of our criminal laws." *Johnson* v. *New Jersey*, *supra*, at 731. In *Tehan* v. *Shott*, *supra*, we thought it persuasive against retroactive application of the no-comment rule of *Griffin* v. *California*, 380 U.S. 609, that such application would have a serious impact on the six States that allowed comment on an accused's failure to take the stand. We said, "To require all of those States now to void the conviction of every person who did not testify at his trial would have an impact on the administration of their criminal law so devastating as to need no elaboration." 382 U.S., at 419. That impact is insignificant compared to the impact to be expected from retroactivity of the *Wade* and *Gilbert* rules. At the very least, the processing of current criminal calendars would be disrupted while hearings were conducted to determine taint, if any, in identification evidence, and whether in any event the admission of the evidence was harmless error. Doubtless, too, inquiry would be handicapped by the un-

[1] Although respondents did not raise the bar of retroactivity, the Attorney General of the State of New York, as *amicus curiae*, extensively briefed the issue of retroactivity and petitioner, in his reply brief, addressed himself to this question. Compare *Mapp* v. *Ohio*, 367 U.S. 643, 646, n. 3.

availability of witnesses and dim memories. We conclude, therefore, that the *Wade* and *Gilbert* rules should not be made retroactive.

We also conclude that, for these purposes, no distinction is justified between convictions now final, as in the instant case, and convictions at various stages of trial and direct review. We regard the factors of reliance and burden on the administration of justice as entitled to such overriding significance as to make that distinction unsupportable. We recognize that Wade and Gilbert are, therefore, the only victims of pretrial confrontations in the absence of their counsel to have the benefit of the rules established in their cases. That they must be given that benefit is, however, an unavoidable consequence of the necessity that constitutional adjudications not stand as mere dictum. Sound policies of decision-making, rooted in the command of Article III of the Constitution that we resolve issues solely in concrete cases or controversies,[2] and in the possible effect upon the incentive of counsel to advance contentions requiring a change in the law,[3] militate against denying Wade and Gilbert the benefit of today's decisions. Inequity arguably results from according the benefit of a new rule to the parties in the case in which it is announced but not to other litigants similarly situated in the trial or appellate process who have raised the same issue.[4] But we regard the fact that the parties involved are chance beneficiaries as an insignificant cost for adherence to sound principles of decision-making.

II.

We turn now to the question whether petitioner, although not entitled to the application of *Wade* and *Gilbert* to his case, is entitled to relief on his claim that in any event the confrontation conducted in this case was so unnecessarily suggestive and conducive to irreparable mistaken identification that he was denied due process of law. This is a recognized ground of attack upon a conviction independent of any right to counsel claim. *Palmer* v. *Peyton*, 359 F. 2d 199 (C. A. 4th Cir. 1966). The practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned.[5] However, a claimed violation of due process of law in the conduct of a confrontation depends on the totality of the circumstances surrounding it, and the record in the present case reveals that the showing of Stovall to Mrs. Behrendt in an immediate hospital confrontation was imperative. The Court of Appeals, *en banc*, stated, 355 F. 2d, at 735,

"Here was the only person in the world who could possibly exonerate Stovall. Her words, and only her words, 'He is not the man' could have resulted in freedom for Stovall. The hospital was not far distant from the courthouse and jail. No one knew how long Mrs. Behrendt might live. Faced with the responsibility of identifying the attacker, with the need for immediate action and with the knowledge that Mrs. Behrendt could not visit the jail, the police followed the only feasible procedure and took Stovall to the hospital room. Under these circumstances, the usual police station line-up, which Stovall now argues he should have had, was out of the question."

The judgment of the Court of Appeals is affirmed.

It is so ordered.

Mr. Justice Douglas is of the view that the deprivation of the right to counsel in the setting of this case should be given retroactive effect as it was in *Gideon* v. *Wainright*, 372 U.S. 335, and in *Douglas* v. *California*, 372 U.S. 356. And see *Linkletter* v. *Walker*, 381 U.S. 618, 640 (dissenting opinion); *Johnson* v. *New Jersey*, 348 U.S. 719, 736 (dissenting opinion).

Mr. Justice Fortas would reverse and remand for a new trial on the ground that the State's reference at trial to the improper hospital identification violated petitioner's Fourteenth Amendment rights and was prejudicial. He would not reach the question of retroactivity of *Wade* and *Gilbert*.

[In the Supreme Court of the United States, No. 254.—October Term, 1966]

THEODORE STOVALL, PETITIONER, *v.* WILFRED DENNO, WARDEN

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[June 12, 1967.]

Mr. Justice White, whom Mr. Justice Harlan and Mr. Justice Stewart join, concurring in the result.

For the reasons stated in my dissenting opinion in *United States* v. *Wade*, — U.S. —, I perceive no constitutional error in the identification procedure to which the petitioner was subjected. I concur in the result and in that portion of the Court's opinion which limits application of the new Sixth Amendment rule.

Mr. Justice BLACK, dissenting. In *United States* v. *Wade, ante,* and *Gilbert* v. *California, ante,* the Court holds that lineup identification testimony should be excluded if it was obtained by exhibiting an accused to identifying witnesses before trial in the absence of his counsel. I concurred in those holdings as to out-of-court lineup identification on the ground that the right to counsel is guaranteed in federal courts by the Sixth Amendment and in state courts by the Sixth and Fourteenth Amendments. The first question in this case is whether other defendants, already in prison on such unconstitutional evidence, shall be accorded the benefit of the rule. In this case the Court holds that the petitioner here, convicted on such unconstitutional evidence, must remain in prison, and that besides Wade and Gilbert, who are "chance beneficiaries," no one can invoke the rule except defendants exhibited in lineups in the future. I dissent from that holding. It keeps people serving sentences who were convicted through the use of unconstitutional evidence. This is sought to be justified on the ground that retroactive application of the holding in *Gilbert* and *Wade* would somehow work a "burden on the administration of justice" and would not serve the Court's purpose "to deter law enforcement authorities." It seems to me that to deny this petitioner and others like him the benefit of the new rule deprives them of a constitutional trial and perpetrates a rank discrimination against them. Once the Court determines what the Constitution says, I do not believe it has the power, by weighing "countervailing interests," to legislate a timetable by which the Constitution's provisions shall become effective. For reasons stated in my dissent in *Linkletter* v. *Walker*, 381 U.S. 618, 640, I would hold that the petitioner here and every other person in jail under convictions based on unconstitutional evidence should be given the advantage of today's newly announced constitutional rules.

The Court goes on, however, to hold that even though its new constitutional rule about the Sixth Amendment's right to counsel does not help this petitioner, he is nevertheless entitled to a consideration of his claim, "independent of any right to counsel claim," that his identification by one of the victims of the robbery was made under circumstances so "unfair" that he was denied "due process of law" guaranteed by the the Fourteenth Amendment. Although the Court finds petitioner's claim without merit, I dissent from its holding that a general claim of "unfairness" at the lineup is "open to all persons to allege and prove." The term "due process of law" is a direct descendant of Magna Carta's promise of a trial according to the "law of the land" as it has been established by the lawmaking agency, constitutional or legislative. No one has ever been able to point to a word in our constitutional history that shows the Framers ever intended that the Due Process Clause of the Fifth or Fourteenth Amendment was designed to mean any more than that defendants charged with crimes should be entitled to a trial governed by the laws, constitutional and statutory, that are in existence at the time of the commission of the crime and the time of the trial. The concept of due process under which the Court purports to decide this question, however, is that this Court looks at "the totality of circumstances" of a particular case to determine on its own judgment whether they comport with the Court's notion of decency, fairness, and fundamental justice, and if so, declares they comport with the Constitution, and if not, declares they are forbidden by the Constitution. See, *e.g., Rochin* v. *United States*, 342 U.S. 165. Such a constitutional formula substitutes this Court's judgment of what is right for what the Constitution declares shall be the supreme law of the land. This due process notion proceeds as though our written Constitution, designed to grant limited powers to government, had neutralized its limitations by using the Due Process Clause to authorize this Court to override its written limiting language by substituting the Court's view of what powers the Framers should have granted government. Once again I dissent from any such view of the Constitution. Where accepted, its result is to make this Court not a Constitution-interpreter, but a day-to-day Constitution-maker.

But even if the Due Process Clause could possibly be construed as giving such latitudinal powers to the Court, I would still think the Court goes too far in holding that the courts can look at the particular circumstances of each identification lineup to determine at large whether they are too "suggestive and conducive to irreparable mistaken identification" to be constitutional. That result is to freeze as constitutional or as unconstitutional the circumstances of each case, giving the States and the Federal Government no permanent constitutional standards. It also transfers to this Court power to determine what the Constitution should say, instead of performance of its undoubted constitutional power to determine what the Constitution does say. And the result in this particular case is to put into a constitutional mould a rule of evidence which I think is plainly within the constitutional powers of the States in creating and enforcing their own criminal laws. I must say with all deference that for this Court to hold that the Due Process Clause gives it power to bar state introduction of lineup testimony on its notion of fairness, not because it violates some specific constitutional prohibition, is an arbitrary, wholly capricious action.

I would not affirm this case but would reverse and remand for consideration of whether the out-of-court lineup identification of petitioner was, under *Chapman* v. *California*, — U.S. —, harmless error. If it was not, petitioner is entitled to a new trial because of a denial of the right to counsel guaranteed by the Sixth Amendment which the Four-

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[2] Note, Prospective Overruling and Retroactive Application in the Federal Courts, 71 Yale L. J. 907, 930–933 (1962).

[3] See Mishkin, Forward, The Supreme Court 1964 Term, 79 Harv. L. Rev. 56, 60–61 (1965).

[4] See Mishkin, n. 3, *supra*, at 61, n. 23; Bender, The Retroactive Effect of an Overruling Constitutional Decision: Mapp v. Ohio, 110 U. Pa. L. Rev. 650, 675–678 (1962); Schwartz, Retroactivity, Reliability, and Due Process: A Reply to Professor Mishkin, 33 U. Chi. L. Rev. 719, 764 (1966).

[5] See Wall, Eyewitness Identification in Criminal Cases 26–40; Paul, Identification of Accused Persons, 12 Aust. L. J. 42, 44 (1938); Williams & Hammelmann, Identification Parades, Part I, [1963] Crim. L. Rev. 480–481; Frankfurter, The Case of Sacco and Vanzetti 31–32.

teenth Amendment makes obligatory on the States.

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

Mr. ERVIN. I am delighted to yield to my good friend, the senior Senator from Florida.

Mr. HOLLAND. Mr. President, I will not content myself with just asking to be associated with the distinguished Senator in his speech.

I compliment and congratulate the Senator upon the very great effort he has made in collecting the thoughts of scholars of all the ages since our Nation was established on this important constitutional matter.

The Senator has been most scholarly. He has been most convincing. He has voiced a courage and a depth of conviction which I wish all Senators could have heard. It is unfortunate that only a handful of Senators has been present to hear this truly great speech.

Mr. President, the distinguished senior Senator from North Carolina has shown a courage and a devotion to his country for a long time. As a boy fighting in Europe, he fought with such courage and devotion that he was awarded the Distinguished Service Cross by his grateful country.

As a young man practicing law, as a somewhat older man in the Halls of Congress at the other end of the Capitol, as a trial judge, as a judge of the Supreme Court of the great State of North Carolina, and in these recent years as a great Senator from the State of North Carolina in the Senate of the United States, the Senator from North Carolina has shown great courage and devotion to his country.

I do not believe the distinguished Senator has ever done a more courageous, convincing, utterly devoted and dedicated job than he has done today. And I congratulate him from the depth of my heart.

I want the RECORD to show how deep is my respect, my admiration, and my affection for the great senior Senator from North Carolina.

Mr. ERVIN. Mr. President, I will always treasure those gracious, generous remarks of my good friend, the senior Senator from Florida.

Mr. LONG of Louisiana. Mr. President, will the Senator yield?

Mr. ERVIN. Mr. President, I am delighted to yield to my friend, the senior Senator from Louisiana.

Mr. LONG of Louisiana. Mr. President, it was my privilege to read the minority views of the distinguished senior Senator from North Carolina prior to coming to the Chamber. It was also my privilege to hear a major portion of his speech which pretty well follows the logic of his minority views.

I can only echo the words of the senior Senator from Florida. It is beyond my capacity to add to what the Senator has said.

I think the Senator has made a great speech, and I would not be true to my oath to uphold the Constitution if I did not agree with everything the senior Senator from North Carolina has said.

Mr. ERVIN. Mr. President, I am deeply grateful to my friend, the junior Senator from Louisiana, for his most gracious remarks.

Mr. HOLLAND. Mr. President, since I intend to vote against the confirmation of Mr. Thurgood Marshall to be a Justice of the Supreme Court of the United States, I feel that the record should clearly state my two principal reasons for so doing.

I have already stated to my colleague, the distinguished senior Senator from North Carolina who preceded me, that I want to be associated with all of his scholarly remarks based upon his long experience and his actual participation in the deliberations of the Judiciary Committee on which he is such an important member. I have, however, just two comments that I want to make and preserve in the record to show my own position in this very important matter.

Mr. President, this is a matter of tremendous importance at all times, and particularly at this critical time when we vote to confirm or to reject a nomination of one named to be a justice on the Supreme Court of the United States.

My first reason for my position and my vote is that I regard Thurgood Marshall as a constitutional ultra liberal and an activist who would further entrench in the Supreme Court the attitude of the present activists on that Court to break down long-established constitutional interpretations, to virtually destroy any reliance upon the rule of stare decisis, and to substitute their own social philosophy for the long-established law and their own view of what the law ought to be for what the Constitution requires it to be.

There are many cases which have been decided by the Supreme Court in the last few years—many of which were mentioned by the distinguished senior Senator from North Carolina—which I could cite to show the attitude of a temporary majority of the Court which I think has been destructive of constitutional principle, but I shall mention only one: the Virginia poll tax case—Harper against Virginia Board of Elections—in which an activist majority of the court decided that a poll tax as a requirement for voting is unconstitutional under Federal law. This decision by a majority of the Court was made in spite of the clear recital in section 2 of article 1 of the Constitution that "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the state legislature" and the repetition of that principle in identical words in the 17th amendment to the Constitution, adopted in 1913.

The fact was that at the time of the adoption of the original section 2, article 1, New Hampshire, one of the original States, had a poll tax which was a prerequisite for voting, and at the time of the adoption of the 17th amendment, numerous States had the poll tax which was a requirement for voting for the most numerous branch of their State legislatures. In the year 1788, when the original Constitution was ratified, and in the year 1913 when the 17th amendment was ratified, several States had much more onerous taxpaying requirements as a prerequisite for voting than the poll tax. During the years prior to the Virginia poll tax decision, the lower courts and the Supreme Court had both upheld the validity of the poll tax. The decision of the Supreme Court in the Virginia poll tax case was nothing more nor less than a substitution of the philosophy of a majority of the Court that the payment of a poll tax should not be a prerequisite for voting, notwithstanding the provisions of the Constitution, which meant that the majority of the Court ruled that the constitutional provision was no longer in effect and that it was unconstitutional to longer require a condition for voting which the Constitution, itself, by expressed words, had made a prerequisite for voting.

I think it is enlightening at this point to quote from the dissenting opinion of Mr. Justice Black in the Virginia poll tax case—and no one could speak of Mr. Justice Black as a racist.

Mr. President, I quote:

> Although I join the Court in disliking the policy of the poll tax, this is not in my judgment a justifiable reason for holding this poll tax law unconstitutional. Such a holding on my part would, in my judgment, be an exercise of power which the Constitution does not confer upon me.

And then again:

> The Court's justification for consulting its own notions rather than following the original meaning of the Constitution, as I would, apparently is based on the belief of the majority of the Court that for this Court to be bound by the original meaning of the Constitution is an intolerable and debilitating evil; that our Constitution should not be "shackled to the political theory of a particular era," and that to save the country from the original Constitution the Court must have constant power to renew it and keep it abreast with this Court's more enlightened theories of what is best for our society. It seems to me that this is not only an attack on the great value of our Constitution itself but also on the concept of a written constitution which is to survive through the years as originally written unless changed through the amendment process which the Framers wisely provided. Moreover, when a "political theory" embodied in our Constitution becomes outdated, it seems to me that a majority of the nine members of this Court are not only without constitutional power but are far less qualified to choose a new constitutional political theory than the people of this country proceeding in the manner provided by Article V.

In the dissenting opinion of Mr. Justice Harlan, the following statement is found—and no one could claim that Mr. Justice Harlan is a racist:

> Property and poll-tax qualifications, very simply, are not in accord with current egalitarian notions of how a modern democracy should be organized. It is of course entirely fitting that legislatures should modify the law to reflect such changes in popular attitudes. However, it is all wrong, in my view, for the Court to adopt the political doctrines popularly accepted at a particular moment of our history and to declare all others to be irrational and invidious, barring them from the range of choice by reasonably minded people acting through the political process.

In my judgment, the whole experience, career, and professional activity of Mr. Marshall shows that he embraces the philosophy of the majority of the Court in the poll tax case, which philosophy has been expressed in numerous other cases to the great harm of our judicial

system and with the result of destroying both the stability of our system and the right of every citizen to rely upon the plain meaning of the Constitution and the earlier decisions of the U.S. Supreme Court construing it.

I am not alone in my strong feeling that Mr. Marshall, as an activist, would further destroy the balance of the U.S. Supreme Court and would further entrench the ultraliberal activists among its members.

My file shows a great number of clippings by responsible writers on this subject. I cite first a column by Mr. David Lawrence appearing in the Jacksonville Times Union of August 25, 1967, entitled "If L. B. J. Selected His Supreme Court Nominee by Race, He Should Have Avoided Another 'Judicial Activist.'" I ask unanimous consent that the column of Mr. David Lawrence be printed in the RECORD as part of my remarks.

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

IF L. B. J. SELECTED HIS SUPREME COURT NOMINEE BY RACE, HE SHOULD HAVE AVOIDED ANOTHER "JUDICIAL ACTIVIST"

(By David Lawrence)

WASHINGTON—Senator Sam J. Ervin Jr., a former Associate Justice of the North Carolina Supreme Court, has made a significant statement to the Senate Judiciary committee concerning President Johnson's appointment of Thurgood Marshall to be a Justice of the Supreme Court of the United States.

Mr. Ervin, in his lengthy pronouncement, does not make a single reference to the fact that Mr. Marshall is a Negro. His point is rather that, if President Johnson felt that he had to choose someone of a particular race or religion, he should not have added another "judicial activist" to the high court.

The North Carolina Democrat declares that the Supreme Court, as now constituted, "has a solicitude for persons charged with crime which blinds it to the truth that society and the victims of crime are as much entitled to justice as the accused."

Senator Ervin mentions that his is not a lone voice on this subject, but that Supreme Court justices, judges of federal courts, state judges, lawyers and writers on legal subjects have charged on many occasions that during recent years "a majority of the Supreme Court has repeatedly rendered decisions incompatible with the language and history of the Constitution."

Mr. Ervin calls attention, for instance, to a resolution adopted by a conference of state Chief Justices which pleaded for the exercise of judicial self-restraint and criticized certain decisions of the Supreme Court of the United States as "inconsistent with the powers allotted or reserved by the Constitution to the states." The North Carolina Senator adds:

"Self-restraint is the capacity and the willingness of the qualified occupant of a judicial office to lay aside his personal notions of what a constitutional provision ought to say and to base his interpretation of its meaning solely upon its language and history. In performing this task, he does not recklessly cast into the judicial garbage can the sound precedents of his wise predecessors. . . ."

What Senator Ervin is implying, in effect, is that he does not object to the nomination of Thurgood Marshall because of his race, but rather that other Negro lawyers might well have been considered who are not among the "judicial activists." He explains:

"This is no time to add another judicial activist to the Supreme Court. The court, as now constituted, has already taken us a long way down the road which George Washington told us not to travel. As a consequence, words of the Constitution no longer mean what they have always meant, history and precedents are disregarded, and decisions on crucial constitutional questions are based on personal notions which a majority of the justices happen to share from time to time. . . .

"It is not strange that Judge Marshall should be a legal and judicial activist. Indeed, it would be little short of miraculous if he were not. His activities as a practicing lawyer were calculated to make any man a constitutional iconoclast."

Unfortunately, the Senate committee which considered the question of confirmation did not in its hearings present to the country the names of some eminent Negro lawyers whose qualifications for the high court are entirely different from those of Mr. Marshall.

Mr. HOLLAND. I cite next a recent column by Mr. James J. Kilpatrick entitled "Marshall's Appointment Upsets Court Balance." I ask unanimous consent that the entire column be printed in the RECORD as part of my remarks. I quote in full the first paragraph thereof, which reads as follows:

The nomination of Thurgood Marshall to the Supreme Court has produced cries of jubilation within the liberal left. On the conservative side of the fence, the prospect produces only a sharp dismay. Where goes the Constitution now?

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

MARSHALL'S APPOINTMENT UPSETS COURT BALANCE

(By James J. Kilpatrick)

The nomination of Thurgood Marshall to the Supreme Court has produced cries of jubilation within the liberal left. On the conservative side of the fence, the prospect produces only a sharp dismay. Where goes the Constitution now?

The big news in Marshall's nomination, of course, is that he is the first Negro ever to be named to the court. In the larger view, the matter of his race is immaterial. The overriding fact is that in choosing Marshall to replace the retiring Tom Clark, President Johnson deliberately has moved to upset the rough balance of liberalism and conservatism that recently has prevailed upon the high tribunal. Next term, the forces of judicial restraint will be represented only by Harlan, Stewart, and White, with an occasional vote from Black. The judicial activists will be in full control.

To either view—conservative or liberal—the consequences of this replacement cannot be emphasized enough. When the founding fathers created the Supreme Court in the Constitution of 1787, it was widely supposed that the court always would be the weakest branch of the central government. The driving force of the court's first Mr. Justice Marshall—Chief Justice John—changed all that. By a process of evolution, culminating dramatically in the Warren Court, the tribunal has become the most powerful authority in the whole of our federal system. Its members, serving for life, are in a commanding position to shape national policies as they please. These days, they often are pleased to turn the Constitution into wax.

Nothing that is said here is intended as criticism of Thurgood Marshall, the man. He is an immensely attractive fellow, as charming as his predecessor of 150 years ago. During a decade of bitter litigation on civil rights issues, Southern attorneys developed an abiding respect and affection for him. At one time, it might have been possible to oppose his nomination by reason of Marshall's total concentration on the narrow field of Negro rights, but his service on the United States Second Circuit and his experience as Solicitor General have removed that objection. Beyond cavil, he is qualified for the high court—more qualified, in truth, than many of his predecessors.

Neither is this intended to say that Clark was a wholly consistent conservative on the bench, or that members of the high court in every case follow predictable lines. Clark had his activist relapses, as in the reapportionment cases; he was not above using his high office to vent his personal spleen, as in the Toilet Goods Association case of May 22. Most judges jump the philosophical traces now and then.

Nevertheless, the briefest glance at key cases of this past term will make the point.

In Adderley v. Florida, Clark was one of five who voted to sustain the convictions of 32 Negro students who undertook to trespass upon the Leon County jail in the name of civil rights. The opinion put a brake on some of the excesses of racial demonstrations. How would Marshall have voted in that case?

This past Monday, in Walker v. Birmingham, Clark was one of five who voted to sustain the conviction of Martin Luther King for putting his own view of the law above the order of a court. Would Marshall have voted to send Martin Luther King to jail?

In Fortson v. Morris, Clark was one of five who upheld the power of the Georgia legislature to name a governor when no candidate obtained a majority in the popular election. Nothing in the Fourteenth Amendment, said the majority, prevents a state from so ordering its own affairs. But Marshall's whole record demonstrates a doctrinaire view of the Fourteenth; he reads into "equal protection" all sorts of provisions the framers of that amendment never intended.

In Cooper v. California, and again in McCray v. Illinois, Clark was one of five who voted to strengthen the hand of police officials in securing evidence of crime. The two decisions served to bring some common sense back to the law of Fourth Amendment searches. How would Marshall have voted in these critically important cases? It is a fair surmise that he would have voted with Warren, Douglas, Brennan and Fortas to reverse.

What the court and country will be getting in Marshall will be a more congenial Fortas, a less truculent Goldberg, a more disarming Brennan. The appointment is a great tribute to Marshall's own skill and industry; he is the grandson of a slave, the son of a Pullman waiter. No critic would wish to take away from the heart-warming success story that came to its climax Tuesday. All the same, in any conservative view of the workings of the court, the nomination is something worse than net no-gain. This was bad news—almost disastrous news—and we shall be living with it for the next ten years at least.

Mr. HOLLAND. I cite next a recent column by Mr. Holmes Alexander, entitled "Americans Fear Supreme Court of Land," which I ask unanimous consent to have printed in the RECORD as a part of my remarks. I quote in full three paragraphs of Mr. Alexander's column, as follows:

Some countries fear their military or their secret police—but America '67 fears its Supreme Court.

How can you tell what that black-robed elite are going to do next? Spring more criminals? Abolish more protections? Throw down more altars? Rewrite more laws? Chew more clauses out of the Constitution? Maybe, as a former Vice President once said, the American people are too dumb to understand, but I wouldn't bet on that. I would bet that the outcropping of evidence at the top—in testimony before the U.S. Senate—says something about a swelling concern among the people themselves.

At this writing the Senate Judiciary Committee is getting such testimony in two separate hearings. The main body is examining the nomination of Solicitor General Thurgood Marshall to be an Associate Justice of the Supreme Court. The uneasiness that the senators feel about Marshall is not—as the liberal press insinuates—that he belongs to a minority group. The uneasiness lies in his attitude.

The hulking, chain-smoking Baltimore barrister is a left-leaning tower of judicial nihilism. He has been a know-nothing before the committee when asked about his beliefs in the Constitutional restraints. It doesn't matter that he'll be the only colored man on the Supreme Court. It matters a lot that he'll tip the Court's balance still more precariously in the bias that has made it fearsome to the American people.

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

AMERICANS FEAR SUPREME COURT OF LAND

(By Holmes Alexander)

Some countries fear their military or their secret police—but America '67 fears its Supreme Court.

How can you tell what that black-robed elite are going to do next? Spring more criminals? Abolish more protections? Throw down more alters? Rewrite more laws? Chew more clauses out of the Constitution? Maybe, as a former Vice President once said, the American people are too dumb to understand, but I wouldn't bet on that. I would bet that the outcropping of evidence at the top—in testimony before the U.S. Senate—says something about a swelling concern among the people themselves.

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Then there's the judiciary subcommittee under Senator Birch Bayh (D., Ind.) which is studying constitutional amendments. You might think that such a subcommittee is an unlikely place to detect fear of the Supreme Court, but the outcropping is there just the same. Bayh's panel is examining proposals on what to do about the electoral college.

Many proposals are in the hopper. All have distinguished sponsors. But a close reading of the most cogent testimony shows that the only strong argument for changing the present system, which has served us well, is fear of the Supreme Court.

It is fear that those black-robed meddlers are going to lay hands on the electoral college, as they did upon the public schools, the public worship, the state legislatures, the House of Representatives and much else. Someday, some fool decision about one-man-one vote will come down from the Supreme Court and outlaw the electoral college. Someday in November, we'll wake up to a Presidential crisis. The Court will have found a national election invalid, and the country will be without a President.

That's the fear, and the argument is that we, the people, had better change the system before those crazy Justices gum up the works, as they're probably capable of doing. The fear has been most openly voiced by Senator Spessard Holland (D., Fla.) who made no bones in noting that the Court "has, in fact, acted in an extralegal and supraconstitutional manner."

"Acting as it has," Holland continued, "would it not be entirely within the realm of possibility for the Supreme Court to assert its judicial power?"

Let's say it can't happen in America, that a military coup would ever set aside a Presidential election. Or that secret police would kidnap a chief-of-state. But the Supreme Court, "extralegal and supraconstitutional" in Holland's language, has got us fearful of our rights to self-government, and no wonder.

Mr. HOLLAND. I next cite the recent column by Mr. William S. White entitled "Marshall to the Court—Can Moderation Survive?" I quote the first three paragraphs from that column, as follows:

All who value poise and objectivity in the Supreme Court—qualities already sadly and often absent from its decisions—must look with deep anxiety upon President Johnson's nomination of Thurgood Marshall to the high bench.

It is, of course, neither wise nor fair to impute as inevitabilities certain attitudes to Thurgood Marshall even before he has put on his black robes. Still, the probabilities of the future can only be rationally estimated by the known and certain past. By this standard it is likely that Marshall's elevations will only aggravate an already profound imbalance by which an already disproportionate majority of liberal justices has for years been acting not as detached arbiters but as lawmakers, not as interpreters of the Constitution but as amenders of that Constitution to suit their own notions.

It is an interesting and even a stirring circumstance, to be sure, that Thurgood Marshall is the first Negro in history to reach the high court. So far as all this goes it is well and good. But all this is not the point. The point is not the color of Marshall's skin, which is irrelevant, but the cast of Marshall's mind. And thus far this has been the mind of an undoubtedly honest but also undeniably zealous liberal advocate, notably in civil rights, that is not the proper equipment for service upon a tribunal supposed to act in aseptic impartiality upon the grand issues of a nation.

My attention has also been called to a news article in the Miami Herald of recent date by Tom Littlewood entitled "Southerners Have a Day, but Marshall's In." I quote the last paragraph from that article which reads as follows:

Marshall said not one word during the Senate hearings to remove any of Ervin's doubts that in fact, another judicial activist will be walking through the doors of the marble palace in October.

In yesterday's Washington Evening Star I noted still another column by Mr. James J. Kilpatrick, entitled " 'Arbitrary Notions' Seen Swaying High Court," and I ask that that column be printed in full in the RECORD.

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

"ARBITRARY NOTIONS" SEEN SWAYING HIGH COURT

(By James J. Kilpatrick)

The "minority views" of a dissenting senator have much in common with the dissenting opinions of an appellate judge. So far as the immediate issue is concerned, such expressions are words written on the wind. The dissenter is writing for those who come after.

North Carolina's Sam J. Ervin Jr. fell into the classic pattern last week:

"I have considered with diligence, and I believe with objectivity, the career of Judge Thurgood Marshall and the philosophy it reflects, and I have been driven by my consideration of these things to the abiding conviction that Judge Marshall is by practice and philosophy a constitutional iconoclast, and that his elevation to the Supreme Court at this juncture of our history would make it virtually certain that for years to come, if not forever, the American people will be ruled by the arbitrary notions of Supreme Court justices rather than by the precepts of the Constitution."

"I use the words 'if not forever' deliberately," Ervin added, "because history teaches that a right once lost is seldom regained. For these reasons, my duty to my country forbids me to advise and consent to Judge Marshall's appointment to the Supreme Court."

In thus opposing Marshall's confirmation, Ervin was undertaking to stop a bull elephant with his bare hands. The nomination came out of Judiciary Committee accompanied by a majority report that went into raptures over "a great American . . . who is uniquely qualified, and one might say perfectly prepared to become a Supreme Court justice."

Nevertheless, Ervin and his corporal's guard of Southerners were dead right in the stand they took. By the majority's own description, Marshall "believes that the Constitution of the United States is a living document which the Supreme Court is required to interpret in each case according to the facts presented to it." What this glowing rhetoric really means, as Ervin remarked, is something else entirely:

"When they say the Constitution is a living document, they really mean that the Constitution is dead, and that activist justices as its executors may dispose of its remains as they please. . . . Those who employ this cliche mean that the Supreme Court should bend the words of a constitutional provision to one side or the other to accomplish an object the provision does not sanction."

Does this mean that the Constitution was intended to impose 17th Century forms upon a 20th Century society? Not at all. The genius of the Constitution, said Ervin, is this:

"The grants of power it makes and the limitations it imposes are inflexible, but the powers it grants extend into the future and are exercisable on all occasions by the departments in which they are vested."

So long as the Congress acts pursuant to the Constitution, it may change the laws at any time. But the power to change the Constitution itself is a power vested not in the Supreme Court, but in the people acting through their states.

The temptation to amend, rather than to interpret, is a temptation that flirts constantly through the high court's marble halls. How is this to be resisted? "The only check upon our exercise of power," said Chief Justice Stone in a famous line, "is our own sense of self-restraint." Stone later regretted his candor, but he stated a truth that ought to be carved eternally above the bench.

The awful reality, as Ervin said last week, is that "no authority external to themselves can compel Supreme Court justices to observe their constitutional obligation to base their interpretation of the Constitution upon its language and history."

Marshall's whole career, as advocate, judge, and solicitor general, suggests that he will join the activist bloc upon the court; and there his own personal notions of a "living Constitution," embodied in the votes he casts, will affect our lives for years to come.

Mr. HOLLAND. Mr. President, I shall read the concluding three paragraphs of the article:

The temptation to amend, rather than interpret, is a temptation that flirts constantly through the high court's marble halls. How is this to be resisted? "The only check upon our exercise of power," said Chief Justice Stone in a famous line, "is our own sense of self-restraint." Stone later regretted his candor, but he stated a truth that ought to be carved eternally above the bench.

The awful reality, as Ervin said last week, is that "no authority external to themselves can compel the Supreme Court justices to observe their constitutional obligation to base their interpretation of the Constitution upon its language and history."

Marshall's whole career, as advocate, judge, and solicitor general, suggests that he will join the activist bloc upon the court; and there his own personal notions of a "living Constitution," embodied in the votes he casts, will affect our lives for years to come.

It seems completely clear from the quotations which I have already included within my remarks, from numerous others which I could include, and from those which were included in the speech of the able Senator from North Carolina, that many patriotic Americans of able mind, who could not be termed racists, are opposed to the confirmation of Mr. Marshall as a Justice of the Supreme Court for the reason that he is shown to be such a complete ultraliberal, such an advanced activist in his thinking, and such a clear addition to the already too large ultraliberal activist membership of the Court who have been rewriting American constitutional law to express their own deeply held convictions as to what the law ought to be for what the Constitution and long-standing Court interpretations state it to be.

My second objection to the confirmation of Mr. Marshall is somewhat like the first but is by no means the same. Perhaps the most bitter field of controversy and litigation which has divided this country in my lifetime has been the field of so-called civil rights. Mr. Marshall's experience and his long-time practice as a lawyer has been almost exclusively in that field and unfortunately has been always on one side. As an experienced lawyer and as a capable advocate, he has been leading counsel for the NAACP in many civil rights cases and has constantly, and so far as I know without variation, adopted views and fought for the views of that organization and of the minority of American citizens whom it represents. I well recall Mr. President, that shortly after I came to the Senate, when the Southern States had entered into an educational compact of the greatest potentiality to advance the cause of education for both white and Negro young people from 15 Southern States, Mr. Marshall appeared as a principal active objector before a Senate committee to congressional ratification of that pact simply because, as he said, he feared that it might result in the advancement of racial segregation in the southern schools and not the advancement of racial integration which seemed to be his sole interest in the field of education. True, the southern educational compact has done a vast amount of good, but it has been unable to divert public funds from one State to the construction of facilities in another State simply because it failed by a narrow vote to get Senate ratification which would have enabled it to pool State capital resources in the effort to build and equip finer institutions of learning, particularly in some specialized fields which are not yet served in the whole southern educational field.

Mr. President, he has so continuously taken that side of the case as to leave him in no position to exercise balanced and impartial judgment on a point of law involving that aspect of civil rights as well as various other civil rights causes which have been involved in his other activities and in his court work. I want to make it very clear that in this matter I would be just as much opposed to any lawyer, regardless of the color of his skin, whose position had been constantly and aggressively on only one side of this whole field of judicial controversy. I have in mind several other lawyers whose activity has been solely of the sort characterized by Mr. Marshall's professional life, of whom I shall mention just one—Mr. Joseph Rauh, of Washington. He, too, is an able lawyer of great experience, but with a mind so entirely attuned to only one side of the controversial questions which I have mentioned that he could not possibly be considered as appropriate material for membership on the Supreme Court or any other Federal court.

I wonder what our ultraliberal friends in the Senate and throughout the Nation would think and say and what their position would be in the event the situation were reversed and the nominee to the Supreme Court happened to be one of the able attorney generals of the Southern States who have, because of their duty and their convictions, represented continuously and ably the other side of these controversial questions. I wonder what the attitude of the ultraliberals would be if an able lawyer from this very body such as the distinguished senior Senators from North Carolina and Mississippi, both of long judicial experience and training, but whose constitutional convictions and proper representation of their constituents has shown them constantly on the other side of these highly controversial civil rights questions in Senate hearings and debates, on television and in other public forums, were now a nominee to this very position. The point I am making is that among all of the undoubtedly experienced lawyers of our Nation, whom the American Bar has rated among its great number of accomplished lawyers there are many, many individuals well qualified to become Supreme Court Justices who are not identified with just one side of the most controversial field of litigation to be heard in our Federal courts for generations and that it is unfortunate that the President has chosen to name as his nominee a man who is so clearly, so closely and so zealously identified with just one side of these long-standing controversies.

In closing, I hardly need to remind the Senate that some of the most controversial of the so-called civil rights issues are still unsettled by the Court and they have shown themselves to be so controversial as to require their settlement by Justices of great experience and character and of demonstrated impartiality and objectivity. Only last night, and for several nights, we have been seeing in the good city of Milwaukee the clear fact that on the question of open housing a racial controversy is raging there which at some time—and I hope in the near future—will require a legislative and ultimately a judicial settlement which can be tolerated and accepted by all good Americans. Other and more terrible riots in other cities, including Detroit which was supposed to be a model city in this field and where 43 persons are said to have lost their lives during the course of the riots and many hundreds wounded, have clearly shown that the question of open housing is by no means settled and that its greatest impact is in the large cities of the north and not in the south where some earlier so-called civil rights problems were regarded as foremost.

There is still unsettled the question of de facto segregation in the public schools which has all the elements of controversy, misunderstanding, and bitterness that will bring it eventually into the U.S. Supreme Court and will require a final settlement there which will be acceptable to our people. Could there be a stronger requirement than that existing in this one field of civil rights that the personnel of the Supreme Court should be carefully chosen from the standpoint of not only their character, experience, and general objectivity, but also their impartiality in this most difficult field?

It is my deep conviction, Mr. President, that the naming of Mr. Marshall to the Supreme Court completely fails to meet the need of the times and of all times for a Court which is not packed or stacked, but whose members can thoughtfully, conscientiously, impartially, and prayerfully approach the great issues which I have mentioned and others which from time to time will bitterly divide our citizens, so that their decisions may be so sound as to command the respect and obedience of every thinking American.

For the reasons named, I cannot and will not support the confirmation of Mr. Marshall as a Justice of the Supreme Court.

Mr. HART. Mr. President, I have been troubled as to whether I should rise and make this comment, but have concluded that it should be made.

Early in his remarks, the Senator from North Carolina [Mr. ERVIN] expressed concern that in rising in opposition to the nomination of Thurgood Marshall, he would be charged with being a racist. The Senator from Florida has just expressed a somewhat similar concern.

None of us here is able to control the expressions of anyone across this country, but I want to make it clear that although it was my honor to report the nomination from the Committee on the Judiciary, no one on the committee and, I am sure, no one in the Senate, feels that the eloquent expressions to which the Senator from North Carolina has given voice this morning were motivated other than by a deep respect for the Constitution of the United States.

This description also motivates the Senator from Florida in what he had to

say today, as well as other Senators who will oppose the nomination.

In my brief statement to the Senate at the opening of debate today, I did not mention the fact—but it is a fact—that Thurgood Marshall is a Negro.

But that is not why he was nominated by the President. That is not why the Senate should and, I trust, will confirm him.

He was selected by the President because he is a man who has an unequaled record among the members of the American bar as a successful advocate, because he has served with distinction as a Federal judge, and because he has had rich experience as the chief Federal litigator in the Office of the Solicitor General.

The President of the United States cited him "as a lawyer and a judge of very high ability, a patriot with deep convictions, and a gentleman of undisputed integrity."

These are the reasons why Thurgood Marshall is before the Senate for confirmation of his nomination to be Associate Justice of the Supreme Court of the United States, and not because he is a Negro.

However, as I have said, we cannot ignore the fact of his race. I think it is a symbol of progress, of hope, and of opportunity. It is a good symbol. It is a welcome one. If confirmed, he will become the first Negro to sit on the Supreme Court of the United States, and the Nation will be the stronger.

But I know that those who rise in his support and those who voice opposition to his nomination will not be doing so because of any matter of color.

Mr. JAVITS. Mr. President, I associate myself—although this is not my speech in chief—with the remarks of the Senator from Michigan. I feel the same way about those who will oppose the nomination of Thurgood Marshall, although I support the confirmation of his nomination.

Mr. ERVIN. I also want to thank the able Senator from Michigan as well as the able Senator from New York for their most gracious remarks.

The Senator from Michigan and I have had many contacts and both serve on subcommittees of the Judiciary Committee.

The Senator from Michigan is a fighter for the things in which he believes. He is always a just man. He is always a gracious man, whether one agrees or disagrees with him.

Mr. HART. I thank the Senator from North Carolina.

Mr. JAVITS. Mr. President, I support the confirmation of the nomination of Judge Thurgood Marshall to be a Justice of the Supreme Court. I have voted on two previous occasions to support Judge Marshall for confirmation—once as a judge of the Circuit Court of Appeals; once as Solicitor General. Together with my colleague from New York, I supported his nominations in both cases before the Committee on the Judiciary, as I have supported this one. I am proud to do so; but I do believe that some of the matters which have been raised against Judge Marshall need to be discussed, for this is one of the highest offices in the land, and one of tremendous power; and the degree of opposition which this nomination has engendered, considering the distinction of Judge Marshall at the bar, is indicative of the importance which should be attached to the question of his confirmation.

The Supreme Court does have a vital and decisive effect upon the life of the Nation. It is as great as that of Congress or that of the President. The Court can overturn the actions of Congress and it can overturn the actions of the President. Its voice can be vital in matters of life and death, as well as of the Constitution. Therefore, it is critically important that we screen with the greatest care those who would be judges. That is why the constitutional power was given to us.

Mr. President, as I see it, there are three questions involved in this confirmation.

First, is Thurgood Marshall fit to be a Justice?

Second, why is he being opposed for that office, if he is fit to be a Justice?

Third, if he is confirmed as a Justice, what kind of a judge will he be, and should that be a ground for opposition to him?

Mr. President, his fitness to be a Justice, I think, is unparalleled. We do not expect our Justices of the Supreme Court to be men who have not fought battles. Indeed, one of the first questions the Committee on the Judiciary—and I have been a member of that committee—asks a candidate is what trial experience has he had.

Mr. President, if you have had trial experience you are an advocate. If you are an advocate, you must have believed in a partisan cause, otherwise you would not be worth your salt as an advocate.

Thurgood Marshall has had unusual and extraordinary experience in most of the courts of the land as a lawyer at the bar, not only in the trial courts, but the appellate courts as well, in cases which required enormous knowledge of the law, tremendous courage as an advocate, and great skill in advocacy. All of those qualities he has shown; and that is what has brought him to the top. That is why he is being named a Supreme Court Justice.

In addition, he has been tried out in two roles which have given him probably far better preparation than the majority of Supreme Court Justices ever receive. He was a judge of the Circuit Court of Appeals for 4 years in my own circuit, which includes New York and is one of the busiest in the country. Then during the last 2 years he was Solicitor General of the United States. In each of those positions, he served with distinction, being as distinguished, and more so, when he left the position than when he came to it.

In addition, he is approved by the bar associations in New York and by the American Bar Association—which gives most careful scrutiny to this kind of appointee—and the testimony about him from every source the committee has heard bears witness to his high qualifications.

Indeed, Mr. President, it is interesting to me that the opposition itself certifies to his high qualifications as an advocate and a judge, because if he were not so good at it, they would not pay that much attention to him. The fact is that he is going to be a very potent and important member of the Court, by knowledge, experience, and force of personality. Therefore he receives much attention, and his confirmation is not routine.

I do not think anyone would seriously challenge his fitness to be a justice. In the questions the opposition raise, they impliedly admit that; their question is, Shall he be a Justice of the U.S. Supreme Court, considering the fact that it is a nine-man Court, and that the ideology and philosophy of a member of that Court does something to its balance, and therefore has an effect on what the majority will hold in many cases?

So the opposition, Mr. President, is not on the basis of fitness, but on the basis of disagreement with the kind of decisions which the opponents believe Judge Marshall will make.

Mr. President, it seems to me that that is pretty thin ground to stand on, because they do not know what decisions Judge Marshall will make. Indeed, the history of the Court is replete with the fact that a man's attitudes when he comes to the Court do not necessarily reflect the way he is going to decide. All one has to do is examine the histories of Earl Warren, Byron White, or Potter Stewart; or, going farther back, Brandeis, Cardozo, Black—a signal example—Goldberg, Frankfurter, all of whom became something very different, on the Court, than they were when they came to the Court.

The Supreme Court, like the presidency, does something to a man. It will do something to Thurgood Marshall. I do not know whether he will persevere in the views he has had up to this time, or not. I hope he will; I agree with them. But, Mr. President, there is no guarantee of that, as shown by the fact that Earl Warren was considered on his record to be fairly conservative at the time of his nomination, and now is regarded by many as a wild liberal. Byron White, on the contrary, who was widely assumed to be a liberal when nominated by President Kennedy, turned out to be quite a conservative member of the Court. No one can quarrel with that, if a man is fit to be a member of the U.S. Supreme Court.

Justice Black, when he came to the Court, was regarded with some concern by those who were called upon to pass on his confirmation because of his conservative record. He turned out to be one of the most liberal members of the Court—indeed, one of the staunchest pillars of its liberalism. Arthur Goldberg, a labor lawyer, turned out to have a very level headed and objective view about the law involving trade unions and labor matters, when he was on the bench.

Finally, Mr. President—and this is perhaps the most important point of all—those who are arguing against Thurgood Marshall's confirmation are really rearguing previous decisions of the Court with which they disagree; that is what it comes down to. Because they disagree, they are trying to get a justice on the Court who will agree with them, rather than with the majority of the Court.

Mr. President, that is no way to correct decisions of the Court, as we all know; and really, Judge Marshall does not deserve the opposition he is receiving on that ground, because I think it is definitely not inherent in the confirmation process of the Senate to try to correct decisions of the Court which a particular lawyer or a particular Senator does not like. The fact is that they were concurred in by a majority of the Court; they are the law of the land; Judge Marshall cannot affect those decisions in any way, and there should therefore be no retribution on him for what the Court decided before he got there.

We cannot turn the clock back. It is a fact, as the deep temper of the country has been demonstrated that we have almost invariably—I do not say invariably—sustained the majority of the Supreme Court here, despite all of the objections that have been made on the floor to one decision or another, whether about confessions or States' rights or the presence of a lawyer to assist the criminal, that whenever we have been actually faced with a situation which requires us to look down the muzzle of the gun and reverse the Supreme Court by legislative action we have not done so—or, at least, we have very rarely done so.

We have fought this argument out on the floor time and time again when Senators thought that a particular decision was extremely unpopular. The majority of the Senate thought, after thorough debate, that the institution of the Supreme Court of the United States is in the eyes of Americans far more important than the particular decision to which they or most Americans might object.

The institution of the Supreme Court demands that men of eminence, men of immense experience, men who have been in frequent conflict and controversy should serve on that court.

One of the best examples is that of Earl Warren—a State Governor, a political leader, nominee for the vice-presidency of the United States on the ticket of one of our great national parties, a man embroiled in the most ardent political contests—who has become one of the most luminous judges in the country.

The same is true with respect to Justice Black and other Supreme Court Justices—that they quickly display a basic understanding of the wellsprings of the Constitution and constitutional law rather than agreement with the particular views of one or more Senators as to what a phrase like "due process" or "equal protection under law," or "interstate commerce" or some other generalized phrase in the Constitution or in the amendments thereto may mean. That ability determines whether a man should or should not serve on the bench.

The appointment of Thurgood Marshall was inevitable. We knew the minute he went on the Circuit Court of Appeals bench that ultimately, if he served well, as he has magnificently done, he would go on the Supreme Court.

This is a most appropriate time for an object lesson to a great people who are in such deep travail in our country—the Negro people. It is a time when object lessons are most desirable. These object lessons cannot be synthetically created. However, when God and nature and the process of public policy has produced a situation in which there is an extraordinary breakthrough and object lesson of this kind, we certainly have the right to speak of it and to be thankful that there exists in the United States a Negro who deserves to be a Justice of the U.S. Supreme Court.

For myself—and I think it will prove to be for a majority of the Senate—it should be a matter of great pride for us that we may certify this fact to the Nation and to the world.

Mr. President, I predict with respect to Thurgood Marshall that he is going to surprise a lot of his critics. He has a rendezvous with history. He is a man of deep conscience. He cannot be taken for granted at all.

I think it is rather unfortunate that the opponents of his nomination are taking him for granted. He is too good a lawyer and too patriotic an American to be taken for granted in this manner.

Let us remember that the Negro is one of our oldest citizens. He has suffered with the soil of this country.

Thurgood Marshall's forebears were slaves. Their sweat and blood and tears have been imbedded in this land for 350 years—more than is true in the case of my ancestors who came over from Europe and took root here in the latter part of the last century.

This is a magnificent day. Thurgood Marshall will make a fine judge. There is no question about his fitness to be a judge. And that should be the only question.

Supreme Court cases should not be reargued here. The current in the stream of history is with the decisions which he has indicated he favors.

Thurgood Marshall certainly cannot be taken for granted.

It is our duty and it should be our honor, considering the circumstances, to confirm the nomination of Thurgood Marshall to be a Justice of the U.S. Supreme Court.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HART. 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. EASTLAND. Mr. President, I rise to speak in opposition to the nomination of Thurgood Marshall as an Associate Justice of the Supreme Court of the United States.

I do so fully aware of the responsibility of this Senate and each of its Members to consider whether to give its advice and consent to this nomination to the highest Court in the land.

My opposition to the nominee is based upon my strong and sincere belief that his elevation to the Supreme Court will have the inevitable result that the Court will truly become not only the keeper of the conscience of this Nation, but will also be the enforcer of the personal views of a majority of its members as to how the people should carry on their daily political, social, and economic lives.

I believe that there is no doubt that this nominee would join some of those presently on the Court to constitute a solid majority, able, willing, and ready to use the vast power of the Court as an instrument of social policy to bring about social changes in the lives of the people deemed desirable by a majority.

Mr. President, if this comes about, our constitutional system of divided powers will be totally destroyed. The Supreme Court will not only exercise judicial power, but will also exercise legislative power to effect social change.

Unfortunately, this process is already well on the way to fruition, as witness a number of recent Supreme Court decisions which have not only interpreted the Constitution, but have rewritten it.

I submit that the elevation of this nominee to the Supreme Court will insure that this pernicious process will be carried to completion.

In considering this nomination, we must realistically view its effect. We all know the present composition of the Supreme Court. Decision after decision of that Court reveals that there are presently four Members who could be characterized as "Judicial Activists." They constitute the so-called "liberal hard core of the Court." Judicial restraint is not one of the virtues of this group.

In the area of criminal law, this group is invariably found on the side which would expand the rights of criminal suspects and which would diminish the powers of Federal, State, and local law-enforcement agencies to deal with the ever-mounting crime wave.

This group is always ready to write its notions of what is "fair" into the Constitution.

I state now, without fear of successful contradiction, that this nominee, if approved by the Senate, would most assuredly become part of this group. This would insure that these persons, whom I regard as threatening the continued existence of our Constitutional Republic, would have free rein to impose their ideas of contemporary communal values on our people.

I base this judgment on the past record and public statements of the nominee, his decisions rendered as a judge of the U.S. Court of Appeals for the Second Circuit, and his testimony before the Judiciary Committee at the hearings on his nomination.

When the nominee appeared before the Judiciary Committee various Senators, including myself, attempted to elicit from him his views on the great constitutional issues which concern Americans. Our sincere efforts resulted in a complete failure. The nominee took the position that it would be improper for him to answer any questions about his theory and philosophy of constitutional law which could involve a question which might come before him as a Justice of the Court. He admitted that any and every provision of the Constitution might come before him as a Justice of the Court for interpretation, and so declined to answer any questions along these lines.

In an effort to learn something of his

views, I produced a copy of the Daily Texan of Austin, Tex., for March 19, 1967, in which the nominee was interviewed upon the occasion of his making a speech at the University of Texas Law School. I read the following quotation from that news story:

Turning to criminal procedure cases, Marshall spoke on *Escobedo vs. Illinois*, and *Miranda vs. Arizona* litigation. The Court held that in those cases that a person suspected of a crime has a right to Counsel, confessions obtained in violation of the ruling cannot be used, and the suspect cannot be made to incriminate himself.

Criticism of these cases, especially by police officials have no basis, Marshall said. He reported he had seen no studies indicating the rulings have adverse effect on investigation of crime.

I then asked him if he had made that statement. His reply was:

I think that is a reasonable statement. But you realize, Senator, Mr. Chairman, that was made at the University of Texas Law School.

I personally do not understand why a statement he made at the University of Texas Law School should be accorded any less weight than any other statement he made under other circumstances. I believe we are safe in assuming that he is in agreement with the line of decisions in the area of criminal law enforcement culminated by the Miranda decision. This will be confirmed by other statements he has made to which I will shortly make reference. It will even be seen that he does not believe that these decisions have gone far enough in achieving the necessary radical reforms in the area of criminal law enforcement.

I also questioned the nominee about an article appearing in the American Bar News, which quoted excerpts from a speech made by him at the University of Miami on Law Day 1966. The nominee acknowledged that he had made such a speech.

I now wish to briefly quote the few questions I asked him about this, and his answers thereto.

The questions and answers as they appear in the printed transcript of the hearings are as follows:

The CHAIRMAN. You are quoted in this article as having said that your concern was not with those who "resist any change in the status quo with fury," but those "whose criticism of recent Supreme Court doctrine stems from a more intellectual level."

You are quoted as having stated that this "intellectual or professional criticism reflects a profound element of misunderstanding. It reflects a refusal to accept a new concept of law, to shake free of the 19th century moorings and to view law, not as a set of abstract and socially unrelated commands of the sovereign, but as effective instruments of social policy."

Now, did you make that statement?

Judge MARSHALL. I think that's accurate——

The CHAIRMAN. Yes.

Judge MARSHALL (continuing). As I remember it.

The CHAIRMAN. Well, then, doesn't that reflect that—isn't the meaning of that that the U.S. Supreme Court is an instrument and should be an instrument of social change?

Judge MARSHALL. I don't think I was talking about the Supreme Court. I was talking about the people in general and especially the bar.

The CHAIRMAN. I see.

Judge MARSHALL. The lawyers of the bar.

I found it difficult to believe that the Solicitor General's testimony was correct. The quotations which I read him distinctly tie his views of the law as an effective instrument of social policy back to the intellectual or professional criticism of the Supreme Court. This strongly indicated to me that he meant that the Supreme Court should be used as an effective instrument of social policy, although he stated in his testimony that that was not what he had meant.

I instructed my staff to obtain a copy of the text of the nominee's Law Day speech in Miami so that we could see exactly what he did mean. After attempting to locate a copy of the speech from a number of sources, it was discovered that the only available copy was in the custody of the nominee himself. He kindly agreed to furnish us with a copy.

I ask unanimous consent to have printed in the RECORD, immediately following my remarks, a copy of the entire text of this speech.

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

(See exhibit 1.)

Mr. EASTLAND. A reading of this speech shows that its principal thesis is that the Supreme Court of the United States should be an effective instrument of social policy and should lead the way in effecting social change. If anyone has any doubt as to the views of this nominee as to the proper function of the Court to which he has been nominated, a reading of this speech will dispel such doubts.

It is a blueprint and a call for a court-enforced social revolution in this country. I should like to read pertinent excerpts from this speech, and I request that every Member carefully consider these words of the nominee.

At one point in the speech he made the following statement:

For Americans view the Constitution as a set of moral commands, guides to civilized communal living, not just technical and specialized guides to good government. In this struggle for racial equality the Supreme Court served, at least in 1954, as a voice not of contemporary opinion but of communal conscience, or in Chief Justice Hughes' earlier characterization, as "teachers to the citizenry."

Further on in his speech he said:

This contrast reveals two conditions that justify transforming the power of invalidation, spawned in a more modest context, into an active instrument of social change—an established social pattern that threatens a central constitutional ideal and a default by other social institutions. The point to be made, however, is not purely an academic one. It suggests to me that the curtain has not, and should not come down, on the Supreme Court's active engagement in the process of social change, of requiring that our social living conform to our social ideals.

In discussing recent developments in the field of criminal law, he made the following statements:

The Supreme Court's involvement in reforming our criminal processes began thirty years ago, and it has continued down to the present, with ever greater intensity. The brush strokes have been getting broader and broader, and the result has been, in my opinion, to remove anachronisms which have no place in our society.

He later made the following remarks as to the proper functions of the Court in enforcing the criminal laws:

The courts cannot rest in their vigilance, they can never be sure that its engagement of reforming the criminal process has been completed. Even though, as a national proposition, we have moved a long way from those initial outrages perceived in *Brown* v. *Mississippi* and *Powell* v. *Alabama*, gross imperfections still remain, if the standard of judgment is contemporary communal values. Pre-arraignment procedures in the station house, bail; pretrial publicity; the right to a speedy trial; pretrial discovery; the admission of evidence dealing with the accused's prior criminal record; the right to counsel in specialized proceedings, such as collateral attacks, commitment proceedings, and revocation-of-parole proceedings. These are just some of the areas that will come under particular scrutiny in the years to come. and the areas in which radical reform will take place.

Toward the conclusion of his speech, the Solicitor General addressed himself to recent criticism of decisions of the Supreme Court. He first made the following observation:

Some of the criticism flows from those whose material selfishness and self-satisfaction lead them to resist any change in the status quo with fury. They are not my concern here. There are others, however, whose criticism of recent Supreme Court doctrine stems from a more intellectual level.

He then went on to say:

Instead my concern is with the intellectual or professional criticism that reflects a profound element of misunderstanding. It reflects a refusal to accept a new concept of law, not as a set of abstract and socially-unrelated commands of the sovereign, but as effective instruments of social policy. In recent decades the Supreme Court has transformed the law into an effective instrument of social policy, and the example *par excellence* is its involvement in the process of social change.

If you believe that the proper powers and duties of a Justice of the Supreme Court include the responsibility of applying his personal notions of contemporary communal values in all areas of our social, economic, and political life, so as to achieve the sort of social change which he finds desirable, then we should approve the nomination of Thurgood Marshall as a Justice of the Supreme Court. If not, we should reject this nomination, which I fervently hope and trust this Senate will do.

The social, political, and constitutional philosophy of a member of the Supreme Court is much more important now than it was in former times. It used to be that the Justices of that Court attempted to carry out their proper duties of interpreting the Constitution and laws of the United States by ascertaining and applying the plain meaning of the language involved, and giving great weight to the original intent of the framers of the Constitution.

In more recent times, however, the trend of some Justices has been to apply their own individual personal notions of right and wrong to rewrite the Consti-

tution and laws. I deplore this trend, and wish that it were not so. I believe it will surely lead to the destruction of our system of government. However, if the Court is to act as the enforcer of a set of moral codes, then let us make certain at least that the members reflect as accurately as possible the views of a majority of the American people, who will be governed by their decisions.

That is why I give such great weight to the expressed opinions and views of this nominee. I believe that in large areas of our life, especially in the fields of the enforcement of criminal law and court-ordered social change, his philosophy is basically antagonistic to that of the great majority of citizens in this country.

An example of the judicial activism which characterizes the lifework of the nominee is the dissenting opinion he wrote as a judge for the Court of Appeals for the Second Circuit in the case of *People of the State of New York* v. *Galamison*, 342 F. 2d, 255. This case involved an interpretation of 28 U.S.C., section 1443, the Federal Criminal Removal Statute. In his dissenting opinion, Judge Marshall argued that the statute should be given a liberal interpretation so that in order to have a criminal case removed from State Court to Federal Court, a petitioner would only have to allege that the State prosecution would deny him the equal protection of the laws. Judge Marshall held that upon the making of this broad allegation a petitioner would have the right to a factual hearing in Federal court as to the truthfulness of his allegations.

This holding was contrary to all of the leading cases on the subject of the correct interpretation of the removal statute, including *Strauder* v. *W. Va.*, 100 U.S. 303, and *Kentucky* v. *Powers*, 201 U.S. 1, which gave a narrow and restrictive interpretation of that statute.

The majority of the Court of Appeals for the Second Circuit disagreed with Judge Marshall, and followed the well-established rule of law that a petitioner would be allowed to remove his prosecution from State to Federal court only in extraordinary circumstances, such as when the State prosecution would deny petitioner a right conferred by a specific Federal statute, such as the public accommodations title of the Civil Rights Act of 1964.

The question of the correct interpretation of the removal statute was decided by the Supreme Court in the case of *City of Greenwood* v. *Peacock*, 384 U.S. 808. In that case, the Supreme Court by a 5-to-4 vote held that that law should be given the narrow interpretation which had been given it by a long line of previous decisions.

The four hard-core judicial activists on the Court, of course, dissented vigorously and argued that section 1443 should be given a very broad and liberal interpretation so as to make it extremely easy for a petitioner to receive a hearing in Federal court as to whether his case should be removed.

One of the five votes in the majority was cast by Mr. Justice Tom Clark, whose place this nominee would take on the Court. It does not require gazing at the crystal ball or a reading of the tea leaves to tell us that when this issue is next presented to the Supreme Court, this nominee, if confirmed, would vote to overturn the Peacock decision and to write some new law on this subject which involves a most delicate area of Federal-State relationship.

There may be those here who would say "What is wrong with that?" The majority opinion in the Peacock case gave a good answer as to the practical effect of a holding which would open the floodgates for these persons to come into Federal court. The Court used the following language in discussing this problem:

> It is worth contemplating what the result would be if the strained interpretation of § 1443(1) urged by the individual petitioners were to prevail. In the fiscal year 1963 there were 14 criminal removal cases of all kinds in the entire Nation; in fiscal 1964 there were 43. The present case was decided by the Court of Appeals for the Fifth Circuit on June 22, 1965, just before the end of the fiscal year. In that year, fiscal 1965, there were 1,079 criminal removal cases in the Fifth Circuit alone. But this phenomenal increase is no more than a drop in the bucket of what could reasonably be expected in the future. For if the individual petitioners should prevail in their interpretation of § 1443(1), then every criminal case in every court of every State—on any charge from a five-dollar misdemeanor to first-degree murder—would be removable to a federal court upon a petition alleging (1) that the defendant was being prosecuted because of his race and that he was completely innocent of the charge brought against him, or (2) that he would be unable to obtain a fair trial in the state court. On motion to remand, the federal court would be required in every case to hold a hearing which would amount to at least a preliminary trial of the motivations of the state officers who arrested and charged the defendant, of the quality of the state court or judge before whom the charges were filed, and of the defendant's innocence or guilt. And the federal court might, of course, be located hundreds of miles away from the place where the charge was brought. This hearing could be followed either by a full trial in the federal court, or by a remand order. Every remand order would be appealable as of right to a United States Court of Appeals and, if affirmed there, would then be reviewable by petition for a writ of certiorari in this Court. If the remand order were eventually affirmed, there might, if the witnesses were still available, finally be a trial in the state court, months or years after the original charge was brought. If the remand order was eventually reversed, there might finally be a trial in the federal court, also months or years after the original charge was brought.

We should know exactly what we are doing if we vote to confirm this nomination. If this nominee should go on the Court in October we can be certain that the question of the interpretation of the Removal Statute will immediately be brought up for reconsideration by the Court in another case. We can be equally certain that when that happens, the Court will reverse the Peacock decision by a 5-to-4 vote.

We can then be prepared to create at least 100 new Federal judges at the trial level, not to mention the additional judges who will be needed to hear these appeals.

I believe that this could lead to a breakdown of our Federal court system.

I strongly urge you to consider these certain consequences if you vote to approve this nomination.

There is another facet of the testimony that Judge Marshall gave with reference to his opinion in the Galamison case that causes me some concern. In that opinion, at page 279 of 342 F. 2d, he cited a book titled "A Documentary History of the Negro People in the United States" by Herbert Aptheker. This book was cited as support by him for the following statement found in that opinion:

> First, peaceful protest, speech and petition, is a form of self-help not unknown during the era of reconstruction when section 1443 (2) was forged.

Of course, Herbert Aptheker is and has for many years been an avowed Communist and the leading Communist theoretician in the United States. I asked the nominee whether he knew at the time he cited that book that its author had been for many years an avowed Communist and the leading Communist Party theoretician. His response is as follows:

> Judge MARSHALL. I positively did not know that.
>
> The CHAIRMAN. In fact if you had known that, would you have cited him as an authority?
>
> Judge MARSHALL. I certainly would not——
>
> The CHAIRMAN. Well, do you think——
>
> Judge MARSHALL (continuing). Have done it.

I believe it is a denial of due process of law to a litigant for a judge to cite a book which has not been admitted in evidence and which the litigant has not had opportunity to discredit as authority for a statement made in a judicial opinion. It is certainly a flagrant denial of due process to cite such a book which is written by an author with a given bias or slant.

This Aptheker book cited by Judge Marshall strictly adhered to the Communist Party line as to Negro history in America. How anyone could even casually read this book and fail to see that obvious fact is difficult to understand.

Surely Judge Marshall read this book before he cited it as authority. He would not be so derelict to his duty as to cite a book he had not read.

The introduction was written by Dr. W. E. B. DuBois, a lifetime fellow traveler who in later years formally embraced communism.

The various introductory material written by Mr. Aptheker clearly revealed the Communist slant of the book. For instance in discussing the role of the Negro during the Spanish-American War, that war is referred to as "a war of imperialism."

It is amazing that a man of political and intellectual affairs such as Judge Marshall would not have known in October 1964 when the Galamison case was argued, or in January 1965 when it was decided that Herbert Aptheker was a leading Communist. He claims not to have known what many ordinary citizens knew.

As of December 1964, Mr. Aptheker had published no less than 23 books and

at least 17 articles in publications. Many of these works deal with the subject of Negro history.

On page 3 of the New York Times of September 9, 1964, there appears a lead story about the funeral in Moscow of Elizabeth Gurley Flynn, for many years a leading American Communist. It was stated in this story that Mr. Herbert Aptheker spoke at that funeral. A photograph showing and identifying Mr. Aptheker in the group of mourners accompanied the news story. There has been over the years a great deal of press coverage given to Mr. Aptheker's Communist activities. He has never been one to hide his light under a bushel.

The most compelling reason for doubting the accuracy of the testimony of the nominee in this respect is the fact that the case of Herbert Aptheker against Secretary of State was decided by the Supreme Court of the United States on June 22, 1964. The opinion of the Court is recorded at 378 U.S. page 500. This case dealt with the legality of the actions of the Secretary of State in denying passports to Mr. Aptheker and other Communists.

One of the cases in the field of criminal law about which the nominee was questioned before the Judiciary Committee was *Escobedo* v. *Illinois*, 378 U.S. 478. The nominee exhibited knowledge about the holding of that case. It is reasonable to assume that he read the opinions of the Court. The Escobedo case was decided on June 22, 1964, the same day as was the Aptheker case. The Escobedo opinion appears in the U.S. reports directly following the Aptheker opinion.

It strains the powers of belief to the breaking point to think that Judge Marshall could have been unaware of who Herbert Aptheker was when he cited his book.

Whether or not he would know who Aptheker was at that time is very important, because he stated in the testimony above quoted that he would not have done so if he had known the facts.

I believe that the Senate should carefully weigh these considerations in considering this nomination.

We all know that former Justice Tom Clark, whose place on the Court this nominee is seeking, frequently sided with those Justices who believed that the highest degree of judicial statesmanship was in the use of judicial restraint. In a number of these cases, the deciding vote in 5 to 4 decisions was cast by Justice Clark.

As I have previously stated, there can be little doubt but that this nominee, if confirmed, would join the group of judicial activists on the Court.

It would be useful in considering this nomination to review a few of the cases in which Justice Clark's vote was decisive in causing the Court to use some measure of self-restraint. It is strongly probable that this nominee, if confirmed, would vote with the activists in similar cases.

Some of the leading cases decided in the last two terms of the Court in this category are as follows:

First. *Ginzburg* v. *United States*, 383, U.S. 463. In that case the Court, by a 5-to-4 vote upheld the conviction of a smut peddler, Ralph Ginzburg, for violation of 18 U.S.C. section 1461, the Federal obscenity statute.

Second. *Adderly* v. *Florida*, 385 U.S. 39. The Court, by a 5-to-4 vote, upheld the conviction under the Florida Trespass Law of a number of demonstrators at a jail in Tallahassee, Fla.

Third. *Fortson* v. *Morris*, 385, U.S. 231. The Court, by a 5-to-4 vote, upheld the validity of a section of the Constitution of Georgia which provided that a majority of the State legislature shall select the Governor from the two candidates with the highest number of votes in a general election where no gubernatorial candidate received a majority vote.

Fourth. *Cooper* v. *California*, 386 U.S. 58. The Court upheld under the California Narcotics Law based on a search without a warrant conducted by the police of a car impounded by the police after the arrest of the criminal suspect.

Fifth. Walker against City of Birmingham, decided June 12, 1967. This case upheld the convictions on charges of criminal contempt of a number of civil rights demonstrators who had willfully disobeyed a State court injunction without first testing its validity.

I sincerely believe that, if the Senate assents to this nomination, the quality of the performance of the Supreme Court will be further diminished.

In No. 78 of the Federalist, Alexander Hamilton discussed the Judiciary Department of the Government. He defended the establishment of an independent judiciary against attacks that the judicial power of interpreting the Constitution and laws might be transformed by Judges into the power to make laws with the following explanation:

> To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them.

The testimony of the nominee before the Judiciary Committee and his public utterances clearly show that he feels that the Constitution of the United States is a "living document", and that while the wording of the Constitution does not change, the meaning sometimes does.

And if there are those who believe that this nominee should be confirmed to serve on the Supreme Court because it is thought that the incorporation of his social and political philosophy into the Constitution and laws of the United States would be a desirable occurrence, I can do no better than to quote the language of Mr. Justice Brandeis, dissenting in the case of *Olmstead* v. *United States*, 277 U.S. 438, 479. He used the following eloquent language to answer this argument:

> Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficient. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

I sincerely hope that the Senate will not advise and consent to this nomination.

EXHIBIT 1

HUMAN RIGHTS—CIVIL RIGHTS: FROM THEORY TO PRACTICE

(Remarks by Hon. Thurgood Marshall, Solicitor General of the United States before the Law Day Luncheon, University of Miami, Miami, Fla., April 27, 1966)

The President of the American Bar Association set the theme for Law Day—1966 as follows:

"Our nation will celebrate in 1966 two notable milestones in the life of our republic. One is the 175th anniversary of the Bill of Rights. The other is the 190th anniversary of the independence of the United States.

"It is appropriate that on May 1 we also will be celebrating Law Day USA with the theme: 'Respect the Law—It Respects You'."

* * * * *

In discussing this theme I shall dwell on what I consider to be paramount: "Human Rights—Civil Rights" and more particular "From Theory to Practice."

Save for Viet Nam and the drive for peace throughout the world, public opinion—professional and lay—is focused on the so-called Negro revolution in the United States and the War on Poverty. Indeed, all three are part of the same cloth. Our world leadership and the struggle for peace is evaluated and re-evaluated by democracy as it is practised at home. We can never explain away our mistreatment of minorities, whether because of race or lack of financial affluence.

Recent demonstrations ranging from the peaceful Selma march to the violent riots in Los Angeles, California, are dramatic enough to cause all to pause and seek out the causes and inevitable solution. Then, too, our present judicial processes including the present method of jury trials in the South—indeed our entire judicial system needs more careful study. Whichever way you look at it, we must seek the removal of all barriers in American life which are based on minority status whether racial or financial, or both.

Since the oldest and most consistent example of mistreatment of minorities has focused upon Negroes, a fair understanding of our present problem requires a glimpse into the past. Being a constitutional democracy we first look to our basic statutory structure. Beginning with the Declaration of Independence we remember that Jefferson sought to have slavery condemned in the Declaration of Independence. He was unsuccessful. Secondly, the constitution of our government expressly recognized slavery and gave legal support to it.

It should also be borne in mind that by that time the status of Negro Americans was being crystalized. In fact, *two worlds* were being set up within the *same* democracy.

During the early part of the 19th century, despite the great drive of abolitionists and others, there was always the recognition of the so-called inferiority of the Negro—even the free Negro. There were instances of refusal of admission of Negroes to abolitionist meetings.

All of this was brought about by the propaganda of many southerners, especially the southern professors. These men, *for the sole purpose* of continuing slavery, managed to convince others that scientific studies actually proved the inferiority of Negroes, and it had its effect.

After the Civil War, Congress made its first efforts toward removing state imposed racial discriminaton by passing the proposed Fourteenth and Fifteenth Amendments and the Civil Rights Acts. The obvious purpose was to make Negroes equal citizens entitled to federal protection of their civil rights. The supreme effort in the Civil War, the rough struggle to get the bills through Congress and the urgency of expandng our country to the West Coast exhausted the liberals

and the struggle for protection of the Negroes was abandoned after the Reconstruction Era.

The executive branch of government never had any intention of moving in. Finally, the Supreme Court with its decisions in the Civil Rights Cases (1883) and *Plessy v. Ferguson* (1896) were interpreted as final abandonment of efforts of the federal government to protect the civil rights of Negroes. The states resumed much of their pre-war practices of deliberate racial discrimination. Now we had the two worlds within the one world of citizenship. This was true—whether by law in the South or by practice in the North. Or, to put it another way, whether by action of the states or inaction by the federal government, they both recognized two classes of citizens divided by color—two worlds within one.

And, so it was until the 1930's.

Neither the Executive nor the Legislative branches of the Federal Government could be persuaded to move. However, the federal courts found a way to fill the vacuum. Through its power of invalidation of state law, the Supreme Court has wrought fundamental changes in the structure of our society. My point can best be made through example, and I chose the example of *Brown* v. *Board of Education*. So much has happened in the decade since the decision, and people's expectations have risen, quite justifiably, at such an accelerated pace, that we often lost prospective. Yet just twenty-five years ago most Negroes' lives were constricted by a whole series of state-imposed and state-fostered laws and regulations designed to foreclose them from participating in the political process and to prevent them from attaining any sort of social or economic equality. In the last decade, however, there has been a massive assault on this citadel, and today we find the legislature, the executive and the general populace joining, and to some extent directing the assault.

What crumbled was not merely a network of legal rules; it was a whole social system bent on keeping the Negroes in a position of inferiority, a social system which relied on and was inspired by the Jim Crow laws. Segregation was constitutionally condemned, and it was thus stripped of all moral predicates. For Americans view the constitution as a set of moral commands, guides to civilized communal living, not just technical and specialized guides to good government. In this struggle for racial equality the Supreme Court served, at least in 1954, as a voice not of contemporary opinion but of communal conscience, or in Chief Justice Hughes' earlier characterization, as "teachers to the citizenry."

The contrast between this use of the power of invalidation and that which confronted the early welfare and New Deal legislation has often been drawn; but the essential distinction can also be expressed in terms of the concept of social change. In the first half of the twentieth century the power of invalidation was too often used to frustrate recently enacted legislation designed to effect a wholesale change in the social order; yet *Brown* v. *Board of Education*, and its progeny, initiated and required social change. History has judged the first use of this power of invalidation to be misconceived, while it will surely vindicate the latter. The difference is not hard to explain. The Supreme Court's leadership in the struggle for racial equality stems from two profound insights; first, the status quo had fallen short of a central constitutional ideal, the egalitarian ideal, and secondly, all other societal institutions, especially the more representative institutions, refused to assume a major responsibility in working toward the realization of this ideal. With the welfare legislation, on the other hand, these justifications did not exist; no central constitutional ideal was threatened, and there was no default on the part of the other societal institutions.

This contrast reveals two conditions that justify transforming the power of invalidation, spawned in a more modest context, into an active instrument of social change—an established social pattern that threatens a central constitutional ideal and a default by other societal institutions. The point to be made, however, is not purely an academic one. It suggests to me that the curtain has not, and should not come down, on the Supreme Court's active engagement in the process of social change, of requiring that our social living conform to our social ideals. Recent voting legislation might lessen the burden on the courts in the struggle for racial equality, and other federal legislation might provide much of the long overdue reform. Yet on the constitutional horizon there looms the problems of the large metropolitan ghettos, both a product and a cause of the fears and prejudices of our generation, and the massive injustices inflicted on the poor; the "other America" is still with us. The hope is not that the Supreme Court will singly take up the burden of eliminating these injustices through requiring further reform, but that the other social and political institutions will make it a joint enterprise, if not their special responsibility.

The object was to insure that basic human values were not violated by state law enforcement officials in the course of, or in the name of, administering state criminal law. If the ordinary citizen came in contact with law enforcers they were usually representing the non-federal levels of government. While, hopefully, only a minority of the population would come in contact with law enforcers, this enterprise could hardly be considered specialized: as a logical proposition all the citizenry was susceptible to the abuses, for it was impossible to insure against being included in the minority, and the enforcement of the criminal laws is one of the most direct or immediate confrontations between the individual citizen and the state.

The Supreme Court's involvement in reforming our criminal processes began thirty years ago, and it has continued down to the present, with ever greater intensity. The brush strokes have been getting broader and broader, and the result has been, in my opinion, to remove anachronisms which have no place in our society. Guaranteeing the right to counsel and protecting the personal rights of the Fourth and Fifth Amendments through the imposition of exclusionary rules have been among the more significant changes. There is little point to turning this address into a refresher course by summarizing these developments; but I would like to analyze them on a more institutional level.

We often lose sight of the fact that courts have traditionally engaged in this type of reform. The quality of the judicial process has always been the special province and special responsibility of the courts. Even where other institutions, such as the legislature, have participated in this reform, it has usually been as a response to judicial promptings. For example, those protesting against the imposition of the new exclusionary rules often overlook the hearsay rule, a massive judge-created exclusionary rule designed to protect less worthy interest than constitutional rights. Of course, there is a vital distinction. Traditionally the judicial reform of the judicial process has been initiated and effectuated by the courts whose process was being challenged; here the reform has emanated from the federal courts, which some would like to view as the courts of another, though supervening, jurisdiction.

There is one unique facet to this reform. The constitutional principle upon which these decisions are based, the principle that no individual shall be deprived of his life or liberty without due process of law, is an evolutionary principle—its contours change with the gradual evolution of our communal values. The process that is due in the next generation is not necessarily the one afforded in this. This fact gives judges more freedom of decision than is usually permitted under the doctrine of stare decisis, but, on the other hand, it can confront judges with a delicate and torturous problem, one that confronted me on more than one occasion during my judicial career—how can you gauge this evolution, how can one be sure that he is remaining sensitive to this evolution without overstepping it? This fact also means that under the Due Process Clause there is infinite possibility of reform. The courts cannot rest in their vigilance, they can never be sure that its engagement of reforming the criminal process has been completed. Even though, as a national proposition, we have moved a long way from those initial outrages perceived in *Brown* v. *Mississippi* and *Powell* v. *Alabama*, gross imperfections still remain, if the standard of judgment is contemporary communal values. Pre-arraignment procedures in the station house; bail; pretrial publicity; the right to a speedy trial; pretrial discovery; the admission of evidence dealing with the accused's prior criminal record; the right to counsel in specialized proceedings, such as collateral attacks, commitment proceedings, and revocation-of-parole proceedings. These are just some of the areas that will come under particular scrutiny in the years to come, and the areas in which radical reform will take place.

This is not just a prediction. It is an invitation to all to join in this task of reform. The Supreme Court's extraordinary posture of leadership in reforming the criminal process can in part be attributed to a serious default by other institutions, and it seems to me that the time has come when the burden must be shared. Sharing the burden will add to the resources that can be used in this enterprise; it will tend to gain a more popular backing for the reform when the reform is initiated by institutions closer to the citizenry, such as local courts and local legislatures; and many of these institutions may be able to implement these reforms in a manner that is more flexible than that usually exercised by the judiciary. To be sure, this is not only an invitation to the local courts and local legislatures—it is also addressed to all members of the bar and the public at large. Through their professional associations lawyers can initiate and press for this reform, and each lawyer engaged in a criminal trial, whether as prosecutor or defense counsel, possesses a special responsibility and power—the power of self control—to insure that the trial conforms to our highest traditions of fairness and justice. Public opinion should insist on this.

The Supreme Court's involvement in the process of social change, through protecting the right to criticize the status quo, invalidating laws and institutions, such as racial segregation, which fall short of central constitutional ideals, and reforming the criminal process provides part of the explanation why the Court has found itself in the center of an intense controversy. Some of the criticism flows from those whose material selfishness and self-satisfaction lead them to resist any change in the status quo with fury. They are not my concern here. There are others, however, whose criticism of recent Supreme Court doctrine stems from a more intellectual level. They are my concern. I am not referring to those who merely feel that the issue was a "close" one, that they would have decided the issue differently than the majority of the Supreme Court had. That kind of disagreement is the lifeblood of the law; the vigor of such disagreement is an occasion to rejoice rather than despair. Instead my concern is with the intellectual or professional criticism that reflects a profound element of misun-

derstanding. It reflects a refusal to accept a new concept of law, to shake free of the nineteenth century moorings and to view law, not as a set of abstract and socially-unrelated commands of the sovereign, but as effective instruments of social policy. In recent decades the Supreme Court has transformed the law into an effective instrument of social policy, and the example *par excellence* is its involvement in the process of social change. The resistance to this transformation is the basis for much criticism and much misunderstanding. It seems to me more important to recognize this transformation, than to debate its propriety.

In recent years we have witnessed great strides toward bringing our every-day practices into line with our theories of Human Rights and Civil Rights. Under the leadership of the late President Kennedy and President Johnson the Executive and Legislative branches of our government have assumed their leadership in this struggle. The 1964 Civil Rights Bill and last year's Voting Rights Bill are setting the framework for guaranteeing the protection of basic civil rights for all Americans.

The War on Poverty and the several measures to provide adequate counsel to indigent defendants go a long way toward removing the bars of poverty.

The gap between theory and practice is being shortened but there is much to do. Much for all of us to do. Once a year we stop to evaluate our legal framework on Law Day. Too often we consider that sufficient to hold us for another year. We return to the old rut of "business as usual." Regardless of how much our government does or will do in the future, we will not close the gap until each of us makes Law Day for every day in the year and each takes this as his individual personal responsibility.

Mr. ERVIN. Mr. President, the able and distinguished Senator from Arkansas [Mr. McCLELLAN] has been called out of the city because of the death of a dear friend. Pursuant to a request made of me by him, I ask unanimous consent that his views with respect to the pending matter be printed at this point in the body of the RECORD.

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

STATEMENT BY SENATOR M'CLELLAN, READ BY SENATOR ERVIN

Mr. McCLELLAN. Mr. President, the crime menace is today the greatest internal threat to our Nation's security. It is reaching astronomical proportions. Accompanying this rising crime rate is a corresponding decline of respect for law and authority. It is my belief that a majority of the Supreme Court has materially contributed to the current lawless trend by going far astray in their interpretation and application of the Constitution in recent decisions that have favored the criminal to the injury of society.

The members of the Supreme Court are in a position to wield great power in their interpretation of the Constitution. There have been split decisions whereby the vote of one member of the Court has radically changed the "law of the land" that has served society well for many decades. The present philosophy of the Supreme Court seems to have as one of its chief aims the establishment of more and more individual rights for the criminal suspect.

I had been hopeful that Judge Marshall, or whomever the President nominated, would profess a philosophy substantially different from that espoused by a majority of the present Court. Unfortunately, nothing Judge Marshall has said during these hearings indicates that his views on the crime issue differ from those of the present majority of the Court. On the contrary, I am convinced he fully shares their philosophy. For this reason, and for the well-being and the confirmation of the nomination of Judge Marshall to serve as an Associate Justice of the Supreme Court.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. FONG. Mr. President, the Senate is now considering what to me is one of the historic nominations to the Supreme Court of the United States—that of Thurgood Marshall.

It is my conviction that Mr. Marshall was nominated to that very important post primarily because he has demonstrated in his distinguished career that he is a lawyer and a judge of excellent ability, an American of unquestioned dedication to high principles, and a man of deep compassion and great integrity.

Born in Baltimore 58 years ago, the great-grandson of a slave, Mr. Marshall is one of our foremost citizens of Negro ancestry—a fact which renders his nomination a matter of pride to Americans everywhere.

For 23 years, as chief attorney for the National Association for the Advancement of Colored People and for its legal defense and educational fund, he has been in the very forefront of the long legal battle to secure the ideals of equality and brotherhood to all Americans.

In 1941 he worked on a case that finally upset the Texas white-only primary election system. He helped integrate the University of Alabama in 1956, Central High School in Little Rock, Ark., in 1957, and was a leader in the Birmingham civil rights demonstrations before Martin Luther King.

He has argued 32 civil rights cases before the U.S. Supreme Court, winning all but three of them. His most famous victory was the Court's 1954 ruling that the separate-but-equal doctrine of school segregation cases was in violation of the 14th amendment to the Constitution.

In 1961 Mr. Marshall was named by President John F. Kennedy to sit on the U.S. Court of Appeals for the Second Circuit, a bench that is perhaps second only in importance to the Supreme Court. Then, in 1965, responding to a presidential request, he became the Solicitor General of the United States, the third-ranking post in the Department of Justice.

Mr. Marshall thus brings with him a professional record of impressive proportions. Both in private practice and in public office and, indeed, in all his life, he has repeatedly demonstrated those qualities which we admire in members of our highest tribunal: thoughtfulness, thoroughness, moderation, fairness, warm compassion for his fellow man, and a balanced approach to controversial and complex national problems.

In short, he possesses the judicial temperament and wisdom long regarded as prerequisite to membership on the High Court.

One clear manifestation of his great wisdom and judiciousness is the fact that he had the good sense to marry a charming young lady from my State. In 1965 he married Cecelia Suyat, who was born in Puunene, Maui, and raised in Honolulu, Hawaii. The Marshalls have two sons—Thurgood, Jr., 11 years old, and John William, 9 years old.

I am sure that Mrs. Marshall has been a source of great strength and inspiration to her husband.

She comes from a very fine family of Hawaii. Her father, Juan Suyat, now in his late seventies and living in Honolulu, is one of the eight or nine survivors of the very first group of workers brought to Hawaii from the Philippine Islands in 1910.

Mrs. Marshall was the fourth child born to Mr. and Mrs. Juan Suyat. Her three brothers and three sisters have all become productive members of society in Hawaii and in other areas of the Nation.

Hawaii rejoices, as I do, in Mr. Marshall's nomination.

Hawaii shares the great pride of the Nation as Thurgood Marshall mounts the High Court bench, one of the pinnacles of power in our system of government.

We are all well aware, I am sure, that the name Marshall is one of the most illustrious in the annals of American constitutional law.

From the time of Chief Justice John Marshall to the time of Thurgood Marshall, this Nation has made tremendous strides to make a reality the ringing words of equality in our Declaration of Independence.

I am convinced that, upon confirmation of the nomination, another Mr. Justice Marshall will serve with great distinction.

Mr. President, I am delighted to support the nomination of Thurgood Marshall in the strongest terms possible. I am confident that the Senate will vote to confirm that nomination today.

And as Mr. Marshall undertakes his new responsibilities, I wish to extend to him and his wife and sons Godspeed, and aloha pumehana.

Mr. TYDINGS. Mr. President, the man whom we are now considering as an Associate Justice of the Supreme Court has already had a career of distinction and service to his country which few men can hope to realize in an entire lifetime. But, in my view, Thurgood Marshall stands merely at the beginning of his greatest time of service. In supporting Marshall's nomination before the Senate Judiciary Committee, I stated my belief that if Marshall's service on the Supreme Court simply matches the distinction of high integrity which have marked his earlier private and public legal career, Thurgood Marshall will

rank among the great Justices who have served on the Court. When the Senate confirms Marshall's appointment, my prediction will be put to the test, and I am confident that I will be proven right.

Let me briefly review Marshall's private and public careers thus far, to indicate the grounds for my prediction, and to indicate in addition how monumental his achievements have been and, accordingly, how high a standard he has set for himself to match as a Supreme Court Justice. I take special pride, as a Senator from the State of Maryland, that Marshall's childhood, public education, and early career were spent in Baltimore. In 1930 he graduated with honors from Lincoln University and went on to the Howard University Law School, where he graduated first in his class. He then entered private practice of law in Baltimore and became counsel for the Baltimore city branch of the National Association for the Advancement of Colored People. From there, he joined the national legal staff of the NAACP and in 1938 became its chief legal officer. In that position, he argued 32 cases before the Supreme Court, and in those arguments forged dramatic victories for the principle of equal justice under law for all American citizens. His legal victories for equal rights gave renewed strength to the fabric of our democratic society and laid the groundwork for legislative and executive action to make equal rights for all citizens a living reality in this country. That battle has not been fully won yet. But Marshall's legal pioneering remains a fundamental basis of impetus for that battle.

In 1961 Marshall's legal talents were brought to a new career, a career of public service in which he has shown distinction equal to his earlier work. In that year President Kennedy nominated Marshall as a judge of the Second Circuit Court of Appeals, and in 1962 the Senate confirmed the nomination. Then in July 1965, President Johnson called on Marshall to assume new duties as the 33d Solicitor General of the United States. The Senate confirmed the nomination of Marshall in that position in August 1965.

As a private attorney, as a judge of the court of appeals, and as Solicitor General of the United States, Thurgood Marshall has had a career of accomplishment and service that can serve as a model for the aspirations of all Americans. As Justice of the Supreme Court of the United States, he will crown his achievements with high distinction.

Mr. TOWER. Mr. President, I will vote to confirm the nomination of Thurgood Marshall as an Associate Justice of the Supreme Court, although I wish to make it crystal clear that had the choice of an appointee been mine, I would have selected an American of more moderate, more conservative philosophical bent.

I am, of course, much concerned about any further Court imbalance, and I hope that such imbalance will not, generally, result from Marshall's service as one of our Supreme Court Justices.

I am concerned lest further liberalization of our Constitution and laws make local, State, and Federal law enforcement even more difficult. Recent Court decisions have favored the criminal in such a way that our society as a whole has been harmed. Hopefully, additional, strong anticrime legislation can be passed by this session of Congress and will limit substantially and mitigate effectively both past and future Supreme Court decisions.

Be that as it may, I wish to state briefly my restrained reasons for voting for this confirmation. Leading lawyers and jurists have attested to Marshall's qualifications. They have detailed for the Judiciary Committee, for the Congress, and for the public Marshall's legal and judicial capabilities. Their praise is, by and large, exceedingly high. I have noted that many lawyers and jurists feel that it is not so important to have one with a particular philosophical outlook on the Supreme Court as it is to have one who is qualified in the law.

Respected lawyers and jurists have, since the founding of this Nation, made a continuing effort to secure for the Federal bench those possessing exceptional legal qualifications. I have the greatest respect for our legal associations collectively and their members individually. I have the highest regard for the legal and judicial knowledge of our outstanding colleague, Senator ROMAN HRUSKA. Senator HRUSKA advised the Judiciary Committee that he had approached this matter on the basis of Marshall's qualifications in the discharge of his official duties as circuit judge and as Solicitor General, and that in his opinion Marshall has displayed a knowledge and ability, which qualifies him for the Supreme Court.

On the basis of these strong representations from America's lawyers and from such Senators as Senator HRUSKA, I will vote for this presidential nomination and hope that the result will be not a reflection of some of Mr. Marshall's past political statements but rather an even-handed and just approach to our Nation's rule of law.

Mr. KENNEDY of New York. Mr. President, we demonstrate the ideals of our society by the dignity and equality with which justice is administered in our courts. And the path of the law is guided most surely by men who are large in spirit and broad in experience. Men of this mold—like John Marshall, Joseph Story, Oliver Wendell Holmes, and Louis Brandeis—have made of our Supreme Court a place where the wisdom of the law acts on human experience to the benefit of all. In urging this body to confirm the nomination of Thurgood Marshall to the Supreme Court, I am urging the confirmation of the nomination of a man who has both the spirit and the experience to continue in that tradition.

For in nominating Judge Marshall, President Johnson has selected for our highest Court a man who brings with him not only a long and distinguished career of widely varied legal experience, but also a man whose work has symbolized and spearheaded the struggle of millions of Americans for equality before the law.

In his decades of work as counsel to the legal defense fund of the NAACP, he was a familiar figure in the halls of the Supreme Court, arguing case after case for petitioners seeking vindication of their constitutional rights. Through his advocacy and the Court's response, he helped to change the law, and to enhance the compassion of our law in its recognition of human dignity. He appeared before the Court to argue that participation in a primary election could not be determined according to race—and the Court established that principle in 1944. He argued that courts should not enforce convenants restricting property sales by race—and the Supreme Court so held. And he was counsel for the petitioner in the historic case of Brown against Board of Education, which proclaimed the right of all children to educational opportunities equal in fact as well as in form. These activities alone attest to Judge Marshall's ability, and secure his place in history.

But Judge Marshall went on to serve with distinction on the U.S. Court of Appeals for the Second Circuit in the tradition established before him by such judges as Learned Hand, Augustus Hand, Jerome Frank, Thomas Swan, Carroll Hincks, and Charles Clark. His performance on the court demonstrated once again that justice is produced by blending wisdom with compassion. Now, for 2 years, he has served as Solicitor General of the United States, returning to appear before the Court again, but this time to represent the United States—but the change of position did not reduce the skill and humanity of his advocacy, the skill and humanity which his whole life represents.

For Judge Marshall is in every sense a man large in spirit—a man who combines the very best qualities of conviction, principle, and integrity. And these are joined with a sparkling wit that captures all who have had the pleasure to work with him.

After a long and varied life in the law, Judge Marshall will upon confirmation begin a new chapter as an Associate Justice of the Supreme Court. He brings with him a unique preparation for service on the Court—a national reputation as advocate in all the courts in the land, distinguished service as appellate judge, and Supreme Court advocate for the United States as Solicitor General. He is, in my judgment, immensely qualified for our highest Court, and I urge the Senate to vote to confirm the nomination.

Mr. YARBOROUGH. Mr. President, Solicitor General Thurgood Marshall had a fantastic record of winning cases before the Supreme Court of the United States before he was appointed Solicitor General.

Thurgood Marshall won his cases before a so-called conservative Court and then before a so-called liberal Court. He could win his cases before any kind of court. Thurgood Marshall is a lawyer's lawyer.

Sometimes in the past lawyers have complained that Presidents have appointed politicians rather than lawyers. That could never be charged here.

In the case of Thurgood Marshall, President Lyndon Johnson has appointed a lawyer who has a record of winning cases in the courts that is probably the envy of every lawyer in America. Thurgood Marshall has risen to the level he has through his competence as a lawyer

in the courts. I recommend the confirmation of his nomination.

Mr. PERCY. Mr. President, in considering Mr. Marshall for the post of Associate Justice of the U.S. Supreme Court, we consider not only a man who has traveled a long and arduous road paved with achievement, but we also consider those achievements.

Like all who have known him, I can attest to his wisdom, courage, and introspection—qualities much to be sought in a member of the Supreme Court. Of those who sit there we demand restraint and self-awareness—and these traits Mr. Marshall has as well.

I need not recite his achievements—his meritorious educational record, his long years with the NAACP, his record of cases argued and won, his brief but notable service as a judge of the U.S. Court of Appeals and as Solicitor General. His record demonstrates the capacity and desire to work long and hard, the ability to make the law a living organism which accommodates both precedent and change, and the necessary combination of knowledge of the world and of theory admirably equipping him for his new position.

I am honored to be able to cast my vote for a man of whom it is not trite to say he is a scholar and a gentleman.

THURGOOD MARSHALL—FULFILLING THE AMERICAN DREAM

Mr. KUCHEL. Mr. President, I shall support the nomination of Thurgood Marshall to be an Associate Justice of the Supreme Court of the United States. His nomination to membership on this country's highest judicial bench reflects the American tradition in its finest sense.

Here is a lawyer from humble origin whose ability and dedication have pushed him to the peak of his chosen profession. Thus, his nomination marks the climax of a distinguished career as judge, lawyer, Solicitor General, to become now an Associate Justice of our highest tribunal.

Thurgood Marshall is a man of proven ability, with an outstanding record as a lawyer and judge. For most of the years of his lifetime he has been recognized as an outstanding American lawyer. He is a highly creditable member of the American Bar Association.

When he was appointed to the Second Circuit Court of Appeals by the late President Kennedy in October of 1961, he participated in every type of case that comes before the Federal courts—in all, more than a hundred. And his years as Solicitor General certainly have helped to give him exposure to many aspects of the law which an Associate Justice must be familiar with and understand.

Leading American lawyers, highly respected jurists, and Members of Congress—House and Senate—have attested to Thurgood Marshall's distinguished career and high competence as a professional man. This Senate overwhelmingly confirmed his nomination both as a circuit court judge and as Solicitor General of the United States. His present nomination has been approved by the Committee on Judicial Appointments of the New York State Bar Association. It has been approved by the corresponding committee of the American Bar Association.

Having established a national reputation as a leading trial lawyer and litigator in the appellate courts of our land, having sat successfully and with distinction on the Nation's second highest tribunal, and having served as the advocate for the Government of the United States before the Supreme Court, Thurgood Marshall is unquestionably qualified to become now an Associate Justice of our Supreme Court.

When this nomination is confirmed by the Senate, as it shortly will be, the highest court of the land will possess its first Negro Justice. Thurgood Marshall will be confirmed, however, not because of his race but simply because of his background, competence, and ability as a lawyer and a judge.

The world and the American people will not ignore completely the fact that as a member of an ethnic minority, he will now sit on our supreme tribunal. I believe his selection is part of a larger process in which not only Negro Americans, but also Americans from all racial and religious backgrounds have begun to participate in the affairs of this Nation.

Among most, if not all, of the nations of the world, America is unique in many ways. In this country, our 200 million people represent all creeds and all colors. In a real sense, perhaps, each of us belongs to some kind of ethnic minority. The American dream is equal justice and opportunity under law. The Senate has been guided in its best hours by the American creed of equality.

Mr. President, today, the Senate again has an opportunity to express confidence in the American dream, a dream which says that every man, regardless of race, color, or creed, may achieve the goals he seeks in a free society. I shall support this nomination and place my faith in the American tradition and in the undisputed abilities of Thurgood Marshall.

Mr. KENNEDY of Massachusetts. Mr. President, Thurgood Marshall is an outstanding American citizen, a lawyer of the highest competence and broadest experience, a man to whom President Kennedy and President Johnson, with the advice and consent of the Senate, entrusted the very difficult positions of U.S. circuit judge and U.S. Solicitor General.

To my knowledge, no nominee for the Supreme Court has ever come before this body with such qualifications. No man has brought the Court such a depth of personal experience as an advocate at every level of the judicial system, as a Federal appellate judge, and as the Federal Government's chief litigator.

Yet, it is superfluous and redundant to make these points here. Most of us know Judge Marshall. We have his record before us. We have the report of the Committee on the Judiciary. There can be no doubt that he has fully earned and richly deserves the honor which the Nation is now bestowing upon him.

Mr. President, I had the opportunity to attend most of the hearings with respect to Judge Marshall's nomination. I heard Judge Marshall questioned at considerable length. He demonstrated during the course of those hearings—and the cold record does not reveal it fully—a perfect judicial temperament, expert knowledge of the law, and a profound ability to apply the law to difficult and trying factual situations. These qualities will certainly serve him well when he is confirmed by the Senate this afternoon.

I know that the questions have been raised during the course of the afternoon about the temperament and judicial philosophy of Judge Marshall. I believe it is recognized by most Senators that we are not charged with the responsibility of approving a man to be Associate Justice of the Supreme Court only if his views always coincide with our own. We are not seeking a nominee for the Supreme Court who will express the majority view of the Senate on every given issue, or on a given issue of fundamental importance. We are really interested in knowing whether the nominee has the background, experience, qualifications, temperament, and integrity to handle this most sensitive, important, and responsible job. Mr. President, I think that Thurgood Marshall has demonstrated that he does have these qualifications and qualities.

In addition, as Senators, we bear a considerable responsibility to the President. The President is charged under the Constitution with sending to the Senate, for the advice and consent of the Senate, all nominations for the Supreme Court. I think it is important to realize that every one who votes against Judge Marshall's nomination this afternoon is also suggesting by his vote that the President has not really met his responsibility in making this recommendation and suggestion to the Senate and to the American people.

The responsibility of the President is quite clear; he has exercised it and exercised it well, I believe. Our responsibility for advising and consenting to this nomination is also clear, and I am sure we will meet it.

Mr. President, I would urge upon all Senators that Mr. Marshall be confirmed. I think the record he made during his career, and during the hearings before the Committee on the Judiciary, and the opinions of men who have known him over many years, who have dealt with him in a close and intimate way, and who have an understanding of his knowledge and experience in the law, make a compelling case for the confirmation of Thurgood Marshall. I would hope that we would act expeditiously and that Thurgood Marshall would be approved overwhelmingly.

Mr. THURMOND. Mr. President, the trend of the decisions of the Supreme Court over the past three decades has caused me much concern. I am not alone in feeling that many of these decisions have torn away at the fabric of our basic law and have rendered it impotent in many areas. Dissatisfaction and downright hostility to many of the edicts of the Supreme Court within this period of time has spread across this country without regard to particular geographical or

regional considerations. This dissatisfaction and concern for the future of the country has been no less expressed in the Halls of Congress, where it has been attempted on many occasions to overturn decisions of the Supreme Court which deviate from the basic intent of the Founding Fathers in drafting the Constitution. Efforts of this nature have met with little success, since in most cases the Constitution must be amended to reinstate the original meaning which has been understood and accepted for years prior to the decision of the Court in question. Since this requires a two-thirds vote in Congress, these continuing efforts have been of little avail.

Dissatisfaction without a remedy, the same as unrequited love, soon turns to a sense of frustration and could lead to an undermining of the institution which is responsible. The Supreme Court of the United States, as an institution, is as necessary and as essential an element of our Government as any other creation provided for in the Constitution. Yet its excesses seem to have been particularly immune from the checks and balances thought necessary by our Founding Fathers to provide for representative government in this country. Of course, there are avenues available by which Congress can correct abuses of the Constitution engaged in by the Supreme Court. Theoretically, the Constitution can always be amended; as a practical matter, as we have seen, this is not always possible. Theoretically, the power of the Supreme Court to hear cases on appeal can be denied it; as a practical matter, it is extremely difficult to guide such a bill through Congress. Theoretically, any individual Justice or any group of Justices can be removed from their position on the Supreme Court by impeachment; practically, as we have seen, this is virtually impossible.

The last remaining outside check upon the Supreme Court is the necessity that its membership be appointed by the President, subject to the approval of the U.S. Senate. The approval of the Senate, in far too many instances in recent years, has been largely a perfunctory matter. This leaves only one real restraint upon the Supreme Court, and that is the judicial self-restraint practiced by the individual members. It is an understatement to say that this self-restraint has been somewhat lacking in recent years.

In opposing confirmation of the nomination of Thurgood Marshall to be an Associate Justice of the Supreme Court, I do not rely solely upon his oft-expressed legal, or political, philosophy that the Constitution is a "living document." To characterize the Constitution as a "living document" is one of the most popular notions of the day, and this is indeed an attractive sounding appellation. When one understands the exact meaning of the phrase, however, one is forced to the stark realization that it is a phrase designed to cover a multitude of sins committed in the name of constitutional interpretation. Indeed, under this theory the Constitution lives more in the imagination of its interpreters than in its original meaning and intent.

The Constitution must be interpreted in accordance with the intent of the framers. Any Justice of the Supreme Court of the United States, or nominee for that position, who believes that he is entitled to change the meaning of the Constitution as understood by its framers in order to meet the fads and fashions of the day, or to accord with his own particular notion of right or justice, is clearly unfit for a post on the Supreme Court. In this respect the nominee, Thurgood Marshall, has clearly indicated, in his response to numerous questions posed by several members of the Senate Judiciary Committee, that he does not consider himself bound by the original intent and understanding of the framers of the Constitution. He repeatedly stated in response to questions that the most potent evidence of the intent of the framers on specific points of original understanding was not conclusive as to the present meaning and application of constitutional principles, particularly the provisions of the 14th amendment. It appears clear that the nominee considers himself to be a free agent in interpreting the Constitution to the extent that he could deviate from the meaning imported into the Constitution by its framers as evidenced by their contemporaneous statements contained in the Congressional Globe and other relevant documents. Under this theory the Constitution would become, as perhaps it has already become, something similar to an old wine bottle from which the Supreme Court is entitled to pour out the old wine and pour in the new wine whenever they think the country needs a stiffer, or perhaps a more diluted, drink. I for one do not subscribe to any such theory. The Supreme Court does not have the power to make up new constitutional rules as it goes along, day by day. Inasmuch as the nominee indicates that the Supreme Court does have such power, judging from what I consider to be an objective evaluation of his position on the record, I cannot in good conscience vote to confirm him for a position on the Supreme Court.

The burden of my discussion against the confirmation of the nomination is not based exclusively on his philosophy, although this is a necessary consideration. Several Senators have indicated that they do not believe it to be within the purview of authority of the membership of the U.S. Senate to question the philosophy of an appointee to the highest court in the land. I do not accept this theory as valid, particularly in view of the fact that the philosophical biases of present day members of the Supreme Court have such a bearing upon their own interpretation of the Constitution.

Assuming, for the sake of argument, that this point is well taken and that the philosophy of the nominee is irrelevant, most assuredly the knowledge of the nominee about the law is relevant. The appointment by the President of a man to fill a vacancy on the Supreme Court carries with it a prima facie case that the appointee is knowledgeable in the law, at least to the satisfaction of the President. It then is incumbent upon the Members of the U.S. Senate, if they are to fulfill their sworn obligation to perform their duties as Members of the Senate, to inquire further into the legal training and knowledge of the nominee.

Accordingly, when the nominee was before the Senate Judiciary Committee, I took occasion to inquire into the extent of his knowledge, both of the law and the historical underpinnings, which are necessary to a clear understanding of the 13th and 14th amendments. It may seem to some, as it has subsequently been alleged, that the questions I posed to the nominee were either immaterial or irrelevant or exceeded that which any reasonable person would be expected to know about the 13th and 14th amendments. I readily admit that the ordinary lay individual could not reasonably be expected to be conversant with the material upon which I posed my questions. I would not even expect the ordinary practicing attorney or even the ordinary judge to be totally knowledgeable on the history and background, and consequently the meaning, of the 13th and 14th amendments. Perhaps to most if not all observers, the questions I posed to the nominee seemed obscure and even irrelevant. In most cases they would have been, but not in this one.

We are dealing here not with the ordinary individual, lawyer, or even judge. Thurgood Marshall has built his reputation upon a specialized practice of law, and I think we can reasonably assume a specialized knowledge and expertise in this field far beyond that which we would expect of another lawyer.

In the case of an average lawyer who has spent his years in general practice, or even a public official who has spent his years dealing with varied aspects of the law and related subjects, a detailed knowledge and understanding of any one particular aspect of law would hardly be expected. Many lawyers are general practitioners and the breadth and scope of their practice denies them of the time or opportunity to acquire specialized knowledge in any one field. As I have said, Thurgood Marshall is a different case. From the time of his original admission to the bar, in the year 1933, until he became a Federal judge in 1961, his practice dealt almost exclusively with cases arising under and relating to the 13th, 14th, and 15th amendments to the Constitution, and enforcement legislation passed by Congress pursuant to those amendments. It is common knowledge that he rose to the position of director-counsel of the Legal Defense and Education Fund, Inc., of the NAACP, after serving in related capacities of a lesser importance with the NAACP for years previous to assuming this post. In this capacity he was repeatedly before the courts of the land, including the U.S. Supreme Court, arguing the interpretation and application of these amendments and the enforcement legislation related thereto. Over the years he has specialized in this field almost to the total exclusion of the many other varied areas of the law. If he has been either unable or unwilling to become totally and unquestionably eminent in his knowledge of this area of the law, in which he has been specializing virtually all of his adult life, it would hardly be expected that he has either the competency or the willingness to become knowledgeable about the

many other areas of the law which will be presented to him for decision, should he be confirmed by the Senate as an Associate Justice of the Supreme Court.

In my judgment, it was, therefore, entirely fair and appropriate that I propounded to the nominee certain fundamental and basic questions which were designed to show his historical and legal knowledge as well as to disclose his personal biases about the so-called Reconstruction amendments.

Mr. President, I think that it is a fair observation to say that the nominee displayed a surprising, for him, lack of knowledge of the area in which he is almost daily depicted as the outstanding scholar. I had previously assumed that in his role as advocate, in which he attempted to advance his own interpretations and persuade the courts of the validity of his position, he had conveniently overlooked many historical factors and many contemporaneous statements by the drafters of these amendments that would have brought the validity of his own position into question. Nevertheless, I felt it safe to assume that he was aware of these statements since his role in cases dealing with this certainly required extensive study and preparation. I was hoping, perhaps vainly, that since he was now being appointed to a position which no longer required him to be an advocate, but rather an objective judge, that some of the knowledge of the counterarguments to his previous positions would rise to the fore and find expression in his response to my questions. As a result of my questioning, I am forced to the conclusion that he was simply not aware of the counterarguments and further was not aware of some fundamental understandings extant during the time when these amendments were drafted and made a part of the Constitution.

I should like to mention briefly some of the areas which we discussed at the hearings and their significance in relation to a proper interpretation of the amendments.

Beginning with the 13th amendment, I first asked if the nominee knew who drafted the 13th amendment. I felt certain he would know this, since it seems to me that in interpreting the exact meaning of such a momentous addition to the Constitution one would endeavor to find out who drafted it and then look to what he said about it at the time, in order to fathom its exact purpose. Senator Lyman Trumbull, of Illinois, the then chairman of the Senate Judiciary Committee, was the drafter of this amendment. Perhaps after all, this is an unimportant point and we will not fault him for not recalling the name of the drafter.

I went on to more important questions dealing with the 13th amendment, such as from what provision of the prior law the language of the amendment was copied and of what legal significance it was that the amendment was copied from a prior provision of the law. To both these questions the nominee professed ignorance. The answer, of course, is that the 13th amendment was a virtual carbon copy of a provision contained in the Northwest Ordinance of 1787, and the legal significance of the fact that it was copied from a prior provision of the law is the fundamental doctrine that when a new provision is copied from an older one, the understanding and interpretations of the older one are considered to be carried over into the new. The answer to the latter question would not require any specialized knowledge of any particular area of the law, it is simply a well recognized and understood legal doctrine.

I then asked the nominee if he was familiar with any pre-1860 cases which interpreted the language contained in the 13th amendment forbidding involuntary servitude. Of course, his knowledge of this would have to be circumscribed by his knowledge of what prior provision of the law the 13th amendment was copied from and he was, therefore, not familiar with these cases. The nominee was unfamiliar with the scope of the term "involuntary servitude" and what limits it might place upon compulsory labor for the benefit of any private person. His answer to the question on this point was largely unresponsive, merely indicating that he would do research on the background of the 13th amendment and apply the law as he saw it to the facts of any individual case with which he might be presented. The nominee had no thoughts as to what kind of legislation would be prevented by the 13th amendment's prohibition against involuntary servitude. The nominee then displayed a total lack of knowledge of the legislative history dealing with the proposal and subsequent acceptance by Congress of the 13th amendment. An understanding of the exact purpose in the minds of the proponents of the 13th amendment, and therefore the meaning and correct application of the amendment, would necessarily require knowledge of the legislative history involved.

In the 39th Congress the House of Representatives initially failed to give a two-thirds vote to the proposition containing the 13th amendment. This occurred because all of the members of the Democratic Party opposed the amendment, and they constituted more than one-third of the entire body. They thereafter switched their vote upon being assured that the amendment had more meaning than simply doing away with the institution of slavery as it had been practiced in the South. The Democrats at that time were not particularly desirous of courting the Negro vote and, therefore, had not initially supported the amendment. The argument that the amendment was not limited solely to the protection of Negroes swayed enough Union Democrat votes to gain approval of the amendment in the House of Representatives.

An understanding of this legislative history would obviously be a prerequisite if anyone is to have any thoughts or opinions on the question of what "involuntary servitude" was intended to mean and what legislation would thereby be prohibited. Considering the fact that the 13th amendment was the first basis for Reconstruction legislation, this candid acknowledgment of the complete lack of understanding of the most basic and elemental portions of the amendment is astounding. It appears to me that at least a basic understanding of the phrase "involuntary servitude" is critical and that anyone who is a specialist in the area of the Reconstruction amendments would possess considerable knowledge on this point.

I then proceeded to ask the nominee a series of questions dealing with the Civil Rights Act of 1866 and the constitutional basis for that act advanced by its proponents when it was before the Congress. A basic understanding of this would appear to me to be desirable in attempting to understand one of the basic reasons for the submission of the 14th amendment to the Congress by its principal drafter. First, I asked the nominee if he believed the Civil Rights Act of 1866, which is now title 42 of the United States Code, sections 1981 and 1982, was constitutional before the ratification of the 14th amendment. Judge Marshall replied he was in the middle on that, but that he considered it unimportant because the amendment was adopted. I do not fault him for being in the middle on it since judicial authority in the United States was also split, but I do not believe that it can be characterized as unimportant even in light of the subsequent adoption of the 14th amendment. Prior to the adoption of the 14th amendment, the Supreme Courts of the States of Indiana and Texas, and Associate Justice Swain on circuit in Kentucky, had held the act constitutional. The Supreme Court of California held it to be constitutional 1 year, and with a change of judges held it unconstitutional the next. Courts of the States of Delaware and Kentucky held it unconstitutional.

I then proceeded to ask the nominee under what legal theories was the constitutionality of the Civil Rights Act of 1866 supported by its proponents. This is an important consideration in view of the fact that it subsequently led to the advancement and ratification of the 14th amendment. Judge Marshall correctly stated that the 13th amendment was one basis, but he failed to recall any others. The most important one, which Judge Marshall failed to recall, was the provision of the Constitution that I inquired about next: the privileges and immunities clause of article IV, section 2, of the Constitution.

My direct reference to this provision failed to refresh his memory or strike any responsive chord. Judge Marshall did not remember any of the theories which were then current in the Republican Party which would give support to the proposition that the Civil Rights Act of 1866 could be constitutionally enacted by Congress to enforce the privileges and immunities clause of article IV, section 2. From time to time there have been at least four theories advanced regarding the purpose of the privileges and immunities clause of the original Constitution. The first is that the clause is a guaranty to the citizens of the different States of equal treatment by Congress. The second theory is that the clause is a guaranty to the citizens of each State of all the privileges and immunities of citizenship that are enjoyed in any State by the

citizens thereof. The third theory of the clause is that it guarantees to the citizen of any State the rights which he enjoys as such even when traveling to or in another State; that is to say, it enables him to carry with him his rights of State citizenship throughout the Union. The fourth and final theory, and the one which has gained popular acceptance, is that the clause merely forbids a State from discriminating against citizens of other States in favor of its own citizens. The last theory has become a settled doctrine of constitutional law.

The theory current during congressional debate on the Civil Rights Act of 1866 was the second of the above enumerated theories: that the clause guarantees to the citizens of each State all the privileges and immunities of citizenship that are enjoyed in any State by the citizens thereof. Thurgood Marshall was apparently unfamiliar with any of these theories and was definitely unfamiliar with the theory then current in Congress in interpreting and applying this provision of the Constitution. Judge Marshall had no knowledge of the significance of the fact that the enforcement provisions of the Civil Rights Act of 1866 were copied from the enforcement provisions of the fugitive slave law and was either unfamiliar with the case of *Prigg* v. *Pennsylvania*, 16 Pet. 539 (1842), or did not understand its relevance in this regard. In response to my question about the Prigg case, Judge Marshall responded that the statutes in question, the Civil Rights Act of 1866, had been litigated over and over again and found to be constitutional. The point of the question was entirely missed, however, since they have been found to be constitutional on the basis of the 14th amendment, and this whole line of questioning dealt with the theory for the original enactment of the law which is necessary to a complete understanding of the purposes of the 14th amendment. One point of interest lies in the fact that Judge Marshall showed little or no familiarity with the case of Prigg against Pennsylvania. In his capacity as Solicitor General, Judge Marshall cited the Prigg case little more than a year ago in his brief in Katzenbach against Morgan. The case was cited as being highly relevant to an understanding of the power to enforce the privileges and immunities clause of article IV, section 2 of the Constitution, but the reference to it in this line of questioning elicited no glimmer of recognition from the nominee.

I then went on to ask what constitutional difficulties Representative John Bingham, of Ohio, saw, or what difficulties the nominee saw, in congressional enforcement of the privileges and immunities clause of article IV, section 2 through the necessary and proper clause of article I, section 8. Judge Marshall did not understand the question, but he was not alone in failing to grasp the import of the question. A full understanding of this question, and the previous questions in this line, are a prerequisite to understanding the basic purpose of the 14th amendment. The Civil Rights Act of 1866 was argued by its proponents to be constitutional on a particular theory of the privileges and immunities clause, to which I have previously referred. Further it was contended at that time that Congress had the power to enforce the privileges and immunities clause through congressional enactment. This is why it is significant that the enforcement provisions of the Civil Rights Act of 1866 were copied from the enforcement provisions of the fugitive slave law. Both the privileges and immunities clause and the fugitive slave, or fugitive from labor, clause of the Constitution are bracketed together in the Constitution. The fugitive slave provision of the Constitution, however, carried with it the authority for Congress to enact legislation. This was initially done in 1793, and the power of Congress to act under this provision of the Constitution has been upheld in the Supreme Court. On the other hand, the theory that congressional action is authorized by the privileges and immunities clause has been proved to be invalid. The privileges and immunities clause of article IV, section 2 is self-executing; its enforcement is dependent on the judicial process, and it does not authorize legislation by Congress. This provision of the Constitution is similar in that respect to the very next section of article IV of the Constitution, dealing with the extradition procedures for fugitives from one State to another. Both have been held to be responsibilities of the States, but neither is subject to congressional enforcement. Therefore, this provision does not delineate a power of Congress which can be legislated upon through the authority of the necessary and proper clause of article I, section 8 of the Constitution.

Representative Bingham, of Ohio, consistently held to the view, advancing it forcefully and correctly, that the privileges and immunities clause of article IV, section 2 was not a power of the Central Government or of Congress, or of any department of the Government, and, therefore, Congress had no authority to enforce it. On this basis he repeatedly voted against the civil rights bill, and for this very reason he was the principal framer of the 14th amendment. It is remarkable to me that the basic reason for submitting the 14th amendment in the first place should have escaped a man who has spent virtually his entire lifetime litigating the meaning of the amendment.

Inquiry was made of the nominee with regard to what he thought the term "civil rights" meant in 1866 and what rights were included thereby. The response was meaningless. Judge Marshall said:

> The rights included in the phrase "civil rights" in 1866 meant the rights that were considered civil rights at that time.

He went on to say:

> The delineation of them is not clear as of this day.

I strongly suspect that it is unclear only in the nominee's mind, since the debates on the 14th amendment repeatedly defined civil rights as being natural rights, such as life, liberty, personal security and property, as distinguished from rights derived from government. Civil rights, in the 1866 sense, referred to rights which the Government was created to protect, but not rights which were in themselves created by government. I asked the nominee what provision of the slave codes in existence in the South before 1860 was Congress desirous of abolishing by the enactment of the Civil Rights Act of 1866. Judge Marshall replied that the black, or slave, codes in existence prior to 1860 ranged from preventing newly freed Negroes from being able to own property, preventing them to vote, and preventing them from flying kites. The first portion of his answer, that relating to property rights was correct, but the portion of his answer concerning voting rights was incorrect.

The Civil Rights Act of 1866 was never intended to cover any political rights, including the right to vote. There is no mention anywhere in the debates that the Members of Congress were concerned that the State of Maryland would not allow newly freed slaves to fly a kite. This was a rather frivolous answer. The nominee did not mention any other important rights which were actively discussed in the debates, such as the right to contract, sue and be sued, and otherwise engage in occupations which they were prevented by law from being engaged in.

It was surprising to find that the nominee did not know that the Joint Committee on Reconstruction was the committee that reported out the 14th amendment and that he further did not know any of the members of that committee by name. I then asked the nominee why he thought the framers of the original version of the first section of the 14th amendment added the necessary and proper clause from article I, section 8 of the Constitution to the privileges and immunities clause of article IV, section 2 of the Constitution.

Mr. KENNEDY of Massachusetts. Mr. President, will the Senator yield?

I recall that during the course of the hearing, the Senator from South Carolina asked Mr. Marshall the names of members of the Judiciary Committee who served at the time the 14th amendment was established, and the Senator has just referred to it again. I was wondering if we could have that information included in the RECORD at this point. Does the Senator have that information at hand?

Mr. THURMOND. I will cover it before I finish.

Mr. KENNEDY of Massachusetts. Does the Senator have the names of members of the Judiciary Committee?

Mr. THURMOND. I will cover it before I finish.

Mr. President, I would prefer to finish my address.

Mr. KENNEDY of Massachusetts. I just raised this question because much was made of Mr. Marshall's knowledge of what many of us thought were extremely complex and complicated and esoteric questions. I noticed that in his remarks, the Senator referred to this question again. I thought it might be helpful, for the record to be complete, that now at least we have those answers.

Mr. THURMOND. I will cover it. Mr. President, the nominee replied that he did not know. Of course, the whole purpose of the 14th amendment, according to its chief advocate, Representative Bingham, was to secure enforcement of the existing privileges of American citizens. Representative Bingham, as previ-

ously noted, was of the opinion that Congress had no power to enforce the privileges and immunities clause of the original Constitution, and he therefore wanted by means of the 14th amendment to give Congress this power. Any person who had spent the bulk of his adult life studying the 14th amendment could certainly be expected to be aware of Representative Bingham's views and to have some knowledge of this interpretation and understanding of the 14th amendment.

In the debates, extensive reference was made to an incident in Charleston, S.C., involving Representative Samuel Hoar. I asked the nominee what the purpose was in referring to this incident as showing the need for the enactment of the original version of the 14th amendment's first section. The incident referred to occurred when a group of shipowners from the State of Massachusetts retained former Representative Samuel Hoar, who was an outstanding attorney as well, to go to South Carolina and litigate the constitutionality of the State statute which prevented free Negro sailors from entering the State and authorized imprisonment if they appeared in ships in Charleston harbor. Mr. Hoar unfortunately was not accorded protection by the local police and was ultimately expelled from the State by resolution of the State legislature. This was a sore point with many of the Members of Congress from northern areas and was repeatedly referred to in the debates as the prime example showing the necessity for a procedure to enforce the privileges and immunities clause of the Constitution on behalf of all citizens of the United States in all the States. It may very well be that this was one of the prime reasons for the enactment of the 14th amendment, particularly the first section thereof. Judge Marshall was unfamiliar with this incident.

Judge Marshall said that he did not have the slightest idea why the framer of the 14th amendment made the statement that if the privileges and immunities clause of the 14th amendment had been in the original Constitution the war of 1860–65 could not have occurred. Of course, it was Representative Bingham's view that had Congress had the authority to enforce the privileges and immunities clause, incidents such as the one involving Mr. Hoar which intensified hostility, could have been prevented and the war might thereby have been averted. Judge Marshall said that he did not know why the equal protection clause of the original draft of the first section of the 14th amendment required equal protection of the rights of life, liberty, and property only, in spite of the fact that it was obvious that this provision was copied from the fifth amendment and therefore limited to these fifth amendment rights.

Then I asked the nominee what the objections were to the original draft of the first section of the 14th amendment which caused the framer to redraft it into its present form. This question is highly relevant to present day issues because the objections raised were that there would be excessive centralization of power under the original wording of the first section of the 14th amendment. At that time, as today, many Republicans were opposed to further centralizing power in the Federal Government and wanted to disperse these powers among the States and reserve them to the people thereof. This is the reason that the framer redrafted this provision of the amendment so that it was worded in the negative and was, therefore, a limitation on State action and did not directly delegate power to the Central Government. An understanding of this seems to me to be central to a complete understanding of this amendment and I was, therefore, surprised that the nominee was unfamiliar with these developments.

A portion of a colloquy which occurred on the floor of the House of Representatives in February of 1866 among Representative Hale, Representative Bingham, and Representative Rogers was quoted by me. This colloquy can be found of page 164 of the Judiciary Committee hearings on the nomination, and dealt with the provisions of the constitutions of the States of Indiana and Oregon, and the application of the then pending 14th amendment to these provisions. Then I asked Judge Marshall what section of the Oregon constitution Representative Bingham thought violated the existing Constitution, and which he wanted to overturn through the equal protection clause of the then pending 14th amendment. Also I asked him what section of the Indiana constitution it was thought was in violation of the existing Constitution, and why the ratification of the proposed first section of the 14th amendment, either in the original draft or the final draft, would have overridden the Indiana and Oregon constitutions. Judge Marshall did not know. One of the principal reasons giving rise to the privileges and immunities, due process, and the equal protection clauses of the 14th amendment were provisions of the constitutions of these two States. Indiana had a constitutional provision preventing free Negroes from entering the State, owning land, getting a job, making a contract, or virtually existing in the State. The Oregon constitution of 1857 added to these provisions, a section preventing any Negro from even suing in the courts of the State.

During the debate on the admission of Oregon to the Union in 1859, this section of the constitution of the State of Oregon was bitterly attacked in Congress. Representative Bingham himself, in a long speech, pointed out it was a denial of the protection of the laws to bar a person from relief in the courts, because he would be at the mercy of any person who wanted to rob him, beat him, imprison him, take his property or otherwise commit injustices against him. Moreover, it was pointed out that the provisions of the Oregon constitution were in violation of the privileges and immunities clause of the original constitution, inasmuch as one of the privileges was the right to enter a State, engage in business there, or otherwise pursue one's livelihood in any individual State. As has been previously pointed out, one of the basic purposes of the 14th amendment was to enable Congress to enforce the privileges and immunities clause, so that every citizen could travel to all the individual States and conduct business or otherwise enjoy the rights pertaining to citizens generally. It is a little short of remarkable, that a nominee for the Supreme Court of the United States who has specialized in the 14th amendment for 25 years displayed no knowledge of these set of circumstances, which were so very important in bringing about the submission and approval of the 14th amendment to the Constitution.

The nominee was then asked three questions concerning the privileges and immunities section of the 14th amendment. Judge Marshall was not sure where this clause was derived from, he was not certain what the framer's purpose was in including it in the 14th amendment, and he could not lay down any broad, general guidelines on what privileges and immunities encompasses, which the 14th amendment prevents any State from making or enforcing any law to abridge. Of course, the section derived from the privileges and immunities clause of the original constitution, and the purpose of the framer in including it in the amendment, as I have previously stated, was to enable Congress to require States to adhere to it. On the question of what privileges and immunities are, Judge Marshall said that this would vary as to the particular facts and that he would not be able, or capable, of making any broad, general guidelines on it. There are undoubtedly some problem areas, but the right to travel into any State, the right to sue, the right to own land, the right to own property, the right to contract, and to buy and sell, are basic rights guaranteed by this section, which would not seem to me to require a specific set of facts in order to enumerate. These are all basic rights which were mentioned in the landmark case of Corfield against Coryell, decided in 1823. These rights were mentioned repeatedly in the debates, as was the case itself.

Judge Marshall was then asked why he thought the word "citizen" was used in relation to the privileges and immunities clause of the 14th amendment, but the word "person" was used in the due process and equal protection clauses. He seemed to be unsure of this, and stated that since the first section of the 14th amendment made all persons born or naturalized in the United States, citizens of the United States and the State in which they reside, the words "person" and "citizen" became quite close. The basic distinction, which Judge Marshall missed, is that privileges and immunities were limited to citizens in the original Constitution and were, therefore, limited to citizens in the 14th amendment. All aliens in the United States are entitled to due process and equal protection of the law, but no knowledgeable lawyer would argue that aliens are entitled to all the privileges and immunities which inure to citizens of the United States, because of the fact of their citizenship. In this regard, due process of the law and equal protection of the law were at that time considered to encompass lesser rights than were encompassed by the phrased privileges and immunities. Judge Marshall stated that he was unable to

give an opinion on a question dealing with this point. The nominee was asked, from what provision of law in existence before 1866 was the due process clause of the 14th amendment copied, and what was the purpose of copying it. Judge Marshall did not know that this provision was simply an embodiment of the due process clause of the fifth amendment, which was intended to be made applicable to the States and overrule the case of Barron against Baltimore, decided by Chief Justice Marshall in 1833.

Since the equal protection of the law clause was intended to be a procedural matter, of course, it would be limited in its application to people within the jurisdiction of the individual State. Judge Marshall stated that the provision applied to everybody in the United States, and he did not know what the purpose was in limiting it to persons within the jurisdiction of the States. In the abstract, it does apply to everybody in the United States, but as to each individual State, it obligates them to extend equal protection only to individuals within their immediate jurisdiction. The point that equal protection of the law was intended to be a procedural, rather than a substantive, matter, was involved in the question concerning the difference between the words "protection of the law," and the words "benefit of the law," or "rights granted by law," or "privileges granted by law." The difference is, of course, that all three of the latter phrases refer to substantive rather than procedural guarantees. Failure to understand this would, in my judgment, dictate a failure to understand the basic purpose in the mind of the framer who drafted the 14th amendment.

Turning then to another subject, I quoted a portion of a statement Judge Marshall made before the Supreme Court in a rebuttal argument in the case of Katzenbach against Morgan. Judge Marshall said:

> I was also most interested, since some have been delving into these debates, that the Equal Protection Clause was for the purpose of protecting Chinese people in San Francisco—and I don't believe I remember a single one of the cases that interpreted the Fourteenth Amendment from *Slaughterhouse* through *Plessy* v. *Ferguson* that have had anything to say about the Chinese in San Francisco. To the contrary, this court says over and over again what the purpose of the equal protection clause was for—to protect the newly freed slaves.

I asked the nominee if he still believed this statement to be accurate, and he answered "Yes." Some of the earliest cases in the United States concerning the application of the due process clause were the so-called Chinese laundry cases, such as *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886) and *Soon Hing* v. *Crowley*, 113 U.S. 703 (1885). Through research on the subject of the 14th amendment, in all its varied aspects, one would hardly fail to turn up these particular cases, since they were crucial to an understanding of the scope of the 14th amendment.

A familiarity with basic U.S. Supreme Court cases does not require a specialized expertise in the area of the 14th amendment. The so-called Chinese laundry cases, of which Yick Wo against Hopkins is undoubtedly the best known, would seem to require merely an elementary knowledge of basic constitutional principles, or just an elementary knowledge of the 14th amendment. Yet, Judge Marshall has twice demonstrated that he is unfamiliar with this line of cases—once in argument before the Supreme Court and again in the hearings on his nomination before the Senate Judiciary Committee.

Judge Marshall was not familiar with the reason Representative Thaddeus Stevens, one of the leaders of the radical Republicans in the House of Representatives, was dissatisfied with the limited scope of the 14th amendment, although I had quoted a series of statements from Stevens indicating his dissatisfaction. The nominee was not aware of the fact that the 14th amendment did not go as far as Representative Stevens wanted it to in banning race discrimination. The 14th amendment, as Representative Stevens understood it, merely forbade a very limited scope of discrimination, primarily preventing discrimination in the area of the privileges and immunities of national citizenship.

I asked the nominee if he believed that the first section of the 14th amendment protected the right to vote, and if so which clause of the amendment was intended to protect political rights. Judge Marshall stated in answer that he did not know what political rights were but said, however, that the equal protection clause has been recognized as protecting the individual against State law which does not give equal protection in the State's voting qualification requirements. It is very clear from the original understanding of the framers of the amendment that the equal protection clause had absolutely no reference whatever to the right to vote. Indeed, the proponents of the 14th amendment felt very badly that they were unable to bring forth at that time a constitutional amendment covering the right to vote as well as protecting other political rights. Quotations from a series of statements of the proponents of the 14th amendment, and those uniquely qualified to testify as to its purpose, unequivocably showed that the right to vote was considered a political right, and that political rights were not to be covered under the terms of the then pending 14th amendment. Judge Marshall has advocated the opposite view for such a long period of time that he has either conveniently forgotten, or intentionally overlooked, the contemporary statements of the framers of the 14th amendment which, on an objective basis, proves his previous advocacy to be in error.

Judge Marshall had previously indicated that he was not familiar with what the term "civil rights" meant in 1866, so I quoted to him a statement made on March 1, 1866, by Representative James F. Wilson, the chairman of the House Judiciary Committee. This statement should be considered authoritative, considering its source and relevance to the debate in progress. Judge Marshall stated that the view of the chairman of the committee would be relevant in determining what was intended to be included in the term "civil rights," but would not be controlling. Judge Marshall did not tell us whose version would be controlling, but I suspect that he, along with four or five of other present members of the Supreme Court, would consider their own view to be the controlling factor.

Then I proceeded to quote to Judge Marshall several additional statements made by a number of other Members of Congress, including the man who drafted the privileges and immunities, due process, and equal protection clause of the 14th amendment, Representative John Bingham, of Ohio. In each case the nominee made virtually the same observation—the contemporaneous observation of the framer would be relevant but not controlling in an interpretation of the wording and application to any modern-day set of facts. It would be extremely surprising to find that a man who drafted a constitutional provision is not fully aware of what he is doing, or does not know as well as someone who is attempting to place a construction upon his language 100 years later. I suspect that Representative John Bingham, an able attorney in his own right, was perfectly aware of what he was drafting and that his statements in respect thereto are quite decisive as to its meaning. Apparently, Judge Marshall thinks that he can disregard the historical events and contemporaneous interpretation, and construe these provisions of the Constitution in whatever way he so desires. At this point, I would like to note that Judge Marshall is not alone in holding to this viewpoint. This is probably the popular attitude, but it is an attitude that has wreaked havoc with our constitutional structure of government, and one which we here in the Senate should not be parties to perpetuating.

Then I quoted a portion of the bill admitting Nebraska to the Union, and an attack thereon by Representative Bingham. The section of the Nebraska statehood bill in question was one which was designed to prevent racial discrimination in voting, and Representative Bingham took the position that this provision of the bill was in direct conflict with the proposed 14th amendment. Since Representative Bingham was the primary author of the major portions of the 14th amendment, his view on this point would seem to me to be much more than merely relevant to an understanding of the purposes of the 14th amendment. Judge Marshall, however, stated that he did not consider this position by Representative Bingham to be relevant as to the constitutional power of Congress. He went on to make the statement that the constitutional power of Congress is to be determined by a court. The power of Congress is, of course, delineated in the Constitution, and the meaning of the Constitution can be gleaned from the statements of its drafters. Judge Marshall apparently feels no obligation to interpret the Constitution in the light of the contemporaneous statements of the drafters, and since he is of the view that the courts are the proper body to determine the constitutional power of Congress, then the Congress can do anything that the courts say that it can. It had always been my impression that the oath taken by each Member of Congress,

requiring fidelity to the Constitution, required each Member of Congress to weigh each proposal on the scales of the Constitution before acting upon it. In that way, Congress is the judge of its own constitutional power, and is bound as much by the contemporaneous statements of the drafters of the Constitution as the courts should be bound.

Judge Marshall was asked whether he thought it was relevant that Representative Bingham had introduced a proposed constitutional amendment designed to give all citizens the equal right to the franchise. He answered:

> I consider that relevant with the restriction that it is no more relevant than other, any other, legislation where provisions are proposed but not adopted.

This response misses the point of the question. Representative Bingham would never have introduced an amendment of this nature if the 14th amendment had, in his view, already put this question to rest, as has been presumed in the one-man, one-vote cases. The amendment which Representative Bingham proposed reads as follows:

> No State shall make or enforce any law which shall abridge or deny to any male citizen of the United States, of sound mind, and over twenty-one years of age, the equal exercise of the elective franchise in such State wherein he shall have actually resided for a period of one year next preceding such election.

This amendment would have legitimately accomplished the one-man, one-vote theory, had it been adopted. The fact of its submission by the principal framer of the 14th amendment indicates that the 14th amendment had no such intent. The fact that it was rejected by Congress further indicates that Congress was not disposed to take such action.

Several other questions were designed to delve into the nominee's knowledge and understanding of the true intent of both the 14th and 15th amendments. One such question dealt with a bill reported from the Judiciary Committee in 1870 by Representative Bingham, who was then chairman of the Judiciary Committee of the House of Representatives. One portion of that bill was designed to require State officials to assess taxes against Negroes, when the State law required the payment of a poll tax as a prerequisite to voting. It would seem apparent to me that this is a clear indication that the 14th amendment was not designed to outlaw poll taxes as a prerequisite to voting. Judge Marshall stated that such a fact would be relevant "but certainly not controlling." It would be very difficult to find what would be controlling, if evidence that the man who framed the pertinent provisions felt compelled to introduce a measure which would, by today's standards, be in violation of the provision he drafted.

When it was pointed out to the nominee that Representative Bingham urged passage of a version of the constitutional amendment that would have barred literacy tests, which was rejected in the House of Representatives, and he was asked whether this showed that it was the intent of the 14th amendment or the 15th amendment to abolish literacy tests, Judge Marshall answered that the body of authority to determine the constitutional power of Congress to pass legislation in the U.S. Supreme Court. He did not indicate that the members of the Supreme Court should feel any obligation to inquire into the original intent of the framers, to try to determine the extent of congressional power derived from any of the provisions of the Constitution.

One can conclude several things from the answers of Judge Marshall to the questions posed him. First of all, Judge Marshall apparently feels no obligation to be bound by the original intent of the framers of the Constitution, or of any of the amendments thereto. This is exactly in line with the oft-quoted statement that the Constitution is a "living document." His numerous responses that the contemporaneous statements interpreting particular provisions of the 14th amendment as "relevant, but not controlling," constitutes irrefutable evidence that the meaning of the Constitution lives in his imagination rather than in its original concept.

What would be the result if this theory were applied throughout the court proceedings of our land? Suppose, for example, an application of this theory in a murder trial. After proof of the crime, evidence is received from an eyewitness that the defendant is guilty, and no evidence to the contrary is presented by the defense. Should the judge then be free to rule that the evidence is relevant, but not controlling, and on that basis proceed to direct a verdict of acquittal, because he does not think that the defendant should be found guilty? In such a circumstance one would begin to suspect that there is something wrong with the judge, and with the brand of justice he is dispensing.

While this may seem to be an extreme example, virtually the same theory is applicable in interpreting the Constitution. The weight or preponderance of historical evidence is decisive, and should be controlling in interpreting and applying constitutional concepts to modern-day facts. If a judge, in trying a civil case heard testimony from a dozen witnesses on one particular point, and received no evidence to the contrary, then directed a verdict contrary to the evidence presented, on the grounds that the witnesses' testimony was "relevant, but not controlling," one would justifiably wonder if the judge involved was competent to sit on the bench.

The duty of an appellate judge is, of course, somewhat different from that of a trial judge. An appellate court is designed to correct errors of law, or errors in the application of the law to the particular set of facts established on trial. Appellate courts are not factfinding bodies, at least not so far as the facts of the particular question before it is concerned. The only extent to which they are obligated to find facts is in determining the intent of Congress in passing a particular law, or enacting a particular constitutional provision. This is a necessary procedure to enable the appellate judge to find out what the law is, or to find out what the law is intended to be, and then apply it to the facts which are established at the trial court level.

An appellate judge is not at liberty to tamper with the facts surrounding the approval of a law or constitutional provision, any more than he is at liberty to tamper with the facts established at the trial court level. The law is the law, and it means today what it meant when it was drafted, and no one, or any group of men, has the right to say that it means something entirely different today than it was understood to mean when it was originally drafted. The notion that a written body of laws undergoes a metamorphosis with the times is a notion which will lead to the destruction of the basic principle of government by law, rather than by man. To draft a set of laws intending them to be a guide for the ages would be, under this theory, a vain and impossible act.

There have been allegations that my questioning of the nominee was somewhat less than fair, in that the questions were detailed and meticulous. I repeat what I said at the outset of my remarks, that I do not consider it to be unfair to question a man in some detail in his one area of expertise. If Judge Marshall had practiced law generally, or in some other area, I could not and would not have expected him to be conversant with the subject of the reconstruction amendments. Questions dealing with the correct application of the 14th amendment particularly come before the court with nauseating regularity these days, however, and since Judge Marshall has spent the greater part of his adult career in dealing with these questions, I thought it appropriate to question him on some of the fundamental concepts underlying the amendment.

Another point needs to be dealt with. It has been stated over and over that Judge Marshall has proved his competence, and has proved that he is deserving of the post because of his long string of successes in appearances before the Supreme Court. I do not consider the fact that the nominee was counsel for the prevailing side, in a number of cases before the U.S. Supreme Court, is of any significance whatsoever. We all know that the U.S. Supreme Court in recent years has decided cases based on factors other than the law as laid down by the framers when the Constitution was written. The Supreme Court has decided cases based on its own predilection as to what the law should be, and what the application of the law should be to a given set of facts. The basic criticism of the Supreme Court in recent years has sprung primarily from this attitude, which is so obvious on the part of the members of the Supreme Court.

While the nominee has been counsel in a number of cases decided on bases other than a strict application of the law and the precedents, it cannot be said that he either won or lost the cases. All that can be said is that a majority of the members of the Supreme Court was prepared to go along and accept the position he advocated, for reasons which probably had nothing to do with his competency as counsel. I think that it is a fair observation to say that a majority of the members of the Court would have so ruled, regardless of who had been the attorney in the case.

Mr. President, considering all relevant

factors, in my judgment, it would be in the best interests of the country for the Senate to refuse to confirm the nomination of Thurgood Marshall for a seat on the Supreme Court. It has been said by some that Judge Marshall could not be any worse than some now sitting on the Court. While this is perhaps true, the opportunity has been presented for an appointment to the Court of a man who would, by his vote, be able to reinstitute "judicial restraint" in future Court decisions. Thurgood Marshall has clearly proved that he is not that man. His nomination follows the pattern of recent years of appointing "judicial activists" who are more intent on rewriting the law than in applying it. For these reasons, I will vote "No" on confirmation of the nomination.

Mr. President, during the course of my remarks, the senior Senator from Massachusetts [Mr. KENNEDY] asked for the names of the members of the Judiciary Committee during the time the 14th amendment was being considered. I asked Judge Marshall, in the hearings on his nomination, what committee reported the 14th amendment and who were its members. The committee that reported the 14th amendment was not the Judiciary Committee. It was the Joint Committee on Reconstruction, and it was composed of the following: Senators Fessenden, of Maine; Grimes, of Iowa; Harris, of New York; Williams, of Oregon; Howard, of Michigan; and Johnson, of Maryland; Representatives Thaddeus Steven, of Pennsylvania; Blow, of Missouri; Washburn, of Illinois; Bingham, of Ohio; Conkling, of New York; Boutwell, of Massachusetts; Morrill, of Vermont; Rogers, of New Jersey; and Grider, of Kentucky. I am pleased to supply this information for the RECORD.

Mr. HART. Mr. President, I ask for the yeas and nays on the pending nomination.

The yeas and nays were ordered.

Mr. HART. Mr. President, very briefly, since the hour grows late and we have had a very thorough debate on the pending nomination, I do not believe an independent branch of the government; namely, the Supreme Court, is likely to be worried whether somebody here rises in its defense or not. I think it is content to let history judge it.

I would not want my silence, however, to indicate agreement with the opinions expressed by some with respect to the quality of service or devotion to their oath of the members of the Supreme Court. I only hope that each of us is as serious in observing the oath he takes as I am convinced each of them is.

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

Mr. HART. I yield.

Mr. JAVITS. I wonder whether the Senator from Michigan would agree with me that after all this criticism of the Court, when we get up against the wall here, and actually face a decision on such matters as legislation to overturn the decision on confessions, or to overturn the requirement for the presence of a lawyer before an accused person can be put through any questioning, or to permit delays in the opportunity to communicate with a lawyer or relatives, and matters of that character, whether when the Senate actually faces a vote to really overturn a decision of the Court by legislation, we would not have some second thoughts about the matter; and I wonder whether the Senator from Michigan would agree with me that that certainly indicates our respect for the institution, and the fact that we do not fear its decisions as much as many of us pretend we do.

Mr. HART. The Senator from New York, I think, makes effectively the point that I was attempting to make. It is easy to react pretty violently when we read in the headlines that the Supreme Court has outlawed prayer; but we have seen the dust settle on that issue, and the position taken by the Court is now, I think, generally regarded by the majority of us as sound, and we are delighted that the Court undertook to carry the heat that it was subjected to in that period.

As the Senator from New York has stated, there are many opportunities, and some of them pending now in committee, to override decisions of the Supreme Court. I doubt very much whether we shall. I hope not.

Mr. JAVITS. Mr. President, we have heard much today about Judge Marshall's views, that he would upset the balance of the Court, that he was a political activist, or a legal iconoclast, as some of our fellow Senators have put it. Would the Senator from Michigan, whose opinions I and other Senators very much respect, be willing to state whether he agrees that fitness for the post of a judge depends upon the nominee's legal knowledge, on the struggles he has fought or is now engaged in fighting in the courts, on his judicial temperament, and on his integrity; and that if we tried to conjure up how we are going to affect decisions by what we think man is going to do on the bench, we would be running in the face of all our experience with the Brandeises, the Cardozos, the Warrens, the Frankfurters, the Byron Whites, and all that host of judges who have gone just the opposite way from what anyone might reasonably have expected?

Mr. HART. That is right. A fellow who wants to make book on the performance of a Supreme Court Justice should have substantial capital.

Mr. JAVITS. Exactly.

Mr. HART. I was struck by the fact that one of the articles introduced by one of those who spoke in opposition to the nominee today—the article entitled "Why Not a Woman On High Court?" written by David Lawrence—makes this judgment in advance:

> Persons who know Thurgood Marshall's philosophy think he will furnish a surprise and will be found in the middle-of-the-road category. His decisions inevitably will attract a lot of attention.

At least the second sentence, we can be sure, is correct.

Mr. JAVITS. I agree.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BYRD of West Virginia. Mr. President, the Taft Memorial Tower, erected in honor of the memory of the late U.S. Senator Robert A. Taft, is located on the Capitol grounds just west of the Old Senate Office Building in which I have my offices. I pass that memorial tower twice daily on my way to and from my work. Inscribed on that tower are these words, which I consider to be pertinent to the decision which is before the Senate today:

> If we wish to make democracy permanent in this country, let us abide by the fundamental principles laid down in the Constitution.

Mr. President, we who serve in the Senate are bound by oath or affirmation, to support the Constitution—article VI, paragraph 3, the U.S. Constitution. Under the Constitution, it is our high duty to confirm or reject appointments of the President of the United States to positions in various high offices including the judges of the U.S. Supreme Court. See article II, section 2, paragraph 2.

The Constitution, therefore, reposes in the Senate a solemn duty, one which is not to be taken lightly, one which is not merely pro forma in nature. While it is the prerogative and responsibility of the President of the United States to nominate individuals to those offices set forth in the Constitution, we in the Senate cannot shirk our responsibility to pass judgment on Presidential nominees as being fit or unfit, qualified or unqualified, and their appointments wise or unwise insofar as the future of our country is concerned.

I feel that, as a general rule governing Senate confirmations, the President should be given the benefit of any doubt concerning a nominee chosen by him, unless that doubt is grave to the point that a Senator's convictions will not permit him to cast it aside.

During the 9 years I have served in the U.S. Senate, I have voted against few men whose names were submitted by the President for Senate confirmation. Among these were Lewis L. Strauss, who was nominated and rejected, by a vote of 49 to 46, for the office of Secretary of Commerce, and the other was John A. McCone, who was nominated and confirmed, by a vote of 71 to 12, for the office of Director of Central Intelligence.

Today the Senate is considering the nomination of Mr. Thurgood Marshall for the office of Associate Justice of the U.S. Supreme Court. I have not the slightest doubt but that the Senate will confirm his nomination. My vote against his confirmation will, therefore, be an exercise in futility insofar as the impact upon his confirmation is concerned. Nevertheless, after much soul searching and reflection, I have reached the conclusion, only last evening, that I shall vote against the confirmation of Mr. Marshall's nomination.

I shall vote against the confirmation of his nomination realizing that, from a purely political standpoint, my vote will probably not be a good vote. Mine being a

political career, it is only natural that I cannot be averse to political considerations in many of the decisions which I am called upon to make. Nevertheless, I feel that political considerations must be subordinated to my strong convictions in matters which will leave a lasting imprint upon the country which the next generation will inherit from our hands.

There are those critics who may say that my vote against Mr. Marshall is a "racist" vote. There are those who may say my vote indicates that I am anti-Negro. Yet, for the RECORD, let me say that I have supported the confirmation of the nominations of many Negroes, among whom were Robert C. Weaver as Secretary of the Department of Housing and Urban Development; Carl Rowan as head of the U.S. Information Agency; Mrs. Patricia Harris as our Ambassador accredited to Luxembourg; and Ambassador Franklin Williams as our chief diplomatic servant in Ghana.

There are a number of Negro justices whose appointments I have supported. Among these are the following:

LIFETIME JUDGES

Wade H. McCree, Jr., U.S. Circuit Court, Sixth Circuit, September 7, 1966.

Spotswood W. Robinson III, U.S. Circuit Court for District of Columbia, October 20, 1966.

William B. Bryant, U.S. District Court for District of Columbia, August 11, 1965.

A. Leon Higginbotham, Jr., U.S. District Court for Eastern District of Pennsylvania, February 3, 1964.

Constance B. Motley, U.S. District Court for Southern District of New York, August 30, 1966.

James B. Parsons, U.S. District Court for Northern District of Illinois, August 30, 1961.

Aubrey E. Robinson, Jr., U.S. District Court for District of Columbia, October 20, 1966.

Joseph C. Waddy, U.S. District Court for District of Columbia, March 2, 1967.

James L. Watson, U.S. Customs Court, March 4, 1966.

TERM JUSTICES

District of Columbia court of general sessions, 10-year terms: Andrew J. Howard, Jr., appointed September 21, 1961; Austin L. Fickling, appointed September 30, 1966; Harry T. Alexander, appointed November 30, 1966.

Domestic relations branch of above court: Richards R. Atkinson, appointed November 3, 1966.

Juvenile court, same court: John D. Fauntleroy, appointed June 28, 1967.

District court for Virgin Islands, 8 years: Walter A. Jordan, appointed September 8, 1959.

Mr. President, the truth of the matter is that I would like to vote for Mr. Marshall, and I am frank to say that I would like to vote for him particularly because he is a Negro. Yet, I consider it my duty as a Senator, under the Constitution, not to let Mr. Marshall's race influence my decision. Having reached the definite conclusion that were Mr. Marshall white, I would vote against him. I cannot, therefore, let the fact that he is a Negro influence me to vote for him when I would not do so otherwise.

What is the basis for my decision to vote against the confirmation of Mr. Marshall's nomination?

It is not that he lacks the ability to serve as an Associate Justice of the U.S. Supreme Court. He has demonstrated ability. I simply cannot bring myself to vote for an individual to be a U.S. Supreme Court Justice who, by his past record so clearly stamps himself as one who will be an ally to the already top-heavy, ultraliberal, and activist bloc on the Court.

In my judgment, many of the disturbing phenomena which have appeared on the American scene during the past 15 years can be traced, at least in part, to certain decisions rendered by a preponderantly activist U.S. Supreme Court. I have in mind, for example, decisions which have favored the atheist, as against the religiously inclined child, in the public schools; the Supreme Court decision knocking down the law requiring Communists to register; various decisions which, in effect, have placed handcuffs on police and have, practically speaking, subordinated the rights of victims and the rights of society to the imagined rights of individual criminals. And one could go on to cite further examples.

Many of these decisions were 5-to-4 decisions, the result being that five men clothed in judicial robes have uprooted the customs and changed the course of the Republic.

The highest tribunal has become the most powerful authority in the whole of our Federal system. Its members, appointed for life, and sequestered from the realities of life as it confronts the man on the street, have departed from pragmatic liberalism and have become ultraliberal in their decisions as they have shaped national policies to conform with their own personal opinions. In doing so, they have dealt with the Constitution as thought it were wax.

I do not maintain that the Court should be structured ideologically with so many liberals and so many conservatives, but I do believe that it is idle to pretend that the delicate and often unpredictable balance of the last few years will not now become a built-in activist majority which will do further injury to constitutional government.

It is, of course, an oversimplification to impute as inevitabilities certain attitudes to a new Supreme Court Justice even before he has donned his judicial robes. It is not possible for one to foresee beyond peradventure of doubt just what position will be taken by Mr. Marshall or any other newly appointed Justice when it comes to the great issues of the day. Yet, as Mr. William S. White recently observed:

> The probabilities of the future can only be rationally estimated by the known and certain past.

So, by this standard, as Mr. White went on to say:

> It is likely that Marshall's elevation will only aggravate an already profound imbalance by which an already disproportionate majority of liberal justices has for years been acting not as detached arbiters but as lawmakers, not as interpreters of the Constitution but as amenders of that Constitution to suit their own notions.

What is there in Thurgood Marshall's past record which points to the probability of his being an activist addition to an already preponderantly activist High Tribunal?

A review of Mr. Marshall's past activities raises a question of his possession of an unbiased judicial temperament when one reads that he is widely heralded in the press of our Nation as "Mr. Civil Rights." He has for a good many years been identified as "the voice of the NAACP."

It is difficult to distinguish traits of impartiality, very vital as a judicial attribute, in a record such as Marshall's, which includes almost a quarter of a century as chief counsel for the NAACP, during which he argued 32 cases before the same Court to which he has now been nominated as a member.

An independent assessment of his legal career at one time read:

> His impact is indicated by the fact that the NAACP had more cases before the Supreme Court in the last term than any other institution except the Federal Government.

It is extremely difficult to believe that a person who has had a quarter of century of emotional commitment and total involvement in one cause can be judicially unbiased in the future, particularly with regard to cases which will undoubtedly continue to make up such a heavy portion of the Court's dockets.

A recent New York Times article, entitled "Shift in Court's Trend," referred to the highest tribunal as "the reform-minded Supreme Court," and went on to say that the Court "running short of dragons to slay after years of activism, is turning increasingly to the politically hazardous business of liberalizing the rights of criminal suspects."

The Times article proceeded to comment on the substitution of Thurgood Marshall for Justice Tom Clark, and I quote the following two paragraphs from that article:

> As a judge in the United States Court of Appeals for the Second Circuit, Mr. Marshall was considered a liberal. He found fault with the New York teachers' loyalty oath, curbed the summary expulsion power of the immigration authorities and tended to favor plaintiffs in damage suits.
>
> This liberality carried over to criminal issues—as reflected in his belief that the Fifth Amendment's prohibition of unreasonable searches should be given broad interpretations in criminal law, he may accelerate the Supreme Court's drive for reform.

I repeat the closing sentence in the paragraph I have just quoted:

> In criminal law, he may accelerate the Supreme Court's drive for reform.

Mr. President, I have no doubt that there has been some need of reform in the criminal law, but the Supreme Court's drive for that reform has carried it far beyond the limits of realistic and commonsense reasoning. The unvarnished truth cannot be overlooked, and the fact that many U.S. Supreme Court decisions in recent years have straitjacketed the police departments throughout the country and have contributed in great measure, to spiraling crime and acts of violence in the streets of our cities, cannot be denied. We have reached the point where the criminal be-

lieves that the law is on his side. I have repeatedly spoken out against Supreme Court decisions which have placed shackles upon the police and which have made increasingly difficult the problem of law enforcement. In a Senate speech on April 20 of this year, I made a statement which was as follows:

If we want to really come to grips with the spiralling crime rate, the place to start is in the appointments to the Supreme Court of the United States.

I repeat that statement today, and I say with all sincerity and with the strongest conviction that the Senate, under the Constitution, must share the responsibility with the Chief Executive of making wise appointments to the Supreme Court. If the Court will not exercise a reasonable restriction upon itself, it is proper that that restraint be generated in the appointive process. If Presidential appointments show an apparent inclination to create a dangerous imbalance in the makeup of the Nation's highest tribunal, then it becomes the duty of the Senate to act to protect constitutional government against destruction by a court which increasingly gives evidence that the majority of its members will not impose self-restraint and which arrives at momentous decisions on the basis of modern sociological concepts rather than legal reasoning and legal precedents.

In the desire of all Senators to promote the concept that ours is a government of laws, not of men, I cannot be unmindful of Woodrow Wilson's statement that:

Constitute them how you will, governments are always governments of men, and no part of any government is better than the men to whom that part is entrusted.

Wilson's appraisal is no less applicable to the judiciary than to any other of the three coordinate and coequal branches of the Government.

I may be wrong in my estimate of Mr. Marshall, and I sincerely hope I am wrong. I supported his appointment as a judge on the U.S. Court of Appeals for the Second Circuit. I supported his appointment to the Office of Solicitor General of the United States. But as an Associate U.S. Supreme Court Justice, Mr. Marshall will hold a position far more critical to the future course of our country than was either of those two positions.

I do not believe that I can be justified in criticizing the U.S. Supreme Court for decisions which favor the criminal if I, by my own actions, fail to take a stand against the appointment of any individual to that Court whose past record in the legal profession and as a jurist point unmistakably, in my judgment, to the likelihood that the nominee will add to an already dangerously imbalanced High Tribunal. The past records of many nominees are unclear as to their guiding philosophies, but in this case the past record of the nominee appears in full outline, and I have arrived at my conclusion based on that record.

As I am able to see my duty, therefore, I feel it incumbent upon me, in the interest of law and order and in the interest of constitutional government, to vote against Mr. Marshall's nomination to the Supreme Court of the United States.

He who saves his country saves all things and all things saved do bless him. He who lets his country die lets all things die, dies himself ignobly, and all things dying curse him.

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

The PRESIDING OFFICER (Mr. SPONG in the chair). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HART. 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. HART. If there is no further comment, Mr. President, I ask that the Senate advise and consent to the nomination of Thurgood Marshall.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD (after having voted in the affirmative). On this vote I have a live pair with the distinguished Senator from Mississippi [Mr. STENNIS]. If he were present and voting he would vote "nay." If I were permitted to vote I would vote "yea." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Nevada [Mr. BIBLE], the Senator from Virginia [Mr. BYRD], the Senator from Alaska [Mr. GRUENING], the Senator from Oklahoma [Mr. HARRIS], the Senator from Minnesota [Mr. MCCARTHY], the Senator from Maine [Mr. MUSKIE], and the Senator from New Mexico [Mr. MONTOYA] are absent on official business.

I also announce that the Senator from Indiana [Mr. HARTKE], the Senator from North Carolina [Mr. JORDAN], the Senator from Arkansas [Mr. MCCLELLAN], the Senator from South Dakota [Mr. MCGOVERN], the Senator from Montana [Mr. METCALF], the Senator from Wisconsin [Mr. NELSON], the Senator from Georgia [Mr. RUSSELL], the Senator from Florida [Mr. SMATHERS], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

I further announce that, if present and voting, the Senator from Nevada [Mr. BIBLE], the Senator from Alaska [Mr. GRUENING], the Senator from Indiana [Mr. HARTKE], the Senator from South Dakota [Mr. MCGOVERN], the Senator from Montana [Mr. METCALF], the Senator from Maine [Mr. MUSKIE], and the Senator from New Mexico [Mr. MONTOYA] would each vote "yea."

On this vote, the Senator from Oklahoma [Mr. HARRIS] is paired with the Senator from Florida [Mr. SMATHERS].

If present and voting, the Senator from Oklahoma would vote "yea" and the Senator from Florida would vote "nay."

On this vote, the Senator from Wisconsin [Mr. NELSON] is paired with the Senator from Georgia [Mr. RUSSELL].

If present and voting, the Senator from Wisconsin would vote "yea" and the Senator from Georgia would vote "nay."

On this vote, the Senator from Minnesota [Mr. MCCARTHY] is paired with the Senator from Arkansas [Mr. MCCLELLAN].

If present and voting, the Senator from Minnesota would vote "yea" and the Senator from Arkansas would vote "nay."

Mr. KUCHEL. I announce that the Senator from Iowa [Mr. HICKENLOOPER] and the Senator from California [Mr. MURPHY] are absent by leave of the Senate on official business.

The Senator from Arizona [Mr. FANNIN] is detained on official business.

If present and voting, the Senator from California [Mr. MURPHY] would vote "yea."

The result was announced—yeas 69, nays 11, as follows:

[No. 240 Ex.]

YEAS—69

Aiken	Fulbright	Morse
Allott	Gore	Morton
Anderson	Griffin	Moss
Baker	Hansen	Mundt
Bartlett	Hart	Pastore
Bayh	Hatfield	Pearson
Bennett	Hayden	Pell
Boggs	Hruska	Percy
Brewster	Inouye	Prouty
Brooke	Jackson	Proxmire
Burdick	Javits	Randolph
Cannon	Jordan, Idaho	Ribicoff
Carlson	Kennedy, Mass.	Scott
Case	Kennedy, N.Y.	Smith
Church	Kuchel	Spong
Clark	Lausche	Symington
Cooper	Long, Mo.	Tower
Cotton	Magnuson	Tydings
Curtis	McGee	Williams, N.J.
Dirksen	McIntyre	Williams, Del.
Dodd	Miller	Yarborough
Dominick	Mondale	Young, N. Dak.
Fong	Monroney	Young, Ohio

NAYS—11

Byrd, W. Va.	Hill	Sparkman
Eastland	Holland	Talmadge
Ellender	Hollings	Thurmond
Ervin	Long, La.	

NOT VOTING—20

Bible	Jordan, N.C.	Murphy
Byrd, Va.	Mansfield	Muskie
Fannin	McCarthy	Nelson
Gruening	McClellan	Russell
Harris	McGovern	Smathers
Hartke	Metcalf	Stennis
Hickenlooper	Montoya	

So the nomination was confirmed.

Mr. HART. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination.

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

THURGOOD MARSHALL TO THE SUPREME COURT—A HISTORIC APPOINTMENT

Mr. MANSFIELD. Mr. President, the confirmation of the nomination of Thurgood Marshall as an Associate Justice of the Supreme Court is also a confirmation of the vitality of the democratic system. It is a tribute to the good sense of President Johnson who made the nomination, and to the judgment of the Senate which approved it.

The confirmation means that a man who loves the law and who has a firm respect and high faith in it moves to the top of his profession by entering the highest judicial body in the United States. Thurgood Marshall's rise to the Supreme Court reaffirms the American ideal that what counts is what you are

and not who you are or whom your antecedents may have been.

This is a shining hour, Mr. President, for Mr. Marshall, for President Johnson, for the Senate, and for the United States of America. We have come a long, long way toward equal access to the Constitution's promise. We shall go further along that way because we have recognized the work and the dedication and the commitment of Thurgood Marshall and asked him to enlarge his contribution to the Nation as a member of the Supreme Court.

I join my colleagues in the Senate in extending sincere congratulations to Mr. Justice Marshall on this most auspicious day in his life.

LEGISLATIVE SESSION

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

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

LEGISLATIVE PROGRAM

Mr. DIRKSEN. Mr. President, while Senators are still in the Chamber, I should like to renew my inquiry of the distinguished majority leader as to the program for the remainder of the day and the week, and when we reconvene on September 11.

Mr. MANSFIELD. The schedule is the same as announced last night. There will be no more votes until 2 o'clock p.m. on Monday, September 11.

Mr. DIRKSEN. That will be the treaty vote.

Mr. MANSFIELD. Yes, the treaty vote. That is it.

Mr. DIRKSEN. I thank the distinguished majority leader.

ARTHUR A. KINOY, AND THE ATTEMPT TO FEDERALIZE LOCAL POLICE DEPARTMENTS

Mr. THURMOND. Mr. President, a recent issue of the Washington Post published a story from New York detailing a highly unusual suit which has been filed against the Newark, N.J., Police Department. The suit asks that the Newark Police Department be placed in receivership and that a Federal "master" be appointed with full administrative power over its affairs. The article goes on to explain that the suit is a pilot project which, if successful, will be extended to other areas across the country.

This suit is nothing other than an attempt to federalize the police forces of this Nation and to concentrate all police power in the hands of Federal authorities. This is manifestly contrary to the spirit of the U.S. Constitution and our traditions of local control. This is an attempt to subvert the American system by using the courts of law.

One of the long-term goals of the Communists has been to concentrate the police power in Federal hands so as to destroy local liberties. It is highly significant, therefore, that one of the chief advisers in this suit is a well-known New York lawyer who has had many connections with Communists and their sympathizers. The Washington Post staff writer, Mr. Leroy F. Aarons, describes this man as "Arthur A. Kinoy of the New York firm of Kunstler, Kunstler, & Kinoy, one of the country's most prominent civil liberties attorneys."

I think it is misleading to describe Mr. Kinoy in this fashion without indicating his constant association defending Communists and Communist causes. I have therefore asked the Senate Internal Security Subcommittee to supply me with an amplified background about Mr. Kinoy, and I ask unanimous consent that this staff report be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. THURMOND. Mr. President, I have left the most shocking aspect of this lawsuit to the end of my remarks. Mr. Kinoy, who is notorious for the associations I have just indicated, has been actively working in cooperation with the New York Legal Services Project, an agency funded by the Federal Office of Economic Opportunity. I feel that Mr. Sargent Shriver, the Director of the OEO, ought to give some explanation as to why a federally funded project cooperates with a man of such well-known leftist inclinations in a program which is aimed at undermining the traditional structure of local government.

I ask unanimous consent that the article from the Washington Post of Friday, August 25, 1967 entitled "U.S. Reform of Newark Police Urged" be printed in the RECORD.

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

U.S. REFORM OF NEWARK POLICE URGED

(By Leroy Aarons)

NEW YORK, August 24.—Seventeen Negro civic leaders and poor people asked the Federal courts today to take over and reform the Newark Police Department.

Similar action may be taken in other cities.

The unusual move came in the form of a civil lawsuit filed in U.S. District Court in Newark and announced at a press conference at New York offices of the American Civil Liberties Union.

BRUTALITY CHARGED

The suit charges a long and continuing pattern of police brutality in Newark, which, it says, has either been ratified by city officials or is out of their control. During the five days of violence in July, the suit charges, police used the "pretext" of putting down the riot to intensify the mistreatment and commit acts of "violence, intimidation and humiliation" against Negroes.

The lawsuit asks that the Department be placed in receivership and that a special "master" be appointed with full administrative power over its affairs.

The master would be ordered to hold public hearings leading to a plan for rehabilitation of the police department under court supervision.

The complaint also urges that the Newark officials—specifically Mayor Hugh J. Addonizio, Police Director Dominick A. Spina and Police Chief Oliver Kelly—be enjoined from allowing such alleged acts of brutality as beatings, intimidation, use of racial epithets and derogatory language, compiling dossiers on civil rights leaders, and refusal to arrest policemen who commit crimes against Negroes.

"NATIONAL PROBLEM"

While the suit deals only with Newark, Robert L. Carter, general counsel of the NAACP, told the press conference, "We regard this as a national problem." He said the NAACP is investigating similar action in many other cities across the country. He named Cincinnati, and another source said Cleveland is being considered.

Carter is one of 22 lawyers who signed the complaint. They represent five cooperating agencies in the case: ACLU, NAACP, the Newark Legal Services Project, the Law Center for Constitutional Rights, and the Scholarship, Education and Defense Fund for Racial Equality.

The suit was actually put together by the New Jersey ACLU, headed by Henry M. diSuvero, in cooperation with the Newark Legal Services Project, an agency funded by the Federal Office of Economic Opportunity and charged with aiding poor people in civil cases. A chief adviser was Arthur A. Kinoy, of the New York firm of Kunstler, Kunstler and Kinoy, one of the country's most prominent civil liberties attorneys.

PLAINTIFF ATTENDS

Approximately 200 affidavits from Negroes claiming various kinds of mistreatment during the riots have been compiled in support of the lawsuit. DiSuvero said the affidavits are being kept secret for fear that the signers will be intimidated.

One of the alleged victims, the Rev. Dennis Westbrook (also one of the 17 listed as plaintiffs) was present at the press conference. He charged that during the riot he was roughed up by police despite the fact that he identified himself as a minister who had been authorized by the Mayor to be in the trouble area.

It was understood that other signed complaints in the hands of the attorneys allege that:

A Negro professional man, who was taking food to his mother, was arrested by police, beaten and forced to kiss and lick policemen's feet before he was released.

A man walking with two women was stopped by police and forced to strip, then made to run naked down the street.

Police, particularly state troopers and National Guardsmen, fired indiscriminately into Negro homes and deliberately at stores run by Negro merchants.

The attorneys justified their report to Federal courts by citing several civil liberties amendments to the Constitution and a Federal law dating back to Reconstruction days. That law provides for civil action at the Federal level where local officials violate the civil rights of an individual or class.

The law was tested and upheld in a suit against the Sheriff of Neshoba County, Miss., where three civil rights workers were murdered. That suit, which asked that Federal marshals be appointed to oversee the actions of local sheriffs, is now in District Court in Mississippi.

FEDERAL REMEDY

Disuvero said the Federal remedy was sought because there is no legitimate machinery for police brutality complaints in Newark, and state courts have been hostile to actions against policemen.

He also noted that for the duration of the Federal suit, new acts of alleged brutality in Newark can be added to the complaint and depositions taken from policemen and witnesses. Thus, said Disuvero, the court action will serve as a temporary review board for brutality complaints.

EXHIBIT 1

ARTHUR KINOY

According to the *Washington Post* of January 5, 1965, page A9, Arthur Kinoy was attorney for the Freedom Party. He addressed a meeting of this organization held at Lincoln Memorial Congregational Temple on

January 4, 1965, according to this press report.

According to a folder of the American Student Union, Arthur Kinoy is listed as a member of the National Executive Committee of this organization. The American Student Union has been cited as subversive by the House Committee on Un-American Activities. Kinoy is listed as a student at Harvard University.

According to testimony before the Senate Internal Security Subcommittee, on April 19, 1955, Arthur Kinoy is listed by Harry Sacher as a member of the law firm of Harry Sacher, Frank Donner, Marshall Perlin and Milton Friedman, with offices at 342 Madison Avenue, New York City. Harry Sacher and Frank Donner have been frequently listed as defending Communist cases.

According to the *New York Times* of October 3, 1956, page 21, Arthur Kinoy is listed, together with Frank J. Donner and Marshall Perlin, as attorney for Steve Nelson before the U. S. Supreme Court. The Senate Internal Security Subcommittee has published a report on the career of Steve Nelson as an American and international Communist leader.

Arthur Kinoy took an active part in the defense of Ethel and Julius Rosenberg, who were executed for committing atomic espionage. They were executed on June 19, 1953.

June 18, 1953—A motion brought by Mr. Arthur Kinoy for Emanuel Bloch was referred to Judge Kaufman by Judge Ryan. June 19, 1953—A motion for a stay of execution pending determination of the motion of Mr. Kinoy brought on June 18th was referred to Judge Kaufman by Judge Dimock. This motion was denied. A motion to stay the execution pending appeal of the decision was likewise denied. ("Trial by Treason, The National Committee to Secure Justice for the Rosenbergs and Morton Sobell," August 25, 1956, House Committee on Un-American Activities, page 137).

On October 13, 1952, Arthur Kinoy appeared as counsel for Alfred J. Van Tassel before the Senate Internal Security Subcommittee. Mr. Van Tassel took the Fifth Amendment in refusing to testify about his Communist Party affiliates. ("Activities of United States Citizens Employed by United Nations," Part 1, Senate Internal Security Subcommittee, pages 2 to 21).

Arthur Kinoy has served as counsel for the United Electrical, Radio and Machine Workers Union, which has been expelled by the Congress of Industrial Organizations on grounds of its Communist character and leadership. ("Communist Domination of Certain Unions." Part II, Senate Labor and Welfare Committee).

Arthur Kinoy was a member of the Editorial Board of the *Lawyers Guild Review*. He was a guest of honor at a banquet of the National Lawyers Guild on October 25, 1957. The National Lawyers Guild has been cited as subversive by the House Committee on Un-American Activities.

The New York Committee for Protection of Foreign Born, an affiliate of the American Committee for Protection of Foreign Born, honored Arthur Kinoy at a banquet held on October 28, 1954. The American Committee for Protection of Foreign Born has been cited as subversive by the Attorney General.

TRANSCRIPT OF RECENT RADIO HAVANA SPEECH MADE BY STOKELY CARMICHAEL

Mr. THURMOND. Mr. President, on August 1, as part of the Latin American Solidarity Conference recently held in Havana, Stokely Carmichael made a speech over Radio Havana on behalf of the Black Liberation struggle of the United States.

Because of the patriotic vigilance of Mr. John Edrington Futch, a student at Florida State University whose two hobbies are "listening to what the other side has to say" via his short-wave receiver, and recording the broadcasts on tape, a transcript and tape recording of this speech have been made available to me. I commend Mr. Futch for the concern he has shown for our Nation's well-being.

To date, however, I have not seen the full text of the Carmichael speech made available either to the American public or to my colleagues. So that my colleagues may have the benefit of knowing what Stokely Carmichael said in his Radio Havana speech of August 1, I ask unanimous consent that a transcript of that speech be printed in the RECORD; and if any of my colleagues desire to hear the heretofore mentioned tape recording of Carmichael's August 1 speech, I shall be only too glad to replay it for them in my office.

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

STOKELY CARMICHAEL: SPEECH ON RADIO HAVANA, AUGUST 1, 1967

"This is Radio Havana, Cuba, and this is Stokeley Carmichael of the black liberation struggle inside the United States. I would like to read a message to our brother Che Guevara on behalf of all the black people struggling inside the United States for our liberation. We want you to know, my fellow Comrade Che, that the African Americans inside the United States have a great deal of admiration for you. We eagerly await your writings in order to read them, digest them, and to plan our tactics based on them. We want you to know, wherever you are, that you are an inspiration, not only to the black people inside the United States, but to the liberation struggle around the world. Please keep on fighting, because by your fighting you are inspiring all of us. Do not despair, my Comrade Che: we will win.

"This is Radio Havana, Cuba, August 1, 1967, Stokeley Carmichael of the black liberation movement inside the United States. I would like to read a message on behalf of the black people struggling inside the United States for our liberation to all our Comrades in the armed struggle against imperialism and racism, and especially to our Comrades in Latin America. We of the black liberation movement of the United States want all of you to know, wherever you are, that we are your comrades. We are no longer going to allow our enemies to make us fight against you, as they have done in the past. We will not fight in Vietnam, Santo Domingo, Venezuela, or anywhere else in the world. Our fight will be inside the United States. While we are fighting to destroy imperialism from the outside, we know you will be fighting to destroy it from the outside. We are dedicated with our very lives to destroy imperialism, as you have proven time and time again, as you have dedicated your lives. We look forward to the day, which will be very soon, when all of us all over the world will be able to overthrow the decadent governments, and will start the real revolution of building a society based on humanity rather than a society based on exploitation. Our struggle is the same. Our love for humanity will make us continue to fight."

NEW SOVIET GUNS IN VIETNAM

Mr. THURMOND. Mr. President, this administration has consistently played down the part which Soviet war materiel is playing in the Vietnamese war. It is seldom that unclassified reports make any reference to the equipment which the Soviet Union is sending to South Vietnam to kill American soldiers.

Yesterday's Washington Daily News published a UPI dispatch from Saigon which told about a Vietcong attack on Dong Ha. Dong Ha is 8 miles south of the demilitarized zone. The attackers were using Soviet-built 152-millimeter cannon which can fire shells weighing 107 pounds up to 15 miles. About 100 of these shells hit the outpost.

Mr. President, when we read reports like this, we can no longer believe the statements that Soviet supplies play no significant part in the war in the South. It is clear that these are major Soviet weapons. It shows us once again why it is necessary to interdict the Communist supply lines and to close the ports, particularly Haiphong. It is the opinion of our military experts that these ports should be closed and this article reinforces that opinion.

I ask unanimous consent to have the article entitled "Reds Rake Marines With Giant Gun" printed in the RECORD.

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

REDS RAKE MARINES WITH GIANT GUN

SAIGON, Aug. 28.—Communist forces today attacked the largest U.S. Marine helicopter base with rockets and bombarded a Leatherneck outpost with their biggest Russian-made guns. At least seven Marines were killed and 89 wounded in the two attacks.

Viet Cong terrorist squads also were busy. More than 500 civilians were killed or wounded in nationwide week-end attacks aimed at disrupting South Vietnam's elections. American Commanders in Saigon put their men on an assassination alert as the Reds pushed their greatest terror campaign of the war.

POISED

U.S. B52 bombers flew two missions early today inside the DMZ and along its fringes where an estimated 35,000 communist troops were reported poised for an invasion of the South. U.S. Marines also launched a drive against the communists threatening northernmost Quan Tri Province.

U.S. fighter-bombers flew 118 missions against targets in North Vietnam yesterday despite cloudy weather. No losses were reported.

Government spokesmen reported that Viet Cong machinegunners killed 15 civilians and wounded 18 more in the attack on the Tea Quay refugee hamlet yesterday. The attack was one of eight terrorist raids during the day.

Early today, Guerrillas killed four Marines, wounded 80 more, destroyed three helicopters and damaged nine others in a rocket assault on the giant Marble Mountain base. Rockets also ripped up the runway and blasted buildings at the installation. Between 10 to 20 rockets hit the base.

THREE KILLED

Three Marines were killed and nine wounded in a dawn attack on the Marine outpost at Dong Ha, eight miles south of the Demilitarized Zone. American officials said the communists used their heaviest guns—the Soviet-built 152-mm cannon which can fire shells weighing 107 pounds up to 15 miles. About 100 shells hit the outpost.

Six hours later, an American spotter plane saw North Vietnamese artillery positions 15 miles north of Dong Ha and called in jets. The jets destroyed two artillery positions and touched off three secondary explosions.

WORST

Vietnamese spokesmen said the terror is the worst of the war but gave no sign of

slackening the election campaign which ends in voting Sunday.

American military commanders in Saigon ordered special precautions for all U.S. personnel in the capital. They curtailed all military passes in the city and told troops to leave their duty posts only on vital business—and then in pairs at least.

THE LEAVEN OF ECONOMIC PROGRESS—ADDRESS BY WARD L. QUAAL

Mr. DIRKSEN. Mr. President, Mr. Ward L. Quaal, president, WGN Continental Broadcasting Co., delivered a very impressive address to the 53d annual conference of the Association of Better Business Bureaus International in Montreal, Canada, on June 12, 1967. This is indeed a worthwhile and provocative presentation which merits wider distribution, and I therefore ask that it be inserted as a part of my remarks.

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

THE LEAVEN OF ECONOMIC PROGRESS

Here we are in an international city of rare beauty within the shadow of an exposition which bespeaks the genius of man. And yet we can hear distantly the rumblings of guns that bespeak man's desolation.

Time moves forward, paced by the ingenious and inventive capacity of new generations, marked by rare advances in science and agriculture and production. Yet, men are still preoccupied throughout the world with the age-old problem of the species: freedom.

We are meeting here during the 53rd annual conference of an organization originally designed to perpetuate freedom in the marketplace through the application of self-discipline. We are meeting at a time when attacks upon fundamental elements of that free market, such as advertising, have reached a crescendo; at a time when bureaucracy has clasped that magic new catch word "consumerism" to its bosom; at a time when, in the places of greatest individual freedom, there is growing evidence of governmental paternalism.

You require no briefing on this topic. You are aware of the suggestions that advertising is anti-competitive, that advertising adds to consumer costs, that media discounts create monopolies, that government should establish sweeping consumer-protective legislation, ad infinitum.

There has been the cry of the dissidents that advertising is a social evil; there have been numerous proposals that government intrude into the free trade arena between producer and consumer far and beyond its present ackowledged posture; and there have been additional suggestions that the consumer must be protected by elaborate informational campaigns about products and services.

This organization exists because those who belong to it (and who support it financially) believe in consumer protection. They believe also in the protection of the good name of business. They have given evidence of this belief for over half a century, and their self-promulgated activities are more extensive, more widespread, more productive now than ever before in history.

It would be preposterous to suggest that business can do no wrong. The very existence of the Bureaus denies that proposition. It is a fair postulate, however, that business does fewer things wrong and, conversely, more things right as the result of self-discipline. I speak not alone of the self-discipline implicit in the effort of the Bureaus, but self-discipline as reflected in codes of practice indigenous to hundreds of business pursuits in free economies throughout the world.

Justice George Sutherland of the Supreme Court of the United States, speaking to the American Bar Association as that organization's president in 1917, touched upon the subject of self-discipline. He observed:

"One objection to governmental interference with the personal habits, or even the vices of the individual, is that it tends to weaken the effect of the self-convincing moral standards and to put in their place fallible and changing conventions as the test of right conduct, with the consequent loss of the strengthening value to the individual of free exercise of his rational choice of good rather than evil.

"Enforced discipline can never have the moral value of self-discipline since it lacks the element of cooperative effort on the part of the individual which is the very soul of all personal advancement."

Justice Sutherland went on to say and, mind you, this comment was made fifty years ago: ". . . the business activities of the country (are) being investigated, supervised, directed, and controlled in such a multitude of ways that the banker, the merchant, and the men of industry generally are afloat upon a sea of uncertainty where if they succeed in avoiding the mines of dubious statutes by which they are surrounded, they are in danger of being blown up by an administrative torpedo, launched by one of the numerous submarine commissions by which the business waters are everywhere infested. . . ."

I repeat the words of this eminent jurist in the hope that they will console you inasmuch as you will learn that what may seem undue intrusiveness by government in this time was ever thus. Nor does one see any more reason to submit now to improper government intervention than the Justice saw then.

This is the conundrum those engaged in private enterprise, both producers and consumers, must ever solve: to what extent is government's concern and intervention beneficent, and at what point does it become meddlesome. For it is meddlesome indeed, and intolerable, if it tends to make rigid the conditions which permit free play in the marketplace. We must seek as free men a proper balance of liberty and order. In the absence of this balance the free society will falter and fail.

It is certainly proper, therefore, that our theme at this 53rd conference of a noble and successful experiment in self-discipline should relate to the interest of the consumer. For the consumer's part in a free economy is fully as vital and surely as generative as that of the producer. The consumer should and does call the tune. He selects the product and service. His selection determines the success of the enterprise. In turn, the success of the enterprise determines its ultimate freedom for it is apparent that the consumer cannot, through the device of semantics, be separated from the voter. In short, he who controls the marketplace also controls the polling place.

The evidence of the interrelationship between the citizen and the business community is preponderant. In this, the 175th year of the New York Stock Exchange, one out of every six American adults is a stockowner. Fifteen years ago, 6½ million Americans owned shares in American business. Today, the number is 22 million.

The consumer's powerful influence upon the marketplace is demonstrated every day. In 1964, one of our more prosperous years, the Bjorksten Research Laboratories of Madison, Wisconsin studied the fate of 27,000 new products that manufacturers tried to introduce to the public that year. Four out of every five of the products were rejected by the consumers. Unsuccessful manufacturers sustained losses totalling more than $3 billion.

And these figures should be appraised in the knowledge that only about 11 percent of the total number of businesses in America comprise corporations. There are now about 11 million business enterprises in the United States, including farms—and quite apparently many are sole proprietorships or small partnerships—where the relationship to the consumer is not only close but often overlapping. In fact, over 100 million Americans indirectly invest in business through savings accounts, insurance policies, and pension fund participation.

As it was stated in a recent annual report of the United States Steel Corporation, "The marketplace is democratic to an almost unimaginable degree in the political realm. Every day is Election Day in the market. Each purchase is a vote, and a company's sales are its tabulation of consumers' ballots, the customers' dollar. For each company there is neither tenure nor a fixed term of office. A big business can be voted small. A small business can be voted big, and any business can be voted out of office."

It is not true that the consumer is defenseless. Nor is the consumer isolated from the mainstream of the free market in action. On the contrary, he is the essential element. His desires in search of fulfillment, his needs in quest of satisfaction—these are the factors that stimulate the growth of business, that move capital to risk investment.

Government indeed has a vital place in this interaction. But that place must be respectful of the freedom of the individual and it should not so dominate the conditions of a free market that trade becomes stultified and initiative withered.

There is plenty of evidence that American business is awakening to the necessity of doing something about the attacks upon basic tools of free enterprise, such as advertising. The Magazine Publishers Association has been sponsoring a series of advertisements telling about the contribution of advertising to our free economy. The Association of National Advertisers has underwritten a new and powerful book by Dr. Jules Backman entitled "Advertising: The Case for Competition." This fine study is published by the New York University Press and its distribution is being promoted by other business organizations, such as the National Association of Broadcasters.

Some progress has been made in another Association—the American Association of Advertising Agencies—which recently acknowledged a possible need for continuing representation in Washington, D.C.

There is wide support for the notion that all business associations representing advertising interests should pool their resources to establish a task force in Washington.

Our own organization, the Better Business Bureau, has been notably progressive in its efforts on behalf of the consumer, not only in establishing voluntary programs for consumer protection, but also in reflecting consumer desires.

The Better Business Bureau Research and Education Foundation was chartered thirteen years ago. As most of you here know, the Foundation's purposes have been brought into sharp relief by recent consumer-oriented activities. In approximately thirty local bureaus throughout the United States, Consumer Affairs Councils are now being formed. These Councils include businessmen, educators, representatives of consumer groups, housewives, union representatives, and others genuinely interested in consumer problems. The Councils are designed to serve as grass roots sounding boards of customer attitudes.

As Victor Nyborg views the Councils, they are "direct links in sensitive geographic areas throughout the country which will help us in determining what consumer ideas the public has on its mind."

The Board of Trustees of the Foundation comprises a blue ribbon list of eminent business leaders led by Chairman Charles H. Kellstadt. The Foundation's objectives in activating these Councils will move forward quickly and productively.

And finally, within the scope of this broad

program of business ambassadorship, you are aware that the Bureaus have recently established their own office of National Affairs in Washington.

You will hear later from our President about numerous other Bureau plans for stepping up service to the consumer—for more fully acknowledging his day-to-day interest in the activities of business and the product of those activities. These plans incorporate programs for continuing exchange of information with government at all pertinent levels of jurisdiction, for expanding informational efforts, for local-level seminars, and for other endeavors purposefully designed to help the consumer toward a broader understanding of the American economic system.

And all of this is intended to strengthen and extend the concept of self-responsibility and self-discipline.

I for one endorse, as I trust all of you here do, the notions that government should limit its regulation of industry to the greatest extent possible and that business thus bears concomitant responsibility to assume greater moral burdens.

If efforts pursuant to this goal will achieve a better world for the consumer, and surely they will, then the Bureaus are wisely set upon such a course.

There may be corollary benefits. The consumer, while learning more about business, may also learn more about Government—which presently owns more than 34 percent of the land area within the 50 States, owns and operates over 3000 tax-free commercial ventures, and dispenses more than 25 percent of the national income.

In our zeal to meet the changing demands of a dynamic expanding economy which brings government into closer consort with the business community we must not lose sight of our original loyalty—to the free citizen whose freedom to choose as a consumer derives from his freedom to choose as a voter.

Whoever jeopardizes one freedom endangers the other.

This process is part of the life cycle as it was seen by the French economist, Frederick Bastiat, who popularized some of the concepts of Adam Smith. Mr. Bastiat wrote: "The Creator of Life has entrusted us with the responsibility of preserving, developing, and perfecting it. In order that we may accomplish this, He has provided us with a collection of marvelous faculties. And He has put us in the midst of a variety of natural resources. By the application of our faculties to these natural resources we convert them into products, and use them. This process is necessary in order that life may run its appointed course."

Some complex manifestations have been added to the cycle of life since Monsieur Bastiat's time, it is true. There have been refinements such as hydrogenation, quick freezing, homogenization, internal combustion engines, nuclear power, television, electricity, laser beams, and incubation, to name a few.

But the progression hasn't changed—from natural resource to production to consumption.

And the leaven in this progression is individual liberty—free choice, if you will.

Damage done to the free market, whatever the source of injury, is damage to the free man. Remove the reward for integrity, effort, and ingenuity, and you remove the incentive to perform.

At a Junior Achievement Award Dinner in Seattle a single scholarship of $2000 was given to one among 500 who had competed in a contest. Said the speaker, "Think a moment of the motivation to you students if we lived under Socialism's idealistic concept of equality for all—and the award had been announced as 500 scholarships worth four dollars each."

There are over 115 million adult consumers in the United States. Our Bureaus in the past year have been in direct contact with over 3½ million people in 125 American cities—contacts related directly to the conduct of American business vis-à-vis the American consumer. Only nine percent of the total contacts involved actual complaints. In most instances the consumer was seeking specific information to assist him in buying. This kind of free interplay between business and consumer through the agency of the Bureaus is vital to the health and expansion of the free marketplace.

The Bureaus are now stepping up their efforts toward enlarging this area of public contact. Through the magic of computerization, precise reports on public attitudes in various parts of the nation can be made available quickly to industry and to government through these self-promulgated programs.

None question the fact that business has been taking a more enlightened view of its place of high responsibility in society. Today's business leader, in large and small industry, must devote much of his executive attention to the social needs of the communities upon which his business activities bear. This requirement daily becomes more demanding.

We must not turn our backs upon it. To ignore it invites the ever-willing heavy hand of government intervention in those areas which are most prudently left to the devices of the free market.

It has not been said better than by a member of our Research and Education Foundation Board. Henry Ford II, who has commented: "I have deep faith in the stimulating power of competition and in the capacity of the free market to allocate resources and to bring optimum growth and progress, if we will only let it work."

As we meet here let us remember the lessons of liberty that have been so dearly learned in this hemisphere and throughout the world. The course of business and the course of government are not as important as the quality of freedom. In a system where liberty is needlessly circumscribed, however noble its concepts and aspirations, man's hope and drives will diminish and die.

We must take our place with the legions who stand for liberty. In time of memory they have been giants in our government, they have marched in the ranks of our armed forces, they have spoken from our pulpits, they have published and broadcast our tidings, they have taught our young—and yes, they have nurtured and managed our industrial complex.

Whatever imperils the freedom of the marketplace also imperils liberty as we know it in our time. Recognition of that essential condition of democratic behavior, and acknowledgment of the responsibility devolving upon each of us as a consequence, must be constantly before us during our deliberations at this Conference.

U.N. SECURITY COUNCIL SHOULD DEBATE VIETNAM WAR

Mr. BREWSTER. Mr. President, I should like to associate myself with the very reasonable and poignant remarks of the distinguished majority leader and others of my distinguished colleagues who have spoken in this Chamber on the failure of the United Nations Security Council to debate the single most important international issue in the world today: the war in Vietnam.

This issue overshadows all other political concerns of our time. The war in Vietnam is the greatest threat to peace and security on earth today. As such, it is a subject more appropriate than any other for debate in the Security Council, the body with "primary responsibility for the maintenance of international peace and security."

Yet, as each of my distinguished colleagues knows, the Security Council has averted its glance from the Vietnam war, even to the point of pretending that it does not exist. Daily, however, the war grows bigger, and the casualty list grows longer.

Now more than 13,000 American soldiers have died in Vietnam, and 75,000 wounded.

Surely it is incumbent upon this Nation to seek out every available means of settling this war by international action. I submit that there is no better starting point than the United Nations Security Council.

Up until this time, we have not moved to take up the Vietnam resolution that has remained on the Security Council agenda for more than a year and a half.

This is deplorable. It is up to us to take the initiative to move on the Vietnam resolution, and our representatives should do so immediately. As the distinguished majority leader has pointed out, our motion could not be vetoed, because it would involve only a matter of procedure.

We have nothing to fear, nor anything to lose, from exposing the hitherto taboo subject of Vietnam to debate in a supreme council of nations. There is no better place to make clear our willingness to explore all paths leading to an honorable settlement.

Our stake in the United Nations, and our faith in that body, is as old as the organization itself. During the Second World War, and in the years immediately afterwards, the United States led in the establishment of the U.N.

In the 22 years since the signing of the charter, we have consistently supported involvement of the United Nations in the international crises of the day. Consistently we have advocated giving the United Nations a larger role in the establishment of a just and durable world peace. Consistently, we have believed in her ability to do so.

How can we, then, sidestep the United Nations in the Vietnam war, the greatest crisis facing us today? To avoid Security Council debate is inconsistent to say the least, but more importantly, it neglects the greatest international device we have for finding an honorable solution to our dreadful dilemma.

Our net dues to the United Nations come to $33.6 million a year. We pay this sum because we believe in the potential of the United Nations to help us solve our problems.

We believe the United Nations can settle international disputes. Therefore, we support the U.N., and believe it is worth using.

Standing alone, we cannot halt aggression and dispense peace the world over. With heavy involvement in the defense of Europe and of Southeast Asia, I can only conclude that this Nation is already overcommitted.

Without substantial assistance from our allies and from the United Nations, I do not see how we can maintain all our overseas commitments indefinitely without drastically cutting back on domestic programs.

This summer's riots in the cities have demonstrated vividly how ill we can afford to make reductions in domestic expenditure.

It is imperative, then, that we seek international solution to our overseas problems—the major problem, of course, being Vietnam.

We cannot shoulder this problem all by ourselves forever.

Even less can we go on forever ignoring the possibility of finding a solution in the United Nations. We must move now to commence debate on the Vietnam resolution.

ILLINOIS SESQUICENTENNIAL—DECEMBER 3, 1968

Mr. DIRKSEN. Mr. President, next year the State of Illinois will observe the sesquicentennial of its entry into the sisterhood of States. To be exact, it happened in December of 1818, but there will be a yearlong celebration and that celebration begins on December 3 of this year.

In this year of the sesquicentennial of the great State of Illinois, I think it appropriate that we remember the events and the names that have contributed to the outstanding role which Illinois has played in the development of the United States—that we summon to mind the share which Illinois has contributed in forging this Nation—that we point with pride to the participation of Illinois in the drama which is American history and heritage.

Foremost among those to whom Illinois was home, Abraham Lincoln and Ulysses S. Grant gave meaning and permanence to the Federal Union—a platitude of history for which we can offer no adequate gratitude—either to Illinois or to the souls of those two patriots who lived a century ago.

Among those who helped make history in Illinois are writers like Eugene Field and Carl Sandburg; architects like Louis Sullivan and Frank Lloyd Wright; industrialists like Cyrus McCormick and George M. Pullman.

Agriculture and industry go hand in hand in Illinois. Large-scale farming was first made possible by the mechanical reapers built by Cyrus McCormick in Chicago in 1847. George M. Pullman built the first successful railroad sleeping car in Bloomington in 1859, thereby changing traditional concepts of travel. Illinois is today one of the largest rail centers and steel-producing States in the country. Atomic energy was born in Illinois, when scientists first controlled a nuclear chain reaction at the University of Chicago in 1942.

Nor has our State neglected education which is essential to greatness. There are 50 accredited universities and colleges in Illinois; the State historical library in Springfield is justly renowned for its Lincoln collection, while the Chicago Natural History Museum is one of the world's leading scientific museums.

In politics, agriculture, industry, and education—Illinois has continually played a leading role since her creation as a State in 1818.

The people of Illinois represent backgrounds as diverse as the State's history is rich in accomplishment. More than 7 percent of its people were born outside the United States, coming from Germany, Poland, Czechoslovakia, Greece, Ireland, Lithuania, Russia, and Sweden, among the most well represented.

Today we regard not only the achievement of the past but also the hope of the future. This land of the flatboat and pioneer wagon, steamship, and modern railroad stands as both a sentimental landmark and a vital pace setter in the progress of the United States toward greatness. The land of George Rogers Clark is also the land of Ernest Hemingway, Arthur Goldberg, and Enrico Fermi. It is the Land of Lincoln—of the restless river and sleepy sun; of the soaring skyline of a mighty metropolis and of the productive prairies teeming with life. It is a land whose history evokes, instead of nostalgia for the past, a vision rich with the promise of future accomplishment.

This is Illinois, my own State, which I salute in celebration of her sesquicentennial span—from the pioneer period to the present primal position not only in agriculture attainments, in mining and manufacturing miracles, and in communication and commerce, but also in people—our great men and noble women.

This Land of Lincoln and people of the prairies, I proudly praise and solemnly salute.

Mr. President, in connection with these remarks, I submit a concurrent resolution for myself and the distinguished junior Senator from Illinois [Mr. PERCY], to whom I now yield, and ask that the concurrent resolution be appropriately referred.

The PRESIDING OFFICER. The concurrent resolution will be received and appropriately referred; and, under the rule, the concurrent resolution will be printed in the RECORD.

The concurrent resolution (S. Con. Res. 43) was referred to the Committee on the Judiciary, as follows:

S. CON. RES. 43

Whereas the State of Illinois proudly entered the Federal Union as the twenty-first State on the 3d day of December 1818; and

Whereas from that day the people of Illinois have joined together to maintain, defend, and enlarge the free institutions upon which our Nation is founded, and to develop the resources of the State for the benefit of its people and the Nation; and

Whereas generations of its citizens have renewed their historic dedication to the principles of the Republic; and

Whereas the inspiring example set by its greatest citizen has evoked the admiration of the world and has caused the State to adopt the slogan "Land of Lincoln": Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress of the United States hereby recognizes and commends the yearlong celebration to be held in the State of Illinois, commencing in December 1967, and extending to the one hundred and fiftieth anniversary of the admission of the State of Illinois to the Union in December 1968, and be it further

Resolved, That the Congress of the United States extends its most cordal greetings and warmest congratulations to the citizens of the State of Illinois upon the occasion of the celebration of its sesquicentennial anniversary.

Mr. PERCY. Mr. President, I am proud to join my distinguished colleague, the senior Senator from Illinois [Mr. DIRKSEN], in introducing a resolution to commemorate the proud history of Illinois on the occasion of its sesquicentennial and salute the bright prospects for its future.

Not the least of its contributions to the Nation is the service, in peace and war, and under five Presidents, of the illustrious Senator DIRKSEN—a man respected not only in his own State and Nation but throughout the free world.

While he and I may be somewhat less than completely objective on the subject, I am confident that the committee to which the resolution is referred will find much of merit in Illinois' contribution to our national heritage and history.

For as my distinguished colleague has pointed out, the story of Illinois is people: sturdy Swedes who built sod houses on Bishop Hill a century ago; scientists who shattered the atom at the University of Chicago; rugged miners going deep into the earth in southern Illinois; farmers seeing the land for both its beauty and its bounty; and city dwellers for many of whom noonday is the midnight hour.

Illinois—the Land of Lincoln—is a blend of action and geography: high finance on LaSalle Street and the ancient, exotic beauty of the Shawnee Forest; factories in the Quad-Cities and the network of navigation and soil conservation dams; university students going to and fro to classes in a busy city and a green and verdant land nestled between the broad, smooth-flowing Mississippi and Ohio Rivers.

Two of Illinois' native sons have captured in written word the courageous, yet quixotic, nature of the people and the stuff of our great State.

Carl Sandburg was laid to rest only a few weeks ago in his native Galesburg. In a large measure, it was he who brought Abraham Lincoln to present-day America. But he created numerous memorials to Illinois, not only of Chicago, in perhaps his most famous poem, but memorials to the land, and its people:

Bury this old Illinois farmer with respect
He slept the Illinois nights of his life after days of work in Illinois cornfields.
Now he goes on a long sleep.
The wind he listened to in the cornsilk and the tassels, the wind that combed his red beard zero mornings when the snow lay white on the yellow ears in the bushel basket at the corncrib.
The same wind will now blow over the place here where his hands must dream of Illinois corn.

That great Chicago newspaperman, Ben Hecht, wrote proudly and colorfully of Chicago:

"The nation's greatest intellectual metropolis," said Mr. Read. "With the finest publishing house in the land, Stone and Kimball. And the finest magazine off American or European presses—The Chap Book. A periodical that put London's Yellow Book in the shade. And a concentration of literary geniuses unequalled in any other city. There were a few first-rate fellows in San Francisco—Bierce, Morrow, London, Sterling. Nobody in New York City except Crane and some scribbling professors who looked down on him. But in Chicago, sir, literature flourished. It was a time of wit and gaiety which I find now gone from the world. We

had men of talent among us, newspaper Neds. Theodore Dreiser, who worked on Mike McDonald's Globe. James Whitcomb Riley who gladdened the old Inter Ocean with tender songs. Finley Peter Dunne who toiled on the Tribune. Gene Field who graced the Daily News staff. George Ade, who reported for the Record. Henry B. Fuller, Stanley Wayman, Kim Hubbard, Artemus Ward, Bill Nye, Harold Fredericks, and others. My dotage has mislaid their names. But I assure you there were droves of them within a stone's throw of where we sit."

Our visitor swallowed another cupful, and straightened his yellow-white beard.

"Yes I assure you," he said, "we enjoyed a civilization that was bright with wit and happy human antics. Forgive me if I boast, but the past was full of things that are no more. It was a grand time."

It was, indeed, a grand time. The Illinois past was indeed "full of things which are no more," a rich heritage of this heartland of the Nation. And an equally bright future lies ahead, with challenge to match opportunities unpredictable and limitless. In the words of Carl Sandburg, "Is there something finished? And some new beginning on the way?"

Mr. President, I would hope all Senators and all States would join in celebrating not only the sesquicentennial of a great State, but as well this common heritage shared by all Americans.

Mr. President, Chicago is today in the midst of controversy over a piece of art designed by Picaso that has just been unveiled in front of our new civic center. Standing five stories high, it dwarfs the Chicago citizenry who day and night crowd our downtown civic plaza to gaze in awe at this monumental work. Picaso has been condemned by some as a mean old man playing a cruel hoax on Chicago. He has been praised by others as the greatest living artist who has given one of his greatest works to our city. When I asked a little girl last week as we stood in front of this magnificent work what it symbolized to her, she said, "A dragon with angels wings." To me it is bold, dynamic, forward-looking just as Chicago is and just as the State of Illinois is, drawing heavily upon our historical past, living to the fullest our exciting present, and thinking everlastingly of building a finer and greater State for our future generations.

THE UNITED NATIONS AND VIETNAM—STATEMENT BY SENATOR METCALF

Mr. MANSFIELD. Mr. President, my distinguished colleague, the junior Senator from Montana [Mr. METCALF], who is in Walter Reed Hospital, wishes to be associated with statements made on Monday, yesterday, and today by Senators AIKEN, FULBRIGHT, COOPER, SPARKMAN, LAUSCHE, BURDICK, LONG of Missouri, BYRD of Virginia, SYMINGTON, ALLOTT, CHURCH, CARLSON, HART, BREWSTER, MORSE, YARBOROUGH, PASTORE, and myself, in the proposal that the Vietnamese matter go before the Security Council of the United Nations. My colleague says:

There is no more important issue than Vietnam concerning the security of the world. There is no more appropriate body than the Security Council to consider the issue. All of the resources of the United Nations should be brought to bear on this issue.

The effects of Security Council action would extend beyond the Council itself, beyond the United Nations itself. Action by the Council reverberates down the corridors and into the offices and attitudes of the member nations. Thus, as Senator Mansfield pointed out Monday, action by the Security Council is one of the steps that can, and should, be taken to "mobilize the diplomatic community of the world on the subject of Vietnam."

Mr. President, I ask unanimous consent that the statement by my distinguished colleague [Mr. METCALF] be printed in the RECORD at this point.

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

I am in complete agreement with the suggestion by Majority Leader Mansfield and others that the Vietnam matter go before the Security Council of the United Nations.

There is no more important issue than Vietnam concerning the security of the world. There is no more appropriate body than the Security Council to consider the issue. All of the resources of the United Nations should be brought to bear on this issue.

The effects of Security Council action would extend beyond the Council itself, beyond the United Nations itself. Action by the Council reverberates down the corridors and into the offices and attitudes of the member nations. Thus, as Senator Mansfield pointed out Monday, action by the Security Council is one of the steps that can, and should, be taken to "mobilize the diplomatic community of the world on the subject of Vietnam."

MOTION TO RECONSIDER

Mr. MANSFIELD. Mr. President, I enter a motion to reconsider the vote by which the Senate passed S. 974, to authorize the Secretary of Agriculture to convey certain lands.

The PRESIDING OFFICER. The motion will be duly entered.

Mr. MANSFIELD. Mr. President, I move that the Secretary of the Senate request the House of Representatives to return to the Senate the papers on S. 974.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. When that is done, will the measure be automatically returned to the calendar? If not, I ask unanimous consent that it be returned to the calendar.

The PRESIDING OFFICER. That will be done on the motion to reconsider; and upon the papers being returned by the House of Representatives, the matter may be taken up.

PROGRAM FOR TOMORROW

Mr. DIRKSEN. Mr. President, I should like to query the majority leader concerning the program for tomorrow. As I understand, there will be no business tomorrow?

Mr. MANSFIELD. None at all. There will be some speakers.

Mr. DIRKSEN. The Senator anticipates some speakers?

Mr. MANSFIELD. A few.

Mr. DIRKSEN. And the Senate will convene at what time?

Mr. MANSFIELD. At 12 o'clock noon.

ORDER OF ADJOURNMENT

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

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

AUTHORITY FOR COMMITTEES TO FILE REPORTS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on Friday, September 8, 1967, from 10 a.m. until 5 p.m., all committees of the Senate be authorized to file reports, together with individual, supplemental, or minority views, if desired.

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 534 and 535.

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

DISCLOSURE OF CORPORATE EQUITY OWNERSHIP

The Senate proceeded to consider the bill (S. 510) providing for full disclosure of corporate equity ownership of securities under the Securities and Exchange Act of 1934 which had been reported from the Committee on Banking and Currency, with an amendment to strike out all after the enacting clause and insert:

That section 12(i) of the Securities Exchange Act of 1934 is amended by striking out "sections 12, 13, 14(a), 14(c), and 16" and inserting in lieu thereof "sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16".

SEC. 2. Section 13 of the Securities Exchange Act of 1934 is amended by adding at the end thereof the following new subsections:

"(d)(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 12 of this title, is directly or indirectly the beneficial owner of more than 10 per centum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors—

"(A) the background and identity of all persons by whom or on whose behalf the purchases have been or are to be effected;

"(B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is

represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 3(a)(6) of this title, it will be sufficient to so state;

"(C) if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;

"(D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the name and address of each such associate; and

"(E) information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

"(2) If any material change occurs in the facts set forth in the statements to the issuer and the exchange, and in the statement filed with the Commission, an amendment shall be transmitted to the issuer and the exchange and shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a 'person' for the purposes of this subsection.

"(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

"(5) The provisions of this subsection shall not apply to—

"(A) any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933;

"(B) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed 2 per centum of that class;

"(C) any acquisition of an equity security by the issuer of such security;

"(D) any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

"(e)(1) It shall be unlawful for an issuer, to purchase any equity security which it has issued in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors or in order to prevent such acts and practices as are fraudulent, deceptive, or manipulative. Such rules and regulations may require such issuer to provide holders of equity securities of such class with such information relating to the reasons for such purchase, the source of funds, the number of shares to be purchased, the price to be paid for such securities, the method of purchase, and such additional information, as the Commission deems necessary or appropriate in the public interest or for the protection of investors, or which the Commission deems to be material to a determination whether such security should be sold.

"(2) For the purpose of this subsection, a purchase by or for the issuer, or any person controlling, controlled by, or under common control with the issuer, or any bonus, profit sharing, pension, retirement, thrift, savings, incentive, stock purchase, or similar plan of the issuer or any such person shall be deemed to be a purchase by the issuer."

SEC. 3. Section 14 of the Securities Exchange Act of 1934 is amended by adding at the end thereof the following new subsections:

"(d)(1) It shall be unlawful for any person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, to make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to section 12 of this title, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 10 per centum of such class, unless at the time copies of the offer or request or invitation are first published or sent or given to security holders such person has filed with the Commission a statement containing such of the information specified in section 13(d) of this title, and such additional information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of such a security shall be filed as a part of such statement and shall contain such of the information contained in such statement as the Commission may by rules and regulations prescribe. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors, and shall be filed with the Commission not later than the time copies of such material are first published or sent or given to security holders. Copies of all statements, in the form in which such material is furnished to security holders and the Commission, shall be sent to the issuer not later than the date such material is first published or sent or given to any security holders.

"(2) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a 'person' for purposes of this subsection.

"(3) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

"(4) Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(5) Securities deposited pursuant to a tender offer or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time until the expiration of seven days after the time definitive copies of the offer or request or invitation are first published or sent or given to security holders, and at any time after sixty days from the date of the original tender offer or request or invitation, except as the Commission may otherwise prescribe by rules, regulations, or order as necessary or appropriate in the public interest or for the protection of investors.

"(6) Where any person makes a tender offer, or request or invitation for tenders, for less than all the outstanding equity securities of a class, and where a greater number of securities is deposited pursuant thereto within ten days after copies of the offer or request or invitation are first published or sent or given to security holders than such person is bound or willing to take up and pay for, the securities taken up shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor. The provisions of this subsection shall also apply to securities deposited within ten days after notice of an increase in the consideration offered to security holders, as described in paragraph (7), is first published or sent or given to security holders.

"(7) Where any person varies the terms of a tender offer or request or invitation for tenders before the expiration thereof by increasing the consideration offered to holders of such securities, such person shall pay the increased consideration to each security holder whose securities are taken up and paid for pursuant to the tender offer or request or invitation for tenders whether or not such securities have been taken up by such person before the variation of the tender offer or request or invitation.

"(8) The provisions of this subsection shall not apply to any offer for, or request or invitation for tenders of, any security—

"(A) proposed to be made by means of a registration statement under the Securities Act of 1933;

"(B) if the acquisition of such security, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, would not exceed 2 per centum of that class;

"(C) by the issuer of such security; or

"(D) which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

"(e) It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation.

"(f) If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to subsection (d) of this section or subsection (d) of section 13 of this title, any persons are to be elected or designated as directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, then, prior to the time any such person takes office as a director, and in accordance with rules and regulations prescribed by the Commission, the issuer shall file with the Commission, and transmit to all holders of record of securities of the issuer who would be entitled to vote at a meeting for election of directors,

information substantially equivalent to the information which would be required by subsection (a) or (c) of this section to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders."

Mr. WILLIAMS of New Jersey. Mr. President, the Securities Act of 1933 and the Securities Exchange Act of 1934 provide protection for millions of American investors by requiring full disclosure of information in connection with the public offering and trading of securities. These laws have worked well in providing the public with adequate information on which to base intelligent investment decisions. Of equal importance is the fact that they have enhanced public confidence in our Nation's securities markets and encouraged their healthy growth and development.

There are, however, some areas still remaining where full disclosure is necessary for investor protection but not required by present law. One such area is the purchase by direct acquisition or by tender offers of substantial blocks of the securities of publicly held companies.

S. 510, cosponsored by the senior Senator from California [Mr. KUCHEL] and unanimously reported by the Banking and Currency Committee, provides for investor protection in these areas. The bill amends the Securities Exchange Act of 1934 to require the disclosure of pertinent information, first, when a person or group of persons seek to acquire a substantial block of equity securities of a corporation by a cash tender offer or through open market or privately negotiated purchases, and second, when a corporation repurchases its own equity securities.

The corporate takeover bid or cash tender offer has become over the last 6 years an increasingly favored method of acquiring corporate control—a situation not contemplated by the Congress when it passed the Securities Exchange Act 33 years ago. It is generally cheaper and faster than the proxy solicitation. Also, filings under the Securities Acts which disclose all pertinent facts to the investing public are not required, as they are in proxy contests or where one company offers to exchange its shares for those of another. Evidence of the increased use of cash tender offers is shown by the fact that in 1960 there were only eight such offers involving listed companies as compared to 107 in 1966. In 1960 there were tender offers for $200 million of listed securities. By 1965 this figure had increased to approximately $1 billion.

Under current law, an individual or group can seek control of a publicly held corporation by simply taking an ad in the newspaper stating a willingness to buy a certain number of shares of stock. The purchase price is usually set at a premium of about 20 percent above that at which the stock is being sold. This fact alone may well be attractive to the investor seeking a quick profit.

By use of a cash tender offer the person seeking control can operate in almost complete secrecy. He need not state the source of his funds; who his associates are; why he wants to acquire control of the corporation; and what he intends to do with it if he gains control.

Today, the public shareholder in deciding whether to reject or accept a tender offer posseses limited information. No matter what he does, he acts without adequate knowledge to enable him to decide rationally what is the best course of action. This is precisely the dilemma which our securities laws are designed to prevent.

The competence and integrity of a company's management, and of the persons who seek management positions, are of vital importance to stockholders. Secrecy in this area is inconsistent with the expectations of investors and impairs public confidence in our Nation's securities markets.

It has been strongly urged that takeover bids should not be discouraged, since they often serve a useful purpose by providing a check on entrenched but inefficient management. Takeover bids are, however, made for many other reasons, and do not always reflect a desire to improve the management of the company.

In reporting this bill, the committee has carefully weighed both the advantages and disadvantages to the public of the cash tender offer. We have taken extreme care to avoid tipping the scales either in favor of management or in favor of the person making the takeover bids. S. 510 is designed solely to require full and fair disclosure for the benefit of investors. The bill will at the same time provide the offeror and management equal opportunity to present their case.

While the bill may discourage tender offers or other attempts to acquire control by those who are unwilling to expose themselves to the light of disclosure, this is but a small price to pay for adequate investor protection. Experience under the Securities Act of 1933 and the Securities Exchange Act of 1934 has amply demonstrated that the disclosure requirements of the Federal securities acts are an aid to legitimate business transactions, not a hindrance.

The legislation before us today provides for full disclosure in cash tender offers and in stock acquisitions of more than 10 percent of a corporation's equity shares.

Under this bill, all pertinent facts concerning the identity and background of the person or group making the tender offer or acquisition must be disclosed. Stockholders must also be informed as to—

The size of the holdings of the person or group involved.

The source of the funds to be used to acquire the shares except where the funds are acquired from a bank in the ordinary course of business.

Any financing arrangements made for these funds and how these arrangements will be liquidated.

The purpose of the tender offer.

The plans of the offeror—if he wins control of the company—whether to liquidate it, sell its assets, merge it with another company, or to make major changes in its business or corporate structure.

Under this legislation all persons soliciting tenders must answer these questions. Indeed, anyone acquiring more than 10 percent of a class of an equity security registered under the Securities and Exchange Act will be required to disclose similar information. This is the only way that corporations, their shareholders and potential investors can adequately evaluate a tender offer or the possible effects of a change in substantial shareholdings.

The bill would also authorize the Securities and Exchange Commission to adopt regulations requiring appropriate disclosures when corporations repurchase their own securities.

Corporate stock repurchases have become increasingly more important over the last 10 years. In 1963, corporations listed on the New York Stock Exchange repurchased more than 26,000,000 shares of their own stock at a cost of more than $1.3 billion. In contrast, the number of shares purchased in this manner in 1954 was 5,800,000 at a cost of $274 million.

Corporate repurchases of their own securities serve a number of legitimate purposes. They may result from a desire to reduce outstanding capital stock following the cash sale of operating divisions or subsidiaries. Companies may also repurchase their shares in order to make them available for options, acquisitions, and employee stock purchase plans, without increasing the total number of shares outstanding. Repurchase programs, however, have also been used by managements to preserve or strengthen their control by counteracting tender offers, or to increase the market price of the company's shares. Whatever the motive, if the repurchases are substantial, they will have a significant impact on the market price of the security. The company's shareholders and other persons interested in the market price of its stock should have full information regarding the company's intentions when such repurchases take place.

The Subcommittee on Securities, of which I am chairman, held three days of extensive hearings on this proposed legislation. The testimony received at these hearings was indeed gratifying. Statements made by witnesses were most constructive and showed a widespread appreciation of the need for this legislation.

Representatives of the New York Stock Exchange, the American Stock Exchange, the National Association of Securities Dealers, the Investment Bankers Association, and Chairman Cohen of the Securities and Exchange Commission, all of whom work daily with the problems which we are attempting to solve with this bill have endorsed the legislation.

All have recognized the need to fill the existing gap in the disclosure pattern of our securities laws.

The full disclosure principle was thought to be revolutionary when it was first introduced into the securities marketplace more than 30 years ago. Many predicted that it would hamper or even strangle the operations of our free enterprise system. The facts have proven otherwise. Full disclosure has given the investing public confidence in our free enterprise system. Following this premise, our Nation's securities markets have thrived and prospered over the years. With this legislation, I am sure

that we will eliminate one of the last remaining areas where full disclosure is necessary but not yet available.

Mr. KUCHEL. Mr. President, on January 18 of this year, I was proud to cosponsor a proposal which I felt would fill a significant gap in investor protection. Today, I am most pleased to see that bill brought before the floor of the Senate for action. The passage of S. 510 will revitalize the strength, vitality, and integrity of our entire securities system.

It was less than a year ago when I was personally made aware of the defect in our securities laws which S. 510 seeks to correct. At that time, a French bank through a Swiss subsidiary made a public tender offer to purchase a large block of stock in a corporation—Columbia Motion Pictures which plays a significant role in the economy of California. Without revealing its true intentions, the bank, after it had obtained the shares, prepared to join forces with a few other dissident shareholders in an attempt to gain absolute control of the corporation. If this attempt had succeeded, Columbia would have found itself under the control of a combination including significant foreign interests, without prior notice to the company, without an opportunity for examination into the circumstances surrounding the tender offer, and without any regard for the rights of its stockholders.

On April 5, 1967, a similar cash tender offer was made for a large block of stock in Metro-Goldwyn Mayer, Inc. Again, the identities of the offerors were kept secret.

Mr. President, the legislation being considered by the Senate today aims at doing away with such secrecy in security transactions. Its mechanics have been worked out carefully by the Senate Committee on Banking and Currency in conjunction with representatives of the Securities and Exchange Commission and the New York Stock Exchange.

Legitimate businessmen certainly have nothing to fear from full disclosure on cash tender offers. The stockholders have a right to know who they are dealing with, what commitments have been made, and the intentions and plans of the offeror. So does the public.

Today, there are more than 20 million individual Americans who actively participate in this Nation's investment community. The American people have placed a tremendous trust in the strength, integrity, and vitality of our securities system. It is our responsibility to protect and safeguard that public trust through effective Federal laws and regulations. I believe S. 510 represents a fulfillment of that responsibility to the American people.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

Mr. JAVITS. Mr. President, may we have an explanation of this matter before we act on it?

Mr. WILLIAMS of New Jersey. Mr. President, this is a bill that the senior Senator from California [Mr. KUCHEL] and I introduced jointly, and it has gone through the entire legislative committee process. Hearings were held, and the bill was reported by the committee without dissent. This legislation fills a gap which now exists in our securities laws dealing with full disclosure of corporate equity ownership. This one area has been overlooked until now—the area where ownership of companies is sought through what is called the cash-tender offer.

What this bill would do is to provide the same kind of disclosure requirements which now exist, for example, in contests through proxies for controlling ownership in a company.

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

Mr. WILLIAMS of New Jersey. Certainly.

Mr. KUCHEL. I am proud to join with the Senator from New Jersey in sponsoring this legislation. Let the record clearly show that the Securities and Exchange Commission approved this legislation, and I am delighted that the head of the New York Stock Exchange came down here and said this was in the public interest.

It is in the public interest to disclose who wishes to purchase stock in an American corporation. This bill fills a gap, and I am delighted to participate in sponsoring it.

Mr. WILLIAMS of New Jersey. I was buttressed, indeed, with the strong support of the Senator from California, which I appreciated.

Mr. JAVITS. Mr. President, a bill of this character is naturally very important to the securities markets and to those who hold securities. There are millions in our country who do, so I hope the Senator from New Jersey will not mind if I ask him a few questions.

First, was this measure unanimously reported from the Banking and Currency Committee?

Mr. WILLIAMS of New Jersey. It was.

Mr. JAVITS. I gather that it has the approval of the Securities and Exchange Commission?

Mr. WILLIAMS of New Jersey. It had the across-the-board approval of the securities industry and, as the Senator from California has stated, the approval of the Securities and Exchange Commission as well as that of the stock exchanges.

Mr. JAVITS. It did receive the approval of the stock exchanges? That is very important. Did that approval include the New York Stock Exchange and the American Stock Exchange?

Mr. WILLIAMS of New Jersey. Yes, that is correct.

Mr. KUCHEL. And the Pacific Coast Stock Exchange?

Mr. JAVITS. The Pacific Coast Stock Exchange, and other stock exchanges?

Mr. KUCHEL. That is correct.

Mr. JAVITS. The bill, I gather, now goes to the House of Representatives; is that correct?

Mr. KUCHEL. That is right.

Mr. JAVITS. One other question I should like to ask the Senator: There is no intendment in the measure, or in the fact that the measure is offered, to in any way condemn the practice of making tenders, is there? Sometimes stockholders do very well because of tenders, especially competitive tenders.

Mr. WILLIAMS of New Jersey. There is no intention in any way to prohibit tender offers. As a matter of fact, I think it might encourage them. Through this legislation people will have more information, and will be able to intelligently decide whether to accept a tender offer and sell their shares to a group which may wish to obtain a controlling interest.

Mr. JAVITS. And it requires full disclosure, I assume, of the group, its antecedents, its purposes, et cetera?

Mr. WILLIAMS of New Jersey. And its source of revenue.

Mr. JAVITS. And its source of financing. One last question on this score: The Senator represents to the Senate, and I accept his representation fully, that this is analogous to the proxy rules, so that very much the same principles obtain as to what the British call a takeover, as to a proxy fight by a group of stockholders.

Mr. WILLIAMS of New Jersey. This legislation is patterned on the present law and the regulations which govern proxy contests.

Mr. JAVITS. Does it seek to avoid or does it seek to do anything about the purchase of control, as it is called, in the open market? That sometimes happens, rather than a cash tender.

Mr. WILLIAMS of New Jersey. Could the Senator from New York further amplify his question?

Mr. JAVITS. Yes. A group often goes out and simply buys, on the open market, enough stock to have working control of a company, in a competitive manner, and no seller on the New York Stock Exchange necessarily knows who the buyer is, though the stock may be run up very materially.

Mr. WILLIAMS of New Jersey. Disclosure is required where the effort is to obtain 10 percent or more of a company's stock.

Mr. JAVITS. Of the oustanding stock?

Mr. WILLIAMS of New Jersey. Yes.

Mr. JAVITS. And I assume there are indicia as to what is meant by the effort to obtain controlling interest, so that not everybody who goes out and buys in the open market, over a period of time, 10 percent of a particular issue, is necessarily required to qualify under this act; is that correct?

Mr. WILLIAMS of New Jersey. That is correct.

Mr. JAVITS. Mr. President, with those assurances, which I think are important, I shall not stand in the way of passage of this bill. I agree with the Senator that new financial techniques always require new methods of financial control; and I will be the first to say that the Senator from New Jersey and the Senator from California may very well have come abreast of a very real problem in this regard.

Of course, we still have the problem of mergers and consolidations, and we have the problem of exchanges of stock, whether as a result of merger and consolidation or otherwise; but I gather that

the point of the Senator from New Jersey and the Senator from California is that this is at least a beginning in keeping up with getting adequate representation and adequate information on the part of the stockholder, who could conceivably be imposed upon, without denying him the opportunities which result from the competive bidding for a block of stock of a given company.

Mr. WILLIAMS of New Jersey. I appreciate the comments of the Senator from New York, whose State, of course, is the host of both major exchanges, although I come from a State that is trying to win them away.

Mr. JAVITS. Fortunately, this bill does not deal with that problem.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (S. 510) was passed.

THE ECONOMIC DEVELOPMENT OF GUAM

The Senate proceeded to consider the bill (S. 1763) to promote the economic development of Guam, which has been reported from the Committee on Interior and Insular Affairs, with an amendment, to strike out all after the enacting clause and insert:

SHORT TITLE

SECTION 1. This Act may be cited as the "Guam Development Fund Act of 1967".

PURPOSE

SEC. 2. For the purpose of promoting economic development in the territory of Guam, there is hereby authorized to be appropriated to the Secretary of the Interior to be paid to the government of Guam for the purposes of this Act the sum of $5,000,000.

SEC. 3. Prior to receiving any funds pursuant to this Act the government of Guam shall submit to the Secretary of the Interior a plan for the use of such funds which meets the requirements of this section and is approved by the Secretary. The plan shall designate an agency or agencies of such government as the agency or agencies for the administration of the plan and shall set forth the policies and procedures to be followed in furthering the economic development of Guam through a program which shall include and make provision for loans and loan guarantees to promote the development of private enterprise and private industry in Guam through a revolving fund for such purposes: *Provided,* That the term of any loan made pursuant to the plan shall not exceed twenty-five years; that such loans shall bear interest (exclusive of premium charges for insurance, and service charges, if any) at such rate per annum as is determined to be reasonable and as approved by the Secretary, but in no event less than a rate equal to the average yield on outstanding marketable obligations of the United States as of the last day of the month preceding the date of the loan, adjusted to the nearest one-eighth of 1 per centum, which rate shall be determined by the Secretary of the Treasury upon the request of the authorized agency or agencies of the government of Guam; and that premium charges for the insurance and guarantee of loans shall be established at rates which will be adequate to cover expenses and probable losses related to the loan guarantee program.

SEC. 4. No loan or loan guarantee shall be made under this Act to any applicant who does not satisfy the agency or agencies administering the plan that financing is otherwise unavailable on reasonable terms and conditions. The maximum participation in the funds made available under section 2 of this Act shall be limited to 25 per centum of the available funds to any single project, to 90 per centum of loan guarantee, and, with respect to all loans, the degree of participation prudent under the circumstances of individual loans but directly related to minimum essential participation necessary to accomplish the purposes of this Act.

SEC. 5. The plan provided for in section 3 of this Act shall set forth such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement, repayment, and accounting for such funds.

SEC. 6. The Governor of Guam shall make an annual report to the Secretary of the Interior on the administration of this Act.

SEC. 7. The Comptroller General of the United States, or any of his duly authorized representatives, shall have access, for the purpose of audit and examination, to the books, documents, papers, and records of the agency, or agencies, of the government of Guam administering the plan that are pertinent to the funds received under this Act.

The amendment was agreed to.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 551), explaining the purposes of the bill.

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

PURPOSE

The purpose of S. 1763 is to establish a $5 million fund which the government of Guam will use to make loans to stimulate and develop private industries and private enterprises on Guam.

BACKGROUND

Prior to World War II Guam's economy was based almost exclusively on agriculture and fishing. More than 3 years of Japanese occupation plus liberation by U.S. Armed Forces resulted in the destruction of a substantial part of Guam's only cash crop, copra, and the subsequent construction of large naval installations created an economy almost completely dependent upon government employment. Neither the agricultural nor fishing economies have been restored. In the two decades since the end of World War II, Guam's attempts to develop a new civilian economy of its own have been restricted by our military buildup there and by natural disaster such as Typhoon Karen which struck the island in 1962. This, coupled with Guam's remoteness to the mainland and sources of capital, has made it extremely difficult for business and industry to get started. As a result, Guam's industrious and independent people have been largely reduced to existing on the military, which today comprises about 80 percent of Guam's economy.

NEED

In enacting Public Law 88-170, the Rehabilitation Act of Guam, Congress recognized the imperative need to develop a viable civilian economy and thus provided under section 6 of the act, authorization of $200,000 for a Federal Territorial Commission to make a long-range economic study for Guam. In 1966, the Department of the Interior released its two-volume economic development study which showed that Guam has excellent economic potential in several areas: tourism, assembly plants, fishing, and livestock. The Guam Economic Development Authority, an arm of the government of Guam created by the local legislature, has aggressively followed up these recommendations, searching to attract suitable business enterprises to the island, but capital remains the problem; sufficient private financing simply has not been available to do the job. As an example, the first recommendation of Interior's economic study was for a first-class hotel capable of attracting and accommodating tourists for which Guam has excellent natural facilities, beautiful coral beaches, a pleasant climate and many interesting historic attractions. Shortly after the study was released, the leaders on Guam selected a hotel site, approved architectural plans and established a nonprofit corporation to handle financing of the hotel. Of the $2.8 million required to build the planned 150-room structure, all but $500,000 has been raised or guaranteed in loans. Yet the project has been stalled for months because the remaining $500,000 cannot be obtained. In addition to the hotel, loan funds are needed to develop agricultural enterprises, commercial fishing, manufacturing and service industries, and for the construction of an industrial park.

S. 1763, the Guam Development Act of 1967, will provide what Guam patently needs most: an economic mechanism to help develop a viable civilian economy. The bill as amended authorizes to be appropriated to the Secretary of the Interior, to be paid to the government of Guam for the purposes of the act, the sum of $5 million. Prior to the time the authorized funds are made available to Guam, a plan for the use of the funds is to be submitted to the Secretary of the Interior and approved by him. The plan must designate the agency or agencies of Guam's government that will administer the plan. It must set forth the policies and procedures to be followed in promoting the economic development of the territory through a program of loans and loan guarantees to promote private enterprise and private industry and make provision for a revolving loan fund for such purposes.

AMENDMENTS

The committee has amended S. 1763, as introduced, to include several specific provisions relating to the use of funds authorized to be appropriated by the bill. The term of any loan made under this act would not exceed 25 years. This term is expected to be granted only in those cases involving projects requiring substantial construction of buildings, etc. Otherwise the duration of loans should range from a period of 15 to 25 years, as is presently required by the act governing the Small Business Administration. All loans will require payment of interest at rates determined to be reasonable, but in no event less than a rate equal to the average yield on outstanding marketable obligations of the United States as determined by the Secretary of the Treasury. Premium charges for insurance and guarantee of loans are required at rates to be established which will adequately cover expenses and profitable losses.

Section 4 requires that no loan or loan guarantee will be approved if financing is otherwise available to an applicant on reasonable terms and conditions. This section also requires that the maximum participation in the funds made available by the act shall be limited to 25 percent of available funds to any single project and to 90 percent of any loan guarantee.

Section 5 specifies that the plan provided for in section 3 shall contain such fiscal and accounting procedures as will assure proper disbursements and repayment of all loans.

Section 6 requires that the Governor of Guam shall make an annual report to the Secretary of the Interior on the administration of the act, and section 7 authorizes the Comptroller General of the United States to audit the agency, or agencies, administering this loan program.

OUR PROMISE TO URBAN AMERICA

Mr. MANSFIELD. Mr. President, on Monday, in an act of statesmanship and

vision, the Senate Appropriations Committee refused to turn back on opportunity, renewal, and hope in the American city.

By voting $537 million for the model cities program—almost the full amount requested by President Johnson—and $40 million for the rent supplements program—the full amount requested—plus $15 million desperately needed to advance urban research, the Senate Appropriations Committee effectively launched a Magna Carta for Urban America.

Led by the consummate and understanding hand of Senator WARREN MAGNUSON of Washington, and aided by others who deeply understand the urgent needs of our urban society, these Senators boldly demonstrated that programs for the cities are not just "urban" programs, they are American programs.

The Senate committee has shown that riots or no riots, they would do the right thing for millions of men, women, and children who look to them from the shadows of poverty, ghettos, and shattered aspirations.

They did not reward rioters. They did not "reward" anyone. They filled in the outlines of a blueprint in which the cities will be safe, homes will be healthful, jobs will be plentiful, private and public programs will be tightly coordinated to insure maximum social and economic effect.

We know, and the President knows, that these funds will not bring the millenium to our cities tomorrow.

But the Senate has shown it will keep faith with the cities.

The Senate Appropriations Committee has demonstrated that although money may not be the total answer to America's urban needs, adequate funding of the more than $7 billion in cities programs presented to the Congress by President Johnson, is the instrument which can lift our cities to the stature they deserve and must have in an affluent progressive America.

In his recent letter to Chairman MAGNUSON asking that these urban programs be fully funded, President Johnson cites the "multiplier" effect which model cities and rent supplement funds would have on our economy and society.

The millions in public rent supplement funds would generate one-half billion dollars in private housing construction.

The few millions invested in urban research will call forth new funds from the foundations and from private businessmen with strong social awareness.

The millions voted for model cities will draft new millions, perhaps billions, like a magnet from local government itself, from local industry, from local education institutions, from all those sources working and fighting to transform America's physical environment.

Just a few weeks ago I said on this floor that "we are challenged now as we were before the riots and during the riots—and as we would be challenged even in the absence of riots—to face up to the plight of our cities."

I am glad that the U.S. Senate has not been frightened away from doing its duty. It would not be rushed into cutting or killing programs which would penalize innocent men and women in the cities who had absolutely nothing to do with riots.

It deliberated and wisely decided to write a new record of accomplishment.

Yet, fine as our accomplishments are thus far, they are not enough.

There waits before the Senate another $7 billion in vitally needed city measures—the most comprehensive city program ever presented to a Congress by an American President.

With these measures, the Senate should sustain the forward movement it sent in motion yesterday.

Not in a sense of haste, but with a sense of urgency, the Senate should now move forward to approve $2.6 billion for the Economic Opportunity Act of 1967; $50 million for crime control; $40 million for the rat extermination program; $25 million for the Juvenile Delinquency Act; $1.6 million for the Elementary and Secondary Education Act; $439 million for manpower development and training; the increase the President has requested for older citizens on social security, and many others like the Teacher Corps effort which has brought praise from all areas of the Nation.

As I recite the urban needs of the Nation, and the programs President Johnson has proposed to fulfill them, I am reminded of the somewhat rural phrase of the poet Robert Frost:

I have miles to go before I sleep . . . and promises to keep . . . and promises to keep.

We in the Senate have many promises to keep.

We have promises to keep to our leader and President who has become an urban President.

We have promises to keep to the people.

But, above all we have promises to keep to ourselves.

We, alone, will be the final judges of whether we have done right by the cities of America.

We, alone, will be the final judges of whether we have answered the crying needs of the city and the countryside.

With men like President Johnson and Senator MAGNUSON to help us, I believe the days ahead will not find the Members of the U.S. Senate wanting in compassion, understanding, and courage.

So that the record can be complete—so that there can be no doubt that our President has long been a champion of the cause of the American city, I ask unanimous consent to have printed in the RECORD the President's key statements and messages on the urban condition.

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

HOUSING AND COMMUNITY DEVELOPMENT

To the Congress of the United States:

Our nation stands today at the threshold of the greatest period of growth in its history.

By 1970, we shall have to build at least two million new homes a year to keep up with the growth of our population. We will need many new classrooms, uncounted miles of new streets and utility lines, and an unprecedented volume of water and sewerage facilities. We will need stores and churches and libraries, distribution systems for goods, transportation systems for people and communication systems for ideas.

Above all, we will need more land, new housing and orderly community development. For most of this population growth will be concentrated in the fringe areas around existing metropolitan communities.

I. HOUSING

Fortunately, the old pressures on our housing supply arising from depression and war-caused shortages have largely been overcome. But new pressures will develop as the number of new families rises rapidly in the late sixties. And great numbers of our families have yet to secure the true goal of every parent: not merely housing but *adequate* housing.

Now is the time to direct the productive capacity of our home-building industry to the great needs of the neglected segments of our population—this is necessary in its own right and vital to the continued strength of the industry.

Satisfaction with the 1,600,000 new housing starts in 1963 cannot obscure the fact that too many minorities, too many families of low income, too many elderly, too many rural families, and too many military families have not shared in the housing improvement which those units represent.

Unless we act and act now, the promises of the National Housing Policy will remain empty slogans to large numbers in these groups.

A. Housing for minorities

Over a year ago, President Kennedy issued an Executive Order designed to assure opportunities for equal access to Federally assisted housing. Already a half million dwelling units are—or soon will be—subject to that order. This Administration will continue and strengthen its efforts to translate the pledge of that order into meaningful practice. The program proposed in this message will broaden the range of housing choices open and realistically available to those whom discrimination has too long restricted.

B. Housing for low-income families

For over a quarter of a century, the low-rent public housing program has been the primary source of additional decent housing for families of low income. Over 1500 communities—350 of them since 1961—have recognized the need for supplementing private efforts by creating housing authorities to build and operate public housing with Federal assistance.

The 100,000 units of Federally-aided public housing authorized by the Housing Act of 1961 are now all committed. But still more communities and more families need such housing.

To continue this program for those who have no other effective opportunity for better housing, *I recommend the authorization of 50,000 additional public housing units for each of the next four years.*

Most of these units should continue to be new construction to provide a net expansion in the volume of housing available to low-income families. However, we have at this time a real opportunity to make low-rent housing available more quickly and at lower cost in many cities by acquiring units from the existing stock of private housing and rehabilitating them, where necessary, for the use of low-income families. *I recommend amendments to the Public Housing Act to facilitate acquisition of existing housing units within the proposed 50,000 units per year.*

In other cases, leasing of standard units by local public housing authorities for use in the low-rent program is a feasible and economic approach. *I recommend, in addition, that the authority for expanding low-rent housing include authorization for local housing authorities to lease 40,000 housing units over the next four years.*

We have much more to learn before the housing needs of our low-income population can be adequately met. The small demon-

stration program provided for this purpose in the Housing Act of 1961 has permitted a number of promising experiments to get underway. *I recommend an additional $5 million be authorized to continue this program for at least one more year.* During this period, attention can be given to special housing needs, such as those of our physically handicapped, as well as to means of helping low-income persons obtain adequate housing.

C. Housing for the elderly

I believe it especially unfortunate that many of those who do not have or cannot secure decent housing are elderly. Special attention to the needs of this group at all income levels should continue.

The expansion and improvement of public housing programs that I am recommending will be used extensively for lower-income elderly. Federal insurance of loans will continue to encourage the construction of specially designed housing for elderly with adequate incomes. However, the existing authority for funds to finance the program of low-interest direct Federal loans which serves the moderate-income elderly will soon be exhausted. *I recommened that the low-interest direct Federal loan program for the elderly be extended and additional funds appropriated to permit loans of $100 million during the coming fiscal year.*

At present, the successful program of moderate-income housing provided through loan insurance at below-market interest rates enacted in 1961 is limited to family tenants. In many cases, admission of single elderly persons to such housing would be highly desirable. *I recommend that single elderly persons be made eligible for housing financed by Federally insured below-market interest loans.*

D. Rural housing

The living conditions of our rural families—including the nearly one-third of our elderly who live on farms or in small towns—likewise deserve and need special consideration.

More than a million rural families still live in homes of such poor conditions that they actually endanger the health and safety of the occupants.

Three million rural families live in homes that need major repairs.

A third of our rural homes do not have complete sanitary facilities.

Nearly two-thirds of rural homes are without adequate heating.

The rural housing programs of the Department of Agriculture, initiated in 1949 and strengthened in 1961 and 1962, have made a good start on meeting the problems represented by these statistics, but the 20,000 rural families helped last year represent only a small fraction of the job to be done. Primary reliance on direct Federal loans for this purpose is, however, neither necessary nor—in the volume required—realistic.

I recommend extension of the expiring authorization in Title V of the Housing Act of 1949 to insure loans on rental housing for the rural elderly. Further, in order to accelerate the basic rural housing loan program, *I urge that the Congress enact an insured rural housing loan program* along the lines of that proposed by the Administration in the first session of this Congress.

I further recommend early action on legislation along the lines of S. 981 to assist with the housing problems of domestic farm laborers—problems which are particularly acute for our 350,000 migrant farm workers.

E. Military family housing

The military man, in keeping with his profession, expects to endure—and frequently does endure—personal hardships during his career. We do not have the right to expect the same from his family. While the Defense Department properly relies primarily upon the private community to supply the major portion of its needs for decent and economical housing, an annual construction program to house the families of military personnel is required in those communities where the severest chronic shortages exist. Accordingly, *I have recommended in the Military Construction program authorizations and appropriations for 12,500 additional units for fiscal 1965* to meet the most critical needs.

F. Improvements in other housing programs

Apart from the housing needs of the special groups already discussed, the partnership between private industry and Government—exemplified by Federal guarantees and insurance of private housing credit—has made possible good housing and widespread home ownership for millions of our citizens.

I intend to encourage—through legislative proposals, where necessary—even more effective cooperation between government and industry for the joint benefit of homeowners, tenants and the industry itself. To this end, I am proposing a number of modifications in the statutes governing our self-supporting mortgage insurance and marketing programs which will improve their efficiency and usefulness. Among these will be the following proposals:

(1)—To provide relief in those isolated cases in which, despite the care exercised by builders and the Federal Housing Administration and the Veterans' Administration, substantial defects develop in new construction they have approved, *I recommend that authority be provided for the FHA and the VA to finance the correction of substantial deficiencies.*

(2)—To make certain that no legislative barriers exist to discourage or prevent mortgage lenders and the Federal Housing Administration from cooperating to help delinquent mortgagers in deserving cases, *I recommend that FHA's claim and forbearance authorities be amended to encourage the temporary withholding of foreclosures against homeowners who default on their mortgages due to circumstances beyond their control.*

(3)—To expand our concerted effort to substitute private credit for Federal loans, *I recommend provision of legislative authority for the pooling of mortgages held by the Federal National Mortgage Association and the Administrator of Veterans' Affairs,* and the sale of participations in such pools.

II. URBAN RENEWAL

The Federal program of urban renewal is today our principal instrument for restoring the hope and renewing the vitality of older cities and worn-out neighborhoods.

The Federal assistance which provides local leaders and governments with incentives and the tools for revitalizing their communities has proven its worth—

In eliminating housing blight;

In contributing to restoration of the economic base of our communities; and

In helping reshape our central areas into effective nerve centers for our cities.

The Housing Act of 1961 doubled the previous urban renewal authorization to a total of $4 billion. By the middle of this year, all of that increase will have been committed. *I recommend that an additional $1.4 billion of urban renewal funds be approved for a two-year period.*

Despite existing programs assisting families and persons displaced by urban renewal projects, the human cost of relocation remains a serious and difficult problem.

The vast majority of those displaced by urban renewal and public housing have relocated in better and standard housing, but some have not. For most, the cost of improved housing has been an unsought burden. For some, the inconvenience of displacement has meant only another slum dwelling and the likelihood of repeating this experience.

To assist further those families and persons least able to bear the burden of displacement, *I recommend*

A. *That an additional annual subsidy of up to $120 per unit be available for local public housing authorities, where needed to provide access to such housing for displacees with extremely low incomes.*

B. *That low- and moderate-income families displaced by urban renewal receive two-year supplemental relocation payments* equal to the difference between rentals on standard housing in their communities and 20 percent of their gross incomes.

C. *That low-income single persons displaced by urban renewal or other public action be made eligible for public housing.*

Similarly, small businessmen—especially those in leased premises—often incur economic loss and hardship as a result of displacement by urban renewal or public housing which is not offset by current compensation practices and moving expense reimbursements. To provide more adequately for these firms, *I recommend authority for a separation payment of up to $2,500 for small establishments.*

At the time of the 1960 census, 7 million nonfarm dwellings were found to be deteriorating, including 2½ million occupied by their owners. Rehabilitation and preservation of existing housing wherever possible is a key element in the urban renewal process today. Elderly homeowners in urban renewal areas with low, fixed incomes are at a particular disadvantage in trying to meet the increased housing payments required by rehabilitation. To assist them, *I recommend a program of Federal insurance and purchase of low-interest loans, with a deferral of amortization of principal, for home rehabilitation by elderly homeowners in urban renewal programs.*

III. COMMUNITY DEVELOPMENT

The great expansion of our urban areas over the last two decades has too frequently been carried out in a sprawling, space-consuming, unplanned and uneconomic way. All levels of government are spending vast sums to accommodate this tremendous urban growth with highways, sewer and water facilities, schools, hospitals and other community facilities. Rural communities and small towns face similar pressures. If the taxpayer's dollar is to be wisely used and our communities are to be desirable places in which to live, we must assure ourselves that future growth takes place in a more orderly fashion.

I recommend that the urban planning assistance program and the open space program administered by the Housing and Home Finance Agency be extended.

Although the planning requirements of these and various other Federal programs—such as the Federal-aid highway program—also emphasize orderly growth and development, much more can and should be done.

The pioneering efforts of progressive and imaginative private developers in planning totally new and complete communities indicate some of the exciting possibilities for orderly growth. In the tradition of the long-established partnership between private industry and Government in housing and community development, the Federal Government should encourage and facilitate these new and desirable approaches.

Such a partnership can help achieve the orderly accommodation of a significant part of our forthcoming urban growth by means of entirely new communities, complete with all public services, all the industry and commerce needed to provide jobs, and sufficient housing and cultural and recreational facilities for moderate- and low-income families as well as for the well-to-do. To realize such new community development, and to encourage the participation of private initiative on the greatest possible scale, *I propose a program of grants and loans to States and local governments for the planning and provision of necessary public facilities and of loan insurance for private developers constructing such facilities.*

Many existing communities face problems of expansion as well. Even though they may foresee enormous development ahead, they

often lack the resources to build sewer and water systems and other facilities with adequate growth capacity. Building in such capacity in advance could result in tremendous savings and prevent costly duplication or premature replacement of inadequate facilities. *I, therefore, recommend a program of public facility loans with deferred amortization to enable communities to plan and build ahead of growth.*

Early acquisition of land for right-of-way and other public improvements is frequently sound public business. Many communities which are prepared to exercise foresight in acquiring land—and to save private owners from uncertainty and hardship—lack the financial capacity to do so. Such advance acquisition—which would assure location of such facilities in accordance with planned development—could also result in substantial savings, inasmuch as the increases in land prices that occur as development proceeds would be avoided. *I, therefore, recommend that public facility loans, with deferral of amortization as required, be made available for advance land purchase or option by States and local governmental jurisdictions.*

To encourage better-planned new development on a neighborhood scale, and to preserve and increase the supply of improved land for homebuilding, *I recommend Federal insurance of loans to private developers for acquisition and improvement of land for planned subdivisions.*

It is essential that all of these programs be based on the existence of effective planning arrangements in the community or region. For planned subdivisions, there should be, in addition, assurance that the neighborhood itself is carefully conceived to maintain its residential integrity and will result in efficent land use.

In our great metropolitan areas, and in our rural communities as well, the difficult problems of growth and development require understanding and cooperation at all governmental levels. The Federal Government can assist and encourage, but, in the last analysis, the success or failure of programs of community development depends on those most directly involved.

IV. URBAN MASS TRANSPORTATION

Efficient transportation systems are essential to our urban communities. Each local system should be tailored to its particular needs—existing and prospective—and the proper mixture of good highways and mass transit facilities should be developed to permit safe, efficient movement of people and goods in our metropolitan centers.

A matching grant mass transit program along the lines proposed by the Administration was approved by the Senate last year (S. 6) and reported favorably to the House by its Committee on Banking and Currency (H.R. 3881). *I urge early enactment of the Mass Transit program as basic to the development and redevelopment of our Nation's cities.*

V. TRAINING NEEDS

The sound administration of local governments and the success of our federally supported programs of community development depend heavily on the competence of State and local public service staffs—on their ability, their imagination, and, especially, their training. Throughout the range of local functions—from traffic control to tax administration, from recreation to renewal—their efforts will influence greatly the quality of community living.

The substantial Federal investment in local community efforts justifies a deep Federal interest in the quality of local government employees and the expenditure of funds to help attract able people to local public service and help them develop the skills and perspective they need.

To this end, *I recommend a program of up to $25 million a year in matching grants to States for the establishment of urban public service training and research programs.*

VI. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

If we are to deal successfully with the complex problems of our urban and suburban communities, we need governmental machinery designed for the 1960's, not the 1940's. The Housing and Home Finance Agency, established seventeen years ago primarily to administer housing programs, has seen its responsibilities enlarged progressively by the Congress during the intervening years to include the broader aspects of community development as well. The Agency now administers such major community development programs as urban renewal, urban planning, public facilities planning and loans, open space, and mass transit. These basic changes in the Agency's role and mission are not adequately reflected in the Agency's current organization and status which remain much the same as they were in 1947. Action to convert the Housing and Home Finance Agency into an executive department is long overdue.

The size and breadth of the Federal programs now administered by the Housing and Home Finance Agency and the significance of those programs clearly merit departmental status. A new Secretary of Housing and Community Development would be in a position both to present effectively the Nation's housing and community development needs in the highest councils of government and to direct, organize, and manage more efficiently the important and closely interrelated housing and community development programs now administered or proposed for the Housing and Home Finance Agency.

I recommend that the Congress establish a Department of Housing and Community Development.

CONCLUSION

The dramatic increase in our Nation's population projected for the coming decades—over 300 million by the year 2000—and the increasing concentration of our population around urban centers will create increased housing needs and intensified problems of community development which must be anticipated and acted upon immediately.

How we respond to these challenges will have a lasting impact on the character of our cities and rural communities. Whether we achieve our goal of a decent home in a decent neighborhood for every American family rests, in large measure, on the actions we take now.

The substantive programs I have proposed in this Special Message will speed our solutions to today's problems and the predictable needs of tomorrow. I earnestly urge the Congress to give the attached draft bills the attention they merit.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *January 27, 1964.*

REMARKS OF THE PRESIDENT AT THE UNIVERSITY OF MICHIGAN, ANN ARBOR, MICH.

President Hatcher, Governor Romney, Senators McNamara and Hart, Congressman Meader, and Congressman Staebler, other members of the fine Michigan delegation, members of the graduating class, my Fellow Americans:

It is a great pleasure to be here today. This University has been coeducational since 1870, but I do not believe it was on the basis of your accomplishments that a Detroit high school girl said, "In choosing a college, you first have to decide whether you want a coeducational school or an educational school."

Well, we can find both here at Michigan, although perhaps at different hours.

I came out here today very anxious to meet the Michigan student whose father told a friend of mind that his son's education had been a real value. It stopped his mother from bragging about him.

I have come today from the turmoil of your Capital to the tranquility of your campus to speak about the future of our country. The purpose of protecting the life of our Nation and preserving the liberty of our citizens is to pursue the happiness of our people. Our success in that pursuit is the test of our success as a nation. For a century we labored to settle and to subdue a continent. For half a century, we called upon unbounded invention and untiring industry to create an order of plenty for all of our people. The challenge of the next half century is whether we have the wisdom to use that wealth to enrich and elevate our national life, and to advance the quality of our American civilization.

Your imagination, your initiative and your indignation will determine whether we build a society where progress is the servant of our needs, or a society where old values and new visions are buried under unbridled growth. For in your time we have the opportunity to move not only toward the rich society and the powerful society, but upward to the Great Society. The Great Society rests on abundance and liberty for all. It demands an end to poverty and racial injustice, to which we are totally committed in our time. But that is just the beginning. The Great Society is a place where every child can find knowledge to enrich his mind and to enlarge his talents. It is a place where leisure is a welcome chance to build and reflect, not a feared cause of boredom and restlessness. It is a place where the city of man serves not only the needs of the body and the demands of commerce, but the desire for beauty and the hunger for community.

It is a place where man can renew contact with nature. It is a place which honors creation for its own sake and for what it adds to the understanding of the race. It is a place where men are more concerned with the quality of their goals than the quantity of their goods. But most of all, the great society is not a safe harbor, a resting place, a final objective, a finished work. It is a challenge constantly renewed, beckoning us toward a destiny where the meaning of our lives matches the marvelous products of our labor.

So I want to talk to you today about three places where we begin to build the Great Society—in our cities, in our countryside, and in our classrooms. Many of you will live to see the day, perhaps 50 years from now, when there will be 400 million Americans; four-fifths of them in urban areas. In the remainder of this century, urban population will double, city land will double, and we will have to build homes, highways and facilities equal to all those built since this country was first settled. So in the next 40 years we must rebuild the entire urban United States.

Aristotle said, "Men come together in cities in order to live, but they remain together in order to live the good life."

It is harder and harder to live the good life in American cities today. The catalogue of ills is long: There is the decay of the centers and the despoiling of the suburbs. There is not enough housing for our people or transportation for our traffic. Open land is vanishing and old landmarks are violated. Worst of all, expansion is eroding the precious and time honored values of community with neighbors and communion with nature. The loss of these values breeds loneliness and boredom and indifference. Our society will never be great until our cities are great. Today the frontier of imagination and innovation is inside those cities, and not beyond their borders. New experiments are already going on. It will be the task of your generation to make the American city a place where future generations will come, not only to live but to live the good life.

I understand that if I stay here tonight I would see that Michigan students are really doing their best to live the good life.

This is the place where the Peace Corps was started. It is inspiring to see how all of you, while you are in this country, are trying so hard to live at the level of the people.

A second place where we begin to build

the Great Society is in our countryside. We have always prided ourselves on being not only America the strong and America the free, but America the beautiful. Today that beauty is in danger. The water we drink, the food we eat, the very air that we breathe, are threatened with pollution. Our parks are overcrowded. Our seashores overburdened. Green fields and dense forests are disappearing.

A few years ago we were greatly concerned about the Ugly American. Today we must act to prevent an Ugly America.

For once the battle is lost, once our natural splendor is destroyed, it can never be recaptured. And once man can no longer walk with beauty or wonder at nature, his spirit will wither and his sustenance be wasted.

A third place to build the Great Society is in the classrooms of America. There your childrens' lives will be shaped. Our society will not be great until every young mind is set free to scan the farthest reaches of thought and imagination. We are still far from that goal. Today, eight million adult Americans, more than the entire population of Michigan, have not finished five years of school. Nearly 20 million have not finished eight years of school. Nearly 54 million, more than one-quarter of all America, have not even finished high school.

Each year more than 100,000 high school graduates, with proved ability, do not enter college because they cannot afford it. And if we cannot educate today's youth, what will we do in 1970 when elementary school enrollment will be 5 million greater than 1960? And high school enrollment will rise by five million. College enrollment will increase by more than three million. In many places, class rooms are overcrowded and curricula are outdated. Most of our qualified teachers are underpaid, and many of our paid teachers are unqualified. So we must give every child a place to sit and a teacher to learn from. Poverty must not be a bar to learning, and leaning must offer an escape from poverty.

But more class rooms and more teachers are not enough. We must seek an educational system which grows in excellence at it grows in size. This means better training for our teachers. It means preparing youth to enjoy their hours of leisure as well as their hours of labor. It means exploring new techniques of teaching, to find new ways to stimulate the love of learning and the capacity for creation.

These are three of the central issues of the Great Society. While our government has many programs directed at those issues, I do not pretend that we have the full answer to those problems. But I do promise this: We are going to assemble the best thought and the broadest knowledge from all over the world to find those answers for America. I intend to establish working groups to prepare a series of White House conferences and meetings on the cities, on natural beauty, on the quality of education, and on other emerging challenges. And from these meetings and from this inspiration and from these studies we will begin to set our course toward the Great Society.

The solution to these problems does not rest on a massive program in Washington, nor can it rely solely on the strained resources of local authority. They require us to create new concepts of cooperation, a creative federalism, between the national capital and the leaders of local communities.

Woodrow Wilson once wrote: "Every man sent out from his university should be a man of his Nation as well as a man of his time."

Within your lifetime powerful forces, already loosed, will take us toward a way of life beyond the realm of our experience, almost beyond the bounds of our imagination. For better or for worse, your generation has been appointed by history to deal with those problems and to lead America toward a new age. You have the chance never before afforded to any people in any age. You can help build a society where the demands of morality, and the needs of the spirit, can be realized in the life of the Nation. So will you join in the battle to give every citizen the full equality which God enjoins and the law requires, whatever his belief, or race, or the color of his skin? Will you join in the battle to give every citizen an escape from the crushing weight of poverty? Will you join in the battle to make it possible for all nations to live in enduring peace as neighbors and not as mortal enemies? Will you join in the battle to build the Great Society, to prove that our material progress is only the foundation on which we will build a richer life of mind and spirit?

There are those timid souls who say this battle cannot be won, that we are condemned to a soulless wealth. I do not agree. We have the power to shape the civilization that we want. But we need your will, your labor, your hearts, if we are to build that kind of society.

Those who came to this land sought to build more than just a new country. They sought a free world.

So I have come here today to your campus to say that you can make their vision our reality. Let us from this moment begin our work so that in the future men will look back and say: It was then, after a long and weary way, that man turned the exploits of his genius to the full enrichment of his life.

Thank you. Goodbye.

REMARKS OF THE PRESIDENT, AT THE SIGNING OF S. 6, URBAN MASS TRANSPORTATION ACT OF 1964, IN THE CABINET ROOM

Ladies and Gentlemen, I am very pleased to be able to sign today the Urban Mass Transportation Act of 1964.

This is by any standard one of the most profoundly significant domestic measures to be enacted by the Congress during the 1960's.

I very especially want to congratulate all of you who have done so much to assure the passage of this long-needed, long-awaited, landmark legislation.

Our Constitution empowered Congress to provide for post roads. Since that time, congressional support of transportation has been a major constructive influence on the progress and development of our American society and our American economy.

In the last century, such support of transcontinental railroads and canals and river navigation gave immeasurable impetus to our expansion. Now, in this century, sound congressional policies in support of both highways and airways for automobile and airplane travel has given incalculable momentum to American progress.

This new Act that all of you have contributed to passing remains faithful to this tradition of vision.

Only a very short time ago, six out of ten Americans lived in rural areas—six out of ten Americans in rural areas. As we meet here today, seven out of ten live in urban areas. The change has come rapidly and has come dramatically, and today your urban congestion is an unpleasant fact of every day life for too many millions of Americans.

All of us recognize that the curses of congestion in commuting cannot be wiped away with the single stroke of a pen, or 50 pens that we have here. But we do know that this legislation that we are coming to grips with faces the realities of American life and attempts to put in motion a movement to do something about it.

It is symbolic of the challenge facing us that most Americans today travel to and from work over city street patterns that were originally laid out by the horses which pulled our grandfathers' carriages.

We face a great task, publicly and privately, of catching up with our full potential and making life as good as it should be for this generation of Americans.

This is a many sided challenge. We cannot and we do not rely upon massive spending programs as cure-alls. We must instead look to closer cooperation among all levels of government and between both public and private sectors to achieve the prudent progress that Americans deserve and that they expect.

I am very proud this morning to see some of America's most progressive mayors who speak for large segments of our population sufficiently interested and determined to provide vision and leadership in this field to come from faraway to participate in these ceremonies.

It is inspiring to me to know that some of the ablest chief executives of some of our best states have joined those mayors to come here in a local-state-federal undertaking that will provide leadership and provide vision for the people who have entrusted us with these responsibilities. I hope and I expect that this milestone measure will serve us as a beneficial forerunner of many other steps forward in meeting the present challenges of metropolitan life in America.

I remember regularly in the Congress we had an anniversary when we celebrated the first signing of the Highway Act. We brought rural free delivery to our people. I think in the years to come that you and your descendants will be very proud that you were part of the vision that provided this legislation.

For the fine work that the Congress has done, I want to commend them all. I especially want to commend Senator Sparkman and Congressman Rains and Senator Williams and Congressman Widnall of New Jersey. All of you have earned the special gratitude of your countrymen, especially those who live in urban areas, large or small, and I just want to make this prediction that when we sign this Act today we will be taking one step—but only one of several—that this Administration is prepared to take in the days ahead to face up to the problems of the urban areas of this country We are determined that we will provide the vision and the leadership necessary and that they will no longer be a stepchild and be neglected by their government in Washington.

Thank you for coming, and I hope we have enough pens here to serve you all.

REMARKS OF THE PRESIDENT UPON SIGNING S. 3049, AN ACT RELATING TO HOUSING AND URBAN RENEWAL, THE CABINET ROOM

Members of the Congress, Ladies and Gentlemen: I am pleased today to approve the Housing Act of 1964. I believe that we have a commitment to assure every American an opportunity to live in a decent home, in a safe and a decent neighborhood. This milestone measure will help us to honor that commitment. This Bill carries forward our continuing efforts to eradicate slums and blight in our cities, to assure decent housing for those least able to find it—the poor, the elderly, the severely handicapped—and those in our rural areas; to help our communities grow in orderly directions and avoid future blight and assure lasting beauty.

This Bill does more than to continue the successful programs that we have had in operation in the past. It provides new support for greater success in the future. The plight of property owners in urban renewal areas is recognized in this measure. Provision is made so that they can rehabilitate their homes and businesses instead of having to move from the path of the bull dozers. Looking ahead, this measure assists local communities in enforcing housing codes so blight does not develop or persist in the future. It also provides for training local urban development administrators and to produce the city planners that we shall need in the future to guide in the growth that we expect.

This is by no means a Bill just for the

cities of America alone. A key new program provides for the construction of low cost rental housing for our farm workers in the Nation. This is a most needed and a most welcome step. Nor is this Bill a Bill solely for the housing of those that are in unfortunate circumstances. It provides expanded benefits to builders and to lenders, and to families in good circumstances. By every standard we think this Bill benefits all Americans, and if we are to continue to keep our commitments in the world, then I believe it is fundamental that we must consider keeping our commitments here at home, and that is what we are trying to do with this legislation.

For our generation, courage is not confined to meeting the challenges far away from us. Courage is also required to meet the problems and the obligations and the challenges that are nearest to us.

This Congress deserves, I believe, very special commendation for the foresight and the courage that it has shown in meeting our problems here at home and in our own country, with our own people. The Urban Mass Transportation Act, the Highway Aid Bill, the Hill-Burton Extension, the many education measures all represent, together, the most constructive attack by any Congress on the challenge of keeping America fit and a fine place for our families.

I believe it is noteworthy that all of these programs represent a new spirit of cooperation between the Federal and the state and local governments; likewise, I think it is significant that a strong spirit of trust between the public sector and the private sector is present. We reject the thought of our families living in a faceless, regimented, monotonous America. We intend to preserve the role of private enterprise, the force of private initiative, and the right of private choice in our life as free men.

May I express my very special congratulations this morning to both Senator Sparkman and Congressman Rains, of Alabama. Certainly for Albert Rains this Housing Act of 1964 is a crowning achievement for a highly constructive career of great public service. I know that I express the thought of all of us when I say we regret that he has not chosen to run again for the Congress. We do hope that he will see fit to honor us in other fields of public service in the years ahead.

I want to thank all the members of the Congress who have come here this morning, and applaud their efforts in passing this most constructive and helpful piece of legislation that is designed to benefit all Americans.

STATEMENT BY THE PRESIDENT

Together with all Americans, I have been disturbed by the riots which took place this past summer in some of our cities. The preservation of order in such circumstances is the responsibility of the local communities and the states, but the fact that such riots can occur is a matter of national concern as well as personal concern to me.

I have today asked Mr. J. Edgar Hoover, Director of the Federal Bureau of Investigation, to make public a report summarizing the available facts developed by the Bureau on the causes and development of these riots.

Mr. Hoover's report indicates that—

No definite pattern was found to exist in connection with the riots from one city to another.

The riots did not have a single cause and cannot be attributed to any identifiable group of individuals.

The riots occurred in communities with economic and social problems crying out for solution.

Local police acted with great restraint in the face of violent abuse.

The riots—as well as other criminal and juvenile delinquency problems in our cities—are closely connected to school dropouts.

The mass of people in each community, white and negro alike, deplored the riots and have cooperated to maintain law and order.

Each riot began with a single incident and was aggravated by hoodlums and habitual lawbreakers.

No evidence was found that the riots were organized on a national basis by any single person, group of persons, or organization.

I have taken several steps as a result of this report:

First, I have directed the FBI through its National Academy to make riot training available for all police departments in the United States.

Second, I have instructed the Secretary of Defense to enlarge the program of the United States Army for demonstration techniques of riot control. We will make these techniques a larger part of the training of the National Guard of the various states and we will make them available to local police forces as well.

Third, I have directed Secretary of Health, Education, and Welfare to make a study of the drop-out program followed in the District of Columbia—one of the most intensive in the Nation—and other places, and to make recommendations to me as soon as possible on what further steps might be taken by the Federal Government to assist in meeting this important problem.

Fourth, at an appropriate time I intend to call a conference of State and City officials to discuss ways in which the Federal Government can continue to be of assistance in this whole area.

Most Americans have a deep commitment to civil peace. I call upon all our fellow citizens to remember that respect for law and order and regard for each person's rights are the cornerstones of self-government in a democracy.

This Administration feels strongly that this must be a society of law and order in which citizens live by recognized rules of conduct. To that end, we not only enforce Federal Acts but cooperate at all levels of government to assure that civil peace shall be maintained.

Every citizen, regardless of his race, creed, or color, is entitled to equal justice. And every citizen is entitled to be secure in his person on our city streets or in the countryside.

The FBI in the first eight months of this year has attended 172 police training schools thoughout the nation where the attendance has totaled more than 5,800 law enforcement officers and has offered advice and counsel. In addition, the FBI has sponsored just this summer 228 conferences which were attended by 20,184 people representing 6,406 police agencies on the problems of securing law and justice.

We will continue this kind of cooperation so our citizens may live in dignity and in security.

STATE OF THE UNION MESSAGE OF PRESIDENT LYNDON B. JOHNSON DELIVERED IN PERSON TO A JOINT SESSION OF THE HOUSE AND SENATE JANUARY 4, 1965

Mr. Speaker, Mr. President, Members of the Congress, my fellow Americans:

On this hill which was my home, I am stirred by old friendships. Though total agreement between the Executive and the Congress is impossible, I am proud to be among my colleagues of the Congress whose legacy to their trust is their loyalty to their nation. I am not unaware of the inner emotions of the new members of this body tonight. Twenty-eight years ago I felt as you do now. You will soon learn that you are among men whose first love is their country. Men who try each day to do as best they can what they believe is right.

We are entering the third century of the pursuit of American union.

Two hundred years ago, in 1765, nine assembled colonies first joined together to demand freedom from arbitrary power.

For the first century we struggled to hold together the first continental union of democracy in the history of man. One hundred years ago, in 1865, following a terrible test of blood and fire, the compact of union was finally sealed.

For a second century we labored to establish a unity of purpose and interest among the many groups which make up the American community.

That struggle has often brought pain and violence. It is not yet over. But we have achieved a unity of interest among our people that is unmatched in the history of freedom.

And so tonight now, in 1965, we begin a new quest for union. We seek the unity of man with the world that he has built—with the knowledge that can save or destroy him—with the cities which can stimulate or stifle him—with the wealth and machines which can enrich or menace his spirit.

We seek to establish a harmony between man and society which will allow each of us to enlarge the meaning of his life and all of us to elevate the quality of our civilization.

This is the search that we begin tonight.

But the unity we seek cannot realize its full promise in isolation. For today the state of the union depends, in large measure, upon the state of the world.

Our concern and interest, compassion and vigilance, extend to every corner of a dwindling planet.

Yet, it is not merely our concern but the concern of all free men. We will not, and we should not, assume that it is the task of Americans alone to settle all the conflicts of a torn and troubled world.

Let the foes of freedom take no comfort from this. For in concert with other nations, we shall help men defend their freedom.

Our first aim remains the safety and the well-being of our own country.

We are prepared to live as good neighbors with all, but we cannot be indifferent to acts designed to injure our interests, or our citizens, or our establishments abroad. The community of nations requires mutual respect. We shall extend it—and we shall expect it.

In our relations with the world we shall follow the example of Andrew Jackson who said: "I intend to ask for nothing that is not clearly right and to submit to nothing that is wrong." And he promised, that "the honor of my country shall never be stained by an apology from me for the statement of truth or for the performance of duty." That was this nation's policy in the 1830's and that is this nation's policy in the 1960's.

Our own freedom and growth have never been the final goal of the American dream.

We were never meant to be an oasis of liberty and abundance in a world-wide desert of disappointed dreams. Our nation was created to help strike away the chains of ignorance and misery and tyranny wherever they keep man less than God means him to be.

We are moving toward that destiny, never more rapidly than we have moved in the last four years.

In this period we have built a military power strong enough to meet any threat and destroy any adversary. And that superiority will continue to grow so long as this office is mine—and you sit on Capitol Hill.

In this period no new nation has become communist, and the unity of the communist empire has begun to crumble.

In this period we have resolved in friendship our disputes with our neighbors of the hemisphere, and joined in an Alliance for Progress toward economic growth and political democracy.

In this period we have taken more steps toward peace—including the test ban

treaty—than at any time since the cold war began.

In this period we have relentlessly pursued our advances toward the conquest of space.

Most important of all, in this period, the United States has reemerged into the fullness of its self-confidence and purpose. No longer are we called upon to get America moving. We are moving. No longer do we doubt our strength or resolution. We are strong and we have proven our resolve.

No longer can anyone wonder whether we are in the grip of historical decay. We know that history is ours to make. And if there is great danger, there is now also the excitement of great expectations.

Yet we still live in a troubled and perilous world. There is no longer a single threat. There are many. They differ in intensity and in danger. They require different attitudes and different answers.

With the Soviet Union we seek peaceful understandings that can lessen the danger to freedom.

Last fall I asked the American people to choose that course.

I will carry forward their command.

If we are to live together in peace, we must come to know each other better.

I am sure that the American people would welcome a chance to listen to the Soviet leaders on our television—as I would like the Soviet people to hear our leaders on theirs.

I hope the new Soviet leaders can visit America so they can learn about our country at first hand.

In Eastern Europe restless nations are slowly beginning to assert their identity. Your government, assisted by leaders in labor and business, is now exploring ways to increase peaceful trade with these countries and with the Soviet Union. I will report our conclusions to the Congress.

In Asia, Communism wears a more aggressive face.

We see that in Vietnam.

Why are we there?

We are there, first, because a friendly nation has asked us for help against the Communist aggression. Ten years ago our President pledged our help. Three Presidents have supported that pledge. We will not break it now.

Second, our own security is tied to the peace of Asia. Twice in one generation we have had to fight against aggression in the Far East. To ignore aggression now would only increase the danger of a much larger war.

Our goal is peace in Southeast Asia. That will come only when aggressors leave their neighbors in peace.

What is at stake is the cause of freedom, and in that cause America will never be found wanting.

But Communism is not the only source of trouble and unrest. There are older and deeper sources—in the misery of nations and in man's irrepressible ambition for liberty and a better life.

With the free Republics of Latin America I have always felt—and our country has always felt very special ties of interest and affection. It will be the purpose of my administration to strengthen these ties. Together we share and shape the destiny of the new world. In the coming year I hope to pay a visit to Latin America. And I will steadily enlarge our commitment to the Alliance for Progress as the instrument of our war against poverty and injustice in the hemisphere.

In the Atlantic community we continue to pursue our goal of twenty years—a Europe that is growing in strength, unity, and cooperation with America. A great unfinished task is the reunification of Germany through self-determination.

This European policy is not based on any abstract design. It is based on the realities of common interests and common values, common dangers and common expectations. These realities will continue to have their way—especially in our expanding trade and especially in our common defense.

Free Americans have shaped the policies of the United States. And because we know these realities, those policies have been, and will be, in the interest of Europe.

Free Europeans must shape the course of Europe. And, for the same reasons, that course has been, and will be, in our interest and in the interest of freedom.

I found this truth confirmed in my talks with European leaders in the last year. I hope to repay these visits to some of our friends in Europe this year.

In Africa and Asia we are witnessing the turbulent unfolding of new nations and continents.

We welcome them to the society of nations.

We are committed to help those seeking to strengthen their own independence, and to work most closely with those governments dedicated to the welfare of all their people.

We seek not fidelity to an iron faith, but a diversity of belief as varied as man himself. We seek not to extend the power of America but the progress of humanity. We seek not to dominate others but to strengthen the freedom of all people.

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.

Finally, we renew our commitment to the continued growth and effectiveness of the United Nations. The frustrations of the United Nations are a product of the world that we live in and not of the institution which gives them voice. It is far better to throw these differences open to the assembly of nations than to permit them to fester in silent danger.

These are some of the goals of the American nation in the world in which we live.

For ourselves we seek neither praise nor blame, neither gratitude nor obedience.

We seek peace.

We seek freedom.

We seek to enrich the life of man.

For that is the world in which we will flourish and that is the world that we mean for all men to ultimately have.

World affairs will continue to call upon our energy and courage.

But today we can turn increased attention to the character of American life.

We are in the midst of the greatest upward surge of economic well-being in the history of any nation.

Our flourishing progress has been marked by price stablity that is unequalled in the world. Our balance of payments deficit has declined and the soundness of our dollar is unquestioned. I pledge to keep it that way and I urge business and labor to cooperate to that end.

We worked for two centuries to climb this peak of prosperity. But we are only at the beginning of the road to the Great Society. Ahead now is a summit where freedom from the wants of the body can help fulfill the needs of the spirit.

We built this nation to serve its people.

We want to grow and build and create, but we want progress to be the servant and not the master of man.

We do not intend to live in the midst of abundance, isolated from neighbors and nature, confined by blighted cities and bleak suburbs, stunted by a poverty of learning and an emptiness of leisure.

The Great Society asks not only how much, but how good; not only how to create wealth but how to use it; not only how fast we are going, but where we are headed.

It proposes as the first test for a nation: the quality of its people.

This kind of society will not flower spontaneously from swelling riches and surging power.

It will not be the gift of government or the creation of Presidents.

It will require of every American, for many generations, both faith in the destination and the fortitude to make the journey, and like freedom itself, it will always be challenge and not fulfillment.

Tonight we accept that challenge.

I propose that we begin a program in education to ensure every American child the fullest development of his mind and skills.

I propose we begin a massive attack on crippling and killing diseases.

I propose we launch a national effort to make the American city a better and more stimulating place to live.

I propose we increase the beauty of America and end the poisoning of our rivers and the air that we breathe.

I propose we carry out a new program to develop regions of our country that are now suffering from distress and depression.

I propose we make new efforts to control and prevent crime and delinquency.

I propose we eliminate every remaining obstacle to the right and the opportunity to vote.

I propose we honor and support the achievements of thought and the creations of art.

I propose that we make an all-out campaign against waste and inefficiency.

Our basic task is three-fold: First, to keep our economy growing; to open for all Americans the opportunity that is now enjoyed by most Americans; and to improve the quality of life for all.

In the next six weeks I will submit special messages with detailed proposals for national action in each of these areas.

Tonight I would like briefly to explain some of my major recommendations in the three main areas of national need.

First, we must keep our nation prosperous. We seek full employment opportunity for every American citizen.

I will present a budget designed to move the economy forward. More money will be left in the hands of the consumer by a substantial cut in excise taxes. We will continue along the path toward a balanced budget in a balanced economy.

I confidently predict—what every economic sign tells us tonight—the continued flourishing of the American economy.

But we must remember that fear of a recession can contribute to the fact of a recession. The knowledge that our government will, and can, move swiftly will strengthen the confidence of investors and business.

Congress can reinforce this confidence by ensuring that its procedures permit rapid action on temporary income tax cuts. And special funds for job-creating public programs should be made available for immediate use if recession threatens.

Our continued prosperity demands continued price stability. Business, labor and the consumer all have a high stake in keeping wages and prices within the framework of the guideposts that have already served the nation so well.

Finding new markets abroad for our goods depends on the initiative of American business. But we stand ready—with credit and other help—to assist the flow of trade which will benefit the entire nation.

Our economy owes much to the efficiency of our farmers. We must continue to assure them the opportunity to earn a fair reward. I have instructed the Secretary of Agriculture to lead a major effort to find new approaches to reduce the heavy cost of our farm programs and to direct more of our effort to the small farmer who needs help most.

We can help ensure continued prosperity through a Regional Recovery Program to assist the development of stricken areas left behind by our national progress; further efforts to provide our workers with the skills demanded by modern technology, for the laboring man is an indispensable force in the American system; the extension of the

minimum wage to more than two million unprotected workers; the improvement and modernization of the unemployment compensation system. And as pledged in our 1960 and 1964 Democratic platforms, I will propose to Congress changes in the Taft-Hartley Act including Section 14–B. I will do so hoping to reduce conflict that for several years have divided Americans in various states of our union.

In a country that spans a continent modern transportation is vital to continued growth.

I will recommend heavier reliance on competition in transportation and a new policy for our merchant marine.

I will ask for funds to study high speed rail transportation between urban centers. We will begin with test projects between Boston and Washington. On high-speed trains, passengers could travel this distance in less than four hours.

Second, we must open opportunity to all our people.

Most Americans tonight enjoy a good life. But far too many are still trapped in poverty, idleness and fear.

Let a just nation throw open to them the city of promise: to the elderly, by providing hospital care under social security and by raising benefit payments to those struggling to maintain the dignity of their later years; to the poor, through doubling the war against poverty this year; to Negro Americans, through enforcement of the civil rights law and elimination of barriers to the right to vote; to those in other lands that are seeking the promise of America, through an immigration law based on the work a man can do and not where he was born or how he spells his name.

Our third goal is to improve the quality of American life.

We begin with learning.

Every child must have the best education that this nation can provide.

Thomas Jefferson said no nation can be both ignorant and free. Today no nation can be both ignorant and great.

In addition to our existing programs, I will recommend a new program for schools and students with a first year authorization of one billion, 500 million dollars.

It will help at every stage along the road to learning.

For the pre-school years we will help needy children become aware of the excitement of learning.

For the primary and secondary school years we will aid public schools serving low income families and assist students in both public and private schools.

For the college years we will provide scholarships to high school students of the greatest promise and greatest need and guaranteed low interest loans to students continuing their college studies.

New laboratories and centers will help our schools lift their standards of excellence and explore new methods of teaching. These centers will provide special training for those who need and those who deserve special treatment.

Greatness requires not only an educated people but a healthy people.

Our goal is to match the achievements of our medicine to the afflictions of our people.

We already carry on a large program for research and health.

In addition, regional medical centers can provide the most advanced diagnosis and treatment for heart disease, cancer, stroke, and other major diseases.

New support for medical and dental education will provide the trained men to apply our knowledge.

Community centers can help the mentally ill and improve health care for school-age children from poor families, including services for the mentally retarded.

An educated and healthy people require surroundings in harmony with their hopes.

In our urban areas the central problem today is to protect and restore man's satisfaction in belonging to a community where he can find security and significance.

The first step is to break old patterns—to begin to think and work and plan for the development of entire metropolitan areas. We will take this step with new programs of help for basic community facilities and for neighborhood centers of health and recreation.

New and existing programs will be open to those cities which work together to develop unified long-range policies for metropolitan areas.

We must also make important changes in our housing programs if we are to pursue these same basic goals. So a Department of Housing and Urban Development will be needed to spearhead this effort in our cities.

Every citizen has the right to feel secure in his home and on the streets of his community.

To help control crime we will recommend programs to train local law enforcement officers; to put the best techniques of modern science at their disposal; to discover the causes of crime and better ways to prevent it.

I will soon assemble a panel of outstanding experts of this nation to search out answers to the national problem of crime and delinquency, and I welcome the recommendations and the constructive efforts of the Congress.

For over three centuries the beauty of America has sustained our spirit and enlarged our vision. We must act now to protect this heritage. In a fruitful new partnership with the states and cities the next decade should be a conservation milestone. We must make a massive effort to save the countryside and establish—as a green legacy for tomorrow—more large and small parks, more seashores and open spaces than have been created during any period in our history.

A new and substantial effort must be made to landscape highways and provide places of relaxation and recreation wherever our roads run.

Within our cities imaginative programs are needed to landscape streets and transform open areas into places of beauty and recreation.

We will seek legal power to prevent pollution of our air and water before it happens. We will step up our effort to control harmful wastes, giving first priority to the cleanup of our most contaminated rivers. We will increase research to learn more about control of pollution.

We hope to make the Potomac a model of beauty here in the Capital, and preserve unspoiled stretches of some of our waterways with a Wild Rivers bill.

More ideas for a beautiful America will emerge from a White House Conference on Natural Beauty which I will soon call.

We must also recognize and encourage those who can be pathfinders for the nation's imagination and understanding.

To help promote and honor creative achievements, I will propose a National Foundation on the Arts.

To develop knowledge which will enrich our lives and ensure our progress, I will recommend programs to encourage basic science, particularly in the universities—and to bring closer the day when the oceans will supply our growing need for fresh water.

For government to serve these goals it must be modern in structure, efficient in action, and ready for any emergency.

I am busy currently reviewing the structure of the Executive Branch of this government. I hope to reshape it and reorganize it to meet more effectively the tasks of the 20th Century.

Wherever waste is found, I will eliminate it.

Last year we saved almost three billion, five-hundred million dollars by eliminating waste in the government. And I intend to do better this year.

And very soon I will report to you on our progress and on new economies that your government plans to make.

Even the best of government is subject to the worst of hazards.

I will propose laws to ensure the necessary continuity of leadership should the President become disabled or die.

In addition, I will propose reforms in the Electoral College—leaving undisturbed the vote by states—but making sure no elector can substitute his will for that of the people.

Last year in a sad moment I came here and I spoke to you after 33 years of public service, practically all of them here on this Hill.

This year I speak after one year as President of the United States.

Many of you in this Chamber are among my oldest friends. We have shared many happy moments and many hours of work, and we have watched many Presidents together. Yet, only in the White House can you finally know the full weight of this office.

The greatest burden is not running the huge operations of government—or meeting daily troubles, large and small—or even working with the Congress.

A President's hardest task is not to do what is right, but to know what is right.

Yet the Presidency brings no special gift of prophecy or foresight. You take an oath, step into an office, and you must then help guide a great democracy.

The answer was waiting for me in the land where I was born.

It was once barren land. The angular hills were covered with scrub cedar and a few large live oaks. Little would grow in the harsh caliche soil of my country. And each spring the Pedernales River would flood our valley.

But men came and they worked and they endured and they built.

And tonight that country is abundant; abundant with fruit and cattle and goats and sheep, and there are pleasant homes and lakes and the floods are gone.

Why did men come to that once forbidding land?

They were restless, of course, and they had to be moving on. But there was more than that. There was a dream—a dream of a place where a free man could build for himself, and raise his children to a better life—a dream of a continent to be conquered, a world to be won, a nation to be made.

Remembering this, I knew the answer.

A President does not shape a new and personal vision of America. He collects it from the scattered hopes of the American past.

It existed when the first settlers saw the coast of a new world, and when the first pioneers moved Westward.

It has guided us every step of the way.

It sustains every President. But it is also your inheritance and it belongs equally to all the people that we all serve.

It must be interpreted anew by each generation for its own needs; as I have tried, in part, to do tonight.

It shall lead us as we enter this third century of the search for "a more perfect union."

This, then, is the state of the union: Free, restless, growing and full of hope.

So it was in the beginning.

So it shall always be, while God is willing, and we are strong enough to keep the faith.

Message on Natural Beauty

To the Congress of the United States:

For centuries Americans have drawn strength and inspiration from the beauty of our country. It would be a neglectful gen-

eration indeed, indifferent alike to the judgment of history and the command of principle, which failed to preserve and extend such a heritage for its descendants.

Yet the storm of modern change is threatening to blight and diminish in a few decades what has been cherished and protected for generations.

A growing population is swallowing up areas of natural beauty with its demands for living space, and is placing increased demand on our overburdened areas of recreation and pleasure.

The increasing tempo of urbanization and growth is already depriving many Americans of the right to live in decent surroundings. More of our people are crowding into cities and being cut off from nature. Cities themselves reach out into the countryside, destroying streams and trees and meadows as they go. A modern highway may wipe out the equivalent of a fifty acre park with every mile. And people move out from the city to get closer to nature only to find that nature has moved farther from them.

The modern technology, which has added much to our lives, can also have a darker side. Its uncontrolled waste products are menacing the world we live in, our enjoyment and our health. The air we breathe, our water, our soil and wildlife are being blighted by the poisons and chemicals which are the by-products of technology and industry. The skeletons of discarded cars litter the countryside. The same society which receives the rewards of technology must, as a cooperating whole, take responsibility for control.

To deal with these new problems will require a new conservation. We must not only protect the countryside and save it from destuction, we must restore what has been destroyed and salvage the beauty and charm of our cities. Our conservation must be not just the classic conservation of protection and development, but a creative conservation of restoration and innovation. Its concern is not with nature alone, but with the total relation between man and the world around him. Its object is not just man's welfare but the dignity of man's spirit.

In this conservation the protection and enhancement of man's opportunity to be in contact with beauty must play a major role.

This means that beauty must not be just a holiday treat, but a part of our daily life. It means not just easy physical access, but equal social access for rich and poor, Negro and white, city dweller and farmer.

Beauty is not an easy thing to measure. It does not show up in the gross national product, in a weekly pay check, or in profit and loss statements. But these things are not ends in themselves. They are a road to satisfaction and pleasure and the good life. Beauty makes its own direct contribution to these final ends. Therefore it is one of the most important components of our true national income, not to be left out simply because statisticians cannot calculate its worth.

And some things we do know. Association with beauty can enlarge man's imagination and revive his spirit. Ugliness can demean the people who live among it. What a citizen sees every day is his America. If it is attractive it adds to the quality of his life. If it is ugly it can degrade his existence.

Beauty has other immediate values. It adds to safety whether removing direct dangers to health or making highways less monotonous and dangerous. We also know that those who live in blighted and squalid conditions are more susceptible to anxieties and mental disease.

Ugliness is costly. It can be expensive to clean a soot smeared building, or to build new areas of recreation when the old landscape could have been preserved far more cheaply.

Certainly no one would hazard a national definition of beauty. But we do know that nature is nearly always beautiful. We do, for the most part, know what is ugly. And we can introduce, into all our planning, our programs, our building and our growth, a conscious and active concern for the values of beauty. If we do this then we can be successful in preserving a beautiful America.

There is much the federal government can do, through a range of specific programs, and as a force for public education. But a beautiful America will require the effort of government at every level, of business, and of private groups. Above all it will require the concern and action of individual citizens, alert to danger, determined to improve the quality of their surroundings, resisting blight, demanding and building beauty for themselves and their children.

I am hopeful that we can summon such a national effort. For we have not chosen to have an ugly America. We have been careless, and often neglectful. But now that the danger is clear and the hour is late this people can place themselves in the path of a tide of blight which is often irreversible and always destructive.

The Congress and the Executive branch have each produced conservation giants in the past. During the 88th Congress it was legislative executive teamwork that brought progress. It is this same kind of partnership that will ensure our continued progress.

In that spirit as a beginning and stimulus I make the following proposals:

THE CITIES

Thomas Jefferson wrote that communities "should be planned with an eye to the effect made upon the human spirit by being continually surrounded with a maximum of beauty."

We have often sadly neglected this advice in the modern American city. Yet this is where most of our people live. It is where the character of our young is formed. It is where American civilization will be increasingly concentrated in years to come.

Such a challenge will not be met with a few more parks or playgrounds. It requires attention to the architecture of building, the structure of our roads, preservation of historical buildings and monuments, careful planning of new suburbs. A concern for the enhancement of beauty must infuse every aspect of the growth and development of metropolitan areas. It must be a principal responsibility of local government, supported by active and concerned citizens.

Federal assistance can be a valuable stimulus and help to such local efforts.

I have recommended a community extension program which will bring the resources of the university to focus on problems of the community just as they have long been concerned with our rural areas. Among other things, this program will help provide training and technical assistance to aid in making our communities more attractive and vital. In addition, under the Housing Act of 1964, grants will be made to States for training of local governmental employees needed for community development. I am recommending a 1965 supplemental appropriation to implement this program.

We now have two programs which can be of special help in creating areas of recreation and beauty for our metropolitan area population: the Open Space Land Program, and the Land and Water Conservation Fund.

I have already proposed full funding of the Land and Water Conservation Fund, and directed the Secretary of the Interior to give priority attention to serving the needs of our growing urban population.

The primary purpose of the Open Space Program has been to help acquire and assure open spaces in urban areas. I propose a series of new matching grants for improving the natural beauty of urban open space.

The Open Space Program should be adequately financed, and broadened by permitting grants to be made to help city governments acquire and clear areas to create small parks, squares, pedestrian malls and playgrounds.

I will also recommend that we add prime outdoor recreation areas to our National Forest system, particularly in the populous East; and proceed on schedule with studies required to define and enlarge the Wilderness System established by the 88th Congress. We will also continue progress on our refuge system for migratory waterfowl.

Faulty strip and surface mining practices have left ugly scars which mar the beauty of the landscape in many of our States. I urge your strong support of the nationwide strip and surface mining study provided by the Appalachian Regional legislation, which will furnish the factual basis for a fair and reasonable approach to the correction of these past errors.

I am asking the Secretary of Agriculture to work with State and local organizations in developing a cooperative program for improving the beauty of the privately owned rural lands which comprise three-fourths of the Nation's area. Much can be done with existing Department of Agriculture programs without adding to cost.

The 28 million acres of land presently held and used by our Armed Services is an important part of our public estate. Many thousands of these acres will soon become surplus to military needs. Much of this land has great potential for outdoor recreation, wildlife, and conservation uses consistent with military requirements. This potential must be realized through the fullest application of multiple-use principles. To this end I have directed the Secretaries of Defense and Interior to conduct a "conservation inventory" of all surplus lands.

HIGHWAYS

More than any country ours is an automobile society. For most Americans the automobile is a principal instrument of transportation, work, daily activity, recreation and pleasure. By making our roads highways to the enjoyment of nature and beauty we can greatly enrich the life of nearly all our people in city and countryside alike.

Our task is two-fold. First, to ensure that roads themselves are not destructive of nature and natural beauty. Second, to make our roads ways to recreation and pleasure.

I have asked the Secretary of Commerce to take a series of steps designed to meet this objective. This includes requiring landscaping on all federal interstate primary and urban highways, encouraging the construction of rest and recreation areas along highways, and the preservation of natural beauty adjacent to highway rights-of-way.

Our present highway law permits the use of up to 3% of all federal-aid funds to be used without matching for the preservation of natural beauty. This authority has not been used for the purpose intended by Congress. I will take steps, including recommended legislation if necessary, to make sure these funds are, in fact, used to enhance beauty along our highway system. This will dedicate substantial resources to this purpose.

I will also recommend that a portion of the funds now used for secondary roads be set aside in order to provide access to areas of rest and recreation and scenic beauty along our nation's roads, and for rerouting or construction of highways for scenic or parkway purposes.

The Recreation Advisory Council is now completing a study of the role which scenic roads and parkways should play in meeting our highway and recreation needs. After receiving the report, I will make appropriate recommendations.

The authority for the existing program of outdoor advertising control expires on June 30, 1965, and its provisions have not been effective in achieving the desired goal. Accordingly, I will recommend legislation to ensure effective control of billboards along our highways.

In addition, we need urgently to work towards the elimination or screening of unsightly, beauty-destroying junkyards and auto graveyards along our highways. To this end, I will also recommend necessary legislation to achieve effective control, including Federal assistance in appropriate cases where necessary.

I hope that, at all levels of government, our planners and builders will remember that highway beautification is more than a matter of planting trees or setting aside scenic areas. The roads themselves must reflect, in location and design, increased respect for the natural and social integrity and unity of the landscape and communities through which they pass.

RIVERS

Those who first settled this continent found much to marvel at. Nothing was a greater source of wonder and amazement than the power and majesty of American rivers. They occupy a central place in myth and legend, folklore and literature.

They were our first highways, and some remain among the most important. We have had to control their ravages, harness their power, and use their water to help make whole regions prosper.

Yet even this seemingly indestructible natural resource is in danger.

Through our pollution control programs we can do much to restore our rivers. We will continue to conserve the water and power for tomorrow's needs with well-planned reservoirs and power dams. But the time has also come to identify and preserve free flowing stretches of our great scenic rivers before growth and development make the beauty of the unspoiled waterway a memory.

To this end I will shortly send to the Congress a Bill to establish a National Wild Rivers System.

THE POTOMAC

The river rich in history and memory which flows by our nation's capital should serve as a model of scenic and recreation values for the entire country. To meet this objective I am asking the Secretary of the Interior to review the Potomac River basin development plan now under review by the Chief of Army Engineers, and to work with the affected States and local governments, the District of Columbia and interested federal agencies to prepare a program for my consideration.

A program must be devised which will:

(a) Clean up the river and keep it clean, so it can be used for boating, swimming and fishing.

(b) Protect its natural beauties by the acquisition of scenic easements, zoning or other measures.

(c) Provide adequate recreational facilities, and

(d) Complete the presently authorized George Washington Memorial Parkway on both banks.

I hope action here will stimulate and inspire similar efforts by States and local governments on other urban rivers and waterfronts, such as the Hudson in New York. They are potentially the greatest single source of pleasure for those who live in most of our metropolitan areas.

TRAILS

The forgotten outdoorsmen of today are those who like to walk, hike, ride horseback or bicycle. For them we must have trails as well as highways. Nor should motor vehicles be permitted to tyrannize the more leisurely human traffic.

Old and young alike can participate. Our doctors recommend and encourage such activity for fitness and fun.

I am requesting, therefore, that the Secretary of the Interior work with his colleagues in the federal government and with state and local leaders and recommend to me a cooperative program to encourage a national system of trails, building up the more than hundred thousand miles of trails in our National Forests and Parks.

There are many new and exciting trail projects underway across the land. In Arizona, a county has arranged for miles of irrigation canal banks to be used by riders and hikers. In Illinois, an abandoned railroad right of way is being developed as a "Prairie Path." In New Mexico utility rights of way are used as public trails.

As with so much of our quest for beauty and quality, each community has opportunities for action. We can and should have an abundance of trails for walking, cycling and horseback riding, in and close to our cities. In the back country we need to copy the great Appalachian Trail in all parts of America, and to make full use of rights of way and other public paths.

POLLUTION

One aspect of the advance of civilization is the evolution of responsibility for disposal of waste. Over many generations society gradually developed techniques for this purpose. State and local governments, landlords and private citizens have been held responsible for ensuring that sewage and garbage did not menace health or contaminate the enviroment.

In the last few decades entire new categories of waste have come to plague and menace the American scene. These are the technological wastes—the by-products of growth, industry, agriculture, and science. We cannot wait for slow evolution over generations to deal with them.

Pollution is growing at a rapid rate. Some pollutants are known to be harmful to health, while the effect of others is uncertain and unknown. In some cases we can control pollution with a larger effort. For other forms of pollution we still do not have effective means of control.

Pollution destroys beauty and menaces health. It cuts down on efficiency, reduces property values and raises taxes.

The longer we wait to act, the greater the dangers and the larger the problem.

Large-scale pollution of air and waterways is no respecter of political boundaries, and its effects extend far beyond those who cause it.

Air pollution is no longer confined to isolated places. This generation has altered the composition of the atmosphere on a global scale through radioactive materials and a steady increase in carbon dioxide from the burning of fossil fuels. Entire regional airsheds, crop plant environments, and river basins are heavy with noxious materials. Motor vehicles and home heating plants, municipal dumps and factories continually hurl pollutants into the air we breathe. Each day almost 50,000 tons of unpleasant, and sometimes poisonous, sulfur dioxide are added to the atmosphere, and our automobiles produce almost 300,000 tons of other pollutants.

In Donora, Pennsylvania in 1948, and New York City in 1953 serious illness and some deaths were produced by sharp increases in air pollution. In New Orleans, epidemic outbreaks of asthmatic attacks are associated with air pollutants. Three-fourths of the eight million people in the Los Angeles area are annoyed by severe eye irritation much of the year. And our health authorities are increasingly concerned with the damaging effects of the continual breathing of polluted air by all our people in every city in the country.

In addition to its health effects, air pollution creates filth and gloom and depreciates property values of entire neighborhoods. The White House itself is being dirtied with soot from polluted air.

Every major river system is now polluted. Waterways that were once sources of pleasure and beauty and recreation are forbidden to human contact and objectionable to sight and smell. Furthermore, this pollution is costly, requiring expensive treatment for drinking water and inhibiting the operation and growth of industry.

In spite of the efforts and many accomplishments of the past, water pollution is spreading. And new kinds of problems are being added to the old:

Waterborne viruses, particularly hepatitis, are replacing typhoid fever as a significant health hazard.

Mass deaths of fish have occurred in rivers over-burdened with wastes.

Some of our rivers contain chemicals which, in concentrated form, produce abnormalities in animals.

Last summer 2,600 square miles of Lake Erie—over a quarter of the entire Lake—were almost without oxygen and unable to support life because of algae and plant growths, fed by pollution from cities and farms.

In many older cities storm drains and sanitary sewers are interconnected. As a result, mixtures of storm water and sanitary waste overflow during rains and discharge directly into streams, bypassing treatment works and causing heavy pollution.

In addition to our air and water we must, each and every day, dispose of a half billion pounds of solid waste. These wastes—from discarded cans to discarded automobiles—litter our country, harbor vermin, and menace our health. Inefficient and improper methods of disposal increase pollution of our air and streams.

Almost all these wastes and pollutions are the result of activities carried on for the benefit of man. A prime national goal must be an environment that is pleasing to the senses and healthy to live in.

Our Government is already doing much in this field. We have made significant progress. But more must be done.

FEDERAL GOVERNMENT ACTIVITY

I am directing the heads of all agencies to improve measures to abate pollution caused by direct agency operation, contracts and cooperative agreements. Federal procurement practices must make sure that the Government equipment uses the most effective techniques for controlling pollution. The Administrator of General Services has already taken steps to assure that motor vehicles purchased by the Federal Government meet minimum standards of exhaust quality.

CLEAN WATER

Enforcement authority must be strengthened to provide positive controls over the discharge of pollutants into our interstate or navigable waters. I recommend enactment of legislation to:

Provide, through the setting of effective water quality standards, combined with a swift and effective enforcement procedure, a national program to prevent water pollution at its source rather than attempting to cure pollution after it occurs.

Increase project grant ceilings and provide additional incentives for multi-municipal projects under the waste treatment facilities construction program.

Increase the ceiling for grants to State water pollution control programs.

Provide a new research, and demonstration construction program leading to the solution of problems caused by the mixing of storm water runoff and sanitary wastes.

The Secretary of Health, Education, and Welfare will undertake an intensive program to clean up the Nation's most polluted rivers. With the cooperation of States and cities—using the tools of regulation, grant and incentives—we can bring the most serious problem of river pollution under control. We cannot afford to do less.

We will work with Canada to develop a pollution control program for the Great Lakes and other border waters.

Through an expanded program carried on by the Department of Health, Education, and

Welfare and Interior, we will continue to seek effective and economical methods for controlling pollution from acid mine drainage.

To improve the quality of our waters will require the fullest cooperation of our State and local government. Working together, we can and will preserve and increase one of our most valuable national resources—clean water.

CLEAN AIR

The enactment of the Clean Air Act in December of 1963 represented a long step forward in our ability to understand and control the difficult problem of air pollution. The 1966 Budget request of 24 million dollars is almost double the amount spent on air pollution programs in the year prior to its enactment.

In addition, the Clean Air Act should be improved to permit the Secretary of Health, Education, and Welfare to investigate potential air pollution problems before pollution happens, rather than having to wait until the damage occurs, as is now the case, and to make recommendations leading to the prevention of such pollution.

One of the principal unchecked sources of air pollution is the automobile. I intend to institute discussions with industry officials and other interested groups leading to an effective elimination or substantial reduction of pollution from liquid fueled motor vehicles.

SOLID WASTES

Continuing technological progress and improvement in methods of manufacture, packaging and marketing of consumer products has resulted in an ever mounting increase of discarded material. We need to seek better solutions to the disposal of these wastes. I recommend legislation to:

Assist the States in developing comprehensive programs for some forms of solid waste disposal.

Provide for research and demonstration projects leading to more effective methods for disposing of or salvaging solid wastes.

Launch a concentrated attack on the accumulation of junk cars by increasing research in the Department of the Interior leading to use of metal from scrap cars where promising leads already exist.

PESTICIDES

Pesticides may affect living organisms wherever they occur.

In order that we may better understand the effects of these compounds, I have included increased funds in the budget for use by the Secretaries of Agriculture, Interior, and Health, Education, and Welfare to increase their research efforts on pesticides so they can give special attention to the flow of pesticides through the environment; study the means by which pesticides break down and disappear in nature; and to keep a constant check on the level of pesticides in our water, air, soil and food supply.

I am recommending additional funds for the Secretary of Agriculture to reduce contamination from toxic chemicals through intensified research, regulatory control, and educational programs.

The Secretary of Agriculture will soon submit legislation to tighten control over the manufacture and use of agricultural chemicals, including licensing and factory inspection of manufacturers, clearly placing the burden of proof of safety on the proponent of the chemical rather than on the Government.

RESEARCH RESOURCES

Our needs for new knowledge and increasing application of existing knowledge demand a greater supply of trained manpower and research resources.

A National Center for Environmental Health Sciences is being planned as a focal point for health research in this field. In addition, the 1966 budget includes funds for the establishment of university institutes to conduct research and training in environmental pollution problems.

Legislation recommended in my message on health has been introduced to increase Federal support for specialized research facilities of a national or regional character. This proposal, aimed at health research needs generally, would assist in the solution of environmental health problems and I urge its passage.

We need legislation to provide to the Departments of Agriculture and the Interior authority for grants for research in environmental pollution control in their areas of responsibility. I have asked the Secretary of Interior to submit legislation to eliminate the ceiling on pesticide research.

OTHER EFFORTS

In addition to these needed actions, other proposals are undergoing active study.

I have directed the Chairman of the Council of Economic Advisers, with the appropriate departments, to study the use of economic incentives as a technique to stimulate pollution prevention and abatement, and to recommend actions or legislation, if needed.

I have instructed the Director of the Bureau of the Budget and the Director of the Office of Science and Technology to explore the adequacy of the present organization of pollution control and research activities.

I have also asked the Director of the Office of Science and Technology and the Director of the Bureau of the Budget to recommend the best way in which the Federal government may direct efforts toward advancing our scientific understanding of natural plant and animal communities and their interaction with man and his activities.

The actions and proposals recommended in this message will take us a long way toward immediate reversal of the increase of pollutants in our environment. They will also give us time until new basic knowledge and trained manpower provide opportunities for more dramatic gains in the future.

WHITE HOUSE CONFERENCE

I intend to call a White House Conference on Natural Beauty to meet in mid-May of this year. Its chairman will be Mr. Laurance Rockefeller.

It is my hope that this Conference will produce new ideas and approaches for enhancing the beauty of America. Its scope will not be restricted to federal action. It will look for ways to help and encourage state and local government, institutions and private citizens, in their own efforts. It can serve as a focal point for the large campaign of public education which is needed to alert Americans to the danger to their natural heritage and to the need for action.

In addition to other subjects which this Conference will consider, I recommend the following subjects for discussion in depth:

Automobile junkyards. I am convinced that analysis of the technology and economics can help produce a creative solution to this vexing problem. The Bureau of Mines of the Interior Department can contribute technical advice to the conference, as can the scrap industry and the steel industry.

Underground installation of utility transmission lines. Further research is badly needed to enable us to cope with this problem.

The greatest single force that shapes the American landscape is private economic development. Our taxation policies should not penalize or discourage conservation and the preservation of beauty.

Ways in which the Federal Government can, through information and technical assistance, help communities and states in their own programs of natural beauty.

The possibilities of a national tree planting program carried on by government at every level, and private groups and citizens.

CONCLUSION

In my thirty-three years of public life I have seen the American system move to conserve the natural and human resources of our land.

TVA transformed an entire region that was "depressed." The rural electrification cooperatives brought electricity to lighten the burdens of rural America. We have seen the forests replanted by the CCC's, and watched Gifford Pinchot's sustained yield concept take hold on forestlands.

It is true that we have often been careless with our natural bounty. At times we have paid a heavy price for this neglect. But once our people were aroused to the danger, we have acted to preserve our resources for the enrichment of our country and the enjoyment of future generations.

The beauty of our land is a natural resource. Its preservation is linked to the inner prosperity of the human spirit.

The tradition of our past is equal to today's threat to that beauty. Our land will be attractive tomorrow only if we organize for action and rebuild and reclaim the beauty we inherited. Our stewardship will be judged by the foresight with which we carry out these programs. We must rescue our cities and countryside from blight with the same purpose and vigor with which, in other areas, we moved to save the forests and the soil.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *February 8, 1965.*

MESSAGE ON THE CITIES

(NOTE.—In this message the word city is used to mean the entire urban area—the central city and its suburbs.)

To the Congress of the United States:

Throughout man's history, the city has been at the center of civilization. It is at the center of our own society.

Over seventy percent of our population—135 million Americans—live in urban areas. A half century from now 320 million of our 400 million Americans will live in such areas. And our largest cities will receive the greatest impact of growth.

Numbers alone do not make this an urban nation. Finance and culture, commerce and government make their home in the city and draw their vitality from it. Within the borders of our urban centers can be found the most impressive achievements of man's skill and the highest expressions of man's spirit, as well as the worst examples of degradation and cruelty and misery to be found in modern America.

The city is not an assembly of shops and buildings. It is not a collection of goods and services. It is a community for the enrichment of the life of man. It is a place for the satisfaction of man's most urgent needs and his highest aspirations. It is an instrument for the advance of civilization. Our task is to put the highest concerns of our people at the center of urban growth and activity. It is to create and preserve the sense of community with others which gives us significance and security, a sense of belonging and of sharing in the common life.

Aristotle said: "Men come together in cities in order to live. They remain together in order to live the good life."

The modern city can be the most ruthless enemy of the good life, or it can be its servant. The choice is up to this generation of Americans. For this is truly the time of decision for the American city.

In our time, two giant and dangerous forces are converging on our cities: the forces of growth and of decay.

Between today and the year 2000, more than 80 percent of our population increase will occur in urban areas. During the next fifteen years, thirty million people will be added to our cities—equivalent to the combined population of New York, Chicago, Los Angeles, Philadelphia, Detroit and Baltimore.

Each year, in the coming generation, we will add the equivalent of 15 cities of 200,000 each.

Already old cities are tending to combine into huge clusters. The strip of land from southern New Hampshire to northern Virginia contains 21 percent of America's population in 1.8 percent of its areas. Along the West Coast, the Great Lakes, and the Gulf of Mexico, other urban giants are merging and growing.

Our new city dwellers will need homes and schools and public services. By 1975 we will need over two million new homes a year. We will need schools for 10 million additional children, welfare and health facilities for 5 million more people over the age of sixty, transportation facilities for the daily movement of 200 million people and more than 80 million automobiles.

In the remainder of this century—in less than forty years—urban population will double, city land will double and we will have to build in our cities as much as all that we have built since the first colonists arrived on these shores. It is as if we had forty years to rebuild the entire urban United States.

Yet these new overwhelming pressures are being visited upon cities already in distress. We have over nine million homes, most of them in cities, which are run down or deteriorating; over four million do not have running water or even plumbing. Many of our central cities are in need of major surgery to overcome decay. New suburban sprawl reaches out into the countryside, as the process of urbanization consumes a million acres a year. The old, the poor, the discriminated against are increasingly concentrated in central city ghettos; while others move to the suburbs leaving the central city to battle against immense odds.

Physical decay, from obsolescent schools to polluted water and air, helps breed social decay. It casts a pall of ugliness and despair on the spirits of the people. And this is reflected in rising crime rates, school dropouts, delinquency and social disorganization.

Our cities are making a valiant effort to combat the mounting dangers to the good life. Between 1954 and 1963 per capita municipal tax revenues increased by 43%, and local government indebtedness increased by 119%. City officials with inadequate resources, limited authority, too few trained people, and often with too little public support, have, in many cases, waged a heroic battle to improve the life of the people they serve.

But we must do far more as a nation if we are to deal effectively with one of the most critical domestic problems of the United States.

Let us be clear about the core of this problem. The problem is people and the quality of the lives they lead. We want to build not just housing units, but neighborhoods; not just to construct schools, but to educate children; not just to raise income but to create beauty and end the poisoning of our environment. We must extend the range of choices available to all our people so that all, and not just the fortunate, can have access to decent homes and schools, to recreation and to culture. We must work to overcome the forces which divide our people and erode the vitality which comes from the partnership of those with diverse incomes and interests and backgrounds.

The problems of the city are problems of housing and education. They involve increasing employment and ending poverty. They call for beauty and nature, recreation and an end to racial discrimination. They are, in large measure, the problems of American society itself. They call for a generosity of vision, a breadth of approach, a magnitude of effort which we have not yet brought to bear on the American ctiy.

Whatever the scale of its programs, the federal government will only be able to do a small part of what is required. The vast bulk of resources and energy, of talent and toil, will have to come from state and local governments, private interests and individual citizens. But the federal government does have a responsibility. It must help to meet the most urgent national needs; in housing, in education, in health and many other areas. It must also be sure that its efforts serve as a catalyst and as a lever to help and guide state and local governments toward meeting their problems.

We must also recognize that this message, and the program it proposes, does not fully meet the problems of the city. In part, this is because many other programs, such as those for education and health, are dealt with separately. But it is also because we do not have all the answers. In the last few years there has been an enormous growth of interest and knowledge and intellectual ferment. We need more thought and wisdom and knowledge as we painfully struggle to identify the ills, the dangers and the cures for the American city. We need to re-shape, at every level of government, our approach to problems which are often different than we thought and larger than we had imagined.

I want to begin that process today.

We begin with the awareness that the city, possessed of its own inexorable vitality, has ignored the classic jurisdictions of municipalities and counties and states. That organic unit we call the city spreads across the countryside, enveloping towns, building vast new suburbs, destroying trees and streams. Access to suburbs has changed the character of the central city. The jobs and income of suburbanites may depend upon the opportunities for work and learning offered by the central city. Polluted air and water do not respect the jurisdictions of mayors and city councils, or even of Governors. Wealthy suburbs often form an enclave whereby the well-to-do and the talented can escape from the problems of their neighbors, thus impoverishing the ability of the city to deal with its problems.

The interests and needs of many of the communities which make up the modern city often seem to be in conflict. But they all have an overriding interest in improving the quality of life of their people. And they have an overriding interest in enriching the quality of American civilization. These interests will only be served by looking at the metropolitan area as a whole, and planning and working for its development.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

To give greater force and effectiveness to our effort in the cities *I ask the Congress to establish a Department of Housing and Urban Development.*

Our urban problems are of a scope and magnitude that demand representation at the highest level of government. The Housing and Home Finance Agency was created two decades ago. It has taken on many new programs. Others are proposed in this message. Much of our hopes for American progress will depend on the effectiveness with which these programs are carried forward. These problems are already in the front rank of national concern and interest. They deserve to be in the front rank of government as well.

The new Department will consist of all the present programs of HHFA. In addition it will be primarily responsible for federal participation in metropolitan area thinking and planning. This new department will provide a focal point for thought and innovation and imagination about the problems of our cities. It will cooperate with other federal agencies, including those responsible for programs providing essential education, health, employment and social services. And it will work to strengthen the constructive relationships between nation, state and city—the creative federalism—which is essential to progress. This partnership will demand the leadership of mayors, Governors and state legislatures.

INCENTIVES TO METROPOLITAN AREA COOPERATION

The federal government cannot, and should not, require the communities which make up a metropolitan area to cooperate against their will in the solution of their problems. But we can offer incentives to metropolitan area planning and cooperation. We can help those who want to make the effort but lack the trained personnel and other necessary resources. And the new Department should have regional representatives in our metropolitan areas to assist, where assistance is requested, in the development of metropolitan area plans.

We already have federal programs in which assistance depends upon the completion of soundly conceived metropolitan area plans, such as the mass transportation program passed by the 88th Congress. This program strikes at the heart of one of our most critical and urgent needs—a transportation system which can relieve congestion and make it possible for people to travel with comparative ease to places of work, learning and pleasure.

I am proposing other programs which will also require sound, long-range development programs as a condition of federal assistance. Wherever it can be done without leaving vital needs unmet, existing programs will also be keyed to planning requirements.

Among the most vital needs of our metropolitan areas is the requirement for basic community facilities—for water and sewerage. Many existing systems are obsolete or need major rehabilitation. And population growth will require a vastly increased effort in years ahead.

These basic facilities, by their very nature, require cooperation among adjacent communities. *I propose a program of matching grants to local governments for building new basic community facilities with an appropriation of 100 million dollars for fiscal 1966.* These grants will be contingent upon comprehensive, areawide planning for future growth; and will be made only for projects consistent with such planning.

One of the greatest handicaps to sound programs for future needs is the difficulty of obtaining desirable land for public buildings and other facilities. As growth is foreseen it should be possible to acquire land in advance of its actual use. Thus, when the needs arises, the land will be there. *I recommend a federal program for financial assistance to help in this advance acquisition of land.* Federal grants would be made available to cover the interest charges for five years on loans obtained by public bodies. Thus we will cover the cost during the period before the facilities are constructed.

Last year alone one million acres were urbanized. As our cities spread, far too often we create the ugliness and waste which we call urban sprawl. At times we find we have built new slum areas in our suburbs. Some of our programs are designed to stem this tide by helping city governments to plan their growth. But we must continue to depend upon the private developer and lender for most of our construction. And they sometimes lack the economic resources to ensure high standards of development. *I therefore recommend a program of federally insured private loans, backed by Federal Mortgage purchases where necessary, to finance the acquisition and development of land for entire new communities and planned subdivisions.*

This program should enable us to help build better suburbs. And it will also make it easier to finance the construction of brand new communities on the rim of the city. Often such communities can help break the pattern of central city ghettos by providing low and moderate income housing in suburban areas.

This program will be complemented with a program of federal financial assistance to state land development agencies. Under this

program public bodies would acquire land, install basic facilities, and then re-sell the improved land to private builders for the construction of suburbs or new communities.

All of these programs would be dependent upon the existence of area-wide planning for growth to which the aided developments must conform. They are designed to stimulate the farsighted planning for future growth which is necessary if we are to prevent sprawl and new slums, and to create standards which will guarantee a decent environment for our future city dwellers whatever their race or income. In addition, these programs should enable us to build better suburbs, since it will be possible to acquire land and improve it before the imminent approach of the city has sent costs skyrocketing upward.

RESOURCES FOR PLANNING

To plan for the growth and development of an entire metropolitan area takes a wide range of skills and a large number of trained people. These vital human resources are in short supply. They are beyond the command of many of our cities. To help meet this need *I propose to establish an Institute of Urban Development as part of the new department.*

This Institute will help support training of local officials in a wide range of administrative and program skills. It will administer grants to states and cities for studies and the other basic work which are the foundation of long-term programs. And it will support research aimed especially at reducing the costs of building and home construction through the development of new technology.

TEMPORARY NATIONAL COMMISSION

Good planning for our metropolitan areas will take not only determination, the spirit of cooperation and added resources. It will also take knowledge, more knowledge than we have now. *We need to study the structure of building codes across the country*: their impact on housing costs, how building codes can be simplified and made more uniform, and how housing codes might be more effectively enforced to help eliminate slums.

Zoning regulations also affect both the cost and pattern of development. We must better learn how zoning can be made consistent with sound urban development.

Few factors have greater impact on cost, on land speculation and on the ability of private enterprise to respond to the public interest, than *local and federal tax policies.* These too must be examined to determine how they can best serve the public interest.

Finally, *we must begin to develop better and more realistic standards for suburban development.* Even where local authorities wish to prevent sprawl and blight, to preserve natural beauty and ensure decent, durable housing they find it difficult to know what standards should be expected of private builders. We must examine what kind of standards are both economically feasible and will provide livable suburbs.

To examine all these problems *I recommend the establishment of a Temporary National Commission on Codes, Zoning, Taxation and Development Standards.* I predict that the body masked by such an unwieldy name may emerge with ideas and instruments for a revoluntionary improvement in the quality of the American city.

This entire range of programs is designed to help us begin to think and act across historic boundaries to enrich the life of the people of our metropolitan areas. We do not believe such planning is a cure-all or a panacea. It can sometimes be a slender reed. It must be flexible and open to change. And we cannot wait for completed plans before trying to meet urgent needs in many areas. But it will teach us to think on a scale as large as the problem itself, and act to prepare for the future as well as to repair the past.

I hope that, as time goes by, more and more of our federal programs can be brought into harmony with metropolitan area programs. For in this approach lies one of our brightest hopes for the effective use of local as well as federal resources in improving the American City.

THE PHYSICAL ENVIRONMENT

We owe the quality of American housing to the initiative and vitality of our private housing industry. It has provided the homes which have made most of our citizens the best housed people in the world. Our federal housing programs are designed to work in support of private effort, and to meet the critical needs which can only be met through government action.

After World War II we worked to revitalize the housing market and provide homes for a growing number of our people. This effort has been successful far beyond our initial hopes. However, the problem now has a different shape. It is not enough simply to build more and more units of housing. We must build neighborhoods and communities. This means combining construction with social services and community facilities. It means to build so that people can live in attractive surroundings sharing a strong sense of community.

To meet new objectives we must work to re-direct, modernize and streamline our housing programs. I will ask the Congress to begin the process this year, while continuing those programs which are providing necessary assistance.

We hope to achieve a large increase of homes for low and moderate income families—those in greatest need of assistance—through an array of old and new instruments designed to work together toward a single goal.

To insist on stricter enforcement of housing codes by communities receiving federal aid, thus mounting an intensified attack on slums.

But such insistence is not realistic, and often not desirable, unless we can provide realistic alternatives to slum housing. We will do this by: *providing rent supplements for families across a wide range of lower and moderate income brackets so they can afford decent housing; providing rent supplement assistance to those forced out of their homes by code enforcement and all forms of federally assisted government action, from highways to urban renewal; using both urban renewal funds and public housing funds to rehabilitate existing housing and make it available to low and moderate income families.* There is no reason to tear down and rebuild if existing housing can be improved and made desirable; *emphasizing residential construction and rehabilitation on a neighborhood-wide scale in the urban renewal program.*

These instruments, combined with existing public housing and direct loan programs, will greatly strengthen our existing effort. *They should offer direct assistance to the housing of one million families over the next four years.* Moreover they will immensely add to our flexibility in the process of building neighborhoods.

RENT SUPPLEMENTS

The most crucial new instrument in our effort to improve the American city is the rent supplement.

Up to now government programs for low and moderate income families have concentrated on either direct financing of construction; or on making below-the-market-rate loans to private builders. *We now propose to add to these programs through direct payment of a portion of the rent of needy individuals and families.*

The homes themselves will be built by private builders, with Federal Housing Administration insurance, and, where necessary, mortgage purchases by the Federal National Mortgage Association. The major federal assistance will be the rent supplement payment for each eligible family.

This approach has immense potential advantages over low-interest loan programs:

First, its flexibility will allow us to help people across a much broader range of income than has hitherto been possible. And it will therefore make it possible significantly to increase the supply of housing available to those of moderate income.

Second, the payment can be keyed to the income of the family. Those with lower incomes will receive a greater supplement. Under present direct loan programs the amount of the subsidy is the same for all who live in a federally assisted development regardless of individual need.

Third, the amount of assistance can be reduced as family income rises. It can be ended completely when income reaches an adequate level. Thus we will not end up, as is sometimes the case, helping those who no longer need help.

Fourth, it will be unnecessary to evict from their homes those whose income has risen above the point of need. This will eliminate what is often a great personal hardship.

Fifth, since the supplement is flexible it will permit us to encourage housing in which families of different incomes, and in different age groups, can live together. It will make it unnecessary for the government to assist and even require the segregation by income level which detracts from the variety and quality of urban life.

In the long run this may prove the most effective instrument of our new housing policy. In order to give it a fair chance we are limiting it to carefully designed categories of need: *in a program of rental and cooperative housing for those low and moderate income families displaced by government action or now living in substandard housing.* The subsidy will help them pay rent or meet payments on a federally insured mortgage; *in a program of home ownership* for those displaced or living in substandard housing who display a capacity for increasing income and eventually owning their own home; *in a program to provide a broader range of housing for the elderly with inadequate incomes.* The existing direct loan program for the elderly will continue at its existing level with the funds already provided by the Congress. I intend to ensure a steadily increasing supply of federally assisted housing for older Americans.

On this basis our rent supplement program should finance more than 500,000 homes over the next four years, while improving our ability to make these homes serve the social needs of those who live in them. If it works as well as we expect, it should be possible to phase out most of our existing programs of low-interest loans.

REHABILITATION

We have concentrated almost all our past effort on building new units, when it is often possible to improve, rebuild and rehabilitate existing homes with less cost and less human dislocation. Even some areas now classed as slums can be made decent places to live with intensive rehabilitation. In this way it may often be possible to meet our housing objectives without tearing people away from their familiar neighborhoods and friends. Sometimes the same objective can be achieved by helping local authorities to lease standard homes for low rent families.

I recommend a change in the public housing formula so that we can more readily use public housing funds to acquire and rehabilitate existing dwellings—and to permit local authorities to lease standard housing for low-rent families. This will assist particularly in providing housing for large families.

I recommend the use of urban renewal funds to permit low-income homeowners to repair their homes and non-profit sponsors to rehabilitate and operate homes for low-income families at rents they can afford.

I have recommended the appropriation of

funds for low-interest rehabilitation loans under urban renewal, designed to help rescue our existing housing from blight and decay.

EXISTING PROGRAMS

I ask Congress to continue, on a modified basis, the existing housing programs which have proven their ability to meet important needs. But I also wish to state my intention to reduce or eliminate these programs whenever new and more flexible instruments have shown they can do a better job.

The public housing program should be continued with an authorization ample enough to permit an increase in the number of new units as well as to conduct a program of rehabilitation.

I ask the continuation, at the rate of 40,000 additional units for fiscal 1966, of the program below market interest rate mortgage purchases for housing for moderate income families. At the same time we must recognize that the benefits of this program are decreasing as the rising costs of federal borrowing narrow the difference between the interest we ask and that demanded in the private market.

I urge continued support for our college housing program which is struggling to keep up with the needs of a rising volume of students.

I ask that our urban renewal program be increased to a level of 750 million dollars a year by 1968. This program has done much to help our cities. But we have also learned, through hard experience, that there is more to eliminating slums and building neighborhoods than knocking down old buildings and putting up new ones.

Through using funds for rebuilding existing housing and by providing more and better assistance to families forced out by urban renewal, we can make this program better serve the people it is meant to help. We will continue to use urban renewal to help revitalize the business and industrial districts which are the economic base of the central city. *But this program should be more and more concentrated on the development of residential areas* so that all our tools—from the poverty program, to education and construction—can be used together to create meaningful and liveable communities within the city.

To accomplish this purpose cities must develop long-range programs which take into account human as well as construction needs. *Therefore I recommend that every city of 50,000 or larger develop a Community Renewal Program as a condition of federal help for urban renewal.* These programs will provide an orderly schedule and pattern for development of areas of blight and decay—combining social and educational services with the planning of physical construction.

NEIGHBORHOOD FACILITIES

A community must offer added dimensions to the possibilities of daily life. It must meet the individual's most pressing needs and provide places for recreation and for meeting with neighbors. *I therefore recommend a new program of matching grants to help local governments build multipurpose neighborhood centers for health and recreation and community activity.* Related to our housing programs these centers can help urban renewal and public housing meet the goal of creating a meaningful community.

At the same time these centers must not be isolated expressions of interest. They should be part of an overall program for improving the life of people in disadvantaged areas. Therefore, I am recommending that in cities participating in the War Against Poverty these grants be made only when they are consistent with an approved community action program.

BEAUTIFYING THE CITY

In my message on natural beauty I pointed out that much of the effort of the new conservation would be directed toward the city. *I recommend changes in the open space program, broadening its authority to help local governments acquire and clear areas to create small parks and squares, malls and playgrounds. In addition I recommend special grants to cities for landscaping, the planting of trees, the improvement of city parks and other measures to bring beauty and nature to the city dweller.*

But beauty is not simply a matter of trees and parks. The attractiveness of our cities depends upon the design and architecture of buildings and blocks and entire urban neighborhoods. I intend to take further steps to ensure that federal construction does not contribute to drab and ugly architecture. But in this field, as in so many others, most of our hopes rest on the concern and work of local governments and private citizens.

CONCLUSION

This message can only deal with a fragment of the effort increasingly directed toward improving the quality of life in the American city. The creation of jobs, the war against poverty, support for education and health, programs for natural beauty and anti-pollution are all part of an effort to build the great cities which are at the foundation of our hopes for a Great Society.

Nor can we forget that most of our programs are designed to help all the people, in every part of the country. We do not intend to forget or neglect those who live on the farms, in villages, and in small towns. Coordinated with the Department of Agriculture, the programs I have outlined above can do much to meet rural America's need for housing and the development of better communities.

Many of these programs are intended to help the poor and those stripped of opportunity. But our goal is more ambitious than that. It is nothing less than to improve the quality of life for every American. In this quest the future of the American city will play the most vital role. There are a few whose affluence enables them to move through the city guarded and masked from the realities of the life around them. But they are few indeed. For the rest of us the quality and condition of our lives is inexorably fixed by the nature of the community in which we live. Slums and ugliness, crime and congestion, growth and decay inevitably touch the life of all. Those who would like to enjoy the lovely parks of some of our great cities soon realize that neither wealth nor position fully protects them against the failures of society. Even among strangers, we are neighbors.

We are still only groping toward solution. The next decade should be a time of experimentation. Our cities will not settle into a drab uniformity directed from a single center. Each will choose its own course of development—whether it is to unite communities or build entirely new metropolitan areas. We will seek new ways to structure our suburbs and our transportation; new techniques for introducing beauty and improving homes. This is an effort which must command the most talented and trained of our people, and call upon administrators and officials to act with generosity of vision and spaciousness of imagination.

I believe today's proposals are an important start along that road. They should help us to look upon the city as it really is: a vast and myriad complex of homes and communities, people and their needs, hopes and frustrations. It can liberate the expectations of men, or it can crush them in body and spirit.

For underneath all the rest, at the very bottom of all we do, is the effort to protect, under the conditions of the modern world, values as old as this nation and the civilization from which it comes. We work in our cities to satisfy our needs for shelter and work and the ability to command a satisfying way of life. We wish to create a city where men and women can feed the hunger of the spirit for beauty and have access to the best of man's work; where education and the richness of diversity expands our horizons and extends our expectations. But we also look for something more.

The American city should be a collection of communities where every member has a right to belong. It should be a place where every man feels safe on his streets and in the house of his friends. It should be a place where each individual's dignity and self-respect is strengthened by the respect and affection of his neighbors. It should be a place where each of us can find the satisfaction and warmth which comes only from being a member of the community of man. This is what man sought at the dawn of civilization. It is what we seek today.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *March 2, 1965.*

LETTER FROM THE PRESIDENT TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, MARCH 4, 1965

Hon. HUBERT H. HUMPHREY,
President of the Senate,
Washington, D.C.
Hon. JOHN W. MCCORMACK,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. PRESIDENT (DEAR MR. SPEAKER): I am pleased to transmit to Congress proposed legislation for high-speed ground transportation research and development. This legislation will help us to bring scientific and technical talent to bear on an increasingly important area of transportation not previously subject to intensive, continuing inquiry.

The life of every citizen is influenced by transportation service. This vast economic activity not only absorbs one out of every five GNP dollars; it shapes the environment in which we live and work. Advances in our transportation system must constantly be made if we are to continue to enjoy growth and prosperity—and if America is to be a liveable Nation.

The last three decades have produced great technological achievements in air and highway transportation. Commercial planes today fly three times as fast as they did in the 1930's. Automobiles speed along modern highways at greatly reduced travel time. The progress of our rail transportation system, unfortunately, has not matched these strides.

I believe the power of science and technology, demonstrated so well in the evolution of air and highway travel, can be utilized in the solution of other transportation problems, especially rail transportation.

Striking advances in the intercity ground transportation—advances in speed, reliability, comfort, and convenience—are needed *and* possible. In the last 50 years, intercity freight tonnage has risen four times, and passenger travel has increased 25-fold. In 1960 Americans travelled over 600 billion passenger miles, exculsive of local movement. That figure will more than double by 1980.

We face an imminent need for improved intercity transportation in the densely-populated area along the East Coast—between Washington and Boston—where travel is expected to increase by 150% to 200% between 1960 and 1980. Freight shipments during the same period may nearly double. Other such "corridors" can be identified throughout the Nation. Advances in the transportation of goods and people safely, reliably and economically in one densely populated area will be directly applicable to other regions.

It is clear that we should explore the feasibility of an improved ground transportation system for such heavily travelled corridors. The program outlined by the Secretary of Commerce calls for research on materials, aerodynamics, vehicle power and control, and guideways. Information requirements for regional studies and evaluations are to be defined and the necessary data col-

lected. We must learn about travel needs and preferences, in part through the use of large-scale demonstration projects. New methods of analyzing the problem will be developed to give adequate consideration to the large number of regional and local characteristics which influence the performance, acceptability, and cost of all kinds of systems.

The task is large and complex. Evolutionary improvement in the existing railroad system must be compared to much more radical and longer term developments. Systems proposed must be compatible with urban transportation plans. The research and development activity will require the services of many outstanding scientists, engineers, administrators and business executives. But I know that we will find the skills in industry, in the universities, and in government—both national and local—to do the job. The consequences of beginning now will be vital, for experience has demonstrated to us that dollars spent in sound research and development produce benefits many times over.

Sincerely,

LYNDON B. JOHNSON.

A bill to authorize the Secretary of Commerce to undertake research and development in high-speed ground transportation and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Commerce is authorized to undertake research and development in high-speed ground transportation for the purpose of improving the national transportation system. In exercising this authority, the Secretary may lease, purchase, develop, test, and demonstrate new facilities, equipment, techniques and methods, and conduct such other activities as may be necessary to accomplish the purposes of this Act.

SEC. 2. The Secretary is authorized to collect transportation data, statistics, and other information which he determines will contribute to the improvement of the national transportation system.

SEC. 3. In carrying out the purposes of this Act, the Secretary is authorized to enter into agreements and to contract with public or private agencies, institutions, organizations, and individuals, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5). The Secretary is further authorized to appoint, subject to the civil service laws and regulations, such personnel as may be necessary to enable him to carry out his functions and responsibilities under this Act. The Secretary is further authorized to procure services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), but at rates for individuals not to exceed $100 per diem, unless otherwise specified in an appropriation act.

SEC. 4. In carrying out the purposes of this Act, the Secretary shall consult and cooperate with the Administrator of the Housing and Home Finance Agency and such other departments and agencies as he deems appropriate.

SEC. 5. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act. Such appropriations when so specified in appropriation acts shall remain available until expended.

STATEMENT OF PURPOSE AND NEED FOR LEGISLATION TO AUTHORIZE THE SECRETARY OF COMMERCE TO UNDERTAKE RESEARCH AND DEVELOPMENT IN HIGH-SPEED GROUND TRANSPORTATION AND FOR OTHER PURPOSES

The purpose of the proposed legislation is to authorize the Secretary of Commerce to carry out activities relating to the development of high-speed ground transportation, thereby contributing to the improvement of the national transportation system.

Efficient surface transportation has always been a vital force in promoting the economic growth of our Nation. The President has emphasized that we must improve ways of transporting people and goods safely, reliably, and economically over relatively short distances in densely populated areas.

The Northeast Corridor and other densely populated areas face critical inter-city transportation problems which require the application of advanced technology to ground transportation systems. The proposed legislation would authorize research and development activities which could be expected to result in the development of more efficient and economical inter-city transportation systems. It should be emphasized that the proposed legislation is not limited to a consideration of the transportation needs of the Northeast Corridor, nor should it be regarded as being for the sole benefit of one particular region of the Nation. On the contrary, the activities to be conducted would be beneficial for the Nation as a whole, and would assist during the coming years in the solution of the transportation problems of densely populated regions in the Nation.

The proposed legislation is not designed to benefit or to concentrate solely on one particular type of transportation. Wholly new kinds of vehicles, guideways and operational and control systems may evolve from concentrated technological research in high-speed ground transportation. Such results can be foreseen within the scope of present and foreseeable technology. A new high-speed ground transportation system would differ radically from passenger trains and railways as we know them today.

The research and development activity which would be carried out under the proposed legislation would be accomplished in cooperation with all relevant elements of our present transportation system, whether privately or publicly owned and operated.

Initial demonstration projects utilizing present railroad technology would be conducted with Federal participation. Such projects would involve relatively low cost improvements in present rail service, for the purpose of measuring market response to higher rail speeds, variation in fares, greater travel comfort and convenience, and more frequent service.

In order to determine the demand for transportation and to evaluate the relative economic efficiency of different systems, section 2 of the proposed legislation would authorize the collection of transportation data and statistics. This data is essential in arriving at sound policy decisions in the future regarding high-speed ground transportation as well as other decisions on the improvement of the national transportation system. Present statistical programs do not fully meet these needs. For example, origin and destination data on travel and more complete and accurate information on travel patterns during periods of peak use are needed. Also needed are standard statistical definitions and location codes.

It is anticipated that work performed during the next three years will be sufficient to permit decisions to be made concerning future activities in high-speed ground transportation. Clearly there will continue to be need for carrying on fundamental research and development in ground transportation systems as well as to continue collection of adequate transportation statistics. There may also be a basis for pioneering development of new ground transportation systems in the Northeast Corridor and in other areas of the Nation.

REMARKS OF THE PRESIDENT TO THE DELEGATION REPRESENTING THE AMERICAN INSTITUTE OF ARCHITECTS AND THE PAN AMERICAN CONGRESS OF ARCHITECTS, IN THE CABINET ROOM, JUNE 15, 1965

Mr. Chairman, ladies and gentlemen: I am grateful to you for this certificate honoring our efforts to foster a greater attention to natural beauty in this spacious and beautiful country of ours.

Your profession is one which I personally greatly admire. I believe in the fullest sense no society can fulfill its greatness until its ideals and aspirations are expressed eloquently and effectively in its architecture.

Here in this country, moving as we are into an age of much greater urbanization, it is more important than ever that attention be given to the quality and character of our architecture.

I am delighted to see that you have our neighbors in this hemisphere join with you here this morning. I am glad not only to welcome them but I know from them we have learned much and will learn more.

Our cities in America can be great centers of inspiration for the finest quality of the human soul if, but only if, that aspiration is captured and reflected through the architecture of these cities.

So it is my hope and my intention that the efforts of the Federal Government of the United States be devoted to encouraging and contributing to these high standards. Cities are for people—for all of our people. We know they can be formalist and oppressing and degrading to the human spirit, or they can be beautiful, as well as livable, pleasant as well as practicable.

We do not want and we do not accept the idea of a standard governmental architecture. This must never be. But we do look to the individual creativity of the members of your profession to provide the leadership that will express the aspirations of our society and exalt the full dimensions of the human spirit.

While you are here, I thought that it might be interesting to you and certainly to some of our friends from the hemisphere, to show to you and for the first time announce publicly the acceptance of the design for a major new building that the Federal Government is doing here in the District of Columbia. We are going to begin a significant development of necessary Federal buildings in the 10th Street and Independence Avenue section of the District of Columbia.

The central building in this undertaking is this structure shown here. This building will house a number of units of our defense establishment and bring them together. They are not now located in the Pentagon, they are scattered around the area—approximately 6,000 Army and Air Force personnel will be employed here. This structure will be one of our very finest buildings in the Federal complex and I want it to have one of the finest names that I know, so I am therefore, in the presence of all of you here this morning, designating this building to be known as the Forrestal Building, honoring this nation's first Secretary of Defense, a man in whose office I worked as a young man, my good friend, the Honorable James Forrestal.

I have conferred with Mr. Knott, the General Services Administrator, I know most of you men are acquainted with, and we are going to try to do our very best to get the best designs, to have outstanding committees from the architectural profession help us in connection with the selection of architects, in connection with the design of public buildings in the hope that we can add much economy, convenience and beauty to the construction of all Federal buildings throughout this land.

Thank you very much.

STATEMENT BY THE PRESIDENT, JUNE 30, 1965

The House of Representatives today took an historic step toward assuring every American a decent place to live.

The passage of the Housing Bill—with its pathbreaking provision for rent supplements—gives us new and expanded weapons for meeting the housing needs of all our people.

The rent supplements will provide new

homes for hundreds of thousands of our people now condemned to slums and substandard homes.

It will give private industry an opportunity and an incentive to build for our future needs and to overcome our present failures.

It will help toward eliminating the arbitrary and unhealthy division of families and communities by income and age—an inevitable consequence of many present programs.

With the new tools of this bill, and with others yet to come, we can move toward the construction of communities and neighborhoods rather than housing units and isolated projects. For the city we aspire to is not just a collection of homes, but a community in which men and their families can live the good life.

REMARKS OF THE PRESIDENT AT THE SIGNING CEREMONY OF THE HOUSING BILL, IN THE ROSE GARDEN, AUGUST 10, 1965

Mr. Vice President, distinguished Speaker McCormack, Senator Mansfield, Senator Sparkman, Congressman Patman, distinguished members of the Congress, distinguished governors, mayors, and friends:

This is a very proud and gratifying occasion. I am very proud to welcome you today to the first house of the land—the house that belongs to all of the American people. I am gratified—as you are—that we could come together to sign into law a measure which will take us many longer strides nearer the goal that has been the dream and the vision of every generation of Americans. That is the goal of honoring what a very great President, Franklin D. Roosevelt, twenty-one years ago expressed as the right—"the right of every family to a decent home."

From Plymouth Rock to Puget Sound—the first priority of the men and women who settled this vast and this blessed continent was, first of all, to put a roof over the heads of their family. And that priority has never—and can never—change.

I am so happy this morning to see the great and distinguished Mayor of New York here because it was his father who pioneered the housing legislation in this country. And here on the platform with me is one of those who joined with him—the very able and distinguished Senator from Louisiana. It took a lot of courage for him to stand on some of those bills. He got in with Bob Wagner and Bob Taft and he got in the middle between them, and it did take courage to stand there.

Many elements mattered to the success and the stability of our great American society. Education matters a great deal. Health matters. Jobs matter. Equality of opportunity and individual dignity matters very much.

But legislation and labors in all of these fields can never succeed unless and until every family has the shelter and the security, the integrity and the independence, and the dignity and the decency of a proper home.

For me, this is not a belief that comes recently. It is a conviction, and it is a passion, to which I was born 57 years ago this month in an humble home on the banks of a small river in Central Texas.

Men may forget many memories of their childhood. But many of you know—as I know—that no man and no woman ever grows too old or too successful to forget the memory of a childhood home that was without lights, and that was without water, and that was without covering on the floor, and I have never forgotten.

The first great reward of my public service was to secure for my little congressional district, as a young congressman, the nation's first public housing project that President Roosevelt signed in the 1930's. And Bob's father was there at that allocation. What I sought then for the people of one city—Austin, Texas—I am determined as President that we shall seek and we shall obtain for all the people of all the nation.

We have the resources in this country. We have the ingenuity. We have the courage—and we have the compassion. And we must, in this decade, bring all of these strengths to bear effectively so that we can lift off the conscience of our affluent nation the shame of slums and squalor and the blight of deterioration and decay.

We must make sure that every family in America lives in a home of dignity and a neighborhood of pride and a community of opportunity and a city of promise and hope.

This legislation represents the single most important breakthrough in the last 40 years.

Only the Housing Act of 1949 approaches the significance of this measure. And in years to come, I believe this Act will become known as the single most valuable housing legislation in our history.

The Housing and Urban Development Act of 1965 retains, and expands, and improves the best of the tested programs of the past.

It extends and gives new thrust to the FHA Mortgage Insurance Program so that millions of Americans can come toward attainment of new homes in the future—as millions already have under that program in the past.

It opens the way for a more orderly and cohesive development of our suburbs; and it opens the door to thousands of our veterans who have been unable to obtain the benefits of a Federal housing program.

It extends and enlarges and improves the Urban Renewal Program so that we can more effectively challenge and defeat the enemy of decay that exists in our cities.

It faces the changing challenge of rural housing. It continues the loan programs to assure the needed dormitories on our college campuses, and decent housing at decent costs for the elderly and the handicapped, and those of lower income.

But the importance of the Bill is not only that it retains and improves the best of good and traditional programs, it is a landmark Bill because of its new ideas.

Foremost and uppermost of these is the program of assistance for the construction and the rehabilitation of housing for the elderly and for families of low-income—the people who live in the most wretched conditions in our slums and our blighted neighborhoods.

The conception of this fine program—endorsed by this fine Congress—calls for the best in cooperation between Government and free enterprise. I am so happy to see so many members of the building industry and the trade unions and our free enterprise system—that made us the strongest nation in all the world—here to honor us with their presence this morning.

This imperative housing will be built under sponsorship of the private organizations. It will make use of private money, and it will be managed by private groups. With supplements paid by their Government, the private builders will be able to move into the low-income housing field which they have not been able to penetrate or to serve effectively in the past.

Furthermore, this legislation responds to the urgent needs of our cities. It offers Federal assistance to the cities and communities of our nation to help pay the cost of essential public works.

And finally, this legislation meets our compelling responsibility for giving attention to the environment in which Americans live. Grants are provided for the acquisition of open spaces, for the development of parks, for the construction of recreational facilities, and for the beautification of urban areas.

This measure votes "No" on America the Ugly—and it votes "Yes" on preserving, for our posterity, America the Beautiful.

The promise and the portents of this legislation cannot be justly described in the limited time we have this morning. But there is embodied in this legislation that generosity of vision, that breadth of approach, that magnitude of effort, with which we must meet all of our challenges here in America.

So, I am very proud to congratulate and to salute those outstanding members of Congress whose influence and whose leadership have helped to achieve this landmark today. There is Senator John Sparkman—the son of a tenant farmer, and still the tenant farmers' friend, as this Bill reflects—who has done perhaps as much or more in America than any living legislator.

There are others whose study and understanding of housing has helped us much. I would like to name all of them but that would take too long. But I must not overlook Senator Paul Douglas of Illinois who is here; Senator Edward Muskie from Maine; Senator George Aiken of Vermont. On the House side there was the great leader of my delegation in the Congress, my long-time friend and the cherished friend of my father ahead of me, Congressman Wright Patman. He has always been a champion and always been faithful to the people. There is Congressman Barrett, whose services have meant so much. There is Congressman Widnall, who has worked for years with Congressman Patman and Barrett to try to give this nation good bills.

I would like to express my appreciation to the governors and the mayors, especially the great Mayor of New York, Bob Wagner; the great Mayor of Chicago, Dick Daley; and all of the others who have been of so much help to me.

And I just cannot overlook being grateful to the constructive role of the nation's home builders, under the leadership of that patriot, Bernie Wooten.

And last, but certainly not last—he has been for months the leader of us all in this field—the modest, retiring, and able administrator—Bob Weaver, who finds not much satisfaction in the compliments paid him, not even in the recognition accorded him by his superiors, but who finds ample satisfaction in the achievements that come his way. And this Bill is a monument to him.

Now, this is not the last housing bill that we shall need and it is not going to be the last that we shall pass.

For I pledge to you that we shall do all that must be done to fulfill our commitment. And the Vice President and I have made it in every State of this Union, and he is going to stand by my shoulder here and throughout the states of the Union to see that we do our best to try to get every American in every family living his life not with the haunted memory of a dilapidated and degraded hovel that he must call home—but with a happy memory of a decent and a dignified home worthy of a free and just society, where a man can enjoy the privacy of his family and can help to build a stronger America, a more profitable and peaceful America, and, finally, something we all want—a more beautiful America.

Thank you very much.

REMARKS OF THE PRESIDENT AT THE SIGNING CEREMONY CREATING A NEW CABINET DEPARTMENT OF HOUSING AND URBAN AFFAIRS (IN THE ROSE GARDEN)

Good morning. Mr. Vice President, members of the Congress, most distinguished Mayors, ladies and gentlemen:

This is a very rare and very proud occasion. We are bringing into being today a very new and needed instrument to serve all the people of America.

This legislation establishes the eleventh Department of our Federal Government—the Department of Housing and Urban Development.

When our nation was born, the only Departments of Government were State and Treasury and War. Our country and our Government have grown greatly since that time. But we have been sparing in creating new and additional Departments except when the need has been clear and compel-

ling and continuing. This is clearly the case for this, the newest Department.

The America of our founding fathers was, of course, a rural America. The virtues and values of our rural heritage have shaped and strengthened the American character for all of our 189 years. Our debt to this heritage is deep and abiding, and we shall honor it always.

When Thomas Jefferson spoke of rural virtues, cities were insignificant on the countryside of this continent. Only five percent of our people lived then in cities and villages. America was the land of the farmer, the woodsman, the hunter, and mountaineer. Even a century ago when Abraham Lincoln asked the Congress to create a Department of Agriculture, fewer than twenty percent of our people lived in the cities.

Now that day is gone. It never will return.

In less than a lifetime—in less than my own 57 years—America has become a highly urbanized nation, and we must face the many meanings of this new America.

Social change in our country is often faster than the mind of a generation can comprehend. But the pace of our urbanization has been stunning. It will move still faster in the immediate years ahead.

Between now and the end of this century, our urban population will double. City land will double.

In the next 35 years, we must literally build a second America—putting in place as many houses, schools, apartments, parks and offices as we have built through all the time since the Pilgrims arrived on these shores.

The physical challenge is awesome. But there is a challenge to the spirit that is even greater and more demanding.

It is not enough for us to erect towers of stone and glass, or to lay out vast suburbs of order and conformity. We must seek, and we must find the ways to preserve and to perpetuate in the city the individuality, the human dignity, the respect for individual rights, the devotion for individual responsibility that has been part of the American character and the strength of the American system.

Our cities and our new urban age must not be symbols of a sordid society. The history of every civilization teaches us that those who do not find new means to respond to new challenges will perish or decay.

Unless we seize the opportunities available now, the fears some have of a nightmare society could materialize.

Unless we match our imagination and our courage to our affluence, we could fail both our past and our posterity.

So the enactment of this legislation and so many other measures of this Congress represents the unified determination of this generation to preserve the best of the past by preparing to make the future better still.

With this legislation, we are—as we must always—going out to meet tomorrow and master its opportunities before its obstacles master us.

In the days of our population's westward movement, we created the Department of Interior. The rise of great industry brought the response of the Department of Commerce and Department of Labor. The growth of our world responsibilities made it necessary to unify our security forces in a Department of Defense. President Eisenhower saw that the magnitude of our health and education and welfare programs required a new department devoted to their fulfillment.

So today we are taking the first step toward organizing our system for a more rational response to the pressing challenge of urban life. This is a historic action and this is a historic occasion. All who have been a part of it can forever be proud of it.

I am grateful, particularly to those members of the Congress whose energies and efforts have made this ceremony possible today: the distinguished Vice President, Senator Ribicoff, Senator Muskie, Senator Clark; the dedicated Chairman of the House Committee, Congressman Bill Dawson; his colleagues, Congressman Fascell and Congressman Reuss, and a dozen more Congressmen and Senators I do not have time to mention. They all, the Congress, all of them, had a vital bipartisan support from a host of their fellow Members.

This is a wise and this is a just and this is a progressive measure for all America, and I am honored to sign it this morning.

Thank you.

To the Congress of the United States:

The Housing Act of 1954 directs that I transmit to Congress the Annual Report of the Housing and Home Finance Agency, covering activities for calendar year 1964.

This report confirms the wisdom of fifteen Congresses and five Administrations going back to 1934. The great Franklin D. Roosevelt first pleaded with the Congress to approve housing measures for the good of all Americans.

Consider what has been done for America by the United States government's housing programs:

$100 billion of FHA mortgage insurance loans has been written, covering more than 7 million homes and more than one million rental units.

700,000 public housing units have been constructed since the start of that program in 1937. Two million people are living in those units in more than 2,000 communities.

More than 600,000 college students are living in dormitories made possible by government loans.

$4.3 billion has been made available for urban renewal.

4,500 communities—mostly small towns—have received urban planning assistance.

$300 million of government credit has gone into small town water and sewer facilities.

These programs were not easily begun. Cries of "socialism" and "waste" surrounded them at their birth. False propaganda and misrepresentation were used to discredit those who were to administer them. Cynicism and self-interest preyed on fear of the new and the imaginative.

But without these programs we would never have been able to push back the frontiers of blight, disease and ugliness that thirty years ago afflicted one-third of a nation. Without them the task of building a clean and safe America would have been impossible.

Today our people accept these programs. Private enterprise and public well-being depend on them. We know now that these programs—and new approaches demanded by logic and vision—are needed to meet the challenges that confront us as hour by hour we become a more urban nation.

In 1965 I requested authority for a new means of housing low-income families. We proposed to encourage private organizations to build thousands of new apartments and houses for poor people who could not afford safe or decent housing. We proposed to help these private builders provide housing for the elderly, the poor, and the handicapped, so that they might live with safety and dignity.

Congress accepted this proposal.

Yet when the time came to provide the funds for this program, the old voices of doubt and misunderstanding were raised once more. Allegations were made that had no basis in fact. Insinuations were raised that obscured the basic purposes of the act.

For the time being, those voices have prevailed. No program funds were granted.

The national interest demands that the matter not stop there. Thousands of American families need this housing now—today. Thousands of poor children who should grow up in a world of safety and decency and promise are being treated with indifference by an affluent nation.

Next January I shall once more ask for the initial $30 million necessary to make bricks and mortar out of a promise. I am confident that the Congress will cut through the propaganda of fear and mistrust to provide shelter for the families who need it now—today. We who have raised up hopes have a duty to bring them to tangible reality.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *October 22, 1965.*

To the Congress of the United States:

Nineteen-sixty-six can be the year of rebirth for American cities.

This Congress, and this people, can set in motion forces of change in great urban areas that will make them the masterpieces of our civilization.

Fifty years from now our population will reach that of today's India. Our grandchildren will inhabit a world as different from ours, as ours is from the world of Jefferson.

None can predict the shape of their life with any certainty. Yet one thing is sure. It will be lived in cities. By the year 2,000, four out of five Americans will live and work in a metropolitan area.

We are not strangers to an urban world.

We began our national life gathered in towns along the Atlantic seaboard. We built new commercial centers around the Great Lakes and in the Midwest, to serve our Westward expansion.

Forty millions came from Europe to fuel our economy and enrich our community life. This century has seen the steady and rapid migration of farm families—seeking jobs and the promise of the city.

From this rich experience we have learned much.

We know that cities can stimulate the best in man, and aggravate the worst.

We know the convenience of city life, and its paralysis.

We know its promise, and its dark foreboding.

What we may only dimly perceive is the gravity of the choice before us.

Shall we make our cities livable for ourselves and our posterity? Or shall we by timidity and neglect damn them to fester and decay?

If we permit our cities to grow without rational design—

If we stand passively by, while the center of each city becomes a hive of deprivation, crime, and hopelessness—

If we devour the countryside as though it were limitless, while our ruins—millions of tenement apartments and dilapidated houses—go unredeemed—

If we become two people—the suburban affluent and the urban poor, each filled with mistrust and fear one for the other—

If this is our desire and policy as a people, then we shall effectively cripple each generation to come.

We shall as well condemn our own generation to a bitter paradox: an educated, wealthy, progressive people, who would not give their thoughts, their resources, or their wills to provide for their common well-being.

I do not believe such a fate is either necessary or inevitable. But I believe this will come to pass—unless we commit ourselves now to the planning, the building, the teaching and the caring that alone can forestall it.

That is why I am recommending today a massive Demonstration Cities Program. I recommend that both the public and private sectors of our economy join to build in our cities and towns an environment for man equal to the dignity of his aspirations.

I recommend an effort larger in scope, more comprehensive, more concentrated—than any that has gone before.

THE WORK OF THE PAST

I know the work of the past three decades. I have shared in the forging of our Federal housing and renewal programs. I know what they have done for millions of urban Americans:

Eight million single family dwellings as-

sisted by the Federal Housing Administration.

An additional 6.7 million assisted by the Veterans Administration.

1.1 million multiple units created.

605,000 families moved out of decayed and unsanitary dwellings into decent public housing.

300,000 dwelling units supported under urban renewal.

Without these programs, the goal I recommend today would be impossible to achieve. Because Federal sponsorship is so effective a part of our system of homebuilding, we can conceive a far larger purpose than it has yet fulfilled. We must make use of every established housing program—and of social, educational, and economic instruments as well—if the Demonstration Cities Program is to succeed.

THE PROBLEM TODAY

Our housing programs have built a platform, from which we may see how far away is the re-born city we desire. For there still remains:

Some 4 million urban families living in homes of such disrepair as to violate decent housing standards.

The need to provide over 30% more housing annually than we are currently building.

Our chronic inability to provide sufficient low and moderate income housing, of adequate quality, at a reasonable price.

The special problem of the poor and the Negro, unable to move freely from their ghettos, exploited in the quest for the necessities of life.

Increasing pressures on municipal budgets, with large city per capita expenditures rising 36% in the three years after 1960.

The high human costs: crime, delinquency, welfare loads, disease and health hazards. This is man's fate in those broken neighborhoods where he can "feel the enclosure of the flaking walls and see through the window the blackened reflection of the tenement across the street that blocks the world beyond."

The tragic waste and, indeed, the chaos that threatens where children are born into the stifling air of overcrowded rooms, destined for a poor diet, inadequate schools, streets of fear and sordid temptation, joblessness, and the gray anxiety of the ill-prepared.

And the flight to the suburbs of more fortunate men and women, who might have provided the leadership and the means for reversing this human decline.

THE INADEQUATE RESPONSE

Since 1949, the urban renewal program has been our chief instrument in the struggle for a decent urban environment.

Over 800 cities are participating in urban renewal programs. Undertaken and designed by the cities themselves, these efforts have had an increasing influence on the use of urban land. Last year the Congress wisely extended the authorization for urban renewal, at a higher level than before.

Years of experience with urban renewal have taught us much about its strengths and weaknesses.

Since 1961 we have made major alterations in its administration. We have made it more responsive to human needs. We have more vigorously enforced the requirement of a workable program for the entire community. Within the limits of current law, we have achieved considerable progress toward these goals.

Nevertheless the social and psychological effects of relocating the poor have not always been treated as what they are. They are the unavoidable consequences of slum clearance, demanding as much concern as physical redevelopment.

The size and scale of urban assistance has been too small, and too widely dispersed.

Present programs are often prisoners of archaic and wasteful building practices. They have inhibited the use of modern technology. They have inflated the cost of rebuilding.

The benefits and efficiencies that can come from metropolitan planning are still unrealized in most urban regions.

Insufficient resources cause extensive delays in many projects. The result is growing blight and over-crowding that thwart our best efforts to resist them.

The goals of major federal programs have often lacked cohesiveness. Some work for the revitalization of the central city. Some accelerate suburban growth. Some unite urban communities. Some disrupt them.

URBAN DILEMMAS

Virtually every forward step we have taken has had its severe limitations. Each of those steps has involved a public choice, and created a public dilemma:

Major clearance and reconstruction, with its attendant hardships of relocation.

Relieving traffic congestion, thereby widening the gulf between the affluence of suburbia and the poverty of the city.

Involving urban residents in redeveloping their own areas, hence lengthening the time and increasing the cost of the job.

Preserving the autonomy of local agencies, thus crippling our efforts to attack regional problems on a regional basis.

These dilemmas cannot be completely resolved by any single program, no matter how well designed. The prize—cities of spacious beauty and lively promise, where men are truly free to determine how they will live—is too rich to be lost because the problems are complex.

Let there be debate over means and priorities.

Let there be experiment with a dozen approaches, or a hundred.

But let there be commitment to that goal.

WHAT IS REQUIRED

From the experience of three decades, it is clear to me that American cities require a program that will:

Concentrate our available resources—in planning tools, in housing construction, in job training, in health facilities, in recreation, in welfare programs, in education—to improve the conditions of life in urban areas.

Join together all available talent and skills in a coordinated effort.

Mobilize local leadership and private initiative, so that local citizens will determine the shape of their new city—freed from the constraints that have handicapped their past efforts and inflated their costs.

A DEMONSTRATION CITIES PROGRAM

I propose a Demonstration Cities Program that will offer qualifying cities of all sizes the promise of a new life for their people.

I propose that we make massive additions to the supply of low and moderate-cost housing.

I propose that we combine physical reconstruction and rehabilitation with effective social programs throughout the rebuilding process.

I propose that we achieve new flexibility in administrative procedures.

I propose that we focus all the techniques and talents within our society on the crisis of the American City.

It will not be simple to qualify for such a program. We have neither the means nor the desire to invest public funds in an expensive program whose net effects will be marginal, wasteful, or visible only after protracted delay.

We intend to help only those cities who help themselves.

I propose these guidelines for determining a city's qualifications for the benefits—and achievements—of this program.

1. The demonstration should be of sufficient magnitude both in its physical and social dimensions to arrest blight and decay in entire neighborhoods. It must make a substantial impact within the coming few years on the development of the entire city.

2. The demonstration should bring about a change in the total environment of the area affected. It must provide schools, parks, playgrounds, community centers, and access to all necessary community facilities.

3. The demonstration—from its beginning—should make use of every available social program. The human cost of reconstruction and relocation must be reduced. New opportunities for work and training must be offered.

4. The demonstration should contribute to narrowing the housing gap between the deprived and the rest of the community. Major additions must be made to the supply of sound dwellings. Equal opportunity in the choice of housing must be assured to every race.

5. The demonstration should offer maximum occasions for employing residents of the demonstration area in all phases of the program.

6. The demonstration should foster the development of local and private initiative and widespread citizen participation—especially from the demonstration area—in the planning and execution of the program.

7. The demonstration should take advantage of modern cost-reducing technologies without reducing the quality of the work. Neither the structure of real estate taxation, cumbersome building codes, nor inefficient building practices should deter rehabilitation or inflate project costs.

8. The demonstration should make major improvements in the quality of the environment. There must be a high quality of design in new buildings, and attention to man's need for open spaces and attractive landscaping.

9. The demonstration should make relocation housing avalable at costs commensurate with the incomes of those displaced by the project. Counseling services, moving expenses, and small business loans should be provided, together with assistance in job placement and retraining.

10. The demonstration should be managed in each demonstration city by a single authority with adequate powers to carry out and coordinate all phases of the program. There must be a serious commitment to the project on the part of local, and where appropriate, state authorities. Where required to carry out the plan, agreements should be reached with neighboring communities.

11. The demonstration proposal should offer proof that adequate municipal appropriations and services are available and will be sustained throughout the demonstration period.

12. The demonstration should maintain or establish a residential character in the area.

13. The demonstration should be consistent with existing development plans for the metropolitan areas involved. Transportation plans should coordinate every appropriate mode of city and regional transportation.

14. The demonstration should extend for an initial six-year period. It should maintain a schedule for the expeditious completion of the project.

These guidelines will demand the full cooperation of Government at every level and of private citizens in each area. I believe our Federal system is creative enough to inspire that cooperative effort. I know it must be so creative if it is to prosper and flourish.

SIZE OF THE PROGRAM

The program I recommend is intended to eliminate blight in the entire demonstration area. Through efficient rebuilding it must replace that blight with attractive and economic housing, social services, and community facilities.

There are many ways by which this can be done, once the commitment has been made to do it. Total clearance and recon-

struction; partial clearance and rehabilitation; rehabilitation alone—any of these methods may be chosen by local citizens.

Whatever approach is selected, however, must be comprehensive enough to be effective and economic.

There are few cities or towns in America which could not participate in the Demonstration Cities Program. We shall take special care to see that urban communities of all sizes are included. For each such community, the impact of the program will be significant, involving as much as 15 to 20 percent of the existing substandard structures.

For the largest qualifying cities a relatively modest program could provide decent housing for approximately 5,000 families now living in substandard dwelling units. It could rehabilitate other marginal housing sufficient to affect 50,000 people. A typical program could well involve a total of 35,000 units or 100,000 people.

For cities of approximately 100,000 people, 1,000 families could be rehoused, and 3,000 units rehabilitated, affecting a total of 10,000 people.

BENEFITS OF THE PROGRAM

I recommend that participating cities recieve two types of Federal assistance:

First, *the complete array of all available grants and urban aids* in the fields of housing, renewal, transportation, education, welfare, economic opportunity and related programs.

Second, *special grants amounting to 80% of the non-Federal cost of our grant-in-aid programs included in the demonstration.* These grants are to supplement the efforts of local communities. They are not to be substituted for those efforts.

In every qualifying city, a Federal coordinator would be assigned to assist local officials in bringing together all the relevant Federal resources.

Once authorized, the supplemental funds would be made available in a common account. They would be drawn at the discretion of the community to support the program. They would be certified by the Federal coordinator.

It is vital that incentives be granted for cost reductions achieved during the performance of the program.

At least as vital as the dollar commitment for rebuilding and rehabilitation is the social program commitment. We must link our concern for the total welfare of the person, with our desire to improve the physical city in which he lives. For the first time, social and construction agencies would be joined in a massive common effort, responsive to a common local authority.

There is another benefit—not measurable in dollars, or even in the extended range of social services—that qualifying cities would secure by participating in this program.

It is a sense of hope:

—that the city is not beyond reach of redemption by men of good will

—that through wise planning, cooperation, hard work, and the sacrifice of those outmoded codes and practies that make widespread renewal impossibly expensive today, it *is* possible to reverse the city's decline.

That knowledge, that confidence, that hope can make all the difference in the decade ahead.

FEDERAL COST

Funds are required in the first year to assist our cities in the preparation of demonstration plans. We should not underestimate the problems involved in achieving such a plan. The very scale of the demonstration, its widespread and profound effects on the social and physical structure of the city, calls for marshaling the city's planning and administrative resources on an unprecedented scale.

I estimate the appropriate Federal contribution to this planning effort at $12 million.

For the supplemental demonstration grants I will recommend appropriations, over a six-year period, totalling over $2.3 billion, or an average of some $400 million per year.

It is impossible to estimate exactly—but it is necessary to consider—the rising cost of welfare services, crime prevention, unemployment and declining property values that will plague all governments, local, state, and Federal, if we do not move quickly to heal and revitalize our cities.

METROPOLITAN PLANNING

The success of each demonstration will depend on the quality of its planning, and the degree of cooperation it elicits from the various governmental bodies concerned, as well as from private interests.

Most metropolitan areas conduct some degree of metropolitan planning now. The Federal government has made funds available throughout the country so that state and local planning agencies might devise—many for the first time—comprehensive plans for metropolitan areas.

I recommend improvements and extensions of this program. The Congress enacted them recognizing that the problems of growth, transportation, housing, and public services cannot be considered by one entity of government alone.

The absence of cooperation between contiguous areas is wasteful. It is also blind to the reality of urban life. What happens in the central city, or the surburb, is certain to affect the quality of life in the other.

The widespread demand for these funds has resulted in their being spread thinly across the fifty states. Thus, the benefits of a truly coordinated attack on metropolitan problems have not generally been realized.

INCENTIVES TO ORDERLY METROPOLITAN DEVELOPMENT

Over the past five years, the Congress has authorized Federal grants for urban mass transportation, open space, and sewer and water facilities. The Congress has required that such projects be consistent with comprehensive planning for an entire urban or metropolitan area. The Federal Government has thus not only helped our localities to provide the facilities they need. It has also stimulated cooperation and joint planning among neighboring jurisdictions.

But more remains to be done. The powerful forces of urban growth threaten to overwhelm efforts to achieve orderly development. A metropolitian plan should be an instrument for shaping sound urban growth—not a neglected document.

I now propose a new incentive to help assure that metropolitan plans achieve their potential.

The Federal Government should bear a larger share of the total cost of related Federal aid programs. This share would be borne where local jurisdictions show that they are ready to be guided by their own plans in working out the patterns of their own development and where they establish the joint institutional arrangements necessary to carry out those plans.

DEMONSTRATIONS OF EFFECTIVE PLANNING

I propose that a series of demonstrations in effective metropolitan planning be undertaken promptly.

Metropolitan areas would be selected to return the broadest possible data and experience to Federal, state and local governments. They should therefore be of varying size and environment, in widely separated locations. They would be selected to assure that their benefits reach small communities surrounding the large cities.

Advanced techniques and approaches should be employed. There must be:

Balanced consideration of physical and human development programs.

Coordinated treatment of the regional transportation network.

Technical innovations, suqch as metropolitan data banks and systems analysis.

New educational and training programs.

New arrangements for coordinating decisions of the various local governments involved.

I estimate the cost of the demonstrations at $6,500,000.

I shall impose on the new Department of Housing and Urban Development the continuing responsibility to stimulate effective planning. If local governments do not plan cooperatively and sufficiently in advance of inevitable urban growth, even adequate funds and an aggressive determination to improve our cities cannot succeed.

HOUSING FOR ALL

The programs I have proposed—in rebuilding large areas of our cities, and in metropolitan planning—are essential for the rebirth of urban America.

Yet at the center of the cities' housing problem lies racial discrimination. Crowded miles of inadequate dwellings—poorly maintained and frequently over-priced—is the lot of most Negro Americans in many of our cities. Their avenue of escape to a more attractive neighborhood is often closed, because of their color.

The Negro suffers from this, as do his children. So does the community at large. Where housing is poor, schools are generally poor. Unemployment is widespread. Family life is threatened. The community's welfare burden is steadily magnified. These are the links in the chain of racial discrimination.

This Administration is working to break that chain—through aid to education, medical care, community action programs, job retraining, and the maintenance of a vigorous economy.

The time has come when we should break one of its strongest links—the often subtle, but always effective force of housing discrimination. The impacted racial ghetto will become a thing of the past only when the Negro American can move his family wherever he can afford to do so.

I shall, therefore, present to the Congress at an early date legislation to bar racial discrimination in the sale or rental of housing.

NEW COMMUNITIES

Our existing urban centers, however revitalized, cannot accommodate all the urban Americans of the next generation.

Three million new residents are added each year to our present urban population. The growth of new communities is inevitable. Unless they are to be casual parts of a general urban sprawl, a new approach to their design is required.

We must:

Enlarge the entire scale of the building process;

Make possible new efficiencies in construction, land development, and municipal services;

Relieve population densities;

Offer a variety of homes to a wide range of incomes.

These communities must also provide an environment harmonious to man's needs.

They must offer adequate transportation systems, attractive community buildings, and open spaces free from pollution. They must retain much of the natural beauty of the landscape.

The private sector must continue its prominent role in the new community development. As I recommended to the Congress last year, mortgage insurance should be made available for sites and community facilities for entire new communities.

It is apparent that new communities will spring into being near an increasing number of major metropolitan areas. Some, already in existence, promise dramatic efficiencies

through size and new construction techniques, without sacrificing beauty. Obviously such a development should be encouraged. I recommend that the Congress provide the means of doing so.

RENT SUPPLEMENT PROGRAM

Rarely has a new housing program evoked such a dramatic and positive response as the rent supplement program.

The Department of Housing and Urban Affairs has already received preliminary proposals from sponsors to construct nearly 70,000 low-income units under this program as soon as funds become available.

The proposals involve 424 projects in 265 localities in 43 States, the District of Columbia, and Puerto Rico. The sponsors have already selected sites for some 40,000 of these units. The interested groups are about equally divided between non-profit organizations and private limited dividend developers.

The need for this program is obvious. It is the need of the poor and the disadvantaged. The demand for the means to meet this need by private enterprise is demonstrated by the figures I have just cited.

I strongly urge the Congress to pass a supplementary appropriation to fund the rent supplement program at the $30 million level it has authorized in the Housing and Urban Development Act of 1965.

MASS TRANSPORTATION PROGRAM

We must continue to help our communities meet their increasing needs for mass transportation facilities. For this purpose, I propose an additional one-year authorization for the urban mass transportation program.

THE NEW DEPARTMENT

No Federal program can be effective unless the agency that administers it is efficient. This is even more crucial for programs that call for comprehensive approaches at both the Federal and local level.

Progress was made after 1961 toward unifying the Housing and Home Finance Agency. But the very nature of that agency limited the extent to which its several parts could be welded into a truly unified whole. Its Administrator lacked the statutory basis for gaining full control over partially independent agencies.

With this in mind, I requested—and you enacted—legislation to create a Department of Housing and Urban Development.

As a result, the Secretary of the new Department now has the authority and the machinery for implementing the new programs I have asked for.

I see five ways by which he can do this:

1. He can organize the Department so that its emphasis will be upon meeting modern urban needs—rather than fitting new programs into old and outworn patterns.

2. He can strengthen the regional structure so that more decisions can be made in the field.

3. He can assert effective leadership throughout the Department.

4. He can mesh together all our social and physical efforts to improve urban living.

5. He can assume leadership among intergovernmental agencies dealing with urban problems.

Such a Department, and such leadership, will be worthy of the program I recommend you adopt.

A YEAR OF REBIRTH

The evidence is all about us that to be complacent about the American city is to invite, at best, inconvenience; at worst, a divided nation.

The programs I have proposed in this message will require a determined commitment of our energy and a substantial commitment of our funds.

Yet these programs are well within our resources. Nor do they compare in cost with the ugliness, hostility, and hopelessness of unlivable cities.

What would it mean to begin now, and to bring about the rebirth of our cities?

It would mean:

A more tolerable and a more hopeful life for millions of Americans.

The possibility of retaining middle-income families in the city, and even attracting some to return.

Improving the cities' tax base, at a time of heavy strain on city budgets.

Ultimately reducing welfare costs.

Avoiding the unnecessary waste of human resources.

Giving to both urban and suburban families the freedom to choose where they will live.

A clean room and a patch of sky for every person, a chance to live near an open space, and to reach it on a safe street.

As Thomas Wolfe wrote, "to every man his chance—to every man, regardless of his birth, his shining, golden opportunity—to every man the right to live, to work, to be himself, and to become whatever thing his manhood and his vision can combine to make him—this . . . is the promise of America."

I believe these are among the most profound aspirations of our people. I want to make them part of our destiny.

I urge the Congress promptly to adopt the Demonstration Cities Act of 1966. If we begin now the planning from which action will flow, the hopes of the 20th Century will become the realities of the 21st.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *January 26, 1966.*

STATEMENT BY THE PRESIDENT

I have today signed an Executive Order designed to establish closer and stronger working relationships among the government agencies concerned with the problems of our cities.

This Order will help the Secretary of Housing and Urban Development insure better coordination of Federal programs for our urban areas. It authorizes the Secretary to take the initiative by convening special meetings and special working groups within the government—in Washington and in the field—to cope with problems as they arise.

The Order helps to carry out the mandate of the Congress which requires the Secretary of Housing and Urban Development to "exercise leadership at the direction of the President in coordinating Federal activities affecting housing and urban development."

The Act creating the Department of Housing and Urban Development was a first step in modernizing our Federal system for a more rational response to the pressing challenges of urban life. In this new Department, major programs for the progress of urban America were brought into a single organization.

In addition to the Department of Housing and Urban Development, there are more than a dozen other Agencies whose programs affect the health, welfare, economic opportunity, and the general environment of the city dweller.

All who are concerned with these vital programs must work in close harmony and with common purposes and policies. The Order does not relieve any Agency of the responsibilities it now has. It will help strengthen the responsiveness of these Agencies to meet needs of the city.

We will seek new and creative ways to help our cities—through such vital programs as the Demonstration Cities Bill, Rent Supplements, and the Teachers Corps.

We will continue to make our urban development programs more efficient.

With this Order, we have taken a forward step in the Federal Government.

But the mayors and city officials and governors are on the front line—in the city itself where the battle against blight, ignorance, disease and poverty must be waged and won.

Thus, I urge city and state governments to follow our example and improve their lines of communication and coordination. In this way, we can work together with unity of purpose to bring the good life to people in every American city.

EXECUTIVE ORDER 11297—COORDINATION OF FEDERAL URBAN PROGRAMS

Whereas our Nation has become predominantly urban in character and is confronted by serious problems arising from inherited urban decay and rapid urban growth; and

Whereas the living standards and general welfare of its people depend upon the solution of the problems of urban life; and

Whereas the Congress has provided in the Department of Housing and Urban Development Act that the Secretary of Housing and Urban Development (hereinafter referred to as the Secretary) shall "advise the President with respect to Federal programs and activities relating to housing and urban development; develop and recommend to the President policies for fostering the orderly growth and development of the Nation's urban areas; and exercise leadership at the direction of the President in coordinating Federal activities affecting housing and urban development"; and

Whereas such activities are closely interrelated with other important Federal activities affecting urban areas so that there is a need for maximum consultation and cooperation among Federal departments and agencies in their administration of programs having impact on urban areas; and

Whereas such consultation and cooperation are also essential to enable the Secretary to carry out his responsibilities under that Act to "provide technical assistance and information, including a clearinghouse service to aid State, county, town, village, or other local governments in developing solutions to community and metropolitan development problems; consult and cooperate with State Governors and State agencies . . . with respect to Federal and State programs for assisting communities in developing solutions to community and metropolitan development problems and for encouraging effective regional cooperation in the planning and conduct of community and metropolitan development programs and projects":

Now, therefore, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

Section 1. *Functions of the Secretary of Housing and Urban Development.* (a) To assist the Secretary in carrying out his responsibilities pursuant to the Department of Housing and Urban Development Act, he shall convene, or authorize his representatives to convene, meetings at appropriate times and places of the heads, or representatives designated by them, of such Federal departments and agencies with programs affecting urban areas as he deems necessary or desirable for the following purposes:

(1) To provide a forum for consideration of mutual problems concerning Federal programs and activities affecting the development of urban areas and for the exchange of current information needed to achieve coordination of, and to avoid duplication in, such programs and activities.

(2) To promote cooperation among Federal departments and agencies in achieving consistent policies, practices, and procedures for administration of their programs affecting urban areas.

(3) To consult with and obtain the advice of the Federal departments and agencies with respect to:

(A) consultation and cooperation with State Governors and State and local agencies concerning Federal and State programs for assisting communities;

(B) provision of technical information, a clearinghouse service, and other assistance to State and local governments in solving com-

munity and metropolitan development problems; and

(C) encouragement of comprehensive planning of, and effective regional cooperation in, local urban, community, and metropolitan development activities.

(4) To identify urban development problems of particular States, metropolitan areas, or communities which require interagency or intergovernmental coordination.

(b) The Secretary shall make arrangements with such Federal departments and agencies for working groups to consider special problems arising with respect to matters described in subsection (a) of this section.

Section 2. *Agency responsibilities.* The heads of Federal departments and agencies having programs which have an impact on urban areas, or representatives designated by them, shall participate in meetings convened pursuant to this Order and, to the extent permitted by law and funds available, shall furnish information, at the request of the Secretary, pertaining to programs within the responsibilities of such departments or agencies, and such additional information as will assist the Secretary in providing a clearinghouse service to aid State and local governments in developing solutions to community and metropolitan development problems.

Section 3. *Construction.* Nothing in this Order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any Federal department or agency or head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

Section 4. *Administrative arrangements.* (a) Each executive department and agency participating under section 1 or section 2 shall furnish necessary assistance for effectuating the provisions of this Order as authorized by section 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691.)

(b) The Department of Housing and Urban Development shall provide necessary administrative services pursuant to this Order.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *April 11, 1967.*

REMARKS OF THE PRESIDENT AT SYRACUSE, N.Y.

I want to talk to you today about the center *of our society*—the American city.

Over 70% of our population live in urban areas. Half a century from now 320 million of our 400 million Americans will live in cities with our larger cities receiving the greatest impact of this growth.

For almost three years my administration has been concerned with the question: what do we want our cities to become?

For you and your children, the question is: What kind of place will Syracuse be fifty years from now?

A city must be more than a collection of shops and buildings; more than an assortment of goods and services; more than a place to escape from.

A city must be a community where our lives are enriched. It must be a place where every man can satisfy his highest aspiration. It must be an instrument to advance the hopes of all its citizens. That is what we want our cities to be. And that is what we have set out to make them.

One word can best describe the task we face—and that word is immense. Until this decade, one description fitted our response: "*too little* and too late." By 1975 we will need two million new homes a year—schools for 60 million children—health and welfare programs for 27 million people over the age of 60—and transportation facilities for the daily movement of 200 million people in more than 80 million automobiles.

In less than 40 years—between now and the end of this century—urban population will double, city land will double, and we will have to build in our cities as much as has been built since the first settler arrived on these shores.

Our cities are struggling to meet this task. They increased their taxes by 39% between 1954 and 1963, and still their tax debts increased by 119 percent. Far more must be done if we are to solve the number one domestic problem of the United States.

Let me be clear about the heart of this problem: It is the people who live in our cities and the quality of the lives they lead that concern us.

We must not only build housing units; we must build neighborhoods. We must not only construct schools; we must educate our children. We must not only raise income; we must create beauty and end the pollution of our water and air. We must open new opportunities to all our people so that everyone, not just a fortunate few, can have access to decent homes and schools, to recreation and culture.

These are obligations that must be met not only by the Federal Government but by every Government—State and local—and by all the people of America. The Federal Government will meet its responsibility, but local government, private interests and individual citizens must provide energy, resources, talent, and toil for much of the task.

Many of the conditions we seek to change should never have come about. It is shameful that they should continue to exist. And none are more shameful than conditions which permit some people to line their pockets with the tattered dollars of the poor.

We must take the profit out of poverty. And that is what we intend to do.

First, I have asked the Secretary of Housing and Urban Development to set as his goal the establishment—in every ghetto of America—of a neighborhood center to service the people who live there.

Second, I have asked the Director of the Office of Economic Opportunity to increase the number of neighborhood legal centers in slums. I want these legal centers to make a major effort to help tenants secure their rights to safe and sanitary housing.

Third, I am directing the Attorney General to call a conference to develop new procedures to insure that the rights of tenants are fully and effectively enforced. We will have at that conference the best legal minds in the country to work with State and local officials.

Fourth, I will appoint a commission of distinguished Americans to make the first comprehensive review of codes, zoning, taxation, and development standards in more than two generations. I proposed the establishment of such a commission in my 1965 message on the cities. Both Houses of Congress this week agreed in conference to fund this effort. The work of the commission will begin immediately upon the enactment of this legislation.

These are steps we will take now. But let me be perfectly candid: This job cannot be done in Washington alone. Every housing official, every mayor and every governor must vigorously enforce their building, health, and safety codes to the limit of the law. Where there are loopholes, they must be closed. Where there are violations, the exploited tenant must be assured a swift and sure action by the courts.

Not even local officials, however, can change these conditions themselves. Unless private citizens become indignant at the treatment of their neighbors, unless individual citizens make justice for others a personal concern, poverty will profit those who exploit the poor.

The Federal government, of course, has a very large responsibility. And we are trying not only to fulfill but enlarge our role in the rebirth of American cities.

In 1961 we were investing $15 billion in our cities. We have increased that nearly 100 percent—to almost $30 billion. For the first three years of this decade these programs increased by an average of $1½ billion per year. Since then, they have increased $4 billion per year—2½ times the rate of increase in the previous three years.

We have made important new starts in many vital areas: in the War on Poverty; in assistance to law enforcement; in the attack on pollution; in the training of manpower; in the education of children; and in the improvement of our health.

But not all the answers are in. Not even all the questions have been asked. We must continue to search and to probe, to experiment and to explore. We need constant study and new knowledge as we struggle to cure what plagues the American city.

This is why, for the first time in our history, our cities have a place in the Cabinet. More than a century after President Lincoln created the Department of Agriculture, we have a Department to serve the needs of the three out of four Americans who live in cities.

I have directed every member of my Cabinet who can help with our urban challenge to meet at least once a week in the White House—or as often as necessary, to keep our cities program moving. I have asked each one of them go out into the cities and to see the needs for themselves—and to come back and tell me what he finds.

This is why we have brought to Washington the ablest men we could find in this country to concern themselves with the future of our cities. They have come from the universities, from business, and from labor. They are scientists, lawyers, and managers—creative men, men of vision, practical men.

This is why we have taken steps to set up summer programs for your youth, to keep the playground open later at night, to open swimming pools and open fire hydrants on hot summer evenings. These temporary steps do not take an act of Congress. Any city can take them. Every city should take them now.

There are responsibilities, however, which only Congress can meet. We need laws and new programs—and we need them this session.

I have proposed to Congress what could become the most sweeping response ever made to our cities needs. This is the Demonstration Cities Program which is still before the Congress. It admits for the first time that cities are not made of bricks but of men. When Congress acts—and action is needed now—we will be able to make the first concentrated attack on urban blight and to rebuild or restore entire neighborhoods.

As we learn more, new ideas and new courses of action to improve our cities can be fitted into the demonstration cities program. It does not freeze our strategy and inhibit future change. It does not erode the power of local governments, but on the contrary gives cities new choices and new abilities, new ideas and new spurs to action.

Congress has already acted to provide the money for the rent supplement program that will mobilize private enterprise for our poor. Every $600 of rent supplements will encourage private enterprise to build a housing unit with 20 times that amount.

Congress gave us $18 million less than we need, and it only acted more than a year after we proposed rent supplements. But now we can move forward to help hundreds of thousands of poor families raise their children in clean and decent surroundings.

These are only two of the programs we have laid before Congress to help solve the problems of our cities. What we need now—and what American cities expect now—is action. Congress can pass this program and bring new opportunities to millions.

To the Congress I say:

Give us funds for the Teachers Corps—and let skilled teachers bring knowledge and a quest for learning to those children who need it most.

Give us more resources for rent supplements—and let us provide better homes for so many who live in substandard housing.

Give us the Civil Rights bill—and let us begin to break the chains that bind the ghetto by banishing discrimination from the sale and rental of housing.

Give us the means to prosecute the War Against Poverty—and let us provide jobs and training for adults and a head-start for the very young.

Give us the Child Nutrition Act—and let us offer breakfasts and hot lunches to needy children who can be encouraged to stay in school.

Give us the Hospital Modernization bill—and we can build and modernize hospitals to serve our urban citizens.

Give us the legislation—and we can help overcome a severe shortage of trained medical personnel.

Give us the money for Urban Mass Transit—and our cities can begin to provide adequate transportation for their people.

Give us a just minimum wage—and more American workers will earn a decent income.

Give us better unemployment insurance—and men out of work can be trained for jobs that need workers.

Give us the Truth in Lending bill—so that customers, especially those who are poor, can know the honest cost of the money they borrow.

Give us the Truth in Packaging bill—so the hard-earned dollars of the poor—as well as of every American—can be protected against deception and false values.

We have an agenda for action. We have taken the first steps toward great cities for a great society. Now Congress must act to give us the power to move ahead on all these fronts.

This is no time to delay. This is no time to relax our efforts. We know there is no magic equation that will produce an instant solution to the blight and poverty and want deposited in our cities by decades of inaction and indifference.

But we also know there is no substitute for action.

I do not know how long it will take to rebuild our cities. I do know it must not—and will not—take forever. For my part, I pledge that this Administration will not cease our efforts to make right what has taken generations to make wrong.

We have started down that road. Until each city is a community where every member feels he belongs, until it is a place where each citizen feels safe on his streets, until it is a place where self-respect and dignity are the lot of each man—we will not rest.

This is what men have always dreamed their cities would be. And this is what we seek to build.

REMARKS OF THE PRESIDENT ON SIGNING THE URBAN MASS TRANSPORTATION ACT, 1966

Secretary Weaver, Senator Williams, Senator Long, Chairman Patman, Congressman Reuss, other distinguished members of the Senate Banking and Currency Committee, members of the House Banking and Currency Committee, distinguished Mayors, my friends, ladies and gentlemen:

When I consider the problem this bill is trying to cope with, I am thankful that I work at home—except on Saturdays.

Several million Americans ought to be—and I think will be—very grateful to this 89th Congress for this legislation.

The members of this Congress have renewed our attack on the most familiar symbol of modern urban civilization—the traffic jam. They have renewed our determination to do something about that daily horror that is broadcast to us from the helicopters flying in the air every morning and afternoon known as the "rush hour".

They have affirmed the right of every man to get to his job in a reasonable time, at a reasonable cost.

We are a nation of travelers. You cannot write our history without devoting chapters to the pony express, the stagecoach, the railroad, the automobile, the airplane.

In the last two years, we have committed $10 billion to our roads and highways. Billions more have been dedicated to our airports and harbors and rivers. Other billions have gone into the exploration of space. We are sending astronauts into orbit at 18,000 miles an hour. When that possibility was discussed a few years ago, people laughed at me. It almost broke up a Democratic caucus one time and today we are putting cameras on the moon.

Yet, until 1964, the Federal Government did little or nothing to help the urban commuter. The Urban Mass Transportation Act of 1964 was the first national recognition of the daily trials faced by the 70 percent of our population who live in the cities of this country.

Our overburdened and underfinanced mass transportation systems were nearing paralysis. In 20 years, no other country in the world allowed its passenger rail service in urban areas to deteriorate as badly as ours and we are the richest, most powerful, and most technically advanced nation on earth.

Through the Mass Transportation Act of 1964, we have moved to relieve the choking traffic which robbed us of time, energy, and dollars. That Act committed us to better systems for getting our people to work and home again—with speed, safety, economy, and comfort.

Two years have proved its worth. In some communities—such as Albuquerque, and Terre Haute, Indiana—the Mass Transportation Act of 1964 has helped save public transportation systems which might otherwise have been shut down.

Twenty-seven States have become partners in the mass transit program we began only two years ago. Fifty-six urban areas have already benefited. Projects have been financed in places as large as New York and as small as Kenner, Louisiana.

The Act we sign this morning extends the program to help public and private transportation companies improve existing facilities and add some new services.

It makes funds available for research and development.

It provides fellowships to encourage young men and young women to train as experts in mass transportation.

In the next 40 years, we must completely renew our cities. The alternative is disaster. Gaping needs must be met in health, in education, in job opportunities, in housing.

And not a single one of these needs can be fully met until we rebuild our mass transportation systems.

The $300 million provided in this bill for 1968 and 1969 will not solve our urban transportation problems.

But it will help us in planning and help us in trying to meet the desperate emergencies that come up. Its real value will be in helping our cities to find their own solutions.

The problem of getting in and out of New York City must be solved not here in the White House in Washington but in New York City. This is true for Boston or Philadelphia or Los Angeles. But we can, and we will help with funds and counsel.

The bill before us today will provide more funds.

And, before I sign this bill, I would like you to meet the man who will help give the expert advice—Mr. Leo J. Cusick. Mr. Cusick rose from railroad brakeman to the highest operating post of the New York City Transit Authority. Today, I am appointing him Deputy Assistant Secretary in the Department of Housing and Urban Development in charge of making this bill work.

If he doesn't make it work, I hope that Chairman Robertson of the Senate Banking and Currency Committee and Chairman Patman of the House Banking and Currency Committee will have some consultations with him. Also you men who have pioneered in this field—Senator Williams and Senator Long, and the rest of you.

To do any job of national importance requires three things: men of vision to perceive a problem; legislators with the power and judgment to prescribe a remedy; and finally, administrators with the skill to replace problems with programs.

Today we are fortunate to have gathered all three of these in one place.

I welcome you here—and I welcome the opportunity to sign this bill into law.

BIOGRAPHICAL DATA ON LEO CUSICK

Name: Leo James Cusick.

Age: 57 (born July 15, 1909 in Bronxville, New York).

Home: Bala-Cynwyd, Pennsylvania.

Present position: Senior Consultant, Mass Transportation, Day and Zimmermann, Inc.

Education: 1962–64, New York University, Municipal Management courses.

Previous experience: 1925–26, various clerical assignments, New York Central Railroad Company, New York City; 1926–32, railroad brakeman, New York Central Railroad Company; 1932–65, assistant general superintendent for operations, New York City Transit Authority; 1965–, senior consultant, mass transportation, Day and Zimmermann, Inc.

REMARKS OF THE PRESIDENT UPON SIGNING S. 3708, DEMONSTRATION CITIES ACT, AND S. 2947, CLEAN WATER RESTORATION ACT OF 1966

Mr. Vice President, Members of Congress, Ladies and Gentlemen:

Since the dawn of civilization, man has been the unwilling pawn of the forces of his environment. Even when he has come to terms with those forces, the terms have never really been his own.

But we now possess the tools to reach out into our environment and shape it to our will. Today Congress has put some of those tools in our hands.

With them we are going to meet, head-on, two of the central challenges of our day and generation—the slow decay of our cities and the relentless poisoning of our waters.

The first of these two measures, the Model Cities Program, recognizes that our cities are made of people, not just bricks and mortar.

It does us no good to clean out our slums if the people there have no place to go.

It does us no good to build modern schools if there are no children to attend them.

It does us no good to give workers new skills if they are unable to find any jobs.

These are the hard lessons of the past. With the Model Cities Program:

Poor children can have a rain-free roof over their heads and a rat-proof bedroom to sleep in.

Our unemployed citizens can come off the welfare rolls and get onto the payrolls.

Our families can live in decent communities where green parks and open spaces will inspire their pride and enrich their lives.

All of our citizens can have the schools and the transportation, the medical care and recreation that spell the difference between despair and the good life.

Let me be clear about one point: This is not a measure just for big cities or just for small cities. It is a measure for all of our cities.

Making it work will not be easy. It will take all of our talents and the energies and support of State and local governments, of public and private groups, and of the individual citizens.

No one knows this better than the two men whose task it is to make this program work. They are Secretary Robert Weaver and his Deputy, Robert Wood. They are exceptional men who relish the strength of ideas, but they are also doers who know that those ideas have to be translated into action.

The second bill we will sign today will enhance the quality of life for every Ameri-

can—the Clean Water Restoration Act will give us the power to rescue the once clear waters of our streams and our rivers and our lakes from the growing menace of pollution.

Like the problem of the cities, water pollution can no longer be attacked piecemeal. Our attack must be comprehensive if it is to be total. Pollution is not a problem of the individual cities or even the individual States. It is a problem of the entire riversheds and water basins. There is where the problem must be fought.

The new measure will allow us to do that. It enlarges and it strengthens the comprehensive approach that is already begun. It creates new incentives for our States and for our cities. It strengthens their partnership with industry and with the Federal Government. It enables us to work together on sound and practical plans for controlling pollution once and for all.

Clean streets and clear rivers—could anything really be more basic to a Great Society? Could anything really be more vital to our children?

I have signed many bills in the three years that I have been President. I will sign perhaps a thousand this year. But none has given me greater pleasure than the ones that we are about to sign this afternoon. For they are proud additions to the legacy of a greater America.

I welcome each of you to the East Room this afternoon as participants at this historic occasion.

Thank you very much.

TEXT OF THE REMARKS OF THE PRESIDENT UPON SIGNING S. 3708, DEMONSTRATION CITIES BILL, AND S. 2947, CLEAN WATER BILL

Since the dawn of civilization, man has been the unwilling pawn of the forces of his environment. Even when he has come to terms with those forces, the terms have never really been his own.

But we now possess the tools to reach out into our environment and shape it to our will. And today, Congress has put some of those tools in our hands.

With them we are going to meet, head-on, two of the central challenges of our time: the slow decay of our cities, and the relentless poisoning of our waters.

The first of these two measures, the Model Cities Program, recognizes that cities are made of people, not just brick and mortar.

It does us no good to clean out our slums if the people there have no place to go.

It does us no good to build modern schools if there are no children to attend them.

It does us no good to give workers new skills if they are unable to find jobs.

These are the hard lessons of the past.

With the Model Cities Program:

Poor children can have a rain-free roof over their heads and a rat-proof bedroom to sleep in.

Our families can live in decent communities where green parks and open spaces will inspire their pride and enrich their lives.

Our unemployed citizens can come off the welfare rolls and onto the payrolls.

All of our citizens can have the schools, the transportation, the medical care, and the recreation that spell the difference between despair and the good life.

Let me be clear about one point. This is not a measure just for big cities, or just for *small cities.*

It is a measure for all cities.

And making it work will not be easy.

It will take all of our talents—and the energies and support of state and local governments, of public and private groups, and of individual citizens.

No one knows this better than the two men whose task is to make this program work.

They are Secretary Bob Weaver and his deputy, Robert Wood. They are exceptional men who relish the strength of ideas. But they are also doers, who know that ideas have to be translated into action.

The second bill we sign today will also enhance the quality of life for every American. The Clean Water Restoration Act gives us power to rescue the once-clear waters of our streams, rivers, and lakes from the growing menace of pollution.

Like the problems of the cities, water pollution can no longer be attacked piecemeal.

Our attack must be comprehensive, and it must be total. Pollution is not a problem of individual cities, or even individual states. It is the problem of entire watersheds and river basins. And there is where it must be fought.

The new measure will allow us to do just that. It enlarges and strengthens the comprehensive approach already begun.

It creates new incentives for our states and cities. It strengthens their partnership with industry and the Federal Government. It enables us to work together on sound and practical plans for controlling pollution, once and for all.

Clean streets and clear rivers—could anything be more basic to a Great Society?

Could anything be more vital to our children?

I have signed many bills as President. But none has given me greater pleasure than the ones we are about to sign this afternoon. For they are proud additions to the legacy of a greater America.

STATEMENT ON NATIONAL COMMISSION CODES, ZONING, TAXATION, AND DEVELOPMENT STANDARDS

No greater challenge faces America than the future of its cities.

The problems are deeply rooted. They are as old as the cities from which they grow.

We have learned that difficulties borne from generations of decay and neglect do not yield to quick or easy solutions.

That is why men of vision and good will have committed themselves to find the right answers. We know those answers can be found.

Today we renew and continue that search.

I am pleased to announce that one of our most distinguished statesmen and economists—Senator Paul H. Douglas—will head a Commission of distinguished citizens to make the thorough study of our cities and urban areas I recommended to the Congress in my 1965 message on the American City and which the Congress approved in 1966.

Under Senator Douglas' direction the Commission will report to the President and to the Congress. Its charter is twofold:

First: to work with the Department of Housing and Urban Development and conduct a penetrating review of zoning, housing and building codes, taxation and development standards. These processes have not kept pace with the times. Stunting growth and opportunity, they are the springboards from which many of the ills of urban life flow.

Second: to recommend the solutions, particularly those ways in which the efforts of the Federal Government, private industry, and local communities can be marshaled to increase the supply of low-cost decent housing.

I am delighted that Senator Douglas will continue to serve his country in this promising and challenging assignment.

This Commission is a valuable new addition to our Government-wide efforts—led by Robert Weaver, our able Secretary of Housing and Urban Development—to help arrest the growing blight of our central cities and to bring about an urban renaissance that will make the American city a better place for all to live and work.

I urge all citizens to cooperate and assist the Commission in its vital work.

MEMBERS ON THE COMMISSION ON CODES, ZONING, TAXATION, AND DEVELOPMENT STANDARDS

Paul Douglas, Chairman.

David L. Baker, Supervisor of the 2nd District of Orange County, California.

Hugo Black, Jr., Lawyer, Miami, Florida.

Lewis Davis, Architect, Brody & Associates, New York, New York.

John DeGrove, Professor, Florida Atlantic University, Boca Raton, Florida.

Anthony Downs, Treasurer, Real Estate Research Corporation, Chicago, Illinois.

Ezra Ehrenkrantz, President, Building Systems Development, Inc., San Francisco, California.

Jeh Johnson, Architect, Poughkeepsie, New York.

John Lyons, General President, International Association of Bridge Structural and Ornamental Iron Workers.

Richard W. O'Neill, Editor, House and Home Magazine.

Richard Ravitch, Vice President, HRH Construction Corporation, New York, New York.

Carl Sanders, Former Governor of Georgia.

Chloethiel W. Smith, Washington Architect and City Planner.

Thomas Vandergriff, Mayor, Arlington, Texas.

Coleman Woodbury, Professor of Urban Affairs, University of Wisconsin.

MESSAGE ON AMERICA'S UNFINISHED BUSINESS: URBAN AND RURAL POVERTY

To the Congress of the United States:

I. THE CHALLENGE

"The slum is as old as civilization. Civilization implies a race to get ahead. In a race there are usually some who for one cause or another cannot keep up, or are thrust out from among their fellows. They fall behind, and when they have been left far in the rear they lose hope and ambition, and give up. Thenceforward, if left to their own resources, they are the victims, not the masters, of their environment; and it is a bad master. . . . The bad environment becomes the heredity of the next generation."

These are the words of Jacob Riis, the Danish immigrant and American reformer, written in 1902. We may wish that those words applied only to the America of 1902—but clearly they apply to the America of the 1960's as well. They describe conditions in parts of every large American city and in pockets of poverty throughout rural America where 43 percent of the Nation's poor live.

It was years after Jacob Riis spoke before Americans realized that poverty was an urgent public dilemma—from which the only escape was to change the basic conditions of human life.

Theodore Roosevelt and Franklin Roosevelt in their times, began the necessary process of change:

The Children's Bureau, proposed in 1909 and established in 1912, spearheaded broad efforts to improve maternal and infant care and to provide better services and protection for our youth.

The public housing program, begun in 1934, today affords more than 2 million low-income Americans decent housing.

The benefits of the Social Security Act of 1935 will provide $25.8 billion in old age, disability and survivorship benefits in fiscal 1968, if my recommendations are adopted by the Congress.

The federally-aided public assistance programs, authorized in 1935, will provide $5 billion in Federal, State and local aid to more than 7 million needy individuals in fiscal 1968.

The Fair Labor Standards Act, enacted in 1938, now provides minimum wage and hour protection for some 40 million workers.

A strategy against poverty

In the 1960's, we have begun to devise a total strategy against poverty. We have recognized that public housing, minimum wages and welfare services could not, standing alone, change the bleak environment of deprivation for millions of poor families.

A successful strategy requires a breakthrough on many fronts: education, health, jobs and job training, housing, public assistance, transportation, recreation, clean air and adequate water supplies. The basic conditions of life for the poor must, and can, be changed.

We must deal with a wide range of physical and human needs. On the human side alone, the strategy must respond to a variety of problems.

Some of the poor—the aged and the hopelessly disabled—are unable to make their own way in this world because of conditions beyond their control. For them, social security, veterans pensions and public assistance can assure a life at minimum levels of human decency and dignity.

Others in our society are working at very low wages or are unemployed. But they are capable of helping themselves if given an opportunity to do so. To launch them on the road to a self-sufficient life, special education, training and employment opportunities will be necessary.

Our strategy requires programs that respond to the human needs of each of these groups. And we have proposed such programs:

To give disadvantaged children healthy bodies and the chance to learn.

To give the teenagers in our ghettos and pockets of rural poverty the training and skills they need to get jobs.

To give our young the chance to develop their minds in college, through Federal grants and loans.

To give the old and the disabled, who are incapable of helping themselves, increases in Social Security and the personal security of being able to see a doctor or obtain hospital care, without losing their entire life savings.

We also must have programs to improve the surroundings in which the disadvantaged live—the physical and social environment of America which has too long entrapped the poor. We have made proposals for:

Model Cities, to rebuild entire blighted neighborhoods in cities, large and small.

Rent Supplements, to bring the genius of private industry and private capital to the problem of housing the poor decently.

Civil Rights legislation, to remove arbitrary barriers of discrimination which prevent a man otherwise qualified from getting a job or a home because of his race.

Our strategy against poverty relies on:

The private initiative of every citizen and on the self-help efforts of the poor themselves.

The resources of city, county, state and metropolitan agencies.

Federal programs to supplement private and local activities and often to supply the vital thrust of innovation.

We have made substantial gains. But we have also come to see how profound are the problems that confront us, how deeply ingrained are the customs and practices that must be changed, how stubbornly the heritage of poverty persists from generation to generation.

Many of our early efforts have revealed the dimensions of the work that remains to be done. For some, this has inspired a pessimism that challenges both the value of what has been accomplished and the capacity of our Federal democracy to complete the task. For others, it has inspired a sober determination to carry through with programs that show great promise, to improve their administration and to seek still more effective instruments of change.

I have already submitted to the Congress my budget recommendations for fiscal 1968.

I have recommended $25.6 billion for the programs directly aiding the poor—a $3.6 billion increase over fiscal 1967.

Many of the programs underlying these budget recommendations have been discussed in previous messages to the Congress this year—on Education and Health, Children and Youth, Older Americans, Crime in America and Equal Justice. The programs described in this message are part of our strategy to change the depressing conditions of poverty now facing millions of our fellow men.

II. POVERTY AND OPPORTUNITY

Few undertakings in our time have generated as much hope, produced as many immediate and beneficial results, or excited as much controversy, as the anti-poverty program I first submitted to the Congress on March 16, 1964.

The controversy was inevitable: what is being attempted is a fundamental change in the way government responds to the needs of the poor.

That there would be some confusion and mistakes was inevitable. The need was for action. America could not wait for a decade of studies which might not even show precisely what should be attempted. New programs had to begin in our cities and rural communities, in small towns and in migrant labor camps. America had to pull the drowning man out of the water and talk about it later.

This experience has led to progress and great accomplishment. We have learned more than some of the most enthusiastic supporters of the anti-poverty program had hoped.

Greater opportunities for millions of Americans depend on how we build on our experience:

On enlarged resources for the Office of Economic Opportunity to strengthen and expand programs that have shown great promise and to continue the development of new and better techniques.

On tightened administration of those programs so that the poor receive the maximum benefits, at the lowest cost to the American taxpayer.

The Economic Opportunity Act of 1967

I recommend that the Economic Opportunity Act be amended:

1. *To help local community action agencies define their purpose more precisely and improve their planning, auditing and personnel systems.*

The purpose and functions of community action agencies should be made more explicit: in their relationship to state, county and municipal authorities, in planning, coordinating and providing services, and in community involvement and innovation.

Strict rules should be established to govern the pay, selection and accountability of community action personnel. Personnel systems should embody merit features and set the highest standards of conduct and efficiency.

The provisions in existing law prohibiting partisan political activities should be retained and strengthened wherever possible.

Auditing requirements now in the law should be expanded and improved.

2. *To give public officials and other interested groups in the community voice in forming policy for community action agencies.*

There should be a requirement for representation of local public agencies on community action boards, as well as representation for the neighborhood groups to be served.

Standards should be set specifically defining the powers and duties of Community Action Boards.

The responsibility of the Boards for policy formulation and control of community action programs should be made explicit.

3. *To strengthen the role of the States, especially in rural areas.*

States should be encouraged to assist in establishing regional community action agencies in rural areas.

The joint funding of anti-poverty programs by Federal and State agencies should be encouraged.

Federal funds should be provided so that States may give increased planning assistance to rural communities.

4. *To encourage more participation by private enterprise.*

The obligation of community action agencies to design and conduct programs with full participation by the private sector should be made explicit.

A closer relationship should be developed between employers, unions and the new work-training programs, with more individual attention to trainees in on-the-job training programs.

5. *To use the Economic Opportunity Act to encourage welfare recipients to become self-sufficient.*

Job Corpsmen, Neighborhood Youth Corpsmen and others engaged in work and training under this Act should be given greater incentives to work, by allowing them to earn more without a corresponding loss of welfare assistance to their families.

6. *To give new direction and momentum to the programs in rural areas.*

A new position of Assistant Director for rural affairs should be established to coordinate and strengthen programs affecting the rural poor.

7. *To strengthen the Economic Opportunity Council in the coordination of anti-poverty activities of Federal agencies.*

The Council's role in helping to improve coordination among federal programs related to the anti-poverty effort should be more clearly spelled out.

These changes will make the administration of the program more effective. But improved administration is not enough. More people must be reached. The gap between promise and real opportunity is still broad. Additional funds must be provided if we are to make genuine progress in attending to our unfinished business.

I recommend that the Congress appropriate $2.06 billion for the Office of Economic Opportunity for fiscal 1968—a 25 percent increase over fiscal 1967.

Community action

The purpose of community action is to encourage those who need help to help themselves.

A Community Action Agency should provide a voice in planning programs to mayors, local business and labor leaders, the citizens to be helped, teachers, lawyers, physicians—all those who give their time and efforts to relieve poverty in their communities and who know well the needs of their neighbors. It may be established as a private, non-profit corporation or created by local government. Each agency analyzes the problems its community faces and develops a strategy for its anti-poverty, self-help effort. This strategy may include any combination of Federal, State and local programs which will assist the poor in their fight against poverty.

Community action agencies should devote their energies to self-help measures and new initiatives that will advance their communities in the war against poverty. To be effective, it is essential that they be nonpartisan and totally disengaged from any partisan political activity. This Administration, the National Advisory Council on Economic Opportunity and, I am confident, the Congress, will be constantly alert to the danger of partisan political activity and will take necessary steps to see that it does not occur.

Legal Services

To be poor is to be without an advocate—in dealing with a landlord, a creditor, or a government bureaucrat. It is to be subjected to the hostility or indifference of society, without redress. It is to be exposed to frustration and delay, without relief.

The Legal Services Program offers free legal assistance in civil matters to people who otherwise could not afford an attorney. The program provides—in ghettos, on Indian reservations, in migrant camps and in rural counties—lawyers for the poor in eviction and consumer credit cases, in administrative actions and in hundreds of other encounters involving their legal rights.

The program has the wholehearted endorsement of the American Bar Association, the National Bar Association and the National Trial Lawyers Association. With the help of these Associations, legal services are now being provided in 44 of the Nation's 50 largest cities and in some rural areas.

I have asked the Director of the Office of Economic Opportunity to strengthen these efforts and to expand the services available to smaller towns and rural areas.

Neighborhood centers

Multiservice Centers

To be poor in a city is to spend long hours and precious dollars for carfare in search of assistance. The employment service may be in one part of town, the social security office in another, welfare offices, veterans assistance, adult literacy training, medical care or housing aid in others.

To be poor in a rural area is to travel many miles in hope of finding assistance—often fruitlessly. The services needed are too often in another county or only in a big city.

The fragmentation—and the unavailability—of services imposes great hardship upon the poor. Often it denies them the comprehensive help that can provide security, and the chance to stand on their own two feet before their fellow men.

We are trying a variety of methods for providing these services more effectively. Hundreds of neighborhood centers have been created: some are referral agencies, others house a complex of services drawn from existing programs. In rural areas centers have been establishd to serve multi-county areas. Our goal is to develop within each community the most effective means to deliver the services so desperately needed at the lowest cost to the taxpayer.

I have asked the Director of the Office of Economic Opportunity, in cooperation with the Secretary of Housing and Urban Development and other Federal departments, to expand and strengthen the development of Neighborhood Multi-Service and Multi-County Centers in the coming fiscal year. These Centers have become the focal point of many local efforts in their attack on poverty, and I expect that local communities will seek some $120 million for them in fiscal 1968.

Health centers

To be poor is to be without adequate medical care:

One-half of all women who have their babies in public hospitals have received no pre-natal care at all.

More than 60 percent of poor children with disabling handicaps are not receiving any medical care.

60 percent of all poor children never see a dentist.

The chance of a child dying before the age of one is 50 percent higher for the poor.

The chance of dying before reaching the age of 35 is four times greater for the poor.

The poor man, making two thousand dollars a year or less—in many cases because of previous illness—will lose twice as many working days from illness as the man who makes seven thousand dollars or more.

In Health Centers, located where the poor live, medical care can be effectively provided for those who need it most. Where appropriate, the Health Centers are linked to Neighborhood Multi-Service Centers so that the individual citizen can obtain in one place a wide range of needed services.

The Director of Office of Economic Opportunity in cooperation with the Secretary of Health, Education, and Welfare, will encourage local communities to establish additional Health Centers in the coming fiscal year, so that up to 50 will be in operation by the end of fiscal 1968.

Upward Bound

When a child's potential for success in life is lost, the nation as well as the child is the loser. When a bright mind is dimmed by successive failures in school, and the despair failure brings, the community suffers as much as the student himself.

Upward Bound seeks out poor rural and urban youngsters whose talents are undeveloped. They are given intensive individual attention and the best training our education system can offer so that they can develop their talents to the full reach of their individual capacity.

Two hundred and twenty-four public and private universities and private secondary schools are taking part in Upward Bound this year. More than 20,000 poor young men and women are today headed for high school graduation and college study through Upward Bound. We estimate that 78 percent of these youngsters—as compared to 8 percent of poor youth generally—will go on to college.

Applications for Upward Bound far exceed the funds presently available. Those funds must be increased—for America needs the trained and competent citizens these poor children can become.

My budget includes sufficient funds for Upward Bound to benefit more than 30,000 young men and women in fiscal 1968.

Foster grandparents

Children in orphanages and homes for the retarded need the patient care of older men and women. Older Americans need the sense of usefulness that a child's dependence can bring.

The Foster Grandparents program meets these needs for more than 2,000 older Americans and 5,000 children. These Foster Grandparents are given training and relatively substantial increases in their incomes for visiting, teaching and caring for children who need them.

The Director of the Office of Economic Opportunity, in cooperation with the Secretary of Health, Education, and Welfare, will expand this program next year.

Head Start and Head Start Follow-Through

I have already submitted to the Congress my recommendations to improve educational opportunities for children who need them most of all—the children of the poor.

For thousands of children in ghettos and pockets of rural poverty, in migrant labor camps and on Indian reservations, the Head Start Program has "replaced the conviction of failure with the hope of success." This fiscal year, Head Start will provide summer opportunities for about 500,000 children and a full-year program for nearly 200,000 children.

We must not lose the precious momentum children gain from Head Start by returning them to substandard schools. We must provide the Follow-Through necessary to vitalize the first years of their grade school experience. We must involve more parents and increase the services of teachers, teachers aides, doctors and counselors for disadvantaged children in the early grades.

For this reason, I have recommended the Head Start Follow-Through Program. My Budget recommendations to the Congress include $472 million for Head Start, including funds for the new Head Start Follow-Through Program to sustain the progress Head Start has made.

With these funds, we will strengthen the year-round Head Start Program and begin to plan and operate Head Start Follow-Through programs for up to 200,000 children coming into the first grades.

Neighborhood Youth Corps

At a critical period in their lives, the Neighborhood Youth Corps has given some 800,000 young men and women from both rural and urban America a chance to succeed as adults. It has helped them work their way through school, return to school, or prepare for useful employment.

My budget recommendations provide $321 million for the Neighborhood Youth Corps in fiscal 1968 to:

Give 195,000 young people the chance to stay in school.

Help 90,000 young people return to school or prepare for jobs.

Provide summer jobs for 190,000 young people.

Job Corps

If the attack on poverty is to mean anything, it must reach all the poor—including those whose educational experience and past behavior make them difficult to teach, motivate and discipline.

The Job Corps is a response to that moral imperative. Its success must be measured against the difficulties of its task.

There are 113 Job Corps centers in America. More than 60,000 youths have passed through them in the last two years.

For some, the Job Corps experience was too short to matter significantly. For others, there was only time enough to have a physical examination, or to learn to read a little or to add a column of figures. But even this was a gain for the young who, on the average, enter the Job Corps at a fourth grade reading level and have never seen a doctor or dentist.

For most, the Job Corps has meant a chance to be a productive—and taxpaying—citizen:

26,000 hold jobs earning an average of $1.71 per hour.

4,500 are back in school to complete an education they have been motivated to seek.

3,500 are in the armed services. Many of them had been previously rejected because they failed to meet medical or educational standards.

The Job Corps does not benefit only those it serves. It has developed educational materials now being used by 84 schools across America. Its volunteers have worked on conservation and beautification projects, and public facility improvements. The Job Corps youths, who are themselves poor, send more than $1 million home to their families each month.

While the Job Corps has used the best talents of industry and of universities to design the program and operate the centers, many problems remain. Costs must be reduced and discipline improved. In fiscal 1968, the estimated full-year cost for a Job Corpsman in established centers will be about $6,700—down from an average cost of about $8400 during the last half of fiscal 1966. This sum will cover food, clothing, transportation, medical and dental care, pay and allowances, as well as the cost of training and education.

The experience we have gained thus far will permit tighter cost controls, firmer discipline, and more effective recruitment and placement. The Job Corps in fiscal 1968 will be even more effective in reaching those young people for whom the road to productive and responsible lives is the longest and hardest.

My budget recommendations include $295 million for the Job Corps Program in fiscal 1968—to educate, train and renew the hopes of some 50,000 young men and women.

VISTA

By this June, more than 4,000 Volunteers in Service to America—VISTA volunteers—will be in the field. They will be living and working in the hollows of Appalachia, on Indian reservations, in migrant camps and city slums—to teach skills, care for the sick, and help people to help themselves.

My budget recommendations for fiscal 1968 includes $31 million for the VISTA Program.

No matter how dedicated or skillful, 4,000 volunteers cannot accomplish the thousands of tasks that require attention in America's poor neighborhoods. Neither can a massive flow of dollars and new programs. We will continue to search for ways to enlist still more Americans in part-and full time service to their fellowman.

Operation Green Thumb

Hundreds of older unemployed and retired farmers and rural workers have gained in income and in dignity, while contributing to the safety and beautification of State highways, schools, parks and rural towns through projects like Operation Green Thumb. They have assisted their disadvantaged neighbors to improve their homes and have added their skills to enhance neighboring communities.

I have asked the Director of the Office of Economic Opportunity in cooperation with the Secretaries of Labor and Agriculture, to expand this activity and to develop new ways to provide meaningful public service opportunities for the elderly in rural areas.

Rural loan program

The special rural loan program of the Office of Economic Opportunity will assist 13,000 families this year to improve their farms and carry on small businesses. Hundreds of other poor families will be helped to increase their production and marketing capacity by loans made to rural cooperative associations.

My budget recommendations provide for $32 million in loans under this program in fiscal 1968.

A concentrated employment program

A thriving national economy is critical to our anti-poverty effort. Through private initiative and wise economic policy, our economy is meeting its fundamental test of producing revenue and employment.

It has not always been so. In the period from 1957 to 1959, 1.9 million Americans, new to the job market, sought work. One million of them could not find jobs. Despite prosperity, unemployment increased.

In the last three years, four million Americans joined the work force for the first time. 5.25 million jobs were added to the economy. Unemployment was reduced by 1.25 million.

But economic policy and unprecedented prosperity have not reached thousands of men and women who live in the nation's slums. The Secretary of Labor has investigated the unemployment situation in slums and found that:

Unemployment rates in the slums are three times the national average.

Large numbers of people work a few hours of the week, unable to find the full-time work they seek.

Large numbers work full-time at poverty wage levels.

Nearly one-third of those who should be employed at self-supporting wages are not.

Neither a high performance economy nor traditional training and employment services have been able to reach these men and women. Some need special counseling and training. Others need special health and educational assistance. All need follow-up assistance until they are permanently placed in a stable job. Even after that, they may need special attention during their first weeks of employment.

I have directed the Secretary of Labor and the Director of the Office of Economic Opportunity, with the assistance of other Federal agencies, to begin immediately a special program using all available resources to provide concentrated assistance to those with the greatest need.

This program will:

Enlist the active support and cooperation of business and labor organizations at the local level.

Provide a wide range of counseling, health, education and training services on an individual basis.

Provide the follow-up assistance necessary to insure that a job once obtained will not quickly be lost.

Use local community action agencies as the focal point wherever practicable.

I recommend that the Congress appropriate $135 million under the Economic Opportunity Act to support this program to train and put to work up to 100,000 slum residents next year. These funds, together with existing programs, will enable us to provide the special counseling and personal attention necessary to reach these impoverished Americans.

This will be a tough objective to meet. But we pledge to make every effort to achieve it.

Wage garnishment

Hundreds of workers among the poor lose their jobs or most of their wages each year as a result of garnishment proceedings. In many cases, wages are garnished by unscrupulous merchants and lenders whose practices trap the unwitting workers.

I am directing the Attorney General, in consultation with the Secretary of Labor and the Director of the Office of Economic Opportunity, to make a comprehensive study of the problems of wage garnishment and to recommend the steps that should be taken to protect the hard-earned wages and the jobs of those who need the income most.

Perseverance

Poverty cannot be eliminated overnight. It takes time, hard work, money and perseverance.

It has been only two years and three months since we decided to embark upon a concentrated attack on poverty. We have made progress. But victory over poverty will not quickly or cheaply be won.

We do not have all the answers. But we have given a great many people—very young children, restless teenagers, men without skills, mothers without proper health care for themselves or their babies, old men and women without a purpose to fill their later years—the opportunity they needed, when they needed it, in a way that called on them to give the best of themselves.

Millions more Americans need—and deserve—that opportunity. The aim of this Administration is, and will be, that they shall have it.

I urge the Congress to examine these programs carefully, to evaluate their accomplishments, and then to support them fully with the funds necessary to do the job.

III. IMPROVING THE CONDITIONS OF URBAN LIFE

The needs for jobs and job training, for special education and health care, for legal assistance, are all urgent in the life of the poor. Most often they exist together in the urban slum—isolated from the city of which they are a part.

I shall not elaborate on these conditions. They are familiar to everyone who has looked candidly at the American city. So are some of the things that should be done about them.

In the past few years, we have made a heavy investment in improving the conditions of life in the cities. Federal aid to cities and their citizens has been steadily rising—from grants and direct loans of $3.9 billion in 1961 to $10.3 billion in 1968.

But some of the most promising urban programs are today only authorizations on the statute books. The 89th Congress made them law. It remains for the 90th Congress to give them life.

Model cities

The Model Cities program, enacted last year, is an attempt to focus a variety of aids—physical and social—on the problems of the slums and to enlist private and local support to rebuild the blighted areas of America's cities.

It is a comprehensive approach to human problems—involving jobs, education, health facilities, housing.

Fulfilling the purpose Congress proclaimed last year is a necessity. We have inspired the hopes of large and small cities in every State. We have generated in local communities a commitment to excellence as they plan for the future.

I strongly urge the Congress to appropriate the full amount it has authorized for Model Cities in fiscal 1968:

$12 million for additional planning grants.

$400 million for supplemental grants to be used in carrying out local model city programs.

$250 million for urban renewal projects in the Model cities.

Rent supplements

The 89th Congress authorized the Rent Supplement Program to enable poor families to live in decent, privately-owned housing.

Only families whose incomes are so low that they are eligible for publicly-owned housing can receive rent supplements—and then only if they are displaced from their homes by governmental action or a disaster, are elderly or physically handicapped, or occupy substandard housing.

With low-rent housing in short supply, it is more important than ever to stimulate construction by private enterprise and nonprofit organizations. The Rent Supplement Program authorizes payments that make the construction of low-rent units attractive for builders.

Last year the Congress provided funds to get this program underway. This year it must be expanded.

I urge the authorization of an additional $40 million for the rent supplement program in fiscal 1968.

Home ownership

For many American families, home ownership is a source of pride and satisfaction, of commitment to community life.

Some families with low but steady incomes have become the owners of decent, modest homes. Their well-maintained homes are often in the midst of slum areas. They are frequently surrounded by substandard homes owned by absentee landlords, where poor families pay rent in amounts much higher than would have been required for ownership of a modest home.

We must learn how best to help low-income families own their own homes.

I have directed the Secretary of Housing and Urban Development to carry out, within existing authority, a low-income housing-ownership pilot program, so that these lessons may be learned and converted to public policy on a broad scale.

I am authorizing the Federal National Mortgage Association to use $20 million of its funds to support this program.

The Program will:

Identify low-income families with the potential to build an ownership equity in a home.

Provide guidelines to assure the economic soundness of their investment.

Explore a program to insure low-income families against mortgage defaults and foreclosures that result from loss of health or economic recession.

Encourage ownership equity to be acquired through self-help in the construction of homes.

New and rehabilitated housing, single-family homes and apartment structures should be included in the program. All forms of ownership should be explored—single-family homes, cooperative and individual apartments.

Protecting the slum child

The knowledge that many children in the world's most affluent nation are attacked, maimed and even killed by rats should fill every American with shame. Yet, this is an everyday occurrence in the slums of our cities.

There is no excuse for this national disgrace. The rats' food supply can be eliminated. Garbage can be collected. Harborages can be eliminated. Buildings can be made rat-proof. As this can be done, it must be done.

To help America's cities wipe out this threat to their people's health and safety, *I recommend the Rat Extermination Act of 1967, to launch a major program of rat control and eradication. I will ask the Congress to provide $20 million to initiate this effort in fiscal 1968.*

Under this Act, as part of the broader program of community development, the Secretary of Housing and Urban Development, in cooperation with the Secretary of Health, Education, and Welfare and the Director of the Office of Economic Opportunity, will help cities:

Establish house-by-house, block-by-block extermination programs in rat infested neighborhoods.

Provide special concentrated code enforcement assistance to eliminate rats from city slums.

Provide public education campaigns for residents of slum areas.

Help provide better garbage collection, eliminate harborages, and take on the necessary self-help measures to protect against rats.

Build on the experiences in Chicago and Detroit, where slum residents were trained, mobilized and given the tools to conduct a major attack on rats in their infested tenements.

Urban housing rehabilitation

Franklin D. Roosevelt said long ago what is still true today: "American industry has searched the outside world to find new markets but it can create on its very doorstep the biggest and most permanent market it has ever had."

Rehabilitation is the key to many of our successful urban renewal programs. It is crucial to the success of the Model Cities Program.

I intend to call together an outstanding group of private citizens from across the country—from business and labor, government and the building industry—to examine every possible means of establishing the institutions to encourage the development of a large-scale efficient rehabilitation industry.

I will ask this group of outstanding Americans to find the best ways to tap the enormous market that exists in rebuilding our cities and to bring the most modern systems and the most advanced technology to this urgent task.

Grants for metropolitan development

Unless metropolitan development is orderly, the public's money will be wasted on public facilities—schools, hospitals, police and fire stations—that are obsolete before they are even completed.

Last year the Congress authorized a new program of twenty percent grants to support orderly development by local communities, working cooperatively in metropolitan areas. These Federal incentive grants supplement ten other Federal grant-in-aid programs that help finance transportation facilities, water and sewer facilities, recreational and other open space areas, libraries and hospitals.

I urge the Congress to provide $30 million in Fiscal 1968 for this essential program.

Urban transportation

The life of a city depends on an adequate transportation system.

Inefficient transportation increases the costs of local industry, and the prices paid by consumers in local stores. It robs the community's citizens of their leisure time and comfort. It penalizes the physically handicapped and those too poor to own a car.

I recommend that the Congress provide $230 million in advance funds for fiscal 1969 for the construction and improvement of urban mass transportation systems.

To improve public transportation systems and to reduce traffic congestion, *I recommend legislation to authorize the Secretary of Transportation, under the Federal highway program, to participate in the cost of acquiring land and developing public parking facilities on the outskirts of large cities.* This authority would enable the Secretary to promote the multi-purpose use of space over and under expressways and to develop areas alongside of highways for parking terminals.

Research and development

Less than one-tenth of one percent of our total research and development expenditures in government have been devoted to the field of housing and urban affairs. Yet, 70 percent of our citizens live in urban areas.

This failure to apply scientific resources and methods to an area of such vital importance to American life cannot be permitted to continue.

Today, we can give only partial, insufficient answers to such basic questions as how to build better housing at lower cost, how to move people more rapidly at less cost in congested urban areas.

This year, I ask that we move to build a basic foundation of urban knowledge—in three ways:

First, I recommend legislation to authorize a new Assistant Secretary in the Department of Housing and Urban Development for research, technology and engineering.

Under the new Assistant Secretary, an office for urban research, technology and engineering will be established along lines that have proven successful in other agencies of government. The new office will also serve as a source of information for State and local governments and for private industry.

Second, I am asking the Secretary of Housing and Urban Development to encourage the establishment of an Institute of Urban Development, as a separate and distinct organization. Such an organization would look beyond immediate problems and immediate concerns to future urban requirements, and engage in basic inquiries as to how they may be solved.

Third, I recommend:

$20 million in fiscal 1968 in funds appropriated to the Department of Housing and Urban Development for general research.

An increase from $13 to $18 million for other studies and experimentation in the fields of housing, urban development and urban transportation.

IV. PROGRAMS FOR THE RURAL POOR

Men have argued the merits of providing jobs in rural areas to stem the flow of people into the cities, as against providing jobs and training on arrival or training for jobs prior to departure. Whatever the "correct" answer may be to this argument, it seems clear to me that conditions of improverishment in rural America continue to exist and must be relieved to the extent we know how to relieve them.

We have taken a number of actions that will, in time, produce effective results:

A National Advisory Commission on Rural Poverty has been established and will submit its report and recommendations to me at the end of the year.

I have asked the Secretary of Agriculture and the Director of the Bureau of the Budget to review all existing Federal programs to insure that rural areas receive an equitable share of their benefits.

The Secretary of Agriculture has been given responsibility to identify development problems in rural areas which require the cooperation of various Federal departments, so that these programs may be better coordinated and duplication eliminated.

But much more needs to be done.

Planning aids for multicounty areas

This is no longer a nation of small towns and communities which can develop independently. Improved transportation and modern communications have created a larger concept of community. Its boundaries are not marked by any arbitrary political lines, but by the commuting distance to available jobs.

Many states have recognized this, and have established multi-county planning and development areas. Others are doing so. In many cases, rural community action agencies—organized on a multi-county basis—serve the same purpose.

But many rural communities lack the means to form multi-county development districts. Many lack the personnel trained in planning broad social and economic programs. Others lack the resources to enable them to plan effectively.

I recommend that the Congress amend the Housing Act of 1954 and authorize $20 million to provide:

Grants to States by the Department of Housing and Urban Development of up to two-thirds of the cost of technical assistance to and comprehensive planning by official multi-county planning agencies in non-metropolitan areas, including multi-county community action agencies.

Technical assistance to the multi-county planning agencies by the Department of Agriculture.

Increasing our public investment

For many rural areas, a relatively small public investment will return substantial increases in opportunity for the local people.

I recommend legislation to remove the annual ceiling on insured loan authority for rural community water and waste disposal systems.

Eliminating the existing $450 million limitation on lending authority for this program will permit more rapid completion of the water and waste disposal systems rural America needs for economic development.

I also recommend legislation to expand the provisions of the existing loan programs to permit farm owners or their tenants to shift the entire use of farm land with adequate recreation potential from agricultural production to income-producing recreation enterprises, as part of comprehensive land-use plans for rural and neighboring urban areas.

This program would permit better use of scarce land resources, provide better opportunities for some farmers now using poor farm land for crop purposes and furnish urgently needed recreation facilities for our population.

Migrant farmworkers

Migrant farm workers are among the forgotten Americans. Their wages are low, their employment uncertain, and their housing and working conditions deplorable. Though their needs are great, they often find it impossible to obtain social services available to other poverty-stricken Americans.

Because of residency requirements, migratory farm workers are barred in many States from receiving public assistance, vocational rehabilitation, and other welfare services. Disabled workers and their families are often not served—even when otherwise eligible—because of their relatively brief period within a State.

I recommend a five-point program for these forgotten Americans:

1. *Legislation to provide 90 percent Federal reimbursement for vocational rehabilitation services for disabled migratory farm workers.* The Secretary of Labor will develop a system for identifying migratory farm workers who would be considered for benefits under this program.

2. *Amendments of the public assistance law to authorize pilot projects to provide temporary public assistance and other welfare services for migratory farm workers and their families, who are now barred by resi-*

dence requirements from receiving these services.

3. *A 25 percent increase—from $28 to $35 million—in funds to provide:*

Special educational services for more than 170,000 migrant children.

Health services for about 280,000 migratory workers and their families.

An expanded self-help housing program for the construction of 2,000 housing units.

4. *Amendment of the Unemployment Insurance laws to provide benefits for workers employed on large commercial farms.*

5. *Extension of social security benefits to 500,000 farm workers by reducing from $150 to $50 the amount which must be earned from a single employer each year.*

V. FINISHING THE NATION'S BUSINESS

It is difficult for most Americans to understand what it is to be desperately poor in today's affluent America. More than half our population was born after 1940. Less than half can remember the depression on the farms of the twenties, or the bread-lines of the thirties. "The Grapes of Wrath" is ancient literature—not a living record—to most Americans.

Yet for more than 31 million Americans, poverty is neither remote in time, nor removed in space. It is cruel and present reality. It makes choices for them. It determines their future prospects—despite our hope and belief that in America, opportunity has no bounds for any man.

Poverty was universally tolerated until a century or so ago. But like disease, war and famine, it gained nothing in acceptability because it was prevalent. As soon as men saw that they might escape it, they fought and died to escape it.

Poverty denies to most of those born into it a fair chance to be themselves, to be happy in life. Federal funds or services, and the opportunities they provide, cannot permanently free a man from the trap of poverty if he does not want to be free. He must use the ladders that circumstance, native ability, and his Nation may create.

Let it be said that in our time, we pursued a strategy against poverty so that each man had a chance to be himself.

Let it be said that in our time, we offered him the means to become a free man—for his sake, and for our own.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *March 14, 1967.*

To the Congress of the United States:

I am pleased to transmit the 1965 Annual Report of the Department of Housing and Urban Development.

The year 1965 was a milestone in the history of America's effort to provide decent housing for its citizens and to improve the quality of urban life. It saw not only the creation of the new Department, but the passage of the Housing and Urban Development Act of 1965.

The Housing and Urban Development Act provided the new Department with powerful tools.

The Congress has since supplied others:

The Model Cities program, making possible the coordination and concentration of Federal, State and local efforts for the physical and social rehabilitation of deteriorating neighborhoods.

Funding for the Rent Supplement Program.

Authorization for the Federal National Mortgage Association to purchase an additional $3.7 billion in home mortgages to help meet the shortage of mortage funds.

An additional two-year authorization for the urban mass transportation program.

In addition to reorganizing five separate, semi-autonomous agencies into a single cohesive organization, the Department of Housing and Urban Development has begun the work for which it was created.

Since it commenced operations on November 9, 1965, the Department has:

Begun the Model Cities program, inspiring hope and generating a commitment to excellence as American cities plan their attack on urban blight.

Approved grants for the construction of 71 Neighborhood Centers in low-income areas, bringing services to those who need them most. At the same time it has joined with other Departments and Agencies to develop a 14-city pilot program of multi-service Neighborhood Centers which will bring together a wide range of Federal, State and local services.

Enabled hundreds of poor people to live in decent privately-owned housing under the new Rent Supplement program.

Moved about 600,000 persons into low-rent public housing.

Initiated a new "turnkey" program to lower costs and speed construction of low-income public housing by permitting private industry to build houses for sale to local housing authorities.

Provided better housing for 100,000 college students.

Made available 8,900 apartment units for elderly persons through loans of $113 million.

Stimulated the up-grading of older areas in more than 40 cities by approving $53 million in grants for intensive code enforcement.

Stimulated the rehabilitation of low-income homes through some 2,300 grants totaling $3 million and nearly 800 loans amounting to $4 million.

Approved an additional 157 urban renewal projects, and increased grant commitments for urban renewal by $931 million.

Approved more than $400 million in loans, grants and advances to promote more than 1,500 community projects, including mass transit, urban planning, development of water and sewer facilities, and acquisition of open space.

On the occasion of the Department of Housing and Urban Development's first anniversary, Secretary Weaver reported to me: "In just one year, significant strides have been made in program development, Departmental organization, and legislation. This is a Department on the move."

Today, with cities in every State of this Nation planning their assault on urban blight under the Model Cities program, we know that the pace will—as it must—be quickened.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *April 17, 1967.*

[From the office of the White House press secretary, June 2, 1967]

STATEMENT BY THE PRESIDENT ON THE FORMATION OF A COMMITTEE TO REBUILD AMERICA'S SLUMS

In my message to the Congress on Urban and Rural Poverty, I announced my intention to appoint a Committee to study this vital question: How can the resources and talents of private industry be directed into the rehabilitation of urban slums?

I said then that I would ask this group "to examine every possible means of establishing the institutions to encourage the development of a large-scale efficient rehabilitation industry."

I am pleased to announce today the formation of that Committee, which will draw upon the talents and the experience of a group of distinguished industrialists, bankers, labor leaders and specialists in urban affairs.

The Committee will be headed by Edgar F. Kaiser, President of Kaiser Industries, Inc.

No domestic task facing this Nation today is more demanding or more urgent than reclaiming the corroded core of the American city. A substantial part of that task is the rebuilding of the slums—with their 7 million dilapidated dwellings—which shame this Nation and its cities.

So vast an undertaking represents, as well, an enormous potential market. American industry has sought and developed markets around the globe. This one lies—waiting—at its very doorstep.

To tap this market, and do the job that must be done, the inventive genius of private industry and the creative productivity of American labor must be fused with the support and initiative of State and local governments and the resources of the Federal Government.

We must find the incentives which will stimulate business and labor to apply the most modern techniques; production systems, work practices, and economies of scale to the problem of the city slum.

The Committee I am appointing today will explore this complex problem in all of its aspects, and recommend those incentives and the private institutional machinery which it believes will best accomplish the task.

The Committee's challenge, in short, is to find the way to harness the productive power of America—which has proved it can master space and create unmatched abundance in the market place—to the most pressing unfilled need of our society. That need is to provide the basic necessities of a decent home and healthy surroundings for every poor American family now imprisoned in the squalor of the slum.

A major instrument of progress is already available to us—The Model Cities Program, enacted last year.

The work of this Committee can be a major step forward in fulfilling the high purpose of the Model Cities Program—to develop the blueprint for the future of the American City.

I have asked Secretary of Housing and Urban Development, Robert Weaver, and other responsible cabinet officers to work closely with the Committee.

The Committee members are: Edgar F. Kaiser, Chairman (President, Kaiser Industries, Inc.); Gaylord A. Freeman, Vice Chairman, The First National Bank, Chicago; Joseph D. Keenan, International Secretary, International Brotherhood of Electrical Workers; Charles Keller, Jr., President, Keller Construction Corporation, New Orleans; Peter Kiewit, President, Peter Kiewit Sons', Inc., Omaha, Nebraska; John A. McCone, Investment Banker and Corporate Director, San Marino, Calif.; George Meany, President, AFL–CIO; Joseph I. Miller, President, Cummins Engine Company, Inc.; Graham James Morgan, President, Member, Executive Committee, and Director, U.S. Gypsum Company; Raymond D. Nasher, President, Nasher Properties; Walter P. Reuther, President, United Automobile, Aircraft and Agriculture Workers of America, CIO; Walter Alter Rosenblith, Professor of Communications Biophysics, Massachusetts Institute of Technology, Cambridge, Massachusetts; John H. Wheller, President, Mechanics and Farmers Bank, Durham, North Carolina; Whitney M. Young, Jr., Executive Director, National Urban League, New York City; Honorable Joseph Barr, Mayor of Pittsburgh; S. B. Bechtel, Jr., President of Bechtel Corporation, San Francisco; R. V. Hansberger, President, Boise-Cascade, Boise, Idaho; and Leon Wiener, President, National Association of Home Builders.

LETTER ON THE AMERICAN CITY FROM THE PRESIDENT TO SENATE MAJORITY LEADER MIKE MANSFIELD

DEAR MIKE: It has long been apparent that the health of our nation can be no better than the health of our cities.

Surely not a single American can doubt this any longer, after the tragic events of this summer.

Just two months after I became President—in January 1964—I sent to the Congress a Special Message on Housing and Community Development. In outlining a series of new proposals for the cities of America, I said: "Whether we achieve our goal of a decent home in a decent neighborhood for

every American citizen rests, in large measure, on the action we take now."

Shortly thereafter, I called together some of the most brilliant minds, the most talented planners, and the most experienced urban experts in the nation. After exhaustive study, they recommended to me a number of proposals that hold vast promise for the future of every city in this nation. Chief among these proposals was the Model Cities Program—the most coordinated, massive, and far-reaching attack on urban blight ever proposed to the Congress. This was not just a federal program. It was designed to stimulate local initiative in the private sector, and at the state, county and local level.

I asked Congress to authorize $2.3 billion for the first six years of this program. Congress reduced that request to $900 million for 2 years.

This year, I requested full funding of the Model Cities—$662 million. The House has already cut that request to $237 million.

I urge that this request be restored in full. We can no longer be satisfied with "business as usual" when the problems are so urgent.

These problems demand the best that an enlightened nation can plan, and the most that an affluent nation can afford.

In addition, the Congress now has before it a number of other programs proposed by the Administration which are concerned entirely or significantly with the urban problems of our nation. These programs, taken together, represent an all-out commitment to the safety and well-being of our cities and the citizens who live in them:

Funds requested, fiscal year 1968

[Millions]

Programs:	
Crime control	$50
Firearms control	-----
Civil Rights Act of 1967	-----
Juvenile delinquency	25
Economic Opportunity Act	2,060
Model cities	662
Rent supplements	40
Urban renewal	750
Urban mass transit, advance appropriation	230
Urban research	20
Neighborhood facilities	42
Home rehabilitation	15
Family relocation assistance	62
Rat extermination	20
Elementary-Secondary Education Act	1,600
Manpower Development and Training Act	439
Food stamps	195
Child nutrition and school lunch program	348
Community health services	30
Mental health	96
Mental retardation	25
Hospital modernization (Hill-Burton)	50
Maternal and infant care	30

All of these programs have been pending before the Congress since the beginning of this session and are included in our January budget.

The task before us is immense. But we have charted a beginning—and we have done so with the help of the best and most experienced minds in the Nation. I believe the enactment and funding of these programs is the first step in making this commitment a *reality* for the people of America.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *August 16, 1967.*

[From the office of the White House press secretary, Aug. 19, 1967]

STATEMENT BY THE PRESIDENT ON SIGNING S. 1762, EXTENDING THE URBAN FELLOWSHIP PROGRAM

The bill I sign today illustrates another aspect of the Federal Government's response to America's urban needs.

During the past few years we have taken a series of steps toward meeting the resource gaps in American cities. We have proposed a Model Cities program to rehabilitate older cities and to reclaim the opportunity for residential urban life. We have proposed a Rent Supplement program to meet our promise of a decent home for all Americans. We have proposed a research and development program to provide more sophisticated techniques for dealing with the problems facing our cities. We must move forward with these commitments.

But all this legislative progress will be barren without the underlying commitment of human resources—people with talent, with advanced training, people equipped to grapple with the physical, social and economic problems of cities.

At the very time we are being confronted with urgent demands in our cities, we face a severe shortage of persons equipped to deal with the growing complexities of urban development. This shortage is so critical that it challenges our ability even to maintain past levels of competence, much less to meet the fast-growing demands of today and tomorrow.

In March 1967 there were between 1500 and 1700 vacancies for urban planners of various kinds. Today's universities are graduating less than half that number.

Our universities tell us that there are two or three times as many qualified applicants for urban studies programs as the available fellowship programs can support. Many of these applicants, unable to find financial assistance in the urban development field, will be forced to look elsewhere.

Standing alone, this Urban Studies Fellowship program will not close the manpower gap of qualified professionals in urban affairs. But it will help—and it does show the way. Besides directly aiding the recipients of fellowships it will stimulate universities to expand their urban affairs programs, and it will encourage other universities to initiate them. Also it will, hopefully, encourage other fellowship programs, both public and private.

Last year, as a part of our response to urban needs, the Department of Housing and Urban Development took the first step toward meeting this urban manpower shortage. Ninety-five fellowships for full-time graduate study, in 40 public and private nonprofit institutions of higher education, were awarded to students for the 1967–68 academic year. The awards were made by Secretary Weaver upon the recommendation of the Urban Studies Advisory Board composed of nine members from universities and national institutions.

Reflecting our needs to cope wtih the growing complexity of urban problems, awards were made for study in such fields as municipal administration, urban sociology, city and regional planning, urban law and urban affairs with an emphasis on the social and economic problems of urban development. The thrust of these programs is toward coordinating the social, economic, and physical resources available in solving urban problems.

These are the crucial skills in determining the future of our cities. With the development of talent on a broader scale than ever before possible, our urban problems will, we believe, appear somewhat less formidable. America has the resources, and the will, to solve her urban problems. Increasing our capacity to solve them is the first important step.

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

Mr. MANSFIELD. I yield.

Mr. JAVITS. Mr. President, it is typical of the distinguished majority leader that everything he says and deals with here has an element of humanity and heart involved in it. This is what endears him to all persons, apart from his position of majority leader.

Whatever may be his political allegiance, the fact is, though he is a boy from the country, he has the deepest humane feelings for the poorer people in these cities.

I happen to serve next to the distinguished Senator from Washington [Mr. MAGNUSON] on the Appropriations Committee. Nothing could please me more or make me happier than to hear the words of praise uttered by the majority leader.

It was tremendously illuminating to me, as a boy from the sidewalks of New York, to note that the general sentiment in the committee—even on the part of those who opposed the programs—showed no disposition to punish the unhappy inhabitants of the ghettos for the recent troubles and violence that occurred there. On the contrary, there was a general understanding of the many important things that it is so urgent to do there.

Mr. President, I am not satisfied that we have done enough even with all of these programs. And there will be many struggles on that score.

One can only express satisfaction at the high motives and the fine words expressed by the majority leader and the many nice things he had to say about the Senator from Washington [Mr. MAGNUSON].

This will be a terrific struggle. I know that the Senate will not remotely endanger the public interest by creating an atmosphere such as surrounded the rat control bill in the House which situation, I think, unhappily took a big toll with respect to our efforts in this regard because of the sheer attitude of those concerned.

There will be need for Herculean efforts on the part of Congress and the President of the United States.

As the newspapermen so like to say: "A lot of arms will have to be twisted."

I join the majority leader in praying that our consciences will be equal to the necessity and the problems which lie before us.

Mr. MANSFIELD. Mr. President, I appreciate the remarks of the distinguished senior Senator from New York. However, I assure him that there will be no arms twisted, but I think that the results will be just as good.

Mr. MORSE. Mr. President, I associate myself with the remarks made by the distinguished majority leader with respect to the programs to render assistance to the cities of the country.

I am very proud of the part that the President of the United States played in connection with the programs. I am also proud of the measures that the distinguished Senator from Washington [Mr. MAGNUSON] brought to the floor of the Senate.

I am very proud also of the work performed by the Senate Committee on Labor and Public Welfare on which the distinguished senior Senator from New York [Mr. JAVITS] and I have the honor and privilege to serve.

I think I can see a great awakening within Congress as to the clear responsibilities we owe to the Republic to pass legislation that provides funds in suf-

ficient amounts to meet the growing crises in the urban centers of America.

CONVEYANCE OF CERTAIN LANDS BY THE SECRETARY OF AGRICULTURE TO THE CITY OF GLENDALE, ARIZ.

Mr. MORSE. Mr. President, I want the RECORD to show my expression of appreciation to the majority leader for the motion he made a few moments ago for the reconsideration of the bill (S. 974) to authorize the Secretary of Agriculture to convey certain lands to the city of Glendale, Ariz.

Mr. President, this bill was passed on the unanimous-consent calendar yesterday during my absence from the floor. I was absent from the Senate yesterday because I was presiding over the public hearings being conducted in connection with the pending railroad controversy in the country.

Mr. President, an error for which no one really deserves any blame occurred yesterday when S. 974 was called up on the unanimous-consent calendar. The bill, in its present form, is a clear violation of the Morse formula in that it would permit the transfer of this Federal property to the city of Glendale, Ariz., without compensation.

The bill, as it is presently worded, even leaves that question in doubt. However, the fact is that it would authorize the Secretary of Agriculture, if he saw fit, to transfer the property without compensation.

What the Senator from Oregon wants to do—and he is sure the Senator from Arizona [Mr. HAYDEN] will understand when he reads this statement—is to confer with the Senator from Arizona in order to work out an application of the Morse formula to the bill.

Mr. President, I have a standing instruction that when a bill comes in that calls for the transfer of Federal surplus property without compensation, objection will be registered to the calendar committee. One of the members of the staff most graciously—but I do not blame him at all—came to me and said that an oversight had been committed yesterday and that is how the bill was passed without the objection being registered.

In 1946, I first started applying the formula that has become known as the Morse formula, which simply provides that if surplus Federal property is to be transferred from the ownership of the Federal Government, for a public use at a State, municipal, county, or local level, 50 percent of its appraised fair market value shall be paid for the property. If it is to be transferred for a private use, then 100 percent of the appraised fair market value of the property shall be paid for it.

I have without exception held to the application of that formula ever since 1946. There have been a few times, but relatively few—I believe the last count showed six or seven times—when the Senate decided to transfer property without compensation, but did it by motion and full debate in the Senate, and by a majority vote of the Senate. I believe that every time it followed that course of action, the Senate made a great mistake; because never has there been, in my judgment, the justification for the taking away from all the taxpayers of this country property that belongs to them and giving it away without compensation.

I believe the formula is very fair, because it calls for 50 percent of the appraised fair market value for disposal of the property for public purposes at a non-Federal level and 100 percent of its appraised fair market value when it is for a private purpose.

In this bill, Mr. President, we have 20 acres of land located within Glendale, Ariz., city limits. It is an old poultry research laboratory. I am satisfied from the report that has been filed that it is not worth very much money, but whatever it is worth belongs to all the taxpayers of the country.

I have taken the position that even when it has been argued on the floor of the Senate that almost a minimum amount is involved, the taxpayers should receive 50 percent of its appraised fair market value. I would be willing to predict that the governmental officials of Glendale, Ariz., or the chamber of commerce or any other group, would express the view that they want the property for park purposes. They are not seeking a handout or a gift. They are perfectly willing to pay a fair compensation for the property, which the Morse formula provides.

I can well remember some years ago, in my own State, a member of the Oregon delegation introduced a bill that sought to give to the city of Albany, Oreg., a part of a parcel of land on which a Bureau of Mines laboratory and research center was located. It involved less than an acre of land—really a fraction of an acre. They needed the property to straighten out a street. I objected, of course, and insisted that the Morse formula be applied. It was applied. A rather small amount of money was involved, but it was paid by the city of Albany, Oreg.

The next time I addressed the Chamber of Commerce of Albany, Oreg., they said, "Listen, we didn't want that property for nothing. That came as a surprise to us. In fact, we didn't even ask for it at 50 percent of appraised fair market value. We would have been willing to pay the full market value of the property."

I recall a similar situation in Roseburg, Oreg.

I objected to another bill that was introduced by a colleague on the Oregon delegation that sought to give, in this instance, a very valuable piece of property to the Douglas County Historical Society. It was a piece of property located in the business center of the town, behind the post office building. It was the old home of an Oregon pioneer. It turned out that the property was worth more than $200,000. I took the position that 50 percent of its appraised market value should be paid for the property. It caused a little concern among some in my State. I pointed out then, as I do today, that the first time I agree to an exception to the Morse formula, whether it is in my State or Arizona or any other State, then the formula, in my judgment, becomes a dead letter.

I would have the Senate think a long time before it rejects the formula, because the last calculations show that since 1946, over $900 million—almost $1 billion—has been saved for the taxpayers of this country by my insistence upon the application of the Morse formula in these surplus property transfers—insisting without exception.

I refuse to believe that the Senator from Arizona [Mr. HAYDEN] and I cannot reach an amicable understanding for the application of the formula to this bill. I have never talked with the Senator from Arizona about it, other than to notify him today that I was going to ask for a reconsideration of the bill so that I could have an opportunity to talk with him about it. My confidence in his reputation for thrift in the wise expenditure of money and the need for the protection of the Federal tax dollar leads me to believe that we will have no difficulty in reaching an understanding for the application of the Morse formula to this bill.

I have been told that the application of the formula would not involve more than a maximum of a few hundred dollars; and I believe we should have no difficulty in getting the city government of Glendale, Ariz., or some group such as the chamber of commerce or another group to contribute the necessary money to pay for half of the appraised fair market value of the property.

The property is to be used for park purposes. The bill provides for a reverter clause. In case the property is ever used for a purpose other than park purposes, it would automatically revert to the Federal Government.

I appreciate the cooperation of the majority leader in making the motion for reconsideration and asking the House to return the papers on the bill for further Senate consideration.

I also want the RECORD to show my appreciation for the graciousness of the Senator from Arizona [Mr. HAYDEN] when I notified him this afternoon that I would seek reconsideration of the bill.

EXTENSION AND IMPROVEMENT OF FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM

Mr. McCARTHY. Mr. President, in behalf of the Senator from New Jersey [Mr. CASE], the Senator from Indiana [Mr. HARTKE], the Senator from New York [Mr. KENNEDY], the Senator from Montana [Mr. METCALF], the Senators from West Virginia [Mr. RANDOLPH and Mr. BYRD], the Senator from Minnesota [Mr. MONDALE], the Senator from New York [Mr. JAVITS], the Senator from Wyoming [Mr. McGEE], the Senator from New Jersey [Mr. WILLIAMS], the Senator from Michigan [Mr. HART], the Senator from Oregon [Mr. MORSE], and myself, I introduce, for appropriate reference, a bill to extend and improve the Federal-State unemployment compensation program.

It is particularly appropriate that this bill be proposed just before Labor Day, since it is designed to strengthen the protection for workers in an area of serious hazard—unemployment. Its enactment would not eliminate that danger

but it would provide far more adequate protection for individual workers and serve as a better deterrent to economic recessions.

The basic framework for the unemployment insurance program was established as a part of the Social Security Act of 1935. In 1939, amendments to the act limited the Federal unemployment tax wage base to the first $3,000 of wages earned by workers. Since that time there have been minor changes, and two temporary programs were enacted in 1958 and 1961 to assist the States in meeting heavy costs during recessions. But despite all the changes in the economy the Federal law has remained without a major adjustment for nearly 30 years.

Last year the House approved a bill which contained a number of constructive provisions but it did not go far enough in several important areas. The bill which passed the Senate retained much of the House language and through amendments adopted on the floor of the Senate it provided more adequate standards for the duration and level of benefits and for financing and it established a federally financed program of supplementary benefits.

I regret that the conferees of the Senate and House were unable to reach agreement on resolving the differences between the two measures and that no new law was enacted.

The bill I am introducing today in its general objectives is along lines of the bill I introduced in the 89th Congress and also of the bill which the Senate approved last year. Despite the failure to enact a bill last year I believe we have a responsibility to try again and to bring the Federal law into line with the realities of the economy as soon as possible.

Unemployment insurance is the first law of defense against the effects of unemployment on workers and their families. In addition the payments made to the unemployed are transformed at once into rent, food, clothing, and other essentials. This added purchasing power tends to arrest the downward spiral in the economy and to check the development of a recession. The experience with the program over the last 30 years has demonstrated its value and importance to the welfare of workers, even though the standards are inadequate. The economy has been strong for several years and the rate of unemployment has declined. This is the time to improve the standards and to make the benefits of the program more effective.

This proposal would substantially increase coverage. Under existing law almost one out of every five jobs is still excluded from coverage under the Federal law. This bill would extend coverage to about 10 million additional workers, principally those who work for small firms employing less than four, those working for nonprofit groups and on large farms, and those employed by State and local governments.

Second, the bill would raise the level of benefits. A benefit of 50 percent wage replacement has been the goal, but today nearly half the claimants receive a benefit below that level. Under the standard proposed in the bill the State law would provide a maximum weekly benefit equal to at least half of the individual's average weekly wage, if his wage is no more than the statewide average weekly wage. The bill provides that this maximum be increased gradually in order that a larger number of workers could receive half pay when unemployed. To insure that the great majority of workers are not prevented by the operation of State maximum benefit amounts from receiving half their average wage when unemployed, the State ceilings on benefits would be raised to at least two-thirds of statewide average weekly wage by 1972.

A third improvement is that State laws provide eligible workers with at least 26 weeks of benefits. However, this does not meet the problem of the long-term unemployed. Unemployment beyond 26 weeks usually occurs because of automation, relocation of industry, and other economic factors. Unemployment of up to 26 weeks can properly be considered a responsibility of State programs. Beyond that there is a Federal responsibility, and the bill provides for a program of Federal unemployment adjustment benefits of up to 26 weeks for workers with a longer and firmer labor-force attachment. These benefits would be available over a 3-year period to qualified workers who are unemployed more than 26 weeks and who have exhausted their rights under the State system. To meet the costs of this Federal program for extended benefits—and also to help finance grants to high-cost States to help meet the increased cost of the higher maximum benefits prescribed by the benefit standard—the bill provides an increase of 0.2 percent in the payroll tax on employers.

The bill also updates the tax base for unemployment insurance. The $3,000 base adopted in 1939 covered 98 percent of the wages paid that year. In 1967 we still have the same Federal standard but during this time average weekly wages have more than tripled and today not much more than half of wages in covered employment are subject to the Federal unemployment tax. In contrast, the wage base for old-age, survivors, disability, and health insurance has been increased several times.

The bill would increase the tax base for unemployment insurance annually: first to $5,600, then to $6,600 and by 1972 to the same amount specified for the OASDHI.

A fifth area of improvement would be to correct many procedures by which individuals who have earned entitlement to protections of the system are now denied benefits. Provisions for disqualifying individuals who attempt to improve their employability through approved training, the denial or reduction of benefits to interstate or multistate workers, the denial of compensation to pregnant women whose unemployment is not due to pregnancy, and the denial or reduction of benefits to individuals solely because of their earned entitlement under other insurance programs—these and similar efforts to reduce benefit costs could no longer be characteristic of State laws if the State's employers are to continue to enjoy a credit, or waiver, of 90 percent of taxes due under the Act. In the same way State law provisions regarding labor disputes would be required to be truly impartial, and the growing practice of disqualifying workers on the grounds that their termination was "voluntary" when, in fact, the termination was not voluntary on the part of the individual worker would not be permitted.

Finally, the bill strengthens the financial structure of the State programs and provides improvements in a number of other areas. These are the kinds of adjustments which should have been added over the years as experience with the system increased. Unfortunately the unemployment compensation system has not had the same kind of adjustments and development that have characterized other programs under the Social Security Act. In the absence of adjustments to maintain realistic minimum standards a number of serious inadequacies have developed and have impaired the effectiveness of the program. The bill which I and other Senators are introducing today is a constructive and comprehensive proposal to meet these inadequacies and to strengthen and improve this program of great importance to the welfare of workers and to the stability of the national economy.

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

The bill (S. 2377) to extend and improve the Federal-State unemployment compensation program, introduced by Mr. McCARTHY (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Finance.

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

Mr. McCARTHY. I yield.

Mr. JAVITS. Mr. President, I am glad to be a cosponsor of the bill which has been introduced. The bill introduces certain new ideas which are very interesting and, I think, very important. I have always been on the bill with the Senator from Minnesota.

Mr. McCARTHY. The Senator is correct.

Mr. JAVITS. I am proud to be on it now.

However, I wish to insert one reservation. There may be some finite details we may be able to work out more intelligently and agreeably than now contained in the bill. I believe the reform is so urgent and the thrust of the bill is so desirable that I join with the Senator.

Mr. McCARTHY. Mr. President, I am happy to have the support of the Senator this year, as in the past. I quite agree with the Senator's observation that there may be need for some details to be adjusted to meet the problems in the employment picture. I hope we can work out these matters since this is a vital step and the bill should be enacted.

Mr. JAVITS. I thank the Senator.

ROY A. PARKER

Mr. BYRD of West Virginia. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1448.

The PRESIDING OFFICER laid be-

fore the Senate the amendment of the House of Representatives to the bill (S. 1448) for the relief of Roy A. Parker which was, to strike out all after the enacting clause and insert:

That the time Roy A. Parker resided abroad between April 19, 1960, and April 19, 1964, accompanying his stepfather who was stationed in France on an official assignment with the United States Army, shall be held and considered to be residence and physical presence in the United States for the purposes of section 316 of the Immigration and Nationality Act.

Mr. BYRD of West Virginia. Mr. President on June 13, 1967, the Senate passed S. 1448 to enable the beneficiary to file a petition for naturalization.

On August 15, 1967, the House of Representatives passed S. 1448 with an amendment in the nature of a substitute which involves only a language change and makes no substantive change in the bill as passed by the Senate.

I move that the Senate concur in the House amendment to S. 1448.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

LUIS TAPIA DAVILA

Mr. BYRD of West Virginia. Mr. President, I ask that the Chair lay before the Senate the message from the House of Representatives on S. 906.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 906) for the relief of Luis Tapia Davila which was, in line 3, after "That" insert: ", for the purposes of the Immigration and Nationality Act."

Mr. BYRD of West Virginia. Mr. President, on May 18, 1967, the Senate passed S. 906 to enable a citizen of Cuba to file a petition for naturalization. On July 11, 1967, the House of Representatives passed the bill with a technical amendment.

I move that the Senate concur in the House amendment to S. 906.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

APPOINTMENTS BY THE VICE PRESIDENT

The VICE PRESIDENT. The Chair appoints the following Senators to attend the annual meeting of the Boards of Governors of the World Bank and the International Monetary Fund, to be held at Rio de Janeiro, September 25 to 29, 1967: SPARKMAN and JAVITS.

The Chair appoints the following Senators to be congressional advisers to attend the meeting of the Food and Agricultural Organization, to be held in Rome, Italy, on November 4, 1967: JORDAN of North Carolina, MILLER, and YOUNG of Ohio.

The Chair, pursuant to Public Law 90-70, appoints the following Senators on the Golden Spike Centennial Celebration Commission: BIBLE, MOSS, KUCHEL, and BENNETT.

The Chair, pursuant to Public Law 80-816, appoints Senator PAUL J. FANNIN to the Board of Visitors to the U.S. Naval Academy to replace Senator MORTON, resigned.

COMPUTER SYSTEMS FOR STATE AND LOCAL GOVERNMENTS

Mr. KENNEDY of Massachusetts. Mr. President, I introduce, for appropriate reference, a joint resolution authorizing the Advisory Commission on Intergovernmental Relations to study the feasibility of a computer system to help State and local governments to participate more effectively in federally assisted programs. The computer system would, further, provide Congress and the President with a better measure of State and local needs and performance under these programs.

The relationship between the Federal Government and State and local governments has changed markedly in the last few years. Since 1955, Federal aid to State and local governments has quadrupled, rising from $3.1 billion in 1955 to an estimated $14.6 billion in 1967. In the past 5 years alone, twice as much Federal aid has been made available as in all the previous years, going back to 1789. State and local governments matched this concern at the Federal level: They spent more than $84 billion for similar programs in 1966 alone.

As more and more Federal programs are developed, State and local governments have a more and more difficult time sorting them out and deciding which ones would help most. The Federal programs are beneficial; the State and local governments want to benefit from them. But the very proliferation of Federal programs is bewildering, and this bewilderment is working against the solution of the problems the programs are designed to meet.

This does not argue against either the programs themselves or their number. They have all been developed to meet specific needs, and we would be denying the existence of the need were we to abolish the programs. What this multiplicity argues for is a modern system of information supply.

The junior Senator from Maine, Senator MUSKIE, has been deeply involved in this problem for years. The 3-year study recently completed by his Subcommittee on Intergovernmental Relations makes clear the benefits of the Federal programs and the creative partnerships they encourage. It also makes clear the problems which are raised by confusion and a lack of coordination among the levels of government. Senator MUSKIE has introduced a host of extremely constructive legislative proposals to overcome these problems, and I hope we see them enacted. Many other Senators have also expressed their interest in modernizing the means by which we make Federal program information available.

The resolution I introduced today supplements the efforts of Senator MUSKIE and others to build efficiency into government. It is similar to Senate Joint Resolution 187, which I introduced on August 10 of last year.

The resolution is directed at one very important part of the overall problem: the need to build an effective communications system among local, State, and Federal levels of government.

We are all aware of the dramatic rise in the demands on State and local governments. This rise reflects the increased public responsibilities shouldered by State and local officials, and there is every indication that these responsibilities will continue to rise. They are a result of the innumerable problems associated with urbanization, with economic expansion, with population growth, and with an increasing awareness of the effects of poverty.

In the face of these growing public needs which cannot be fully satisfied through State and local funding, the Federal Government has increased its programs of assistance, as I have mentioned. The number of State and local employees has risen swiftly in response, from 5 million in 1956 to more than 8 million today. In the same period, Federal civilian employment has increased only 360,000, to about 2.5 million. It should be noted that the vast majority of these Federal civilian employees work in State and local sites.

These Federal programs are not predicated on some master plan or grand design drawn up in Washington. Rather, they depend upon the initiative and resources of State and local officials, who must draw them up and keep them going.

But if our Federal programs of assistance are to be most effective, every State official, every mayor, every city and town administrator, every county or regional official, when faced with a community problem, should have complete information on the full range of Federal programs available. Only then can he be sure he is choosing the programs his community needs, and is shaping them so they will bring the greatest benefit to his community and the people who live in it.

What these administrators most need is information. Without information to help them make their decisions, many communities miss out completely on programs of Federal assistance for which they are eligible. Others are extremely slow in getting programs started, or choose to pursue programs poorly suited to meet highest priority needs even though better programs are available. Still others face the frustrations, because of inadequate information on application requirements, of having their applications for assistance go back and forth between the Federal agency and the State or local agency for rewriting.

Government action based upon inadequate information is wasteful and costly.

It is costly to the American taxpayer, whose money is not wisely or effectively spent.

It is costly to the communities, who are denied benefits or delayed in getting them.

It is costly to the Nation as a whole, when haphazard and ill-informed decisions result in a misallocation of resources.

And it is wasteful of time, time while problems continue to fester.

There can be no question that we need a more effective communications system among the various levels of government. Yet it will not be easy to achieve one, because the number and scope of Federal programs is vast and the variety of needs is great.

For example:

The Federal Government has almost 300 programs to deal with education, environment, poverty, or community development. They are administered by more than 100 departmental subdivisions at varying organizational levels in 18 different departments and agencies.

More than 40 different Federal programs provide aid for urban development, yet these programs, too, are scattered throughout the executive branch.

Four different agencies handle similar grant or loan programs for waste disposal facilities, and handle them in dissimilar ways. The Bureau of the Budget has recently concluded a "sewer treaty" to bring some coherence to these programs, yet the time-consuming interagency referral still bogs these programs down, in some instances.

Five Federal agencies are involved in community planning—the Office of Economic Opportunity, the Economic Development Administration, the Department of Housing and Urban Development, the Department of Agriculture, and the Appalachian Regional Commission.

There are over 21 Federal departments and agencies dealing with State and local governments, with some 150 major bureaus and offices in Washington and over 400 regional and subregional offices in the field.

There are over 75 different planning assistance programs, many of them duplicative and overlapping because of limited function.

But the problem the resolution I introduce today addresses itself to is not solely one of the multiplicity of Federal programs. It is also focused on the incredible maze of State and local governmental units. Using 1962 figures, the latest complete ones, we find 3,000 counties, 18,000 municipalities, 17,000 townships, 35,000 school districts, 1,000 housing and urban renewal districts, 2,200 drainage districts, 2,400 soil conservation districts, 3,200 fire districts, and 700 health and fire districts. There are, in all 92,000 local governmental units—many of them fiscally and administratively independent. It is these units with which the Federal program administrators must deal, in large part.

It is this welter of applicants for a welter of programs which has led to what some have called the crisis of federalism.

The Senate Subcommittee on Intergovernmental Relations, after 3 years of study, observed that there is "substantial competing and overlapping of Federal programs—sometimes as a direct result of legislation and sometimes as a result of bureaucratic 'empire building.' "

The conditions precedent to obtaining funds, furthermore, vary considerably from program to program, agency to agency, project to project, and also within agencies and programs over periods of time. These variances are aggravated by the sheer size and complexity of the Federal agencies and their missions.

Federal programs of assistance have provided community officials with so many alternatives that they cannot keep track of them all, or distinguish between them. The problem has been aptly described by Patrick Healy, the executive director of the National League of Cities; and John Gunther, the executive director of the U.S. Conference of Mayors:

> The rapid expansion in the number, size and inter-relationship of urban-oriented Federal programs has resulted in growing concern within many city administrations that they may not be aware of all of the opportunities to effectively utilize Federal programs.

This concern is generated and heightened by the lack of an effective communications system able to keep pace with the expansion of activity.

Thus, unfortunately, local participation in these programs has often been haphazard. Local officials, lacking large staffs, are often bewildered by the maze of Federal programs confronting them, and are unable to stay informed about the Federal funds and projects they might obtain.

In short, we are faced with a crisis in communication.

This conclusion is confirmed by the 3-year study made by the Senate Subcommittee on Intergovernmental Relations, and by a comprehensive survey of Federal program administration conducted by two private business organizations, Basic Systems, Inc., and University Microfilms, Inc., two subsidiaries of the Xerox Corp.

It is the conclusion I have arrived at after numerous conferences and conversations with State and local officials in Massachusetts and with other Senators and Congressmen who have observed the same problem in their own States. It has always saddened me that many communities I have visited have not taken full advantage of the stimulus of Federal programs, and I have often found the cause to be a lack of information on the programs themselves.

This communications lack is also demonstrated by the variety of efforts underway, by both public and private organizations, to relieve bottlenecks it creates.

For example, State and local governments have more and more been sending representatives to Washington, to set up a clearinghouse for information on Federal programs. A system designated to provide interested groups with a single, continuing source of intelligible data on Federal programs has been established here by Basic Systems, Inc., and University Microfilms, Inc. And the National League of Cities and the U.S. Conference of Mayors have joined together through the Joint Council on Urban Development to provide such a service to cities on a contractual basis.

Federal agencies have begun to compile catalogs and handbooks on aid programs. Last year, the catalog of Federal programs for individual and community improvement published by the Office of Economic Opportunity required 414 pages just to give the briefest description of each program. The second edition of this catalog of "Federal Assistance Programs for Social and Economic Progress" runs to 701 pages. The catalog of "Programs and Services of the Department of Health, Education, and Welfare" alone runs to 374 pages. Similar catalogs have been developed by Senator MUSKIE's subcommittee and by the Economic Development Administration, and a "Mayor's Handbook of Federal Assistance Programs" has been prepared by the Bureau of the Budget. In addition, each agency charged with the administration of a Federal grant-in-aid program has a vast amount of literature available concerning all aspects of its particular programs.

There has been such a proliferation of catalogs to cope with the proliferation of Federal programs that the Advisory Commission for Intergovernmental Relations has recently published an index of them—a catalog of catalogs, in effect.

But none of these initiatives deal with the communications problem in comprehensive terms.

The problem will not be solved by catalogs or by indexes of catalogs. It will not be solved by more books. We do not need more information duplication—but we do need a single source of detailed information, bringing together the piecemeal information on projects presently going on, available through a modern information retrieval system, operated on a decentralized basis, to which officials can turn to identify their options and to select the best of available Federal programs.

The resolution I offer would authorize the Advisory Commission on Intergovernmental Relations to conduct a thorough investigation of the feasibility of a comprehensive information service system. This system would make use of automatic data processing equipment and other forms of advanced information technology, to serve our States and localities.

I have long been impressed by the enormous potential of computer and information retrieval technology, and by its possible application to the development of an intergovernmental information system.

What I have in mind is a computer-based information system, using satellite centers, which would provide each State, local government, county, or other governmental unit with detailed information both on programs available to it and the appropriateness of each to the particularized problems of each governmental unit. With a profile of each community, a satellite computer could be programed to inform the community of new programs as they become available, of what programs have expended all their funds, of what programs have changed, and of what programs have been discontinued. In every case, the information provided would be on the request of the govern-

mental unit in question, and it would reflect the particularized needs of each unit.

Such a system has been used with great success by the National Aeronautics and Space Administration, in its technology utilization program, to provide private industry with detailed information on technological advances with potential benefit to particular industries. The Post Office Department, the Internal Revenue Service, the Department of Defense, the Bureau of the Census, the Department of Housing and Urban Development, OEO, and other major governmental agencies are all using data processing equipment to bring greater efficiency to their operations.

States, too, have begun to make use of modern information retrieval systems. Six million words of Iowa law are now stored in the State of Iowa's computer center in Des Moines, and any of Iowa's 61 senators and 124 representatives in the State legislature have near-instant access to any of the 2,988 pages of Iowa statutes. The computer is able to finish in 4 or 5 minutes what formerly took a staff researcher a week or more to complete. This same computer performs a multitude of other tasks for Iowa: It handles the data processing needs of 36 State agencies, it does all State accounting, it prepares 6,000 State payroll checks each month, it maintains records relating to 1.6 million State drivers' licenses, and accounts for and pays 40,000 welfare recipients. Many other States, including New York, New Jersey, Pennsylvania, and Ohio are also making good use of computer technology.

This Iowa system is not, of course, the type my resolution is concerned with, but it does illustrate, and does so graphically, the enormous potential that modern information systems have for management of government.

Given this background, I think it a disservice to State and local governments if we fail to investigate the possibilities of using advanced information system technology to provide the information which local executives so desperately need.

Over the past year, I have spent considerable time exploring the feasibility of such a system. I have spoken with representatives of a number of firms involved in this field, such as Diebold Associates and International Business Machines, and explored this question with knowledgeable individuals in government, in universities, and in consulting businesses. My conclusion is that we have every reason to expect that such a system could be constructed, and that its operation would be a boon to State and local governments. But it is also apparent to me that we need a comprehensive study of the problem, to determine what form that construction should take.

IBM, at my request, undertook a preliminary examination of the feasibility and appropriate design of such a system. From the conclusions of this examination, many of the specific questions which must be answered in this study become clear.

To begin with, we must determine the appropriate inputs of the system. State and local officials must be surveyed, and State and local government program—planning and decisionmaking studied in order to ascertain exactly what the informational needs and problems are. Much groundwork has already been done in this area, by various governmental agencies, so the undertaking is not as vast as might first appear.

On the basis of such a study, it would then be possible to determine the extent and form of input data required for the system, the most desirable form in which to receive this information, and the degree and kind of interpretation of information needed. For example, IBM concluded that at least four kinds of input data would be required:

First. Socioeconomic data involving income distribution, education, law enforcement, health and welfare, et cetera.

Second. Community resource data involving labor force and employment, industry and trade, transportation, housing and community facilities, financial, et cetera.

Third. Programs reference data concerning the nature and purpose of assistance programs, conditions of eligibility, information contact, authorizing legislation, and the administering agency.

Fourth. Programs status data involving the nature and extent of usage of various aid programs, the status of obligated funds, the names and numbers of communities involved, et cetera.

There are, as I pointed out earlier, a number of information sources already developing. The study I propose will survey this growing field; determine what action is needed to merge or otherwise synthesize these other information sources to avoid duplication of effort; identify gaps in existing information sources; and provide for the collection and indexing of whatever necessary additional information is needed to fill those gaps.

Once the input design is determined and data collected, construction of an information system would readily follow. This system would be capable of up-to-date storage, retrieval, and printing of relevant information. It would be manned by skilled personnel, for interpretation and evaluation of the information, which would enable State and community officials to select most intelligently those programs of Federal assistance which best serve their interests.

The study will give us a definitive answer about the construction of such a system. The answer will depend in part on whether the costs of constructing it are less than the fiscal and social costs involved in continuing as we do now. Thus, the study would consider the design of alternative information systems, varying in complexity, provide cost estimates for each, and compare the costs to the benefits accruing from the introduction of such systems.

The system I visualize would be decentralized in nature. But careful study is needed to determine how many satellite centers should be established, where they should be located, and whether the overall system would best be operated under the direction of the Department of Housing and Urban Development, the Bureau of the Budget, the Census, the General Services Administration, or some other Government agency.

An information system of the type I propose need not be limited solely to offering data on Federal programs. By keeping a record of the projects and programs carried out in various communities, it should be possible for communities to learn from the system what programs other communities are developing, and then to profit from their experiences. This will further reduce the cost and waste of our present system.

Moreover, through data phones and other link-ups, the system would be capable of providing Congress and the administration with a better measure of the needs and performances of the cities, States, and regions operating under these programs. This information, perhaps similar to the community profiles being developed by OEO, would be available almost instantly to those authorized to request information from it.

This would facilitate legislative oversight, as well as making possible speedy and more accurate adjustment of aid programs to meet existing needs.

I think it important that the study consider the possible political problems which may arise, and how we can preserve the existing, desirable relationships between city and State officials, Members of Congress, and administration officials.

I consider it also important to stress that this system I propose would be used as an aid to the decisionmaking responsibilities of public officials, and not a replacement. This has been the great revolution the computer has worked in private industry: facilitating the decisionmaking process by making more and reliable information available to those who must make the decisions.

Finally, the study of systems design must carefully consider the fact that the system and the information required by the system will not remain static. Specific attention must be given to the incremental development of the system. As program requirements change and new ones are added, the information must be reviewed and up dated and provision must be made for standardizing its structure and collection.

In short, Mr. President, it is my judgment that the basic idea is sound, and the need apparent. A thorough study of the entire question, which I propose today, is a prerequisite to effective action.

The Advisory Commission on Intergovernmental Relations seems to me an ideal body to carry out such an investigation.

The Commission was established in 1959 to study ways and means to strengthen our federal system, at all of the levels of government. Its statutory mandate specifically directs the Commission to study and to provide a forum for discussing administration and coordination of Federal programs, as well as to encourage study of emerging problems requiring intergovernmental cooperation.

Furthermore, the staff of the Commis-

sion has concentrated its activities on the problems of Federal-State-local relations, thereby building an expertise of great help in carrying out the study I propose. And their work has consistently been of high quality.

In addition, the composition of the Commission is uniquely suited for this kind of study, because it is both a continuing agency and broadly representative of all levels of government. It is not a Federal agency in the usual sense: Its members include representatives of the executive and legislative branches of all levels of government.

As Patrick Healy of the National League of Cities put it:

> We believe that the heterogenous nature of the Commission—it consists of both executives and legislatures representing all levels of government—is one of the features which allows it to make important contributions to the field of intergovernmental relations.
>
> When this hybrid group of people sit down to consider the research activities of the Commission, the full interplay of opinions and interests creates a new understanding of the problem under discussion. This is governmental interaction at its best, because it maximizes the opportunities the Commission presents for reasonable men to arrive at desirable and practical solutions to the problems of intergovernmental relations in our Federal system.

The legislation establishing the Commission, Public Law 86–388, already provides authority for the Commission to employ the technical consultants necessary to accomplish this study, and the study itself would dovetail with many of the other studies and reports that the Commission is currently engaged in. Further, it already authorized the appropriation of funds necessary to carry out such a study.

I am hopeful that this study will lead to quick implementation of an advanced information system for increasing the effectiveness of State and local decisionmaking.

I want to reiterate my belief that it is not the multiplicity of Federal programs which has led to the crisis of federalism. These programs have all resulted from specific needs and are all tailored, in one way or another, to meeting these needs with new financial and personnel resources. The crisis of federalism has resulted from a reliance upon managerial techniques which our industries—the world's best—rejected years ago.

We will go far toward our goal of a better life for all Americans if we make modern computer technology available to State and local officials, for it is these officials who must plan for and carry out the programs designed to bring this better life about.

Mr. President, I ask unanimous consent to have this joint resolution printed in the RECORD, as well as two statements dealing with the subject matter of the bill.

The VICE PRESIDENT. The joint resolution will be received and appropriately referred; and, without objection, will be printed in the RECORD, together with the two statements, as requested.

The joint resolution (S.J. Res. 110) to authorize a study and investigation of information service systems for States and localities designed to enable such States and localities to participate more effectively in federally assisted programs and to provide Congress and the President with a better measure of State and local needs and performance under these programs, introduced by Mr. KENNEDY of Massachusetts, was received, read twice by its title, referred to the Committee on Government Operations, and ordered to be printed in the RECORD, as follows:

S.J. RES. 110

Whereas, optimum implementation of Federal assistance programs for the development of physical, social, and economic resources in States and local communities requires an effective communication and information system enabling State and local officials to identify and order their resource needs and program objectives and to determine which of available Federal programs are best designed to meet those needs and objectives;

Whereas, in recent years there has been an ever-increasing growth in the size and complexity of activity at all levels of government to meet growing public needs, while State and local revenue resources have become less responsive to economic growth and are inadequate to meet such public needs;

Whereas the expansion of Federal programs has not been accompanied by an equivalent growth in the informational capability of State and local officials to make best use of programs of Federal assistance in meeting community needs;

Whereas State and local officials have difficulty obtaining information necessary to enable them to define adequately the areas of community need, to assign priorities among such areas of need, and to choose among the available Federal programs of assistance in order to receive maximum benefit from such programs; and

Whereas scientific advances in computer and information retrieval technology represent a major new capability which may have important applications to the development of a modern intergovernmental information system: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That:

(a) the Advisory Commission on Intergovernmental Relations (hereinafter referred to as the "Commission") is authorized and directed to initiate and conduct a thorough study and investigation of the nature of the diverse types of information interchange presently in existence between Federal, State and local governmental units;

(b) the Commission is authorized to study and investigate the desirability of developing and maintaining information systems utilizing automatic data processing equipment, and other forms of advanced information technology, which systems would be capable of collecting, storing, evaluating, retrieving, sorting, and disseminating the relevant informaton necessary to enable the officials of States and localities, on a continuing basis, to assess areas of community need, assign priorities among such areas of need, and more effectively participate in federally assisted programs; and

(c) Such studies and investigations shall include consideration of the following:

(1) the preservation of the existing desirable relationships between the levels of local, State, and Federal governments;

(2) the extent to which presently available service systems can improve the utilization of modern techniques of program planning and other aids to decisionmaking by officials of State and local governments with respect to applications for federally assisted programs;

(3) the type and quality of information presently in existence and the type of information required by systems embodying increasing utilization of present computer and communications technologies;

(4) the best means by which various types of information service systems can collect, store, evaluate, sort, retrieve, and disseminate the information;

(5) the cost of developing, constructing, and operating such systems;

(6) the most desirable location of authority for the operation of such systems at the various levels of government;

(7) the extent to which such various systems might be employed to provide Congress and the President with a better measure of State and local needs and performance under these federally assisted programs;

(8) the application of advanced technology to assure the possibility of subsequent expansion and modification of such systems if eventually necessary; and

(9) the extent to which such systems once developed would be used by officials of State and local governments.

SEC. 2. In addition to the authority granted herein, the Commission, for the purposes authorized by this joint resolution, may utilize any of the powers granted by the Act entitled "An Act to establish an Advisory Commission on Intergovernmental Relations," approved September 24, 1959 (73 Stat. 703).

SEC. 3. The Commission may transmit to the President and to the Congress such interim reports as it deems to be proper. The Commission shall transmit its final report to the President and to the Congress not later than one year after the date of enactment of this joint resolution. Such final report shall contain a full and complete statement of the findings and conclusions of the Commission and its recommendations for such legislative measures as it may deem to be appropriate.

SEC. 4. There are hereby authorized to be appropriated such sums as may be necessary to carry out this joint resolution.

The text of the two statements is as follows:

INTERNATIONAL BUSINESS MACHINES CORP.
Senator EDWARD KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: At your request, we have made a preliminary examination of how modern technology may be used to facilitate the efforts of state and local officials to secure aid under federal programs for such purposes as education, transportation, housing, and community facilities. These are programs intended to provide National Assistance for Individual and Area Development (NAIAD).

Our preliminary conclusions are as follows:

The design and implementation of a computer-based NAIAD system is now feasible.

The key problems are institutional, not technical. They relate to managerial responsibility for, and privilege of access to, the system.

1. STATEMENT OF PROBLEM

The problems here to be explored are the following:

What should be the nature of a modern NAIAD system?

What unusual system considerations may arise from the requirements of the Legislative and Executive branches for information essential to their differing but coordinate roles?

2. OBJECTIVES OF NAIAD SYSTEM

In the present context, the NAIAD system comprises the entire body of men, skills, data, and machines needed to accomplish the desired objectives. Much of the work will be done, as now, by trained professional people, applying their knowledge with great skill to very ill-defined problem areas. That which may change is the support given these

people by providing them more complete, more accurate, and more timely information, and by performing computations and simulations possible only with modern computer-based technology.

Most computer-based systems in the Federal Government have objectives such as lower cost or increased efficiency in accomplishing some specific agency mission. The NAIAD system, extending into a number of agencies and serving Legislative as well as Executive interests, will necessarily have broader objectives. These are as follows:

To facilitate the flow of information on aid programs relevant to the specific purposes of the interested federal, state and local officials.

The NAIAD system must have within itself, or readily available to itself, information descriptive of conditions in the community seeking aid, and of the entire range of federal aid programs. Upon demand, the system should be able to retrieve all information relevant to the conditions and needs of that specific community. As experience is gained in handling requests, it may later be possible to assign the task of performing various kinds of analyses to the NAIAD system. These might include projection of socioeconomic trends and analyses of cost-benefit ratios, as well as the preparation of financial justification of projects. By these means, it should be possible to match more effectively federal aid with the evolving needs of the community.

To provide the Executive branch with information for monitoring agency and program performance, and for correcting defects in the law or in its administration.

The NAIAD system should assist the agency operating a program to do so with greater speed and effectiveness. It should permit the Executive to coordinate more effectively the various forms of aid flowing into a given community. Through analysis, the system could determine socioeconomic profiles of the various communities to aid in monitoring their social and economic health. Comparative analyses might then be prepared showing the "State of the Community," and projecting future conditions in these communities under various policy assumptions.

To provide Congress with tools for serving its constituents, for facilitating legislative oversight, and for adjusting aid programs to meet evolving social and economic needs.

Despite the various forms of assistance provided by the Executive, Members of Congress are frequently called upon to provide a link between constituents or communities seeking aid and the various agencies offering aid. The NAIAD system should speed and facilitate the service thus provided, and lessen the burdens of such casework on Congressmen and their staffs.

At the level of national policy, the system should enable Congress to monitor the performance of operating agencies, the progress of the various programs, and the development of various communities. The comparative analyses prepared by the system should facilitate planning for an ever more effective and equitable distribution of federal aid.

3. DISCUSSION OF DATA REQUIREMENTS

The key to a successful system is its store of readily available information. To achieve its objectives, the NAIAD system must have access to a large body of structured, up-to-date information, ranging from census data, to maps and photographs showing land use, to application forms for the various programs. Certain data are needed to explain programs, to establish qualifications, or to guide implementation. Other data are needed to perform analyses or to predict trends. The data, provided by federal, state, county, municipal, and private agencies, need not be physically present in one place, so long as adequate references are available to where the actual information can be found and retrieved.

Major classes of data encompassed by the NAIAD system would be of four kinds:

Socio-economic Data: Demographic, income distribution, education, law enforcement, health and welfare, etc.

Community Resources Data: Labor force and employment, industry and trade, transportation, housing and community facilities, land use and zoning, financial, etc.

Programs Reference Data: Nature and purpose of aid, conditions of eligibility, information contact, authorizing and other relevant legislation, administering agency, etc.

Programs Status Data: Nature and extent of usage of various aid programs, status of approved and obligated funds by program and by community, names and number of communities involved, number of families or individuals affected, physical status of facilities being built or renewed, etc.

4. DEVELOPMENT OF THE NAIAD SYSTEM

Requests for aid presently flow from interested officials at the state and local levels to the Executive agencies and Congress. With careful planning, it should be possible to design a computer-based system which preserves essential relationships between constituents, Congressmen, and agencies. As shown in Figure 1, the NAIAD system would function at the interface between the state and local levels and the two branches of the Federal Government. The flows of information, advice, and funds would then be facilitated by the capabilities for data storage, retrieval and analysis provided by the system. This central (and sensitive) location, however, gives rise to a number of considerations relating to managerial responsibility, privilege of access, and evolutionary development of the system.

Who shall develop and operate the NAIAD system?

Two of the criteria for testing alternative organizations for managing the system are:

(a) Understanding of the political process and competence in applying computer technology,

(b) Catholicity of interest extending across the entire range of federal aid programs, present and potential.

The choices for management include a not-for-profit organization (e.g., Brookings Institution), a "trade association" (e.g., U.S. Congress of Mayors), or an agency within the Executive branch.

While certain not-for-profits can meet these criteria, they may be reluctant to accept managerial responsibility. "Trade associations" may lack experience in developing computer-based systems. A number of the Executive agencies meet the first requirement, but only the Bureau of the Budget meets both requirements. One possibility is for implementation and operation to be handled under the general direction of the Bureau of the Budget, with the advice of an interagency team drawn both from those departments having operating responsibility and from the Advisory Commission on Intergovernmental Relations. The objective would be a government-wide system operating from a common data base, with each of the operating agencies, Bureau of the Budget, and Congress using only those data and computer programs related to its purposes. State and local officials could continue to deal, as they do now, with agencies having responsibility for specific programs.

Who shall have access to what kinds of information?

The system will include a wide variety of information, some of which should be accessible only to certain users. Privilege of access impinges heavily on the needs and roles of Executive versus Legislative, of department level versus agency level within the Executive and of agency level versus state or local planning officials. Also involved here is the need for preventing disclosure of confidential or proprietary information—a privy relationship required by law—which will strongly influence the degree of system centralization, as well as the conditions and methods for access. Finally, the distinctive needs of Congress for information and confidentiality may well lead to two separate but similar systems, with the Bureau of the Budget having overall cognizance of the system used by the Executive; the General Accounting Office or Legislative Reference Service, for that used by the Legislative.

How might the system evolve?

The NAIAD system should be implemented in stages as follows:

(a) Stage 1:

Formulation of system concept.

Definition of requirements of information within the system.

(b) Stage 2: Development of capability for storing and retrieving data to service requests for aid, and for reporting status of aid programs.

(c) Stage 3: Expansion in capability of system to perform trend projections, cost-benefit analyses, etc.

As experience is gained, more of the burden of analysis may be done on the computer.

A large part of the cost of implementing and operating the system will be involved in preparing and maintaining the various files of information. Changes will occur in laws, in regulations, in agency organizations, in programs, in community needs, and in technology. The system design should be such as to permit easy modification and expansion of computer programs and of the data files. This means that additional pressures will be created for standardizing the structuring and collection of data in the several levels of government.

I do hope that these comments will be helpful to you in preparing the legislation you desire.

Very truly yours,

ABRAHAM KATZ,
Manager of Economic Analysis.

COMPUTERS AND THE PUBLIC WELFARE, LAW ENFORCEMENT, SOCIAL SERVICES AND DATA BANKS

(By Harold R. Johnson, Office of the Director of Telecommunications Management, Executive Office of the President)

I. INTRODUCTION

During the past three years major legislation has been enacted which provides for an increasing orientation of our national effort towards improving the quality of American life.

As a nation, one of our major concerns is to provide an environment in which the benefits of our society are increasingly available to all of our people.

A large portion of our national product is being devoted to new programs aimed at better support of the health and welfare demands of our nation. We are currently devoting well over $100 billion a year to this important sector of our economy.

Federal grant-in-aid programs devoted primarily to the fields of health, welfare, education and law enforcement assistance have increased sharply. The participation of the Federal government in these programs has risen from about $4.1 billion in 1957 to nearly $15 billion in the current year. Further increases in Federal support are projected.

To be effective, our national programs in education, health, welfare, and law enforcement assistance require close cooperation between Federal and State activities. Computer-communications technology can provide major assistance in achieving this cooperation and in furthering our national objectives in this field.

II. NATIONAL OBJECTIVES

The President's message on "Crime in America", transmitted to the Congress on February 6, 1967, underlined the fact that "public order is the first business of govern-

ment" and presented a wide ranging program in which local government, State government and Federal government can cooperate to obliterate crime from our nation.

The importance of health and education to the national welfare was underlined in the President's message to the Congress of February 28, 1967 . . . "Nothing is more fundamental to all we seek than our programs in health and education."

The President's message on health and education also underlined the challenge to the nation to do a better job in achieving national objectives. "Today, we face major challenges of organization and evaluation. If our new projects are to be effective, we must have the people to run them, and the facilities to support them. We must encourage states and localities to plan more effectively and comprehensively for their growing needs and to measure their progress towards meeting those needs."

The crime rate, continuously rising—taking more and more of our national wealth to try to control.

Education—soaring enrollments and requirements for teachers—higher costs per student—the need for more facilities, for new methods, for reaching more people.

Health—rising costs—marked increase in mental illness—inadequate hospital facilities—stagnation in the numbers of doctors and nurses relative to the population.

Welfare—the challenge of helping our aging citizens—of coping with the programs of the underprivileged—of dealing with a demand by our citizens for better, more rapid service.

The extensiveness and the range of cooperative effort between the Federal, State and local governments who are seeking to respond to the national challenge in the field of improved education, social services and law enforcement activity is notable. All of these efforts underline a close partnership and extremely close working relationship between Federal, State and local governments.

III. NEW ENVIRONMENT FOR COMPUTER COMMUNICATIONS SYSTEMS

The major shift in social demands and national priorities discussed above coupled with the establishment of national objectives which require extensive cooperation between Federal, State and local governments, clearly presents a new environment for computer-communications systems within the United States.

These new national objectives and priorities, together with advancing technology in the computer-communications field present a need for major improvements in the technological support of our national objectives. Specifically:

There is a need for increased efficiency in the liaison between employees and data centers of State and Federal agencies. Computer communications complexes can provide this increased efficiency.

There is a need for improvements in the decision making processes and a structuring of information flow so that routine determinations can be made against programmed criteria within supporting information systems and at prescribed decision levels.

In certain areas, such as law enforcement, medicine, social security, and education, there is a need for joint Federal-State computer communications networks which can apply new technology to improving the management of major national programs in these areas.

IV. ANALYSIS OF THE ENVIRONMENT

The development of national computer-communications complexes in the field of law enforcement, social services and public welfare generally is at present in a very early stage. What we see now in the way of operational systems are in fact only limited applications of technology. Within the next five years computer communications complexes will be extensively employed throughout this country to provide greatly improved services to our nation, not only in the field of law enforcement, social services and public welfare, but also in a great many other fields in which national interests exist.

Even at this very early stage of development it is possible, however, to carry out some analysis of the environment for computer-communications complexes.

Integrated Systems.—It is quite clear that in fields such as law enforcement, education and medicine and some other elements of social welfare, nation-wide computer communications complexes will develop to link together Federal, regional, and State data banks with complete flexibility. In most cases, these computer-communications complexes will provide for time sharing, computer utility type operation.

Nature of Basic Information.—Studies done by the State of California and the State of Nebraska provide a basis to appraise the extent of data entry points that will be involved in the systems under discussion. Based upon information taken in these studies, it is quite clear that long term information exchange requirements will include wide band data and image transmission and that data entry points may ultimately involve more than 10,000 terminals throughout the nation.

Information Flow Patterns.—The pattern of information flow between Federal, State, local and private elements of our economy was carefully analyzed in the study of California information systems done by Lockheed. Other than income tax data and certain social welfare information, the information is generally concentrated at Federal or State field offices prior to relay to a Federal agency or data center. A hierarchy of computational and data processing complexes, time shared, both at the State and at the Federal computer communications complex seems likely to develop.

Trends in State and Federal Automated Systems.—The growth in use of data processing systems, both within the state and Federal governments, has been little short of spectacular over the past several years. It is important to note here that even though applications to date have been growing at an extremely rapid rate, even faster growth may occur in the future. Basis for this observation is the fact that to date most government applications of data processing equipment have concentrated on well-defined clerical operations in the financial and accounting fields. We are only now beginning to see the application of real time intergovernmental computer communications complexes and these are beginning to develop fresh concepts of information handling which may further spur growth.

Trends in Communications and Data Transmission.—Since we are dealing with computer communications complexes, it is worthwhile looking at the communications side of the coin also, to analyze the trends in this element of the system. Over all, the transmission of data on our domestic communications system will, by 1980, be a more important element of the service demand pattern than voice transmissions. The trends appear even more sharply in the analysis of the growth of voice and data communications within the Federal telecommunications system. In the last two years, data transmission within the Federal telecommunications system have grown by more than 155%, while voice has grown about 11%.

Growth in Private Lines Systems.—The growth in private lines systems operated exclusively in support of the State government functions is also important in the analysis of the environment in which computer communications systems may operate in the next few years. More than 30 states already operate or plan to operate private line systems exclusively for State government business. This is an important factor in overall system design.

V. HOW NATIONAL SYSTEMS DEVELOP

The development of national systems in any field is a highly complex process. In the field of health, education and welfare the process of reaching national consensus, focusing on national requirements and articulating national goals is particularly intricate. What is presented here is a very much oversimplified summary of the sociological and political activities which must take place before technology in general and computer-communications technology in particular can be applied effectively to improving the social welfare, education and law enforcement activities of the nation:

Importance of State and Local Action in the Requirements Phase.—All of the activities pertaining to the public welfare, education and law enforcement discussed here impact upon every citizen of our Nation. Requirements accordingly are felt and expressed first at the local level. Situations which become intolerable locally and which are beyond local solutions are presented at the national level in the House of Representatives and in the Senate. At this stage, national solutions can begin to develop.

Development of National Systems.—Perhaps no single factor underlines the importance of early design attention to national system than does a full understanding of the time required to carry out a full cycle of national systems development. It is perhaps worth while, therefore, to consider briefly the major milestones involved in the development of a national system:

National Goals.—These usually involve a Presidential message on the importance to the nation of the functional area concerned. A legislative recommendation from the Executive Branch usually ensues for consideration by the Congress.

Legislative Action.—In the development of a national system the Congress will normally be required to vote some funding support, either in the form of direct program funding or grant-in-aid support activity. This means a series of hearings and careful evaluation of the need before an Act of Congress is passed and provisions made for financial support.

Development of State and Regional Systems.—It is seldom that a program is launched on the national scene initially. More often, the Congress provides financial support for the development of State and regional services in the law enforcement areas, in the educational areas and in other areas of public welfare. Only after these State and regional support systems have fully developed does it become worthwhile to begin integration of such systems into national computer communications complexes.

Development of National Systems.—Once the advantages of integrating a series of State or regional data banks with those available within the Federal government becomes apparent, planning can begin on national systems. Often it is possible to effect major savings by properly planning these national systems so that computational and communications requirements are consolidated. Responsibilities in the area of planning, operation, administration and finance also need to be detailed carefully in the national system design.

VI. DEVELOPMENT OF COMPUTER COMMUNICATIONS COMPLEXES IN PUBLIC WELFARE, LAW ENFORCEMENT AND SOCIAL SERVICES

In the field of public welfare, law enforcement and social services, some significant advances have been made in the development of nation-wide computer communications complexes.

In law enforcement, a full scale nation-wide system time shared between Federal

government and State agencies is currently in operation. This system is a typical example of a computer utility type application of data processing within the Federal-State-local government complex.

A nationwide network is in operation to support the flow of information required in Medicare and Social Security. This system does not yet provide for the most advanced time sharing techniques, like time service and direct access, that has been incorporated into the law enforcement medium. Further improvements are sure to come.

In the field of education, educational television is leading the way in the development of nationwide systems. Plans have been drawn for a series of nationwide educational television transconnects within the coming year. Somewhat further in the future, it is possible that communications technology may be used for transconnection of ETV stations. Ultimately it is quite clear that the information networks presently provided for television exchange only will be extended to provide a range of computer communications transconnections as well as voice interconnections between the major centers of education within the United States.

In the field of welfare, we have not yet seen the development of nationwide computer communications complexes, although a number of state systems have been undertaken throughout the nation. In this field, national systems would seem to be four or five years in the future.

VII. LAW ENFORCEMENT—A CASE STUDY IN NATIONAL SYSTEMS DEVELOPMENT

The FBI has developed a nationwide information system to serve law enforcement agencies throughout the country. The system is real time, time shared computer communications complex. The hub of the system is the National Crime Information Center in Washington, D.C.

Interoperation With State Systems.—The new FBI National Crime Information System operates on line in real time so as to complement computerized systems already in operation or planned for local and State law enforcement agencies. When fully implemented the system will provide a rapid means of processing, storing and instantly transmitting vital police information, national in scope, to any point in the country within a matter of seconds.

Data Standards Developed Cooperatively.—The development of data transmission standards and computer programs was undertaken as a team effort by representatives of the FBI with the assistance of local and state law enforcement agencies throughout the country. The rules for the operation of the network are thus a joint product. Rigid adherence to the standards and specifications will be essential in this highly complex information system.

System Design Plans.—The system provides the following capabilities:

Access to the central computer on time shared basis.

Direct access from state and local agencies throughout the nation.

Full information exchange and feedback between Federal, State and local law enforcement agencies.

Real time communications.

Integration of all necessary information at key decision points.

Full system flexibility and reliability.

VIII. CASE STUDY

Social Security and Medicare Computer-Communications Complex.—A nationwide voice and data network has been established to support Social Security and Medicare. Computer services have been interlinked with Federal Telecommunications System communications network so as to provide rapid transmission and processing of information in this area.

Design Philosophy.—The Social Security Administration communications requirement develops from the policy of storing in a computer(s) in the Social Security Administration Headquarters, Baltimore, the basic data indicating the social security status of every citizen with a social security registration. This now has been extended to equivalent records on all phases of the Medicare program.

To keep in as close as possible touch with Social Security and Medicare registrants, the Social Security Administration has established some 725 field offices throughout the United States. Registrants visit or write to these field offices for information concerning their Social Security or Medicare status, or to apply for payments under the respective programs. Each such inquiry or application typically results in a communication to Baltimore, because all information concerning the applicant is stored there. This is the primary source of the Social Security Administration communications requirement for about 225 million words per year between the field stations and Baltimore.

Operating System.—The volume originating at any one field station is not sufficient to justify expensive, high speed facilities. Consequently, each field station is equipped with a Model 33 (or 35) teletypewriter(s), with automatic transmitters, that transmit or receive at 100 words per minute. The field originated traffic is concentrated by the ARS Message Switching Computer and written on magnetic tape at either Romney or Berwick, or both. From here it is sent via high speed, dedicated circuits to Baltimore, where it is received on magnetic tape ready for input to the Social Security Administration's computer without conversion.

The Social Security Administration also maintains magnetic tape to magnetic tape transmissions systems from the National Blue Cross Headquarters to Baltimore. This further extends the communication capability.

Outlook for the Future.—Social legislation enacted in this area requires communications support for activities involving approximately 19 million persons over the age of 65. The initial plan involving a mixture of Federal Government facilities and facilities operated by the Blue Cross Association is capable of meeting immediate requirements. In the long term, a more expeditious means of coordinating the provision of assistance to Medicare subscribers and for validating claims and carrying out fiscal activities will be needed.

IX. THE OUTLOOK FOR OTHER NATIONAL SYSTEMS

Other than the areas of law enforcement and Medicare/Social Security the development of national systems is in an early stage. It is clear that such additional national requirements as do develop will ultimately be viewed in the context of their relationship to such national networks as the Advanced Record System and other elements of the National Communications System. The pattern of typical subsystem activity in the field of welfare and social services is summarized below.

Education Communications Systems.—Led by educational television, State educational communications networks are expanding rapidly. With the advent of communications satellite systems, national network support education is a distinct possibility within the next few years.

Health.—No national networks involving complete interconnection of computers has been developed in the health and welfare field. Advanced development activity is under way, directed by the National Institute of Health and the National Library of Medicine.

Drug Administration.—An FTS network has been established to provide a quick reaction capability in connection with the Adverse Reactions Program.

Water Pollution.—The Advanced Record System is being used in connection with remote sensors to monitor water pollution in certain rivers on a 24-hour-a-day basis.

X. CONCLUSIONS

In the field of public welfare, education and law enforcement, the trends toward cooperating programs between the Federal, State and local governments are tending to support development of intergovernmental nationwide systems, which can bring the full benefit of technology to bear on these important problems. Trends in Federal, State, and local government activity clearly indicate the growing interdependence and interrelationship among agencies.

The growth in population and social demand is being met generally throughout the nation by conversion to automatic data processing systems and by interconnection of those systems. Over-all, the outlook for computer communications complexes is one of increasing importance to the realization of national objectives and to the effectiveness of government at Federal, State and local levels.

DEPARTMENT OF STATE STILL FERTILE AND CREATIVE

Mr. McGEE. Mr. President, on Sunday, August 27, Howard K. Smith, writing in the Washington Star, had some kind things to say about the Department of State, noting that it is still fertile and creative. It is a column which says things that should be said far more often, for it is not widely realized or accepted that our State Department has functioned well and made considerable progress during a time in which, as Mr. Smith put it:

The world has been not merely fluid; it has been raging with riptides.

Mr. President, I ask unanimous consent that Mr. Smith's column be printed in the RECORD.

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

POWER AND PROGRESS AT THE STATE DEPARTMENT

(By Howard K. Smith)

If there is anything more battered and bloodied than a president in the midst of an unpopular war, it is the State Department in the midst of any time. Something kind ought to be said about it now and then, not to soothe the pain, but because there are kind things to say.

Probably the department's basic problem is that it deals with Power. In our permissive time, four-letter words are gaining acceptance. But the five-letter word, Power, is still a dirty word to most Americans. There is a feeling that it is like Sin: you can choose to do it, or not to do it, depending on your strength of character. The truth has not been widely grasped that we have no choice: we have to use Power.

It would be truer to say that the State Department has the function of threatening or promising Power—which is one definition of Diplomacy. The Power itself resides in the White House and the Department of Defense. Thus the State Department is in fact required to throw its weight around without having much weight to throw.

Its problem is compounded by the fact that it is the only department of government which has no statistics to measure Progress the way Mr. Wirtz can with unemployment statistics or Mr. McNamara can with almost anything. Statecraft is a football game with no clear termination time.

An act that seems foolish today can turn out to look wise a year from now—and foolish five years from then. It is hard to say when the results are all in.

Furthermore the department is precluded from defending itself by the fact that it deals with over a hundred sovereign nations about whom it cannot say harsh truths that might explain away many of its own problems. The State Department is thus the ideal target for political freebooters who abound not only in Congress but in the Press and in Academe.

Undoubtedly the stock criticisms are true: it is probably overstaffed in some places, pushes too much paper and is often dilatory. Possibly some kind of Hoover committee ought to study it for a few years and make recommendations. But the old caution must be kept in mind: reforming the administration of this department is, as its defenders say, a little like performing an appendectomy on a man permanently carrying pianos.

However, reforms would probably not much improve its central function of working out policies to recommend to the President, and seeing they are carried out. It has actually done this work amazingly well at a time when the establish powers—Western Europe—have all abdicated, at a time when a new aggressive ideology is on the move, and at a time when multitudes of peoples with no qualifications for being sovereign have become sovereign. The world has been not merely fluid; it has been raging with riptides.

It is now widely agreed that it accomplished marvels in the Truman period with the Truman Doctrine, the Marshall Plan, NATO and Point Four. It is hard to recall that, while that was going on, Truman's Gallup Poll rating shrank to half what Johnson's is, and Acheson became an almost unspeakable name.

What is not widely realized is the fact that the department is still fertile and creative. While critics say it should stop being a fire department and work out long-range policies, that is exactly what it has been doing. Its central plan is regional cooperation and integration. That process did not exist in Asia two years ago, but now it is moving ahead. It is moving more rapidly in Latin America and less so in Africa. What critics fail to take into account is that long-range policies are by definition long range: No sudden glossy triumphs are likely. Still, the marked change of mood in Southeast Asia in the past two years is something to brag about.

There is one outrageous point to add: Mr. Rusk is a good Secretary of State. He handles Congressional committees more skillfully than any predecessor I have seen or read about. He has launched a program called "Open Forum" by which any idea for policy from the lowliest officer in the department can reach him for his personal attention. The criticism that he does not come down hard on an option, when advising the President, is invalid: when you serve a strong President who likes his options left open, that is the way to do it. When policy is set, with his advice, he becomes hard enough. If he did not, he would be a badly whipped man about this time in his career.

THE FAYETTEVILLE, ARK., LIBRARY

Mr. FULBRIGHT. Mr. President, Miss Virginia Tidball has written a thorough scholarly historical account of the outstanding public library in my hometown of Fayetteville, Ark.

I ask unanimous consent that the article, published in the Arkansas Gazette of August 27, 1967, be printed in the RECORD.

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

FAYETTEVILLE WANTED A LIBRARY: SO IT GOT ONE

(By Virginia Tidball)

Most people take public libraries for granted. The library is there, for their use, and its cost is nominal—even infinitesimal—compared to the service it renders. Indeed, very few subscribers to the average public library ever think of it in terms of money at all until they let the latest best-seller get overdue.

By the same token, most people have no idea of the work and worry and even sacrifice (in terms of volunteer time) that go into (A) setting up a public library and (B) keeping it going.

A good example may be found in Fayetteville, a college town which normally could have more use for such a public facility than the average community. Fayetteville's Roberta Fulbright library now has a fine and handsome building and its personnel and supporters are constantly seeking to enlarge its services.

But Fayetteville's library hasn't always been this up-to-date. In fact, back in early 1916 it didn't even exist. But fortunately that year Miss Julia Vaulx, who will be remembered by many an alumnus of the University of Arkansas where she served for a number of years as head librarian, began to promote the idea of a Town library to complement the Gown facility. Actually, the idea of a public library came from Rev. J. J. Vaulx, rector of St. Paul's Episcopal Church. But it was his daughter, Miss Julia, who first put the idea into action.

First she wrote out-of-town friends asking for donations—with some sucesss. Among others, Walter Wood, son of Dr. H. D. Wood, gave $100, and Carl Gray, a well known railway executive who had begun his career in Fayetteville, gave $25.

Then a mass meeting was called and a permanent library board was formed with Miss Vaulx as president. Other active workers were Miss Florida Read, Mrs. Ashton Vincenheller, J. L. Hancock and Allen G. Flowers.

To house the library, Judge B. F. Campbell got two rooms in the basement of the Courthouse. There were many gifts of money, books, labor, and equipment. And there was a great deal of work involved in cataloging and labeling. Then, June 7, 1916, the library opened.

At first, the volunteer librarians served without pay, although hours were much shorter then. Miss Florida Read became the first paid librarian at a monthly salary of $15, and she was followed by Miss Edna Hester. Then came Miss Lila Rollston, who served up into 1934, the year of her death—and by older users of the library she is well remembered as an interesting combination of faithful efficiency, gentility, and steel.

By 1925, the number of books had increased from 2,000 to 8,025. Getting enough, however, has always been a problem—enough books, enough money, enough space. And always there has been volunteer help. Boy Scouts have worked hard at collecting newspapers, magazines, and discarded books to sell. And the librarians have worked for small pay far beyond the call of duty.

From the beginning, the library has served many people in many ways. In a 1917 report Miss Rollston asked for more chairs, since more people were coming in to read. Her records showed that traveling books had gone to schools as well as gifts of magazines. Vocational books, intended especially for returned soldiers, had been placed on the shelves, and 36 books had been sent to Camp Pike. Many leaflets for the control of diseases and the like had been given away.

In the 1920s the county judge called for the two rooms in the Courthouse, and the library then occupied two rooms at the corner of East and Meadow Streets.

After Miss Rollston's death in 1934, Miss Irene Gallaway became librarian and stayed for 11 years. In her time the library moved again, this time to the Chamber of Commerce building.

Miss Gallaway was another of the quiet and faithful. Perhaps no other librarian in Fayetteville ever had such a "card catalogue" knowledge of the books on the shelves, and the present librarians recall her ability to identify them even after her retirement. Her power to share her knowledge with others is well recorded in the long file of her locally published "Book Chats." In these she not only analyzed the book, but included many opinions of it from readers about town. When she lacked funds for rebinding old books, she and her assistants covered them with jackets of gingham and print.

Miss Jobelle Holcomb, remembered for her years of teaching English at the University, followed Miss Gallaway, and is credited with setting up the first card catalogue.

She was followed by Mrs. Ed Watson, Mrs. Gus Bryant, Mrs. C. B. Wiggans, and Mrs. Margrete Paulsrud, who remains as a part time librarian.

The year 1959 was important in the growth of the library. Before this it had been supported chiefly by general community funds, but that year a one mill tax was voted. While the possibility of a new library was being considered, Gilbert Swanson volunteered to give two residential lots for it at the present site at 21 East Dickson Street if the board would agree to name the library for his wife's mother, Mrs. Roberta Fulbright, and for his wife, also named Roberta.

Webb Williams, chairman, with other members of the board, promptly agreed to this proposition, and plans for the new building went forward. Bonds to finance it were sold November 28, 1959, and Warren Seagraves was chosen as architect.

The new building was dedicated on June 4, 1962, Senator J. William Fulbright spoke briefly, and the principal address was given by Judge E. B. Meriwether, a longtime professor of Law at the University, and a speaker on many other historic occasions. The audience included people from several states and foregn countries.

A great deal could be written about this new building, and certainly any description should include the Arkansas Room—the archivist of great past events of the State and of the city, and a pleasant reminder of lesser things worthy of remembrance.

Having signed in, a reader may sit at a simply fashioned desk with a memorial plaque to Miss Lila Rollston and inspect a very varied collection of books—including, of course, many fat, old volumes of history. Among smaller items some senior citizens might note their grade school text, *Makers of Arkansas History*, by John H. Reynolds. Like Walt Whitman, Dr. Reynolds loved pioneers, and devoted a good deal of space to such firsts as Henri de Tonti of the Iron Hand, founder of Arkansas Post, William E. Woodruff, the state's first editor, and Benjamin Johnson, Arkansas's leading pioneer jurist.

There are several volumes by Charles J. Finger, the transplanted Englishman who lived on a farm near Fayetteville while writing these books. And in lighter vein there are volumes of folklore and stories such as *The Arkansas Bear* by Albert Bigelow Paine, who presumably fell under the influence of Uncle Remus before fashioning his own lively tales of rabbits, crows, 'coons, and other animals.

This small room that holds a great deal of history is an ideal place to take a look back. And certainly the thoroughly modern building, with the City library facing the street and with Mrs. Grace Keith in charge, and with the county library on the floor below, where Mrs. Hazel Deal is head librarian, not only serves the present age but looks well to the future.

METROPOLITAN EXPEDITER

Mr. MONDALE. Mr. President, the Committee on Appropriations should be congratulated for its fine job in considering the independent offices and Department of Housing and Urban Development appropriations for fiscal 1968. The result of the hearings and bill deliberations is a bill that recognizes the needs of urban America and a bill that reaffirms the intention of Congress to carry out the advances in urban legislation that were made in the past few years. Rent supplements and model cities are two of the most important programs in the statutes. I was most pleased to see that the committee granted a full restoration to the rent supplements program and restored $300,000,000 to the model cities program. This is definite refutation to those who have claimed the 90th Congress would undo what was achieved in the 89th.

I am especially delighted to see the metropolitan expediter program continued on an experimental basis. This program could be one of the most important passed in the last Congress. It provides for a Federal representative to reside in a metropolitan community and assist the local communities identify their problems, plan to solve them, and "expedite" the applications for Federal aid. Mr. President, the expediter is not a Federal czar; rather, he is a member of the local community. He is a person who can provide the needed technical assistance to the localities as they try to wade through the maze of Federal programs and the redtape, bureaucratic guidelines, and regulations associated with these programs.

The program was tried on an experimental basis in four areas last year: Minneapolis-St. Paul, Providence, R. I., Allentown-Bethlehem, Pa., and St. Louis, Mo. All indications were that the program was an overwhelming success in these areas. I can speak for the program in the Twin Cities by saying that it was supported by the two big cities and by the smaller, suburban communities.

This is a program that is needed if we are to guarantee that our Federal money is used in an efficient, effective way. It is of special importance to the smaller city in the metropolitan area that cannot afford a full-time staff member to deal with urban programs and negotiate for grants. Likewise, the program reduces the timelag between grant application and grant approval and assures that the needed funds are obtained when they are needed.

Again, Mr. President, I reiterate my pleasure in seeing this program restored on a small, experimental basis. The funds included should provide for the 10 to 15 expediters, and I would assume that the cities that were experimenting with this program will be allowed first chance at these funds. Likewise, I am pleased to see the intent of the 1966 language restated in the committee report: that the request and approval of local officials is a prerequisite for the appointment of an expediter.

The first battle for the expediters is over, but there are two more to be won, the one on the floor of the Senate and then the one in the conference committee. I hope that the program has been explained sufficiently to alleviate the fears of some House Members and that the expediter can be continued on this experimental basis.

CLARK WILSON RETURNS TO UTAH

Mr. BENNETT. Mr. President, to those of us who have been especially concerned with the problems of the domestic lead-zinc industry, the Lead-Zinc Producers Committee and Clark L. Wilson have been synonymous. It was with real regret, therefore, that I learned that Clark Wilson was resigning as chairman of the Lead-Zinc Committee. My regret was tempered by the announcement that he would be returning to Utah as resident manager of a Western Hemisphere corporate mining research department being formed by the Anaconda Co. which will be headquartered in Salt Lake City.

Mr. Wilson was born in Cripple Creek, Colo., but grew up in Salt Lake City and was graduated from the University of Utah with a B.S. degree in geological engineering. He received his master's degree in geology from the University of Arizona and was awarded a professional degree of geological engineering by the University of Utah in recognition of his service to the mining profession and industry.

For the past 7 years he has served as chairman of the Lead-Zinc Producers Committee, which was organized in 1957 by private industry, as the Emergency Lead-Zinc Committee, to promote a sound and stable domestic lead-zinc mining and smelting industry. It represents a majority of the domestic lead and zinc mining operations and smelting industries in 20 States which reach from the east to the west coasts.

As chairman, Clark Wilson has worked tirelessly to protect the domestic industry from a repetition of the intolerable conditions caused by excessive imports in 1957 and 1958. Since the executive department has failed to present a policy to encourage on a long-range basis the continued search for, and production of, domestic lead and zinc, a simplified and liberalized legislative proposal was prepared and recommended to Congress by the industry. I had the honor to cosponsor, with 27 of my colleagues, this "minerals policy," proposed to adjust with current and future business conditions in the lead-zinc industry. Similar bills were introduced by 34 House Members.

S. 289 provides for flexible quota legislation with a 5-year term. During this period, if domestic producers' metal stocks reach levels considered excessive, as defined in the bill, quotas on either lead or zinc ores and metal would become effective for a 3-year period. The quotas would be canceled if stocks were reduced below normal levels and additional imports were needed. A minimum import quota would be guaranteed. The plan is simple, fair to producer, consumer, and importer alike, and would go into effect only when it is necessary to stabilize the supply consumption ratio at proper levels.

The Committee on Interior and Insular Affairs reported favorably on the bill and it is now pending before the Committee on Finance. I am most hopeful we can get early and favorable action because of the mounting concern that without this legislation the domestic industry may soon be in serious trouble.

If S. 289 does become law, a great deal of the credit should go to Clark Wilson. With his broad knowledge of the factors affecting foreign and domestic metal markets and his experience in the lead-zinc industry, he has been a most effective advocate.

We will miss his advice and counsel on lead-zinc problems here in Washington, but we wish him Godspeed and welcome back to Utah.

SENATOR YARBOROUGH ON VIETNAM

Mr. FULBRIGHT. Mr. President, my attention was recently invited to an editorial in the Texas Hays County Citizen of August 24, 1967. The editorial comments favorably on recent remarks which the distinguished Senator from Texas [Mr. YARBOROUGH] made on the subject of Vietnam. Senator YARBOROUGH has long been identified with important progressive and humane legislation in this body.

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

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

YARBOROUGH AND VIETNAM

U.S. Senator Ralph Yarborough made his first Senate speech on the Viet-Nam war last week. The senior Texas senator stated that he feared that the Johnson administration was contemplating an invasion of North Viet-Nam and warned that such a move would force him to modify his generally favorable position on the war. Restating Gen. Douglas MacArthur's warning against involvement in an Asian war, Yarborough argued that invasion of the North would be "a vastly different matter than our presence in South Viet-Nam as the invited guest of the recognized government, where numerous routes to eventual withdrawal are possible." Denying that such a step would bring a quick end to the war, he added that a land invasion of the North would be "an utterly indefensible step," and "escalation gone wild." If the "military planners wish to make their case to Congress," Yarborough said, "let them come forward seeking that declaration of war in the proper fashion, before they invade that other country."

Senator Yarborough's remarks were temperate, but clearly show that he is deeply concerned over the Johnson administration's handling of the Viet-Nam imbroglio. Yarborough has never styled himself an expert on foreign policy which probably accounts for his silence heretofore on the war. His recent speech must have come only after much consideration and should be taken into account by the administration when it next contemplates raising the ante in Viet-Nam.

Yarborough's speech comes at a time when the Johnson administration has undertaken a dangerous escalation of the war. Last week U.S. planes began bombing within 10 miles of the Chinese border, increasing the chances of prompting Chinese intervention. The move brought renewed criticism from Senate opponents of the war, who were told by Undersecretary of State Katzenbach that the new series of bombing raids would not pro-

voke a military response from China and that there was little chance that U.S. planes would violate Chinese air space. Tuesday, however, the Pentagon stated that two U.S. Navy planes had been lost over Southern China while on a bombing raid over North Vietnam. This brought to seven the number of U.S. planes brought down in Chinese territory.

President Johnson has consistently refused to listen thoughtfully to criticism of his Viet-Nam policy, but we hope that eventually, as more opposition develops inside the government and out, the President will be forced to reconsider just how "committed" the U.S. should be to an undemocratic military junta in South Viet-Nam. We hope that Senator Yarborough will increase his public statements on Viet-Nam. His opposition to a widening of the war is a refreshing change from the "hawkish" bombrattling of the junior Texas Senator, John Tower. We believe that Yarborough's conception of the future of American democracy is much more astute than Tower's and we welcome his reasoned voice in the sensitive field of foreign policy.

AMBASSADOR EDWARD CLARK RECOUNTS BENEFITS OF AMERICAN INVESTMENT IN AUSTRALIA TO AUSTRALIANS

Mr. YARBOROUGH. Mr. President, our distinguished Ambassador to Australia, the Honorable Edward Clark, has frequently and eloquently expressed his great admiration for the people of the land in which he now resides. Ambassador Clark's "love affair with Australia" as he is wont to call it, infuses his comments about his adopted country with such enthusiasm and vibrancy that all who listen fall in love with Australia too. I know from my own most enjoyable visit to the land "down under," how valid the Ambassador's praises are.

The warmth and affection of the Australians for Americans and the provocative business opportunities in the rapidly developing economy of Australia make it a ripe area for American investment. Ambassador Clark is aptly qualified to discuss, as he frequently does, the practical reasons for investing in the expanding economy of Australia. His combination of business, banking and legal experience with his affectionate insight into the character of the land and people make the Ambassador a convincing and enthusiastic advocate of American-Australian economic cooperation. It is of great interest to all that we carefully investigate the mutual benefits that can accrue from closer business ties to our faithful ally, Australia.

Mr. President, I ask unanimous consent that the speech by Ambassador Clark, entitled "American Investment in Australia," given on May 14, 1967, before the Young Country Party Convention at Caloundra, Queensland, be printed in the RECORD.

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

AMERICAN INVESTMENT IN AUSTRALIA

(Address of Edward Clark, American Ambassador to Young Country Party Convention at Caloundra, Queensland, May 14, 1967)

Mr. Chairman, Members of the Young Country Party, distinguished guests: It is a special pleasure for me to address you here this afternoon. I have spoken to many gatherings in the state capitals of Australia, and have visited many stations and small towns throughout this wonderful country. However, this is the first occasion on which I have spoken as the guest of the Young Country Party. It is a new and very gratifying experience for me. The fact is, I lay claim to being a countryman myself.

I grew up in the small country town of San Augustine, Texas, with about 2,500 people, no bigger today than when I was a boy. I first practiced law in that little town. Later on, my mature life has been spent in Austin, Texas, which is only a small city compared to New York or Sydney or Brisbane. Over the years, of course, I have come to know and respect many men in the great cities of America. Here in Australia I have warmly appreciated the hospitality of many friends in Sydney and Melbourne.

Nevertheless, I still feel like a country boy at heart. I think that we country people must always keep a shrewd lookout at what the fine folk from the big cities are doing. We just need to keep an eye on what the big-city gentlemen are up to. We must form our own opinions, and reach our own conclusions.

Now you may well feel that this caution applies to my subject this afternoon, American Investment in Australia. You may well feel that Australian country people, and indeed all Australians, should take a very hard-headed look at the flow of investment money into Australia from the great cities and enterprises of America. I entirely agree with you. You should look at this important matter very closely. I hope and believe that you will end by agreeing with me, that on balance American investment benefits Australians just as much, and maybe even more, than it benefits Americans.

A few basic facts may help us put the whole subject in perspective. The most notable fact is the relative increase in North American investment in relation to other foreign investment. Incidentally, the figures include Canada with the United States, but it is nearly all Amercian money, one way or another. In the first post war decade, North American investment was only about 42 per cent of British investment. Now, however, American investment seems to be running slightly higher than British. This trend may develop further if Britain enters the Common Market.

Of course, the accumulated total of British investment is still far greater than American. In such important fields as banking, insurance, and urban real estate, there is much British investment and scarcely any American. Overall, since World War II, America has furnished about one-third of all foreign investment in Australia, and Britain nearly 55 per cent.

A question often asked is, "What proportion of Australian business is in some way controlled by American interests right now?" This is a very complicated technical question; but based on official Australian figures, the answer seems to be about 8 per cent. More precisely, it seems that Americans own about 8 per cent of all Australian company assets. This is about one-third of the overall 24 per cent foreign ownership of Australian company assets.

It is important to note that over the last ten years the total proportion of foreign ownership of Australian company assets does not appear to have increased, contrary to certain dire predictions of the mid-fifties. The absolute amount of foreign investment has substantially increased, and the American share of this increase has grown relative to that of other nations. The Australian economy as a whole, however, has grown roughly in proportion to the growth of foreign investment. As compared to ten years ago, foreigners control the same proportionate slice of a much bigger pie.

On this matter of foreign control, and particularly American control, we must always remember that the practical day-to-day management of American-owned Australian company assets is very largely in the hands of Australian managers. I will return to this point later.

Furthermore, while we are on the subject of control, let us remember that it cuts both ways. If a million American dollars of equity investment comes to Australia, this million dollars will certainly influence the property and work of various Australians. It is equally true, however, that the million American dollars become subject to the final control of the Australian Government. In the last analysis, it is Australia which controls American investment in Australia.

I believe, of course, that you have exercised your controlling authority very wisely, and will continue to do so. Nevertheless, all American investors here know perfectly well who has the last word. We have had some painful experience in certain other countries, where the local government has not been so fair-minded as in Australia. You treat us fair and square, and we know it, and we appreciate it.

Now I would like to turn to the controversial question of the profits made by American-controlled companies. As you know, some of these companies did very well in the 1950's. I want to say quite frankly that I am a businessman myself, and I believe in profits. Profits are what make the whole show go. Of course, the reason American investors come to Australia, just like everywhere else, is that in the long run they expect to make a profit, and hope it will be a very good profit.

An important fact, however, is that in the last six years the rate of return on American investment in Australia has fallen very sharply, from a handsome 16 per cent in the fifties to a more pedestrian 8 per cent in the mid-sixties. In passing, we should remember that most of the American profits in the 16 per cent era were plowed back into the Australian economy, and not taken out of the country.

It is interesting to consider the reasons why the rate of return for American investors has fallen to half in the last five years. Part of the reason is that the Australian economy has become more competitive. Stricter control of inflation by the Australian Government has limited purely paper profits as measured in Australian currency, and indirectly has stimulated greater efficiency throughout the economy. Australian business as a whole, including the foreign sector, has had to pull its socks up a bit. The abandonment of import licensing has had the same effect, though increased tariffs may have cut the other way.

Perhaps the most important reason for the falling return on American investment, however, is the great increase in new American commitments. The new investors are not looking for a fast buck. They often get no profit at all in the very first years. They are here for the long pull.

In this regard, it is worth considering General Motors-Holden, the largest single American investment in Australia, which got so much unfavorable publicity for its relatively high profits in the fifties. These profits came some thirty years after General Motors had established its first plant in Australia in 1926. GM–H passed through a period during the world depression, when there were no profits at all, only red ink. Some people recommended closing down the business altogether. In fact, GM–H perservered, and became by far the greatest single factor in establishing the Australian motor industry, with all its direct and indirect benefits to the Australian economy.

It is these direct and indirect advantages to Australia from American investment that

I would like to point out. When an important new factory is built largely by American capital, or in the case of cars, a major industry dramatically developed; there is a whole range of benefits to Australia; new job opportunities for many Australians, new tax revenues, stimulation of supporting industries and services, and often new export possibilities.

Of particular significance is the skill and know-how which we can bring. It is no secret that our big companies in America are spending fabulous sums on research, and the results are transmitted to American subsidiaries in Australia. We have also developed a great pool of trained personnel. We have learned how to do a great many things rapidly and efficiently. Here in Australia we can get lots of things done quickly, which Australians, by themselves, would have to learn the hard way.

Furthermore, Australians can learn from our people in the operation. It is worth noting that most American-owned enterprises try as much as possible to keep American personnel in Australia to a minimum. A most striking example is right here in the state of Queensland. I refer to the Mount Isa Mines. As you know this operation was in serious straits when American capital first arrived in 1930. In fact, the American investors received no dividends for the first 17 years, until 1947. Right now there is a 54 per cent American interest, yet not one single American is permanently employed at Mount Isa. Everyone from the Managing Director on down is an Australian.

Mention of Mount Isa reminds me of the great new discoveries of mineral resources all over Australia: bauxite in Queensland, oil and gas off the shores of Victoria and elsewhere, and above all the immense iron reserves in the Hammersley area. The Australian economy just hasn't reached the point where all this can be developed solely by Australian capital. The iron ore would still be under the ground without foreign investment.

Since I am addressing the Young Country Party, I certainly must say a word about American agricultural investment. I noted with interest a statement made by Dr. E. M. Hulton of the CSIRO, at the Australian Institute of Agricultural Science in Melbourne, on March 20 of this year, regarding American agricultural investment in the Northern Territory. He said it . . . "will make a most significant contribution to northern development, and will put us at least ten years ahead."

A few months ago I visited some large American properties in the Esperance area of Western Australia. The apparently desolate land in that area needs only trace elements for productive use. The basic scientific discoveries were made by the local Australian Agricultural Research Station. However, large amounts of capital were needed to get things going in a practical way on a large scale. The first major American investor didn't have enough to stick it out, and the first scheme collapsed. Now, however, splendid progress has been made by the Chase Bank of New York, Mr. Art Linkletter, and other major American investors.

The results of their experiments, not all uniformly successful by any means, have been made known to local Australian investors, who would otherwise have had to learn the hard way, and could not have afforded it. I remember the vivid view from the airplane. Large emerald green pastures ended on ruler straight boundary lines right up against gray, apparently sterile, scrub land. The infusion of large American investment has made a big difference out there, and surely this is good for all Australia.

Since many of you here belong to a younger generation, I would like to recommend to your consideration a book published last year by a young New Zealand economist, Mr. Donald Brash, working at the Australian National University in Canberra. It is called "American Investment in Australian Industry." In his preface the author says quite frankly that he began his research project "very conscious of the disadvantages of foreign investment." He states that in an earlier writing he had warned New Zealand against too much reliance on foreign capital.

He then states, however, that . . . "as the survey progressed I became increasingly conscious of the benefits Australia derives from foreign investments. . . . The costs appear small when set beside the gains . . ." and ". . . it is certain that from the economic point of view U.S. direct investment has made a major contribution to Australian industrial development . . ." At the end of his study, this young economist, who started out predisposed against foreign investment, concludes that "the most important question to be asked is not 'Does foreign investment benefit Australia?' but 'Is Australia maximizing the benefits from foreign investment?' "

In my opinion the facts bear out those conclusions. I think Australia is a magnificent place for American investment, and I have said so far and wide in the United States. The Australian Government's encouragement of American investment has produced splendid results for both Australians and Americans. Your Government gives us a fair go, and I don't think any young Australian in this room will ever regret it.

A NEW HERO FROM VIETNAM

Mr. TOWER. Mr. President, several weeks ago the San Antonio Sunday Light published a front page article about a new breed of hero newly returned from Vietnam.

The hero is Nemo, a German Shepherd whose fighting ability saved the life of his handler.

I ask that Ron White's article on Nemo be printed in the RECORD.

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

NEMO'S A HERO—VIET VETERAN SAYS ACTION WAS "RUFF!"

(By Ron White)

The returning Vietnam hero climbed down the ramp of the C124 Globemaster that touched down on Kelly Air Force Base's runway Saturday.

How was it in Vietnam, the battle-scarred veteran was asked.

"Ruff," he growled.

For Nemo, a German Shepherd credited with saving his handler's life while the dog was suffering from a serious head wound, Vietnam had indeed been rough.

But his fighting days are now over, and he has come home.

CANINE HERO

Waiting to honor Nemo as the first canine hero of Vietnam were Capt. Robert M. Sullivan, officer in charge of sentry dog training at Lackland AFB, several Air Force veterinarians and other officers.

A sleek 4-year-old when he first arrived in Vietnam January, 1966, Nemo Saturday wore the scars that proved he had done his share of the fighting during his year in Southeast Asia.

His right eye is missing and a scar runs from under his right eye to his mouth.

The scars are a result of a wound Nemo suffered when he and his handler, Airman 1.C. Robert A. Throneburg, were dispatched in December, 1966, to ferret out Viet Cong infiltrators hiding inside the boundaries of Tan Son Nhut Air Base near Saigon.

FIND VIET CONG

In the early morning darkness, Nemo led Throneburg to four Viet Cong hiding in a cemetery about a quarter of a mile from the runways.

"Watch him," Throneburg commanded Nemo.

Then the order: "Get him."

Nemo and Throneburg lunged into the enemy soldiers' hiding place and, before a bullet felled Nemo, the airman and his dog, had killed two of the infiltrators.

Other security guards then finished off the other two Viet Cong.

SAVED LIFE

Nemo was credited with saving the life of Throneburg, now recuperating from his wound, and with helping to halt the infiltration.

The sentry dog was treated by the base veterinarian at Tan Son Nhut. The veterinarian performed skin grafts on his face and a tracheotomy to help him breathe, and had to remove the dog's eye.

Saturday, however, Nemo pranced friskily as his new handler, Airman 2.C. Melvin W. Bryant, led him from the plane to where veterinarians were waiting to give him the last of several examinations Nemo has received at every landing on his trip from Vietnam.

Having served his time in hell, Nemo is now back at Lackland, where he first received sentry dog training, to "retire with honor."

PERMANENT KENNEL

Retirement for an honored sentry dog means a permanent kennel, immaculate and newly painted, near the veterinary facility. Over the kennel will hang a sign with Nemo's name, serial number and details of his exploit.

Sullivan believes that by staying at Lackland, Nemo will continue to help other sentry dogs and their handlers.

"I think our seeing him around here—feeling the tradition he represents—will impress these students more than anything else we can tell them," Sullivan said.

"I have to keep from getting involved with the individual dogs in this program, but I can't help feeling a little emotional about this dog. He shows how really valuable a dog is to his handler in staying alive."

NASSER

Mr. YOUNG of Ohio. Mr. President, the Egyptian dictator, Nasser, conceives himself as leader of the Arab world, a 20th century Saladin. Yet, in the recent war, the Israelis wrapped him up in 4 days.

This petty tyrant ordered the use of poison gas against other Arabs in the civil war in Yemen, in which Egypt has been involved for more than 4 years. The International Red Cross recently reported that hundreds of Arab civilians in Yemen were killed by poison gas bombs dropped from Egyptian airplanes. Our State Department condemned this inhumane action as contrary to international law and simple human decency.

Mr. President, Nasser's unbridled ambition has brought his country to the brink of bankruptcy and the world to the brink of total war. This sandlot Hitler has used poison gas, something that even Hitler never did. Even more ironic, he has been using this horrible weapon against his own people. This hypocrite sheds crocodile tears over Arab refugees, whom he will not lift a finger to help, and at the same time unleashes deadly gases on Yemeni villagers.

U.S. RECORD OF LEADERSHIP IN HUMAN RIGHTS HAS BEEN SULLIED BY SENATE INACTION ON HUMAN RIGHTS CONVENTIONS

Mr. PROXMIRE. Mr. President, the birth of the United States was announced by a profound human rights document—the Declaration of Independence.

It was effective U.S. leadership at the 1945 San Francisco Conference which led directly to the inclusion in the U.N. Charter of a strong endorsement of international promotion of human rights.

The U.S. delegation pushed hard for the human rights section in the United Nations Charter, because our delegates wisely recognized that unchecked domestic oppression too frequently grows into unprovoked foreign aggression, as demonstrated by the Axis Powers.

Our U.S. delegates were also vitally aware that the denial of human rights and human dignity creates a prime source of potential conflict and a threat to international peace.

Twenty-two years ago, the United States led in the worldwide struggle for human rights. But today, the United States stands alone with the Union of South Africa among charter members of the United Nations which have failed to ratify a single human rights convention.

I believe that Americans overwhelmingly support international standards of human dignity. We rightly cherish our own freedoms as Americans, but we agree with the ageless wisdom of the Great Emancipator when he said:

> As I would not be a slave, so I would not be a master.

Americans want for other people those freedoms which have made America both the envy and the example of so many nations.

But cynical voices are raised in objection to these conventions. They ask: What can they accomplish and why do we need them when our own laws already guarantee these rights?

Mr. President, my answer to these critics is this: The United States has as its stated foreign policy objective: the promotion of peace and freedom. Human rights and peace are intimately related and historically interdependent. Where human rights are secure, peace is attendant. When the human rights of any people are threatened, peace itself is in jeopardy.

Perhaps the human rights conventions do not have a binding enforcement power behind them. Violators will not be sentenced to any international prison. But these conventions go a long way toward establishing a universal consensus on human rights and human dignity. And in so doing they carry with them the considerable influence of moral persuasion.

Maybe that sounds somewhat idealistic and optimistic to some but I, for one, subscribe to Woodrow Wilson's classic answer to the charge of idealism:

> Sometimes people call me an idealist. Well, that is the way I know I am an American. America is the only idealistic nation in the world.

I once again urge the Senate to give its advice and consent to the Human Rights Conventions on Forced Labor, Freedom of Association, Genocide, Political Rights of Women, and Slavery.

PRIVATE PHILANTHROPIC ACTIVITY

Mr. TOWER. Mr. President, many thousands of people in the United States have the means as well as the desire to engage in philanthropic activity. In a very real way these men and women possessed with charitable ideals are overlooked—or perhaps I should say their works are overlooked—in our public searching for solutions to social problems. Too seldom is it remembered that men of wealth have historically shouldered responsibility for laudable social goals such as education and for social problems such as aleviation of the difficulties of society's unfortunates, and that they continue today their considerable efforts. Such a man is Stewart Morris of Houston.

The Houston Chronicle, in a recent issue, published a short biography of Stewart Morris, one of that city's most distinguished and valued leaders. I am pleased to count him as a valued friend and he is indeed worthy of the fine write-up which appeared in the Chronicle.

As in Stewart Morris' case, private charity is personal and, I believe, dollar for dollar, more effective than impersonal welfare programs. Such tax financed programs are not charitable since there is no relationship between the donor and the recipient—no hope for the recipient to live up to. Perhaps personal involvement and the establishment of personal relationships is the answer to our grave contemporary problems.

I ask that the Chronicle's article be printed in the RECORD.

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

HELPING MANKIND MORE IMPORTANT THAN RICHES TO STEWART MORRIS

(By Zarko Franks)

For the rich, the cross of responsibility to mankind is perhaps the heaviest cross of all.

A rich man named Stewart Morris said it in a rare mood of self-analysis.

His life, obviously shaped by the influence of a father who sought to aid the unfortunate, is aimed at making a contribution to his fellow man.

"Any fool can make a living," says Morris, an attorney and executive of a title guaranty firm, "But each man must ask himself: 'What contribution can I make to the society in which I live?' "

As chairman of the board of Houston Baptist College in Sharpstown, Morris says he believes he is fulfilling a need in this community.

The need, as he sees it, is an institution dedicated to the development of character and to the perpetuation of Christian ideals.

Morris, intense and righteous, pulls no punches in defining the type of student or faculty the college desires.

"We believe in academic freedom, yes," he says, "But within the framework of our precepts."

The barefoot long-hair, the symbol of today's so-called hippie, bleachie or beachie, need not apply.

"The unwashed we don't want," he says.

He described Houston Baptist College as a "Christian liberal arts college."

Its graduates, he hopes, "will be so brainwashed in Christian ideals and our American heritage" that they will carry their way of life and thinking "into our public schools as teachers and into business careers."

A Houston banker, John Whitmore, president of the Texas National Bank of Commerce, describes Morris as an "imaginative businessman and a devoted churchman dedicated to his religion."

Morris was the financial brains behind acquisition of the Baptist college.

He negotiated a $760,000 loan from Rice University to buy 390 acres. Later, 200 acres were subdivided and sold for enough to pay off the loan.

The role of men such as Rex Baker Sr., Jake Kamin and Donald McGregor in founding the college cannot be minimized but Morris is seen as the major force behind the establishment of the institution.

"We borrowed the money from Rice," he says, "to give us sanction from a great university in our aim to establish a first class liberal arts college."

He admits that "we have a high-button-shoe philosophy" at Houston Baptist, "but we don't believe the teaching of a Christian way of life can ever become old-fashioned."

A friend said of Morris:

"He's a non-drinking Baptist. He has his strait-laced convictions and lives by them. You have to admire him for it."

Strait-laced he may be, but Morris has the grace to tell a Baptist story and laugh at it—and at himself. Such grace has been the savior of many a man.

He's the son of the late W. C. and Willie Stewart Morris. His mother was a sister of Maco Stewart who established Stewart Title Co., in 1896.

His father was one of the founders of the Star of Hope Mission, a sanctuary for society's derelicts, the skid row habitues.

For 30 years W. C. Morris was president of the missions. Stewart, treading his father's footsteps, is a trustee of the mission.

His father also was one of the founders of Goodwill Industries, an organization whose aim is to aid the physically handicapped to become productive.

The son, molded in the father's image, believes the ultimate aim of life is more than storing up treasures in this world.

No one will dispute that Stewart Morris, a pale-eyed man with thinning blond hair, has succeeded in achieving what the world knows as success.

He bears these credentials:

President of Stewart Title Co; president of Stewart Trust Co., president of Admiral Investment Co., Inc.; partner in the law firm of Morris, Termini, Harris, McCanne & Lacas; member of the River Oaks Country Club; director of the Houston Bank & Trust Co. and the Nassau National Bank and a director of the Nassau Bay Telephone Co.

Through his companies, financing is arranged for home construction in at least 300 cities over a 10-state region extending from Florida to California.

LAND DEVELOPMENT

Land development, a banker said of him, is Morris's long suit.

"He is as well informed in the area of land development as any man I know," said Whitmore of Texas National Bank of Commerce.

Stewart Title Co. was primarily a Texas firm until Stewart Morris with his brother Carloss and Maco Stewart III, a grandson of the firm's founder, joined hands and began the expansion move to make the firm a giant in its field.

Stewart Morris's love for land and its potential is reflected in his acquisition of 61 acres of an island bounded by the waters of the Guadalupe and a dam in McQueeney between Seguin and New Braunfels.

He developed the acreage reserving a choice site for his own summer home.

LBJ COUNTRY

He bought 1,000 acres in Blanco, south of Johnson City, where the President lived as a boy.

Keen business acumen again is reflected in his reason for buying the acreage.

"Texas land values will continue to increase. This is my hedge against inflation."

Morris and his wife, Joella, and their three children, Carlotta, 19, Stewart Jr., 18, and Caralisa, 14, live at 5 E. Rivercrest off Westheimer.

His working schedule at offices in the Guaranty Bldg., Caroline and Rusk, is 8 a.m. until 8 p.m., five days a week, and "looking at land" on Saturdays.

FLIES OWN PLANE

He flies his own twin engine Aero-Commander about 400 hours a year to keep tab on district offices of the far-flung Stewart Title Co. empire.

The business empire is sufficiently diversified to include the 250-room Southland Hotel in Dallas and a housing development in Nassau Bay.

Stewart Morris has a hobby: He collects horse-drawn carriages. But, outside his business, his consuming interest is Houston Baptist College.

"Education is an early maturity," he says, "Our aim at the college is to expose our students to the refinements of gracious living, good architecture, good furniture, and the over-riding ingredient of Christian thinking."

IT'S A CRIME TO MAKE CRIME A POLITICAL ISSUE

Mr. MOSS. Mr. President, I am distressed over recent political sniping about crime, for crime knows no politics. Meaningful discussions are a healthy thing, but finger pointing is not constructive.

As the days roll by, more and more of the CONGRESSIONAL RECORD is devoted to statement, speeches, and editorials on crime. All responsible Americans deplore the crime situation in our Nation. Our daily mail reflects ever-increasing concern. All of this will serve a useful purpose, if, and only if, it spurs the Congress into an all-out bipartisan investigation of the causes of crime. Fragmented, piecemeal approaches to the problem will not suffice. To legislate intelligently against crime, Congress must coordinate all available information and its own efforts. My bill, Senate Joint Resolution 94, to create a Joint Committee To Investigate Crime is cosponsored by 20 Senators from both sides of the aisle. A companion resolution was introduced by Congressman PEPPER on the House side and it too has bipartisan support.

The joint committee we propose would investigate all aspects of crime on a continuing long-range basis and provide the Congress with the badly needed coordination I speak of.

We should not become preoccupied with the experts in irresponsibility such as Rap Brown—he, and those like him, should be sternly dealt with by the law. We should not allow crime to become a political matter. It deserves thoughtful attention of all of us. We should not look at organized crime only or separately; we should not look at riots only or separately; we should not look at crime on the streets only or separately.

If we are to effectively get at this national problem, what we should do is look at the whole picture on a bipartisan basis.

Mr. President, Senate Joint Resolution 94 is the vehicle to achieve such a goal. I urge immediate favorable consideration of this bill.

I ask unanimous consent to have printed in the RECORD two editorials, one from the Washington Post of August 30, 1967, the second from the church news section of the Deseret News of August 26, 1967.

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

[From the Washington Post, Aug. 30, 1967]

CRIME AND LETHARGY

A Republican effort to stir Congress into effective action on crime could be a significant national service. But the reproach to the Administration issued on Monday by a group of moderate GOP members of the House—that it has allowed the "war on organized crime to grind to a virtual standstill"—misses the mark on two counts.

The accusation aims, to begin with, only at the war on "organized crime"—that is to say, racketeering and the like—at a time when the country is justly aroused and alarmed about the soaring rates of criminal violence in the streets of all its great cities. The most terryfying threat to law and order today comes from sporadic, unorganized crime—murder, rape, robbery and assault.

The GOP thrust misses its mark, in the second place, because it focuses on a relatively trivial, peripheral aspect of the war on crime. It refers dispargingly to the Justice Department's commendable restrictions on bugging and wiretapping as devices for catching criminals. These devices no doubt have some utility in detecting organized crime; they are totally irrelevant, however, when it comes to snaring rapists, robbers, thugs and footpads who do not plot their offenses by telephone or in office conferences.

The GOP emphasis on bugging and tapping suggests, moreover, an indifference to rights of privacy which are basic to the well-being of Americans. In putting restraints on electronic surveillance, the President and the Attorney General acted to protect the sanctity of the American home and to promote freedom of communication among free citizens. Only the very shortsighted would be willing to jettison this value in the pursuit of safety.

When all this has been said, however, the fact remains that the war on crime has stalled dismayingly. More than two years have gone by since President Johnson, recognizing the urgency of the Nation's crime problem, established a National Crime Commission to recommend the strategy of a concerted attack on crime. Six months ago the Commission submitted a superb report—"The Challenge of Crime in a Free Society"—searching in its analysis of the problem, constructive and concrete in the remedies it proposed. In February, the President sent his "Safe Streets and Crime Control Act" to Congress. The House early this month, passed a badly bowdlerized version of it; the Senate pondered. Crime rates continue to soar, and the country is left with a sense of handwringing helplessness about it.

The crime problem in America is not going to be solved by piddling recruitment measures or by concealed listening devices. It can be solved only by a dramatic strengthening and reorganization of police departments, outmoded in training and equipment, and by a powerful, coordinated attack on the slum conditions that breed vice and crime. There seems to be a notion in Congress these days that it would somehow be rewarding rioters to eradicate the cause of rioting. Rioting and urban violence grow out of the same malevolent roots—poverty, wretchedness, hopelessness, squalor and unemployment. Nothing more urgently challenges America today than the need to hack at these roots realistically and effectively.

[From the Deseret News, Aug. 26, 1967]

THE RIGHTS OF NONCRIMINALS

Every person has the right to life, liberty and the pursuit of happiness.

This includes the victims of criminals, as well as the criminals. It includes an assurance that our courts will be as fair to law-abiding citizens as they are to those who break the law. It provides that if any preferred treatment is to be given, it should favor the good citizens rather than the parasites on society.

This was the substance of the thinking of a group of women in Indianapolis who started an anti-crime crusade in that city which now has reached the proportions of a major movement.

Fifty thousand women there have now organized to fight crime, and part of their objective is to see that judges in the courts deal fairly with the victims of crime.

It started five years ago following the death of a 90-year-old woman killed by a 15-year-old boy who snatched her purse. But there had been numerous previous crimes of a similar nature. Especially purse-grabbings and sex assaults on women walking alone on the streets of the city.

A significant drop in crime has been the result.

The President's Crime Commission, referring to this movement, said.

"The most dramatic example in the country of a citizens' group that has addressed itself forcefully and successfully to the problems of crime and criminal justice is the Anti-Crime Crusade of Indianapolis."

These women give complete support to their local police, who in turn cooperate with the women. Their program includes:

Putting proper lighting on city streets.

Getting school drop-outs back into school.

Providing jobs for boys who need them.

Assisting boys released from penal institutions to adjust properly in society.

And setting up a system of "court watching."

The latter point was considered by the women as one of their most important tasks. At least two of their number sat in on every court case, and reported back to the entire group on the practices and decisions of the courts.

They decided that it is the right of the public to demand efficient, mannerly operation of the courts. And this they achieved.

But education in law observance was also given. With the cooperation of school and police officials, all students in the seventh and eighth grades were provided with special instruction on maintaining the law and the advantages of doing so.

More than 2,000 drop-outs were put back in school without spending tax funds. The streets are now well lighted. Women and girls may walk safely at night. Even the debris around the city has been removed.

But it is brought more and more to the attention of the public that keeping youth in line is first a matter of keeping adults in line.

Statistics of the past several years have shown a sharp increase in the number of young people arrested for serious crimes—murder, robbery, forcible rape, burglary, aggravated assault, larceny of $50 or more and automobile theft.

Those under 18 years of age account for almost half the total arrests reported for these crimes.

In a concentrated effort to control this rash of youthful criminality, innumerable youth serving groups have joined law enforcement and our courts.

These groups, often desperately in need of support, offer the individual a good opportunity to combat crime, since youthful criminality is uniquely suited to preventing and correction.

However, these efforts in behalf of youth can only supplement—never replace—parental concern.

Broken homes, dissolute parents and a tragic absence of guidance typify the backgrounds of many youthful offenders.

The role of the parent is paramount. It is indeed difficult to imagine a more fundamental service to society than imbuing one's children with respect for law and order.

REVIEW OF WAGES, PRICES, AND PRODUCTIVITY

Mr. PROXMIRE. Mr. President, one of the greatest problems the Congress has in formulating its own policy proposals is the lack of adequate and current information. This deficiency, which—in the current jargon—we might label the "information gap," enhances the power of the Executive in initiating legislative proposals and policy changes. As chairman of the Joint Economic Committee, I have been particularly aware of the need for more timely and better data in the economic field, and have attempted to improve the information the Congress receives in this vital area.

To date, the committee has been successful in obtaining agreement from the Bureau of the Budget and the Department of Defense to provide the committee and Congress with more current information. In addition to the annual budget, the Bureau of the Budget has agreed to prepare two additional budget reviews each year for this committee—the first to come at midyear and the second following congressional action on all of the appropriation bills. Director Schultze in testifying before the committee last week presented the first midyear review under this agreement. Although his presentation was disappointing in several aspects—particularly in its lack of revised estimates of defense spending—it was a helpful beginning.

In recognition of the great need for better information about defense expenditures, the committee also initiated a proposal for the regular release of defense information. Subsequently, the Department of Defense agreed to begin regular monthly publication of a new report entitled "Selected Defense Department Indicators." The first issue became available on June 30.

Today, I am pleased to tell you that I have just received a new report from the Bureau of Labor Statistics. This report entitled, "Review of Wages, Prices, and Productivity," is the first in a new series which the Bureau will prepare each quarter for the committee. I would like to summarize the main conclusions of the paper and ask that the full text be included in the record at the end of my remarks.

The Bureau of Labor Statistics reports an unusually large increase in productivity for the second quarter of 1967 of about 2 percent. This gain compares with a slight decline in the first quarter. The report cautions, however, that the quarter's sharp rise in productivity does not represent a major trend change, but rather a delayed reaction to economic adjustment in the first quarter. For the full year, measured from the second quarter of 1966, productivity has advanced only 2.8 percent.

The large productivity rise kept unit labor costs virtually unchanged for the second quarter, but this appears to be only a short-lived respite in an upward trend. Unit labor costs had risen sharply in the first quarter and the past 12 month average of 3.3 percent is about double the postwar average.

This upward cost pattern, however, has not yet put significant pressure on prices. Although price developments in the second quarter were not auspicious—the wholesale price index rose 0.6 percent, turning around a 6-month decline and the consumer price index rise quickened to 0.9 percent—they appeared to come largely from sharp increases in farm and food prices. The slowdown in demand contributed to stability in industrial prices. As in the past—in fact, ever since World War II—service prices continued their relentless rise.

These and other points are explained in detail in the Bureau of Labor Statistics report, which I ask unanimous consent to have printed in the RECORD.

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

REVIEW OF WAGES, PRICES, AND PRODUCTIVITY, SECOND QUARTER 1967

Summary

Real output of the private economy (including government enterprises) advanced 0.5 percent, seasonally adjusted, in the second quarter, after having dropped moderately in the first. Man-hours, on the other hand, fell 1.4 percent in delayed reaction to the earlier slowdown. The net result of these two opposite developments was an unusually large increase in productivity (output per man-hour) of about 2.0 percent, following a slight decline in the first quarter.

The quarter's sharp rise in productivity reflects mainly time lags in economic readjustment, rather than a basic change in trend. For the full year since the second quarter of 1966, output has increased only 1.9 percent, carrying with it a man-hours decline of nearly 1.0 percent and a productivity advance of 2.8 percent. (As is usually the case, output and productivity grew more slowly in the nonfarm area than in the total private sector.)

Hourly labor costs in the private sector rose 2.1 percent during the second quarter, after a slow rise in the first, for an increase of 6.2 percent over the year. Wages and salaries and fringe benefits have been rising somewhat faster in 1967 than in the same period of 1966, reflecting both larger settlements and the effect of the new FLSA standards. These increases have been partially moderated by a slower rise in employer-paid social security taxes, a decline in overtime, and relatively stronger employment gains in low-wage industries.

Since productivity in the second quarter increased almost as much as hourly compensation, unit labor costs were virtually unchanged. They had risen sharply in the first quarter, however, and the 3.3 percent increase over the past twelve months is about double the postwar average.

Prices during the quarter reflected a number of unrelated and partially offsetting forces. The slowdown in demand helped to hold industrial commodity prices steady at wholesale, but prices rose in finished producer goods and consumer nondurables—the sectors most affected by continuing strong demand or rising costs. Current or anticipated changes in the supply of agricultural goods brought farm and food prices down earlier in the year, but the trend reversed sharply in May. Prices in services continued strongly upward, although at a slower pace than a year earlier.

I. PRODUCTIVITY

The sharp rise in output per man-hour contrasted with a slight decline during the previous quarter. (See Table 1a.) It reflected the delayed adjustment of employment and hours to the decline in output. Man-hours had fallen only slightly in the fall and winter and then dropped 1.4 percent in the spring quarter. A decline of about half an hour in average weekly hours accounted for about 1.0 percent; the remainder came from a slight decline in employment.

Wide fluctuations in productivity are not unusual, but the last time such a large increase occurred was the second quarter of 1961—which also followed a drop in real output. Despite the recent increase, the gain in productivity since the second quarter of last year was only 2.8 percent, well below the long-term rate of 3.2 percent.

The increase in productivity was slightly smaller in the nonfarm sector—1.4 percent between the first and second quarters of 1967, and 2.2 percent over the year. (See Table 1b.) The postwar increase has averaged 2.6 percent.

Most of the adjustment process took place in manufacturing, where severe pressures on capacity during most of last year had inhibited productivity growth. (See Table 1c.) According to the FRB and Census quarterly measures, output declined between 0.7 and 1.0 percent during the second quarter of 1967, after even sharper declines in the first quarter. Man-hours dropped less than output during the first quarter—resulting in a decline in productivity—but more in the second quarter—yielding a productivity increase ranging between 0.7 and 0.9 percent. Over the year, productivity gains were between 1.0 and 1.4 percent—far under the long-term average.

The cutback in production and man-hours in manufacturing reduced some of the pressures on capacity which have characterized the last few years. Manufacturing plants were operating at 84.7 percent of capacity during the second quarter, compared to 87.0 percent for the first quarter of 1967 and 90.9 percent for the second quarter of 1966.

II. WAGES, SALARIES, AND BENEFITS

This section emphasizes changes over the half year rather than the quarter. In general, the shorter the period over which comparisons are made, the more do the differences reflect the specific industries which bargain rather than changes in the general economic climate affecting wage decisions.

Hourly expenditures on wages and benefits for employees [1] in the private nonfarm economy rose 3.2 percent in the first half of 1967. (See Table 2.) This rate of increase was slightly lower than the 3.3 percent recorded during the first half of 1966, but only because social security taxes paid by employers rose only two-tenths of one percent in 1967 as compared with seven-tenths of one percent in 1966. Also, overtime earnings declined and the relatively low wage industries and occupations had a heavier weight in the average.

Summaries of major collective bargaining settlements and average hourly earnings adjusted for overtime also indicate that compensation rose faster in the first half of 1967

[1] This section refers to nonfarm employees only, whereas the summary and Table 1 include both the self-employed and all farm workers.

then in 1966 as a whole, though it advanced at about the same pace as in the second half of the year. For those key settlements [2] that were reached during the first half of 1967, the average rate of increase in hourly wage and benefit costs was 4.6 to 4.9 percent a year. (See Table 3.) This compares with 4.1 to 4.5 percent in all of 1966.

General wage increases alone have averaged 4.3 percent so far this year, compared with 3.9 percent in 1966. Many contracts provided larger increases in the first year of the agreement than in subsequent years, so that the average first year increase was 5 percent of straight-time average hourly earnings—slightly above last year's 4.8 percent and larger than in any year since 1956. (See Chart 1.)

After allowance for differences in overtime pay, average hourly earnings in manufacturing and in a number of other industry divisions rose faster than in the first half of 1966. (Comparisons of changes in hourly earnings for the first part of the year with the entire preceding year or with the second half of the year have limited significance, since average hourly earnings typically increase at a faster rate during the second half of each year.) The rise in straight-time average hourly earnings in manufacturing was the largest in the first half of any year since 1956.

Part of the 1967 increase reflected new collective bargaining agreements. In addition, in some low-wage industries, especially in the South, some of the increases were the direct result of higher minimum rates and expanded coverage under the FLSA. Increases in average hourly earnings of unskilled workers in southern cities were relatively large between early 1966 and early 1967. In both women's apparel and footwear industries, new agreements reached in late 1966 or early 1967 raised wage rates; many apparel agreements keep minimum rates a specified distance above the FLSA minimum.

Except where minimum wage increases had a substantial impact, wage rates in nonunion manufacturing establishments rose at a slightly slower rate during the first part of 1967. This reflects both the smaller rate of increase in consumer prices in the first quarter of this year and the less intense demand for labor.

Textile wage rates were not appreciably affected by the FLSA change in February 1967, but in August 1967 general wage-rate increases of about 6.5 percent were announced by major southern producers, most of whose employees are unorganized. This was the fifth and largest general wage increase for most southern textile workers in four years. This increase may have been due in part to labor competition with industries directly affected by the new FLSA provisions, and in part to anticipation of the $1.60 minimum to go into effect in February 1968. The 1967 increase reduced to about 10 percent the number of cotton textile workers earning below $1.60.

The direct effect of FLSA rates and coverage, effective in February 1967, was to raise hourly costs by an estimated 0.3 percent average, mostly in nonmanufacturing such as trade, finance, insurance and real estate, and hotels and laundries. Pay in other nonmanufacturing industries, notably railroads and trucking, was affected by new union agreements. After widespread wage or salary increases for nurses and other hospital workers, amounting to 10 percent or more, advances in this field lessened early in 1967.

Wage-rate increases in the construction industry were larger than in 1966 or 1965, though average hourly earnings were held down by the employment recovery in home building, which pays lower average wages than other types of construction do. Union scales rose faster in the first half of 1967 than in any comparable period since 1948. Many of the year's settlements provided wage and benefit increases of 6 to 10 percent a year, and some were even larger.

In most industries hours of work fell substantially, leading to smaller increases in gross hourly earnings and to either a greater decline or a smaller increase in weekly earnings—depending on the industry—than a year earlier. Wholesale and retail trade were exceptions; hours fell less than last year, when the FLSA amendments reduced normal hours for retail trade to 40. Finance, insurance and real estate, and hotels, were also exceptions: the acceleration in hourly earnings was great enough to offset the reduction in hours.

For the private nonfarm economy as a whole, real net spendable earnings (weekly earnings adjusted for changes in the CPI and in Federal taxes deducted from employees' pay) in June 1967 were about the same as they were six months earlier, whereas they had dropped slightly between the previous December and June. Spendable earnings declined during the first three months of the year because of an increase in social security withholding and the fall in hours, but they recovered by June as the workweek stabilized and earnings rose more rapidly than prices. In manufacturing alone, however, real net spendable earnings declined during the first half of 1967—more than in any first half since 1958.

The major bargaining for the remainder of the year will be in copper, now involved in strikes over new contracts, and in the automobile, farm equipment, and related industries. Some meatpacking contracts remain to be negotiated. The relativcly smaller increase in prices has reduced the size of wage increases under cost-of-living escalator clauses and the pressure to raise wages of nonunion workers, but there will probably be some increases for the latter in anticipation of the rise to a $1.60 FLSA minimum next February. In addition, about a million and a half workers, including basic steel and aluminum workers, as well as those in longshoring, aerospace, and electrical industries, will receive deferred wage increases under contracts negotiated in 1965 or 1966.

III. UNIT LABOR COSTS

Despite the relatively large increase in hourly compensation (2.1 percent) during the second quarter, the large gain in productivity held the rise in unit labor costs in the private sector to only 0.1 percent. (Table 1a.) This small increase contrasts sharply with larger rises earlier; the rise was 3.3 percent.

Similar movements took place in both the nonfarm and manufacturing sectors. (See Tables 1b and 1c.) Between the first and second quarter, unit labor costs rose 0.2 percent in the nonfarm sector and 0.5 percent in manufacturing. Over the year, unit labor costs increased 3.6 percent in nonfarm activities and more than 5 percent in manufacturing.

IV. PRICE DEVELOPMENTS

Wholesale prices began to rise in the second quarter of 1967 after six months of decline, and consumer prices quickened their rate of advance. The Wholesale Price Index rose 0.6 percent and the Consumer Price Index 0.9 percent between March and June. (See Tables 4 and 6.) Both the turnaround at the wholesale level and the acceleration at the retail level resulted from sharp increases in farm and food prices.

During the preceding six months, declining farm and food prices had more than offset rising industrial prices in the WPI, and had dampened the rise in service and nondurable goods prices in the CPI. At the end of the second quarter, wholesale prices were 0.6 percent and consumer prices 2.7 percent above a year earlier; farm prices were down moderately and food prices up a little.

Farm Products and Foods. Upward pressures in agricultural prices during the second quarter came chiefly from livestock, meats, fresh produce, and milk. Seasonally adjusted wholesale prices of farm products, processed foods, and retail grocery food rose, although there were decreases in prices of poultry, eggs, wheat, and bread. (See Tables 4 and 6.) As of June, prices of many agricultural commodities had not had their customary seasonal declines.

In most instances, the volatility of farm and food prices is largely attributable to changes in supply. The largest price increases in the second quarter—hogs, pork, and fresh produce—resulted from curtailed supplies. In 1966, high prices for meat caused increased production; as prices fell and feed costs rose in the second half of the year, farmers cut back. By May, hog slaughter had declined and pork prices began to climb sharply. This jump, in turn, buoyed beef prices, which also advanced sharply even though the supply remained high. Similarly, expanded production caused substantial price decreases for poultry, eggs, and wheat.

Unfavorable weather delayed maturing of late-spring crops and was a basic factor in the second-quarter rise in fresh fruit and vegetable prices. Although the increases were sharp at wholesale, they were little more than seasonal at retail. Part of the discrepancy reflects the greater volatility of wholesale prices, but part is due to normal lags and will affect retail prices in later months.

Consumer Services. The services sector continued to push consumer prices upward, rising 0.9 percent in both the first and second quarters. However, this advance was moderately slower than last year's, chiefly because of a decline in mortgage interest rates and, in the second quarter, a slower rise in transportation and medical costs. (See Table 5.)

Despite a slackening, medical costs—particularly physicians' fees and hospital rates—still rose more than other service groups in the second quarter. Rents continued to rise at the same rate, as earlier in the year, but prices of household services rose more rapidly, especially for property taxes, insurance, home maintenance and repair, and day care. Financial services and taxes also account for a significant share of price advances so far, as well as those services that are labor-intensive. Only some publicly-regulated service charges, such as gas and electric rates, and air and rail fares have remained relatively stable.

Industrial Materials and Products. Average wholesale prices of industrial commodities did not change in the second quarter, but consumers paid significantly more for manufactured products. (See Table 4.) Retail durable price increases came largely from used cars (not included in the wholesale index), mainly because of a steady reduction in used car inventories, but prices of tires and furniture also advanced. Among nondurables, retail price increases were widespread, with substantial rises in apparel, footwear, gasoline, and toilet goods.

The stability in wholesale industrial prices resulted from divergent trends affecting many groups. On a seasonally-adjusted basis, prices declined in 4 of the 12 major industrial groups in the second quarter, rose in 7, and remained unchanged in 1.

Second quarter price advances were mainly in finished goods, unlike the sharp increases in 1965 and early 1966 which had centered in crude materials. The uptrend in wholesale prices for many finished goods accelerated in late 1966 and continued throughout the first half of 1967. Probably affected by last fall's suspension of the investment tax credit, as well as by the subsequent slackening in the economy, prices of producers' goods—though still rising sub-

[2] Contracts of 5,000 or more. These estimates do not make allowance for the effect of cost-of-living escalator clauses.

stantially—were advancing at a slower rate than in 1966. Wholesale prices of consumer nondurables, however, were rising faster. (See Table 6.)

Prices of some crude materials edged up slightly after their year-long fall, while some intermediate construction materials, such as lumber and concrete products, rose more than seasonally. In producer finished goods, the most important price rises came in metalworking and other nonelectrical machinery. In finished nondurables increases were mainly in apparel, cigarets, and gasoline. Consumer durables declined at wholesale, with lower prices for passenger cars and TV sets, although furniture and appliance prices continued to rise.

The economic slowdown, the easing of credit costs, and falling prices of some crude and intermediate materials dampened upward price pressures in the first half of the year, although demand continued relatively strong and many costs advanced—taxes, labor, insurance, and construction, as well as some materials.

The continuing large advance in apparel prices (see Tables 4 and 7) which had been a major factor in the increased prices in nondurable finished goods at both wholesale and retail, reflects both demand and cost pressures. Average hourly earnings of production workers in the apparel industry increased 8 percent from a year ago, with more than half of the rise in 1967. Labor costs for retail employees also rose significantly, particularly in women's apparel shops, and helped push retail prices up more than wholesale. Increased retail mark-ups were probably another important factor. On the other hand, rising material costs were not a major influence since many textile prices had been declining. However, demand was moderately strong; on a seasonally-adjusted basis, average retail sales in April and May were higher than in the first quarter and were well above year-earlier levels.

Since the beginning of the current price advance in December 1964, both wholesale and retail prices of nonfood commodities have risen at an annual rate of about 1.5 percent. Their divergence in trend in the second quarter was due in part to temporary reasons.

TABLE 1-a.—OUTPUT PER MAN-HOUR, HOURLY COMPENSATION, AND UNIT LABOR COST IN THE PRIVATE SECTOR, 1966-67

	Output	Man-hours	Output per man-hour	Compensation per man-hour	Unit labor cost
Percent change:					
Annual rate, 1947-66	3.7	0.5	3.2	4.9	1.7
From previous quarter:					
1966—					
1st	1.7	1.0	.7	2.0	1.3
2d	.4	.1	.3	2.2	1.9
3d	.7	.8	—.1	1.1	1.2
4th	.9	—.1	1.0	1.8	.8
1967—					
1st	—.2	—.1	—.1	1.0	1.2
2d	.5	—1.4	2.0	2.1	.1
2d quarter 1967 from year earlier	1.9	—.9	2.8	6.2	3.3
1st half 1967 from previous half (annual rate)	.8	—1.8	2.6	6.0	3.2
1st half 1967 from year earlier	1.8	.1	1.9	6.2	4.2

Note: Unpublished estimates.

Source: U.S. Department of Labor, Bureau of Labor Statistics.

TABLE 1-b.—OUTPUT PER MAN-HOUR, HOURLY COMPENSATION, AND UNIT LABOR COST IN THE PRIVATE NONFARM SECTOR, 1966-67

	Output	Man-hours	Output per man-hour	Compensation per man-hour	Unit labor cost
Percent change:					
Annual rate, 1947-66	3.8	1.1	2.6	4.6	1.9
From previous quarter:					
1966—					
1st	1.8	1.3	.4	1.7	1.3
2d	.7	.7	.0	1.8	1.8
3d	.7	.9	—.2	1.0	1.2
4th	.9	—.2	1.1	1.7	.6
1967—					
1st	—.5	—.3	—.1	1.4	1.6
2d	.6	—.8	1.4	1.6	.2
2d quarter 1967 from year earlier	1.7	—.4	2.1	5.8	3.6
1st half 1967 from previous half (annual rate)	.4	—1.6	2.2	6.2	4.0
1st half 1967 from year earlier	1.7	.3	1.4	5.9	4.5

Note: Unpublished estimates.

Source: U.S. Department of Labor, Bureau of Labor Statistics.

TABLE 1-c.—OUTPUT PER MAN-HOUR, HOURLY COMPENSATION, AND UNIT LABOR COSTS IN THE MANUFACTURING SECTOR,[1] 1966-67

	Output		Man-hours	Output per man-hour		Compensation per man-hour	Unit labor cost	
	FRB	Census		FRB	Census		FRB	Census
Percent change:								
Annual rate, 1947-66	4.2	(2)	0.8	3.4	(2)	5.0	1.5	(2)
From previous quarter:								
1966—1st	3.8	3.2	2.1	1.6	1.1	1.5	—.2	.5
2d	2.1	.8	1.6	.5	—.9	1.4	1.0	2.3
3d	1.3	.5	.6	.7	.0	1.7	1.0	1.7
4th	.9	1.7	.8	.1	.9	1.6	1.4	.6
1967—1st	—1.5	—1.4	—1.0	—.5	—.4	1.7	2.1	2.1
2d	—1.0	—.7	—1.6	.7	.9	1.3	.8	.5
2d quarter 1967 from year earlier	—.3	.1	—1.3	1.0	1.4	6.5	5.4	5.1
1st half 1967 from previous half (annual rate)	—3.0	—1.9	—2.9	—.2	1.0	6.3	6.4	5.3
1st half 1967 from year earlier	1.3	.8	.3	.9	.5	6.5	5.5	6.0

[1] Employees only.
[2] Not available.

Note: Unpublished estimates.

Source: U.S. Department of Labor, Bureau of Labor Statistics.

TABLE 2.—SUMMARY OF PERCENTAGE CHANGES IN PRIVATE NONFARM EMPLOYEES COMPENSATION, 1964 TO JUNE 1967

	3 months ending in—				6 months ending in—				Annual data		
	June 1967[4]	Mar. 1967	June 1966	June 1965	June 1967[4]	Dec. 1966	June 1966	June 1965	1966	1965	1964
Average hourly compensation [1]	1.6	1.6	2.0	1.4	3.2	2.6	3.3	1.4	6.0	(2)	(2)
Average hourly earnings	1.5	.8	1.6	1.7	2.3	1.6	2.8	2.5	4.4	3.8	(5)
Manufacturing	.7	.7	1.1	.8	1.4	2.2	1.9	1.2	4.1	3.1	2.8
Real average weekly earnings [3]	1.5	—1.1	1.3	1.2	.4	—.8	.8	1.1	(5)	1.7	(4)
Manufacturing	.3	—2.0	.8	(5)	—1.6	—.1	—.1	—.5	—.2	1.5	3.1
Real spendable average weekly earnings (worker and 3 dependents)	1.2	—1.2	1.1	1.0	(5)	—.9	—.3	1.6	—1.1	2.2	(4)
Manufacturing	.2	—2.0	.6	—.1	—1.8	—.3	—1.5	.3	—1.8	2.2	4.9

[1] Preliminary. In contrast to table 1-b, the hourly compensation figures on this table pertain to nonfarm employees only (including private household employees); the self-employed and all farmworkers are excluded.
[2] Average annual rate 1964-65 is 4.3 percent.
[3] Production and nonsupervisory employees.
[4] Data not available.
[5] No change or change of less than 0.05 percent.

Note.—Changes are increases unless preceded by a minus sign.

Source: U.S. Department of Labor, Bureau of Labor Statistics.

TABLE 3.—WAGE AND BENEFIT CHANGES,[1] MAJOR COLLECTIVE BARGAINING SETTLEMENTS, 1966 AND 1ST HALF OF 1967

Item	Median annual rate of increase for contracts negotiated during—						
	1967			1966			
	1st half	1st quarter	Total	1st half	1st quarter	2d half	4th quarter
Wage and benefit changes (packages):[2]							
Equal timing[3]	4.6	4.8	4.1	3.6	3.7	4.1	4.1
Actual timing[4]	4.9	4.9	4.5	4.2	3.9	4.8	4.5
General wage changes:[5]							
Increases averaged over life of contract:							
All industries	4.3	5.0	3.9	[6]3.7	[6]3.7	[6]3.9	[6]3.9
Manufacturing	4.3	4.1	3.8	[7]	[7]	[6]3.6	[6]3.6
Nonmanufacturing	4.4	5.0	3.9	[7]	[7]	[6]3.9	[6]3.9
1st-year increases:							
All industries	5.0	5.0	4.8	3.9	3.8	5.0	5.0
Manufacturing	5.4	5.7	4.2	3.8	3.7	4.2	4.2
Nonmanufacturing	5.0	5.0	5.0	3.9	4.0	5.7	5.8

[1] Possible increases in wages resulting from cost-of-living escalator adjustments were omitted.
[2] Limited to settlements affecting 5,000 workers or more. A few settlements, affecting relatively few workers, have not been priced.
[3] Based on estimated increases in hourly costs at end of contract period and assumes equal spacing of wages and benefit changes over life of contract.
[4] Takes account of actual effective dates of wage and benefit changes.
[5] Contracts affecting 1,000 workers or more. Data for quarters and halves of 1966 exclude construction. Medians for 1967 and all of 1966 are the same whether or not construction is included, with the following exception: The median 1st-year wage increase for all industries would be 4.5 rather than 4.8 if construction were omitted.
[6] Limited to settlements affecting 5,000 workers or more.
[7] Not available.

Source: U.S. Department of Labor, Bureau of Labor Statistics.

TABLE 4.—CONSUMER PRICE INDEXES FOR SELECTED COMMODITIES—QUARTERLY PERCENT CHANGES

[Seasonally adjusted except when indicated otherwise]

Consumer price indexes	1966				1967	
	December 1965, to March	March to June	June to September	September to December	December 1966, to March	March to June
All items[1]	0.9	0.8	1.1	0.5	0.3	0.9
Services[1]	.7	1.6	1.2	1.4	.9	.9
All commodities	1.1	.3	.9	.2	0	.9
All commodities less food	.3	.8	.5	.4	.6	.8
Food	3.1	−.2	1.1	−.3	−.9	.9
Food at home	3.4	−.4	1.2	−.7	−1.3	.9
Meats	7.1	−2.1	−3.5	−1.0	−.6	3.4
Beef and veal	5.6	1.0	−3.1	−.5	−.1	3.1
Pork	8.9	−6.8	−4.7	−3.3	−1.6	6.0
Chicken, frying	10.3	−3.7	.2	−7.4	−2.4	−2.8
All dairy products	2.5	2.5	4.6	−.1	−.3	1.6
Milk, grocery	2.7	2.6	3.2	.2	−.4	2.3
Fruits and vegetables	2.9	−1.4	4.5	−2.9	−2.5	.3
Fresh fruits and vegetables	4.9	−1.2	6.4	−3.9	−3.0	.6
Processed fruits and vegetables[1]	.7	−.6	−.6	−.4	−1.4	0
Cereal and bakery products[1]	1.2	1.0	3.2	.3	−.2	−.3
Bread, white[1]	2.4	1.1	5.2	−.3	−1.3	−.1
Eggs	6.7	−9.4	1.0	4.6	−11.6	−4.0

Consumer price indexes	1966				1967	
	December 1965, to March	March to June	June to September	September to December	December 1966, to March	March to June
Durable commodities	−0.1	0.5	0.3	0	0.1	1.1
New cars	−.7	.5	−1.2	1.4	−.4	.1
Used cars	−.7	−.7	1.6	−3.6	3.4	2.5
Tires, new[1]	−.3	2.2	.6	0	.4	1.2
Household durables[1]	.1	.5	.6	.4	.1	.2
Appliances	−.5	−.4	.2	−.1	−.7	−.2
TV sets[1]	−.4	−.1	−.5	.2	−1.0	−1.4
Furniture and floor coverings	.5	1.0	1.1	.9	.3	.5
Nondurable commodities except food	.6	.7	.6	.7	.8	.7
Apparel, less footwear	.8	.6	.8	.8	1.3	.9
Women's and girls'	1.1	.6	.8	1.1	1.4	1.1
Men's and boys'	.6	.7	.7	.9	1.2	.9
Footwear	1.4	2.5	1.2	1.2	1.5	.8
Textile housefurnishings[1]	−.6	1.1	1.3	1.4	0	.5
Fuel oil and coal	−.4	2.2	−.4	.1	1.0	2.7
Gasoline[1]	.4	.7	1.7	.5	.5	1.3
Drugs and prescriptions[1]	.3	.2	−.1	−.2	−.3	−.3
Toilet goods[1]	.6	.3	.3	.3	.3	.7
Tobacco products[1]	.2	1.9	1.2	.2	0	.4

[1] Not seasonally adjusted.

TABLE 5. SELECTED CONSUMER SERVICE PRICES, QUARTERLY PERCENT CHANGES

[Not seasonally adjusted]

Consumer price indexes	1966				1967	
	December 1965, to March 1966	March to June	June to September	September to December	December 1966, to March 1967	March to June
All services	0.7	1.6	1.2	1.4	0.9	0.9
Rent	.4	.3	.5	.5	.4	.4
Transportation services	1.1	.5	1.9	.8	.7	.5
Auto repairs	0	.5	.9	1.0	1.5	.8
Auto insurance	1.3	.9	1.6	.6	.5	.2
Registration and license fees	10.1	.2	0	0	2.1	.7
Parking and garage rent	.3	−.2	.1	.9	2.0	.1
Local transit	.1	0	8.9	.1	.7	.7
Taxicabs	------	------	------	------	------	------
Railroad fare, coach	−.1	0	0	0	.2	0
Airline fares	.1	−.2	0	−.1	.1	.3
Bus fares, intercity	1.3	.3	.4	.2	2.6	1.5
Medical care services	1.5	1.7	2.4	2.3	2.5	1.6
Physicians' fees	1.8	2.0	2.2	1.6	2.0	1.3
Dentists' fees	.6	1.2	1.6	1.2	1.2	.9
Eye examination and eyeglasses	.4	1.0	1.2	1.3	1.7	.9
Hospital daily rates	2.4	2.1	5.1	6.0	6.1	3.0
Operating room charges	2.1	1.3	2.5	3.1	4.5	3.5
Household services	.1	2.7	1.1	1.5	.6	.9
Mortgage interest rates	.7	6.0	2.1	3.1	−.5	−1.2
Property taxes	.7	1.1	1.2	.5	2.4	2.0
Property insurance	1.0	1.7	1.6	.4	.7	3.1

Consumer price indexes	1966				1967	
	December 1965, to March 1966	March to June	June to September	September to December	December 1966, to March 1967	March to June
Household Services—Con.						
Home maintenance and repair	1.2	2.0	1.9	1.5	1.1	1.5
Gas	.4	−.4	.2	−.5	.4	−.3
Electricity	0	.1	−.2	.2	.4	.1
Telephone	−6.3	6.6	.1	0	−.2	0
Domestic service	1.7	.7	1.9	2.2	2.8	1.5
Babysitters	1.2	1.2	.2	1.9	2.2	1.6
Day care	.4	2.8	1.2	2.3	1.0	1.4
Laundry, flatwork	1.6	1.8	2.3	3.2	1.9	1.8
Postal charges	0	1.3	0	0	2.6	0
Other services	1.5	1.1	.9	1.1	.6	1.2
Laundry, men's shirts	1.1	.8	.8	3.4	.6	.8
Drycleaning	1.0	1.4	1.5	2.1	.3	1.2
Tailoring charges	1.0	2.9	1.0	.9	.4	1.9
Shoe repairs	.3	.3	.2	−.8	0	.9
Men's haircuts	1.9	2.7	1.5	1.4	.9	.6
Beauty shop	.7	1.5	1.0	.7	1.1	1.0
Movie admissions	3.7	1.2	1.5	1.4	1.1	2.9
Bowling fees	1.3	−.7	−2.1	4.0	1.7	−.4
Film developing	.9	−.1	−.4	.6	.1	−.4
Funeral services	.3	.7	.9	.6	.5	.6
Bank service charges	.3	.2	.7	.6	−.2	1.5
Legal services	1.4	.2	1.2	1.0	1.6	1.6

TABLE 6.—WHOLESALE PRICE INDEXES FOR MAJOR SECTORS, FARM PRODUCTS, AND PROCESSED FOODS, QUARTERLY PERCENT CHANGES

Wholesale price indexes	1966				1967	
	December 1965 to March	March to June	June to September	September to December	December 1966 to March	March to June
All commodities (not seasonally adjusted)	1.2	0.3	1.0	−0.8	−0.2	0.6
Farm products	3.7	−2.4	4.3	−6.3	−2.2	2.8
Processed foods and feeds	1.6	−.2	3.1	−2.3	−2.0	1.8
Industrial commodities	.8	.9	.3	.3	.5	0
Crude materials	3.9	−.1	−3.5	−1.2	−1.4	−.7
Intermediate materials	.7	1.0	.2	0	.5	−.1
Finished goods:						
Consumer nondurables	.4	.8	.5	.1	.9	.8
Consumer durables	.1	.4	−.1	1.3	0	−.3
Producers' goods	.8	1.0	.5	1.7	.5	.5
Farm products (seasonally adjusted except when otherwise indicated)	2.4	−.7	2.1	−4.8	−3.4	4.7
Fresh fruits and vegetables	1.1	−2.3	19.8	−7.9	−10.3	15.7
Grains	1.0	5.5	8.7	−2.9	−1.2	−2.9
Wheat [1]	−1.4	8.6	11.2	−5.4	−1.0	−7.2
Livestock	1.3	−4.3	−3.1	−6.7	−3.0	8.6
Steers [1]	4.5	−7.8	−.2	−3.4	−.4	2.9
Farm Products—Con.						
Livestock—Con.						
Hogs [1]	−10.6	−1.4	−0.2	−17.1	−5.5	17.4
Live poultry	3.0	.1	−5.4	−8.6	4.0	−.4
Eggs	2.4	−8.8	7.5	−9.0	−14.1	−.5
Fluid milk	6.2	2.9	6.7	−1.6	−2.3	5.0
Processed foods and feeds (seasonally adjusted except when otherwise indicated)	2.1	−.2	2.1	−1.8	−1.6	1.9
Cereal and bakery products	1.1	1.6	4.3	−1.0	−.3	−.3
Bread [1]	1.1	.4	6.8	.2	−.9	−.4
Meat, poultry, and fish	2.2	−3.9	−1.1	−2.6	−3.1	5.5
Meats [1]	.6	−3.7	3.0	−6.3	−4.3	9.1
Beef and veal [1]	9.8	−5.1	3.6	−4.2	−1.1	6.2
Pork [1]	−10.4	−1.4	4.3	−9.9	−10.2	16.4
Dairy products	4.7	2.0	4.8	−1.8	0	2.0
Milk [1]	2.7	.6	4.6	1.5	−1.4	2.9
Processed fruits and vegetables	−.1	0	.2	.6	−1.3	2.1

[1] Based on data unadjusted for seasonal variation.

TABLE 7.—WHOLESALE PRICE INDEXES FOR MAJOR GROUPS AND SELECTED INDUSTRIAL COMMODITIES, QUARTERLY PERCENT CHANGES

[Seasonally adjusted except when indicated otherwise]

Wholesale price indexes	1966				1967	
	December 1965 to March	March to June	June to September	September to December	December 1966 to March	March to June
Industrial commodities [1]	0.8	0.9	0.3	0.3	0.5	0
Textile products and apparel	.3	.1	−.1	−.4	.1	−.2
Cotton products	.7	1.3	.2	−.6	−1.4	−1.3
Wool products	.5	.6	−.5	−1.0	−1.0	−.7
Manmade fiber products	−1.4	−1.1	−1.1	−1.9	−.2	−1.5
Apparel	.6	−.1	.2	.5	.7	.5
Housefurnishings	.4	.6	.9	−.1	.1	.3
Hides, skins, leather, and products	3.8	2.8	−2.3	−1.8	.2	−1.8
Hides and skins	13.2	−1.2	−14.6	−13.2	−8.6	−12.1
Leather	6.3	1.9	−2.2	−3.9	−3.0	−4.6
Footwear	1.5	2.9	.4	.8	1.2	−.3
Fuels, products, and power	.1	1.4	.7	−.4	2.1	.1
Crude petroleum [1]	.1	.4	.3	.4	.2	0
Refined petroleum products	0	1.9	1.5	−1.7	3.5	−.4
Gasoline	.7	2.1	2.2	−2.2	3.8	−2.2
Chemicals and allied products	−.2	.3	.5	0	.1	.3
Industrial chemicals	−.3	.6	.2	.4	.6	.2
Fats and oils (inedible)	−1.9	−4.2	1.7	−10.0	−12.6	−2.1
Agricultural chemicals and products	−.5	.3	.2	.6	1.9	−.6
Rubber and rubber products	1.2	1.0	−.5	0	1.3	−.3
Crude rubber	.9	−1.8	−.8	−.6	−2.2	−.2
Tires and tubes	.9	3.2	−1.5	.5	1.9	−1.4
Lumber and wood products	2.2	1.3	−1.1	−1.8	−.3	.5
Lumber	1.9	3.5	−1.8	−2.3	−.4	.9
Millwork	1.3	.8	.2	−.1	.8	.1
Plywood	3.1	−4.2	−3.2	−.8	−2.6	1.5
Industrial commodities—Con.						
Pulp, paper, and products	0.7	1.1	0.6	−0.3	0.4	0.2
Woodpulp	−.5	.2	.2	0	−.4	.2
Converted paper and paperboard	.8	.9	.8	.3	1.1	.3
Metal and metal products [1]	1.3	.6	−.3	.6	.4	−.5
Iron and steel	.6	−.1	.6	.1	.4	.2
Nonferrous metals	2.6	1.4	−2.0	.8	.1	−2.6
Metal containers	−.5	.1	.5	.3	.7	0
Plumbing fixtures	1.1	3.0	1.5	−.3	.3	−.6
Machinery and equipment	1.1	1.0	.9	1.6	.7	0
Nonelectrical machinery [1]	1.0	1.3	.9	1.3	.7	.3
Metalworking	1.4	1.9	1.2	1.2	.7	.7
Electrical machinery	1.6	.7	.7	1.9	.7	−.3
Furniture and household durables [1]	.2	.5	.2	1.2	.2	.2
Household furniture [1]	.5	1.6	.8	1.8	.5	0
Commercial furniture [1]	.1	1.2	.7	2.5	.6	2.4
Floor covering	.2	−.2	−.7	−.7	−2.2	−.5
Household appliances	0	.3	−.2	.3	.3	.2
Nonmetallic mineral products [1]	.5	.4	.5	.3	.5	.1
Concrete ingredients [1]	.4	−.2	.3	.4	1.4	.1
Concrete products [1]	.4	.8	.6	.3	.6	1.1
Transportation equipment	(2)	(2)	(2)	(2)	(2)	(2)
Passenger cars, new	−.3	−.4	−1.0	2.1	−.5	−.1
Railroad equipment [1]	0	0	0	1.7	0	.2
Miscellaneous products [1]	1.3	.4	.2	.4	.2	1.8
Tobacco products	3.6	−.1	.3	.3	0	3.5

[1] Based on data unadjusted for seasonal variation.
[2] Not available.

HENRY J. KAISER

Mr. KENNEDY of New York. Mr. President, Henry J. Kaiser's life was filled with the vitality, restlessness, and inventiveness which characterize the best of our national spirit. With his death at 85 last week in Honolulu, we lost a distinguished American for whom each new success was only a spur to new achievement.

The career that led him to build dams, ships, automobiles, and hospitals around the world began in New York where he worked for $1.50 a week as a cash boy in a Utica dry goods store. But it was appropriate that his last activities and his death took place in Hawaii—while exploring new opportunities to develop the newest part of the country.

For Henry Kaiser was more than an immensely successful industrialist; his life was more than a record of business profits. He was a man who could declare that "problems are only opportunities in work clothes"—and go on to build dams in Ghana and initiate profit-sharing plans in Latin America. He was a man who built a ship a day during the war, one-third of the entire American production—but he was as concerned with preserving the beauty of the land he developed as he was in reaping its rewards. He was a man who liked to say that his job was not to build ships or dams, but to "build and develop people, to bring out their courage," and improve their lives—and he went on to establish medical care programs in the United States that now serve 1,250,000 people.

His life is an example to young Americans of the value to be gained from a purposeful life. It matters not so much whether their energy is directed first toward business or public service or professional activity—but it is essential that many more have the energy, the will, the initiative that Henry Kaiser had in abundance, and that they devote that drive and talent to the welfare of others.

Mr. President, an extensive and informative biography of Henry Kaiser was published in the New York Times following his death. I ask unanimous consent that it be printed in the RECORD.

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

HENRY J. KAISER IS DEAD AT 85—BUILT $2-BILLION INDUSTRIAL GIANT—HEAD OF MULTI-FACETED EMPIRE STARTED HIS CAREER AT 13 IN DRY GOODS STORE

HONOLULU, August 24.—Henry J. Kaiser, the industrialist who built dams, ships, automobiles and hospitals, died in his sleep this

morning at his home here. He was 85 years old.

Mr. Kaiser, who had been suffering from a circulatory ailment, became ill on a recent trip to the mainland. He returned to Honolulu on June 25.

At his side were his wife, Alyce, a nurse Mr. Kaiser married after the death of his first wife in 1951, and his son, Edgar Kaiser, and his wife.

A school dropout at the age of 13 who went on to become one of the nation's leading industrialists, Henry John Kaiser once declared in his blunt fashion: "Problems are only opportunities in work clothes."

Mr. Kaiser, no stranger to work clothes and a man who some said subsisted on three hours of sleep a night, spent a rich, restless, widely diverse lifetime taking on problems and converting them into opportunities.

He built roads, pipelines, dams, factories, ships, cars, bridges, homes, resorts, hospitals and, ultimately the many-faceted billion-dollar Kaiser Industries Corporation. The robust industrialist perpetually aimed high, and generally made it.

"I always have to dream up against the stars" he observed. "If I don't dream I'll make it, I won't even get close."

Mr. Kaiser habitually seemed to find a way to get close. He attained nationwide fame with his performance as a shipbuilder during World War II, then went on to build a giant industrial empire that included steel, cement, aluminum and, for a hectic period, automobiles.

He took on the latter through the Kaiser-Frazer Corporation, which failed. But he kept his hand in the business through the familiar Jeep, produced by Willys Motors, which became a Kaiser subsidiary, and through two South American auto-producing plants.

Constantly expanding, most recently in Hawaii real estate development, his businesses achieved annual sales of $2 billion and has assets of $2.5 billion.

Mr. Kaiser, one of four children of German immigrant parents, was born May 9, 1882, in Sprout Brook, N.Y. His business career began at 13, when he left school to help support his family. He took a $1.50-a-week job as a cash boy for a Utica, N.Y., dry goods store and supplemented his income by taking photographs after working hours.

He subsequently took to the road as a photographic salesman in upstate New York and, at the age of 22, became a junior partner in the photographic concern of Brownell & Kaiser at Lake Placid.

Within a year, having husbanded his resources, he purchased the business and hung out a billboard-size sign over his door reading: "Meet the Man With a Smile."

OPENED OTHER STORES

He branched out, following free-spending vacationers to other resort areas, and opened stores in Daytona Beach and several other Florida cities as well as in Nassau in the Bahamas.

It was during this time that he met Miss Bessie Hannah Fosburgh of Norfolk, Va. Her guardian, a wealthy Virginia lumberman, objected to Mr. Kaiser's suit for her hand, feeling he was unable to provide adequate support. Mr. Kaiser promptly headed west, to Spokane, Wash., in 1906, to prove himself a worthy suitor.

There were no immediate jobs, but the industrious young Easterner pitched in as a helper in a large hardware store and shortly was taken on the payroll at $7 a week. Within a year he was made city sales manager. He returned east to marry Miss Fosburgh in April, 1907, and headed back to Spokane.

In 1912 he joined a construction company as a salesman and manager of paving contracts in Washington and British Columbia, getting his first taste of what was to become a career in building. "Find a need, and fill it," he once declared.

He established his first company, the Henry J. Kaiser Company, Ltd., in 1914 in Vancouver, B. C., at the age of 32, borrowing money from a bank to buy secondhand equipment. His innate knack for improvisation and inventiveness quickly showed itself and the company prospered.

LOGGED 75,000 MILES A YEAR

At one point, needing water for a highway project near Seattle, he was reluctant to buy an expensive gasoline pump to obtain it. A stream near the project gave him an idea and in short order he anchored a barge in the stream, rigged it up with a paddlewheel from a river steamer and put the stream to work turning the wheel, which operated a pump.

"We don't need power," Mr. Kaiser told his foreman. "The Lord does it for us."

During the next dozen years the hustling, bustling young businessman—"There's only one time to do anything and that's today," he was fond of saying—concentrated on highway construction in the Pacific Northwest and in California, in addition to erecting several sand and gravel plants of his own and two earth-fill dams.

By 1921 his headquarters had been established in Oakland, Calif., which remained the center of his far-flung operations despite his own heavy personal travel schedule. He logged as many as 75,000 miles annually during much of his career and was reported to have run up telephone bills on the order of $300,000 a year.

In his own view, the breakthrough point in his business life came in 1927 when, as a $20-million subcontractor on a Cuban road-building project, the Kaiser company built 200 miles of highway and 500 bridges into the interior of the island. The venture meant recruiting and organizing 6,000 workers, largely unskilled, but the job, which took four and a half years, was completed well ahead of schedule.

"The biggest headache of all," Mr. Kaiser once recalled to an interviewer "was to muster able management and supervision.

"We learned you can't just pay high salaries and import the finest talents into your organization. You and the men who work with you have to build yourselves up to the capacity to tackle bigger and bigger jobs."

Bigger and bigger jobs were in the offing. While still in Cuba, Mr. Kaiser learned of the plans to build Hoover (Boulder) Dam on the Colorado River. At that point it was one of the largest structures contemplated by man.

"I lay awake nights in a sweltering tent in Cuba," he recalled, "dreaming of this great day and thinking it over and over."

POOLING KNOW-HOW

His dreaming and thinking led Mr. Kaiser to the conclusion "that no single company was alone." "Why not," he reasoned, "get a group of contractors together as partners and pool their individual know-how?"

Out of this concept came the formation, in 1931, of Six Companies, Inc., which received the contract to build the giant dam. Mr. Kaiser became chairman of the group's executive committee.

Along with some of his associates from this successful four-year project, Mr. Kaiser, in 1934, formed and became president of the Columbia Construction Company, which participated in the building of the Bonneville Dam, and, later, through Consolidated Builders, he constructed Grand Coulee Dam on the Columbia River.

In addition to these activities, Mr. Kaiser undertook such other heavy construction projects as the piers of the San Francisco-Oakland Bay Bridge; levees on the Mississippi River; pipelines in the Northwest, Southwest and Mexico; naval defenses on Wake, Guam and Hawaii, and a 30-mile aqueduct for the New York City water system.

Up to the start of World War II, Mr. Kaiser and companies associated with him had built about 1,000 projects totaling $383-million.

SHIPBUILDING RECORDS

He also participated in the construction of the Shasta Dam in northern California, winning a bid in 1939 to supply 6 million barrels of cement and 11 million tons of aggregates.

"They tell me," he remarked at one point, "I often go out on a limb. Well, that's where I like to be." On the Shasta Dam project, for example, he demonstrated one of the techniques for large-scale operations that virtually became his trademark.

He built a 9.6-mile conveyor belt to carry sand and gravel from Redding, Calif., to the dam site. He also built a mammoth cement plant at Permanente, Calif., confounding his competitors for the cement contract on the Shasta Dam. At the time he submitted his bid he didn't even have a site for the cement plant.

Upon the outbreak of World War II, Mr. Kaiser rose to international prominence through the speed, breadth and quality of his war construction program. Although new to shipbuilding, the Kaiser organization entered the ship-repair and shipbuilding business on a colossal scale.

It was soon setting records for speed in the launching of cargo ships. The use of prefabrication techniques and his by now familiar innovations culminated in the completion of a 10,500-ton freighter at a Richmond, Calif., yard in 4 days and 15 hours from keeling to launching.

Averaging a ship a day, Mr. Kaiser went on to build a total of 1,490 vessels, including nearly one-third of the entire American production of merchant shipping and 50 small aircraft carriers, on his 58 shipways. He wound up operating a chain of six shipyards on the Pacific Coast and one on the Atlantic.

Just as he needed cement for the Shasta Dam project, and proceeded to build his own plant, so he found he needed steel for his shipbuilding activities.

He proceeded to build at Fontana, Calif., the Pacific Coast's first completely integrated iron and steel plant—containing, in one facility, all the equipment necessary for producing both metals. He financed this venture with a $112-million loan from the Reconstruction Finance Corporation.

To equip ships with engines built by his yards, he bought and expanded an ironworks at Sunnyvale, Calif. At Permanente he constructed and put into operation a magnesium plant to supply that metal for airplane construction.

Before the war ended, Mr. Kaiser was also in the aircraft and aircraft-parts business and was managing the largest artillery shell operations in the country.

ALUMINUM ENTERPRISE

Characteristically, he entered the post-war period with all the drive he had displayed before and during the war, and soon added an aluminum facility to his steelmaking operations. By 1947 his aluminum enterprise, in business less than a year, showed sales of $41.7-million and earnings of $5.3-million.

He boldly entered the automobile business with the formation, in 1945, of the Kaiser-Frazer Corporation, which leased the huge Willow Run plant near Detroit. Initially both a Kaiser and a Frazer car were produced.

Mr. Kaiser once said, "In the Frazer there is the heart of Joe Frazer and in the Kaiser you will find the soul of Henry Kaiser." His partner was Joseph W. Frazer, who had had 30 years in the sales and financial aspects of the automobile business.

The Frazer and Kaiser passenger cars were eagerly awaited by a car-hungry public after the war. But by 1955 the three main models, the Kaiser, the Frazer and the compact Henry J., had joined a long list of also-rans in the highly competitive automobile busi-

ness. Mr. Kaiser attributed the failure of the venture to undercapitalization.

Today the affiliated Kaiser companies turn out 300 products from 180 plants and projects in 32 states and 40 foreign countries. They employ more than 90,000 people and have 130,000 stockholders.

In recent years, Mr. Kaiser concentrated his energies on the development of extensive resort and community facilities, including a $4-million Kaiser Foundation hospital in Hawaii.

A hulking, bald, bull-shouldered figure, Mr. Kaiser packed his 6-foot, 240-pound frame off to Hawaii and the island of Oahu for a rest in 1954. Impressed with the potential he sighted there, he soon was casting about for some land and in short order built the Hawaiian Village hotel.

This was, typically, merely the first step in what was to become a 6,000-acre, $350-million housing and resort development known as Hawaii-Kai.

Just as he had made his presence felt wherever he turned up, Mr. Kaiser soon became a familiar figure on the island, sporting, among other things, pink decor for his hotel, a pink Lincoln Continental of his own, a profusion of pink Jeeps, pink bulldozers and road-grading equipment. "Pink," he told an inquiring reporter, "is a happy color."

Most happy himself when working full tilt, Mr. Kaiser never took the time to pursue such standard executive pursuits as golf. He was active in hydroplane racing for a time, sometimes piloting his own cup-winning Scotter II and Hawaii-Kai at speeds of 100 miles an hour. He left the competitive driving to professionals, however.

Generally up at 5:30 a.m. every day, Mr. Kaiser switched on his television and radio sets for the news, ate a quick steak breakfast and was off and running for what usually consisted of 16-hour working days. He was a nonsmoker and relaxed occasionally with a pre-dinner drink.

He sported two watches, one bearing West Coast time, the other showing the time where he happened to be, in recent years mostly Hawaiian time.

A registered Republican, Mr. Kaiser was an independent voter who, during the immediate postwar years, was the object of a brief Presidential boom. It was reported that President Franklin D. Roosevelt considered him as a possible running mate in the 1944 campaign. But Mr. Kaiser regarded himself as a builder, not a politician.

MEDICAL CARE PROGRAM

Mr. Kaiser's continuing interest in health and medical care led to the development of the Kaiser Foundation Medical Care Program. The program includes the building of self-sustaining hospitals and medical centers where medical care is provided by independent partnerships of doctors under a prepayment health plan. More than 1.25 million people in California, Oregon, Washington and Hawaii are members of the plan.

Among many honors and citations, Mr. Kaiser received in 1965 the Murray-Green Award from the A.F.L.–C.I.O. Executive Council for outstanding service to the labor movement. He was the first industrialist to be given this highest honor bestowed by organized labor.

His lifelong theme, said Joseph A. Beirne, chairman of the A.F.L.–C.I.O. Community Services Committee, in presenting the award, has been: "The worker is a human being."

Mr. Kaiser was unable to attend the award dinner in Washington. His surviving son, Edgar Fosburgh Kaiser, read his remarks for him, which said, in part:

"I have often been asked, 'What is it, Mr. Kaiser, in your organization that enables you to make impossible projects become possible?' I appreciate the compliment and answer that our real job is not the building of dams, ships, factories and hospitals, our job is to build and develop people, to bring out their courage, their talents, their zeal and their will to work."

Mr. Kaiser's first wife, Mrs. Bessie Fosburgh Kaiser, died March 14, 1951, in Oakland, Calif. The couple had another son, Henry J., Jr., who died in 1961.

On April 10, 1951, Mr. Kaiser married his wife's former nurse, Alyce Chester.

EXTENT OF POVERTY IN THE UNITED STATES

Mr. TOWER: Mr. President, with each new revelation of the political involvement and corrupt activities of some "warriors on poverty," there are increasing numbers of persons who wonder why we ever got into that war and how soon we can get out. The only reason we continue our commitment, I am sure, is the essential good nature of the American people who hope to see an end to what they have been told is a continuing condition of human suffering gripping vast numbers of other Americans.

Writing in the current, September 4, issue of U.S. News & World Report, Prof. John B. Parrish, professor of economics at the University of Illinois, provides us with some timely information on the extent of poverty in the United States and the degree of its seriousness. His words are must reading for Senators, and I hope his article will be widely read and heeded.

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

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

IS UNITED STATES REALLY FILLED WITH POVERTY?—A LOOK AT THE FACTS

(NOTE.—How many Americans are really in poverty? Thirty million? Eighty million? Or only a handful? This article, written for "U.S. News & World Report," is based on a study of poverty—and of the "poverty cult" that has developed in this era.)

(By John B. Parrish, profesor of economics, University of Illinois)

When future historians write the history of the 1960's there will be no more extraordinary episode in their accounts than the rise of America's "new poverty" cult. Intellectuals from every social-science discipline, every religious denomination, every political and social institution have climbed aboard the poverty bandwagon.

This article is concerned with a few fundamental questions: How did the new cult get started? What are its claims? Does the economic evidence support the claims? Are we moving toward a new and better social order or toward social chaos?

After a decade of exploring every nook and cranny of the poverty world, the "new poverty" cult has settled on a few basic doctrines which together form a dogma that apparently may be accepted on faith. These claims may be briefly summarized as follows:

1. The economic process, which in earlier years brought affluence to a majority of Americans, recently has slowed up and apparently stopped. As a result, a large minority of Americans are "hopelessly" trapped below the poverty line.

2. The size of this poverty population is "massive," and may be increasing. Minimum estimates place the number at 30 million, maximum at nearly 80 million.

3. Despite its great size, the poverty population is hidden away—"invisible," unknown, unwanted, unaided, helpless.

4. The hard core of the "other America" is the Negro. Because of racial discrimination, he has been unable to participate in economic progress. He is frustrated, embittered, forced to live outside the affluent society of the majority.

5. The "new poverty" can only be eradicated by massive, federal social-action programs involving income maintenance, self-help, education and training, in a milieu of racial integration, the latter voluntary if possible, compulsory if necessary.

Does the evidence on diffusion of economic well-being support the "new poverty" cult? Has diffusion mysteriously slowed to a halt, leaving millions "hopelessly trapped"? Are 30 to 80 million suffering acute deprivation in today's America? The plain truth is there is no basis in fact for the "new poverty" thesis. The high priests of the poverty religion have been exchanging each other's misinformation. Let's look briefly at some illustrative evidence.

Diet. The diet of U.S. families has continued to improve steadily over time until today at least 95 per cent, perhaps 96 per cent or 97 per cent of all families have an adequate minimum daily intake of nutrients.

Automatic cooking equipment. Are 20 per cent, perhaps 40 per cent of U.S. families without decent equipment with which to prepare this food intake? No. As a matter of fact, 99 per cent of all U.S. households have automatic cooking equipment, including most of those families living in rural and urban "ghettos." The diffusion has been consistent and persistent over the last six decades.

Refrigeration. Could it be that millions of American families are experiencing dull and dreary meals because they have no way to preserve foods and beverages against spoilage? No. About 99 per cent of all U.S. families have purchased electric or gas refrigerators. It is reasonable to assume they know how to operate them, even in the "ghettos."

Communication. Are millions of America's poor shut off from all contact with the rest of their affluent countrymen—alone, frustrated, in that "other world" of poverty isolation? At last count, the diffusion of TV sets had reached 92 per cent of all U.S. households, providing instant access to entertainment, news, sports, cultural enrichment. Since a small per cent of middle and upper-income families who can afford TV have chosen not to buy, the per cent of families having TV who want it must be around 96 or 97 per cent—a diffusion achieved in just 15 years.

Medical aid. Have the "new hopeless poor" found the doors to modern medical service "slammed shut," forcing them to rely on quack remedies, superstition, midwives, or to die alone and unattended?

In 1910, only one of every 10 American families had access to hospitals for childbirth. The diffusion since then has been spectacular and persistent for all groups, including nonwhites. By 1960, over 97 per cent of all American women had their babies born in hospitals. Today it is somewhere between 98 per cent and 99 per cent.

The luxury of telephone service. Telephone service is ordinarily not a rock-bottom consumer necessity. It is useful and convenient but not an absolute requirement, as was demonstrated during the Great Depression of the 1930s when the per cent of families with telephones declined.

Yet today nearly 90 per cent of all U.S. households have telephones. Since there are still a few pockets of unavailability, it is reasonable to conclude that close to 95 per cent of all U.S. households in availability areas who would like this luxury actually enjoy it.

"THREE POVERTY FALLACIES"

The foregoing illustrative evidence raises an interesting question: *How can the "massive" group of America's "hopeless poor" buy so much with so little?* Perhaps this basic question can be put another way: How could the poverty intellectuals be so wrong?

The answer is actually very simple. The intellectuals have chosen to be wrong. Most members of the "new poverty" cult are quite well-trained in statistics. Some are acknowledged experts. They know better. But, for the sake of the "new poverty" religion, they have chosen to accept three poverty fallacies.

The "new poverty" cult has built much of its case on family-income statistics. Some technical matters aside, there is nothing wrong with these statistics, per se. But there is something wrong, very much wrong, with their use. It is impossible for anyone adequately to interpret them in terms of average family economic well-being.

Poverty fallacy No. 1 got its big push from the 1964 report on "The Problem of Poverty in America" by the Council of Economic Advisers. CEA determined that households with less than $3,000 annual income were in poverty. Using this income yardstick, it was determined that 20 percent of U.S. households containing 30 million persons were in the poverty class.

This report provided a wonderful takeoff point for poverty statisticians. With 30 million to build on, it was not difficult to find millions of additional families who should be added to the poverty population. The poverty numbers game became quite exciting. Who could count the most? Honors so far have gone to those claiming nearly 80 million. A majority of cult members have settled for a more modest 40 to 50 million.

The truth about poverty-income statistics is this: Under no reasonable assumptions does income below $3,000 indicate poverty status. It may or may not, and to say otherwise is not only erroneous but absurd.

Let's take as an example a young married couple, the Smiths. They are attending college. They constitute a statistical household. Their annual income is $1,500 a year. They are not being "hopelessly" shut out from the good things of life. They are, along with other American youth, enjoying a rate of access to higher education greater than the youth of any country, any time, any place. They enjoy electric lighting, refrigeration, adequate if not fancy food, and a second-hand automobile or motorcycle. They would like a new Cadillac, but will manage without one. They aren't "poor" and need no crocodile tears shed in their behalf.

At the other end of the life cycle are the Joneses. Mr. Jones has been a machinist all his life. He and Mrs. Jones had always wanted to visit the country's great national parks after the children had grown up and left. So he has opted to retire at age 60. The retirement income will come to only $2,000 a year. Are they poor? The poverty cult says, "Yes," these people are suffering from deprivation. They have been "hopelessly" cast aside. Yet the truth is they have a small home paid for, a modest automobile paid for. They enjoy refrigeration, automatic cooking equipment, inside plumbing, TV, enough clothes to last for years—the accumulation of a lifetime. And now they propose to enjoy more leisure, in more comfort, for more years than similar working-class families of any country, any time. The Joneses think the Council of Economic Advisers is statistically wacky.

And take the Browns. They are in the middle years. Both Mr. and Mrs. Brown work. Their three children are in school. They have a modest new home, partially paid for, some savings, some insurance, good clothes—yes, and a paid-for refrigerator and TV set. They have a new car and six installments still outstanding. Mr. Brown becomes ill. Mrs. Brown quits work to take care of him. Their income drops to below $3,000 for the year. Are they in trouble? Yes. Are they in desperate consumer poverty? Are they "hopelessly trapped"? By no means. After a tough year they will resume as members of the affluent society even by CEA's definition.

Some clues to how much poverty in United States

Percentage of families having—	1920	1965
Minimum adequate diet, or better	50	95
Electric or gas stoves	28	99
Electric refrigerators	1	99
Television sets	—	92
Telephones in home	35	[1] 88
Children born in hospitals	20	98

[1] In metropolitan areas.

Source: Study by Prof. John B. Parrish, University of Illinois.

ECONOMIC WELL-BEING: "CUMULATIVE"

These illustrations could be multiplied many times. Cross-section household-income statistics are a very inappropriate yardstick with which to measure economic well-being, which is a longitudinal and cumulative process.

Let's return for a moment to the telephone as a luxury—or at least a semiluxury—consumer good. Now take the desperately poor on whom the doors of affluency have presumably been "slammed shut." Now take the "poorest of the poor"—those at the very rock bottom of the income scale, those desperately deprived households earning less than $500 a year. You just can't get much poorer than that.

Now observe that nearly 60 per cent of these poorest of the poor had telephone service in 1965. How could this be? Why would families presumably facing the grim miseries of malnutrition order telephone service? And, if we make allowance for the availability factor and the "can afford but don't want" factor, then it is reasonable to conclude that 70 to 80 per cent of America's poorest poor had telephones in 1965.

If this is the "new poverty," it is apparently not too severe. How to explain this paradox of income poverty, consumer-goods affluence? The answer is quite simple. Income data are a very bad measure of economic well-being. The Smiths, the Joneses, the Browns, all had telephone service even though the CEA's income statistics put them in the "poverty class."

There is a second big fallacy in the "new poverty" claims, and in some respects an inexcusable one. The poverty cult measures the economic well-being of families at all income levels by determining what they can buy with their income at current retail prices. In fact, the poverty cult makes much out of the fact that because of the greed of retail merchants and the gullibility and lack of buying savvy on the part of many poor buyers, the "new poor" actually pay more for the same goods than the affluent classes. This is hogwash.

The truth is, America's low-income classes have access to a low-price consumer-goods market in which prices are a fraction of published retail prices, and in which the purchasing power of "poor" dollars is multiplied many times. This discount market yields levels of consumption far above that indicated by retail prices.

As the poor could explain to CEA and the poverty intellectuals, this market is America's enormously big resale market—the world's largest. Every year, from 25 to 65 per cent of many consumer durable-goods purchases involve second or third-hand goods moving in established trade or in informal, person-to-person channels.

Take as an example a popular consumer durable good, the electric refrigerator. In 1923, this appliance was a new item. In current dollars, it cost around $900. Its capacity was small, averaging less than 6 cubic feet. It averaged only six years of service life, or about $150 a year. There were too few produced, and service was too short for a resale market. Only the rich could afford a refrigerator.

Today a good new refrigerator can be purchased for about $300. Its capacity will average about 10 cubic feet. Service life will be around 18 years. The average replacement year currently is around 10. So the first buyer pays about $30 a year, minus trade-in. Resale value will be about $50. This will permit the second buyer to purchase eight years of the same quality of refrigeration for about $6 a year. The low-income buyer, not particular about the latest style, has expanded his purchasing power 500 per cent over that of the first high-income buyer.

Today's low-income, "new poverty" buyer has purchasing power 25 times greater than that of the rich buyer of 1923. America's consumer durable-goods market is operating under a law of accelerating diffusion. America's low-income families are not being shut out. They are being pulled into affluence at an ever-increasing rate.

There is a big, hidden, tertiary consumer-goods market not measured even by retail or resale price statistics. This is the intergeneration movement of goods accumulated over time and handed down or distributed from one generation to another. In an affluent society this becomes a very large market. Sewing machines, automobiles, electric irons, kitchenware, furniture, silverware, dinnerware, bicycles, etc.—all these provide an enormous source of consumption for all income classes, including the poor.

GROWTH OF NO-COST GOODS, SERVICES

If ignoring the durable-goods resale market is inexcusable, the failure of the poverty cult to take account of the rapid growth in low-cost or no-cost goods and services in America is well-nigh incredible. It is incredible because much of it has been brought about by the very federal agencies whose economists have been among the high priests of the poverty cult. This failure constitutes poverty fallacy No. 3.

To illustrate: Nearly 90 per cent of all Negro births today are in hospitals. Yet the U.S. House Committee on Education and Labor in 1964 said half the Negroes in America were suffering from acute poverty, measured by income statistics. How can so many poor afford so much medical service? For two reasons: First, as already noted, the income data are faulty. But more to the point here, almost every urban community has free or very low-cost medical services for low-income families. In fact, surveys show that in some communities the lowest-income families have more medical checkups, vaccinations, chest X rays, eye examinations than some higher-income groups.

The number of low-cost food programs has been growing rapidly. For example, the national school-lunch program provided low-cost noon meals for nearly 20 million children in 1967. The food-stamp plan provided low-cost food for 1 million persons in 1966, and was scheduled to rise to 2 million in 1967. The low-cost milk plan—along with school lunch—accounted for 5 per cent of total U.S. nonfarm fluid-milk consumption in 1966, and would have expanded even more in 1967 had not cutbacks been ordered because of Vietnam.

The total number of low-income persons reached by various food-subsidy programs came to nearly 30 million in 1966, or precisely the number of persons classified as poor in 1964 by the Council of Economic Advisers. Since many of CEA's 30 million didn't belong in the poverty classification in the first place, some questions may well be raised as to who and how many poor have been "forgotten."

If the evidence suggests the "new poverty" intellectuals have grossly exaggerated the extent of poverty in America, can we now sit back comfortably and forget the poverty claims? Unfortunately, we cannot.

"SOME DISTURBING TRENDS"

There are some very disturbing social trends which have accompanied the spread

of affluency. Even more disturbing is the possibility that the federal antipoverty programs may be causally as well as associationally related to these developments. We may be headed not toward a great new society, but toward social chaos. Let's look briefly at six problem areas, all of them interrelated:

1. The various federal-State income-maintenance programs seem to have generated an explosion of illegitimacy in America that will have far-reaching consequences for the future. The illegitimacy rate has doubled in the last few years, until today 1 out of 12 Americans is born illegitimate. At recent rates of growth, every tenth American by the early 1970s will be born out of wedlock.

2. Related to illegitimacy is the long-run growth in households managed only by females, a large proportion subsidized by various federal-State aid programs. Today in America, 1 out of 10 households is fatherless. There is every reason to expect this to rise in the future. Among Negro families the percentage is already 1 out of 4.

3. A particularly disconcerting development over and above trends for the whole population is the upsurge in the number and proportion of unwanted and unguided Negro youth. Today 1 out of 4 Negroes is born illegitimate. In some sections of large urban areas the percentage is very much higher. If the trends of 1950–64 continue, then by 1975 about one third of all Negro youth born in the U.S. will be born outside normal family-life patterns. They will be arriving at the teen ages not suffering from malnutrition or abject consumer-goods poverty, but from acute social and intellectual poverty. The future consequences for the rest of the urban populations, both white and nonwhite, will be considerable.

4. Related to but not solely derived from problems 1 to 3 is the rise of juvenile delinquency. The rate has doubled in the last decade. How long can society tolerate such a rate of growth? At least in part, the steady climb of delinquency may be due not to poverty, but to an affluent society—more leisure, more spending money, fewer responsibilities, less motivation, failure of rehabilitative programs.

5. The diffusion of affluency has been accompanied not only by rising juvenile delinquency but by a rising rate of general crime. The rate rose by one third, 1960 to 1964. The law-abiding segment of the population has an ever-increasing struggle to avoid the depredations of criminals, the latter experiencing not acute deprivation but the encouragement of easy and profitable pickings of the affluent state.

6. Perhaps no problem illustrates so well the failure of the poverty intellectuals than the upward drift of youth unemployment. Very strenuous and dedicated efforts have been made by the U.S. Congress to do something about youth unemployment. A great diversity of programs has been attempted. Recent conditions of tight, full employment have provided a favorable labor market. Yet the "new poverty" intellectuals have only failure to show for their efforts. Youth unemployment has not retreated. For nearly 20 years it has shown a rise—slight for white youth, sharply upward for nonwhite youth.

Could it be the "new poverty" cult has been fighting the wrong war? Measured by consumer-goods yardsticks, less than 5 per cent of U.S. households are below the poverty line, and the percentage continues to decline.

There is a war to be fought, however. There are disturbing signs of deep social problems around us, and more on the horizon. The most rapidly growing segment of the American population is the illegitimate segment. The largest proportion of this "other America" is Negro.

Who is to discipline, guide, train this growing army of unwanted, unmotivated? The ordinary family influences, so strong among earlier ethnic groups immigrating to U.S. cities, appears to be lacking. In fact, such influences appear to be declining and may well be disintegrating.

The churches, historically an important institution in shaping constructive life patterns, appear to have limited and perhaps declining influence.

The "new social problem" is being dumped onto the public schools and the police. But schools cannot discipline—and without discipline they cannot educate.

The police can discipline—but they cannot educate and motivate. Racial-integration efforts have created new antagonisms to add to the problems of the already overburdened schools and police.

"PHONY STATISTICS: HARDLY CONVINCING"

The poverty intellectuals say they are building a great new society. Perhaps they are. But phony statistics are hardly convincing proof. Perhaps they should take a second look. They may well be rushing us pell-mell toward social chaos. The dogmas of the poverty cult may not prove as effective as expected.

Efforts to force racial integration may bring about as many disruptive as constructive influences. We may well need some new institutions designed for the problems of an affluent society of the present, not the poverty society of the past.

If this conclusion is even partially correct, then we should be about the task before it is too late. It may be already too late.

POLITICAL REFUGEES FROM ASIA AND THE PACIFIC

Mr. FONG. Mr. President, on July 12, 1967, I wrote to Secretary of State Dean Rusk strongly protesting the Department's implementation of section 203(a)(7) of the Immigration Reform Act of 1965 dealing with the conditional entry of political refugees from Communist or Communist-dominated countries.

The establishment of refugee offices in six European countries, one in the Middle East, and none in Asia and the Pacific, I pointed out, effectively barred such refugees from entering the United States from Asia and the Pacific under this provision of the law.

On July 25, I received an answer from the Department in regard to my urgent request that refugee offices be established in Hong Kong and Thailand or Singapore.

Then, on August 8, I wrote another letter to the Secretary pointing out that I was "absolutely not satisfied" with the points raised by the Department's letter which attempted to justify their position on this matter. I believe I rebutted each argument effectively, and charged that by refusing to designate refugee offices in Asia and the Pacific, the Department is guilty of gross discrimination—not by law, but by administrative fiat.

Mr. President, I ask that the texts of the Department's letter of July 25 and my responding letter of August 8, be printed at this point in the RECORD.

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

DEPARTMENT OF STATE,
Washington, July 25, 1967.

Hon. HIRAM L. FONG,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FONG: Secretary Rusk has asked me to thank you for your letter of July 12 in which you request that Hong Kong and another country in Southeast Asia be added to the list of areas through which political refugees from Communist countries may be granted conditional entry into the United States under Section 203(a)(7) of the Immigration and Nationality Act. The Department is glad to give you its views on this matter.

I should like to state at the outset that the Department of State shares your view that there should not be discrimination against refugees from Communist China. Indeed, the Department has consistently supported legislation and programs for help to Chinese refugees, including the Far East Refugee Program, which the Department administers, and the several immigration laws under which Chinese refugees have been and are being admitted to the United States. Under present circumstances, this is one of the few ways by which we can demonstrate that the historic friendship and humanitarian concern of the American people toward the Chinese people continues.

Several thousand Chinese refugees received visas under the Refugee Relief Act of 1953 and over 2,000 more obtained special refugee visas under Section 15 of Public Law 85–316, the Act of September 11, 1957. Following the massive influx of refugees from Communist China in 1962, the President authorized the use of the Attorney General's parole power under Section 212(d)(5) of the Immigration and Nationality Act for the admission of Chinese from Hong Kong. As a result, during the period 1962–65 over 15,000 Chinese, most of them refugees from Communist China, were paroled into the United States. Many of these Chinese benefited from that provision of Section 203(a)(7), which permits the use of up to 5100 numbers annually for the adjustment of the status of refugees already in the United States.

More recently the removal of quota and other restrictions by the Act of October 3, 1965, which amended the Immigration and Nationality Act, has provided substantial relief for Chinese refugees in Hong Kong. In the quota year ending June 30, 1965, before the new Act had modified the national origins system and the discrimination of Asians associated with it, only 2,122 immigrant visas were issued by the Consulate General in Hong Kong. In the year ending June 30, 1966, the number of visas issued had risen to 6,911, and in the year ending June 30, 1967, the number is expected to reach about ten thousand, almost five times the number issued before the new law was enacted. In the last few years the number of Chinese immigrants has increased to the extent that voluntary relief agencies and others have reported that many of the Chinese are having difficulty in finding jobs and housing in the United States except under conditions which are substandard and not on a par with their skills and previous level of living.

With regard to the language of Section 203(a)(7) of the Immigration and Nationality Act, the Department is in full agreement with you that the language of the statute would permit the conditional entry of refugees from Communist China. However, among the considerations involved in the implementation of Section 203(a)(7) was the position of the Congress as noted in the reports of Committees of the Judiciary of both the Senate and the House. These reports stated that the conditional entry of refugees as proposed in this bill was not unlike the parole procedure utilized during the existence of the so-called Fair Share Act and that it was intended that the procedure should remain the same. Public Law 86–648, the Fair Share Act of July 14, 1960, was enacted for the specific purpose of resettling the overflow of refugees in Europe and the Middle East. In accordance with Congressional intent for the implementation of that law, the seven countries mentioned in your letter—Austria, Belgium, France, West Germany, Greece, Italy and Lebanon—were designated as centers for the parole of refugees. With the passage of the new Immigration

Act, and in line with the language of the Congressional reports, these same countries have continued to be the only ones from which refugees are being processed for conditional entry.

As you know, Section 203(a)(7) provides that conditional entries shall be made available by the Attorney General to aliens who are examined by Immigration and Naturalization officers. Although this section of the law is administered by the Immigration and Naturalization Service (INS), the Attorney General and the Secretary of State have agreed that the Department of State will designate the countries in which it is considered feasible and in the foreign policy interests of the United States for the Immigration and Naturalization Service to undertake the examination of applicants for conditional entry. Also involved are agreements with the countries of asylum to the arrangements necessary for INS to conduct these operations. These include the right of INS officers to interrogate applicants, the right of access to local government records on the refugees and the right to return refugees to the asylum country within a period of two years if they are found ineligible to remain in the United States.

The Department in consultation with the Immigration and Naturalization Service has given consideration to the possible extension of the benefit of Section 203(a)(7) to other areas. For example, in addition to the two million or so Chinese in Hong Kong who might qualify as refugees, the million and a half Palestine refugees in the Middle East pose a similar problem. However, under the law a maximum of only 10,200 refugees may be granted conditional entry annually and half of this total, or 5,100 numbers, may be made available for the adjustment of status of refugees already in the United States. Therefore, the numbers of Chinese who might enter the United States under these limitations would have relatively little impact on the total refugee situation in Hong Kong. Should Hong Kong (or the Middle East) be opened up for the implementation of conditional entry, the problem of administering the presumed huge number of applications, of making determinations as to the applicant's refugee status, and of trying to assign priorities among potential applicants far in excess of the numbers available would be most difficult. There would be a special problem in Hong Kong where the authorities consider persons entering the Crown Colony without legal documents as "illegal immigrants" rather than "refugees." Whereas in European countries, refugees apply for and receive asylum under definite standards related to the provisions of the United Nations Convention on Refugees, no such determinations are made in Hong Kong.

These are the considerations upon which the Department thus far has withheld designation on Hong Kong as an area for the examination of applicants for conditional entry. You may be assured, however, that the Department will continue to keep the question of enlarging the scope of the refugee program under serious consideration.

I appreciate the opportunity which your letter provides to explain the Department's position in this matter.

If there is any additional information which you believe we can furnish, please let me know.

Sincerely yours,

WILLIAM B. MACOMBER, Jr.,
Assistant Secretary for Congressional Relations.

AUGUST 8, 1967.

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

DEAR MR. SECRETARY: This will acknowledge receipt of the response of the Department of State, dated July 25, to my letter concerning political refugees from Communist countries in Asia and the Pacific. I appreciate very much the extensive exposition of the Department's views on the matter.

I am well aware of the past efforts on the part of this country to assist refugees escaping communism from Communist China and other areas of Asia and the Pacific. The Department's support of these efforts is indeed commendable. But this should not excuse the full implementation of the spirit and intent of the law.

I am also fully aware of the language contained in the Reports of the Committees on the Judiciary of both Senate and House regarding the implementation of Section 203(a)(7) of the Immigration and Nationality Act of 1965 which was noted in the Department's letter. It is quite true that the Senate Report, for example, contains the following language: "The conditional entry of refugees as proposed in this bill is not unlike the parole procedure utilized during the existence of the so-called Fair Share Act . . . and is intended that the procedure remain the same."

This language of the Senate Report clearly indicates that procedurally it follows the Fair Share Act. But nothing in the Report says that the refugees should be only those covered by the Fair Share Act.

As you point out yourself on page 2 of your letter: "With regard to the language of Section 203(a)(7) of the Immigration and Nationality Act, the Department is in full agreement with you that the language of the statute would permit the conditional entry of refugees from Communist China."

There is no question that the overriding public policy underlying every single aspect of the 1965 Law is the complete elimination of race discrimination from our basic immigration statute. This transcendent public policy is made abundantly clear in statements of President Johnson, when he submitted the bill to Congress and when he signed the measure into law, and in all the legislative history of the Law.

When that public policy is applied to statutory provisions dealing with political refugees, and fortified by what we all agree to be the meaning of Section 203(a)(7), it is plain to me that such refugees in the Asia and Pacific areas should be placed on exactly the same footing as political refugees in Europe and in the Middle East.

I can understand the problems outlined in the Department's letter with respect to political refugees in Asia, particularly those in Hong Kong. But I am convinced these problems are exactly what you have had and are experiencing in most of the seven nations where you have established refugee offices.

To be sure, there is the "problem of administering the huge number of (Hong Kong) applications"—particularly in comparison with the small number of refugees to be admitted annually under the 1965 Law.

This again appears, however, to be a problem common to political refugees the world over—whether they may come from Europe, the Middle East, or Asia. The reason for this is the limited number the Congress has seen fit to allow into the United States each year.

The primary relevant criterion for considering their admission to the United States in this context is that all such refugees, although limited in number, be given an equal footing, regardless of race, color, or national origins.

As for foreign policy considerations, the establishment by the Department of refugee offices in Asia and the Pacific undoubtedly would greatly enhance America's image in that critical area of the world. By doing this, we would be demonstrating to the hundreds of millions of people in Asia and the Pacific that America does not discriminate against them—in favor of the peoples of Europe and the Middle East.

I am certain that the United States would encounter no difficulty in reaching agreements with the countries of asylum I have proposed to enable INS screening of applicants for conditional entry. The United Kingdom, and the sovereign states of Thailand and Singapore undoubtedly would be more than willing to extend their fullest cooperation to this country in this regard.

There appear to be no insurmountable obstacles to establishing refugee offices in the Asia and Pacific areas. It is therefore evident to me that the problems which are outlined in the Department's letter have been raised to avoid the full implementation of a law duly passed by the Congress.

All that is requested is that at least two refugee offices be established in the Asia-Pacific area. Only when this is done will the Immigration Reform Act of 1965 be fully implemented as to its basic underlying policy of complete eradication of race discrimination. Only then will America not be accused of reverting to the ill-advised policies of the past.

In view of the language of the Law and its overriding intent, the Asia-Pacific area has been grossly discriminated against—not only by law, but by administrative fiat. It has not been placed on the same footing as Europe and the Middle East.

It is imperative that the language and spirit of the Law be fully implemented. This could be done by designating Hong Kong and another nation—Thailand or Singapore—as points through which refugees might be processed at the earliest possible date.

I look forward to your favorable reply.

Sincerely yours,

HIRAM L. FONG.

Mr. FONG. Mr. President, on August 25, the Department wrote me again, answering my August 8 letter.

This time, the Department appeared to be more receptive to my urgent request and assured me that—

The Department is continuing to keep the question of enlarging the scope of the refugee problem under serious consideration.

I was told that the Department has requested from its missions in Asia "additional facts" and the "appraisals of the extension of the program" to Asia and the Pacific.

The Department assured me that—

The cogent points which are contained in your letter—

Dated August 8—

along with the field evaluation of the matter will certainly receive our most serious study in our active review of this problem.

In the meantime, the Department requested an opportunity to discuss with me "certain foreign policy implications which are inherent in this problem."

Mr. President, I ask that the text of the Department's letter of August 25 be printed at this point in the RECORD.

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

DEPARTMENT OF STATE,
Washington, August 25, 1967.

Hon. HIRAM L. FONG,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FONG: The Secretary has asked me to reply to your letter of August 8 concerning political refugees from Communist countries in Asia and the Pacific. As indicated in my reply of July 25 to your original inquiry of July 12, the Department is continuing to keep the question of enlarging the scope of the refugee program under serious consideration.

We have asked our missions in Asia for additional facts and for their appraisals of the extension of the program to Asian countries. The cogent points which are contained in your letter along with the field evaluation

of the matter will certainly receive most serious study in our active review of this problem.

In the meantime, I wish to reiterate the Department's offer to discuss with you certain foreign policy implications which are inherent in this problem. I should be most happy to arrange for appropriate officers of the Department to meet with you at your convenience.

May I thank you for giving Secretary Rusk your views on this matter.

Sincerely yours,

WILLIAM B. MACOMBER, Jr.,
Assistant Secretary for Congressional Relations.

Mr. FONG. Mr. President, yesterday, Mr. President, I met for 45 minutes with three representatives of the Department.

We discussed at some length various problems relating to foreign policy considerations and other security aspects of the situation.

The Department's spokesmen were quite encouraging about the prospects for establishing refugee offices in the Asia-Pacific area.

I am happy that the Department is now fully cognizant of the implications of its partial implementation of the Immigration Reform Act, and will conduct a full-scale reappraisal of opening refugee offices in Asia and the Pacific. I am hopeful that this will be done as expeditiously as possible.

After the Department has had a chance to review the entire picture, I am very hopeful that it will fully implement the overriding policy of complete elimination of race discrimination from our basic immigration statute.

WESTERN GOVERNORS AND SENATORS AGAIN ASK PRESIDENT FOR ACTION ON COPPER STRIKE

Mr. BENNETT. Mr. President, on Monday of this week I introduced, on behalf of myself and Senators ALLOTT, FANNIN, DOMINICK, HANSEN, and JORDAN of Idaho, Senate Resolution 161, urging the President to invoke the 80-day cooling-off period of the Taft-Hartley Act so that the 46-day-old copper strike in the West could be brought to an end.

The economic impact of the strike in Utah alone is reaching the $17 million mark—a total which does not appear overly large in this day and age of multi-million-dollar deficits and appropriations—but a total which is proving to be an economic crisis in a relatively poor State such as Utah. Aside from the many miners who are out of work the economic pinch is now being felt by the many allied industries who rely on a sound copper economy in the West.

It has now become obvious that the Labor and Public Welfare Committee will not have time before we begin our congressional Labor Day recess to hold any hearings or to take any action on our resolution. It is my feeling that this situation will become a deeper emergency by the time we return from the recess the week of September 11 and consequently I have joined with a number of my Western States colleagues in addressing a wire to the President urging him to take the emergency action available to him under the provisions of title II of the Taft-Hartley Act. In sending this wire to the White House we are supporting two similar wires—one as early as yesterday—which the Governors of the five States involved have sent also urging the President to take steps to help alleviate this situation.

If we are to wait until after the Labor Day recess I am afraid that by then the American copper supply will reach a dangerously low point which will affect Defense Department and Vietnam supplies. The Commerce Department has informed me that we may be out of copper by September 15. I do not think we should allow this copper strike to get to the point where one single Defense Department request—be it for a few feet of copper wire or be it for a pound or two of copper for munitions—I do not think we should allow one single "sorry, we're out," reply to come back.

Mr. President, so that the record can be complete on this matter, I ask unanimous consent to have printed in the RECORD the text of the wire sent to me by the Governors of the five States as well as the text of the wire which we also have sent to the White House.

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

AUGUST 30, 1967.

The PRESIDENT,
The White House,
Washington, D.C.:

In view of pending congressional Labor Day recess and obvious lack of time for any Senate Labor Committee action on Senate Resolution 161 regarding the copper strike, we join the western Governors who have twice wired you respectfully urging you to take all action necessary, and to invoke title II of Taft-Hartley Act to help bring to an end the 46-day-old copper industry strike. Commerce Department informs us that copper supplies may run out in 2 more weeks. Therefore, on about September 15 the Defense Department may receive negative replies when it attempts to secure copper to manufacture needed war supplies. The U.S. copper stockpile already has a deficit of 500,000 tons, thus endangering this source of supply. The situation in the West grows more and more critical every day. Immediate action is required.

WALLACE F. BENNETT,
U.S. Senator, Utah.
PAUL FANNIN,
U.S. Senator, Arizona.
GORDON ALLOTT,
U.S. Senator, Colorado.
CLIFFORD HANSEN,
U.S. Senator, Wyoming.
LEN B. JORDAN,
U.S. Senator, Idaho.
PETER DOMINICK,
U.S. Senator, Colorado.

AUGUST 29, 1967.

Senator WALLACE F. BENNETT,
Senate Office Building,
Washington, D.C.:

We have this day dispatched the following wire to the President of the United States:

"On Thursday, August 24th we wired you requesting the appointment of a board of inquiry to inquire into the circumstances surrounding the strike in the copper industry and the efforts to mediate the same. On Friday morning we were contacted by Mr. Simkin, of the Federal Mediation and Conciliation Service stating that this matter had been referred to him and that he wished time to pursue another approach to the matter. We received word this afternoon from Mr. Simkin that this other approach had proved fruitless. We wish to renew our request for the immediate appointment of a board of inquiry. Our situation as a result of this strike grows more critical each day. We will appreciate your assistance in this matter.

"CALVIN L. RAMPTON,
"Governor of Utah.
"TIM BABCOCK,
"Governor of Montana.
"PAUL LAXALT,
"Governor of Nevada.
"JACK WILLIAMS,
"Governor of Arizona.
"DAVID F. CARGO,
"Governor of New Mexico."

EDUCATOR TONY CAMPOS TALKS ABOUT VALUE OF BILINGUAL EDUCATION

Mr. YARBOROUGH. Mr. President, in August 1964, the Texas Outlook, official publication of the Texas State Teachers Association, gave early recognition to the value of bilingual education in Texas schools. Written by Tony Campos, then a Spanish teacher with the Houston schools, and presently serving Houston with the Teachers Corps, in this article explained the advantages gained by the students of Spanish-speaking background who are taught first in the natural, then in the national, tongue. Mr. Campos speaks knowledgeably and well and the workings of bilingual education, as he even then conducted it, in his article, "Preserving a Noble Heritage."

His years of experience have given Mr. Campos valuable knowledge of the value and the workings of bilingual education, and have made him an ardent supporter of this system of teaching the Spanish-speaking student.

I commend Mr. Campos and the Texas Outlook for continuing service to the teachers and students of Texas, as evidenced in this early support of bilingual education.

Mr. President, I ask unanimous consent that Mr. Campos' article entitled "Preserving a Noble Heritage" published in the August 1964 Texas Outlook, be printed in the RECORD.

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

PRESERVING A NOBLE HERITAGE

(By Tony Compos)

(NOTE.—Tony Campos, Spanish teacher in Houston ISD for the past three years, has taught Spanish to 22 teachers and the principal of DeZavala Elementary so they can more easily convert the students of Spanish descent into English speakers. He has also assisted in formulating Texas Education Agency's Preschool Instructional Program for Non-English Speaking Children. A graduate of Baylor University, he is now attending night classes at the University of Houston.)

On Thursday evening November 21, 1963 the late Pres. John F. Kennedy and Mrs. Kennedy attended a reception in a Rice Hotel ballroom given by members of the Houston Chapters of the League of United Latin American Citizens. The more than 1,000 LULAC members and friends gave Mrs. Kennedy a standing ovation when she honored them with a short talk in Spanish.

Mrs. Kennedy said: "Estoy muy contenta de estar en al gran Estado de Tejas, y especialmente de estar con ustedes y ver esta noble tradición española. Esta tradición se estableció 100 años antes que se colonizó el Estado de Massachusetts, donde nació mi marido. Es una tradición que aun hoy es fuerte y vigorosa. Ustedes trabajan por Tejas y por los Estados Unidos. Gracias."

Translation: "I am very happy to be in this great State of Texas and especially to be

with you and see you carry on this noble Spanish tradition, which was established 100 years before the colonization of the State of Massachusetts, where my husband was born. It is a tradition that even today is strong and vigorous. You work for Texas and for the United States. Thank you."

LULAC members recognize this fact and read it every time they recite the LULAC Code which states, "Be proud of your origin and maintain it immaculate."

Mrs. Kennedy made such an impression because she spoke Spanish so fluently that Latin Americans all over the world, and especially in Texas, admire her.

In spite of the heritage of the people of Spanish descent, the teaching of Spanish in the elementary grades to Spanish students has met with opposition from many Latin Americans in Texas.

Since the first encounter with the problems of the preschool Spanish child, American educators have been amazed at the tremendous advantage a youngster has if he possesses the ability to speak two different languages.

Thousands of Spanish-speaking youngsters in Texas are told not to speak Spanish when they enter first grade. Not only are they kept from speaking the only language they know, but they are set apart from the English speakers because of their inability to comprehend and speak English, the language of the country in which they were born, the United States. Since they are unable to fathom the reason, some of these children feel unwanted. They think that they are grouped together because of the color of their skin and because they have Spanish parents. These children may acquire feelings of resentment they will never overcome.

Believing their inability to speak and understand English is the reason they are set apart, they blame their ancestry and soon try to forget their heritage. There is a feeling of resentment toward the Latin-American countries from which many of their ancestors have come. Some children immediately try to forget every word of Spanish they have learned; but how can they change the deep-rooted accent in their speech, plus the already imbedded beliefs, customs, and traditions of Latin-American countries and peoples who boast of a language full of rhythm and melody?

Certainly, the Americans of Spanish descent are proud of their origins. Their ancestors are a people difficult to understand without the sympathy lent by an intimate understanding of their manners and customs. The beauty of the history of Mexico is an example. The romance of the life and the language which have so much beauty surely are things of which to be proud.

What can educators do to assist in this crucial problem? First, they need to realize that many of the Spanish-speaking children who start school every year speak their mother tongue with complete fluency. Because they have learned this first language so well, it is only natural that something should be done to cultivate and build on what they already know.

People so endowed with the Spanish language are an asset to the United States. Let us conserve this wonderful talent. It is obvious that many children have mastered the sounds of Spanish. These youngsters have also learned much of the structure and have built up an extensive vocabulary in Spanish by listening to other people and by imitating what they say. Do not allow them to forget the words which they have already learned.

When a Spanish-speaking child is given the opportunity to improve his mother tongue, it will give him a deeper basis for learning other things. The child will associate principles which apply to the familiar tongue with the learning of a new language. Let us build up these complicated habits which have enabled these youngsters to talk Spanish with complete ease by teaching them also to read and write their own language, to learn the grammar, and to enlarge their Spanish vocabulary. These skills will help them understand the construction of English and increase their English vocabulary. Songs, numbers, stories, and other lessons will be easier to understand and to master if they already know them in Spanish.

Spanish-speaking children should be taught the correct pronunciation and enunciation of words. There is also a great need for an enlarged vocabulary. Too many children speak an incorrect combination of English and Spanish.

The Spanish-speaking child should be taught some of the history of his ancestors, so that he may take pride in his heritage. This will give him self-confidence and as his bilingual skills grow his personality will blossom. This in turn will strengthen his motivation and improve his performance in school. Dropouts will be fewer in the elementary grades because the youngster has tasted success and takes pride in being able to communicate and to think in two languages.

A large percentage of the Spanish-speaking children attend churches, civic clubs, and meetings of other organizations where Spanish is spoken. They understand what is said but many are unable to read Spanish literature. By learning to read in two languages they will greatly extend their horizons.

Schools must improve the quality of the child's speech. The child already has a base on which to learn. He will feel more confident because he has proved his ability to speak and understand one langage. He will not feel inferior in his new environment, and by the end of the sixth grade he will be better off. This beginning of writing and reading in Spanish must be done while it is still fresh in his mind.

It is important that educators understand the serious problem involved if we are to develop properly the abilities of every child who enters school. This problem must be undertaken with a high degree of sympathy and love if the child is to achieve optimum success regardless of language background.

The State of Texas has made possible a program of public instruction for preschool non-English-speaking children. The primary objective is to teach oral English to the child during the summer prior to his first year in school, thus enabling him to understand fundamental vocabulary meanings.

The majority of Spanish-speaking parents will welcome a program of teaching Spanish to the child together with English as soon as possible. The parents are eager for the child to learn the language of their ancestors. The parents are interested in learning more about their Spanish origins, also.

The teacher who has a basic vocabulary in Spanish will better understand the Spanish-speaking child and the parents. School districts which have a large segment of Spanish-speaking children might do well to help their teachers learn Spanish and to engage more teachers who speak Spanish natively.

It is estimated that one of every six children enrolled in the Texas public schools has a Spanish surname. The hardest fact to comprehend is that there is only one Spanish-surnamed child in the twelfth grade for every 12 Spanish-surnamed children in the first grade. Four students of Spanish ancestory drop out of school before graduating from high school to each one of non-Spanish origin.

The failure of the child who is not able to finish his primary and secondary education will haunt him throughout his life—often by placing him in unskilled or semi-skilled employment and thus preventing him from enjoying the full meaning and privilege of being an American citizen.

This first and second generation of Spanish-speaking citizens must not be kept from this better understanding and success. We cannot continue to block the avenues leading to a better culture. The Spanish Americans should keep many of their traditions. To a large degree they do not realize the need that this country has for persons who are able to speak Spanish.

Thousands are immigrating to the United States from Mexico every year. Citizenship has to be learned, and it requires the full use of English as well as Spanish. If these people are able to speak two languages, they will be able to plan careers instead of settling for just any laboring job. They will vote as they think best and not have to carry a printed slip of paper into the booth to match names on the ballot. They will understand better the American way of life; their chances of experiencing frustration and living with hate and resentment will be fewer. They finally will realize that theirs is a *noble tradition.*

SUCCESS AT GENEVA

Mr. BREWSTER. Mr. President, after years of determined efforts by the United States and other nations, a draft nuclear nonproliferation treaty has been submitted to the 18-Nation Disarmament Committee in Geneva by the United States and the Soviet Union.

President Johnson said recently:

For more than twenty years the world has watched with growing fear as nuclear weapons have spread . . . Today, for the first time, we have within our reach an instrument which permits us to make a choice.

That choice is between peaceful accommodation and total destruction.

The tabling of this treaty at Geneva is a first step—but a long one—toward peace.

All the parties concerned will have to agree on testing and inspection procedures. There are major nations which have not yet signed.

Still, this is clearly a "nuclear milestone" in the words of the New York Times.

American-Soviet agreements on even an incomplete treaty demonstrate that the world's two greatest powers can recognize a powerful common interest in self-preservation, despite differences of ideology and policy.

I ask unanimous consent that the President's statement of August 24 on the nuclear nonproliferation treaty, and editorials from the New York Times and the Baltimore Sun which comment on the treaty, be printed in the RECORD.

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

STATEMENT BY THE PRESIDENT ON PRESENTATION TO THE 18-NATION DISARMAMENT COMMITTEE OF NONPROLIFERATION TREATY

Today at Geneva the United States and the Soviet Union as Co-Chairmen of the Eighteen-nation Disarmament Committee are submitting to the Committee a draft treaty to stop the spread of nuclear weapons.

For more than twenty years, the world has watched with growing fear as nuclear weapons have spread.

Since 1945, five nations have come into possession of these dreadful weapons. We believe now—as we did then—that even one such nation is too many. But the issue now is not whether some have nuclear weapons while others do not. The issue is whether the nations will agree to prevent a bad situation from becoming worse.

Today, for the first time, we have within our reach an instrument which permits us to make a choice.

The submission of a draft treaty brings us to the final and most critical stage of this effort. The draft will be available for consideration by all governments, and for negotiation by the Conference.

The treaty must reconcile the interests of nations with our interest as a community of human beings on a small planet. The treaty must be responsive to the needs and problems of all the nations of the world—great and small, aligned and non-aligned, nuclear and non-nuclear.

It must add to the security of all.

It must encourage the development and use of nuclear energy for peaceful purposes.

It must provide adequate protection against the corruption of the peaceful atom to its use for weapons of war.

I am convinced that we are today offering an instrument that will meet these requirements.

If we now go forward to completion of a worldwide agreement, we will pass on a great gift to those who follow us.

We shall demonstrate that—despite all his problems, quarrels, and distractions—man still retains a capacity to design his fate, rather than be engulfed by it.

Failure to complete our work will be interpreted by our children and grandchildren as a betrayal of conscience, in a world that needs all of its resources and talents to serve life, not death.

I have given instructions to the United States representative, William C. Foster, which reflect our determination to ensure that a fair and effective treaty is concluded.

The Eighteen-Nation Committee on Disarmament now has before it the opportunity to make a cardinal contribution to man's safety and peace.

[From the New York Times, Aug. 25, 1967]

NUCLEAR MILESTONE AT GENEVA

In hailing the American-Soviet agreement at Geneva on a draft treaty to halt the spread of nuclear weapons, President Johnson was wise to emphasize the distance yet to be traveled on the road to world nuclear security. Submission of the agreed draft to the eighteen-nation Disarmament Conference is a remarkable achievement, but its full contribution to world security will not be realized unless the next stage of international negotiations proves equally successful.

That stage will involve an attempt to get agreement on a workable system of international inspection and control. Article III of the treaty draft at present consists only of the title, "International Control." To come upon that vacant article in reading the draft is to get an immediate reminder of what remains to be done in a crucial area.

Hope persists that an acceptable compromise can be found between Moscow's stand for inspection of all non-nuclear countries by the International Atomic Energy Agency in Vienna and the insistence of America's West European allies that inspection in their countries be continued by their own agency, Euratom. Even such a compromise may not completely resolve the control issue, however, as shown by Rumania's demand that the nuclear powers should also be subject to inspection.

Apart from a control system, much missionary work will remain to persuade non-nuclear countries that adherence to the treaty will neither consign them to second-class industrial status nor leave them vulnerable to nuclear blackmail.

In an earlier stage at Geneva, Brazil argued that to bar a country from carrying out its own peaceful atomic explosions in earth-moving and construction would be to damage its entire technology. This week India—ever conscious of China's nuclear weapons progress—again asked for a multilateral guarantee of protection for non-nuclear signatories.

These problems are not insurmountable, but they are substantial enough to rule out premature celebration. Recognition of their importance in no way detracts from the considerable—perhaps monumental—achievement at Geneva.

American-Soviet agreement on even an incomplete treaty constitutes evidence that the world's two nuclear super-powers can recognize a powerful common interest despite their bitter and perilous disagreements on Vietnam and the Middle East. Great-power responsibility of this high order, if translated into other fields, could mean a mighty step toward that minimum security in a nuclear world without which there can be no assured future for anyone.

[From the Baltimore Sun, Aug. 25, 1967]

NUCLEAR TREATY

The long years of negotiations with the Soviet Union since the end of World War II have taught us to be skeptical about agreements "in principle" or about treaties relating to arms controls which have no inspection or enforcement clauses. There have been too many instances in which no agreement could be reached about the fine print. Yet the treaty halting nuclear tests in the earth's atmosphere was finally signed, without inspection-enforcement provisions which once had been considered essential, and its general effects have been beneficial, even though France and Red China refused to sign and have gone on with their own tests.

The draft treaty designed to halt the spread of nuclear weapons, which has been under discussion for months in Geneva, logically follows the treaty on nuclear testing in the atmosphere. Its intent is to apply international controls to these awesome weapons and to allow man to edge a little farther away from the shadow of the mushroom cloud.

For the moment, however, the draft treaty on which the United States and the Soviet Union can agree—and which other governments will be asked to agree—is incomplete in a vital point. This is the proposed Article 3, which would deal with inspection of the signatory governments' civilian nuclear facilities. This part of the draft treaty, which has been under negotiation for months, is being left blank.

There still is a difference of opinion as to whether the inspection system should be uniform for all signatories or whether the members of Euratom—the atomic energy agency of the European Economic Community which of course includes West Germany—should maintain their own system and be excluded from other inspection. This involves, in substance, the question of whether one group would be allowed to inspect itself.

A draft treaty with one article missing is only a step toward an agreement. The American and Soviet governments seem to regard it as a significant step. Let us hope so. But let us be realistic about the work still to be done.

CONSTITUTIONAL RIGHTS OF FEDERAL EMPLOYEES—THE CIA AND NSA CONTROVERSY

Mr. FONG. Mr. President, I do not believe that the Central Intelligence Agency and the National Security Agency should be completely exempted from the provisions of the bill, S. 1035, protecting the privacy and other constitutional rights of Federal employees.

We have been giving this matter our most careful study and consideration during the past 3 years, when the bill was in the Judiciary Subcommittee on Constitutional Rights, of which I am a member.

The chairman of that subcommittee, the distinguished Senator from North Carolina [Mr. ERVIN], has been in almost constant touch with all the agencies of our Government having to do with national security questions. After a most exhaustive analysis of the whole picture, the subcommittee adopted amendments to the bill exempting the Federal Bureau of Investigation, and granting a partial exemption to the CIA and NSA.

This limited exemption provides that the practices outlawed by the bill, such as lie detector tests and psychological tests, may be used only in situations involving the national security.

I strongly agree with Senator ERVIN that all Federal employees should be accorded the protection of their privacy and basic rights, regardless of the mission of the agency for which they happen to work.

The CIA and NSA have had ample opportunity to present their views and discuss their problems with the subcommittee over these last 3 years. To raise objections to the bill at the 11th hour is to me only an attempt to kill the legislation.

SAFETY REQUIREMENTS FOR PRIVATE PLANES

Mr. DOMINICK. Mr. President, recently I had occasion to speak in the Senate on the need for establishing weather-monitoring stations and providing crash location beacons for private aircraft. Recently an excellent article, which analyzes at some depth the rash of crashes in our Colorado mountains, was written by Mr. Dan Partner, a Denver Post staff writer, and published in the Post of August 20, 1967.

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

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

RASH OF CRASHES: WEATHER, TERRAIN, AND ERRORS CLAIM LIGHT PLANES IN COLORADO

(By Dan Partner)

Flying conditions for light airplanes in Colorado have been described as the roughest of any state, Alaska excepted. "If you can fly in Colorado," veteran pilots say, "you can fly anywhere."

Pilot error, the hostile terrain of Colorado's Rockies and "quick change" weather are often co-pilots of death on light aircraft.

Colorado's crashes came in bunches. Last year there was a rash of accidents in June. This year August is the bad month.

Actually, Colorado's flying safety record compares favorably with the fair-weather states of Arizona and California—a high tribute to the approximately 10,000 pilots and an exceptional group of flying instructors.

Despite the hazards, Colorado pilots are maintaining a safety record equal to those of the eight other Western states, according to Federal Aviation Administration (FAA) statistics. California, for example, had 56.6 per cent of the aircraft and 60.7 per cent of the airmen in the nine-state area in 1965. It accounted for 50 per cent of the total accidents, 48 per cent of the fatal accidents and 48.3 per cent of the fatalities. Arizona had 7.2 per cent of the aircraft, 5.5 per cent of the airmen and accounted for 8.5 per cent of the total accidents, 9.6 per cent of the fatal accidents, and 11 per cent of the fatalities.

Colorado had 6 per cent of the aircraft, 7 per cent of the airmen and contributed 8 per cent of the accidents, 7.4 per cent of the fatal accidents and 5.7 per cent of the fatalities. The state of Washington had a 10 per cent figure across the board. The 1965

figures are the last available for the Western states.

Colorado's fatality figure can, in part, be "credited" to visitors unaware that mountain flying requires a special set of rules. A five-year study of general aviation flying in Colorado, 1962–66 inclusive, by the FAA revealed out-of-state pilots were involved in 26.1 per cent of the accidents during the period and accounted for 40 per cent of the fatal accidents.

(General aviation includes all flying except the commercial planes and military. An accident is recorded if damage requires $300 or more for repairs.)

CALIFORNIANS LEAD

California-based pilots were the leading out-of-state contributors to the Colorado accident toll during the five-year period. having 25 crashes with five fatalities. Eighteen Texas planes crashed, killing five. Planes from other states crashing in Colorado included Kansas, 15 accidents, 2 killed; Nebraska 14, 1 killed; New Mexico 16, 2 killed; and Wyoming, 10, 2 killed.

The study, made by the FAA's General Aviation district office, headed by Robert H. Lewis, revealed these Colorado totals:

Year:	Accidents	Fatal accidents	Fatalities
1962	109	18	37
1963	121	16	30
1964	109	16	42
1965	102	10	16
1966	140	17	33
Totals	581	77	158

Of the 581 accidents, 67.6 per cent were attributed to pilot's error, 13.9 per cent to mechanical trouble and 18.5 per cent to other factors, such as severe winds, turbulence and conditions over which the pilot had no control. It was found that while only 22 percent of the accidents occurred during the cruise phase of flight, 81.8 per cent of the fatal accidents happened during this phase.

The recent spurt in accidents, FAA officials fear, had ruined chances of holding the 1967 total to the 140 recorded last year. The pace appeared favorable from Jan. 1 to June 30 as 69 accidents were recorded, four of them fatal for eight persons. Since July 1, however, there have been 20 accidents and 10 persons have died in four of them.

While the current accident rate is not regarded as "alarming," FAA officials are stepping up their safety programs designed to acquaint pilots with the dangers, both routine and extraordinary, associated with the mountains and its fickle weather. The FAA now has "Operation Safe" under way to call attention to the heavy air traffic expected during the Labor Day weekend and urging observance of safety regulations to curb the toll of accidents.

PILOT'S CHOICE

Flying safety is a personal matter for each pilot, the FAA believes, and cannot be legislated. They believe the present rules are sufficient, if common sense is used.

"If a pilot wants to take chances with his life and the lives of his passengers, there's nothing we can do about it—except ground him under an emergency suspension, if he survives the accident," says Robert H. Lewis, chief of the FAA's General Aviation district office.

"Most pilots do very well in the FAA tests," he says. "But we don't know what he'll do when he walks out of the office and gets in the cockpit. If he thinks he has to go, regardless of the weather and the fact that he isn't qualified to fly on instruments, then we've all got trouble."

Lewis said the five-year study revealed that 23 planes involved in fatal accidents on cross-country flights were piloted by men who were not rated for instrument flying.

While there is no significant difference in the accident rates in the nine Western states, Colorado's record shows a unique seasonal trend. The summer months, ordinarily a good time for flying in most states, present danger in Colorado due to thunderstorms and squalls. These are particularly dangerous to pilots flying into the state from the East. Fog and rain conditions account for a sharp rise in accidents due to weather in June. October traditionally is Colorado's best month for weather but statistics show a jump in fatal accidents during that month. Pilots have a tendency to become complacent and get caught in the first severe storms of the winter season. The lowest number of accidents is recorded in December and the fewest fatals occurs in February.

WOMEN SAFE

The age of pilots, the FAA study shows, is not a factor in accidents. The rate is constant for pilots ranging from 20 to 50 years of age. Private pilots accounted for 43 per cent of the Colorado accidents during the five-year period. Forty of the 250 mishaps were fatal. Student pilots accounted for 19.3 per cent of the accidents.

FAA records show that Colorado had 362 women pilots on Oct. 1, 1966. They were involved in only 2.5 per cent of the accidents during the five-year period. This record included one fatal mishap.

The general aviation study, Lewis says, has provided several guidelines for promotion of flying safety. His office has started issuing a series of safety bulletins relating to seasonal flying and to dangerous or potentially dangerous weaknesses in the structure of specific aircraft. Pilot examiners are urged to conduct safety clinics and assistance is being provided the newly-organized Colorado chapters of the Flight Instructors Association.

An effort to aid pilots in beating the weather problem is underway by the U.S. Weather Bureau. Included in the 1968 fiscal year budget of the Environmental Sciences Service Administration (ESSA) are funds to obtain a weather radar system for Colorado. This would be part of the national weather radar system now concentrated in the Midwest and Southeast to provide warnings of tornados and hurricanes.

The equipment is estimated to cost $150,000 and the entire installation, to be located east of Denver on the high plains near Limon, would cost approximately $400,000. If approved, it could be in operation in about two years. The radar, with a 250-mile scan, ignores clouds unless they bear moisture. These are spotted and tracked and data is recorded at the Denver center, immediately available for pilots and for others concerned with the danger of flash floods. Weather systems now are traced by individual reporting stations, a slow and sometimes inaccurate process due to frequent changes in the patterns and direction.

BETTER INFORMATION

The radar system, the weather bureau believes, will be a major step in aiding pilots to avoid being trapped by weather, a frequent difficulty that many times results in tragedy.

Funds from Congress to improve Colorado's weather reporting service now are being sought by Sen. Peter Dominick, R-Colo. A pilot with more than 5,000 flying hours, Dominick recently told the Senate the failure of the weather bureau to install proper weather monitoring stations in the state has "meant the death of many fliers." The senator admits some frightening experiences while flying in the mountains and contends such situations could have been eliminated if late weather information had been available.

Dominick wants $43,855 added to the ESSA budget for new weather reporting stations at Nucla and Walden and to finance expansion of operations at Montrose, Gunnison, Salida, Aspen, Durango and Alamosa. He called the Colorado reporting system the "worst" in the Rocky Mountain area. This description was called "not entirely accurate" by one veteran pilot. Another said the Colorado system was as good, if not better, than those in states with comparable weather and terrain. It is agreed that Dominick's proposals would improve the system and "fill some gaps." An improved communications system also is sought to allow planes necessarily flying at low altitudes in the mountains to make radio contact with reporting stations.

Weather reports on an hourly basis, instead of every three hours, would improve the system, in the opinion of some pilots. It also has been suggested that a weather reporting station be located at Sterling or Fort Morgan to assist student pilots flying the Denver-Cheyenne-Akron triangle.

SYSTEM IGNORED

One effort by the FAA to provide assistance in flying through the mountains has been virtually ignored by pilots. This is the Rocky Mountain Reporting Service system, established in August 1964, to provide closely monitored Denver-Grand Junction routes via either Corona Pass or Monarch Pass.

The routes were determined after an 18-month research program in which many veteran pilots participated. The terrain includes many of the 54 mountains in the state which tower above the 14,000-foot level and where areas for emergency landings are almost nonexistent. Procedures for pilots to use the routes are simple but demand strict adherence to these major flight rules:

Fly the prescribed route at an altitude no less than the established minimum radio reception altitude.

File an accurate time of departure.

Radio a position report every 10 minutes.

In event of aircraft radio failure, the pilot must land at the nearest airfield and notify the nearest FAA radio plant.

FAA officials say use of the system is disappointing. Only eight to 10 pilots fly the prescribed route each month. Most seem to prefer it during the good-weather months instead of during the winter, when the FAA thinks it is most effective. By requiring a position report every 10 minutes, the system pinpoints the location of aircraft at all times. This would expedite the start of search and rescue operations in event of an accident. Instead of a four-hour lag in getting a search underway, the reporting service would flash the alarm in approximately 25 minutes.

Many pilots have an aversion to filing flight plans, contending that their destination is a personal matter. Some business firms, including oil companies involved in exploration activities, are said to prohibit the filing of flight plans, fearing competitors will learn the location of a potential enterprise.

However, the chief of the Air Force's Aerospace and Recovery Service, Brig. Gen. Allison C. Brooks, has suggested to Congress that pilots be required to file flight plans prior to takeoff. The lack of information on a plane's route presents a "hopeless" task for search units, the general said in congressional testimony, adding that delays in locating downed planes many times result in death of the passengers due to exposure.

Dominick, in his recent speech to the Senate, criticized the FAA for its failure to require the installation of crash locator beacons in aircraft. These beacons are radio units that beep a signal to search aircraft and ground units. Because downed planes have no beacons, Dominick said, the loss of lives has been large and search operations have cost U.S. taxpayers millions of dollars.

The senator said the Air Force has spent $112,808 for each person saved in search and rescue operations. He contends planes should be required to carry the beacons, which now cost from $200 to $500.

The FAA agrees that beacons would greatly aid the location of planes but says its efforts to require the units have been strongly protested by pilots and flying organizations. Most pilots, an FAA spokesman said, are "normal Americans—they aren't safety con-

scious. They rarely carry even a first-aid kit, much less a well-stocked survival kit and to buy an expensive gadget they think they'll never use is out of the question."

SAFETY FACTORS

While mandatory flight plans and beacons are matters for future legislation, both procedures would be of valuable assistance to the Colorado Civil Air Patrol (CAP), which conducts search and rescue efforts for the Air Force. The CAP averages 20 such missions a year and each mission involves approximately 150 persons and 30 aircraft during the average 3½-day search. Lt. Col. Burnice L. Terrell, deputy for emergency services, says the CAP has flown more than 400 missions during the past 25 years and has made 19 during the past 12 months. The success rate is estimated at 75 per cent.

Three planes remain unaccounted for, Terrell says. One is a CAP plane lost July 28, 1959, while making a search in the Granby area. The others disappeared in 1963 and 1964.

Search and rescue operations are added duties for the CAP. Its primary purpose is to provide general knowledge of basic aviation and aerospace programs to boys and girls between the ages of 13 and 18. These programs are considered valuable in teaching flying safety to the state's future pilots.

VIETNAM AND THE UNITED NATIONS

Mr. BURDICK. Mr. President, the majority leader, the distinguished Senator from Montana [Mr. MANSFIELD], and other Senators, last Monday expressed their deep concern that the United Nations Security Council had not turned its attention to the Vietnam situation. I share that concern and wish to commend the majority leader for bringing the matter to the attention of the Senate. The United Nations was established for the purpose of maintaining the peace, and certainly this organization should be called upon to exert its efforts in a search for an honorable settlement of the conflict in Vietnam. I believe the time has come for such action in the Security Council, and if action there is prevented by veto, then in the General Assembly.

THE NEED FOR A NEW MERCHANT FLEET

Mr. BREWSTER. Mr. President, I have spoken often in this Chamber of the old-age crisis that faces the U.S. merchant marine. Our merchant ships are old and need to be replaced soon if we are to continuing carrying even the meager 7 percent of our ocean-borne foreign commerce that we now carry in our own bottoms.

One of the major ills besetting the American merchant marine is apathy. Too few Americans realize the predicament of the maritime industries, and too few realize the extent to which these industries affect them personally.

In the midst of this public apathy, however, one man has undertaken the enormous task of educating the American public in the importance of maintaining a strong, modern merchant fleet.

That man is Peter M. McGavin, executive secretary-treasurer of the AFL–CIO maritime trades department.

Recently, Mr. McGavin had published in the magazine Railway Clerk, an article entitled "United States Needs New Merchant Fleet." In this well-reasoned and thought-provoking article, he demonstrates the need for a new shipbuilding program and the tremendously beneficial effect that such a program would have on the total economy of the United States.

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

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

UNITED STATES NEEDS NEW MERCHANT FLEET

(By Peter M. McGavin, executive secretary-treasurer, AFL–CIO maritime trades department)

The worker who makes restaurant equipment in Cheyenne, Wyoming, the mattress maker in New Jersey, and railroad workers all over America, probably don't feel a common stake in the U.S. merchant marine. They should. And so should thousands of workers in other jobs thousands of miles from the sea.

A new merchant ship built in a United States yard—instead of in a foreign nation, as is now being proposed in Congress—will require as much galley equipment as a good-sized restaurant and the crew will need at least 50 innerspring mattresses and box springs. Building a merchant ship obviously means a lot more than merely the jobs of a few hundred guys in a shipyard.

Add to the galley equipment and mattresses the vessel's other requirements—such as cables, electric wires, fans, furniture, pots, pans, dishes, plumbing, sinks, cooling systems, heating systems and a thousand other needs—and you come up with a total of nearly $5 million in outfitting costs once the basic vessel is built—most of it shipped by rail.

Lost on most Americans is the fact that the cost of a U.S.-flag vessel is not solely the money that is spent within the shipyard. In fact, more than half of a vessel's needs are purchased outside the shipyard and constitute a multi-million-dollar market for ship suppliers, steel mills, fabricating companies, manufacturers, suppliers and scores of related companies which employ thousands of workers.

In steel, alone, today's freight vessels require 7,500 tons for the hull and superstructure. One such order provides jobs for thousands of steelworkers and puts $1.12 million into the hands of the steelworkers as purchasing power. The propulsion plant and its related equipment is an additional $3 million order that involves sub-contracts to pump manufacturers, condenser manufacturers, generator builders and auxiliary equipment makers. One vessel's below-decks machinery would be enough to provide all the needs to run a good-sized office building.

Multiply these multi-million dollar expenditures by the number of merchant vessels the United States *should* build annually and the impact on our economy is obvious. A modest program of 15 vessels annually would result in an expenditure of $130 million outside of the shipyard for materials and equipment, alone. Another $100 million would be spent in the yards themselves for assembling the vessel and installing the equipment.

A more realistic shipbuilding figure—and one in line with the needs of the U.S. merchant marine—would be at least 50 vessels a year, a $1.5 billion expenditure whose economic ripples would be felt in Cheyenne, Chicago, Chattanooga and Camden.

Most certainly a decision to build vessels in foreign yards to be operated under the American flag would be felt in these same cities, but in an adverse manner. Sooner or later it is brought home to Americans that we cannot maintain a strong economy nor industrial leadership of the world if we "farm out" all of our manufacturing needs.

The current Middle East crisis has a built-in potential for erupting into a conflict that could embroil the entire Mediterranean. Consider the problems if a U.S. merchant fleet—a defense auxiliary—were abuilding in Greek yards or in the Montefalcone yards of Italy near Trieste. The volatile status of world affairs should be evidence enough that we can never be certain of a shipbuilding sanctuary beyond our shores.

Shipyard workers have every right to ask those who urged us to build ships abroad if they would urge the same dismantling of our airplane-building facilities and have us depend upon foreign factories for our aircraft? Their response would be revealing.

Arguments are made—and with few dissents—that the United States must participate in developing our air commerce, including subsidization for research, development, control facilities and navigation. Last year the United States spent $766 million on air industry subsidies. Of this, $576 million went for air navigation facilities and $100 million was the Federal share of airport construction, $90 million was spent in behalf of the supersonic transport, a figure which can swell to $2 billion before the SST program is fully operative.

Meanwhile, the merchant marine received about two-thirds of that amount in Federal assistance. A total of $417 million was spent for operating subsidies, construction-differential subsidies and the Government share of 50–50 law costs.

It seems like a lot of money?

It's a drop in the bucket. To be exact, it is only seven per cent of the agriculture subsidy bucket. In 1965, farm subsidy programs cost the U.S. taxpayers $6.6 billion. Of this $2.7 billion was spent for price supports, alone, which is about six times what is spent for subsidy aid to the merchant marine.

Our argument is not whether these are valid programs or not; instead, the issue is whether our nation will spend subsidy funds where they are clearly in our best interests.

A realistic Government-supported shipbuilding program is of great economic benefit to the nation; it is of vital importance in our standby defense posture, and it is within our national philosophy of enlightened self-interest. If we "farm out" our shipbuilding, we may find that we have "sold out" our future.

REVIEW OF "THE JOURNAL OF DAVID Q. LITTLE"—A NOVEL BY R. DANIEL McMICHAEL

Mr. DOMINICK. Mr. President, recently I had the stimulation and excitement of reading a remarkable novel entitled "The Journal of David Q. Little," written by R. Daniel McMichael and published by Arlington House.

The ability of the author to project into the future some of the trends of today is not only engrossing reading but discouragingly prophetic.

Mr. James H. McBride, Research Principal of the Center for Strategic Studies at Georgetown University, has written an illuminating review of this novel. Since both the novel and the review deal with subjects of immediate interest and enormous importance to the people of the country, I ask unanimous consent that the review be printed in the RECORD in order that persons who are concerned with establishing guidelines for further policies may take the time and opportunity to read and mentally digest this very fine novel.

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

HANDWRITING ON THE WALL

("The Journal of David Q. Little," a novel by R. Daniel McMichael, New Rochelle: Arlington House, 1967, 527 pp.)

There is serious concern in many quarters over current trends that directly affect the future of the United States and the American people. Some of the more ominous of these involve: crime, racism, anarchy, urbanization, moral and cultural values, and the possibility of nuclear holocaust.

When we consider these unpleasantries, we cannot help but reflect on the proud history of this country and ask: "What does the future—the next decade—hold for the United States as a nation and for Americans as individuals?" These two futures cannot be separated, for the well-being of the individual is conditioned and limited by the well-being of his country. Conversely, the well-being of the country is literally created by its people. This is especially true under our form of government. Unfortunately, some of our citizens forget one lesson the Founding Fathers taught: Freedom is meaningless except when firmly tied to civic responsibility. There is no such thing as freedom from responsibility except perhaps in slavery or death.

Diverse threats to our national well-being are many, but perhaps the most commonly recognized and feared is that of nuclear war. It is the motivating force behind the entire "peace movement," which has grown quite large and influential over the past few years. One of the many vivid portrayals of the results of global nuclear war was presented in Nevil Shute's novel *On the Beach*, which was also made into a motion picture. Hundreds of thousands of Americans know this story and it has probably had an impact on both our defense policies and our foreign policies.

This is all very well, but we must realize that nuclear holocaust is not our only threat. Others are equally horrible and much more real. If we follow the advice of those obsessed with this threat, the disarmers, the neo-pacifists, and other varieties who are so frightened by this possibility that they overlook or sweep under the rug all other threats, we will indeed fall into equally unpleasant traps that would make life in America gargantuan hell.

This is not far-fetched. It has happened in many mature and relatively advanced societies. The classic example is probably the Jacobin Revolution. Coming down to more recent times, recall the experience of the Soviet Union, especially during the Civil War and the first Five Year Plan. Remember, too, Estonia, Latvia, Lithuania, all of Eastern Europe and most especially Czechoslovakia after the 1948 coup. Czechoslovakia was not conquered by force of arms but by political intrigue, albeit made possible by military impotence, in turn brought on by a moral indifference in the thirties.

There are countless political refugees in the United States who would be only too willing to remind us of the blessings of our Western Liberal political system and the horrors of a peace without choice—always in the name of "the people." Have these lessons been forgotten? Have they been relegated to the dusty and neglected shelf of history?

Just as we needed to be made aware of the consequences of nuclear war a few years ago, we need now to be made aware of the consequences of this other threat: moral relativism and civic indifference. As *On the Beach* portrayed a nuclear devastated America we need a scenario projecting existing trends—seeds already sprouting within us—into the future.

Fortunately a novel has recently been published which provides us with such a scenario. It is entitled *The Journal of David Q. Little*, by R. Daniel McMichael. This fascinating story takes the form of a historical document published in 2223 A. D. in Sidney, Australia. According to the publisher's preface, *The Journal of David Q. Little* was discovered by a task force of human behavior scientists during a visit to an obscure Christian mission on the western slopes of the Rocky Mountains. The author of the Journal appears to have begun his account in the early 1970s when when the threat of imminent nuclear war between the United States and the Soviet Union was ended by the Treaty of Friendship between those two nations.

The crisis developed out of United States' refusal to recognize a newly-formed communist government in Latin America. The Soviet Union issued an ultimatum to the United States, declaring that if we did not recognize this government within six months they would consider this an act of aggression and would act to defend themselves and "other peace-loving peoples' democracies around the world through the use of every kind of weapon necessary to assure victory in the shortest possible time." The ultimatum was credible because the Soviet Union enjoyed a clear nuclear superiority over the United States. American deterrence had been undermined by a wide-spread and seemingly effective Soviet ballistic missile defense. The United States had no ballistic missile defense and hence was wide open to nuclear blackmail.

At first the United States Government stood fast in its refusal to recognize the Latin American government as the designated Destruction Day came nearer and nearer. Then, three weeks before "D. Day," the nerve of the people cracked. The White House and Congress were flooded with phone calls, telegrams, letters and every sort of communication demanding that something be done to avoid the certain fate. Next, the Soviet Premier stepped in to save the face of the President and offered what seemed to be real concessions to the World Order of Nations, the successor to the United Nations. A summit meeting was held and the Treaty of Friendship was signed. Naturally, the American people were wild with joy, oblivious of all but that the danger of nuclear incineration seemed to be over.

The World Order of Nations had been created on the initiative of Western statesmen when it had become clear that the United Nations had failed in its mission. This time the founders, representing 126 nations, vowed to eliminate past mistakes by creating an organization with broad supernational powers to settle disputes through the rule of law. Disputes were to be adjudicated by a system of World Courts. Decisions were to be enforced by an international military force more powerful than any national force. Those who had long advocated world federation and universal disarmament now saw the fulfillment of their dreams.

The Treaty of Friendship provided for general and complete disarmament and the transfer of all national military forces to the World Order of Nations. National sovereignty was surrendered, but then international peace was assured. Of course the United States and all its citizens became subjects of the World Order of Nations, but then the U.S. Constitution remained in force, and that was comforting. At first it was argued by many members of the press, academic community and political figures that the Treaty would in no way change our pattern of life; peace and prosperity would be better than ever. But, of course, it was only reasonable that the Communist Party of America become a major political force. It had to happen, for how could world peace be pursued if Americans continued to be hostile toward a philosophy of government practiced by the very nation with which we signed the Treaty? How could we, the world leaders in tolerance, objectivity, and democracy, set an inspiring example for the rest of the world if we discriminate against those who practice democracy in a different way?

For all practical purposes the United States Government ceased to exist, and without a shot fired. Its functions were usurped by the Joint Committee for Local Action—an organization of the World Order of Nations set up to enforce the Treaty of Friendship. The Treaty was neither long nor detailed, but all manner of things were construed by the Joint Committee to be in violation of the Treaty or required to support the Treaty. This is not at all surprising, nor is it surprising that there was no great public outcry. The precedent has been set by our own Supreme Court, which bases all the rulings, however positivistic, on the Constitution.

Under Joint Committee rulings, labor leaders, industrialists, businessmen, and all who were trained or engaged in free enterprise, as opposed to radical socialism, were utterly destroyed. Laborers' wages were cut and the work week increased. The economy and natural resources of the United States were bled white, all for the very humanitarian and democratic purpose of bringing the standard of living in the less fortunate nations of the world into balance with our own.

David Little was a member of the middle class, a steel salesman. Naturally his job was soon abolished and he lost his home. With the new Bureau of Wages and Prices in firm control of all employment, he could not find work. His children were taken away to be raised by the State, on the pretext that he could no longer support them. As a member of the middle class, he and his family were marked for extermination, even though he cooperated with the regime and even campaigned for the Communist Party.

His wife became a party girl for influential officials in a fruitless effort to salvage some economic and social position for herself and her children. She despised her husband as a ne'er-do-well for being unable to gain membership in the Party, the only path to affluence and social position in the new society.

Too late David Q. Little realized that what had happened was not a sudden turn of fate or the inevitable surge of the tides of history. It was the cumulative effect of trends that had been maturing and growing for a long time. He, himself, had been a part of these trends. In some cases he had jumped on a band-wagon; in others he had just minded his own business. He was only trying to avoid trouble or embarrassment even though sometimes he had a gnawing feeling that all was not well and that somehow he should speak up or do something to help set things straight. Now all the chickens had come home to roost and a once-great society was helpless, defenseless, and ruined beyond repair. David Little wrote in his journal:

"To stand alone with Truth; to know at last the evil of deception and to see yourself as part of that evil; to plunge headlong into the trap you yourself have helped to build; to know that there is nothing now you can do or say or cry out to, save only yourself."

It is only too clear when we consider the trends that I enumerated at the outset that America is in a different and more serious crisis than we have ever known before. Today we live on a narrow ridge between two great abysses. One symbolizes the ever-present threat of nuclear war. That threat may be increasing, due to Soviet and Chinese advances in nuclear and missile technology. The other represents the increasing attenuation of our values and moral confusion. We see this every day; not only in riots, looting, demonstrations, and open agitation, but also in our crime rate, the teach-ins, the so-called "new morals," and even in popular music, dance, and feminine attire. The existence, as well as public and official tolerance, of all these things are interrelated and form an ever-growing web which is pulling us towards the abyss.

When our sense of values becomes confused, moral relativism sets in and both black and white becomes shades of grey. The cold war seems to disappear and the means and methods of international communism seem to be not really wrong after all. Or perhaps we see once sharply distinguishable

value systems as converging, with one about as good as another in the new light. Looking through the grey glasses of relativism, then, nuclear parity seems not only reasonable, but even desirable as a further step towards compromise and convergence. Security becomes insecurity, and insecurity becomes security. At this point we enter the journal of David Q. Little and the descent into the abyss.

But between these two abysses lies a path illuminated by reason, common sense, courage, and awareness of our American heritage. We must know that both abysses are there and stay on the path between them. We must maintain our balance, for if we become obsessed with the dangers of one, we may run blindly into the other. But in this country we are blessed with the material and political means to choose. We have the moral and cultural heritage to know how and what to choose. The rest is up to us.

The Journal of David Q. Little has shown us in vivid terms the penalty for failing to face up to our social and moral problems and to take a stand for what we know to be right. It calls to mind an old American saying, popular a few generations ago: "The brave man dies but once; the coward, many times." David Little died a thousand deaths, and so did his country. Yet he was no special coward—he was simply Mr. Average. The problem was that his *time* called for special courage. The stark and naked truth is that David Little's time is *now*.

SOUTH VIETNAM'S CAPTIVE VOTE

Mr. FULBRIGHT. Mr. President, in view of the current interest in the elections in Vietnam, I believe it may be of interest to Senators to read what Mr. Tran Van Dinh, former chargé d'affaires of the Vietnamese Embassy in the United States, has to say on the subject.

I ask unanimous consent to have printed in the RECORD an article entitled "South Vietnam's Captive Vote," written by Mr. Van Dinh, and published in the New Republic for September 2, 1967.

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

SOUTH VIETNAM'S CAPTIVE VOTE

(By Tran Van Dinh)

On September 3, a Sunday, four million South Vietnamese voters will go to the polls. It should be a sunny day in Saigon or in the Delta, with the rainy season ending; and a rainy day in Hue and Central Vietnam, with the monsoon just starting there. Rain or shine, the Vietnamese trooping to the polls will be captive voters. Police will stamp identification cards at the voting booths and anyone subsequently searched and found without the election-day stamp on his card will be in danger of automatic classification as a Viet Cong. There will be 900 polling stations in Saigon alone. Each voter will get, first, eleven ballots, one for each presidential ticket (two names: president and vice president); then 48 other ballots, one for each senatorial slate (10 names on each). He will have to go over 502 names (22 for presidential, 480 for senatorial) and scrutinize 59 symbols (two for presidential, 48 for senatorial). The symbol for Phan Khac Suu's ticket is a male buffalo and for Nguyen Dinh Quat it is a female buffalo. Hard to tell the difference. There are 60 senators to be elected. Of the 480 senatorial candidates, all but 72 live in Saigon and its swelling suburbs. The 72 whose residence is outside of Saigon live in provincial cities, insulated from peasants.

Ly Dai Nguyen, an aspiring presidential candidate, proposed a 24-hour cease-fire on election day. He was excluded from the race. Decree Law 004/65 proscribes "all plots and actions under the false name of peace and neutrality." The central electoral committee of the national Constituent Assembly barred all candidates whose platform was peace. The candidates included Dr. Au Truong Thanh, former Minister of Economy and Finance, a presidential candidate; and 16 senatorial slates (160 persons), among them Professor Ho Huu Tuong, a well-known writer who was sentenced to death in 1962 by President Ngo Dinh Diem, and Dr. Nguyen Duy Tai, who runs the maternity clinic where the Buddhist leader Thich Tri Quang was under house arrest for several weeks in June last year. General Duong Van Minh, former head of state, was prevented from returning from Bangkok to run.

The Ky-Thieu ticket's most formidable opponents are Tran Van Huong and his running mate, Mai Tho Truyen, a noted Buddhist scholar. Huong, 64, is a South Vietnamese, born of a poor family at Vinh Long. General Thieu is from central Vietnam, General Ky is a northerner. Huong as a student was active in the nationalist cause. During the first days of the August 1945 revolution led by Ho Chi Minh and the Viet Minh Party Huong was elected chairman of the administrative committee of Tay Ninh province, in the south. He joined the Viet Minh *maquis* when British troops arrived in September 1945 to disarm the Japanese and help the French reestablish their colonial power. He refused to cooperate with French-sponsored regimes from 1946 to 1954, when General Thieu and General Ky were with the French forces. In 1954, under President Ngo Dinh Diem, Tran Van Huong was mayor of Saigon-Cholon. He resigned in March 1955, after having been in office five months, long enough to discover that President Diem did not want any criticism of Diem's regime. Following the abortive revolution on November 11, 1960 of army paratroopers led by General Nguyen Chanh Thi (then a colonel, now in exile in Washington, D.C.), Huong was arrested and charged with being in the rebellion.

Early in 1964, after the fall of Diem, Tran Van Huong again became mayor of Saigon-Colon, and then became prime minister of South Vietnam. But his civilian regime was overthrown by the army on January 27, 1965, and he took asylum for a week in the residence of the British Ambassador. Later he was allowed to be the "special guest" of the military junta at Vung Tau seaside resort and lived in a government villa named Santa Maria, well guarded by police. On July 13 this year, he was authorized to go to Saigon for a "courtesy call" on General Ky.

A teacher by profession, Huong is also a poet and playwright. In a press interview two days before his July meeting with Ky he was quoted as saying that everyone was tired of the war and wanted peace. "America also wants peace, in 1968. . . . If peace is achieved there is no winner and no loser."

Despite their power to influence or rig the election, the military junta have shown signs of uncertainty and insecurity. Like all dictatorial regimes, they are afraid of their own people. On May 13, Ky warned that he "might respond militarily if a civilian whose policies he disagreed with won the post (of president)." On July 27, he threatened to "overthrow" any opposition ticket that won by "trickery." It is obvious to everyone that the only candidates who could win by "trickery" are those on the Thieu-Ky ticket.

On June 29, Ky as forced by his fellow generals, and by the pressure of US Ambassador Bunker, to accept the No. 2 spot on the presidential ticket with his rival, General Nguyen Van Thieu. As No. 2, he now has to try harder. On July 22 in the mountain resort of Dalat, he met with his close associate, Chief of Police Nguyen Ngoc Loan, and 50 key district police chiefs, and he has declared he is not going to be a "tea-drinking" vice president, though the 1967 constitution stipulates (article 66) that the vice president "is chairman of the Culture and Educational Council, the Economic and Social Council and the Ethnic Minority Council" and "cannot hold any other position in the government." It would be a tragedy for Vietnam to have General Ky supervise the culture and education of the country, and it would be disastrous for the people's welfare to have him oversee their economic, social and minority problems. But Ky is not going to be a figurehead. At his instigation, the senior generals in South Vietnam have formed a "military committee" to act as a kitchen cabinet if the Thieu-Ky ticket wins. In the unlikely case of its ticket losing, the committee will serve to overthrow the civilian elected president.

General Ky has other plans if his ticket wins. He made a step backward in June 1967; he will make two steps forward after the election. He could force parliament to amend the constitution to enable the vice president to take on the functions of prime minister. He might even overthrow Thieu and take his place as president. If, however, after the elections he feels he is not strong enough yet, he can select as civilian prime minister a friend, such as General Nguyen Duc Thang, Minister of Revolutionary Development, Ky's close associate, and a favorite of the US mission.

PRESIDENT JOHNSON'S ANNOUNCEMENT OF HOUSING CONSTRUCTION ON NATIONAL TRAINING SCHOOL SITE

Mr. TYDINGS. Mr. President, President Johnson today took steps to meet the critical shortage of low and moderate income housing in the District of Columbia and, potentially, across the country. I congratulate the President for this action.

In the District of Columbia, the President directed that a 300-acre parcel of surplus Federal land—the site of the old National Training School—be used to create housing for some 25,000 people. This use of surplus Federal land illustrates the enormous potential which exists across the country for meeting the crisis in low and moderate income housing.

Last week I introduced in the Senate a bill (S. 2343) which, among its other features, would make available surplus Federal lands for low and moderate income housing at 50 percent of the land's market value. Under present law, a municipality or private contractor which wants to buy surplus Federal land to build such housing must pay full market value. Although the Federal Government was apparently able to piece together enough funds to make the Training School site program possible, these funds will not be available in many other areas. New means must be found to finance the use of surplus Federal lands for housing construction. S. 2343 provides such means.

The President today also appointed a special Cabinet-level task force "to evaluate the prospects for transforming surplus Federal lands into vital and useful community resources." I believe this task force should act immediately to endorse the proposal I have put forward in S. 2343.

The advantages of using surplus Federal land for housing are significant. In particular, the land is immediately available so that the time-consuming processes of condemnation are not required, and there is no need for costly and often

agonizing relocation of families from existing housing units.

TOWARD RESPONSIBLE FREEDOM

Mr. PERCY. Mr. President, the Community Renewal Society is one of Chicago's oldest and most effective social welfare agencies. With 85 years of experience in a variety of social services, it has gained the respect of all segments of the Chicago community—from business and political leaders to the poor and disenfranchised residents of the most wretched ghettos.

The Community Renewal Society is embarking on a fresh and promising social experiment of great potential significance to all the troubled cities of our Nation. The project is called Toward Responsible Freedom. It will seek to extend to slumdwellers themselves the opportunity to rebuild and revitalize their own communities. It is based on the idea that our urban poor themselves best understand the problems that beset them, and they are capable of solving these problems if only they are given the opportunity, the capital, and the technical assistance. It is based on the hope that the great human energy which is now being wasted in our ghetto neighborhoods may be permitted to create and not destroy.

The Community Renewal Society has published an excellent pamphlet which describes the means and goals of the Toward Responsible Freedom project. As this pamphlet makes clear, it is the complete lack of any sort of stakes of ownership that is an important element in the hopeless despair of America's slum residents:

> The major cause of the failure of the slum resident to assume responsibility in his neighborhood is that he owns virtually none of it. . . . Rarely does he ever own the place where he lives. Such money as passes through his hands goes largely to those who are nonresidents, eliminating the economic advantage to the community of money that stays where it is expended, at least for some duration.

Mr. President, it is exactly this situation which the National Home Ownership Foundation Act, which I am sponsoring along with 39 other Senators of both parties, and which Representative WIDNALL, of New Jersey, and 111 other Representatives have introduced in the House, would seek to correct. Like Toward Responsible Freedom, this bill would provide the opportunities for ownership and for local decisionmaking in local matters which are not now present. I have publicly stated my enthusiastic support of the Community Renewal Society and its Toward Responsible Freedom project. I commend this pamphlet to the attention of the Senate and ask unanimous consent that it be printed in the RECORD.

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

TOWARD RESPONSIBLE FREEDOM

THE CONTINUING CRISIS IN THE SLUMS

Thousands of lives . . . Millions of man hours wasted in nonproduction, nonconsumption, nonparticipation in our society . . . Square miles of valuable land misused as welfare camps for the noncontributors. . . . The paradox of increased welfare expenditures while thousands of jobs stand open . . . The threat to human safety posed by human energies locked uselessly into slums.

These are the dimensions of the crisis in the inner city, a crisis that is spanned by frustration and resentment on the one hand, and by apathy and indifference on the other.

It is a continuing crisis. Each year between now and 1970, 20,000 non-whites will be added to the Chicago labor force . . . mostly youths of slum background, slum education, slum prospects. School drop-outs are expected to exceed 12,000 yearly. The ADC welfare population has maintained a five year plateau of nearly 200,000. A recent survey of selected slum blocks revealed that 48% were unemployed; 70% of these were not seeking work; and 56% expressed no interest in job training.

Hundreds of millions are being spent in Chicago alone on public and private welfare, urban renewal, housing construction and rehabilitation, job placement and training, and many other worthwhile projects and programs. But the crisis continues.

WHY?

Because the dynamic of self-help is no longer at work in the slums. Hard work without initial skills or adequate education is no longer the guarantee of successful entrance into America's highly technical economy. The pace of technological change is leaving the unlettered and the unskilled behind in a separate "Culture of Poverty" in the midst of a "Culture of Affluence." In our society, the latter have everything going for them, even as the former have everything going against them.

Public surveys reveal the apathy and cynicism of the slums . . . the seeming indifference to job opportunities and job training. Our welfare services have long been concerned about the deepening patterns of dependency . . . the mounting evidence of several generations of the same families continuing to receive benefits. Is it possible that this apparent apathy grows out of the hard conviction that in the slums there are no opportunities, only hand-outs—or break-outs?

AND WHAT OF "VIOLENCE IN THE STREETS"?

The events of recent months recall to us that the seeming indifference is the thinnest of veneers. Scratch the surface anywhere and the abiding bitterness and ill concealed resentment come readily to light, often in overt hostility if not unbridled violence. Today's slum dweller has a short fuse, and a low ignition point.

Thus the crisis is seen most acutely by the observer in rioting . . . looting . . . vandalism, all of them ugly words. These manifestations of the explosiveness of the problem raise difficult questions:

Can such violence be due to a general disregard for law and order?

Then who is responsible for a society that breeds such as these?

Are these simply people without character—shiftless, irresponsible?

Then how did they get to be that way while maturing in a nation that stresses integrity, initiative, and responsible behavior?

Does the answer lie somehow in "walling them off" from decent society . . . locking them tighter into their ghettos . . . giving them increasing welfare benefits, even perhaps the guaranteed annual wage?

Will this keep them from becoming even more restive, and creating further disturbances of the urban peace?

Can the lid be kept on? Can what appears to be a revolution be suppressed? Is all that we need in the present crisis a firmer hand by those in authority?

Is it possible that the crisis will continue regardless?

WHAT DOES THE SLUM DWELLER OF TODAY REALLY WANT?

For generations past and now in the present, government programs and private agencies have tried to give them what their administrators thought was needed. Employment services and job opportunities? But many are not actively seeking work. Better low income housing? Build more housing projects in which they live while remaining poor. Necessities like food, clothing, medical care? Extended welfare programs, public and private, encouraging dependency and discouraging initiative. These have typically been our answers to their problems.

The real answer is that the slum dweller wants the same opportunities that are available to those who reside in the world outside. He wants the same advantages, material and spiritual. His television set may be ancient, but the picture is clear enough to see what is available to others. If we want peace in our cities, we are either going to have to turn off the advertising dream, or do something about realizing it in our slums.

A QUICK LOOK AT SOME POSSIBLE SOLUTIONS

Urban Renewal—In the critical problem of urban renewal, it is often only by the massive involvement of government that the debris of civilization and the cancer of blight can be removed. Valuable land is reclaimed and put to productive use. Shining new buildings rise where tenements once stood in crowded decay. Why then is there so much objection by local residents to such urban planning for the future?

The major cause is that in all too many urban renewal plans, however well conceived otherwise, there is less than adequate housing provided for the residents who lose what has been home to them. Oftentimes, the poor by the thousands are shuffled off to new slums and to overtax the already overburdened housing of a neighboring area. Urban renewal alone, however humane, is not the sole answer. For those who think first of people, the primary task is to transform the ghetto, not transfer it.

Increased Welfare Benefits.—There will always be a need for welfare. The aged, the disabled, the mothers of fatherless children, and the self defeated individual will always be with us. But for the able-bodied individual of passing intelligence, welfare ought to provide only a temporary assist in a time of economic crisis, such as in the period of adjustment to urban life, or in the case of a family disaster. To become permanently dependent is to be both debased and dehumanized.

We now live in the fourth decade of an increasing involvement on the part of federal, state, and local government in welfarism. There are many of liberal persuasion who ardently espoused the cause, and who now look with critical eyes at the results. Our domestic aid programs appear to have engendered the same kind of resentment and hostility in the recipients as we have all too often encountered in the beneficiaries of our foreign aid efforts. Those who depend on public aid were deeply involved in the disturbances in Los Angeles, Cleveland, Chicago, and elsewhere. Increasing welfare benefits is not the answer to the slum dweller's problems.

More Money for Crime Prevention.—There are those who have advocated a more militant stance by authority in the strengthened police force and a well trained National Guard. This may prove to be a more or less effective means of suppression, but it is no cure for the underlying ills.

Others have suggested more money in the area of social work, particularly in the problem of teen age gangs and juvenile delinquency. Here again, the benefits may be temporary as the slum resident grows to maturity in an environment that strictly limits his opportunity to get ahead.

What needs recognition is that some of our best intentioned programs, both governmental and private, have tended to tinker with the symptoms of the disease, rather than to strike at its roots. Can we help the slum resident in the full restoration of his own awareness of human dignity and personal worth? . . . in his effort to gain a sense of community in the neighborhood where he lives? . . . as he struggles to overcome the inertia and frustration that precludes the seeking and accepting of responsibility in a larger society? Here is where the real sickness lies.

How can we teach bright but unlettered men the skills of management? How can anyone learn to manage his own affairs unless he has something worthwhile to manage? It is our responsibility to provide for and encourage this kind of opportunity.

SOME BASIC ASSUMPTIONS

The Responsibility for Renewal of the Slums.—The time has come to trust the people of the slums with the principal and decisive role in combating poverty and eliminating slums. The low income resident needs more than opportunities outside the slums . . . he needs responsibilities inside the slums . . . responsibility for his own affairs . . . his own enterprises . . . his own self-help projects. If every last barrier to open occupancy were to be removed tomorrow, the sad fact is that the vast majority of slum residents do not have the economic base to move to a better neighborhood.

The slum itself must of necessity be the first assigned responsibility of the slum dweller. It is what he knows best. It is where he is, and improving conditions there is exactly the project most likely to enlist his full energies. While it is sound in principle to train and educate people so that they can escape the slums, it will be necessary for some time to come, to train and educate for usefullness in the slums, and to provide developing leadership there. Under our present course, the best talent in the slums is leaving instead of leading.

Certainly a part of our strategy must be to encourage integration in better neighborhoods. On the other hand, there must be a frank recognition that this process will be slower than anticipated, and our major effort must be concentrated on the renewal of the slums . . . on making them a decent place to work and live. They are going to be "home" to most residents for a long time to come. The "Culture of Poverty" must be attacked and destroyed where it is, and not elsewhere.

Many Slum Residents Want To Help Themselves.—There is increasing evidence that given the right kind of opportunity, the motivation for self-help is present in many ghetto residents:

One organization has opened up more than 2,000 in-the-ghetto jobs for local residents, adding some $10,000,000 to earned income. The same leadership has opened up chain store marketing opportunities for more than a dozen indigenous industries, adding still more jobs.

A job placement service developed by unemployed men has placed more than 500 unemployed persons in jobs in a year and a half of operation, and has developed a community spirit that helps to keep them there.

A tenant's union of slum residents has achieved a precedent-setting maintenance contract with a major slum landlord and is now forming a tenant's cooperative to own and rehabilitate the buildings.

An inner city housing agency has already established small entrepreneurs as general building contractors.

A community organization leader reports up to twenty mothers of children with high school or better education could take jobs that are available now, leaving the welfare rolls, if only an adequate day nursery could be provided in the community. They want to break free from dependency.

It would be wrong to assume that even a majority are thus motivated, for the bitter frustration of limited opportunity has contributed to apathy and a sense of futility. But there is reason to rightly hope that when a community is organized, and significant gains have been won, and light begins to come through opening doors, that the unmotivated will move toward new opportunity and the larger liberty it presents.

Slum Communities Have an Emerging Leadership.—Much of it can be found in the existing community organizations. To these have gravitated the angry; the dissatisfied; those in the community who want and are willing to work for change. They have been learning the value of concerted action. Individually, they may have felt a sense of helplessness; together, things have begun to happen. Therein lies the birth of hope, and with it, the motivation to fight for personal and community betterment.

The community organization frequently begins as opposition to a particular injustice . . . to project grievances forcibly and unitedly to proper authority. It can be a voice in all matters of common concern, and a rallying point to the concerned. Its leadership may enter upon the formation of tenant and welfare recipient unions; job creation, placement, and training. In these experiences, there is the inevitable development of certain management skills, and leadership abilities. With the restoration of human dignity comes the responsible behaviour that those outside the ghetto describe as what they would like to see rather than violence and disorder.

The need for all those who would seek to help with the problems of personal and community renewal in the slums, is to discover the means of working with angry people. And today, the best leadership is angry, particularly in the Negro slums. All they see of us is certain of our agents . . . the welfare case worker . . . the local squad car . . . the precinct captain. These figures of authority and dominance represent white leadership to the people of the Negro slums. They are often all that they know of American enterprise and opportunity.

It remains a real question to what degree we can successfully work with the hostile, angry ones. But if we shrink from the task, let it be remembered that the typically successful American business executive, were he to find himself in the circumstances that confront today's resident of the slums, would be the angriest man of them all.

The real and potential leaders are in the slums. They are intelligent, and at times brilliant, even if uneducated. It is for us to identify them, and establish rapport, to the degree that we can.

The lack of equity by ownership.—A major cause for the failure of the slum resident to assume responsibility in his neighborhood is that he owns virtually none of it. Ninety percent of the businesses are owned and operated by those who live outside the area. Rarely does he ever own the place where he lives. Such money as passes through his hands goes largely to those who are non-residents, eliminating the economic advantage to the community of money that stays where it is expended, at least for some duration.

There needs to be a significant effort by government and private interests to make possible the experience of ownership of home and business to the ghetto resident. This appears to be a vital part in any major renewal of low income areas of the city.

The need for private enterprise.—There is a growing conviction, voiced by both government spokesmen and those who represent the private sector, that it is time for the creative resources of private enterprise to be brought to bear effectively upon the critical aspects of the war on poverty and the slums. This is not to discount the necessity of government involvement in the urban crisis, particularly in the massive funding required. But the new direction lies in the establishment of many more privately initiated, administered, and financed projects, backed up by government financing where this is available, particularly in the areas of small business loans, and housing funds.

The private agency has certain distinct advantages. If it has served an area effectively, it often builds up a reservoir of trust that is not always accorded by the slum resident to an arm of government. As a private agency, it is free from bureaucratic pressures, political influences, and the need to abide by rulings made by those who are frequently far removed from the scene. Moreover, it is relieved of the difficult occasion of being asked to work against itself, as can well be the position of government in working with slum residents and their problems.

The challenge lies in whether the existing American economic system of free enterprice can be made to operate for the benefit of the poor, rather than have its technological advances create an increasing number of casualties. The crisis demands the pulling together of all of the resources and the existing knowledge in our possession, plus the dynamic of significant innovation.

IS THERE A WORKABLE PLAN?

The Community Renewal Society Commends Toward Responsible Freedom.—"A program to channel the frustration and resentment of the slum dweller into avenues of renewal for himself and the neighborhood where he lives, and that will encourage him to grow by self help into responsible freedom."

The Community Renewal Society, formerly the Chicago City Missionary Society, has been helping residents of the inner city for 85 years to achieve a meaningful and constructive way of life. We have dealt with successive waves of immigrants from various ethnic backgrounds, assisting in the process of adjustment to and assimilation by the city. The low income area resident of today, Negro, Spanish speaking, or southern white, is largely unadjusted, unassimilated, and made to feel unwelcome.

Through a variety of institutional centers, and the funding of community organizations and many experimental programs, the Society is moving to encourage these residents to overcome patterns of helpless dependency. Our current operating budget for 1967 is approximately $900,000, and is committed to "renewing the metropolis through faith in action". While maintaining a relationship with the United Church of Christ, the Society has always been ecumenical in outlook, independent in its operation, and willing to close ranks with all those who work for the cause of human dignity and a better way of life for inner city people.

THE THINKING BEHIND THIS PROGRAM

CRS is committed to the principle that all men should be free, and that in this larger liberty, they be enabled to act responsibly.

CRS believes that the culture of poverty that has entrapped generations of people in helpless dependency patterns must be changed.

CRS is certain that the victims of the system can only be freed as they develop self reliance, and a sense of community in the neighborhood.

CRS affirms that responsible freedom for the slum dweller can only come through the locally generated motivation that group organization and action provides, assisted by outside resources, namely funding and personnel with problem-solving skills.

HOW WILL TOWARD RESPONSIBLE FREEDOM WORK?

The Community Renewal Society proposes:

To stake out an area of the inner city where problems of poverty and blight are acute. To be well chosen, it must be large enough to encompass a full range of representative and critical needs, as well as opportunities. At the same time, it must be small

enough to avoid overtaxing the available resources in funding and personnel.

To engage qualified personnel in the areas of program development, planning and research, and community development, the latter position being a specialist in community organization who will serve as project coordinator. Three additional staff specialists will be sought in the areas of raising earned income, improving housing, and bettering training and educational opportunities.

To work for stronger community organizations that can provide a focal point for problems and a force for constructive change. These groups will be assisted by the staff specialist and by the funding of their own staff and programs. Here lies the key to the rekindling of hope for the neighborhood, and the development of a sense of community.

To form four community resource boards to aid in the solving of major problems that restrict community development. Each will be composed of local residents who live daily with the problem; a second group who are at home in the race or nationality represented in the site area but who have themselves achieved responsible freedom; and a third group of outside resource persons with the particular skills needed to aid in solving the kinds of problems apt to be encountered.

The resource board on earned income will originate and receive, investigate, refine, and seek activation for any worthwhile plan to raise the income level of the community. Its efforts will likely be concentrated on attracting new businesses, offering assistance to existing businesses, the creation of new jobs, and job placement. Outside resource persons will include those with successful experience in finance, manufacturing and distribution, retailing, economic and community planning, management counsel, corporation law, accounting.

The resource board on housing will utilize every available means to improve the housing situation for local residents. It may be expected to be particularly active in the acquisition and rehabilitation of slum dwellings, new construction, negotiation with slum landlords, and the encouragement of home ownership. Outside resource persons will include housing developers, real estate brokers, experts on government housing, building contractors and tradesmen, mortgage specialists, attorneys, community planners.

The resource board on training and education will be concerned with activating programs in the area of job training, and to fill in educational gaps, working particularly with young people and adults whose deficiencies limit job potential. It can also be expected to be active in improving the quality of local public school education, and in encouraging greater participation by parents in joint responsibility with the schools. Outside resource persons will include industrial trainers, remedial work specialists in reading and speech, public school administrators and teachers, specialists in adult education, sociologists, University level educators, experts in parent-teacher relationships.

The resource board on legal assistance will be active in helping the poor of the site area with those problems peculiar to their situation, and in such manner that the law becomes an instrument for social change rather than suppression. Funding will provide for the services of attorneys, litigation costs, bail and appeal bonds. Attention will be focused on maintaining welfare recipients' rights, housing code violations, and the defense of those who cannot afford legal counsel. Outside resource persons will include attorneys, jurists, and legislators.

To offer supplementary resources in the form of funding to provide for consultants, research, and evaluation of the developing program and its results.

In essence, Toward Responsible Freedom, at work in the site area will:

Set up the necessary problem solving machinery to deal with the major ills that are present, as seen by local residents. The Community Renewal Society is convinced that when those who live daily with the problems are brought together with those who have skills in the solution of such problems, they will be solved.

Bring the creative talents of private enterprise to bear on the critical problems facing slum residents. Privately initiated, administered, and financed, it will make use of government funding where this is available, particularly in the areas of housing and small business loans.

THE UNIQUENESS OF TOWARD RESPONSIBLE FREEDOM

1. *The extensive involvement of local residents in the solution of their own problems—the program will evolve out of their needs as they see them.*

2. *The Resource Board concept, bringing together local residents with those who have the skills necessary to help them solve their problems.*

3. *A coordinated attack mounted on all of the major problems of a given area at the same time.*

4. *The provision for the engagement of planning consultants, researchers, and an independent evaluation of results.*

THE ROLE OF THE COMMUNITY RENEWAL SOCIETY

The most significant role of the Society in Toward Responsible Freedom will be as an agent of interaction. With 85 years experience in work among low income residents of Chicago, the Society has deep roots in the midst of those who live in poverty, and has their respect and confidence. At the same time, it has maintained excellent relationships with the community of talent who are represented particularly in its Board of Directors, its Volunteer Training Programs, and in local church congregations. With a foot in both camps, it becomes possible to be effective in bridging the gap between two groups who are presently not engaged in meaningful conversation: the low income residents and those who possess the skills needed in helping them to solve their problems.

The Society sees itself as

An intermediary—bringing the poor together with businessmen, educators, attorneys, and others who can assist in the process of self-help.

A catalyst—whose presence is necessary to insure the right kind of reaction.

A broker—who can see that those who have talent and skill to offer can be brought into touch with those whose desire and need for these things is acute.

RESEARCH, PLANNING AND EVALUATION

Under an Associate Director of Research and Planning, the Society plans to carry forward a program that will engage competent and independently based research and planning personnel, preferably at the University level, and representing a variety of academic disciplines. They may be expected to assist in the selection of the site area and a control group; in the planning and development of programs; and in a final evaluation of significant results.

This appears to be a vital necessity if the findings of this project viewed as experimental social and economic research are to have validity and application elsewhere.

PRELIMINARY GOALS FOR THE SITE AREA

Based on objectives as they are presently conceived, the Society would look for the following in the way of measurable results after several years of operation:

1. Broader based, well staffed, vigorous community organizations, due to the assistance of the CRS staff specialist, and the funding of local community organization staff and programs.

2. Significant improvement in the average income of resident families, and favorable change in regard to unemployment and underemployment.

3. A major upgrading of housing in the area through acquisition and rehabilitation, stronger tenant unions, efficient housing code enforcement, a rise in home ownership, and new construction.

4. Better educational and training opportunities in quality and quantity, and significant improvement in public education through programs with teachers and parents in the community.

5. A new respect for law and order as residents come to see the law as being more often on their side as a constructive force for social change.

6. Attitudinal changes in regard to personal worth, the future of the local neighborhood, and the larger society, assisting in the elimination of apathy, frustration, dependency, and violence as a means of expressing protest.

IF SUCCESSFUL, HOW FAR CAN TOWARD RESPONSIBLE FREEDOM GO?

Alone, it cannot be expected to eliminate the problems of poverty and blight in the renewal of Chicago. Successful as a pioneering venture, with carefully validated results, it can be expected to stimulate a massive rethinking and restructuring of existing governmental and private programs, not only for Chicago, but for other troubled urban areas in the nation.

A FRANK WORD ABOUT THE DIFFICULTY

The failure of most programs designed to eliminate poverty and blight, both governmental and private, has been the inability to get the people themselves deeply involved in the process of self-help.

Can we work creatively with those who are frustrated and therefore hostile?

Can apathy and dependency be overcome by the offering of new hope?

Can people trapped in helpless dependency, even with assistance, be enabled to become free?

No one can be sure of the answers. However, we do believe that Toward Responsible Freedom has an excellent chance for success, and merits a trial for its potential contribution to knowledge in how to deal with a grave crisis.

A FRANK WORD ABOUT THE RISK

Toward Responsible Freedom is committed to the principle of allowing people to think and decide for themselves. Responsibility in management of affairs, personal and business, can only come through experience. We do not anticipate that all of the decisions made by developing leadership in community organizations will always be either right or wise. The freedom of choice, even if wrongly exercised, is vital to the gaining of true independence.

We ask that our friends who will support us in this program assume this risk with us as a necessary adjunct to the development of reponsible freedom for the slum dweller.

AN APPEAL FOR COMMITMENT

If Toward Responsible Freedom is to be successful in its aim to involve local residents in the solution of their own problems, who with the skilled assistance of resource boards will mount a coordinated attack on all the major problems of an area, funding of the program by foundations, business corporations, and individuals is vitally necessary. It is here that you may play a part in a vital decision. By sharing financially, you contribute to making democracy work for the ghetto resident as well; he who presently is denied through circumstances much of its benefits.

There is no program that is more firmly

in line with the American tradition than Toward Responsible Freedom. It relies upon the democratic process to ultimately find the best solution to mutually felt needs. It seeks to develop the motivation and initiative for self-help, rather than to encourage patterns of helpless dependency. It offers counsel and funding only where organized groups and individuals cannot make it alone, and then at their own request. It can provide the *means* whereby the seething and repressed energies of thousands of the disadvantaged can be utilized to purposeful and constructive advantage.

Toward Responsible Freedom will need more than money from business and professional sources. This program cannot succeed without the extensive application of managerial and technical skills, largely volunteer, to the problems of poverty and the slums. Through the resource boards, these manifold talents will become available to the site community, mediated by the Community Renewal Society.

We believe that Toward Responsible Freedom is more than just one more well meaning program. There are programs that have been inclined to treat the symptoms of poverty and blight. TRF will get at the root of the disease: the absence of community, and the inertia and frustration that precludes the seeking and accepting of responsibility by the slumdweller.

Some programs, some urban renewal plans in particular have had a disunifying effect on the community in seeking to bring about change for the better—TRF will engender a sense of community through the experience of effective power exercised in community organization for the improvement of living conditions.

Most programs have usually depended on outside money and outside management—TRF will require outside resources, but will seek the development of indigenous community leadership to manage its programs.

Many programs have tended to create dependency with its attendent bitterness and frustration—TRF will encourage independence in thought and action, a vital essential in individual responsibility.

Other programs have provided practical help to the motivated—TRF will seek to provide and inspire a much needed response from the vast numbers of the unmotivated.

Every indication that we have as an experienced agency suggests that the restless energies of the ghettos can no longer be contained. The dictated solution by an outside authority is not acceptable. The day for hoping that the welfare recipient is both satisfied and duly grateful is past. It is time to make a move Toward Responsible Freedom. Will you close ranks with us, and help initiate a march in a new direction?

TO SAVE OUR CITIES

Mr. MONDALE. Mr. President, one of the most agonizing experiences we have faced this summer has been the outbreak of violence in our cities. However, this violence has accentuated the public focus on the problems that are facing the cities and made the public aware of the difficulties in solving the problem.

Mr. Richard Kleeman, the Washington correspondent of the Minneapolis Tribune, has recently completed an 11-part series entitled "To Save Our Cities." In this series Mr. Kleeman examined the major problems with which the city must cope and demonstrates the interrelationship of these problems and their complexity.

Mr. Kleeman indicates that the political fragmentation which has occurred in the metropolitan areas is in itself a problem. The suburbs attempt to create an economic and racial homogeniety within their borders. This, of course, has repurcussions in the older city as it is given the responsibility for taking care of the poor and the minorities.

Mr. Kleeman indicates that the most important issue now facing the city is one of organization and development of the metropolitan area. Many of the problems that are now plaguing the cities can be attributed to the unplanned sprawl that occurred after World War II. To avoid a continuation and extension of these problems, planning for the future must be instituted. However, plans for regional development require cooperation among units of government in the region and this can only come about when the officials realize that their community has a stake in the betterment of the whole region.

The prime reason for the existence of cities, as Mr. Kleeman points out is to provide choice for the residents:

> Choices of where and how to live, learn, work, relax, and worship; choices of whom to see and whom to avoid; choices of where to go, how to get there and what to see and do there.

Mr. Kleeman notes that our policies have in fact restricted choice and therefore restricted the reasons for having cities. He states:

> But if these choices are artificially restricted—by poverty, by poor schools in poor neighborhoods with poor housing, by lack of jobs, by outmoded transportation methods, by racial segregation, open or subtle—if these conditions take hold and worsen, cities have lost their prime reason for being.

Mr. President, this is indeed an indictment against our present efforts in the urban field. We must continue with our present programs and offer additional ones that encourage a revitalization of "the city" where choice, not lack of it, is the prime reason for settling there.

Because of the importance of the message contained in this series of articles, I ask unanimous consent that they be printed in the RECORD.

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

PROBLEMS TO FACE: CITIES NEED HELP TO BE PLACES OF CHOICE

(EDITOR'S NOTE.—In this series of articles, Minneapolis Tribune Staff Correspondent Richard P. Kleeman will present a national overview of the crucial problems facing the United States cities and the efforts being made to solve them.)

(By Richard P. Kleeman)

WASHINGTON, D.C.—Cities are great places to visit, but over 135 million of us live here.

By the year 2000, there will be 250 million of us living in large and small American cities and their suburbs.

Fine and lofty things have been said about cities:

"Men come together in cities in order to live; they remain together in order to live the good life," Aristotle said, in an excess of blissful optimism probably traceable to his never having had to negotiate the Hennepin-Lyndale bottleneck.

President Johnson has declared:

"The city is a community for the enrichment of man. It is a place for the satisfaction of man's most urgent needs and his highest aspirations. It is an instrument for the advance of civilization."

Some less-than-lofty things are said about our cities, too.

"Most central cities already are deep in trouble with problems they have neither the money nor the authority to cure—most of them problems that call for major rebuilding and/or restructuring," declared a panel of 33 "urbanists," including Minneapolis Major Arthur Naftalin, not long ago.

"They are deep in problems concerned with slums, traffic, parking, sprawl, ugliness, housing; with recreation needs; with air and water pollution; with overtaxation and undertaxation," the panel added.

Some of those problems—added to that of a violent, lawless minority—boiled over earlier this month in riots in more than a score of cities, Minneapolis among them.

The late Stephen Currier, a philanthropist whose deep concern over the crisis in American cities led him to form Urban America, Inc., a nonprofit organization of service to those who would make cities more livable, outlined their troubles in these words:

"Their air is polluted; pure water is in short supply; transportation in and out is increasingly difficult and exasperating; housing is not being built in sufficient quantities to meet current needs; major recreation facilities are far from population centers, yet, remote as they are, are overcrowded.

"More and more people are crowding into the metropolitan areas; white families continue to flee central cities to open space, single-family housing and better schools in the suburbs. Their places in the city are taken by nonwhite and lower-income families. The central cities are being called upon to supply an ever-increasing number and variety of special and expensive services and facilities."

Harvard economist John F. Kain calls it "selective depopulation" of central city areas that leaves behind the aged, the unemployed, the poor and the Negro.

The trend, says Kain, results in an employment decline that has "aggravated old problems and created new ones for central city governments."

If cities present such grievous problems, why do so many people flock to live in or near them?

The simplest answer probably lies in one word: choices.

Cities mean choice—or should.

Choices of where and how to live, learn, work, relax and worship; choices of whom to see and whom to avoid; choices of where to go, how to get there and what to see and do there.

But if these choices are artificially restricted—by poverty, by poor schools in poor neighborhoods with poor housing, by lack of jobs, outmoded transportation systems, by racial segregation, open or subtle—if these conditions take hold and worsen, cities have lost their prime reason for being.

And, far worse, they explode into violence.

It is a tried-and-true device, when urging some course of action, to say that a situation stands at a crossroads.

When he wanted the department of Housing and Urban Development (HUD) created, as it was in 1965, President Johnson said, "This is truly the time of decision for the American city."

When he wanted the ambitious "model cities" legislation passed, as it was in 1966, the President again perceived a crossroads:

"We know that cities can stimulate the best in man, and aggravate the worst," he said.

"We know the convenience of city life, and its paralysis. We know its promise, and its dark foreboding.

"What we may only dimly perceive is the gravity of the choice before us. Shall we make our cities livable for ourselves and our posterity? Or shall we, by timidity and neglect, damn them to fester and decay?"

But the undersecretary of the new Cabinet agency, Dr. Robert Wood, former political science chairman at Massachusetts Institute of Technology believes the current period,

until the 1970s, actually offers American cities a brief and unusual opportunity for breath-catching and policy-planning.

The post-World War II "baby crop" is by now housed—not always well-housed, but adequately, for the most part, Wood says. Not until the 1970s will the flood of the baby crop from that baby crop be upon us, pressing for places in our cities.

"We have an opportunity to lay our strategy before the flood tide hits in 1970," Wood says. "Then the problem of complete rebuilding begins.

"We have a couple of years to decide how we want to build a predominantly urban country."

Some of the chief problems besetting the American city before the coming of that flood tide, and the ideas advanced to attack them, will be discussed in forthcoming articles in this series.

STUDENTS DESCRIBE MAJOR CITY PROBLEMS FROM OWN EXPERIENCE

(By Richard P. Kleeman)

WASHINGTON, D.C.—"Today we develop the crisis," explained the attractive young woman city planner, turned summertime teacher, as she prepared to confront her unusual seminar of teen-agers.

The setting was a suburban Virginia coeducational private school—exclusive, expensive and predominantly white during the school year.

But this summer seminar—on problems of cities in general and Washington in particular—was different:

Open to selected, bright 9th and 10th graders from local schools, it included among its dozen participants nine Negroes (more than the school sees all winter). There also were two white boys and a girl of apparently mixed parentage.

When the young seminar leader asked her teen-aged flock to help her list major city problems on the blackboard, she was calling on a group predominantly from central Washington, where the public schools are 91 per cent Negro.

Some traveled an hour or more to get to the seminar, for which their school counselors had picked them. Many required total scholarships.

The two white boys came from a city area—Georgetown—and a suburb—Chevy Chase—that are overwhelmingly white.

Yet among this dozen youngsters the visitor seemed to sense a rare spirit of camaraderie, even in the seminar's early days.

"Troublemaker, aren't you?" a white youth jibed at a larger Negro boy, in response to some boyish boast. But the name-calling obviously was in a warm boy-to-boy tone, and racial differences were, if not forgotten, at least well submerged.

This unusual group of 13, 14- and 15-year-olds in unusual surroundings proceeded to help its leader compile a list of city ills which, while they spoke of the Washington they knew, would be applicable in some degree to most urban communities.

"Taking care of people who live in poverty," called out Oscar, a Negro, to head the list of "major problems."

"Lack of education," put in Mike, one of the two whites. "Either people don't care to go to school or they haven't had the chance."

"Segregation" went up on the board at the suggestion of Darlene, a Negro, followed by "better understanding between police and the community," from Lorenzo, also black.

"The cost of houses is high in Washington," put in Deborah, a Negro, voicing a fact only relatively more true here than anywhere else. Then came a Negro boy with one problem other cities are happy to leave to Washington: "home rule."

"We don't have a government of our own, and if we did, we'd be able to solve some of the problems we have now," this youngster explained, with a faith some cities might consider misplaced.

One of the farthest-traveling Negro girls from central Washington sang out "transportation," adding, by way of explanation, "just think about getting out here."

Then in rapid succession, a Negro girl contributed "co-operation" and "justice," a Negro boy added "health—V.D." and the girl who seemed of mixed parentage threw in "danger in the ghetto," which went up on the board as "crime."

"How about what we do with things and people we leave behind—old people and waste?" asked the seminar leader, and "welfare" and "waste disposal" found their somewhat more delicate way to the list.

Later, apparently as afterthoughts, "government finance," "conservation" and "population growth" were added and the board was filled.

"Hey, are there things that are no problem? Is there anything going all right?" the seminar leader asked.

The group fell almost silent. One Negro youth mumbled, without conviction, that perhaps Washington has enough diversified music and entertainment from its many radio and television stations, movie theaters and concert halls.

Five weeks later, this unusual group held "final exercises" and presented before proudly watching parents the recommendations for better cities they will send to responsible local officials. A sampling of their many proposals:

Apartment houses with shopping centers on middle floors, equidistant from top- and bottom-story residents, and recreation space on the roof.

Children's recreation areas with space set aside for parents and for quiet play, "for anyone who wants solitude."

Reducing crime by having more "judges taking fewer vacations."

Improving police-community relations by hiring more "indigenous" officers to patrol their own neighborhoods.

Hiring the unemployed to clean up slums, "thus killing two birds with one stone," and using computers "to match jobs with the jobless."

In schools, "teachers should stop talking about what this school was like before integration."

Also out of the seminar may come a decision by the school to offer a city problems course to its regular school-year students, who surely will have less firsthand knowledge to share than did this rare group of summer seminarians.

EX-SENATOR DOUGLAS SAYS: "SUBURBS USE LAWS TO KEEP OUT POOR"

(By Richard P. Kleeman)

WASHINGTON, D.C.—The "hottest issue in America today," says a white-haired former senator who knows a hot issue from 18 years of experience with them, is the "iron band" residential suburbs have clamped around cities.

Their aim is simply to keep out the city's poor—whom they equate, not too accurately, with Negroes, says Paul Douglas, the former Illinois Democratic senator who, at 75, lost that job and is tackling a new one.

Douglas, named by President Johnson to head the National Commission on Urban Problems, thinks it "highly desirable" that suburbs take on at least a 50,000 population—where it's one-quarter.

"The main mass of poverty is outside our metropolitan areas," Douglas declares.

Nevertheless, racial and income restrictions compound an already massive housing problem.

Undeniably the nation has been better housed since passage of the periodically-amended 1937 housing act: more than 636,000 low-income families are in public housing, with 230,000 more units on the way, and nearly 15 million private one-family homes and 1.1 million multiple-dwelling units have been built under various federal-help programs.

In 1949 Congress declared its goal, in passing a revised housing act, to be "a decent home and suitable environment for every American family."

Yet the 1960 census found one housing unit of every 14 without running water, one out of eight without a flush toilet. One-third of the homes owned by Negroes and nearly half of those they rented were labeled substandard.

"Some 4 million urban families," President Johnson said last year, "live in homes of such disrepair as to violate decent housing standards."

Add to this the expected population increases for cities and surrounding areas, resulting from people's moving from country to city, and you find that by the year 2000 we'll need 68 million new housing units—10 million more than we have now.

"We're going to need 2 to 2½ million new housing units a year until 2000," says Douglas. "And we've never built more than 1.6 million a year."

Douglas believes "the central problem" is to get construction volume up by getting costs down. While his commission report next year may offer specific suggestions, Douglas today is not ready to discuss implications of this need for lower-cost housing for entrenched "featherbedding" practices of construction trade unions.

But he is convinced that for the one-sixth of the population with annual incomes under $3,300, housing cannot be built or made livable without subsidy. Another 8 per cent with incomes between $3,300 and $4,300 are "on the fringes of poverty" and will need some degree of public help to obtain decent housing, Douglas believes.

But he is convinced that for nearly one-quarter of the population with annual incomes below $4,300—those in poverty or on its fringe—there will always have to be some government subsidy, full or partial, in building new housing or remodeling the old.

For people of relatively high income—above $7,500 a year—who depend on the private housing market, Douglas believes there must be new economies of space—such as the "cluster" idea of several houses or apartments built around a large common recreation or park area.

The nation's housing needs continue to be the subject of constant legislative tinkering.

Running through talk about housing during the Ribicoff hearings on cities last fall was the theme of promoting home-ownership, even among the poor. Sen. Joseph Tydings, D-Md., is developing a bill to make it possible for public housing tenants whose income increases to remain and buy their homes—instead of being forced out.

Sen. Charles Percy, R-Ill., together with all 35 other Senate Republicans, is sponsoring a national home ownership foundation bill whose merits—especially as a help to the very poor—are being questioned.

It leans importantly on the private sector and creates a national foundation to sell bonds to the public, reloaning the proceeds, through local non-profit groups, to help low-income home-buyers meet interest payments. Technical help also would go to community housing groups.

Sen. Robert F. Kennedy, D-N.Y., also has a complex proposal aimed at combining private capital with government incentives to get an increasing supply of new or remodeled low-rent housing.

Sen. Walter F. Mondale, D-Minn., besides sponsoring the 1967 administration fair housing legislation, has introduced a pair of bills aimed at increasing the supply of housing for people of low and moderate income. One measure would assist nonprofit corporations in the housing field; another would make mortgage insurance available to home-buyers of moderate means.

Looking toward making the most economical use of costly, close-in city land, the

33 urban experts who met recently to discuss the city of the future concluded:

"Whether we like it or not, most urban growth in the next 30 years will have to be up, not out."

They attributed this both to the relative efficiency, economy and speed of vertical transportation (elevators) in contrast to *horizontal movement*, and to the fact that "building up" makes multiple use of scarce urban land.

"Just because land has been used once for a railroad yard is no reason why it cannot be used again for a sports arena or an office building or an apartment—or all three," said the experts.

(This same aim of getting the most use out of high-priced city land underlies the new emphasis of the Federal Bureau of Public Roads on using air-space above, below, or alongside new space-eating freeways—for schools, shops, offices and housing.)

CITY RENEWAL ROBS POOR TO AID RICH, CRITICS SAY

(By Richard P. Kleeman)

WASHINGTON, D.C.—No one who has seen Minneapolis' Gateway Center, and can remember what it replaces, should have much trouble understanding what urban renewal means, or why it stirs controversy.

This program of federal dollars to help in clearing or face-lifting of blighted city neighborhoods has spread widely since Congress authorized it in 1949.

Renewal programs are in effect in all states but South Dakota and Montana, according to the Department of Housing and Urban Development (HUD).

A survey last year by three national groups concerned with cities showed that 441 cities in 44 states and the District of Columbia had $3.5 billion in federal urban renewal funds under contract or reserved, with applications pending for $1.3 billion more.

These same cities reported planning requests for $8 billion more for renewal projects through 1976, probably more than Congress can be expected to provide.

"I do not pretend to you or anyone else that these efforts have remade the face of America," HUD Secretary Robert C. Weaver said recently, of HUD's housing and renewal programs, "but we are, I think, on the way to remaking it."

Yet this program that has done away with many a Skid Row in cities across the country has not been without its severe critics.

Some have called it heartless for displacing thousands of poor persons without providing them with replacement housing at rents they can afford. Relocation allowances and services were added to the program to meet this criticism.

Objectors also have called renewal a high-cost program to benefit a few—those wealthy enough to live in new, high-towered downtown apartments or influential and affluent enough to own downtown businesses, shops or real estate. Many of the latter, it has been claimed, wouldn't live within a city-mile of the downtown they want renewed, and flee nightly to their suburban strongholds.

Civil rights groups have contended that urban renewal ought to be called "Negro removal" for the number of nonwhites it has uprooted in many big cities.

To meet some of these objections, the emphasis in the program has been shifting lately toward providing for more housing for low- or middle-income tenants and less luxury housing and commercial or business projects.

Rehabilitation of existing housing also is beginning to claim more attention than total clearance, followed by construction.

Furthermore, to "glue" together the many federal help-to-city programs, the administration proposed and Congress so far has modestly financed the "model cities" program.

In its first phase, 194 cities, including Minneapolis, made proposals, competing for $11 million in planning funds, for "total" programs of attack on physical and human blight in their most rundown neighborhoods. Renewal was included, but there was much more besides.

From these 194, half or more are likely to be selected for the planning grants that will enable them to map action programs of new housing, better schools, more jobs, improved welfare services, antipoverty, health and safety programs—and to qualify for "extra" federal dollars.

These supplemental "demonstrations" grants, which could amount to 80 per cent of the nonfederal funds required for all the rest of the program, would be, in a sense, rewards for having wrapped up the entire program in a single package.

Even cities that do not ultimately qualify for "model cities" grants, however, are likely to have benefited from the self-examination and the joint effort of city, county, state and federal agencies that the preliminary planning for applications entailed.

Lest it be thought that "model cities" approach instantly met all past criticisms of urban renewal, it must be recorded that some civil-rights groups have reservations about this program, too, even before it fairly gets off the ground.

They question whether this broad-fronted attack on problems of rundown neighborhoods may not make of them simply "gilded ghettos"—closing the door, perhaps forever, on hopes for genuinely desegregated living and schooling.

"BASICALLY UNEQUAL"—WHITES ALSO HURT BY SEGREGATION

(By Richard P. Kleeman)

WASHINGTON, D.C.—"History will look back at this time in our lives as the age of the emerging new city," Vice President Hubert H. Humphrey told a recent gathering here of urban educators.

"The new city," he went on, "can and should be a place where all Americans of all races, religions and ethnic backgrounds can live together as good neighbors . . . where the schools are uniformly excellent . . . where all children have the opportunity to develop their intellects, stretch their imaginations and realize their dreams."

By the Supreme Court's definition, city children do not have such schools nor that opportunity. The court, in its 1954 decision outlawing school segregation, held that it is basically unequal to have separate schools for white and Negro children.

In the words of a voluminous 1966 government report on "equality of educational opportunity":

"The great majority of American children attend schools that are largely segregated—that is, where almost all of their fellow students are of the same racial background as they are."

What group is most affected by such a situation? Negroes, you may reply instinctively.

"Among minority groups, Negroes are by far the most segregated," said this much-discussed 737-page Coleman Report by the Office of Education. Its summary continued:

"Taking all groups, however, white children are most segregated. Almost 80 per cent of all white pupils in first grade and 12th grade attend schools that are from 90 to 100 per cent white.

"And 97 percent at first grade, and 99 percent at 12th grade, attend schools that are 50 percent or more white."

To "segregation" of that kind, even a Minnesota school system with the best intentions would have to plead guilty, unavoidably.

What of it?

Consider those Coleman Report findings alongside statements like these:

From a New York area education report on suburban school problems around Washington, Chicago, Detroit and Los Angeles:

"In each city, officials were at a loss to stop the flight of the white middle class to the suburbs. In Washington the struggle was over, since the school system was 91 percent Negro. In Chicago and Detroit, the racial balance was more than 50 percent Negro."

Next a group of city experts, including Minneapolis Mayor Arthur Naftalin, gathered recently and asked: "What kind of city do we want?"

"Suburbia is the great segregator," they said, "segregating not only white from nonwhite but also the lower-middle class from the middle-middle class from the upper-middle class and the wealthy. We think this is as bad for those who are segregated in, as for those who are segregated out."

And finally, completing this chain of logic, is landmark federal Circuit Court decision, on which the ink is scarcely dry and from which appeals may yet be taken.

This ruling, by Judge J. Skelly Wright, found many long-accepted practices of the Washington schools discriminatory and indirectly led to the resignation of Washington School Supt. Carl F. Hansen.

It declared:

"Racially and socially homogeneous schools damage the minds and spirit of all children who attend them—the Negro, the white, the poor and the affluent—and block the attainment of the broader goals of democratic education, whether the segregation occurs by law or by fact. . . .

"A racially and socially integrated school environment increases the scholastic achievement of the disadvantaged child of whatever race."

The court ordered Washington's schools to use buses to haul volunteering children from overcrowded, largely Negro schools of one area to underused, heavily white schools across town.

This technique, used experimentally in St. Paul and Boston, Mass., infuriates Southern and conservative congressmen, who joined last year to write into the Model Cities Act guarantees against enforced race-mixing by school bus hauling.

Yet if Humphrey's prediction of "uniformly excellent" schools is to come true and if one-color schools are inherently harmful, it would seem that a controversial approach, as yet only talked about, will have to be considered.

This is the wedge or pie-shaped school district with segments of both central city and outlying suburbs. The very mention of such a plan usually raises the hackles of school administrators, especially in the suburbs, and prompts them to mention numerous administrative problems.

Meanwhile, state and local educators, with multimillion-dollar federal help under the 1965 Elementary and Secondary Education Act, the newly decentralized National Teacher Corps and the antipoverty Head Start programs, continue to chip away, doing whatever money and special help can accomplish for the school surrounded by poverty in the central city.

If access to uniformly good schools is every city-dweller's right, so, it would seem reasonable to assume, should be access to some place to get away from it all—especially in view of the current trend of shorter workdays and longer vacations.

The U.S. Census Bureau has found that three out of four Americans get a day's relaxation within 50 miles of home. Since the city-dwelling poor, aged and minority groups are often unable to travel even that far, the 33 city experts, previously quoted, have said:

"Every neighborhood needs its own neighborhood park and playgrounds. The denser the neighborhood's population, the greater its need for nearby outdoor recreation; and the poorer the neighborhood, the more urgent this need is apt to grow.

"A dozen small parks close to home can often be more important than one big park too far away."

SHOULD CITY BEAR BRUNT OF WELFARE, SCHOOL COST?

(By Richard P. Kleeman)

WASHINGTON, D.C.—Problem: Name three big-city mayors—or even one—willing to say publicly they have enough money to run their cities.

Answer: There isn't one—or at least none appeared at the "cities" hearings conducted last fall and early this year by Sen. Abraham Ribicoff, D-Conn.

If cities are strapped for funds, many believe it's largely because welfare costs for the poor and education costs for the young are heavily borne by the local taxpayer. Together these two programs eat up $6 out of every $10 spent by local governments.

"Can cities be expected to bear the full cost of education and welfare, when these are largely inherited problems, dumped on them from the country?" asks Paul Douglas, the former Illinois senator who heads the National Commission on Urban Problems.

"Does this not point to a need for a greater federal share in the support of education and welfare and a diminution of the local share?"

(Actually, in Minnesota at least, local taxpayers do not bear the "full" cost of education: States aids gradually are approaching the 50 per cent level—on a statewide average, although far less in Minneapolis—and federal programs have substantially increased in recent years.)

What Douglas raises as a question—one of a series of tough ones to which his commission is seeking answers in a series of hearings across the country—a group of 33 city experts, meeting recently, answered flatly: The states should assume primary responsibility for paying education costs, and the federal government should assume it for poverty.

"The United States is almost the only country on earth where the central government does not pay all the costs of free public education," declared these experts, among them Minneapolis Mayor Arthur Naftalin, a longtime advocate of shifting welfare costs to Washington.

"So instead of saying that our state and federal governments are helping our local governments pay for schools that are a local responsibility, it might be more correct to say that our local governments are crippling themselves financially to help our central government pay for schools whose support should be the responsibility of the central government."

"A second reason why our city governments are too poor to make their local services good is that the property tax is still being tapped for many of the costs of poverty and many of the costs required by today's much-more-generous spending for poor relief," the 33 experts added.

"These costs are set up by state and federal policy and most of us think they should all be paid out of state and federal taxes."

Agreeing with Douglas, the "urbanists" declared that these are not strictly local problems:

"Half the people on relief in almost every city and half the ward patients in the city hospitals came there from somewhere else; half the children in the city schools came from somewhere else and will grow up to work somewhere else."

Local school control is a jealously guarded tradition that, with few exceptions, few citizens or educators would give up without a fight.

"Shifting the basic cost of education to the states would not necessarily require giving the states any more control over local schools than they now exercise," declared the 33 city experts, "and communities that want better schools than the statewide standard could still afford to supplement what the state was willing to spend."

As for welfare, when representatives of public welfare agencies in a dozen big cities—including Minneapolis—met in Washington a year ago, their recommendations for improvement pointed toward more—not less—local involvement.

Round-the-clock, seven-day-a-week services; cooperation with groups of organized welfare recipients; services brought closer to the people being served—all were among their recommendations.

This grassroots approach, even when most of the dollars come from Washington, has characterized the major antipoverty efforts: Head Start, which involves parents in preparing preschoolers for school; community action programs, run by boards on which poverty-area people now must constitute one-third of the membership, and the new neighborhood health, welfare and legal services centers where programs of many local, state and federal agencies are brought under one roof within the neighborhoods.

"Washington can suggest programs, but the local community must carry them out," said the second annual report of the Office of Economic Opportunity (OEO) recently, attempting to answer one of the frequent criticisms of the War on Poverty. The OEO report added:

"Because a major percentage of OEO funds is administered locally, the success or failure of a program depends on the local community's willingness to become involved."

TRAFFIC JAMS BRING FEARS WE'LL PAVE WHOLE NATION

(By Richard P. Kleeman)

WASHINGTON, D.C.—San Francisco decides to allow no more expressways and starts to build a billion-dollar subway system.

Philadelphia gets the federal government to agree to help pay for covering an expressway to preserve historic national shrines, while New Orleans dreads the irreparable scar of a superhighway alongside its colorful Vieux Carre.

Washington finds the race problem inextricably involved in the subway-freeway argument, slowing progress on both:

Will a single-line subway fill up with suburban whites before reaching city Negro districts? Are freeways—which often displace poor Negroes—built mainly to speed "whitey" on his homeward rush to segregated suburbia?

Minneapolis completes a bus-and-taxi transitway along the Nicollet Mall while Washington taxi and bus-drivers cuss traffic jams created by a similar project kept open to private autos.

Of such diverse threads is woven the cloth of the nation's city traffic problem.

"We can be proud that this is a nation in which so many people can move in so many ways," said Secretary Robert Weaver of the Department of Housing and Urban Development (HUD) at a recent urban traffic conference.

He was not unmindful, however, of the irony of his words—to a man stuck in a Los Angeles freeway traffic jam, a New York subway traveler at rush-hour or a Negro resident of a district unserved by public transportation.

Traffic congestion in our cities—already bad, with half of the nation's motor movements jammed onto the 10 per cent of streets and highways that lie in urban areas—will get worse. By 1980, it's expected that city and suburban areas will be seeing 69 per cent of the nation's motor travel.

Clearly, dependence on private auto travel—63.5 per cent of metropolitan-area people got to work that way in 1960—can not increase indefinitely.

"The bigger the city, the bigger the cost of putting primary reliance on automobiles to handle the commuter rush," declared 33 city experts, including Minneapolis Mayor Arthur Naftalin.

"A three-lane expressway, costing up to $95 million a mile, can carry no more workers to their jobs in an hour than a single seven-car train, and New York's estimate of $21,000 for the capital cost of bringing in one more commuter car is exceeded by Washington's $23,000.

"Neither figure includes any money for adding more parking facilities, though each added mile of expressways requires seven times as much space to park the cars it brings in."

Already, noted these experts, the automobile claims 54 per cent of downtown Atlanta, Ga., 50 per cent of Los Angeles, Calif., and 44 per cent of Denver, Colo.—either in street area or parking lots.

"At the rate we are going, we will pave the whole country. There will be nothing left but asphalt and concrete," a New York Congressman complained at highway hearings a year ago.

What is the answer? Harvard economist John Meyer points out that rapid-transit trains are "right" for only a few cities:

"The conditions necessary to make rail transit economical—maximum hourly passenger transit volumes per corridor in excess of 40,000—are found in the United States today only in New York City; indeed, only Chicago and New York have corridor flows exceeding 25,000 per hour.

"Very few urban corridors in the United States have hourly transit maximums in excess of 10,000 or 15,000, and those generally have rail transit service already," Meyer said.

(Estimated peak traffic potential along the busiest access route to Minneapolis—the southwest diagonal corridor—is around 6,000 persons per hour.)

Two major shortcomings of city transit systems that have failed to keep pace with population and industry shifts, according to Meyer and others, are their failure to:

Link outlying districts by lines that do not pass through downtown.

Provide "inside-out" commuter service for employes, often Negroes, who must live in central cities but work at factories moved out to the suburbs to take advantage of larger sites and easier access for truck deliveries.

To the 33 "urbanists" the answer will be a balanced solution.

"This solution will almost certainly involve some return to much more use of man's original method of locomotion—walking," they said.

"It will also involve much more reliance on high-speed elevators, and wide acceptance of moving sidewalks and the revolutionary low-cost systems for automated mass transit that are well past the design stage."

The experts also foresee "some revolutionary but still visionary" changes in cars and trucks and barring cars from some city streets in favor of pedestrians.

Others have advanced solutions built around buses of various sizes and new designs: express service, door-to-door pickups, park-and-ride lots and exclusive bus traffic lanes.

Congress saw the need for a balanced transportation approach, nationwide, when it created the Department of Transportation in 1966 and ordered it to develop an integrated plan.

Before that can be achieved, one of the decisions to be made affects the 1964 Urban Mass Transit Program of research, grants and loans for improving big-city transportation. This is lodged in HUD. The question is, should it remain there or come under the new Transportation Department.

Secretaries of both Cabinet agencies, directed by Congress to collaborate on a proposed solution, so far have publicly taken the predictable positions:

Urban transit planning must be an integral part of over-all city development planning (HUD's view), or, no transportation program can be comprehensive unless it covers mass transit within cities (the Transportation Department view).

Meanwhile, among projects under the 1964 Urban Mass Transit Program, HUD is financ-

ing $1.5 million in research to develop short- and long-range recommendations for systems to move people and goods more safely, conveniently and healthfully around big-cities.

(The Twin Cities' transportation system is under scrutiny in one of these studies.)

Metropolitan planning agencies with area-wide concern for transportation problems—such as the two groups created for the Twin Cities by the 1967 Legislature—existed in less than half the nation's 231 metropolitan areas in 1960. With the impetus of federal planning grants, they have been springing up widely since then.

CLEAN AIR, WATER GO TO WASTE IN UNITED STATES

(By Richard P. Kleeman)

WASHINGTON, D.C.—There's affluence behind our affluents.

The more prosperous we get, it seems, the more we tend to foul our own nests.

We do it, unintentionally, by discharging untold tons of pollutants into the air we breathe and the water we use for health, pleasure and commerce.

"Air pollution is an immense and immediate menace to every large city in the United States," says Robert Low, a New York, N.Y., city councilman.

"We are ruining our waters by using them for a national garbage disposal system," declares Murray Stein, chief enforcement officer for the federal Water Pollution Control Administration (WPCA), a man Minnesotans came to know during the recent flap over the state's meeting a deadline for setting interstate water quality standards.

Low, considered the guiding force behind New York City's air pollution ordinance, summarizes the wealth-filth connection in these words:

"The seemingly unsatiable demand for automobiles clogs our streets with gas-guzzling monsters belching out clouds of deadly carbon monoxide.

"The growing list of appliances and electronic gadgets in the home means that utility companies must burn more and more fuel to generate more and more electricity.

"The rapid rise in home ownership has led to the installation of millions of small individual furnaces and incinerators that are inefficient in terms of pollution control.

"The commercial building boom and constant physical renewal of metropolitan areas leaves mountains of debris that must somehow be disposed of.

"The proliferation of new packaging techniques, whereby it seems that just about everything we buy nowadays comes prepackaged in a disposable container, makes for one huge problem of handling refuse."

Coping with the problem, Low suggests in an article, requires five steps: Arousing public concern; pinpointing pollution sources; envisaging reasonable but effective solutions, including tough laws; creating incentives for industrial engineering advances against air pollution and ways of extracting profitable by-products from these advances, and finally, "never to consider the job done."

After New York was engulfed by a thick smog for four days last Thanksgiving, President Johnson proposed—and Congress is still considering and weakening—the air quality bill.

Recognizing that air flow pays little heed to state or municipal boundaries, the act as proposed would provide federal support for regional "air quality commissions," with jurisdiction over interstate "airsheds." Washington would be empowered to set air pollution levels for various industries.

Opposition has cropped up, predictably, from governors wanting a strong state role preserved, and from industry.

In water pollution—where the problem is aggravated by a growing worldwide shortage that increasingly requires reuse of water—the outlook, bleak at the moment, is not hopeless.

"There is practically no type of contaminant or pollutant that we do not know how to remove from water," according to Stein.

Lending weight to that claim, he cites five recreational lakes, manmade in Southern California, which are fed entirely by the outflow from a sewage treatment plant.

"Their water is of a quality higher than many natural recreational lakes," says Stein, conceding that the demonstration project is costly.

Urban America, Inc., recently pointed out that 80 per cent of water used by manufacturing industries goes untreated before being disposed of, and 40 per cent of the nation's communities have inadequate water systems.

(The Department of Housing and Urban Development program of matching grants for basic sewer and water facilities is one of the most popular of federal assistance programs. In addition, at least three other federal departments have grant programs concerned with water, sewage and waste treatment—a fact which caused no little confusion for local officials until the Bureau of the Budget devised a single grant application form for all four agencies.

Stein is heartened by an apparently increased public concern over water pollution.

"While our waters are still being polluted faster than we can clean them up," he has said, "the indications are clear that the public not only desires but demands prompt and effective reversal of the shameful trend of pollution."

Last fall Congress exceeded administration requests and passed a $3.7 billion, four-year program to combat lake and river pollution, the vast majority of it to be used for helping state and local agencies build sewage treatment plants. This marked a major stepup in the level of federal spending for this purpose, which had been running at about $150 million a year.

Stein has proudly cited WPCA's success in using conferences with state, local and industrial officials to reduce pollution through agreement. Only where this approach fails is the administration empowered to call in the Justice Department for prosecution.

Terming water pollution control "the art of the possible—like politics," James M. Quigley, WPCA commissioner, has described the federal government approach as that of the traditional carrot-and-stick.

"The states, if they step in, can really move in this area," Quigley said. "But if the states default, nobody should be surprised if we (the federal government) move in—because Congress has said, 'This is what happens.' "

In still another facet of the federally led campaign against nest-fouling, the U.S. Public Health Service has made a series of grants to states (including Minnesota) and research groups to find ways to get rid of solid wastes.

One plan under study is the possibility of hauling refuse away on trains to areas needing fill and reclamation. This gave rise to a Washington newspaper report that "the next train you hear whistling 'round the bend' " may be one that could be called "the garbage express."

CITY ORGANIZATION, DEVELOPMENT CITED AS CHIEF URBAN PROBLEMS

(By Richard P. Kleeman)

WASHINGTON, D.C.—There are almost as many major urban questions as there are experts to view them with alarm, and that's quite a few.

To William L. Slayton, former commissioner of the Federal Urban Renewal Administration and now executive vice-president of nonprofit Urban America, Inc., "the major urban question today is the organization and development of metropolitan areas."

Saying this recently to a receptive Sen. Edmund S. Muskie, D-Maine, chairman of a Subcommittee on Intergovernmental Relations, Slayton added:

"We know metropolitan areas will grow. We know they are attracting industry and population. We know also that we have not fashioned an effective tool to shape, direct or control that growth.

"And we shall not be effective in shaping metropolitan area growth until we establish political institutions that have both the responsibility and authority to guide its development."

Slayton is not alone with this opinion.

Vice-President Hubert H. Humphrey, deploring the "galloping muddle of our cities," has pointed to some 80,000 separate units of local government, saying:

"Today's problems do not respect yesterday's governmental structure. They are often as not metropolitan problems, and there is usually no metropolitan framework in which they can be solved."

Dr. Royce Hanson, a student, and professor, of government who heads Washintgon's Center for Metropolitan Studies, said essentially the same thing at a recent conference.

"The modern American metropolis is an intergovernmental wasteland which promises to become a burying ground for local democratic government unless political power and program responsibility can be harnessed tandem."

And the 33 city experts previously quoted in this series declared: "There is no reason why good urban planning should constantly be frustrated by obsolete political boundaries."

The Minnesota Legislature set about meeting this problem in a self-protective way, creating for the Twin Cities metropolitan area an appointive, co-ordinating metropolitan planning and development council with limited powers,—essentially a state subagency.

The Legislature also created a transit commission whose first effort, at least, will be to study the area's long-range needs for more speedy, better mass transportation.

Slayton listed for Muskie's subcommittee the major activities that should be tackled from an areawide, metropolitan standpoint:

Transportation: Expressways and highways, railroads, terminals for air, bus and rail commuters and freight and service to industry.

Utilities: Water distribution, sewer lines and sewage disposal.

Major open spaces: Location of park, recreation and scenic areas, and preventing their being used for other purposes.

Use of major land areas: Including creation of industrial centers and transportation facilities serving them.

Control of air pollution: A potential obstacle to sound metropolitan development that observes no municipal boundaries.

Major waterway developments: The river that may be used for recreation, commerce and industry flows obliviously over city and county lines.

The form such metropolitan approaches should take is a continuous subject for debate, no less in Minnesota than elsewhere.

Responding to the worries of many local officials about "supergovernment," Hanson suggests:

"It is fair to venture that, so long as local units exist, there is relatively little danger that many American metropolitan areas will establish 'metro' governments in the classic sense of that term by consolidating all existing local governments into a single unified regional superstructure.

"In most metropolitan areas, this is probably just as well."

At the federal level, from Humphrey on through the Department of Housing and Urban Development (HUD), much encouragement has been given to metropolitan "councils of governments." These are formed voluntarily by locally elected officials and often have little more power than that of collective persuasion and leadership.

There are today about 50 of these "COGS"

in operation and at least 35 more being formed in metropolitan areas.

Some develop into more than mere discussion groups, sometimes assuming responsibility for programs that transcend local boundaries.

Because of the increased significance of such regional planning and development groups as review bodies for federal grant applications—a new requirement under the 1966 Metropolitan Development Act being challenged in Congress—HUD is financing an $88,000 program to help cities and counties interested in forming regional councils.

Adhering, at least on the surface, to its declared policy of leaving the form of metropolitanism to local communities, HUD's announcement of this program called the COGS "one method of meeting regional needs through areawide co-operation."

By financing the program to encourage such councils and in the criticism of some facets of the new Twin Cities council, HUD makes it clear that it considers the regional council of elected officials a good vehicle for providing planning and leadership for a metropolitan area.

ADVISORY GROUP URGES CUTBACK IN U.S. GRANTS

(By Richard P. Kleeman)

WASHINGTON, D.C.—The Advisory Commission on Intergovernmental Relations, a most unusual body, delivered a plea not long ago that would be objectionable to practically no one: Cut down on the vast number of federal grant programs.

A commission meeting sounds like an exercise in name-dropping: A United States Senator from South Dakota may second a motion made by the governor of New York; or a New Jersey congresswoman may take issue with the mayor of Minneapolis (Arthur Naftalin is among the commission's 26 members).

This bipartisan, congressionally created body includes as members mayors, governors, legislators, judges; university, city, county and federal officials, and members of both houses of Congress.

Together they try to make the federal system of government work more effectively, to improve what President Johnson likes to call "creative federalism."

Recently the commission spoke out in support of several pending bills to allow the President to prepare plans to consolidate related federal grant programs. A plan would take effect after 90 days unless either house of Congress vetoed it—much like government reorganization proposals originating from the White House.

"The commission's recommendation was in response to the major problems of co-ordination, comprehension and manageability created by the rapid multiplication of federal aid programs, now totaling more than 400 separate authorizations," the commission announced.

"According to one count, federal grant programs are administered by 21 federal departments and agencies, at least 150 federal bureaus and divisions, and involve all 50 states and a sizable proportion of the 80,000 units of local government.

"This proliferation of grant programs has tended to confuse objectives, recipients and administrators," the announcement declared.

How many of these programs affect cities?

Secretary Robert C. Weaver of the Department of Housing and Urban Development (HUD) recently prepared a list of programs "with impact on urban areas" for the Senate subcommittee studying cities, headed by Sen. Abraham Ribicoff, D-Conn.

It covered 238 programs, administered by 11 federal departments or bureaus. Because they involved various forms of loans and loan insurance as well as grants, there was no overall total of the dollars involved in the programs Weaver listed.

But the TEMPO Center for Advanced Studies of the General Electric Co., in Santa Barbara, Calif., has estimated that, of some $11.1 billion in federal aid to states and cities in 1964–65, at least $6.2 billion went to the cities.

With the total aid figure increased in 1965–66 to $12.5 billion, if cities merely held their own—and they probably did better—they would have received about $7.1 billion from Washington.

(If the usual rule-of-thumb—that Minnesota receives about 2 per cent of most federal programs—is applicable in this case, Minnesota cities might have received about $124 million under all federal programs in 1964–65 and about $142 million the following year.)

Many of the programs use direct Washington-to-city channels, bypassing state capitols and thereby causing increasing discontent among governors and state legislatures.

At least a dozen states, Minnesota among them, have created state-level planning agencies, as well as departments or divisions of urban affairs. Minnesota this year also became one of the leaders among states in instituting a program of grants to municipalities.

The Carnegie Corp. of New York is financing a two-year study to improve the effectiveness of state governments and their planning activities. But it is apparent that in many areas the states are coming late into a field where direct federal-to-city lines are well-established.

"The states are on the verge of losing control over the metropolitan problem; if they lose this control, they lose the major responsibility for domestic government in the U.S. and in turn surrender a vital role in the American federal system," the advisory commission said in its annual report earlier this year, adding:

"The tremendous task of financing, serving and governing metropolitan America clearly poses the greatest challenge to federalism since the Civil War."

A somewhat differing view of the states' role was taken in a publication of GE's Tempo center, dealing with "options for meeting the revenue needs of city governments." Citing the tradition of federal funds channeled through states and advising caution before this custom is violated, the study declares:

"On the other hand, there are compelling reasons for not allowing the states to administer or even to decide how to allocate federal funds intended to aid localities.

"If given power to administer such funds as they see fit, it is naive to believe that the states would not divert some funds to other uses."

CHANCE ABOVE AVERAGE—STATE CITIES MAY BECOME "REALLY GOOD"

(By Richard P. Kleeman)

WASHINGTON, D.C.—"Unfortunately nobody has ever seen or experienced a city that comes anywhere near measuring up to today's potential. . . .

"Nobody has ever experienced a really good city—a city that takes full advantage of today's better technology, design and planning. . . ."

So concluded those 33 city experts, previously quoted, who pondered the question: "What kind of city do we want?"

Not really good cities? Perhaps not yet. And the violence of a Detroit or a Newark—or even of a Minneapolis—does nothing to improve the image of today's city.

But Minnesota cities—existing today or still to be built—stand a better chance than most to become someday those "really good" urban centers.

Underlying the experts' regret that past efforts have fallen short, and in attitudes found among officials at every government level and among influential private citizens, there seems to be a willingness to keep on trying to achieve good cities.

Whether the job is tackled through rebuilding old neighborhoods with schemes like the ambitious "model cities" or through putting up new towns like Virginia's Reston, Maryland's Columbia or even Minnesota's drawing "Experimental City"—there appears to be optimism that the problems of cities, while astronomical, are not insurmountable.

Those who ask "What will it cost?" usually meet with the response, "What will it cost us if we don't make cities livable?"

The riots of recent weeks offer one stark answer to that question—in human lives and in dollars.

There are also some fairly tangible estimates, however, of what it would take to make over our cities.

"A trillion dollars-plus for the next decade," suggested Sen. Abraham Ribicoff, D-Conn., after concluding six weeks of hearings on city problems. But, he hastened to add, not all of that can or should be government money.

"More and more we need—and I sense developing—a deep involvement of the private sector," Ribicoff declared.

Patrick Healy, executive director of the National League of Cities, estimates the cost of "urbanization" over a longer time-span: Between now and 1999, he says, cities need a total investment—public and private—of $3.5 trillion, or roughly $100 billion each year from all sources.

New York Mayor John Lindsay told the Ribicoff subcommittee his city alone should have $50 billion more from the federal government over the next 10 years if it is to become "thoroughly livable and exciting."

Ribicoff found—"without question"—the one thread running through his hearings to be the need for more jobs in cities. Behind that lies the philosophical issue: Should the federal government assure a job—some even would say a minimum income—to everyone who can't find work otherwise?

There is little debate, however, over the fact that the federal treasury—because of its superior revenue-raising powers—will have to provide massive help to cities.

General Electric's TEMPO Center of Advanced Studies sees cities facing a $262 billion "revenue gap" over the next 10 years and suggests that $125 billion of it be "closed" by a program of federal aids on top of existing ones.

"Federal funding on this scale is absolutely essential for making real as opposed to token progress on urban problems," the TEMPO study declares.

All such proposals are always hedged, however—with a sidelong glance at the progress of the Vietnam war—with some phrase like TEMPO's "assuming no major increase in defense budget requirements." This assumption hardly seems valid at the moment.

Still the optimism over someday curing the cities' ills remains. Vice-President Hubert Humphrey, who repeatedly appeals for planning now for sound spending programs to be carried out after the Vietnam war, reflects this general hopeful spirit.

"The way lies open," he told a conference on city problems, "to dream big dreams of cities filled with green and open space . . . transportation that is safe, comfortable and rapid . . . neighborhoods once more filled with neighbors . . . schools and universities that truly care about the future of our children . . . rural areas, towns, cities, suburbs where people can live together in harmony and co-operation, no matter what their age, the color of their skin, their religion or their last name.

"We have the knowledge. We have the resources. And, I believe, we should have the wisdom to put them intelligently together.

"The critical question is: Do we have the will?"

NEW DISTRICT OF COLUMBIA COMMUNITY DEVELOPMENT PROJECT

Mr. KENNEDY of New York. Mr. President, I was pleased to hear of President Johnson's announcement today that he had instructed administration officials to move to develop a new community within the Washington city limits.

I believe this is an important step forward for the Nation's Capital.

The new development, designed to house 25,000 citizens, will be located on a 335-acre site in Northeast Washington formerly occupied by the National Training School for Boys.

This will be a modern, attractive, and livable community. It will contain 1,500 low-income housing units, 2,220 moderate-income units, and 800 units of high-income apartments, homes, and townhouses. It will also contain ample public parkland, and a wide variety of services including schools and shopping facilities.

But it is much more than a massive Federal project. It calls for a heavy involvement of private enterprise in developing, building, and operating many of the units.

Perhaps the most promising aspect of this plan is its use of surplus Federal land.

This will cut the per-unit cost of urgently needed housing.

And it will eliminate time-consuming condemnation proceedings.

President Johnson has appointed a task force to survey Federal surplus property throughout the country to ascertain how much of it can be similarly used.

I welcome these actions aimed at meeting the pressing need for additional housing. I hope the new District plan will serve as a forerunner of similar projects across the Nation in the months to come.

THE MOB

Mr. PERCY. Mr. President, in an age of rapid communication, where competition between news media often results in oversensational presentation of commonplace events, it is unusual to find an article that can truly be classed as "arresting." Life magazine has produced such an article in its September 1 issue.

Entitled "The Mob," it is an unusually detailed presentation attempting not only to outline the structure of "The Organization" but to set forth in minute dimension some of its more violent and insidious operations. It is particularly noteworthy, since "The Mob" gives every appearance of becoming a permanent part of our society unless aggressive counteraction is taken.

Mr. President, I am unaware of the sources relied upon in this frightening account of Cosa Nostra operations. I have long read and admired the work of Sandy Smith, who is a former Chicagoan. I hold Life in high regard as well. Certainly when laid beside the recent report of the President's Commission on Law Enforcement and the Administration of Justice, this account cannot be lightly dismissed. My own knowledge of Chicago adds to the concern generated by this article.

The material concerning Raymond Patriarca, Mafia Boss in New England, is also documented in the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary, in the recorded results of the electronic surveillance efforts on Patriarca's place of business. If the rest of the material was acquired in the same way, the article should put to rest any question of the effectiveness of electronic surveillance, particularly if it could be used in the proof of such crimes as are described.

In my opinion, it is incredible that if this sort of information is available to the press, some of it cannot be produced to convict more than the 100 out of 5,000 active Mafia members who—the subcommittee is informed—have been convicted in recent years.

Mr. President, I commend this article to my colleagues in the spirit of earlier remarks on the floor when I introduced a series of bills aimed principally at curbing organized crime, including the Electronic Surveillance Control Act. It should stimulate immediate progress toward the goal of freeing our citizens from the ponderous burden of the menace of "The Mob." I ask unanimous consent that the article be printed in the RECORD.

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

THE MOB

(By Sandy Smith)

Call it the Mob. The name fits, although any of a half-dozen others—the Outfit, the Syndicate, La Cosa Nostra, the Mafia—serves about as well. Whatever it's called, it exists, and the fact of its existence is a national disgrace. In this issue and the next, Life reveals the structure, tactics, ruthlessness and alarming strength of this brazen empire.

The Mob is a fraternity of thugs, but it holds such power, wealth and influence that in one way or another it poisons us all. It rigs elections and in so doing destroys the democratic process. More and more it is muscling into legitimate business—local, national and international—to the extent that nearly every American is paying into its treasury in countless unsuspected ways.

The 5,000 members of Cosa Nostra are all of Italian background, and most of them are Sicilians. Abetting them is a larger army of nonmembers—of many creeds and origins—who wittingly or unwittingly do the Mob's bidding. The scale and sophistication of its operations challenge the imagination: the President's Crime Commission estimates the Mob's annual profit from illegal gambling alone at $6 to $7 billion. "Loan sharking," narcotics, labor racketeering, "skimming" and all the varieties of extortion in which it deals bring in enormous additional sums wrenched out of the poor and those least able to resist the exploiters. Through the mechanism of "the fix," it can, and too often does, control congressmen, state officials and law enforcement men. The Mob is in fact a government of its own, with its own laws, enforced with torture and murder. It is organized with ruthless efficiency to achieve its ends and protect its members from prosecution. At the top is a ruling body which settles internal disputes and preserves discipline. Beneath this supreme council are the officers and troops, the men who do the corrupting, bribing, extorting, terrorizing, robbing and killing.

The crime syndicate of today came into being with Prohibition and has continued to thrive and grow despite sporadic bursts of public concern. One of the principal reasons for this is that existing legal machinery is simply unable to cope with it. Criminal laws deal with individual crimes, not an international association. The Mob's multitiered hierarchy insulates its leaders from direct participation in the crimes they order. To the continuing despair of police agencies, it has also benefited vastly from recent court decisions limiting the admissibility of evidence. Most of all, the Mob has fattened itself on the public's appetite for its services—dope, sex and gambling—and apathy toward its evil.

MACABRE HOME OF A "CAPO," MONUMENT TO MOB MURDER

From the gateposts, topped by menacing bronze swans with wings angrily outspread, the driveway leads up about two blocks to the great stone mansion near Livingston, N.J. The drive is overhung by trees and flanked with flowers in gargoyle-shaped pots. The style might be called Transylvania traditional, with overtones of the owner's native Sicily. At a jog in the road is a cluster of painted family statues dominated by one of the squire himself. Ruggiero Boiardo, astride a horse.

It is a chilling place even in the warmth and sun of an August morning. A lot of Mr. Boiardo's fellow gangsters are mortally afraid of going up that driveway alone. Some who did never returned.

As mobsters go, Ruggiero Boiardo—or Richie the Boot, as he is called—is not a very big shot. Nonetheless, he is a significant figure in organized U.S. crime and his estate, literally, is one of its monuments. Boiardo is a *capo* (captain) in the 60-member Cosa Nostra Family of Vito Genovese. Now, a stoop-shouldered man of 76, he putters in his flower beds and mutters imprecations against the world in general: "They call Boiardo a thief, a killer," he complained to one recent caller. "They call him Cosa Nostra. Trouble."

Two other New Jersey gangsters, Angelo "The Gyp" DeCarlo and Anthony Russo, once babbled like schoolboys about the foul deeds that have been committed beyond these colorful gates. As an informant was to relate, the conversation went like this:

"Stay away from *there!*" said Russo, "So many guys have been hit there. There's this funace 'way up in back. That's where they burned 'em."

DeCarlo, fascinated, asked for details. Russo cheerily ticked off victims by their first names: "Oliver . . . Willie . . . Little Harold . . . Tony. . . ." He himself, Russo bragged, had carried Little Harold to the furnace by a chain tied to the dead man's throat.

Authorities are convinced Russo was not exaggerating. Certainly, the number of victims incinerated at Boiardo's estate exceeds the number buried on the much-publicized chicken farm near Lakewood, N.J., where remains of two bodies and traces of a third were found last March. But no corpses have ever come to light at Boiardo's; people thought to have died there are listed officially as Missing Persons.

Even the big shots of Cosa Nostra approach Boiardo's notorious estate with respect. In November 1957, when the high council met there to whack up the territory of the late Albert Anastasia, they came and left all in a group—thus avoiding the path described by Russo, "'way up in back."

Richie Boiardo—and the two fellow mobsters who discussed the crematorium as casually as two men might compare golf scores—are alive and free men at this writing. They conduct various legal and illegal enterprises in New Jersey and are notably prosperous.

Deep in the rackets since Prohibition days, with a reputation for unabashed savagery, Boiardo gets paid $4,000 a month out of the Mob's Las Vegas "skimming" profits. He also runs a legitimate wrecking business (much of the nonfamily statuary on his estate was

salvaged from buildings he wrecked; his house is built of stones from the old Newark post office). He presently is awaiting trial on a gambling charge and simultaneously is dueling with Internal Revenue.

Russo, 48, is the gambling and rackets boss of Monmouth County, N.J. and also has interest in Florida. Gyp DeCarlo, 65, an obese character who detests his nickname, like Boiardo is a *capo* in the Genovese Family. He grows fat off gambling and loan-shark rackets in Union County, N.J. and operates crap games that float from borough to borough in New York City.

Like countless others in the rackets, Boiardo, Russo and DeCarlo are virtually laws unto themselves, answerable only to the invisible government to which they owe their sole allegiance—Cosa Nostra.

HOW JOE BONANNO SCHEMED TO KILL—AND LOST

If Cosa Nostra has a failing at all from the standpoint of efficiency, it is the fact that it is composed at all levels of total scoundrels. Loyalty, as most men understand it, simply does not exist. Though elaborate oaths are required for membership in most cities, the members hang together mainly for the enormous profit this makes possible, and also out of fear of the consequences if they do otherwise. Consider, for example, the case of Joseph "Joe Bananas" Bonanno, the New York mobster whose greed almost broke up the Syndicate.

The Mob's ruling council was organized in 1931 by Lucky Luciano and Al Capone, and Bonanno, then a mean, ambitious 26-year-old, was given charter membership as the representative of a Brooklyn gang. It was not until 1963 that the name Cosa Nostra became part of the American idiom. That was the year Joe Valachi, a small-time killer for the Mob, decided to spill the brotherhood's secrets to federal agents and then, on network television, to a congressional committee. As Valachi detailed it—and as some lawmen were already aware—each of the "Commissioners" serving on the ruling council is the head of a subdivision called a "Family" which more or less has free rein over the rackets in its own territory. Any disputes over territorial jurisdictions are settled by the Commission.

At present, there are eight Commissioners on the ruling council: Vito Genovese of New York and New Jersey, now in the federal penitentiary at Leavenworth; Carlo Gambino of New York; Steve Magaddino of Buffalo; Joe Colombo of New York; Joe Zerilli of Detroit; Momo Salvatore "Sam" Giancano of Chicago; Angelo Bruno of Philadelphia—and the aforementioned Joe Bonanno. (There was a ninth member, Thomas "Three-Finger Brown" Lucchese, who died—of natural causes—in July; the vacancy is still up for grabs.)

Collectively, they are not a physically imposing lot, nor even frightening. Five of them are over 60. Magaddino, at 75, is widely spoken of—though never to his face—as a senile and autocratic windbag. Giancana is 59. Bruno, a tubby hypochondriac to whom the greeting "How are you?" is an invitation to deliver an organ recital, is 57. Even Colombo, at 43, doesn't stack up as much of a headbreaker. Yet the thing to remember is that they got where they are—and have managed to stay there—by killing people.

The troublemaker in the executive club was Joe Bonanno, a fact that stemmed from his aggressive and inventive nature. A lot of his innovations worked out very well—for instance, the "split-level coffin." As the Boiardo incinerator disclosure points out, disposal of the bodies of victims has always been a problem taxing the mobsters' ingenuity. Bonanno solved it in Brooklyn by acquiring a funeral home. To get rid of unwanted corpses he had them stuffed into the lower compartment of a specially built casket of his own design. The corpse of record lay in the upper compartment, with family and cemetery keepers none the wiser. When such a tandem burial was to be held, Bonanno supplied muscular pallbearers who could carry the extra weight without strain. Bonanno's victims in the lower berths were put underground before police even became aware they were missing.

By 1963, at the age of 58, Bonanno had lost none of his ambition and had developed a vast disdain for his fellow Commissioners—some of whom had been mere car thieves when he was already on the council. He habitually staked out for himself areas deemed "open" by the Commission—such as the U.S. Southwest and Canada. "He's planting flags all over the world!" fumed Commissioner Magaddino when Bonanno muscled into Magaddino's Canadian preserves.

The greedy Bonanno was doing more than planting flags. Seeing a chance to seize control of the brotherhood, he issued contracts for the murders of three fellow Commissioners—Magaddino, Lucchese and Gambino—and another contract for the slaying of the head of a Family in California, Frank DeSimone. Bonanno assigned the New York murders to one Joe Magliocco, a fat hoodlum with high blood pressure. Magliocco in turn farmed the New York murder contracts out to an ambitious young torpedo named Joe Colombo.

Colombo turned out to be more of an angler than a triggerman. He tipped off the Commission to Bonanno's planned coup, and they hurriedly convened a meeting to deal with the treachery. Magliocco and Bonanno were summoned to face charges. Magliocco appeared in a panic, made a full confession, was banished from Cosa Nostra, fined $50,000 and sent home. Shortly thereafter he died of a heart attack. Meanwhile, his Family and his Commission seat were given to the stool pigeon Colombo.

Joe Bonanno never showed up for trial. He hid out on the West Coast, using the name "J. Santone." Then, in 1964, he went to Canada to poach once more on Magaddino's grounds. Magaddino went into a frenzy, calling a Commission meeting for Sept. 18, 1964, in the Englewood Cliffs, N.J., home of gangster Thomas Eboli. Bonanno ignored that meeting, too, despite the entreaties of the Commission's emissary Sam DeCavalcante, whose biggest previous distinction had been in trying to develop a garbage disposal unit that would reduce a human body to a meatball. In the face of Bonanno's insults, the council accepted the advice of its Chicago Commissioner, Momo Giancana: "Kill—kill! Why don't you just kill the guy?"

On Oct. 14, Magaddino met in Buffalo with two men. An informant has recalled bits of the conversation: "New York . . . the lawyer . . . we got the car."

Seven nights later, Bonanno and four lawyers dined in a New York steak house. A sixth man joined them about 11 p.m. He left the table twice, walking out in a rainstorm to use a corner phone.

Shortly after midnight, Bonanno's party left the restaurant in taxis. The sixth man, who took a separate taxi, got out at 37th Street and Park Avenue and beckoned to two men standing on the corner. A few minutes later, Bonanno arrived at an apartment house a block away. The two men stepped up and forced Bonanno into a car at gunpoint. Though there has been all sorts of speculation about the kidnapping—including a theory that Bonanno staged the whole thing to avoid an appearance before a grand jury—the fact is that he was held for about six weeks somewhere in the Catskills. There he talked his captors out of killing him by raising the specter of a nationwide gang war if they knocked him off. But if they let him go, he promised to turn over his gang and his rackets in gratitude. Apparently the Commissioners' lust for loot exceeded their lust for vengeance, for they turned him loose in December 1964.

Bonanno was only fooling. He went to Haiti to bide his time, then returned to New York last year to rally his gang, claim his place on the Commission and continue his invasion of Canada. Magaddino still howls about it, but the other Commissioners, perhaps afraid of the guns in Bonanno's Family, seem intent on trying to ignore him, hoping he'll go away, or something.

This cartoon map [not included] shows how organized crime spans and penetrates the country, with interests ranging from extortion, narcotics, prostitution, loan-sharking and every conceivable form of gambling to hijacking, bootlegging and murder for hire. As indicated, the Loods have also "gone legit," muscling into such varied enterprises as banking, music recording, trucking, garbage collecting and undertaking. Red stars mark the home territory of members of the Commission that rules Cosa Nostra and whose portraits are shown in the storm cloud above the map. Under a truce arrangement that is more or less respected by all mobsters, Las Vegas and Miami are "open" cities where any Family may operate. Broken lines indicate routes taken by "bag men" carrying "skim" money—the millions of dollars siphoned tax-free from gambling receipts in Las Vegas and the Bahamas. Meyer Lansky, the multimillionnaire nonmember who masterminds the "skimming" intrigues of Cosa Nostra from his base in Miami, sees that a portion of the loot gets to the Mob's bank accounts in Switzerland—after taking a hefty cut for himself.

YOUR LAND IS HOODLAND

The disturbing fact is that the Mob today is spread across the land and has been able to insinuate itself into the core of society. Most Americans are just not aware of the extent of its influence.

Costa Nostra is a cartel of 24 semi-independent Families that vary widely in size (from 20 to 1,000 members) and their importance in the rackets. Each Family unit is headed by a Boss and several of these Bosses—the current number is eight—sit on Cosa Nostra's ruling Commission. The other Family heads (shown flanking the map) are not necessarily less powerful than individual Commissioners—Raymond Patriarca in New England and Carlos Marcello in Louisiana, for example, are more powerful than some who sit on the ruling body. But they generally follow the Commission's edicts.

Second in command in each Family is the Underboss. Beneath him are squads known as *regimes*, each headed by a *capo* (captain) and staffed by younger or less accomplished thugs known as *soldati* (soldiers). When a member grows old or infirm he may become a *consigliere*, sort of a mobster emeritus who serves only as an adviser to the Boss. The Boss passes orders down the chain of command—a system designed to screen the top man from the police. The Boss has tremendous authority in his own territory, presiding over all gangland enterprises—he is a partner in everything—and also umpiring intra-gang frictions, as New England Boss Patriarca is shown doing in the Boston gang war in the map. The membership rolls of Cosa Nostra supposedly have been closed since 1957—an attempt by the Commission to prevent a recruiting race that might upset the delicate balance of power within the fraternity. Nevertheless, some Families continue to add new members when an old one dies and, despite the decrepitude of the present Commissioners, there is no shortage of ambitious younger talent waiting to take over.

In the old days, a recruit had to take part in at least one murder before he was accepted. But during the World War II manpower shortage, standards slipped and later, as murder became a less popular tactic, many

gangsters were let in who never had made a fatal score. This irks some oldtimers. As one graying hood complained, "Today you got a thousand guys in here that never broke an egg."

THE BRAZEN ATTEMPT TO SPRING HOFFA WITH A $1 MILLION BRIBE: A CASE OF THE FIX

At the heart of every successful gangster's operation is the Fix—the working arrangement with key police and elected officials and business and union executives. It guarantees the racketeers room to swing and a certain amount of acceptance in "respectable" circles. For sheer audacity and sweep, few Fixes the Mob has ever undertaken could top a plot just now unfolding in New Orleans, where the Cosa Nostra is ruled over by Carlos Marcello. Its hoped-for objective is liberty for James Hoffa, the imprisoned boss of the Teamsters Union.

LIFE has found conclusive evidence that Hoffa's pals—some in the union, some in the Mob, some in both—dropped $2 million into a spring-Hoffa fund late last year. The money was placed at the disposal of Cosa Nostra mobsters, and it was to be payable to anyone who could wreck the government's jury-tampering case on which Hoffa had been convicted.

In due course, the money was made available to Marcello to do the job. The chief government witness in the trial, which took place in 1964 in Chattanooga, had been Edward Grady Partin, leader of a Teamster local in Baton Rouge, La. As the Mob saw it, Partin was a logical target for a Fix. If he could be persuaded somehow to recant his own testimony, or to "taint" it by claiming that wiretaps had been used against Hoffa, the conviction would surely be reversed. By last January the Mob might have assumed that Partin already had been softened up. A series of dynamite explosions had wrecked construction sites, trucks and oil-drilling rigs of companies whose employes were members of Partin's union. Partin got the message all right, but ignored it.

Then another pitch was made to Partin. It was arranged by Aubrey Young, 45, who for years had been an aide and confidant of Louisiana Governor John J. McKeithen.

Though the governor did not know it, Young had some curious contacts outside of the executive suite. One of these was Marcello, about whose empire you will read more in next week's instalment.

In January, Young set up a meeting with Partin at the request of still another man of influence in Louisiana politics, a sometime public relations specialist and all-around operator named D'Alton Smith.

Members of Smith's family are well-placed in Louisiana. His brother, A. D. Smith, is a member of the state board of education. His sister, Mrs. Frances Pecora, is an official of the state insurance commission. Mrs. Pecora is also the wife of Nofio Pecora, former operator of the Marcello-owned Town and Country Motel in New Orleans.

The meeting with Partin took place at Young's house in Baton Rouge, Smith was there when Partin arrived.

"D'Alton had told me he wanted to see if he could straighten out Partin's testimony to help Hoffa," Young has since told LIFE. "When I saw what they were talking about in the parlor, I took a walk because I didn't want any part of it. After the meeting, D'Alton told me that he couldn't budge Partin; that Partin said his testimony was true."

Partin confirmed to LIFE that this indeed was the subject of the conversation, and has added these details of the inducements he says were held out to him: The initial offer for the changing of his testimony was $25,000 a year for 10 years. He turned it down. The ante was hiked until it reached an overall total of $1 million. Still Partin refused. When Smith gave it up as a bad job and went away, Partin called the Justice Department.

A short time later, Young, who had been drinking heavily, sought sanctuary for three days in the Town and Country Motel, which is Marcello's rackets headquarters. Young has offered this explanation: "I go to the Town and Country because there's always lots of politicians there. I didn't see Carlos or talk to him. I know I didn't, because there was a state policeman with me all the time."

Meanwhile, in response to Partin's call, the Justice Department began an investigation into the bribery attempt. Young returned to the capitol at Baton Rouge. When the governor asked him to explain his absence, Young blurted out the story of the attempted bribery of Partin. Furious, McKeithen threatened to fire him. Young resigned.

As to what has happened to the $2 million, Marcello, of course, isn't talking. And Hoffa remains in federal prison.

This is a fair example of the intricate forces involved in a particular sort of Fix. But a Fix doesn't have to entail an exchange of money. It can be accomplished by putting in fear, through means as unsubtle as a crack over the head, an arm broken by twisting, an implied disclosure of family skeletons, a hoarse voice on the phone, a timely murder. It can be accomplished by campaign "contributions" or by outright bribes. It can be attained through employment of public relations counsels who stress things like the good name of a city or the amount of money donated to charity by Mob enterprises, or who plant in newspaper columns evidences of the charm, wit and good connections of key mobsters as they are seen about the spots where expensive people gather. It can be helped immeasurably with cheap devices like easy "loans" to a reporter whose tastes outrun his income.

A big-city mayor may have nothing but loathing for mobsters. Yet if disclosure of corruption in his city threatens the tenure of his political machine, he may make every effort to suppress the story—rationalizing that the city would be much worse off with the opposition in control. This is a solid dividend of the Fix. Ask any gangster.

THE FAT MAN WHO DIED ON A MEAT HOOK

The information and entertainment media, and ultimately the public themselves, play their part in all of this. Too often they take a scriptwriter's view of gangsters, viewing them as one would look at tenants of the great ape house at the zoo—with vague thrills of identity but with amused tolerance. When Frank Sinatra appears in public with Sam Giancana, who is a killer and a crook, the tendency is to see Sinatra as a bigger swinger than ever—not just another entertainer who has some crummy friends.

Giancana is a pretty good exhibit when it comes to illustrating the manicuring of gorillas. Despite his absence from the country, his Fix in Chicago remains as tight and traditional as any you could find.

Giancana took over the 300-member Chicago Cosa Nostra Family—the Outfit, as it is called locally—in 1957, after it became apparent to him that the incumbent Boss, Tony Accardo, was getting too slow and too rich. Giancana's decision was brought home to Accardo by a bullet fired over his head as Tony was entering his spacious $500,000 estate in suburban River Forest, He understood.

Sam Giancana is a frail, gnome-like man whose constant cigar smoking has deformed his upper lip into a permanent sneer. Back in World War II, when asked by the draft board what he did for a living, he replied, "I steal." He was adjudged a psychopath, and Sam figures it was a bad rap. "I was telling them the truth," he said. Before he was old enough to vote, he'd been arrested three times for murder. He likes the girls—for one he purchased a remounted 30-carat stolen diamond from a fence in New York—and has made international headlines as the recurrent escort of Singer Phyllis McGuire. He likes to play golf, and when FBI agents began bothering his game when they had him under surveillance in 1963, he went to federal court and got an order stipulating that the agents must stay two foursomes back.

Ultimately, the agents won that round. Giancana was called before a grand jury, granted immunity from prosecution stemming from anything he might say and, when he refused to answer questions served a year in jail for contempt. Fearing another such sentence, he has stayed pretty much out of the country ever since. For a time, control of the Outfit fell to Giancana's lieutenants, but as federal prosecutions sent several of them to jail, Family matters demanded a more experienced hand at the helm. One current theory is that Accardo has come out of retirement to resume active control.

The truth is that Giancana is still running things by remote control from a hideout in Mexico, a posh castle near Cuernavaca where he poses as Riccardo Scalzetti. The real Scalzetti. Giancana's erstwhile chauffeur and courier, is more familiar to Chicagoans as Richard Cain, a well-known former Chicago policeman and more recently a private investigator.

In Chicago, where racketeering was perfected, the connections between the Mob and the politicians remains extensive and arrogant. From an office across from City Hall, there are men ready to carry out Giancana's wishes and attend to the clockwork of the Fix.

It is a matter of particular pride to Giancana and his boys that they are firmly in control of both the Democratic and the Republican political organizations in Chicago's famous First Ward, which includes the Loop with its glittering commerce and the West Side campus of the University of Illinois as well as a warren of flophouses, honkytonks, pool halls, pawnshops and slums. It also enfolds City Hall, the Cook County courthouse, police headquarters, the federal courthouse, the Chicago Stock Exchange, the Board of Trade, most of the major office buildings, the largest hotels and the terminals of major railroads. The Democratic organizations of two other West Side wards—the 28th and the 29th—are also nominally chattels of the Mob. But the real gangster operative power, for obvious reasons, is in the First.

The First Ward Republican apparatus is a joke. Giancana's men permit it to exist only so they can have a foot in both parties. The hoods have been known to round up a few thousand G.O.P. votes in certain elections just to avoid embarrassing Democratic winners with heavy pluralities from a gangster-dominated political organization. But aside from being something to scratch matches on, Republicans in the First Ward are handy in other ways. In Mexico City this year, for example, Giancana and Miss McGuire tooled around in a white Oldsmobile licensed to Peter Granata, the present Republican committeeman in the First Ward.

Although Cosa Nostra control over the three wards is as well-known to many Chicagoans as the Water Tower, Mayor Richard J. Daley, the longtime guru of Cook County's Democrats, stays aloof. As Chicago mayors have always done, Mayor Daley tends to bristle at allegations of organized corruption in his city as being something less than patriotic. Leadership of ward organizations, he contends, is the exclusive concern of the people in the wards.

First Ward Democratic headquarters, just across La Salle Street from City Hall, is a handily located, permanently established center of political corruption. Here politicians, policemen, newsmen and other useful people troop into the office for favors given and received. (As in few other cities, certain journalists are part and parcel of the First Ward Fix. The First Ward Democratic organization, if it serves the gangsters' needs, can—and on occasion does—swing enough influence in city rooms to get a story killed or softened to the point where it is almost an apology.) The principal disbursing officer,

and Giancana's main liaison with the First Ward-heelers, is Pat Marcy, who served a prison term for robbery back before he became secretary of the First Ward Democratic organization.

Details of the First Ward's bribe trafficking were spelled out in a 1963 report on police corruption in Chicago by the U.S. Department of Justice. The report, naming names, disclosed specific payoffs that kept police from cracking down on centers of vice operated by the Giancana Mob. But Police Superintendent Orlando W. Wilson, a man with a reputation for incorruptibility, reacted in much the same manner as Mayor Daley, scoffing at the report as "gossip" and refusing to take any action against accused bribetakers on the police force—including his administrative assistant, Sgt. Paul Quinn. (Wilson retired August 1. Quinn remains on the force as administrative assistant to Wilson's successor, James B. Conlisk Jr.)

Giancana rules the First Ward like a Tartar warlord. He can brush an alderman off the city council with a gesture of his hand—as he did in 1962, when he ordered the resignation of Alderman John D'Arco. (It was all brought to a head by a D'Arco *faux pas*. He and Giancana were seated at a resturant table when an FBI agent, well-known to both men, approached. D'Arco, reacting as a politician, leaped to his feet and shook hands with the agent. Giancana disapproved. Exit Alderman D'Arco.) State Senator Anthony DeTolve, a relative of Giancana's late wife, was nominated to succeed D'Arco. Four days before the aldermanic election, the gang Boss capriciously decided that DeTolve would not do, either. In the ensuing confusion, the First Ward wound up without an alderman for a year. Not many constituents could discern any difference.

For seven years, U.S. Representative Roland Libonati was one of the tame congressmen from the First Ward, "Libby" got on the powerful House Judiciary Committee and became something of a Capitol Hill landmark. Tony Tisci, Giancana's son-in-law, was on the government payroll at $11,829.84 a year as Libonati's assistant. In 1962, for reasons still undisclosed, Giancana decided that Libonati was a liability. The hapless congressman submitted without a protest and, for stated reasons of his wife's ill health, obediently did not run for re-election in 1964. Tisci stayed on as assistant to Libonati's successor, Frank Annunzio.

The grand jury investigation that jailed Giancana eventually dislodged Tisci from Annunzio's payroll. The disclosure that Tisci had refused to talk to the jury, pleading fear of self-incrimination, was followed by his resignation as Annunzio's aide. Marcy and D'Arco were also Fifth Amendment witnesses. But there, as might be expected, the matter rested. U.S. Attorney Edward V. Hanrahan, a Democratic appointee, did not extend immunity to Tisci, Marcy and D'Arco even though they, like Giancana, had balked at testifying. Immunity for them might have been embarrassing for Mayor Daley's Democratic machine. It would have given the three the choice of exposing the workings of Giancana's captive organization or, like him, going to jail.

For some years, Giancana's political courier was the master fixer of the Chicago Mob, the late, notarious Murray Humphreys. Using the name "Mr. Pope," he frequently delivered messages and packages to Libonati and other members of the Illinois congressional delegation. Humphreys died in 1965, and some of his political duties now fall to Gus Alex, who runs the rackets for Giancana in the First Ward.

Giancana, perhaps spellbound by his acquaintances among celebrities and his control over paid-for political hacks, has been known to overstep his own influence. Once, during a time of tight surveillance by the FBI, he dispatches his aide-de-camp, a hoodlum named Charles English, with a message for the G-men who were waiting outside for him to leave a saloon. The message was an invitation to Robert F. Kennedy, then the Attorney General, to sit down and talk over calling the agents off. English made quite a sales pitch. "Elected officials all over the country, hundreds of 'em, owe their jobs to 'Moe.'" he explained proudly. His parting words were equally blithe: "Moe says that if Kennedy wants to talk, he should get in touch with Frank Sinatra to set it up."

Kennedy passed up the bid—and along about that time Sinatra fell out of New Frontier favor. The FBI continued its investigations, resulting in a 1965 jail sentence for Giancana.

Some of Giancana's lieutenants have their own connections with politicians, officials and important people. Gus Alex has an especially warm relationship with Chicago's city treasurer, Marshall Korshak, and his brother, Attorney Sidney Korshak. Sidney is a pal of other leading Chicago gangsters—"a message from him [Sidney]," a prominent mobster once was quoted on a witness stand, "is a message from us." On Alex's application in 1957 for an apartment on exclusive Lake Shore Drive, he described himself as a $15,000-a-year employe of Marshall Korshak, then a state senator.

Among political favors rendered by paid-for officials to Cosa Nostra are the passing along of information that comes over their desks, and the sending up of storm signals whenever official action against the Mob is threatened. In 1962, for example, Attorney General Kennedy sent his federal prosecutors a list of gangsters to be investigated, stipulating that the list be held in strict secrecy within the Department of Justice. In a matter of weeks a copy of the list turned up in a Michigan Avenue office used by Giancana and Alex.

Fans of Sinatra and Miss McGuire might reconsider their acceptance of Giancana as a social figure if they had heard a conversation which took place in Miami a few years ago among three Giancana employes. So, for that matter, might Sinatra and Miss McGuire. The subject was William Jackson, a grotesque slugger for the Outfit who weighed well over 350 pounds. Jackson somehow had gotten out of line and had to be dealt with. As faithfully related by an informant, James Torello and Fiore Buccieri were telling John (Jackie) Cerone with some glee how they'd gone about it.

"Jackson was hung up on that meat hook," said Torello. "He was so ——— heavy he bent it. He was on that thing three days before he croaked"

Buccieri began to giggle. "Jackie, you shoulda seen the guy. Like an *elephant*, he was, and when Jimmy hit him in the ——— with that electric prod . . . "

Torello interrupted excitedly. "He was floppin' around on that hook, Jackie. We tossed water on him to give the prod a better charge, and he's screamin'. . . ."

The conversation turned animatedly to other methods of dispensing Giancana's brand of justice—except for the revolting subject matter, they might have been men sitting around a bait shop discussing favorite fishing lures. "The stretcher is best," insisted Torello. "Put a guy on it with chains and you can stretch him until his joints pop. . . . Remember the guy that sweat so much he dried out? He was *always* wantin' water, water. . . . I think he died of thirst."

Once again, a reminder: these men are members of Giancana's Cosa Nostra Family. He was, and still is, the Boss who gives people like Buccieri and Torello the "contracts" for killing people like the late, heavy William Jackson.

The cardinal principle of the Fix is immutable—*i.e.*, be with winners. Politically, this is conducive to bipartisanship. "Do like we do in Chicago," counseled Sam Giancana when he was reviewing his secret investments in the Stardust Casino in Las Vegas in 1961. "Give to both parties."

Naturally, when the delicate matter of investments of this sort is at issue, the man whose knowhow is most prized is Meyer Lansky. Though not a Cosa Nostra member (he is Jewish), he is the Mob's chief financial counselor. As such, he was the architect of "the skim," the system whereby tax-free cash is siphoned off the top of casino profits in Nevada.

Nevada has been "open" territory for Cosa Nostra racketeers ever since legalized gambling made Las Vegas synonymous with high rolling. The Mobs from Cleveland, Chicago, Miami and New York all had representatives looking after their hidden interests and therefore had something of a stake in Nevada politics.

Small wonder, then, that Giancana saw fit to give people advice. Nor is it at all remarkable that the Fremont Casino in Las Vegas found it necessary to obtain the personal approval of Lansky for its $19,500 budget for political "contributions" in 1963: $5,000 for a justice of the Nevada supreme court; $200 to a justice of the peace: $300 to a county commissioner; $500 to a state assemblyman, and $500 to a candidate for lieutenant governor. That was local. Another $1,000 was anted up for a national political figure—and $12,000 for his opponent.

The payoff, of course, was influence in Las Vegas, Carson City and Washington—not just for Ed Levinson, operator of the Fremont, but also for Lansky. (At the time, Levinson had another very useful connection in Washington. Both he and Benjamin Sigelbaum, the bagman who transported the "skim" money to Lansky in Miami Beach, were partners of Bobby Baker in the Serv-U vending machine enterprise. Baker, it will be recalled, was then the Senate majority secretary, as well as a chief dispenser of funds for the Senate Democratic campaign committee and confidant and protégé of the then Senate majority leader, Lyndon Johnson.)

The philosophy behind all this was perhaps most succinctly explained by Major Riddle, operator of the opulent Dunes Casino of Las Vegas. When the owners yelped about a $20,000 contribution to a man very high in then-Governor Grant Sawyer's office, Riddle gave an explanation, which an informant has passed along: "The guy does whatever we want. Any one of the things he does for us would bring in $20,000." And besides, Riddle added, the contribution in question was an economy when compared with the $200,000 the Desert Inn had anted up for another influential politician.

Riddle told the informant later about the nuances of political giving and taking. The case in point was the gambling license for Irving Devine, a local racketeer. Devine was prepared to make a hefty "political contribution" of $50,000 to the Nevada governor's campaign for re-election, Riddle said, in return for his license.

"That's the only way our guy would do it," said Riddle. "You know, in a campaign, he needs funds. Any other time, it's something else again."

Unfortunately for Devine, a federal report disclosing his ties with skimming racketeers began to circulate around Nevada shortly afterward. Any talk of a gambling license for Devine became a dead issue.

PROCONSUL OF THE BOSTON GANG WAR

The Fix is by no means limited to wide-open Nevada and the political backrooms of Chicago. It also flourishes in New England, with a ruthlessness that is a point of personal pride to the resident Cosa Nostra proconsul Raymond Patriarca.

At 59, Patriarca has two distinctions in Cosa Nostra. When it comes to manipulating the makers and enforcers of the law, he has few peers. His tightly disciplined 150-member gang operates a dazzling array of rackets and

legitimate businesses over Massachusetts, Rhode Island, Connecticut and Maine.

He is also known as the only Cosa Nostra Boss to operate for more than three years within range of an FBI microphone. The Cosa Nostra Commissioners have held several discussions to decide how this mountainous blunder should be dealt with. Bosses have been killed for less. The bug itself, planted by the FBI in Patriarca's office in Providence, R.I., was bad enough. But Patriarca compounded the original security breach by letting some of the taped transcripts get into the federal court record. In this, his arrogance played a major role.

It all involved the income tax fraud trial of one of his *capos,* Louis Taglianetti. When Taglianetti was found guilty, Patriarca made his big mistake—by ordering an appeal of the conviction. This ultimately forced the introduction of the bugged tape transcripts into the record. The way Cosa Nostra sees it, far better Taglianetti should have served his seven months in the first place.

Among the disclosures in the FBI records:

Patriarca is the referee of the celebrated gang war that has plagued Boston for more than three years. He presides over the shabby scene with such authority that nobody is killed without his permission. At least a dozen of the 40-odd victims were slain on his direct orders. The bug picked up conversations among Patriarca and his *capos* concerning the slaying; the assassins themselves were named. At one point, when his own declaration of an armistice was not being observed, Patriarca proclaimed angrily that he was about to "declare martial law."

All types of crime in his baliwick, not just the organized kind, are cleared by Patriarca—among them bank robberies, hijackings, arson, jewel thefts and kidnapings.

Such information, needless to say, was priceless intelligence for law officials. It was also a temporary lease on life for gangsters William Marfeo and John Biele, who had fallen out of favor with Cosa Nostra. The bug revealed Patriarca's various plots to kill the pair over a period of months, and on each occasion, FBI agents managed to tip them off—as well as the police. A ban on bugging in 1965 forced disconnection of the microphone in Patriarca's office. Within a year, Marfeo was slain in Providence; Biele was murdered in Miami last March.

As a Mob Boss, Raymond Patriarca sits as something of a judge himself, sometimes over the affairs of politicians. On one such instance, in 1963, a top official of the Rhode Island state government, much in Patriarca's debt, had been defeated for re-election. One of his backers, a Warwick, R.I. businessman, had contributed $17,000 to the unsuccessful campaign and wanted his money back, claiming it had been a loan. Not so, said the politician—it was an outright gift.

Patriarca himself held court on the matter behind the vending machines in his Coin-O-Matic office in Providence. Unsurprisingly, he ruled for the defendant. The $17,000 was a gift. Judge Patriarca advised the businessman to forget it. He did.

Patriarca is far warier with his own political contributions. His political payoffs are held in a bank account that has come to be known as "Raymond's Escrow Fund." It is released to deserving political servants only after they have delivered for Raymond Patriarca.

A good example of this device was a battle in 1963 in the Massachusetts legislature over proposed extension of the racing season at the Berkshire Downs race track, at Hancock, Mass. At the time, Patriarca and the late Thomas Luchese were among the hoodlums holding secret interest in the track. More racing days were needed at the track to keep it from going bankrupt. Patriarca spread the word that there would be an added purse of $25,000 in Raymond's Escrow Fund for dispersal—*if* the track got a lengthened season.

There was a stormy floor fight in the legislature. Patriarca's forces lost, but the $25,000 remained in Raymond's Escrow Fund.

But in routine matters, Patriarca's Fix, in spite of his tendency to talk too much about it, has worked smoothly. To cite an example: on Friday afternoon, July 27, 1962 a high-ranking state police officer flashed a yellow alert to Jerry Angiulo, Patriarca's Underboss in Boston, that there was going to be a raid the next day on gambling joints at Revere Beach. When the raiders arrived, Patriarca's five joints were demurely closed. The police raided only the independent gamblers—who had been foolish enough to refuse to cut Angiulo and the Mob in on their operations. On the following Tuesday, Angiulo's five casinos reopened at new addresses and quickly lapped up the business of the gamblers who had been shut down in the raid. Three years later, in June 1965, with the Fix working smoothly as ever, the whole sequence of jiggers-shut-down-raid-reopening was reenacted at Revere.

If the Commission doesn't decide to eliminate him, Patriarca eventually could be tripped up by his own heavy-handed greed. Right now the chief witness against him in a conspiracy case awaiting trial is Joseph Barboza, a 35-year-old triggerman whom Patriarca had assigned in June 1965 to kill Marfeo (one of the occasions when Marfeo was tipped off). Later Barboza was imprisoned on an unrelated charge. His gangster friends immediately set about collecting funds to pay for an appeal. Two of them were waylaid—by Patriarca's men—and shot dead. The killers walked off with the $80,000 they had collected. Barboza, stranded behind bars and enraged at the doublecross, became a government witness. Patriarca may live to regret it.

The Fix, like any other form of commerce, is peculiarly susceptible to the winds of inflation. Nowhere was this more apparent than in New Jersey, home of Vito Genovese and other thieving murderers and politicians.

In February 1963 three men sat down in a ramshackle club called "The Barn," on Route 22 in Mountainside, N.J., to discuss the rising cost of fixing police officials. Two of them were the gabby old friends who discussed Richie Boiardo's beckoning incinerator: Angelo DeCarlo and Tony Russo, the Genovese family's betting boss in Monmouth County. (Russo's sobriquet in the Mob is "Little Pussy." His brother John—"Big Pussy" did a stretch for murder.) Also at the table was an informant for a law enforcement agency, and the minutes of that meeting, kept secret until now, have been a key factor in the recent amassing of intelligence by federal officials on New Jersey Mob activities.

The specific complaint of the two gangsters was the forthright grabbiness of a top-level officer in the New Jersey State Police. Russo said the police official was collecting $250 a month for ignoring bookies around Monmouth Park race track, plus $1,000 a month in gambling payoffs in Long Branch and another $1,000 from Asbury Park. As if this weren't enough, Joe Zicarelli, a Bonanno *capo* who bosses bookie and lottery action in Hudson County, was paying, according to Russo and DeCarlo, an additional $5,000 a month. And now, to top it off, Russo complained, this guy had the gall to demand *double* payoffs for each month of the summer season, when resorts like Asbury Park and Long Branch boom and so does gambling. The irony of it all, DeCarlo added bitterly, was that he, Russo and Zicarelli had only themselves to blame. They had personally picked their greedy policeman and arranged for a well-connected Hudson County politico to promote him to his high place on the force. DeCarlo promised to talk soon to the same politician about the state policeman's unseemly greed.

Whatever was said at that meeting, the result was negative, for the police officer continued to extort heavy payoffs from DeCarlo, Russo and Zicarelli until his retirement, two years later. Expensive though he was, he was worth too much to the Mob to warrant getting rid of him. He represented what is called in Cosa Nostra a "solid setup"—the ultimate protection, a direct hand-to-pocket Fix with a top law enforcement official in a policymaking position.

The power of the Fix in certain areas of New Jersey is just about total. In Long Branch, for example, a town of 26,000 on the Jersey shore, Russo told the informant that the Mob had taken charge. Russo bragged they had fixed elections and maneuvered the ouster of a city manager. "What we got in Long Branch is everything," said Russo. "Police we got. Councilmen we got, too. We're gonna make millions."

Russo said that another *capo,* Ruggiero Boiardo, no less, keeper of the crematorium near Livingston, was wanting to muscle into the Long Branch bonanza with some road-construction contracting. DeCarlo figured Boiardo was out of bounds on this—he and his son Anthony already had all they deserved with "all the electric work in Newark." (Anthony Boiardo lists his occupation as "public relations man" for an electrical contracting firm in Newark.)

Several federal agencies have confirmed and supplemented the information on the Russo-DeCarlo talk. One investigation stemming from it disclosed that DeCarlo, Zicarelli and Ruggiero Boiardo had combined to maneuver the friend of another gangster into office as police superintendent of a large New Jersey city. The Mob-selected police chief used to work as a doorman at crap games run by gangster John Lardiere.

Actually "Bayonne Joe" Zicarelli's outwardly modest position as head of a bookie and lottery syndicate in Hudson County does him considerable injustice. True, in New Jersey, his interlocking tieups with scores of Hudson County officials are so expensive that some gangsters consider him a "connection-crazy" wastrel. But Zicarelli has an international sideline so extensive that he's practically a one-man state department for the Mob. He has holdings in Venezuela and the Dominican Republic, and throughout the hemisphere is known as the man to see for guns and munitions when a government is to be overthrown or a rebellion is to be put down. For example, through the years he shipped arms to Dominican leaders, selling with fine and profitable impartiality to Trujillo and the men who overthrew him. (In next week's issue more will appear on Zicarelli's business interests.)

Even Zicarelli's domestic connections extend well beyond the confines of Hudson County, into the chambers of the U.S. Congress itself. Indeed, he is on the best of terms with the widely respected Democratic representative from Hudson County, Congressman Cornelius E. Gallagher. Gallagher is one of the bulwarks of the House Foreign Affairs Committee and was seriously mentioned before the 1964 Democratic convention as a possible running mate for Lyndon Johnson. Bayonne Joe and his congressman seem to have a lot to talk over, judging from the frequency of their get-togethers. These usually take place a long way from Washington or Bayonne—where Gallagher lives and Zicarelli runs the rackets. Sometimes the setting is a picturesque wayside inn off the Saw Mill River Parkway, north of New York, and the occasion is an unhurried and chummy Sunday brunch.

WELFARE RALLY THREATENS RIOTS

Mr. BYRD of West Virginia. Mr. President, the Washington Evening Star of

Tuesday of August 29 contains on its front page, a story by Betty James, reporting that welfare recipients demonstrated that day in Washington, D.C., before the Department of Health, Education, and Welfare and at the U.S. Capitol. The article, entitled "Welfare Rally Threatens Riots," emphasized that more money is now the demand, under the threat of more riots in the cities of our Nation.

I ask unanimous consent that the Star story be printed in the RECORD.

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

WELFARE RALLY THREATENS RIOTS—PROPOSED AID CURBS PROTESTED BY 1,000

(By Betty James)

A threat that more riots will occur in the cities if the needs of poor people are not met was voiced by nearly 1,000 welfare recipients from 70 cities yesterday at the United States Capitol and the Department of Health, Education and Welfare.

This was the theme that dominated a stormy session in the Senate caucus room, a high decibel rally in Union Square at the west front of the Capitol and a march and demonstration around HEW at 330 Independence Ave. SW.

The trigger issue was the House-passed Social Security amendments that would "freeze" the number of children on welfare rolls whose fathers are absent from the home and which would make work and work training a condition of welfare for mothers.

ASSAIL LAWMAKERS

Mrs. Catherine Krouser of New York, who contended that under the amendments children could be taken from their mothers, said: "I'm a mother and I'm going to arm myself."

But underneath it all was the dominant note struck by the national welfare rights movement earlier this year and sounded again at its convention this weekend—welfare recipients are not grateful for relief that they say has kept them hungry and their homes ridden with rats and despair. More money now was a recurring cry.

Beneath the brooding figure of Gen. Ulysses S. Grant at Union Square, dark against the shining Capitol dome, recipients cheered until they were hoarse when a mother excoriated the lawmakers as "lousy, dirty, conniving brutes" who are trying to put black people back on the plantation.

Mrs. Margaret McCarty of Baltimore, who made the charge, shouted: "It's another form of slavery, baby. But I'm black, and I'm beautiful. They're not gonna take me back."

PREDICTS BIG 1968 TURNOUT

Although white people were in a distinct minority, Mrs. Dorothy DiMascio of Rochester, N.Y. said more and more white people were joining the black members. "We're going to fight with them if we have to die with them," she said.

At HEW, Mrs. Johnnie Tillmon, newly elected chairman of the National Organization for Welfare Rights that was created during the convention, said it was time officials understood the meaning of the long hot summer. She predicted that next year the convention would be so large that it would take Madison Square Garden to hold it.

Leaders of the welfare rights movement unsuccessfully sought an audience with John Gardner, HEW secretary. According to a spokesman for HEW, they also had asked Gardner to address them and refused Gardner's offer that HEW Undersecretary Wilbur J. Cohen speak at the convention instead.

Dr. George A. Wiley, director of the Poverty Rights Action Center, which has developed the welfare rights movement, said the Senate Finance Committee, now holding hearings on the Social Security amendments wouldn't meet with poor people, nor would Secretary Gardner meet with poor people. If this country doesn't listen to poor people, what happened in Detroit and Newark will be only a prelude, he said.

Sen. Jacob Javits, R-N.Y., arranged for the delegate to use the Senate caucus room, where Wiley said they were holding their own hearings on the Social Security amendments.

Delegates expressed scorn that Javits and Sen. Robert Kennedy, D-N.Y., sent representatives to the caucus room instead of appearing themselves.

Robert Patricelli, representing Javits, said the two New York senators agreed that the House-passed amendments are bad.

One delegate told the caucus room assemblage that Senate Minority Leader Everett Dirksen, R-Ill., had hit a delegate with his fist when about 12 persons from Illinois went to see him.

The delegate involved, Richard Hanelin, 24, told the press that Dirksen hit him on the arm with the back of the hand. Hanelin said he felt this was Dirksen's way of saying, poor people, keep what you have, keep down.

Dirksen, who denied the charge that he had struck anyone, told a reporter: "I just reached over and put my hand on his shoulder. They were trying to conduct a little sit-in in my office, and a sit-in obstructs the public business."

ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in adjournment until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 20 minutes p.m.) the Senate adjourned until tomorrow, Thursday, August 31, 1967, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate August 30 (legislative day of August 29), 1967:

PUBLIC HEALTH SERVICE

Bruno W. Augenstein, of Virginia, to be a member of the Board of Regents, National Library of Medicine, Public Health Service, for a term expiring August 3, 1971, vice Russell Alexander Dixon.

IN THE ARMY

The following-named officer for temporary appointment in the Army of the United States to the grade indicated under the provisions of title 10, United States Code, sections 3442 and 3447:

To be Brigadier General

Chaplain (Colonel) Ned Ralston Graves, [redacted], U.S. Army.

IN THE AIR FORCE

The following-named officers for promotion in the Regular Air Force, under the appropriate provisions of chapter 835, title 10, United States Code, as amended. All officers are subject to physical examination required by law.

First lieutenant to captain

Abeln, Paul J., [redacted]
Abram, Max L., [redacted]
Abruzzese, Tommaso G., [redacted]
Acheson, Densel K., [redacted]
Ackerman, Charles T., [redacted]
Acuff, Mack F., [redacted]
Adair, Charles R., [redacted]
Adams, George T., [redacted]
Adams, James O., [redacted]
Aehnlich, Paul C., [redacted]
Ahmann, James N., [redacted]
Aiken, Gerald G., [redacted]
Albro, William A., [redacted]
Alexander, Larry D., [redacted]
Allen, Calvard S., [redacted]
Allen, Daryl D., [redacted]
Allen, Gerald N., [redacted]
Alston, Harold R., [redacted]
Aman, Earl D., [redacted]
Amann, Richard W., [redacted]
Amlong, Joseph B., [redacted]
Andersen, Jack T., [redacted]
Andersen, Niels B., [redacted]
Anderson, Bobby D., [redacted]
Anderson, Charles A., [redacted]
Anderson, David K., [redacted]
Anderson, Gordon L., [redacted]
Anderson, Marcus A., [redacted]
Anderson, Wendell L., [redacted]
Anderson, William F., [redacted]
Andes, William S., [redacted]
Andres, Lanny R., [redacted]
Angus, William E., [redacted]
Anzivino, Angelo L., [redacted]
Apodaca, Victor J., Jr., [redacted]
Arnaiz, Donald R., [redacted]
Arnold, Richard W., [redacted]
Arnold, William E., [redacted]
Asakura, Takazumi Jr., [redacted]
Asher, Laurence F., [redacted]
Assaf, Frank N., II, [redacted]
Atwood, Daryl G., [redacted]
Aube, Albert E., [redacted]
Austin, James S., Jr., [redacted]
Auth, James F., [redacted]
Ayers, Richard G., [redacted]
Baber, Gary P., [redacted]
Babitzke, Edward B., [redacted]
Babos, Sandor, [redacted]
Bacher, Stephen E., [redacted]
Backer, Donald E., [redacted]
Bacs, John, [redacted]
Badgett, Lee D., [redacted]
Baertl, Charles E., [redacted]
Baggiano, Anthony L., [redacted]
Bailey, Roy C., Jr., [redacted]
Baines, Donald D., [redacted]
Bainter, Hugh T., [redacted]
Baker, Donald R., [redacted]
Baker, George W., [redacted]
Baker, Guy F., [redacted]
Baker, James N., [redacted]
Baker, James P., [redacted]
Baker, John T., Jr., [redacted]
Baker, Marion K., [redacted]
Baker, Roy T., [redacted]
Baker, Willard L., Jr., [redacted]
Baran, Michael F., [redacted]
Barber, Hugh W., Jr., [redacted]
Barker, William V. H., [redacted]
Barnes, James E., [redacted]
Barnes, Warren S., [redacted]
Barnett, David R., [redacted]
Barrett, Norman L., [redacted]
Barry, Edward P., Jr., [redacted]
Barry, Gregory P., [redacted]
Bartholomew, Rodney A., [redacted]
Bartlett, William K., Jr., [redacted]
Barton, John B., [redacted]
Barton, Roland S., Jr., [redacted]
Bartrand, Louis E., [redacted]
Bassett, David E., [redacted]
Baten, Jimmie R., [redacted]
Batton, Robert N., Jr., [redacted]
Baushke, James L., [redacted]
Bayer, Roger T., [redacted]
Bazet, Randolph A., Jr., [redacted]
Bear, Howard J., [redacted]
Beardemphl, Thomas W., [redacted]
Beck, John J., Jr., [redacted]
Becker, Edward L., Jr., [redacted]
Begley, George A., [redacted]
Behler, Joseph A., [redacted]
Belcher, Gary D., [redacted]
Beldy, Andrew J., [redacted]
Bell, Jerald R., [redacted]
Bellanca, Thomas J., [redacted]
Beller, Gerald R., [redacted]

Benjamin, William D., Jr., xxxx
Bennett, Jerry L., xxxx
Bennett, John H., xxxx
Bergmann, Harold W., xxxx
Beringson, Richard J., xxxx
Berry, John S., xxxx
Berta, Michael A., xxxx
Bertenshaw, Thomas G., xxxx
Bertram, David G., xxxx
Bessett, George R., xxxx
Best, Robert W., Jr., xxxx
Bethel, Howard E., xxxx
Betsill, Sammy F., xxxx
Bettersworth, James A., xxxx
Betz, Ernest J., xxxx
Bicknell, Ernest P., III, xxxx
Binder, Donald H., xxxx
Birch, Joel R., xxxx
Birkhead, Robert F., xxxx
Birmingham, Milton D., xxxx
Bishoprick, Dean W., xxxx
Bjorke, Erle L., xxxx
Blackwood, Gordon B., xxxx
Blaisdell, Allan C., xxxx
Blakney, Kenneth L., xxxx
Blaufuss, Edward A., xxxx
Bledsoe, Adolphus H., Jr., xxxx
Blessing, David A., xxxx
Blevins, Bedford D., xxxx
Blevins, John C., xxxx
Blews, Monte E., xxxx
Blizzard, John D., Jr., xxxx
Blume, Roger C., xxxx
Bodenhamer, Howard L., xxxx
Boedeker, Robert F. C., xxxx
Boette, August E., xxxx
Bogart, Bruce C., xxxx
Bohan, James A., xxxx
Bohlson, John S., xxxx
Bolen, Edward S., xxxx
Boles, Jimmie K., xxxx
Bolton, Malcolm F., Jr., xxxx
Bonertz, Donavon F., xxxx
Bonfield, John A., xxxx
Bookout, William G., xxxxx.
Boortz, Eugene H., xxxx
Boothe, Robert M., xxxx
Bordeaux, John C., xxxx
Borden, Benton L., xxxx
Boright, Arthur L., xxxx
Borts, Robert A., xxxx
Bostick, Neil D., xxxx
Bott, Don C., xxxx
Bounds, Gordon S., xxxx
Bouquet, Victor H., Jr., xxxx
Boursaw, Jon E., xxxx
Bowers, Francis L., xxxx
Bowling, Gene D., xxxx
Bowman, Gary H., xxxx
Bowser, Gary F., xxxx
Box, Don W., xxxx
Boyd, Cecil S., xxxx
Boyd, Stuart R., xxxx
Boyer, Robert E., xxxx
Bradberry, Lester E., xxxx
Bradley, George E., Jr., xxxx
Bradley, James E., xxxx
Bradstreet, Frederick E., III, xxxx
Brady, James C., Jr., xxxx
Branch, Christopher I., xxxx
Branch, Kirby P., xxxx
Brandt, David A., xxxx
Brandt, Larry J., xxxx
Brandt, Rand, xxxx
Brannelly, John J., xxxx
Brannon, John J., xxxx
Brant, Roger F., xxxx
Bredenkamp, Barton C., xxxx
Breen, Joseph A., xxxx
Breen, Walter M., xxxx
Brewer, James E., xxxx
Bridley, Charles A., xxxx
Briggs, Benjamin R., xxxx
Bright, Jack W., xxxx
Brinson, James E., xxxx
Brittain, Claire E., Jr., xxxx
Brookie, James H., xxxx
Brooks, David M., xxxx
Brooks, Joseph G., xxxx
Brophy, Thomas F., xxxx
Brown, Dennis C., xxxx
Brown, Dennis E., xxxx
Brown, Donald A., xxxx
Brown, Donald R., xxxx
Brown, Lester P., Jr., xxxxx.
Brown, Michael B., xxxx
Brown, Robert C., xxxx
Brown, Willis N., Jr., xxxx
Brueggemeier, Garry F., xxxx
Brugger, Walter I., xxxx
Brundage, John A., xxxx
Bruno, Joseph M., xxxx
Brya, Edward N., xxxx
Bryant, Jon F., xxxx
Bryant, William L., xxxx
Bryars, Frank K., xxxx
Buchanan, George L., xxxx
Buchner, George E., xxxx
Buckley, Martin J., xxxx
Buckley, Patrick J., xxxx
Bucksbee, John D., xxxx
Buerk, William C., xxxx
Bulick, Edward H., xxxx
Bull, Robert G., II, xxxx
Bullard, Donald R., xxxx
Bullmer, Joseph J., xxxx
Bulov, John G., xxxx
Burchfield, Joseph P., III, xxxx
Burd, Bobby R., xxxx
Burden, Alfred L., xxxx
Burgess, Danny N., xxxx
Burgess, George D., xxxx
Burke, Edward J., xxxx
Burke, Harry E., xxxx
Burke, John F., xxxx
Burnett, Thomas E., xxxx
Burns, Ronald A., xxxx
Busch, Francis N., xxxx
Bussman, William F., xxxx
Butcher, Doyle A., xxxx
Butler, George L., xxxx
Butler, Ronald L., xxxx
Butterfield, John D., xxxx
Byrne, Richard O., xxxx
Cairns, Douglas B., xxxx
Calder, David H., xxxx
Caldwell, David O., xxxx
Callaway, Patrick W., xxxx
Campassi, Charles C., xxxx
Campbell, Clarence N., xxxx
Cambpell, David, xxxx
Campbell, Harold N., xxxx
Campbell, Joseph M., Jr., xxxx
Campbell, Roger R., xxxx
Campen, Richard L., xxxx
Cann, Donald J., xxxx
Canning, Gordon J., Jr., xxxx
Cantrell, Teddy D., xxxx
Caraway, Bobby R., xxxx
Carder, James R., Jr., xxxx
Care, Francis J., xxxx
Carey, Nelson F., xxxx
Cargill, Robert L., xxxx
Carlberg, Ronald L., xxxx
Carleton, Will A., Jr., xxxx
Carling, Joseph C., xxxx
Carlson, Donald T., xxxx
Carlson, Robert D., xxxx
Carlstrom, David L., xxxx
Carpenter, Edmund M., Jr., xxxx
Carpenter, Shirley M., xxxx
Carpenter, William H., Jr., xxxx
Carr, Chalmers R. Jr., xxxx
Carroll, Jo R., Jr., xxxx
Carroll, John M., Jr., xxxx
Carroll, William R., xxxx
Carron, Hubert J., xxxx
Carson, Caroll G., Jr., xxxx
Carstensen, Darwin R., xxxx
Carter, Rubert L., xxxx
Carver, James I. II, xxxx
Casciato, Richard F., xxxx
Casey, Kendall F., Jr., xxxx
Casey, Walter H., xxxx
Cason, Carl W., xxxx
Cassidy, Patrick E., xxxx
Castillo, Richard, xxxx
Casupang, Amador C., xxxx
Caum, Nancy A., xxxx
Cawein, Walter G., xxxx
Cayton, John J., xxxx
Ceruti, Franklin D., xxxx
Chambers, Glen D., xxxx
Chaney, Larry O., xxxx
Chappelle, James E., xxxx
Chase, James L., xxxx
Chavez, Antoni I., Jr., xxxx
Cheatham, Walter H., Jr., xxxx
Childers, Andrew N., xxxx
Childress, Guy P., Jr., xxxx
Christian, Robert E., III, xxxx
Christopherson, Thomas G., xxxx
Chuvala, Raymond D., xxxx
Clanton, Norman G., xxxx
Clapp, David E., xxxx
Clapsaddle, Ronald E., xxxx
Clark, Clifton C., Jr., xxxx
Clark, Frank M., Jr., xxxxx
Clark, Leonard L., xxxx
Clarke, Ernest J., xxxx
Clarke, George R., xxxx
Claus, Richard L., xxxx
Clawson, Stewart H., xxxx
Clemmer, William H., xxxx
Clemons, Eugene S., xxxx
Cleveland, Marvin A., xxxx
Clevenger, David A., xxxxx.
Cliatt, Edwin N., xxxx
Clyncke, James M., xxxx
Cochenour, David A., xxxxx.
Cochran, Henry J., xxxx
Cockerham, Lorris G., xxxx
Cockrum, Donald J., xxxx
Coe, Larry J., xxxx
Coffin, Fred J., xxxx
Cole, Charles R., xxxx
Coleman, Earnest L., xxxx
Coleman, Edward L., xxxx
Collard, Joseph W., Jr., xxxx
Colvin, Charles G., xxxx
Combest, William D., xxxx
Combs, Donald R., xxxx
Compton, Phil V., xxxx
Conely, James H., Jr., xxxx
Conley, Emil R., xxxx
Conley, Thomas M., xxxx
Conover, Charles D., xxxx
Conrad, Robert E., xxxx
Constant, Dennis L., xxxx
Cook, Donald A., xxxx
Cook, Edward R., xxxx
Cook, Loyal S., xxxx
Cook, Warren W., xxxx
Cooper, Dale J., xxxx
Cooper, Frank B., xxxx
Cooper, John M., xxxx
Cooper, Marcus F., Jr., xxxx
Cooper, Richard M., xxxx
Cope, Larry G., xxxx
Cope, Lawrence L., xxxx
Copeland, John M., xxxx.
Copner, Robert E., xxxx
Coppock, Richard M., xxxx
Cordier, Kenneth W., xxxx
Cornell, Gerald E., xxxx
Corrick, Blaine S., Jr., xxxx.
Cors, Theodore C., xxxx
Corson, Howard A., Jr., xxxx
Costain, Richard Y., xxxx
Cotter, Edward J., xxxx
Cotton, Charles E., xxxx
Couch, Robert P., xxxx
Coughlin, James P., xxxx
Coupland, James W., xxxx
Couvillion, Charles E., xxxx
Cox, Claude D., xxxx
Cox, Gary E., xxxx
Cox, Homer M., Jr., xxxx
Cox, Lawrence C., xxxx
Coyle, Ronald W., xxxx
Coyne, Thomas M., xxxx
Crane, John M., Jr., xxxx.
Crane, Robert W., xxxx
Crawford, Charles L., xxxx
Cress, Larry E., xxxx
Croft, Stephen L., xxxx
Croll, Charles W., xxxx
Crossley, Robert W., xxxx
Crotwell, George P., Jr., xxxx
Crow, Ralph R., Jr., xxxx
Croy, Otto E., Jr., xxxx
Cruickshank, John P., xxxx
Cubero, Ruben A., xxxx
Cuellar, Hector M., xxxx
Cullen, James A., Jr., xxxx
Culp, Larry F., xxxx
Culver, John N., xxxx

Culver, William C., xxxx
Cuneo, William J., Jr., xxxx
Cunliffe, William E., xxxx
Cunningham, Robert G., xxxx
Cunningham, Robert J., xxxx
Curtis, Justin A., xxxx
Cushing, Emery G., xxxx
Cushman, Clifton E., xxxx
Custer, Robert H., xxxx
Cutney, John M., xxxx
Dailey, Fred D., Jr., xxxx
Daily, Terry J., xxxx
Danborn, Donald R., xxxx
Daniels, John F., xxxx
Daniels, Ralph E., xxxx
Danigole, Simon A., Jr., xxxx
Danner, James E., xxxx
Darnauer, James H., xxxx
Dates, John A., xxxx
Davey, Jack N., xxxx
Davidson, Hugh M., xxxx
Davies, Thomas J., Jr., xxxx
Davis, Charles W., xxxx
Davis, Gene H., xxxx
Davis, Kenneth D., xxxx
Davis, Philip B., xxxx
Day, Carroll N., xxxx
Day, Richard W., xxxx
Deal, James E., xxxx
Dean, Chester F., xxxx
Dechant, William A., xxxx
Dedoes, Dirk H., xxxx
Deem, Larry A., xxxx
Degavre, Timothy T., xxxx
DeGroot, John P., Jr., xxxx
DeKock, Karel R., xxxx
Delano, Marshall K., xxxx
Delbridge, Leo A., xxxx
Delgiorno, Emil V., xxxx
Dellangela, Silvio G., xxxx
Delles, Gerald K., xxxx
Delmont, John A., xxxx
Delprete, Frank, Jr., xxxx
Dempsey, David D., xxxx
Denhardt, Thomas J., xxxx
Denisio, Carl B., xxxx
Denning, James H., xxxx
Densmore, Richard W., xxxx
Detjen, Derek H., xxxx
Devietti, John F., xxxx
Deville, Edsel J., xxxx
Devorshak, George A., xxxx
Dexter, Calvin R., xxxx
Diamond, Verl K., xxxx
Dibiase, James A., xxxx
Dibrell, Aquilla G., III, xxxx
Dichtl, Rudolph J., xxxx
Dickens, Lewis A., xxxx
Dicks, Gary R., xxxx
Dieterly, Duncan L., xxxx
Dietz, Frederic H., xxxx
Diferdinando, Anthony F., xxxx
Dillon, Dan V., xxxx
Dilworth, Billy G., III, xxxx
Dingle, Robert J., Jr., xxxx
Dishner, Jimmy G., xxxx
Dishon, Larry E., xxxx
Ditch, Oliver P., xxxx
Dittrich, Mark S., xxxx
Dixon, Clifford C., xxxx
Doan, Larry L., xxxx
Dobkowski, Edwin C., xxxx
Dockum, Robert R., xxxx
Dondero, Richard W., xxxx
Donelson, Nicholas J., xxxx
Donnellan, James L., xxxx
Donovan, James G., xxxx
Dorrough, Robert E., Jr., xxxx
Doten, Eric S., xxxx
Doty, Dale A., xxxx
Doubek, Thomas J., xxxx
Dowd, Anthony P., xxxx
Downs, James J., xxxx
Drake, Richard F., xxxx
Draney, Elwyn N., xxxx
Dreesbach, Donald A., xxxx
Driver, John C., III, xxxx
Drumgool, James E., xxxx
Dudek, Albert G., xxxx
Dudley, John D., xxxx
Duemmel, John W., xxxx
Duff, Dennis K., xxxx
Duffie, Boyd T., III, xxxx
Duffy, James E., xxxx
Duganne, Robert A., xxxx
Duke, Charles W., Jr., xxxx
Dumond, David L., xxxx
Dunlap, Richard C., xxxx
Dunn, Prince H., II, xxxx
Dunne, Gilbert F., xxxx
Dunning, John E., xxxx
Dupre, James J., xxxx
Durham, Harold R., Jr., xxxx
Durham, Louis, D., xxxx
Durnbaugh, Ralph E., xxxx
Duvall, John S., xxxx
Dvorak, James E., xxxx
Easley, Rex C., xxxx
Eddlemon, John A., xxxx
Ederer, Larry P., xxxx
Edkins, David, xxxx
Edwards, Charles M., xxxx
Edwards, Donald R., xxxx
Edwards, Norman B., xxxx
Edwards, Paul W., xxxx
Edwards, Rufus L., xxxx
Eggebrecht, Gerhard W., xxxx
Egolf, Charles A., xxxx
Ehresman, William C., xxxx
Eichmeier, Marvin H., xxxx
Eichorst, Douglas W., xxxx
Eliason, Carl D., xxxx
Elle, John M., xxxx
Eller, Thomas J., xxxx
Elliott, Thomas A., xxxx
Ellis, David A., xxxx
Ellis, Larry G., xxxx
Elmore, Irven W., xxxx
Emery, Jay O., xxxx
Emmett, Burton P., xxxx
Emper, Neal H., Jr., xxxx
Encinas, Esequiel M., xxxx
Endo, Toki R., xxxx
Engebretson, Thomas H., xxxx
Engel, John E., xxxx
Engelbach, Herman F., Jr., xxxx
Englar, Ruger H., xxxx
Ennis, Ralph B., xxxx
Enniss, William C., xxxx
Ensign, Richard B., xxxx
Entsminger, Joseph E., xxxx
Erbes, James L., xxxx
Erickson, William C., xxxx
Erkkinen, Albert T., xxxx
Erler, Robert C., Jr., xxxx
Erskine, Jerald J., xxxx
Erxleben, Edward J., xxxx
Esses, David J., xxxx
Eubanks, Johnny D., xxxx
Evanczyk, Elroy E., xxxx
Evans, Alexander, III, xxxx
Evans, James E., xxxx
Evans, John K., xxxx
Evans, Travis L., xxxx
Evenson, David B., xxxx
Everett, Robert P., xxxx
Evers, Richard J., xxxx
Evon, William J., xxxx
Ewing, John H., xxxx
Faber, Brian R., xxxx
Fairlamb, Richard C., xxxx
Falcinelli, Alexander J., xxxx
Fardal, Richard W., xxxx
Farfaglia, Theodore S., xxxx
Farnham, Duane W., xxxx
Faulk, Renold I., xxxx
Feenan, Arthur L., III, xxxx
Fehrenbacher, Larry L., xxxx
Feldman, John L., xxxx
Ferguson, David L., xxxx
Ferraro, James L., xxxx
Ferro, Frank, xxxx
Festerman, Gary T., xxxx
Fichtel, Terry P., xxxx
Ficinus, Robert F., xxxx
Fields, Barry N., xxxx
Fieszel, Clifford W., xxxx
Finnerty, Chester C., xxxx
Fischer, Alton F., xxxx
Fisher, Jack D., xxxx
Fisher, Michael F., xxxx
Fisher, Robert W., xxxx
Fisk, James W., xxxx
Fleig, Norman G., xxxx
Fleming, Michael C., xxxx
Fletcher, Kenneth M., xxxx
Flowers, Thomas M., xxxx
Floyd, Edwin R., xxxx
Flynn, Richard R., xxxx
Foley, Paul F., xxxx
Foltz, Warren L., xxxx
Forbrich, Carl A., Jr., xxxx
Ford, William R., xxxx
Fornwalt, Harry C., Jr., xxxx
Forsberg, Franklin A., xxxx
Forster, George J., xxxx
Forster, John C., xxxx
Fort, Darrell L., xxxx
Foster, William J., xxxx
Fournier, Paul E., xxxx
Fowler, Guy E., xxxx
Fowler, Robert T., xxxx
Fowler, Vernon F., xxxx
Fox, Allan L., xxxx
Fox, James, xxxx
Franklin, James V., xxxx
Franzen, George A., Jr., xxxx
Frassato, Richard L., xxxx
Fratzke, William F., xxxx
Freebairn, James D., xxxx
Freeman, Larry B., xxxx
Freeman, William E., xxxx
Freney, Michael A., xxxx
Frenzel, Earl E., Jr., xxxx
Frichette, Steven R., xxxx
Fricke, Maurice G., xxxx
Fricks, Martin E., xxxx
Friday, Elbert W., Jr., xxxx
Friedman, Gerald J., xxxx
Friehauf, Edwin F., xxxx
Friel, John, xxxx
Fritts, Charles, xxxx
Frucht, Walter H., xxxx
Fuchlow, William D. M., xxxxx
Fudala, Eugene R., xxxx
Fukumoto, Malcolm T., xxxx
Fulaytar, Donald J., xxxx
Fullerton, Ronald A., xxxx
Fulton, David H., xxxx
Fuqua, William L., xxxx
Furlong, Daniel E., xxxx
Furst, William A., xxxx
Furtak, Ronald E., xxxx
Gabbert, Gale L., xxxx
Gaebler, Richard A., xxxx
Gaffney, Patrick J., xxxx
Gage, Howard J., xxxx
Gaines, Kimball M., xxxx
Gale, Kenneth A., xxxx
Galey, Fred D., xxxx
Gallington, Roger W., xxxx
Gambill, Jack H., xxxx
Ganger, Marvin O., xxxx
Garcia, Denis, xxxx
Garcia, Manuel C., xxxxx
Gardner, Gregory G., xxxx
Garland, Robert A., xxxx
Garner, John L., xxxx
Garrett, Harley F., Jr., xxxx
Gaskins, Darius W., Jr., xxxx
Gates, George O., xxxx
Gatling, Wade S., xxxx
Gatto, Francis R., xxxx
Geist, James R., xxxx
George, Getty J., Jr., xxxx
George, William D., xxxx
Gerber, Harry D., xxxx
Gesell, William H., III, xxxx
Getchell Paul E., xxxx
Gibson, Robert H., xxxx
Giedlin, Robert W., xxxx
Gifford, Robert R., xxxx
Giger, John M., xxxx
Gilbert, James F., xxxx
Gilchrist, John R., Jr., xxxx
Giles, Jimmie D., xxxx
Gill, Duane D., xxxx
Gill, Gerald W., xxxx
Gilmore, Richard M., xxxx
Gilroy, Kevin A., xxxxx
Gingery, David W., xxxx
Girod, Alan L., xxxx
Gissing, Peter W., xxxx
Giuliano, Frank S., xxxx
Givens, Charles A., xxxx
Glasz, William, xxxx

Glidden, Benjamin C., xxxx
Glud, Robert G., xxxx
Goddard, Richard T., xxxx
Goldschlager, Gerald I., xxxxx
Gonzales, Joseph U., xxxx
Goodall, George F., xxxx
Goodley, John R., xxxx
Gordon, William S., III, xxxx
Gornell, Daniel R., xxxx
Gortler, Gordon D., xxxx
Gosnell, Wayne L., xxxx
Goss, Charles R., Jr., xxxx
Gossett, Harry R., III, xxxx
Gough, Billy J., xxxx
Gould, Kenneth E., xxxxx
Grace, Bobbie L., xxxx
Grace, Vaughn K., xxxx
Gradert, Marvin M., xxxx
Graf, Charles E., xxxxx
Graffagnino, Olaff D., xxxx
Graham, L. B., Jr., xxxx
Graham, Richie W., xxxx
Granberry, Carl W., xxxx
Granquist, Larry A., xxxx
Grant, Donald E., xxxx
Grant, Gordon A., xxxx
Grapes, Darrell W., xxxx
Graves, John K., xxxx
Graves, Ronald A., xxxxx
Graves, William R., xxxx
Gray, Giles J., xxxx
Gray, Jimmie D., xxxx
Gray, Robert L., xxxx
Gray, Troy G., xxxx
Gray, William R., Jr., xxxx
Graydon, Michael T., xxxx
Green, Denzil L., xxxx
Green, James D., xxxx
Green, John P., xxxx
Green, Richard I., xxxx
Greenfield, Joseph F., xxxx
Greenspan, Michael M., xxxx
Greenwood, Robert R., Jr., xxxx
Greer, Clifford G., Jr., xxxx
Greer, William R., xxxx
Greeg, Otis C., Jr., xxxx
Gregory, Duane B., xxxx
Grenier, Daniel R., xxxx
Gries, Charles E., xxxx
Griffin, James R., xxxx
Griffin, Joseph C., xxxx
Griffith, Alexander J., xxxx
Grigg, Ralph W., Jr., xxxx
Grikis, Aloisius S., xxxx
Grimaud, Joseph A., Jr., xxxxx
Grimm, Joseph M., xxxx
Gritten, Philip D., xxxx
Grohn, Dan A., xxxx
Gros, Percy J., Jr., xxxx
Grossman, Darwin B., Jr., xxxx
Grow, Samuel A., xxxx
Grundvig, Robert H., xxxx
Guess, Terry J., xxxx
Guidry, Roland D., xxxx
Guise, Ralph F., xxxx
Gunn, Earnest L., xxxx
Gunn, Kenneth C., xxxx
Gustafson, Jarl S., xxxx
Gustavson, Robert L., xxxx
Guthrie, Charles E., xxxx
Gygi, Stuart R., xxxx
Haap, Frederick, III, xxxx
Haars, Neil W., xxxx
Hablas, Louis J., Jr., xxxx
Hahn, Gerald E., xxxx
Hailey, Joaquin M., xxxx
Haines, David W., xxxx
Hala, Norbert A., xxxx
Halbert, Milton R., xxxx
Hale, Robert H., xxxx
Hall, Aubrey L., xxxx
Hall, Jack G., xxxx
Hall, James D., xxxx
Hall, Joe E., xxxx
Hall, Joel T., xxxx
Hall, John H., xxxx
Hall, Joseph R., Jr., xxxxx
Hall, Sauel L., xxxx
Halprin, Edwin A., Jr., xxxx
Halstead, Woodrow J., Jr., xxxx
Hamiga, John V., xxxx
Hamilla, Gerald J., xxxxx
Hamilton, James P., xxxx
Hamilton, Ralph P., xxxx
Hammond, Trevor A., xxxx
Handy, Burrell R., III., xxxx
Haney, Donald E., xxxx
Hanig, William J., xxxxx
Hanks, George F., xxxx
Hannah, Robert V., Jr., xxxx
Hannan, Jon E., xxxx
Hanner, Gerald P., xxxx
Hansen, Donald C., xxxx
Hansen, Roger H., xxxx
Harden, James A., xxxx
Harden, William D., III, xxxx
Hardy, Robert A., Jr., xxxx
Haring, David R., xxxx
Haring, Wayne A., xxxx
Harley, Lee D., xxxx
Harris, John A., xxxx
Harris, John D., xxxx
Harris, Michael W., xxxx
Harris, Patrick L., xxxx
Harris, Robert E., xxxx
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Harry, William T., Jr., xxxx
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Hartnett, Charles L., xxxx
Haskins, John D., xxxx
Haslouer, Warren L., xxxx
Hasz, Paul H., xxxx
Hatcher, Ronald N., xxxx
Hatfield, Jerry H., xxxx
Hathcock, Allan C., xxxx
Hauschild, Wal D., Jr., xxxx
Havas, Joe L., xxxx
Hawkins, James T., xxxx
Hayden, Albert H., Jr., xxxx
Hayden, Gaylord V., xxxx
Hayes, Charles E., xxxx
Hayes, Robert J., xxxx
Hayman, Sheppard L., xxxx
Haynie, Charles W., Jr., xxxx
Hays, David W., xxxx
Hazen, Vernon L., xxxx
Hazlett, Robert L., xxxx
Heacock, Phillip K., xxxx
Head, Larry D., xxxx
Head, Sidney A., Jr., xxxx
Hearn, Kenneth P., xxxx
Heath, William P., xxxx
Hebert, Lawrence R., xxxx
Hedges, Robert L., xxxx
Heimach, Chairles E., xxxx
Heineman, Albert F., III, xxxx
Heininger, Marvin W., xxxx
Helbling, Anthony, Jr., xxxx
Hendrickson, Jame R., xxxx
Hendrix, Jerry B., xxxx
Henninger, Frederic W., xxxx
Herbst, Ralph E., xxxx
Hernandez, Claro M., xxxx
Hernandez, Johnny, xxxx
Herndon, Floyd D., Jr., xxxx
Heron, Thomas M., xxxx
Hersman, Walter C., xxxx
Hesch, Harold W., xxxx
Hester, Joe W., xxxx
Hewes, William E., xxxx
Hickman, David B., xxxx
Hickman, Warren W., xxxx
Hickox, Joseph E., xxxx
Hicks, Charles F., xxxx
Hicks, Jimmy C., xxxx
Higgins, Lennis L., xxxx
Hill, Edwards A., xxxx
Hill, James H., Jr., xxxx
Hill, Joseph L., xxxx
Hill, William A., III, xxxx
Hilton, Russell B., xxxx
Himes, Kenneth F., xxxx
Hinds, Bruce J., Jr., xxxx
Hinkle, James M., xxxx
Hinkle, Rodney L., xxxx
Hinson, Forrest E., Jr., xxxx
Hintze, Carl, III, xxxx
Hipp, Edward F., xxxx
Hitt, William R., xxxx
Hlavinka, Duane K., xxxx
Hmiel, David G., xxxx
Ho, Stephen S., xxxx
Hobbs, Fleming C., Jr., xxxx
Hobby, Walter T., Jr., xxxx
Hodge, Clifford A., xxxx
Hodge, Ralph L., xxxx
Hoeksema, Peter P., xxxx
Hoernig, Otto W., Jr., xxxx
Hoffer, Leland H., xxxx
Hofstatter, Gerald E., xxxx
Hogan, William E., xxxx
Hogg, Thomas G., xxxx
Hokins, Albert H., xxxx
Holbert, Lee J., xxxx
Holcomb, Vernon C., xxxx
Holden, Charles H., xxxx
Holets, James J., xxxx
Holley, Carroll J., xxxx
Hollie, Lawrence L., xxxx
Holmes, John A., xxxx
Holmes, Samuel M., xxxx
Holway, Walter D., xxxx
Honeycutt, Rembert L., xxxx
Hooper, James D., xxxx
Hoover, Richard D., xxxx
Hope, John L., xxxx
Hopkins, Mitchell D., xxxx
Hopkins, Robert N., xxxx
Hopp, Eugene G., xxxx
Horner, Robert S., xxxx
Horton, Kenneth, xxxx
Hoscheid, Terrence G., xxxx
Hoskins, Donald R., xxxx
Hosley, David L., xxxx
Hourin, James J., xxxx
House, Francis L., xxxx
Hoven, Gary H., xxxx
Howe, Henry L., xxxx
Howell, Marvin W., xxxx
Howell, Ralph W., xxxx
Howes, George F., xxxx
Howes, Thomas R., xxxx
Hrastar, Gerald J., xxxx
Hubbard, Don V., xxxx
Hudgins, Richard E., xxxx
Hughes, Billy F., xxxx
Hughes, David R., xxxx
Hughes, Phillip L., xxxx
Hughes, Ralph H., xxxx
Hughes, Thomas K., xxxx
Hughes, William F., Jr., xxxx
Hull, John L., Jr., xxxx
Hunt, David F., xxxx
Hunt, Leo B., xxxx
Hunter, Sammie R., xxxx
Huntwork, Philip L., xxxx
Hurley, Richard S., xxxx
Hurston, Stanley L., xxxx
Huston, Lawrence E., xxxx
Hutchinson, Creston C., Jr., xxxx
Hutson, John F., xxxx
Hyland, Gerald W., xxxx
Idehara, George M., xxxx
Ikelman, Robert H., xxxx
Ikner, Jerry E., xxxx
Immel, Allen E., xxxx
Ingalls, Donald A., xxxx
Inscoe, Willard F., xxxx
Irving, Lawrence K., xxxx
Irwin, John W., xxxx
Ivins, Arthur K., xxxx
Ivory, James O., xxxx
Jackson, Charles L., xxxx
Jackson, John A., Jr., xxxx
Jackson, Kelso L., xxxx
Jackson, Paul P., xxxx
Jackson, Peter A., xxxx
Jackson, Robert A., xxxx
Jackson, Tyler M., xxxx
Jackson, Wells T., xxxx
Jacobs, William E., xxxx
Jaeckle, John T., xxxx
Janka, Paul J., xxxx
Janzen, Myron R., xxxx
Jeas, William C., xxxx
Jeffreys, James V., xxxx
Jeffryes, Phillip R., xxxx
Jenkins, David A., xxxx
Jenkins, Paul W., xxxx
Jennings, Thomas T., xxxx
Jernigan, George W., xxxx
Jerome, Richard D., xxxx
Johansen, Albert E., xxxx
Johanson, James A., xxxx

Johnson, Allan P., III, xxxx
Johnson, Cecil D., xxxx
Johnson, Charles R., xxxx
Johnson, Curtis M., xxxx
Johnson, Dale R., xxxx
Johnson, David C., xxxx
Johnson, Elliot L., xxxx
Johnson, Harold E., xxxx
Johnson, Harvey L., xxxx
Johnson, John B., xxxx
Johnson, John E., Jr., xxxx
Johnson, Kenneth R., xxxx
Johnson, Laurie R., xxxx
Johnson, Myron, xxxx
Johnson, Robert E., xxxx
Johnson, Ronald N., xxxx
Johnson, Russell C., xxxx
Johnston, Gerald B., xxxx
Johnston, Gerald D., xxxx
Johnston, Luther G., xxxx
Johnston, Ronald B., xxxx
Jones, Arthur E., xxxx
Jones, Billy S., xxxx
Jones, Brice C., xxxx
Jones, Charles A., xxxx
Jones, Dean H., xxxx
Jones, Edwin G., III, xxxx
Jones, Freddy H., xxxx
Jones, Glenn A., xxxx
Jones, Howard H., II, xxxx
Jones, John C., xxxx
Jones, Lowell W., xxxx
Jones, Needham B., xxxx
Jones, Nicholas, xxxx
Jones, Richard L., xxxx
Jones, Robert V., xxxx
Jones, Stanley R., xxxx
Jones, Vernal O., Jr., xxxx
Jones, Wayne H., xxxx
Jones, William E., Jr., xxxx
Jones, Wilton R., xxxx
Jordan, Elton M., Jr., xxxx
Jorris, Terry R., xxxx
Josey, James W., xxxx
Joyce, John E., III, xxxx
Joyner, Ronald S., xxxx
Judge, Paul J., xxxx
Jue, Kam B., xxxx
Justice, Donald H., xxxx
Kacher, Leonard M., xxxx
Kahla, Jeffery D., xxxx
Kailing, Gerald R., xxxx
Kaiser, Guenther W., xxxx
Kaiser, Lyman L., xxxx
Kaneski, Donald E., xxxx
Kanter, David G., xxxx
Karnowski, Lawrence J., xxxx
Kasperbauer, Gerald H., xxxx
Kaye, Eugene S., xxxxx.
Keasey, Kenneth W., xxxx
Keeby, Louis W., xxxxx.
Keech, Marvin E., xxxx
Keith, Larry R., xxxx
Kellerman, Karl F., III, xxxx
Kelley, Kenneth T., xxxx
Kelley, Russell K., xxxx
Kellock, Robert E., xxxx
Kelly, John L., Jr., xxxx
Kelly, John P., xxxx
Kelly, Kenneth H., xxxx
Kelly, Vincent J., xxxx
Kemp, James F., xxxx
Kempster, Thomas B., xxxx
Kempton, Jimmy D., xxxx
Kempton, Joseph R., xxxxx.
Kennedy, Gerald L., xxxx
Kennedy, William W., xxxx
Kenney, Wayne G., xxxx
Kennison, Robert L., xxxx
Kent, John D. G., xxxx
Kerr, Arthur D., xxxx
Kerr, Joseph W., xxxx
Kikta, John J., xxxx
Kiley, Robert A., xxxx
Killen, Wayne G., xxxx
Kilpatrick, Bibb B., xxxx
Kimball, David G., xxxx
Kimble, James L., xxxx
Kimick, Ray W., xxxx
Kindurys, Victor A., xxxx
King, Benny G., xxxx
King, Henry A., III, xxxx
King, Jon B., xxxx
King, Larry A., xxxx
King, Michael, xxxx
King, William L., xxxx
King, William S., xxxx
Kingsbury, William C., Jr., xxxx
Kipness, Marc E., xxxx
Kirk, Wayne D., xxxx
Kirkham, Thomas L., xxxx
Kiser, Billy J., xxxx
Kissler, William D., xxxx
Kitchen, Gerald A., xxxx
Kitchens, Claude E., xxxx
Kitowski, John V., xxxx
Kittle, Joseph S., xxxx
Klag, John E., xxxx
Klinger, Chandis L., xxxx
Knese, Paul B., xxxx
Knight, John F., Jr., xxxx
Kniker, James D., xxxx
Knipfer, Ronald E., xxxx
Knoblock, Richard G., xxxx
Knotts, Jerry E., xxxx
Knox, Richard D., xxxx
Koch, Dale H., xxxx
Koch, Theodore H., Jr., xxxx
Koehnke, Richard K., xxxx
Koerner, Darrell K., xxxx
Kohout, John J., III, xxxx
Kolar, Edward F., xxxx
Komarnitsky, Oleg R., xxxx
Kondra, Vernon J., xxxx
Kono, Arthur H., xxxx
Koonce, Jefferson M., xxxx
Koonce, Terry T., xxxx
Kormanik, James R., xxxx
Karmanik, Joseph D., xxxx
Kowalski, Harold W., Jr., xxxx
Kracker, Herbert F., xxxx
Kraig, Robert E., xxxx
Krakauer, Richard L., xxxx
Kramer, Terrence L., xxxx
Kraus, Ronald J., xxxx
Krause, William M., xxxx
Krawetz, Barton, xxxx
Krebs, Roy R., Jr., xxxx
Kronz, Ronald L., xxxx
Krupka, Joseph P., xxxx
Kudek, Robert J., xxxx
Kuhla, Cletus B., xxxx
Kuhlenschmidt, Keith N., xxxx
Kujawski, Bruce T., xxxx
Kuropkat, Robert A., xxxx
Kurras, Jacob F., xxxx
Kutzman, Nathanial J., Jr., xxxx
Kwiecinski, Warre T., xxxx
Kyle, James B., xxxx
Kyle, Larry K., xxxx
Laborde, David A., xxxx
Lacey, Howard T., xxxx
Lacy, James M., xxxx
Lahue, Murray L., xxxx
Lake, Orley L., xxxx
Lamaida, Terry A., xxxx
Lamos, William M., xxxx
Lamoureaux, Joseph R., xxxx
Lampman, Richard E., xxxx
Lance, Henry R., xxxx
Landry, James J., xxxx
Lane, Peter B., xxxx
Langford, Hugh A., xxxx
Langhurst, Jay C., xxxx
Langille, David M., xxxx
Langreich, Donald A., xxxx
Laplante, Thomas A., xxxx
Larkins, James T., xxxx
Larson, Roland R., xxxx
Laser, Thomas A., xxxx.
Lathrop, Lawrence R., xxxx
Lau, Charles A., xxxx
Lavalle, Arthur J. C., xxxx
Lavin, James K., xxxx
Law, Richard T., xxxx
Lawrence, Dana B., xxxx
Lawry, David J., xxxx
Lawyer, John E., Jr., xxxx
Lazik, Alexander, xxxx
Lazorchak, Michael P., xxxx
Lee, John W., xxxx
Lefton, Jerry D., xxxx
Leib, David B., xxxx
Lenahan, Roderick, xxxx
Lenamon, John L., xxxx.
Leopard, David M., xxxx
Lepo, Stanley J., xxxx
Lesan, Thomas C., xxxx
Leuck, Frank P., xxxx
Lewis, Paul K., Jr., xxxx
Lewis, Richard A., xxxx
Lewis, Richard J. A., xxxx
Lewis, Russell L., xxxx
Lewis, Thomas E., Jr., xxxx
Liepins, Andris I., xxxx
Lightfoot, Gordon W., xxxx
Lightner, George W., xxxx
Lillie, Marvin A., xxxx
Lindbo, Don A., xxxx
Lineback, Ronald C., xxxx
Linenberger, Donald E., xxxx
Linn, Joseph E., Jr., xxxx
Linville, Kenneth D., xxxx
Lioi, Rudolph, xxxx
Liss, Walter E., xxxx
Litteer, Albert H., xxxx
Little, Betty J., xxxx
Lloyd, Ronald G., xxxx
Locke, Anthony W., xxxx
Lockhart, Hayden J., Jr., xxxx
Lockhart, Kenneth D., xxxx
Lofgreen, Jesse B., xxxx
Lofgren, William W., Jr., xxxx
Logeman, John D., Jr., xxxx
Loitwood, Howard S., Jr., xxxx
Loken, Thomas A., xxxx
Long, Herman T., Jr., xxxx
Long, Ralph L., xxxx
Loring, John M., Jr., xxxx
Loucka, William M., xxxx
Louden, Philip E., xxxx
Lounsbury, Wiliam E., Jr., xxxx
Lovvorn, Charles J., Jr., xxxx
Lowe, Chester A., Jr., xxxx
Lowe, Robert E., xxxx
Lowell, Richard D., xxxx
Lowry, Michael H., xxxx
Lu, Philip M., xxxx
Lucas, Edward R., xxxx
Lucci, Anthony G., xxxx
Lucken, Herbert C., xxxx
Luedtke, Alvin W., xxxx
Luigs, Charles F., xxxx
Luiken, Richard C., xxxx
Lukes, Mark R., xxxx
Lurie, Philip J., xxxx
Lusk, Robert E., xxxx
Lutes, Paul M., xxxx
Lydick, Larry N., xxxxx.
Lynch, Howard E., xxxx
Lynch, Robert H., xxxx
Lynch, Urban H. D., xxxx
Lynch, William J., Jr., xxxx
Lyon, Larry B., xxxx
Lyon, Robert R., xxxx
Lyons, Michael F., xxxx
Macaulay, Kenneth W., xxxx
MacDonald, Donald C., Jr., xxxx
MacGregor, Charles H., xxxx
Mackey, Henry J., xxxx
Mackie, William A. J., xxxx
Madden, Dewan D., xxxx
Madsen, William L., xxxx
Magee, Richard H., Jr., xxxx
Mahler, William R., xxxx
Mahnken, Robert J., xxxx
Mahoney, Bobby R., xxxx
Mahoney, Frank J., III, xxxx
Maier, Alexander E., III, xxxx
Malaga, Donald J., xxxx
Malin, Benedict L., xxxx
Maloney, James M., xxxx
Maloney, Joseph P., Jr., xxxx
Mangold, David D., Jr., xxxx
Manini, Gary W., xxxx
Mann, Edward K., xxxx
Mann, William L., xxxx
Manz, Louis R., Jr., xxxx
Marano, Franklin A., xxxx
Maraska, Donald G., xxxx
March, Stanley, xxxx
Marcus, Donald R., xxxx
Mark, John W., xxxx
Markham, Gordon E., xxxx
Marks, Vincent C., xxxx
Marler, John B., xxxx
Marquette, Robert M., Jr., xxxx

Marschall, Horst, xxxx
Marsh, Melvin E., Jr., xxxx
Marshall, Robert E., xxxx
Martel, John H., Jr., xxxx
Martin, Gerald E., xxxx
Martin, James H., xxxx
Martin, Jerry D., xxxx
Martin, Kenneth G., xxxxx
Martin Leonard D., Jr., xxxx
Martin, Peter E., xxxx
Martin, Richard T., xxxx
Martin, Samuel D., xxxx
Martin, William E., xxxx
Martindale, Charles A., xxxx
Masterson, Michael J., xxxx
Mastromonico, Joseph J., Jr., xxxx
Matteis, Richard M., xxxx
Matthews, Dan C., xxxx
Mattson, Robert J., xxxx
Maw, Donald L., xxxx
Maxwell, William N., xxxx
May, Gerald M., xxxx
May, John T., xxxx
May, Therun J., xxxx
May, Thomas C., xxxx
Maye, Paul A., xxxx
Mayes, Max D., xxxx
Mayo, James R., xxxx
Maypole, Thomas A., xxxx
Mazurek, Norman C., xxxx
McBride, Harold T., xxxx
McBride, James W., xxxx
McCabe, Fredric E., xxxx
McCabe, John M., xxxx
McCall, Collier F., xxxx
McCallum, James N., xxxx
McCannon, Jerry D., xxxx
McCarter, Donald E., xxxx
McCarthy, Joseph V., xxxx
McCaughan, Robert A., xxxx
McClain, Howard R., xxxx
McCleskey, James L., xxxx
McClure, Wallace B., xxxx
McColl, Hugh F., xxxx
McConnell, Robert B., xxxx
McCormick, Donald W., xxxx
McCormick, Michael B., xxxx
McCue, Worth R., xxxx
McCuistion, Michael K., xxxx
McCune, James A., III, xxxx
McCurdy, Clark B., xxxx
McCurdy, John A. Jr., xxxx
McCutcheon, Thad Jr., xxxx
McDaniel, Bobby L., xxxx
McDaniel, Johnny F., xxxx
McDonald, John B., xxxx
McDonald, Terry L., xxxx
McEathron, Warren L., xxxx
McElhannon, Virgil B., xxxx
McEwen, Donald L., xxxxx
McFadyen, Donald W., xxxx
McGhee, Donald B., xxxx
McGinn, Sylvester Jr., xxxx
McGregor, Charles R., xxxx
McGregor, Glynn A., xxxx
McIlwain, Jimmie J., xxxx
McInnis, Reuben L., xxxx
McIntire, Robert P., xxxx
McKee, Floyd G., xxxx
McKee, William F., xxxx
McKemey, Dale R., xxxx
McKessy, John D., xxxx
McKinney, Eugene P., xxxxx
McLaughlin, Clyde W., xxxx
McLaughlin, Larry D., xxxx
McMillan, Michael M., xxxx
McMonigal, Richard C., xxxx
McMurray, Louis E., xxxx
McNeil, Ernest E., Jr., xxxx
McNeill, Joseph A., Jr., xxxx
McNiff, Thomas E., Jr., xxxx
McNulty, George C., xxxx
McQuaide, Thomas J., xxxxx
McRae, David S., xxxx
McVicker, David W., xxxx
Meador, Jon M., xxxx
Meadows, Bobby L., xxxx
Medland, Thomas M., xxxx
Meehan, Gary C., xxxx
Meek, Jerry L., xxxx
Meiggs, William B., xxxx
Melby, Carroll H., xxxx
Melquist, Gary L., xxxx
Mendeke, August Jr., xxxx
Menker, Eugene B., xxxx
Merrick, Paul A., xxxx
Merrill, Philip W., xxxx
Metzger, Kenneth E., xxxx
Metzler, Gerald W., xxxx
Meyer, James E., xxxx
Meyer, John H., xxxx
Middlebrook, William J., xxxx
Midyett, Ennis M., xxxx
Mieliwocki, Thomas R., xxxx
Mielke, Robert R., xxxx
Milburn, Larry G., xxxx
Milford, John A., xxxx
Miller, Charles L., xxxx
Miller, Charles L., xxxx
Miller, Donald G., xxxx
Miller, Francis D., xxxx
Miller, Gerald S., xxxx
Miller, Jackie D., xxxx
Miller, Jerry A., xxxx
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Miller, John M., Jr., xxxx
Miller, Kenneth J., xxxx
Miller, Roger D., xxxx
Miller, Ronald F., xxxx
Miller, Warren L., xxxx
Miller, Warren R., Jr., xxxx
Miller, William S., Jr., xxxx
Milligan, Kenneth B., xxxx
Millikan, Richard L., xxxx
Mills, William F., xxxx
Milner, Burl C., xxxx
Milner, David B., xxxx
Milnes, Richard C., II, xxxx
Miner, Robert W., xxxx
Missell, Richard W., xxxx
Mitchell, Ellsworth L., xxxx
Mitchell, Gary W., xxxx
Mitchell, John E., xxxx
Mitchell, Russell F., xxxx
Mixon, Julian W., xxxx
Mize, John T., xxxx
Mizell, Earl C., xxxx
Modolo, Jerome M., xxxx
Monaghan, Joseph E., Jr., xxxx
Monahan, George F., xxxx
Montgomery, Joe L., xxxx
Moody, John L., xxxx
Moorberg, Monte L., xxxx
Moore, Clyde A., Jr., xxxx
Moore, Edward S., II, xxxx
Moore, Ernest L., xxxx
Moore, Frank E., xxxx
Moore, John H., xxxx
Moore, John L., xxxx
Moore, Mahlon P., xxxx
Moore, Philip E., xxxx
Moore, Richard A., xxxx
Moore, Ronald J., xxxx
Moore, Thomas C., Jr., xxxx
Moran, Robert T., xxxx
Morea, Michael J., xxxx
Morgan, Burke H., xxxx
Morgan, David W., xxxx
Morgan, James P., xxxx
Morgan, Neville A., xxxx
Morgan, Richard E., xxxx
Morganti, Richard B., xxxx
Mork, William A., xxxx
Mormino, Lawrence D., xxxx
Morrell, David N., xxxx
Morris, Jack D., xxxx
Morrison, Carl G., Jr., xxxx
Morrison, Malcolm B., xxxx
Morrissey, John C., xxxx
Morrow, James W., Jr., xxxx
Morrow, John P., xxxx
Mortimer, William J., xxxx
Morton, Harold E., Jr., xxxx
Morton, John E., Jr., xxxx
Moser, Robert W., xxxx
Moulton, William T., xxxx
Mucha, Ronald R., xxxx
Mucho, Edward B., xxxx
Mueller, William C., xxxx
Muff, Robert C., xxxx
Mullen, Robert F., xxxx
Mullen, Stephen F. T., xxxx
Muller, Albert F., Jr., xxxx
Mullis, Ronald D., xxxx
Mullooly, William E., xxxx
Mulvey, Thomas A., III, xxxx
Muma, James D., xxxx
Munzlinger, Frederick D., xxxx
Murnieks, Janis, xxxx
Murphy, Edward V., xxxx
Murphy, Harry F., xxxx
Murphy, Jack L., xxxx
Murphy, Richard M., xxxx
Mushinski, Jerome S., xxxx
Myatt, Paul B., xxxx
Myers, Billy E., xxxx
Myers, David K., xxxx
Myers, Robert H., xxxx
Nagai, Yasumi, xxxx
Najman, Mirko, xxxx
Nakamura, George I., xxxx
Nallick, Richard L., xxxx
Nash, Donald S., xxxx
Nations, William D., xxxx
Naujoks, Waldemar M., xxxx
Neel, Charles B., xxxx
Neff, James F., Jr., xxxx
Negroni, Hector A., xxxx
Nell, Larry G., xxxx
Nelson, David L., xxxx
Nelson, Donald D., xxxx
Nelson, Gary M., xxxx
Nelson, Glen H., xxxx
Nelson, Robert J., Jr., xxxx
Nelson, Thomas B., xxxx
Nesbitt, Robert L., xxxx
Nettle, Charles W., Jr., xxxx
Neutzling, Ronald B., xxxx
Nevin, Charles E., xxxx
New, Gary D., xxxx
Newcomb, Fred R., xxxx
Newland, Samuel R., Jr., xxxx
Newman, James G., xxxx
Newman, Kenneth R., xxxx
Newton, Charles A., xxxx
Newton, Clyde L., xxxx
Nicewarner, Charles E., xxxx
Nichols, Charles L., xxxx
Nichols, James B., xxxx
Nichols, John M., xxxx
Nichols, Stewart C., xxxx
Nickel, George H., xxxx
Nicoletta, Gerald P., xxxx
Noble, Alan M., xxxx
Noble, Lawrence A., xxxx
Nolde, George T., Jr., xxxx
Nolen, James H., xxxx
Nolen, Michael E., xxxx
Nophsker, Howard G., xxxx
Norden, John A., xxxx
Norris, Thomas E., xxxx
Norton, Jay L., xxxx
Norton, Luther P., xxxx
Norwood, William B., xxxx
Novotny, Frank J., Jr., xxxx
Nugent, James A., xxxx
Nunnally, Edward R., Jr., xxxx
Nupen, Curtis D., xxxx
Nussbaum, Richard C., Jr., xxxx
O'berry, Carl G., xxxx
O'Connell, Donald L., xxxx
O'Connor, Donald J., xxxx
O'Connor, Paul B., xxxx
Oda, Richard S., xxxx
O'Donnell, Robert D., xxxx
Ogawa, Sanford S., xxxx
Ogershok, Richard W., xxxx
Ohl, Joseph A., xxxx
Ohlstein, Myron, xxxx
Okane, John, Jr., xxxx
Olgeaty, Edward C., xxxx
Oliver, John D., xxxx
Olivia, Charles A., xxxx
Olson, Theodore H., xxxx
O'Neal, Donald O., xxxx
O'Neill, John P., xxxx
Orbeck, Einar A., xxxx
Ordes, Diane E., xxxx
Ordonio, Franklin C., xxxx
Orear, Earl N., xxxx
Orlando, Anthony J., xxxx
Ormrod, Rodney B., xxxx
Ortiz, Francis G., xxxx
Osborn, Ronald L., xxxx
Osgood, James D., Jr., xxxx
Ossinger, Donald L., xxxx

O'Toole, Robert M., xxxx
Ott, William A., xxxx
Owen, Kemmel H., xxxx
Owen, William E., Jr. xxxx
Owens, Francis L., Jr. xxxx
Owens, Thomas P., Jr. xxxx
Ozols, Modris, xxxx
Page, Bradford S., xxxx
Paine, Robert G., xxxx
Palmer, Weymouth C., xxxx
Pankonen, Jerry E., xxxxx
Panttaja, Toivo A. xxxx
Pappas, Constantine A., xxxx
Paquette, Gerald R., xxxx
Paquin, William C. xxxx
Park, Thomas N., Jr. xxxx
Parker, Alfred E., xxxx
Parker, Gregg O., xxxx
Parkhurst, Norman P. xxxx
Parkison, Robert G., xxxx
Parks, John H. xxxx
Parr, William D., xxxx
Parsons, Larry D., xxxx
Pasciutti, John L., xxxxx
Pastor, Ronald C. xxxx
Patria, Louis, Jr. xxxx
Patrick, Rayford P. xxxx
Patti, Eugene C. xxxx
Paxton, Pat R. xxxx
Paxton, Warren K., xxxx
Paye, Donald D. xxxx
Payne, Allen R., xxxx
Payne, Edwin R. xxxx
Payne, James H., Jr. xxxx
Payne, John G. xxxx
Payne, John T., xxxx
Pearson, David W., xxxx
Pearson, Wayne E., xxxx
Peavy, John R., Jr. xxxx
Pedersen, Don W., xxxx
Peek, Max H., xxxx
Peeler, Ross E., xxxx
Penasack, John P., xxxx
Pennefather, Michael, xxxx
Penny, John W., xxxx
Penton, William N., xxxx
Penttila, Robert R., xxxx
Peoples, Ronnie C., xxxx
Perry, Rowland B., xxxx
Perry, William G., xxxx
Peterkin, Julius, Jr., xxxx
Peters, Ronald M., xxxx
Petersen, Roland N., xxxx
Peterson, Peter F., xxxx
Petroski, Bernard P., xxxx
Petry, Jack R., xxxx
Pettit, Edwin E., xxxx
Pfanschmidt, Phil O., xxxx
Pfeifle, Ward A., xxxx
Pfleeger, John R., xxxx
Philbrick, Carleton R., xxxx
Philipp, Joseph W., xxxx
Phillips, Harold D., xxxx
Phillips, Jack A., xxxx
Phillips, James H., xxxx
Phillips, John A., xxxx
Phillips, Willard R. xxxx
Picantine, Jareld L., xxxx
Piccirillo, Albert C., xxxx
Pickens, Oliver L., xxxx
Pierce, Charles D., xxxx
Pierce, Max R., xxxx
Pierpont, Peter F., xxxx
Pinckney, Scott S., xxxx
Pinsky, David H., xxxx
Plants, Louis S., xxxx
Pleva, Paul C., Jr., xxxx
Plodinec, Nicholas S., III, xxxx
Podrasky, George H., xxxx
Poley, Paul W., xxxx
Polick, Melvin E., xxxx
Pollard, Ralph E., xxxx
Pombo, Joseph A., xxxx
Pomeroy, Andrew R., xxxx
Pompei, John A., Jr., xxxx
Poole, James C., Jr., xxxx
Poore, Roger C., xxxx
Porter, David W., xxxx
Porter, William J., xxxx
Poth, John E., xxxx
Potts, John P., xxxx
Potts, Laurence H., Jr., xxxx
Powell, Lloyd R., xxxx
Powell, Ross A., xxxx
Powers, Felix D., xxxx
Prairie, Donald L., xxxx
Preiss, Terry D., xxxx
Prescott, Gary T., xxxx
Preston, Harry T., xxxx
Previty, Anthony P., xxxx
Price, George E., Jr., xxxx
Priebel, Elmer A., xxxx
Prima, Paavo, xxxx
Prine, Lavelle, xxxx
Proud, John G., xxxx
Pruner, James R., xxxx
Pucci, Joseph A., xxxx
Puckropp, John E. xxxx
Pulicella, George xxxx
Pullen, Larry A. xxxx
Puls, Darwin M., xxxx
Purcell, Lynn E. xxxx
Purdie, Robin S. xxxx
Pursley, Donald G. xxxx
Pustis, Joseph E. xxxx
Quick, David H., xxxx
Quick, Dennis L., xxxx
Quigley, Hale A. xxxx
Quinlan, Michael J. xxxx
Radeker, Walter S., III xxxx
Radike, Donald J. xxxx
Rahn, Robert K., xxxx
Ramey, Ronald L. xxxx
Ramsdale, Glenn L., Jr. xxxx
Ransom, William R. P., Jr. xxxx
Raroha, George H. xxxx
Ratner, George H. xxxx
Rausch, Robert E. xxxx
Rawlins, Michael E. xxxx
Ray, William D., xxxx
Readnour, James L. xxxx
Reagan, William C. xxxx
Reale, Steven A. xxxx
Reaves, Ray D. xxxx
Record, James F. xxxx
Redding, Kenneth L., xxxx
Reder, Frederick J. xxxx
Reed, David C., xxxx
Reed, Max W., xxxx
Reed, Robert D., xxxx
Reed, Ronald E., xxxx
Reeser, Richard L. xxxx
Regan, Michael J. xxxx
Reid, Charles L. xxxx
Reid, John R. xxxx
Reid, Robert E., xxxx
Reiff, Kenneth R., xxxx
Reiling, Frederick A., xxxx
Remington, Bobby R., xxxx
Remy, Daniel P. J., xxxx
Renaldi, Frank J., Jr., xxxx
Rengert, Kenneth R. xxxx
Reppert, Jack W., xxxx
Reschak, Robert J., xxxx
Reutter, Joseph C., xxxx
Reynolds, John C. xxxx
Reynolds, Phillip L. xxxx
Rhame, James L., Jr. xxxx
Rhodes, Michael P., xxxx
Ribble, Ronald G. xxxx
Rice, Howard J. xxxx
Rice, James W., xxxxx
Richard, Don R. xxxx
Richards, Fred F., Jr. xxxx
Richards, Reid C. xxxx
Richardson, Sanford A., xxxxx
Rider, Ernest G., xxxxx
Rider, James W. xxxx
Rider, Paul E. xxxx
Rieselman, Leo F., Jr. xxxx
Riggle, Frederic L. xxxx
Riggs, Robert E., xxxx
Rinehart, Ronnie O., xxxx
Rinker, Gerald W. xxxx
Rioux, James P., Jr. xxxx
Rish, Thomas L., xxxxx
Rist, David J. xxxx
Ristau, Edward T. xxxx
Rizzo, Donald J. xxxx
Roach, John B. xxxx
Roberts, Arthur III, xxxx
Roberts, Floyd N. xxxx
Roberts, Gary L., xxxx
Roberts, Kenneth A., xxxx
Roberts, Paul A., xxxx
Robeson, Fletcher R., xxxxx
Robichaux, William H., xxxx
Robinson, David S., xxxx
Robinson, Virgil A. A., Jr., xxxx
Robnett, Dean E., xxxx
Robsman, Igor V., xxxx
Rochez, Fred, xxxx
Roeder, David M. xxxx
Rogers, Lewis R., II, xxxx
Rogers, Roy D., xxxx
Rohrer, Ralph H., Jr., xxxx
Root, Robert R., Jr., xxxx
Roper, Ennis A., xxxx
Rose, Alan L., xxxx
Rosenbach, William E., xxxx
Rosencrans, Herbert C., Jr., xxxx
Ross, Bruce E., xxxx
Ross, James A., Jr., xxxx
Ross, Donald D., xxxx
Rote, Philip L., xxxx
Rother, Henry G., xxxx
Rourk, Wilbur A., Jr., xxxx
Royal, Bruce R., xxxx
Royer, Erlind G., xxxx
Ruana, Rudolph M., xxxx
Ruby, Nelson B., xxxx
Rucker, Roger, xxxx
Ruffing, John J., xxxx
Ruffner, Gerald A., xxxx
Ruggles, Bertrand F., xxxx
Runge, Larry J., xxxx
Rup, Joseph M., Jr., xxxx
Ruppel, John L., Jr., xxxx
Ruschmeier, Peter F., xxxx
Russell, John F., xxxx
Russell, Kenneth E. xxxx
Russell, Richard L., xxxx
Rutherford, Robert L., xxxx
Rutz, Ernest F., Jr., xxxx
Ryan, Charles F., xxxx
Ryan, Martin J., Jr., xxxx
Ryon, Roy A., xxxx
Saber, James A., xxxx
Sabey, Mark R., xxxx
Sadovsky, Edward M., xxxx
Salsbury, Harold B. xxxx
Samelson, Louis J., xxxx
Sample, Robert W., Jr., xxxx
Sanders, Russell L., xxxx
Sandin, James K., xxxx
Sands, Charles D., II, xxxx
Sands, William J., Jr. xxxx
Sandvik, James E. xxxx
Sanford, Jack R. xxxx
Sansone, Anthony J. xxxx
Sarabia, Michael F., xxxx
Sather, James M. xxxx
Satz, Dieter W., xxxx
Saunders, David W. xxxx
Saunders, Earl F. xxxx
Sawyer, Richard R., xxxx
Sayer, Albert F., Jr., xxxx
Scambilis, Nicholas A., xxxx
Schaefer, Edgar N., xxxx
Schaffer, John A., xxxx
Schaneberg, Leroy C., xxxx
Schang, Joseph F., xxxx
Scherer, Waldemar P., xxxx
Scheyd, Fredric J. xxxx
Schmidt, Paul R., xxxx
Schmitt, Roger K., xxxx
Schneider, Roderick F., xxxx
Scholz, Alfred F., xxxx
Schorr, Rubert W., xxxx
Schreihofer, Alan G., xxxx
Schriever, Brett A., xxxx
Schroeder, Henry W., xxxx
Schuermann, Robert R., xxxx
Schulz, Raymond E., xxxx
Schulze, Carl J., xxxx
Schuneman, Stephen T., xxxx
Schuster, Edward P., xxxx
Schutt, Thomas E., xxxx
Schwartz, Norman C., Jr., xxxx
Schwitters, Michael T., xxxx
Scivoletto, Emmanuel J., xxxx
Scofield, Richard M., xxxx
Scooler, Donald, xxxx

Scott, Bobby G., 71642.
Scott, Hanson L., 62740.
Scott, Martin D., 71467.
Scott, Richard W., Jr., 75087.
Scott, William D., 83088.
Scrosati, Gerald P., 72920.
Scruggs, Leonard M., 69587.
Scungio, Vincent, 71468.
Seal, Arlan B., 75089.
Seamon, John B., 72921.
Sebesta, Joe M., 3139216.
Seidel, Kelly G., 71469.
Seidl, John M., 62743.
Self, Frank A., 72922.
Selzer, Franklyn J., 3115400.
Serksnas, Anthony A., 75094.
Sewell, Vernon L., 73414.
Shafer, Ardean M., 74027.
Shaffer, Marvin S., 74028.
Shamblee, George L., 62744.
Shamblin, Robert P., 71471.
Shankland, Charles G., 63641.
Shannon, Lawrence E., 3109718.
Shaw, Harvey J., 73417.
Shaw, Jerome C., 72429.
Shepherd, Robert L., Jr., 77462.
Shepley, Jeffrey T., 73419.
Shera, Thomas L., 77153.
Shewmaker, Larry A., 62745.
Shields, David L., 77154.
Shiflett, Leighton P., 83095.
Shilt, Jerry C., 3117413.
Shinn, Darrel D., 63695.
Shipp, Loy D., 3101527.
Shirley, Henry G., 74032.
Shoemaker, Harold D., 61141.
Short, Charles J., 75105.
Shotz, Donald S., 77732.
Shull, Warren B., 62746.
Shurley, John R., III, 77159.
Sicklesteel, William I., 83098.
Siders, Marvyn J., 77160.
Siegel, Charles J., 77161.
Siegenthaler, Kenneth E., 62747.
Siegfried, Thomas W., 83099.
Sigg, Martin D., 75107.
Silvia, Ronald, 83101.
Simms, James W., 71091.
Sims, John N., 77165.
Sinclair, George M., 78436.
Singleterry, Paul A., 72741.
Singleton, Curtis F., 72925.
Singleton, Jerry E., 73423.
Sipple, Garryl C., 63714.
Sistrunk, Harold M., 62988.
Sittner, Ronald N., 72432.
Sloan, John K., II, 83104.
Small, Albert W., 69677.
Smart, Halbert R., II, 74038.
Smedley, David R., 77169.
Smedley, Gerald F., 78343.
Smeenk, Norman W., 75113.
Smith, Arthur D., 77170.
Smith, Charles E., 74039.
Smith, Charles W., Jr., 69787.
Smith, Donald L., 72927.
Smith, Donald L., 72926.
Smith, Gary R., 77734.
Smith, Harold L., 73107.
Smith, Irvin B., 63616.
Smith, Jack H., 63524.
Smith, James S., 3100529.
Smith, Joe S., 83109.
Smith, John C., 77171.
Smith, Joseph D., 83111.
Smith, Mark L., 71864.
Smith, Phillips W., Jr., 62749.
Smith, Richard D., 62750.
Smith, Richard P., 77172.
Smith, Robert E., 62751.
Smith, Ronald L., 75122.
Smith, Tommy D., 83113.
Smith, William C., 77173.
Snyder, Charles E., 71866.
Snyder, Willis G., 74045.
Solomon, James D., 72171.
Solum, James L., 77175.
Sommercamp, John D., 62752.
Sophie, Bruce E., 83106.
Soszka, Stanley R., 75130.
Southwick, Martin W., 83110.
Sowers, William H., 63439.
Spain, John G., 83112.
Sparks, Fred E., 63522.
Speer, Michael J., 3118086.
Speight, James E., 3097938.
Spencer, Gary K., 77177.
Spencer, Jerry W., 83115.
Spencer, Jimmie L., 74049.
Spencer, John C., 77178.
Speros, Richard L., 69572.
Speyrer, Saul C., 74051.
Spivey, Ronald C., 75137.
Spooner, Benjamin W., 74052.
Springs, Frank G., 74053.
Stackhouse, William K., 62754.
Staden, Arthur L., 77179.
Stamant, Anthony L., 3116496.
Stamm, Richard F., 75139.
Stanbery, Charles E., 78438.
Stanley, Norman W., 63633.
Stanley, Walter E., 62755.
Starbuck, Ronald J., 77860.
Stark, John K., 72174.
Starks, Billy D., 74056.
Starnes, Thomas E., Jr., 78345.
Staten, Kenneth E., 62756.
Stebbins, Charles F., 62757.
Steckler, Richard H., 77485.
Steckley, Richard A., 3115406.
Steding, Ralph H., 3118183.
Steel, Dean E., 71479.
Steele, Edward B., 3116497.
Stefands, Steven C., 74057.
Steger, James H., 73429.
Stenson, Stephen S., 78145.
Stephen, Paul R., 62758.
Stephens, Larry T., 72930.
Stephenson, Howard D., 72745.
Stephenson, John L., 75149.
Stephenson, Stanley D., 69573.
Stevenson, Samuel J., 77864.
Stewart, Joseph T., Jr., 70693.
Stires, Martin A., 74062.
Stocks, Samuel E., 3107203.
Stolp, James T., 77487.
Stone, Frederick M., 73432.
Storing, William J., Jr., 72175.
Storm, Terry L., 62759.
Stotts, Jackie L., 73433.
Stouder, Kyle, 77184.
Stoughton, Peter W., 74063.
Stoven, John M., 62760.
Stover, Thomas A., 63606.
Stovin, Scott B., 63716.
Stratvert, Bruce N., 62761.
Straub, Peter G., 75156.
Strausborger, Larry L., 83125.
Strawn, Ronald P., 83126.
Stretch, Grover W., 64190.
Stuart, Robert G., 63518.
Studer, William A., 77186.
Stump, Wayne D., 71868.
Suits, Norman L., 77187.
Sullivan, John D., Jr., 62764.
Sullo, Pasquale, 75160.
Sung, William K., 79165.
Surles, Becky F., 77188.
Sutila, Joseph M., 83129.
Sutton, Thomas L., 62765.
Swan, Ronald E., 74066.
Swanson, Harold J., Jr., 78440.
Swanson, John W., Jr., 77742.
Swanson, Ronald G., 71869.
Swarts, Rubert F., 69695.
Sweeny, Llewellyn R., 72932.
Swick, Joseph G., 63543.
Swint, David O., 72933.
Symons, John R., 77191.
Syslo, Joseph M., 69591.
Szambelan, Lawrence J., 72443.
Szucs, Richard J., 63390.
Szupel, Edward G., 72934.
Tabor, Dale C., 62766.
Tait, Eric V., 69542.
Talbott, John J., 3109729.
Tannehill, Willard F., Jr., 83131.
Tate, Joe D., 3118186.
Taylor, Daniel A., Jr., 63581.
Taylor, Edward R., 63460.
Taylor, Gerald A., Jr., 63386.
Taylor, Herbert F., 3117733.
Taylor, John C., 62768.
Taylor, John H., 77193.
Taylor, John W., 3117458.
Taylor, Rubert L., 63626.
Taylor, Ruger K., 71484.
Taylor, Thomas L., 79109.
Taylor, Val W., 63691.
Teague, Harold K., Jr., 77194.
Temte, Jon E., 74067.
Tencza, Stanley F., Jr., 71486.
Terry, David A., 63382.
Thaanum, Thomas R., 72177.
Theobald, Robert E., Jr., 77196.
Theurer, Byron W., 62770.
Thomas, Charles George, 62771.
Thomas, Forrest W., 3139118.
Thomas, James C., 3054213.
Thomas, James G., 77197.
Thomas, John C., 3117505.
Thomas, John R., 74069.
Thomas, Lowell V., 64170.
Thomas, Richard W., 77199.
Thome, Benny O., 72937.
Thompson, Addison S., III, 62772.
Thompson, Gary L., 72445.
Thompson, James E., 73435.
Thompson, Jerry R., 72446.
Thompson, John R., 83143.
Thompson, Larry D., 83145.
Thomson, David W., 77868.
Thon, Martin L., 69671.
Thonen, Paul A., 75176.
Thorne, John E., Jr., 71488.
Thornton, James A., 71870.
Thornton, Stephen R., 72448.
Thornton, William D., Jr., 75179.
Thrash, Charles G., Jr., 72940.
Thurman, Jack M., 63462.
Thurneck, William J., Jr., 74070.
Tidrick, Ralph L., 77488.
Tilghman, Dorothy J., 77200.
Tilghman, Thomas A., 63368.
Tilton, William T., 78347.
Tisdale, Richard L., 73438.
Tissue, Gary L., 71649.
Tittenhofer, Robert N., 63715.
Tokita, Yuzo M., 75183.
Tollison, Benjamin H., Jr., 72179.
Tollman, William T., 75185.
Tomasetti, Thomas A., 3116198.
Tompkins, David T., 71489.
Tompkins, Gary R. , 75186.
Toner, John T., 75188.
Torline, Norbert K., 77746.
Torpy, Charles R., 63634.
Toth, Richard L., 75189.
Traudt, Runald H., 83149.
Traversa, Peter A., 71491.
Trippe, Frede A., III, 71492.
Trowell, John A., Jr., 74076.
Tucker, Arthur L., Jr., 73440.
Tulis, James F., Jr., 62776.
Tumey, Lincoln E., 77489.
Turcotte, Maurice E., 73441.
Turczynski, Raymond, Jr., 69544.
Turey, Thomas H., 75195.
Turner, Bruce W., 72451.
Turner, Carroll R., 3105918.
Tuthill, William S., 63473.
Tuttle, Harold E., 73442.
Uhlenhup, Michael H., 74080.
Ulm, James P., 62777.
Underwood, Bobby D., 71871.
Underwood, Ellie B., Jr., 63635.
Undorf, Robert W., 3117223.
Uribe, Henry T., 77208.
Uyehara, Robert K., 75204.
Vajda, Stephen, 72183.
Vanallen, Douglas F., 72453.
Vanderwaal, Gerard W., 15655.
Vanous, William W., Jr., 74081.
Varcho, John M., 75207.
Veal, William A., 74082.
Vettergren, Erik H., Jr., 62780.
Vichierguerre, Claude H., 15534.
Villaescusa, Frank W., 73444.
Vincent, Donald R., 72184.
Vinckier, Andrew M., 83161.
Vining, Robert L., 77751.
Violette, Gerald P., 72941.
Viquesney, Jules L., 62781.

Virtue, Robert B., [redacted]
Vitito, Thomas E., [redacted]
Vivian, Michael A., [redacted]
Vocelka, Robert R., [redacted]
Voit, Arnold J., [redacted]
Voland, Paul M., [redacted]
Vondrak, Kenneth M., [redacted]
Voorhis, Byron E., [redacted]
Voss, John M., [redacted]
Vrablic, Walter S., [redacted]
Wade, Allan D., [redacted]
Wagener, Wayne F., [redacted]
Wagley, Ardith N., [redacted]
Wagner, Gervase J., [redacted]
Wagner, Rees R., [redacted]
Wagner, Robert K., [redacted]
Wagner, Robert Z., [redacted]
Waite, Richard M., [redacted]
Wakefield, Gerald L., [redacted]
Walker, Ralph W., [redacted]
Walker, Richard L., [redacted]
Walker, Thomas T., [redacted]
Walla, Gerald J., [redacted]
Waller, Robert W., [redacted]
Walling, Charles M., [redacted]
Walsh, Francis A., Jr., [redacted]
Walter, Gary J., [redacted].
Walter, Larry R., [redacted]
Walters, Carl I., [redacted]
Walters, James L., [redacted]
Walton, Richard C., [redacted]
Walton, Willis R., [redacted]
Wanner, Ronald W., [redacted]
Ward, Clark W., [redacted]
Ward, James F., III, [redacted].
Ware, Gene B., 75226.
Warner, Arthur W., Jr., [redacted]
Warner, David C., [redacted]
Wasserstrom, Daniel D., [redacted]
Waters, Brian K., [redacted]
Waters, Ronald H., [redacted]
Watkins, Frank E., [redacted]
Watkins, Franklin W., [redacted]
Watson, Warren K., Jr., [redacted]
Weathers, George T., Jr., [redacted]
Weaver, John C., Jr., [redacted]
Webb, David G., [redacted]
Webb, Paul T., [redacted]
Webb, William J., [redacted]
Weber, Robert F., [redacted]
Weeden, Ronald J., [redacted]
Weichel, Hugo, [redacted]
Weiss, Charles A., [redacted]
Welch, Bobby O., [redacted]
Welles, John E., [redacted]
Wellington, Leonard E., Jr., [redacted]
Wells, John H., [redacted]
Wells, William V., Jr., [redacted]
Wenkel, Lester R., [redacted]
Wertz, Ronald G., [redacted]
Wesen, Charles L., [redacted]
Westbrook, Clyde O., Jr., [redacted]
Westby, Darrell E., [redacted]
Westenhaver, Herbert J., [redacted]
Weyland, Drew C., [redacted]
Whaley, Edward K., [redacted]
Whaley, James P., [redacted]
Whaley, John M., [redacted]
Wheeler, Joseph C., [redacted]
Whichard, Willis K., Jr., [redacted]
Whipps, James J., III, [redacted].
Whisner, Richard L., [redacted]
White, Lewis R., [redacted]
White, Robert P., [redacted]
Whitfield, James K., [redacted]
Whitney, David G., [redacted]
Wickell, James E., [redacted]
Wickham, Kenneth J., [redacted]
Wicklund, Elroy J., [redacted]
Widun, Edward V., [redacted]
Wilhelm, James E., [redacted]
Wilkowske, Kathleen N., [redacted]
Wilks, Linus R., [redacted]
Will, Thomas S., [redacted]
Willess, James A., Jr., [redacted]
Willette, James F., [redacted]
Willhite, Richard A., [redacted]
Williams, Conward E., [redacted]
Williams, David A., [redacted]
Williams, James E., Jr., [redacted]
Williams, John L., [redacted]
Williams, John R., [redacted]
Williams, Kent G., [redacted]
Williams, Richard L., [redacted]
Williams, Robert M., [redacted]
Williams, Robert W., [redacted]
Williams, Thomas W., [redacted]
Williams, William T., IV, [redacted]
Willie, Lavern A., [redacted]
Willis, Frank E., [redacted]
Wills, Dennis L., [redacted]
Wilmans, Norman A., [redacted]
Wilson, David A., [redacted]
Wilson, Frank S., [redacted]
Wilson, John M., Jr., [redacted]
Wilson, Joseph W., [redacted]
Wilson, Thomas W. C., [redacted]
Wilson, William R., [redacted]
Wimmer, Carl J., [redacted]
Winchell, Larry R., [redacted]
Winkelman, Alton B., [redacted]
Winn, John C., Jr., [redacted]
Wintzer, Louis A., [redacted]
Wise, Donald E., [redacted]
Wisner, Thomas D., [redacted]
Witcher, Bruce E., [redacted]
Withers, James R., [redacted]
Witt, Harry J., II, [redacted].
Witte, Roger E., [redacted]
Wittmers, Edward H., Jr., [redacted].
Woelfel, Robert T., [redacted]
Woempner, Stanley W., [redacted]
Wohrman, Frederick R., [redacted]
Wolcott, John J., [redacted]
Wolf, Dennis J., [redacted]
Wolfe, Dennis B., [redacted]
Wolfe, James L., [redacted]
Wolfe, Roland L., Jr., [redacted]
Woller, Elde C., [redacted]
Wollpert, James H., Jr., [redacted]
Wood, Douglass G., [redacted]
Wood, Jerry D., [redacted]
Wood, Wayne L., [redacted]
Woodbury, Roger C., [redacted]
Woodland, Kenneth E., [redacted]
Woodson, Raymond E., [redacted]
Woodward, Charles D., [redacted]
Wooke, Charles F., [redacted]
Wray, Duane J., [redacted]
Wright, James H., Jr., [redacted]
Wright, Larry J., [redacted]
Wright, William R., [redacted]
Wyatt, J. C., [redacted]
Wyatt, Richard H., [redacted]
Wyman, James P., [redacted]
Wynne, Richard L., [redacted]
Yarber, Harley A., Jr., [redacted]
Yavis, Robert P., [redacted]
Yeagle, Paul H., [redacted]
Yoakam, Gary L., [redacted]
Yocum, James B., [redacted]
Yoder, Frederick D., [redacted]
Young, Emerson D., Jr., [redacted]
Young, Richard A., [redacted]
Yount, Ben F., [redacted]
Zakrzeski, Alexander, Jr., [redacted]
Zapotocky, Robert J., [redacted]
Zarpaylic, John T., [redacted]
Zavadil, Charles N., [redacted]
Zilinsky, Anthony J., Jr., [redacted]
Zimmern, Jonathan E., [redacted]
Zinselmeier, Jack M., [redacted]
Zompa, Edward A., [redacted]
Zylstra, Corliss E., [redacted]

CHAPLAINS

Bluschke, Derrick W., [redacted]
Busher, Peter J., [redacted]
Carleton, Rhon V., [redacted]
Cleary, William O., Jr., [redacted]
Cowell, Donald M., [redacted].
Davis, Edwin S., [redacted]
Doughtie, Robert J., [redacted].
Evans, Paul R., [redacted]
Felker, Lester G., [redacted]
Gallenbach, Thomas E., [redacted]
Griffith, William H., [redacted]
Hartsell, Franklin D., [redacted]
Hensley, Billy D., [redacted]
Kaiser, Ruman F., [redacted]
Lewin, Fred, [redacted]
McGinty, Edward S., [redacted]
Meeks, Alfred W., [redacted]
Metcalf, Frank D., [redacted]
Richard, Leon J., [redacted]
Smeltzer, John P., [redacted].
Thurman, James M., [redacted]
Valen, David L., [redacted]
Warren, William H., [redacted]
Whalen, John R., [redacted]
Wilson, Theodore J., [redacted]
Wood, Richard D., [redacted]

DENTAL CORPS

Aberth, George H., Jr., [redacted]
Brown, Garth W., [redacted]
Brunsvold, Michael A., [redacted]
Carey, Robert J., [redacted]
Chipman, William R., [redacted]
Cooper, John T., [redacted].
Cusimano, Joseph M., [redacted]
Dohaney, Martin J., Jr., [redacted]
Duran, Paul C., [redacted]
Drake, Philip L., Jr., [redacted]
Dukart, Rodney C., [redacted]
Foulke, Clark N., [redacted]
Hammer, Wayne S., Jr., [redacted]
Haroz, Carl T., [redacted]
Hoerath, John C., [redacted]
Holgate, Robert S., [redacted]
Jennette, William C., Jr., [redacted]
Kemblowski, James F., [redacted]
Kolker, Stanley L., [redacted]
Kutz, Paul L., [redacted]
Lawbaugh, Michael J., [redacted]
Lundgren, Richard P., [redacted]
Maust, Jay R., [redacted]
McLeod, Gary L., [redacted]
Menegay, Raymond J., [redacted]
Moore, John N., Jr., [redacted]
Nehls, John W., Jr., [redacted]
Osburn, Richard C., [redacted]
Pixley, Phillip J., [redacted]
Richard, Glenn E., [redacted]
Rivard, Rudney A., [redacted]
Rocco, James J., [redacted]
Roehrig, Kenneth L., [redacted]
Rule, Charles G., [redacted]
Scholes, Edwin, Jr., [redacted]
Senia, Ennio S. A., [redacted]
Short, Ronald C., [redacted]
Siegel, Burton L., [redacted]
Smith, Howard E., [redacted]
Smith, Kenneth J., [redacted]
Verwayen, Henry J., Jr., [redacted]
Wilcox, James W., [redacted]
Wilson, Theodore T., [redacted]

MEDICAL CORPS

Abbott, Kenneth H., II, [redacted]
Aldredge, Horatio R., III, [redacted]
Anderson, William E., [redacted]
Andruczk, Robert C., [redacted]
Bickham, Billy L., [redacted]
Bryson, Andrew L., [redacted]
Chappell, Seaborn M., [redacted]
Cook, James H., [redacted]
Crowder, Wade A., [redacted]
Demos, George T., [redacted]
Erickson, Larry L., [redacted]
Fisher, William J., [redacted]
Gilpin, Eugene L., [redacted]
Gold, Robert E., [redacted]
Hartman, James F., [redacted]
Hemsell, David L., [redacted]
Howard, Jack B., [redacted]
Hutton, Robert D., [redacted]
Johnson, Wayne A., [redacted]
Kelly, Paul A., [redacted]
Kramer, Edward F., Jr., [redacted]
Mathews, Theodore S., [redacted]
McFarlane, Claude L., [redacted]
Morgan, John L., [redacted]
Odom, David D., [redacted]
Parker, Edward H., Jr., [redacted]
Robinson, James R., [redacted].
Rodriquezcolon, Juan, [redacted]
Sarnacki, Clifford T., [redacted]
Shirley, James H., [redacted]
Singleton, Charles H., [redacted]
Smith, Dwight D., [redacted]
Stadler, Frank, III, [redacted]
Swanson, Philip A., [redacted]
Tate, Harry B., [redacted]

Thompson, Cleveland, III, xxxx
Wagner, Grant H., xxxx
Wakulat, Richa H., Jr., xxxx
Watson, Alfred B., Jr., xxxx
Wild, James H., xxxx

NURSE CORPS

Adams, Mary E., xxxx
Aitchison, Nancy L., xxxx
Albrecht, Joanne, xxxx
Anderson, Marie E., xxxx
Baker, Patrick J., xxxx
Bayley, Susane A., xxxx
Bearson, Lawrence O., xxxx
Birch, Patricia L., xxxx
Brooks, Dorothy, xxxx
Bryant, Dolores E., xxxx
Cleland, Donna L., xxxx
Coghlan, Jeanne T., xxxx
Dean, Dee J., xxxx
Demeaux, Jeanne R., xxxx
Dirlam, Patty A., xxxx
Eisele, Helen M., xxxx
Feeney, Robert F., xxxx
Ferrari, Jeannette M., xxxx
Glavinovich, Helen M., xxxx
Guthridge, Evelyn V., xxxx
Hamberger, Ann M., xxxx
Haney, Mary S., xxxx
Hickman, Anne L., xxxx
Hutts, Marilyn J., xxxx
Jablunovsky, Bernadette M., xxxx
Johnson, Phyllis J., xxxx
Jorgensen, Contance J., xxxx
Kaufmann, Ronald D., xxxx
Kepner, Sheila A., xxxx
Klinghoffer, Lorraine M., xxxx
Lapp, Judith E., xxxx
McDowell, Fred S., Jr., xxxx
Merrill, Sylvia A., xxxx
Moynahan, Patricia M., xxxx
Pavlich, Mary L., xxxx
Robertson, Cecelia A., xxxx
Runyan, Norma J., xxxx
Sam, Alice M., xxxx
Schumacher, Rosemary, xxxx
Stitt, Frances E., xxxx
Thomas, Grayce H., xxxx
Tolbert, Gwendolyn, xxxx
Weimer, Marian L., xxxx
Wells, Joan M., xxxx
Wells, Mabel E., xxxx
Woodward, Doris E., xxxx
Young, Marva P., xxxx

MEDICAL SERVICE CORPS

Amesbury, John F., xxxx
Bonfili, Hubert F., xxxx
Burke, David U., xxxx
Daughtry, Ben P., xxxx
Duffy, Brian J., xxxx
Frient, Gerald J., xxxx
Gordon, Darwin G., xxxx
Gordon, James V., xxxx
Habbinga, Richard H., xxxx
Hermann, Kenneth G., xxxx
Jaroszewski, Leo F., xxxx
Kilpatrick, Karl L., xxxx
Magee, Denis F., xxxx
Maisey, Terry M., xxxx
Mallory, Melvin A., Jr., xxxx
May, Frank J., Jr., xxxx
Miller, Lowell J., xxxx
Newman, Jack E., xxxx
O'Connell, James J., xxxx
O'Donnell, Daniel J., xxxx
Polk, Joseph E., xxxx
Rhode, John F., xxxx
Rohrbough, Frank G., xxxx
Tadano, Ben, xxxx
Turner, Charles E., xxxx

VETERINARY CORPS

Brewer, George L., Jr., xxxx
Burch, Louis T., xxxx
Kendrick, Jerry Z., xxxx
Mohri, William F., xxxx
Townsend, Lee R., xxxx
Vandyke, Don, xxxx

BIOMEDICAL SCIENCES CORPS

Aldrich, Terrance C., xxxx
Burnett, Ronald D., xxxx
Bush, Conrad L., xxxx
Christian, Raymond D., xxxx
Dunton, Donald D., xxxx
Evans, James D., xxxx
Fallon, Alexander E., xxxxx
Fickess, Robert J., xxxx
Fitch, Roger C., xxxx
Grisolano, James E., xxxx
Hartman, Richard A., xxxx
Hatcher, Richard L., xxxx
Holub, Frank J., xxxx
Moorhouse, Marianna, xxxx
Perry, Alan H., xxxx
Pickett, William E., Jr., xxxx
Simpson, Harry J., xxxx
Swanson, Christine H., xxxx
Trimberger, David J., xxxx
Wrenn, Hubert E., xxxx
Zavatson, Mary A., xxxx

CONFIRMATIONS

Executive nominations confirmed by the Senate August 30 (legislative day of August 29), 1967:

DEPARTMENT OF COMMERCE

Joseph W. Bartlett, of Massachusetts, to be General Counsel of the Department of Commerce.

U.S. SUPREME COURT

Thurgood Marshall, of New York, to be an Associate Justice of the Supreme Court of the United States.

EXTENSIONS OF REMARKS

The Public Broadcasting Act

EXTENSION OF REMARKS
OF
HON. RAY BLANTON
OF TENNESSEE
IN THE HOUSE OF REPRESENTATIVES
Wednesday, August 30, 1967

Mr. BLANTON. Mr. Speaker, the enormous impact of the broadcasting media on the lives of each one of us cannot be underrated. We are kept informed by them, we are entertained by them, we are sometimes annoyed by them. They stimulate our thinking. They provoke our comment. We cannot ignore them. Television and radio have evolved into the most influential method of communication of our time. Still the potential of this vast industry is only on the verge of being explored. I refer to noncommercial educational broadcasting which, because of grave financial restrictions, has remained in its developmental stage far too long—gaining only inches when it should have been making great strides ahead. In instances where a noncommercial service has been professionally tested it has proved its worth beyond expectation. In my own State of Tennessee, educational television has had great impact on the culture of our people—both in terms of formal instruction and in terms of the broader aspects of noncommercial broadcasting—adult education and the enrichment of family and community life. The Public Broadcasting Act will aid my State in its development of a network of educational communications dedicated to the public good.

Until we have a fully operational educational broadcasting service throughout the United States our communications system will not be complete. Educational broadcasting, if it is ever to realize its great capacity for public service, needs the endorsement of the 90th Congress through swift passage of the Public Broadcasting Act of 1967.

Drum and Bugle Corps

EXTENSION OF REMARKS
OF
HON. JAMES H. SCHEUER
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Wednesday, August 30, 1967

Mr. SCHEUER. Mr. Speaker, it is with great pleasure and pride that I join in the salute to the drum and bugle corps. The rich, meaningful role this organization plays in the lives of American youth merits the recognition they receive during International Drum Corps Week. The patriotism so proudly displayed before the world is in the finest American tradition. The activities engaged in, constructively channeling the exuberant energies of our youth, is an example for all to see.

As a Representative from the Bronx, N.Y., it is personally gratifying to me to notice the energetic participation of Bronxites in the organization. This includes national chairman, Harvey Berish, along with so many young people.

I wish the corps an enjoyable and fruitful Drum Corps Week. I hope that they meet continued success as they symbolize the great American heritage and echo its resounding calls.

Educational Television

EXTENSION OF REMARKS
OF
HON. EDWARD J. PATTEN
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Wednesday, August 30, 1967

Mr. PATTEN. Mr. Speaker, 5 years ago this Congress considered and passed the Educational Television Facilities Act, now Public Law 87-447. This act provided the first essential step of Federal financial assistance to help construct new educational television stations and to improve existing stations. No one today questions its merits or value, al-