national resources to solve these very solvable domestic problems. But we can see fit to invest over $30 billion and thousands of American lives annually in fighting for "freedom" in South Vietnam. How often do we ask ourselves—how free is a 6-year-old American, suffering from chronic malnutrition—which may or may not cause future brain damage—who attends substandard schools and lives in a substandard house? What choices will be opened to this child at the age of 18 when he most likely will be a functional illiterate and face extended periods of unemployment?

The city council in Pittsburgh adopted a resolution calling for an end to our involvement in Vietnam and an immediate reordering of our national priorities.

I would like to enter this resolution into the RECORD at this point:

RESOLUTION No. 237

Whereas, American armed forces have been engaged for over four years in combat in Vietnam, and have distinguished themselves for their valor despite vague and sometimes conflicting expressions of national purpose and objectives in that war; and

Whereas, Combat deaths for American forces now exceed the death toll in the Korean War, and the nation continues to spend $100,000,000 per day to finance the war; and

Whereas, The direct American involvement in the war in Vietnam—never intended in our original intervention—has reached the point where it brings an intolerable financial and personal burden to all Americans; and

Whereas, The pressing needs of our nation's cities are being slighted, Congressional appropriations are being cut and urban programs are being curtailed in the face of increasing need for substantial government action; and

Whereas, It is apparent that the national government has not yet formulated a definite plan to end direct American involvement in the Vietnam war;

Now, therefore, be it resolved, That the Pittsburgh City Council hereby memorializes the administration of President Richard M. Nixon to declare and carry out a definite program to terminate direct American involvement in the war in Vietnam and to put into effect the systematic withdrawal of major forces in America, to be completed before the end of 1970; and

Be it further resolved, That the Pittsburgh City Council does hereby memorialize the Congress of the United States to provide through its legislative and budgetary powers that the administration of President Nixon quickly begin to extricate the United States from its crushing, disastrous involvement in Vietnam and to devote national resources to programs which meet the needs of cities in housing, education and public transportation.

In Council October 14, 1969, read and adopted.

JOHN F. COUNAHAN,
President of Council.

Attest:

LOUIS C. DINARDO,
Clerk of Council.

Mayor's Office, October 21, 1969.

Approved:

JOSEPH M. BARR,
Mayor.

SENATE—*Monday, November 3, 1969*

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

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Almighty God, the light of the pure in heart who see Thee, the life of the souls that love Thee, the strength of the minds that seek Thee, from whom to turn is to fall, to whom to turn is to rise, and in whom to abide is to stand fast forever, be Thou to us light and life and strength that our labor may be secure in Thee. Keep us alive to all true values and enable us to grow in the ways of Thy spirit.

O Lord, be with this Nation. Guide in Thy pure ways all who bear positions of trust, that they may know and do Thy will, and daily set forward Thy kingdom.

Through Jesus Christ our Lord. Amen.

MESSAGE FROM THE HOUSE RECEIVED DURING ADJOURNMENT

Under authority of the order of the Senate of October 30, 1969, the Secretary of the Senate, on October 31, 1969, received the following message from the House of Representatives:

That the House had passed the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States, with amendments, in which it requested the concurrence of the Senate; that the House insisted upon its amendments to the bill, asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PERKINS, Mr. DENT, Mr. PUCINSKI, Mr. HAWKINS, Mrs. MINK, Mr. BURTON of California, Mr. AYRES, Mr. ERLENBORN, Mr. BELL of California, and Mr. SCHERLE were appointed managers on the part of the House at the conference;

That the House had passed a bill (H.R. 14001) to amend the Military Selective Service Act of 1967 to authorize modifications of the system of selecting persons for induction into the Armed Forces under this act, in which it requested the concurrence of the Senate.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

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

S. 73. An act to amend the act entitled "An act to authorize the sale and exchange of isolated tracts of tribal land on the Rosebud Sioux Indian Reservation, S. Dak.";

S. 267. An act for the relief of Lt. Col. Samuel J. Cole, U.S. Army (retired);

H.R. 337. An act to increase the maximum rate of per diem allowance for employees of the Government traveling on official business, and for other purposes;

H.R. 12982. An act to provide additional revenue for the District of Columbia, and for other purposes; and

S.J. Res. 164. Joint resolution to provide for a temporary extension of the authority conferred by the Export Control Act of 1949.

HOUSE BILL REFERRED

Under authority of the order of the Senate of October 30, 1969, the bill (H.R. 14001) to amend the Military Selective Service Act of 1967 to authorize modifications of the system of selecting persons for induction into the Armed Forces under this act, was considered as having been read twice by its title, and was referred to the Committee on Armed Services.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, October 30, 1969, be dispensed with.

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

MESSAGES FROM THE PRESIDENT

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

REPORT OF THE DEPARTMENT OF TRANSPORTATION—MESSAGE FROM THE PRESIDENT (H. DOC. NO. 91–189)

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Commerce:

To the Congress of the United States:

I hereby submit the Second Annual Report of the Department of Transportation, covering Fiscal Year 1968.

RICHARD NIXON.

THE WHITE HOUSE, *October 31, 1969.*

EXECUTIVE MESSAGES REFERRED

As in executive session, the President pro tempore 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.)

WAIVER OF CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the legislative calendar, under rule VIII, be dispensed with.

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

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that statements in relation to the transaction of routine morning business be limited to 3 minutes.

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.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nominations on the Executive Calendar.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDENT pro tempore. The nominations on the Executive Calendar will be stated.

DEPARTMENT OF DEFENSE

The bill clerk read the nomination of Robert Louis Johnson, of California, to be an Assistant Secretary of the Army.

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

U.S. ARMY

The bill clerk proceeded to read sundry nominations in the U.S. Army.

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

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

U.S. MARINE CORPS

The bill clerk proceeded to read sundry nominations in the U.S. Marine Corps.

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

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

NOMINATIONS PLACED ON THE SECRETARY'S DESK—AIR FORCE, ARMY, NAVY, AND MARINE CORPS

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

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

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

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

LEGISLATIVE SESSION

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

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

THE IMPORTANCE OF BEING COURTEOUS

Mr. MANSFIELD. Mr. President, I was disturbed to read on the ticker this morning the kind of reception given to our colleague, the distinguished Senator from Mississippi (Mr. STENNIS), when he appeared at Johns Hopkins University as a guest of that institution.

There are questions on which the distinguished Senator and I disagree, but I have always felt that anyone invited into an institution like Johns Hopkins just as anyone invited into someone's home should be treated as a guest, with courtesy and consideration. There are two sides to every question, and I abhor the fact that a Member of this body—and this would apply to any of our citizens—was not given the courteous treatment which any American deserves when he appears as a guest at any institution of this kind.

What we ought to recognize is that the differences which divide us will become wider if we do not try to narrow the gap.

I know Senator STENNIS as a man of courage, a man of deep conviction and great sincerity. I know, too, that if this situation had been reversed, Senator STENNIS would have extended toward the views of others the courtesy and tolerance that have characterized his many years of public service.

So I would hope that, despite the differences which many of us have, we would treat one another with courtesy and consideration. I know that Senator STENNIS would not have it otherwise. The example he has set over the years on that score is one all of us could follow. In that way also I think we would be less likely to resort to violence, epithets, name calling, and other forms of abuse which do none of us any good and, in fact, do this Nation great harm. I commend Senator STENNIS. I deplore the type of reception he reportedly received at Johns Hopkins.

THE TAX REFORM-TAX RELIEF MEASURE

Mr. MANSFIELD. Mr. President, the action last Friday by the Senate Finance Committee in ordering reported the Tax Reform-Tax Relief Act brings closer to completion what should prove to be the most singular achievement of the 91st Congress. During my years in Congress, I have never witnessed any committee devote itself more diligently to a task—in this case working from early morning to early evening for 2 solid months—than has the Finance Committee under the leadership of its chairman, RUSSELL LONG.

Last July, when the question of extending the surtax was before the Senate, Chairman LONG and the members of the Finance Committee agreed that they would report the tax reform bill by October 31. I do not believe that even they realized at the time just how much work would be involved in meeting that timetable. But rather than extend the period to accommodate the workload, they intensified their efforts to meet the original schedule. In setting such a timetable for his committee, Chairman LONG is to be particularly lauded for his efforts, for his commitment, for his cooperation, and performance.

In like manner, the ranking minority member, the distinguished Senator from Delaware (Mr. WILLIAMS)—who has for years championed the cause of tax reform—as well as all members of the Finance Committee who hammered out a full and distinct set of proposals in a relatively short period, deserve the praise and respect of the entire Senate and of the country.

The expeditious attitude of the Finance Committee should be the example for the entire Senate. The leadership will make every effort to assist the Finance Committee in completing Senate action on this bill by early December. The bill will be scheduled for floor action this month after the written report is filed and will be the first order of business after the disposition of the confirmation proceedings of Judge Haynsworth. It will be the leadership's intention to come in early each day on this bill—including Saturdays—and to stay until early evening in hopes of finishing work on the bill prior to the first week in December. The Senate can be most efficient when it devotes its full energies to a task. If no committees meet while the tax bill is under consideration on the floor, a great deal can be accomplished in 2 weeks.

With Senate disposition of this tax reform-tax relief package anticipated this session, there is no particular urgency or reason for proceeding in a separate bill with the repeal of the investment credit, the extension of the excise taxes, or the surtax extension. These are contained in the present Tax Reform-Tax Relief Act. Last July, when the original surtax extension was before the Senate, these provisions were not contained in the House-passed tax reform-tax relief bill. After the Senate acted to extend the surtax through December 31, 1969, the House added these provisions to the tax reform-tax relief package. These provisions remain in the Senate Finance Committee bill. If there is any question after Senate disposition of this tax reform-tax relief package with respect to completion of a con-

ference prior to the end of this calendar year, the investment credit and excise tax extension can be reenacted as part of a separate bill for swift completion prior to a sine die adjournment. These two provisions must be completed this year to prevent a revenue loss. The surtax extension will be effective January 1, 1970, regardless of when passed.

The achievements of the 91st Congress shall be many, but none can surpass that which is foreseen in the Tax Reform-Tax Relief Act. It should be highlighted that this bill is one that originated solely within the Halls of Congress. The initiative as well as the followthrough was in Congress. This act will highlight again that our actions in Congress are far more significant than anyone's words.

I ask unanimous consent that an editorial published in yesterday's Washington Post commending the work of the Senate Finance Committee be printed at this point in the RECORD.

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

TAX REFORM GOES TO THE SENATE

Congratulations are in order for the Senate Finance Committee for sending the tax-reform bill to the floor on schedule. An immense task remains in checking the language of the bill and writing the report, but if the Senate then moves as expeditiously as the Finance Committee has done it should be possible to enact the bill before the end of the year. In our view, it would be a serious mistake for Congress to lose the momentum it has now attained by letting the bill go over into the 1970 session.

As it now stands, the Finance Committee bill is better than many supposed it would be. Chairman Russell B. Long had given the impression that his committee might indulge in a tax-cutting spree that would be highly troublesome for the Treasury. The bill that it has finally sent to the Senate would cut income taxes about $9 billion a year, offset by increased revenue amounting to $6.5 billion from reform provisions. But the impact of these cuts would be softened in some measure by postponing the full effectiveness of the reduction until 1972. In this regard the bill is somewhat more conservative than that passed by the House.

The Finance Committee must be given credit for some other improvements in the bill. Especially notable are the more equitable schedules approved for single persons and widowed or divorced taxpayers with dependents. The House had also provided relief for these overtaxed categories, but with a strange discriminatory cutoff against single taxpayers under 35 years of age. At the request of the Treasury, the Finance Committee dropped this objectionable provision and adopted a reduced schedule of rates applicable to all single taxpayers. It would require them to pay 20 per cent more than married couples filing joint returns on comparable incomes (instead of 41 per cent more under present law) and the new head-of-household rates would be about midway between the other two schedules. This equitable and workable solution should easily prevail in the House-Senate conference.

We think the committee was well advised to reject Senator Gore's attempt to substitute a higher personal exemption for the tax cuts in the House bill. The effect would have been regressive and would have further complicated the reconciliation of the House and Senate versions.

The most serious deficiency in the Finance Committee bill comes from the elimination of the House provisions designed to ease the problem of tax-exempt state and municipal bonds. The House made a realistic approach to this dilemma by offering a federal subsidy to cover the higher interest rates on bonds made taxable by the states and cities and by limiting the tax preferences that any person may pile up for himself. If the Senate version should stand, some of the wealthiest Americans, drawing millions from tax-exempt interest, would continue to pay not one cent in federal income taxes. Here are provisions that should certainly be restored on the Senate floor or in conference.

The Finance Committee also watered down the House's treatment of depletion allowances for the oil and gas industry, but the relatively narrow gaps between the bills in this area should present no major problem. Likewise the Senate committee was more gentle in its claims upon capital gains, and the conflicting provisions in regard to foundations will require substantial adjustments. No doubt the Treasury will plead for narrowing the gap between the total cuts and increases, but there are no insuperable obstacles in sight. The country appears to be much closer to the achievement of tax reform than seemed possible to many at the begininng of the present congressional session.

Mr. SCOTT. Mr. President, I do agree with the distinguished majority leader that all measures of legislation originate in Congress. I think it is proper to raise the proposition that suggestions originate with the Executive in many cases. The President did ask for tax relief and tax reform in April of this year and he has consistently pressed his requests for this and other important measures.

The need for this tax bill is obvious to everyone. The uncertainty under which the country labors is real and unfortunate. Whether the investment tax credit and extension of the surtax by 5 percent occur as a part of this bill or separately is an arguable matter; some of us have one opinion and others have another opinion, but the fact is we should dispose of this tax bill in this session of Congress. That seems to me to be of the utmost importance, and I hope we can send to the President a bill as nearly as possible in keeping with his own suggestions of April of this year and subsequently.

PROGRAM

Mr. SCOTT. Mr. President, I would like to ask the distinguished majority leader if he could give us some information on the program for this week, bearing in mind that tomorrow is election day in many States.

Mr. MANSFIELD. I think those Senators whose States have elections tomorrow can be free to go. The calendar is practically bare. We are waiting for the committees to act. There is not a bill on the calendar that we can act on at the moment. We expect that the Committee on Armed Services will report the authorization for military construction today, and that the Committee on Appropriations, under the chairmanship of the distinguished President pro tempore, will report this afternoon the State, Justice, and Commerce appropriation bill.

If there is no objection, I would like to have the minority leader consider the possibility of taking up the State, Justice, and Commerce appropriation bill tomorrow, because that bill contains some very important drug and crime legislation—in fact, two of the items which were specifically requested by the President in his quasi-state of the Union address of October 13, 1969. I do not know of any great arguments against the consideration of that bill, and I do agree with the President that we should expedite every effort in enacting measures and appropriations dealing with drug and crime control.

Mr. SCOTT. Mr. President, I wish to say to the distinguished majority leader that that suggestion is perfectly satisfactory with me.

I am only raising the question that, tomorrow being election day, although none of us is a candidate for office tomorrow, the American Heritage Society and a great many others do urge people to vote and they urge us by our example to vote in our voting districts on the annual election day.

I assume many Senators would be somewhat conscious of their civic duty and would want to be present in their home areas for that civic purpose.

I would say it is extremely important that we get on with the appropriation bill and I would not want to impede it.

Mr. MANSFIELD. The Senator has been most cooperative in his capacity as minority leader in this body on all occasions on which I have approached him; but if Senators find it agreeable, we would consider this legislation tomorrow and if there is to be a rollcall vote it could be put over until about 12:30 p.m. on Wednesday. In that way no time will be lost and everybody will be given consideration.

Mr. SCOTT. I think that would be eminently fair to Senators. I can either go home or stay here depending on how the schedule works out.

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

Mr. SCOTT. I yield to the Senator from New Hampshire.

Mr. COTTON. Mr. President, I may have missed some of the colloquy between the two distinguished leaders. Was there any mention made of when the Senate intends to take up the general continuing resolution that the House has passed, which involves a considerable increase in HEW?

Mr. MANSFIELD. My best information is not before the end of the week at the earliest.

Mr. COTTON. I thank the Senator.

ORDER OF BUSINESS

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

The PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

TO SET THE RECORD STRAIGHT

Mr. MANSFIELD. Mr. President, what I am about to say is for the record. The proposed reform of the draft law is one of the most important social measures to be considered by the 91st Congress. It affects the lives of the youth of our Nation. Many Senators have devoted much effort to devise proposals to remove the great inequities in the present system. These proposals will be considered in the Senate when the Senate considers changing the draft laws. The Senate rules grant that prerogative to each Senator on every measure to come before the Senate. This draft reform proposal should not be considered as being any different. Its importance demands that it not be summarily considered by the Senate.

Last Thursday, I announced my belief to reporters that there probably would be no draft reform legislation considered by the Senate this year. That belief was based upon the realities and practicalities of the situation involved. Upon the publication of that offhand remark, it is my understanding that the President issued a statement in which he asked the Senate leadership to reconsider its position on this matter.

May I say at the outset that if and when a draft reform bill is reported out of the Committee on Armed Services, it will receive the most expeditious consideration possible. That is the position of the leadership now—it was the position of the leadership last Thursday. It has always been the leadership's position.

The majority leader, I should point out, is in no position to call up a bill that has not been considered by the committee; that has not been reported out of the committee; that is not on the Senate Calendar and that may well not be on the calendar. So if I may reiterate: Any bill covering draft reform or any other matter that is reported out of committee and cleared by the policy committee—which I have no doubt would be the case—will be called up and considered promptly.

I make this statement not in reply to the President's suggestion that the Senate leadership reconsider its position on draft reform, but only to set the record straight and to make clear what that position was, what it is now, and what it will continue to be.

So far as I am personally concerned, I voted against the last extension of the Draft Act because I thought it was inequitable, unfair, and placed unduly difficult burdens on the lower income groups in this country. I do not think the change requested by the President goes far enough. Many inequities would still exist. However, I applaud the efforts of the President to remove some of the unfairness of the present law. But the fact is, the whole system is still most inequitable, most unfair and therefore, if considered this year, I will vote against the President's proposal as I would against the extension of the present draft law as is.

Despite my personal feelings, however, may I reiterate that if any measure is reported out of committee and placed on the calendar, that measure will receive prompt consideration and will be debated and considered by the Senate as a whole for the purpose of arriving at a clear-cut decision. That is the position of the leadership on all legislative proposals. And certainly, the President is entitled, in my opinion, to that much consideration. The hundreds of thousands of young men in this country certainly deserve that much consideration. Each will have it, if and when a draft proposal reaches the full Senate. But I should add that the President knows, as well as I, that unless a bill is reported out of committee and placed on the Senate Calendar there is absolutely no way in which the Senator from Montana as the majority leader can call up such a measure for Senate consideration.

Mr. President, I ask unanimous consent that editorials on this matter appearing in the Washington Daily News, the Washington Star, and the Boston Globe on November 1 be printed in the RECORD.

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

[From the Washington Daily News, Nov. 1, 1969]

THE DRAFT DEBACLE

By one abrupt statement, the majority leader in the Senate, Sen. Mike Mansfield of Montana, has killed what for a time had seemed to be rosy prospects for improving the draft system.

On the same day, the House of Representatives had passed a bill—382 to 13—to permit the President to install a lottery system of choosing young men for military service.

Mr. Nixon wants to call up 19-year-olds first. He wants to limit to one year the time in which a young man may be subject to draft call. He wants to do away with the present system which calls older men first, which keeps a man uncertain whether he will be called until he is 26.

The President thinks the present system is unfair. Even Sen. Mansfield thinks it is unfair.

But, Sen. Mansfield won't put the House bill to a vote in the Senate this year because, he says, it is "impossible" to get a consensus in the Senate on how to handle the bill. He doesn't think the lottery system Mr. Nixon proposes to use in deciding which young men are called is a sufficient reform of the draft law.

So he doesn't want any reform at all.

In this, strangely enough, he is joined by Sen. Ted Kennedy of Massachusetts who long had declared himself an advocate of a lottery system.

Mr. Nixon can make some draft reforms without legislation. But he can't set up the lottery system in the fairest possible form because there is a law which forbids it. Congress ought to change that law—and there is no legitimate excuse for not doing it now.

[From the Washington Star, Nov. 1, 1969]

POLITICS AND THE DRAFT

The Senate Democratic leaders should think again about their decision to block the administration's proposal for limited draft reform. They should reconsider—and they should follow the lead of the House which approved the measure 382 to 13.

There is no doubt about the leadership's ability to bottle up the legislation. If Senator Mansfield says it will not move this year, it will not move. There must be a strong temptation to use this simple means to embarrass the administration. But it is a temptation that should be resisted.

The leadership's arguments in favor of procrastination are not very persuasive. The limited measure, which would permit the use of lottery procedure in the draft, was attacked by Senator Kennedy as a fraud on the young because it would not cure all the ills of the present system. Mansfield argued that action is impossible in this session because there is no time to reconcile the struggle between those who favor the administration move and those who want far-reaching reform of the draft laws.

No one in the administration has argued that the plan to pick 19-year-olds first under a lottery system is a cure for all the inequities of the draft. No one has presented the proposed amendment to the present law, which would remove the prohibition against a lottery, as an alternative to further sweeping reform in the next session of Congress.

It is not an either-or situation. The amendment should be passed now so that the most glaring inequities in the present law can be promptly eliminated. Then Congress should start the lengthy and complex debate on over-all reform.

The siren song of easy political gain is always a strong temptation. But in this case the apparent advantage may be wholly illusory. It is quite possible that the young voters-to-be will remember just who it was that blocked the way when a measure of relief was in sight, and will act accordingly.

[From the Boston Globe, Nov. 1, 1969]

MANSFIELD ERRS ON DRAFT LAW

An able and good man is Senate Majority Leader Mike Mansfield. The Montana Democrat has erred, however, in his refusal to let the Senate take up proposals to amend the draft law at this session of Congress. President Nixon is on the side of the angels in urging him to reconsider. He should.

The Mansfield argument, in which he is joined by Senate Armed Services Committee Chairman John C. Stennis and others, is that, if the draft law were to be called up for floor debate now, so many amendments would be offered that the Senate would have little time for anything else. But merely because a law is so outrageously defective that major repairs are required is no reason for letting it stand as is. It is a reason for getting to work.

To remedy one major defect of the law, the Senate needs but accept one simple amendment already approved by the House. This is a one-liner striking out of the 1967 law a provision that prohibits the President from using the random selection, or lottery system under which none but 19-year-olds would be drafted, thus limiting the period of a man's vulnerability to the draft to one year.

This is not the major surgery that is required. But it would at least make the law more palatable pending the time when Congress can get around to rewriting it.

The present mishmash in the Senate is largely a result of political jockeying between the White House and Congress and between the parties in Congress. This has gone on long enough. It is time for all sides to call quits to it.

Mr. GRIFFIN. Mr. President, will the Senator from Montana yield at that point?

Mr. MANSFIELD. I yield.

Mr. GRIFFIN. I want to commend the Senator from Montana for his statement which includes at least a ray of hope concerning this very important legislative proposal of the President.

Obviously, if the record had stood as it did last Thursday, there would be very little reason or incentive for members of the Armed Services Committee to report legislation in view of an announcement which indicated it would not be considered anyway.

Now, at least, we do have the assurance of the majority leader, which I appreciate, that if the measure is reported from the committee, it will be brought before the Senate, which I think is progress and for which I commend the distinguished majority leader.

Mr. MANSFIELD. Who made the statement that if it was reported it would not be considered?

Mr. GRIFFIN. Well, I am not sure at all that anyone did, I say to the majority leader. I only say that that was the impression——

Mr. MANSFIELD. I see.

Mr. GRIFFIN (continuing). That was left; an unfortunate impression. Of course, as it happens, I am glad to have the matter straightened out.

Mr. MANSFIELD. I am delighted to have the opportunity to straighten the matter out because I want to assure the distinguished Senator and acting minority leader that any measure which is reported by the committee is given swift consideration by the policy committee. Insofar as the joint leadership is concerned, we endeavor to bring legislation up as rapidly as possible, once it is placed on the calendar. But neither leaders can do a thing unless a draft reform bill is reported from the Armed Services Committee and then placed on the calendar.

For example, we find that the Committee on the Judiciary some 3 weeks ago, reported the Haynsworth nomination. It will be another week or so before it will be placed on the calendar. I would have liked to have brought up the Haynsworth nomination a month ago, but until and unless that nomination, reported by the Judiciary Committee, is placed on the Executive Calendar, there is nothing the joint leaders can do.

I made my statement this morning for the purpose of setting the record straight because some people seem to have the idea that the Senator from Montana can withhold or push forward legislation. They credit me with too much power and authority when, as a matter of fact, I really have less authority than the other 99 Members of the Senate.

This leadership operates on the basis of cooperation, understanding, and tolerance, but there are certain rules which have to be followed and, No. 1 is that before a bill can be called up, it has to be on the calendar.

Mr. GRIFFIN. I think that is an important statement of the majority leader's position. It clarifies the situation as I understand it. Now, if draft reform does not come to the floor, it will not be because of any attitude on the part of the majority leader. It will be because the bill is not reported out of the committee. At least, the committee will not now have the excuse of pointing to any statement by the majority leader; committee members cannot say, in effect, that there is no point in us considering or reporting the bill because it will not come to the floor anyway. That was the impression I was concerned about as of last Thursday.

Mr. MANSFIELD. I appreciate the President's concern. Had I been in his shoes, perhaps I would have reacted similarly. But I think that the record should be made clear, and I think it is.

EXECUTIVE COMMUNICATIONS, ETC.

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

REPORT ON BUFFALO RAPIDS PROJECT, MONTANA

A letter from the Assistant Secretary of the Interior, reporting, pursuant to law, that the classification and approval of a small previously nonirrigated acreage in the Shirly Unit area, Buffalo Rapids project, Montana, has been made; to the Committee on Interior and Insular Affairs.

SUSPENSION OF DEPORTATION OF CERTAIN ALIENS

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

REPORT OF THE COMMISSIONERS OF EDUCATION

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, the 18th annual report of the Commissioners of Education on the administration of Public Laws 874 and 815, 81st Congress, as amended, for the fiscal year ended June 30, 1968 (with an accompanying two part report); to the Committee on Labor and Public Welfare.

PROPOSED AMENDMENT OF THE MENTAL RETARDATION FACILITIES AND COMMUNITY MENTAL HEALTH CENTERS CONSTRUCTION ACT OF 1963

A letter from the Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to amend the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 to extend and improve the provisions relating to the construction and operation of community mental health facilities, and of specialized facilities for alcoholics and narcotic addicts, and for other purposes (with an accompanying paper); to the Committee on Labor and Public Welfare.

REPORT ON THE FEDERAL VOTING ASSISTANCE PROGRAM

A letter from the Deputy Coordinator, Federal Voting Assistance Program, transmitting, pursuant to law, the seventh report on the Federal Voting Assistance Program (with an accompanying report); to the Committee on Rules and Administration.

ANNUAL REPORT OF ESCUELA AGRICOLA PANAMERICANA

A letter from the Chairman, Development Committee, Escuela Agricola Panamericana, transmitting for the information of the Senate its annual report, for the year 1968 (with an accompanying report); to the Committee on Agriculture and Forestry.

PETITIONS AND MEMORIALS

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

By the PRESIDENT pro tempore:

A petition, signed by Alfred S. Dyer, and sundry other citizens of the State of New York, praying for the enactment of a just and equitable tax bill; to the Committee on Finance.

The petition of Robert Bradford Murphy, of Leavenworth, Kans., praying for a redress of grievances; to the Committee on the Judiciary.

BILLS INTRODUCED

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

By Mr. SCOTT (for himself and Mr. SCHWEIKER):

S. 3099. A bill to provide that the U.S. district court for the eastern district of Pennsylvania shall be held at Allentown, Easton, Reading, and Philadelphia; to the Committee on the Judiciary.

By Mr. WILLIAMS of New Jersey (for himself, Mr. HARTKE, and Mr. MUSKIE):

S. 3100. A bill to increase the Social Security Act to provide increases in benefits under the old-age, survivors, and disability insurance program, to provide health insurance benefits for the disabled, and for other purposes; to the Committee on Finance.

(The remarks of Mr. WILLIAMS of New Jersey when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. DOMINICK:

S. 3101. A bill to amend section 403(c) of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963; to the Committee on Labor and Public Welfare.

(The remarks of Mr. DOMINICK when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. MAGNUSON (by request):

S. 3102. A bill to amend section 4 of the Fish and Wildlife Act of 1956, as amended, to extend the term during which the Secretary of the Interior can make fisheries loans under the Act; to the Committee on Commerce.

(The remarks of Mr. MAGNUSON when he introduced the bill appear later in the RECORD under the appropriate heading.)

S. 3100—INTRODUCTION OF THE SOCIAL SECURITY AMENDMENTS OF 1969

Mr. WILLIAMS of New Jersey. Mr. President, on behalf of myself and Senators HARTKE and MUSKIE, I introduce, for appropriate reference, a bill to amend the Social Security Act to provide increases in benefits under the old-age, survivors, and disability insurance program, to provide health insurance benefits for the disabled, and for other purposes.

This bill—endorsed by the National Council of Senior Citizens, the American Federation of Labor-Congress of Industrial Organizations, and the National Association of Social Workers—offers a comprehensive and realistic provision intended to help our social security system become markedly more effective in alle-

viating a worsening retirement income crisis which affects millions of Americans today and which threatens many more millions in the future.

The extent of that crisis—and the prospects for the future—have been the subject of intensive study and hearings by the Senate Special Committee on Aging during the past year. Perhaps the authoritative summation of the situation was provided by a distinguished task force which issued a working paper called "The Economics of Aging: Toward a Full Share in Abundance."

That document has caused a stir because it offers weighty evidence in support of a fundamental truth, and that truth is:

The economic problems of old age are not only unsolved for today's elderly, but they will not be solved for the elderly of the future—today's workers—unless this Nation takes positive, comprehensive actions going far beyond those of recent years.

To support that conclusion the task force offered economic facts of life for the elderly, including the following:

Half of single people living alone have incomes of less than $1,480, and one-fourth have $1,000 or less—1967 figure.

Families with an aged head of household: 50 percent less than $4,000; 20 percent below $2,000; 7 million people age 65 and over are living in poverty or near poverty.

The average social security benefit meets less than one-third of the needs spelled out in the Bureau of Labor Statistics "retired couples budget."

The "gap" between workers income and retirement income is widening—51 percent in 1961 and 46 percent in 1967.

Average social security payment—end of 1968—$98.90 for retired aged worker; $51.20 for the spouse; and $86.50 for the aged widow.

Widows: of 3.6 million women living alone, 2.1 million live in poverty.

The task force, while noting that the Nation's social security system has failed to keep up with the rising income needs of the aged, also said:

> The existing social insurance system is a fast and effective way to deliver an income assurance that carries commitments for the future, as well as for the current generation of the aged.

Thus, the task force envisioned a major role for an improved social security system in an overall program to improve the overall economic security of the elderly of today and in years to come.

As chairman of the Senate Special Committee on Aging, I have conducted several hearings on "The Economics of Aging" since the task force issued its report, and chairmen of three subcommittees have also conducted specialized hearings on consumer aspects, health aspects, and homeownership aspects of the economics of aging. Additional hearings are planned in the months ahead, but already we have received eloquent testimony about the grave problems related to inadequate retirement income.

We have heard from the elderly themselves.

We have heard from representatives of organizations related directly or indirectly to the field of aging.

We have heard from individual economists, other medical experts, and from representatives of many other disciplines. Their testimony, and testimony yet to come, will provide this Nation with the most compelling case yet made for the "positive, comprehensive actions" sought by the Committee on Aging task force.

The bill I am introducing today would go a long way toward assuring economic well-being for the elderly now, and in the future. If our social security system is to serve as the foundation for economic security now and in the future, we must move ahead without further delay to make fundamental changes.

My bill is identical to H.R. 14430, introduced by Congressman GILBERT, of New York, on October 21. The Congressman, the AFL–CIO, and the National Council of Senior Citizens deserve much praise for producing omnibus legislation which makes the most of funds now available in the trust fund while proposing new means of financing future improvements.

Without detailing the provisions of this bill, I will mention only a few of the major changes that should win the wholehearted endorsement of all those who are concerned that our social security system achieves its full potential.

BENEFIT LEVELS

Benefits would be increased substantially. The general level would be raised by 44 percent through a two-step increase, the first in January 1970, and the second in January 1972, with the minimum going to $120. The change in the minimum alone would remove a significant number of our aged people out of poverty.

Thereafter, benefits would be automatically adjusted annually for each 3 percent or more increase in the cost of living. Our task force report pointed out that for some social security beneficiaries, past increases in social security benefits have been too little and too late to catch up with rising prices. My proposal would correct this unfortunate situation after benefits have been raised to more nearly adequate levels, rather than merely perpetuating the inadequacy by automatically adjusting benefits that are too low by any reasonable standard.

Benefit levels of the future would also rise as a result of automatic increases in the maximum earnings that are taxed and credited for benefits.

MEDICARE

Beginning July 1970, my proposal would eliminate the supplementary medical insurance premium—now $4 monthly, and scheduled to rise—and provide for financing both hospital and medical insurance premiums through payroll taxes and a matching contribution by the Federal Government. Out of hospital prescription drugs would be covered.

Our committee's study has clearly indicated the need for these changes in order that medicare can more nearly fulfill its promise of lifting from the elderly some of the heavy burden of rising medical costs.

FEDERAL CONTRIBUTIONS

Among the most significant reforms is a proposal for general revenue sharing in the costs of social security. Our present method of relying solely on payroll taxes places a regressive tax on the Nation's workers. Unless we correct this deficiency, I do not believe we can achieve an adequate benefit level, now and for the future, that will be supported by today's workers.

Our present system involves heavy costs of paying full benefits to workers already close to retirement when first covered by the system. A Federal contribution—spelled out through a formula in the bill, so it is not subject to congressional whim—would have the effect of transferring these heavy costs from today's workers to a less regressive source of revenue, shared by the total population.

RELATION OF THIS BILL TO S. 2270, S. 2271, S. 2272, S. 2273, AND S. 2274

On May 27, 1969, I introduced five bills to amend the Social Security Act. I said:

> What I look for in the next few months, is the evolution of an omnibus bill, which will serve as a worthy vehicle for Congressional debate at the earliest possible date.
>
> Today, I am not introducing that omnibus bill. But, I am introducing several proposals which I regard as essential without which the final bill would be incomplete.

My earlier bill includes some provisions not incorporated in the comprehensive bill I am introducing today. They are, however, consistent with the objectives of this bill.

For the relationship of these earlier bills to today's bill, I submit a letter, written to Congressman MILLS, urging that the House Ways and Means Committee consider these bills at the same time as the Gilbert bill.

Perhaps several of my colleagues, especially those on our Special Committee on Aging, will wish to join me in sponsoring this important legislation. I ask unanimous consent that the RECORD include at this point an analysis of the bill I am introducing—identified as H.R. 14430, the bill introduced by Mr. GILBERT on October 21—and a comparison with the social security amendments proposed by the administration—H.R. 14080.

This useful comparison was prepared by Francis J. Crawley, Education and Public Welfare Division, Legislative Reference Service.

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

The bill (S. 3100) to amend the Social Security Act to provide increases in benefits under the old-age, survivors, and disability insurance program, to provide health insurance benefits for the disabled, and for other purposes, introduced by Mr. WILLIAMS of New Jersey (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Finance.

The analysis, presented by Mr. WILLIAMS of New Jersey, is as follows:

STATEMENT BY THE HONORABLE HARRISON A. WILLIAMS, JR.

The comprehensive hearings on Social Security legislation, which the House Ways and Means Committee is now holding, represent a timely opportunity for a thorough review of the present and potential roles of our social security system in assuring economic security to the nation's older population.

I think you know that the Senate Special Committee on Aging has been concentrating its attention on this subject during the past year.

In a report to the Committee entitled, "Economics of Aging: Toward a Full Share in Abundance", a distinguished Task Force concluded that the Social Security System "has failed to keep up with the rising income needs of the aged." The Task Force also said:

"The existing social insurance system is a fast and effective way to deliver an income assurance that carries commitments for the future as well as for the current generation of aged."

My preface to the Task Force report issued on March 24, 1969, pointed out:

"The economic problems of old age are not only unsolved for today's elderly, but they will not be solved for the elderly of the future—unless the nation takes positive, comprehensive actions going far beyond those of recent years."

The hearings which we have held on the Eocnomics of Aging have added to my conviction that the retirement income problems of today and tomorrow will not be solved by adding a few dollars every two years to social security benefits. It is clear that more fundamental changes in the Social Security System are needed to serve as the foundation for economic security now and in the future.

I urge therefore that the House Ways and Means Committee initiate the study of these more fundamental changes.

The revised Social Security bill that Congressman Gilbert has introduced on October 21 provides an excellent focal point for this study. There are other essentials to broad reform of the Social Security System—consistent with the objectives of Congressman Gilbert's bill—that I urge be considered simultaneously. These essentials are included in five bills to amend the Social Security Act that I introduced on May 27, 1969. At that time I said:

"What I look for in the next few months is the evolution of an omnibus bill which will serve as a worthy vehicle for Congressional debate at the earliest possible date.

"Today I am not introducing that omnibus bill. But I am introducing several proposals which I regard as essentials without which the final bill would be incomplete."

The relationship of my earlier bills to the bill Congressman Gilbert has introduced follows:

S. 2270 A bill to amend Title II of the Social Security Act to permit the payment of benefits to a married couple on their combined earnings record where that method of computation produced a higher combined benefit.

S. 2270 would eliminate a social security inequity against married couples were the wives work. The Gilbert bill does not deal with this problem and hence the proposal of S. 2270 is also needed as part of comprehensive reform.

S. 2271 A bill to provide for the conduct of certain studies by the Secretary of Health, Education and Welfare with respect to the insurance program established by Title II of the Social Security Act.

S. 2271 proposes three studies. The first of these is an analysis of various approaches to automatically adjusting benefits, including a cost-of-living adjustment. The bill Congressman Gilbert has introduced provides that benefit amounts would be automatically adjusted annually for each 1 per cent or more of increase in the cost-of-living. There is still need for the broad study proposed by S. 2271 which would encompass methods of adjusting benefits to productivity and rising standards of living and would also assess the appropriateness of the use of a cost-of-living index based on the needs and spending habits of the total population.

The second study proposed by S. 2271 related to general revenue financing. The fact that the Gilbert bill provides for general revenue financing gives assurance that careful attention will be given to this subject.

The third study proposed by S. 2271 concerns the trend toward retirement before age 65 and the effects of that trend upon individual social security beneficiaries. The Gilbert bill would lessen the actuarial reduction imposed on persons claiming benefits before age 65 but it does not eliminate the need for a broad study of the trend toward early retirement.

S. 2272 A bill to amend title II of the Social Security Act to increase the amount of the insurance benefits payable to widows and widowers.

S. 2272 would no longer be needed because the bill introduced by Congressman Gilbert raises the proportion from 82½ per cent to 100 per cent of the worker's benefit where the survivor's benefit begins at age 65.

S. 2273 A bill to amend Title II of the Social Security Act to increase the amount of earnings permitted each year without deductions from benefits thereunder.

S. 2273 would no longer be needed. The Gilbert bill proposes the same liberalization of the "retirement test" and in addition provides for automatic adjustment of the annual exempt amount of earnings under the retirement test.

Since introduction of S. 2273 I have become even more aware of the impact of the present retirement test on the participation of older workers in gainful employment. I hope the House Ways and Means Committee will address itself to two questions: (1) If benefits are raised as contemplated by the Gilbert bill, would pressures for the elimination of the retirement test be reduced? and (2) What additional costs would be involved in eliminating the retirement tests proposed by the Gilbert bill and proposed by President Nixon?

S. 2274 A bill to amend Title II of the Social Security Act so as to provide that remarriage shall not disqualify an individual from receiving widow's or widower's benefits thereunder.

S. 2274 would still be needed to deal fully with the problems of reduction or elimination of social security benefits on remarriage.

The comparison, presented by Mr. WILLIAMS of New Jersey, is as follows:

COMPARISON OF NEW OMNIBUS PROPOSAL—IDENTICAL TO H.R. 14430—H.R. 14080, AND THE PRESENT SOCIAL SECURITY ACT

EXISTING LAW	NEW OMNIBUS PROPOSAL—IDENTICAL TO H.R. 14430	H.R. 14080—ADMINISTRATION PROPOSAL
(a) Basic Amounts	*1. Benefit Amounts*	
Benefits for a worker beginning at age 65, range from $55 to $218. Benefits for dependents and survivors are based on these amounts.	Benefit amounts for the worker would be increased in 2 steps of 20% each: Beginning and range: January 1970, $90 to $293. January 1972, $120 to $537. Benefits for dependents and survivors would be increased proportionately.	All benefits would be increased by 10 per cent in March 1970. The increased benefits for a worker would range from $61 to $250.
	(b) Automatic Adjustment	
No provision.	Thereafter, benefit amounts would be automatically adjusted annually for each 3 percent or more of increase in the cost of living.	Same as H.R. 14430.
	(c) Actuarial Reduction	
Benefits for workers, and their wives or husbands, who start getting benefits before age 65 are payable at reduced rates. The benefits are reduced to an amount that will on the average give the same total lifetime benefits that would have been paid if the benefits had not begun until age 65. A worker's benefit at age 62 is 80 percent of the benefit he would have gotten at age 65; a wife's or dependent husband's benefit is 75 percent of the amount payable at age 65.	Smaller reductions would be made. A worker's benefit at age 62 would be 85 percent of the unreduced amount; a wife's or husband's, 82½ percent.	No provision.

COMPARISON OF NEW OMNIBUS PROPOSAL—IDENTICAL TO H.R. 14430—H.R. 14080, AND THE PRESENT SOCIAL SECURITY ACT—Continued

EXISTING LAW—continued	NEW OMNIBUS PROPOSAL—IDENTICAL TO H.R. 14430—continued	H.R. 14080—ADMINISTRATION PROPOSAL—continued
	1. Benefit Amounts—Continued	
(d) Widow's and Widower's Benefits		
Benefits beginning at or after age 62 are equal to 82½ percent of the benefit amount that would be payable to the deceased spouse.	The amount payable where benefits begin at or after age 65 would be equal to 100 percent of the benefit amount that would be payable to the deceased spouse. Benefits beginning before age 65 would be reduced; where benefits begin at age 62 the benefit amount would be equal to 82½ percent of the benefit of the deceased spouse.	Same as H.R. 14430.
	(e) Disabled Widow's and Widower's Benefits	
Disabled widows and widowers can get benefits at or after age 50. Where benefits begin before age 62, the benefit amounts are reduced.	Benefits would be payable to a disabled widow or widower at any age. No reduction would be made in benefits that begin before age 62; the benefit amount would be 82½ percent of the deceased spouse's benefit, the amount payable under present law and under the bill to a widow who begins getting her benefits at age 62.	No provision for disabled widows and widowers.
	(f) Dependent Parents' Benefits	
Benefits are provided for the dependent parents of deceased workers.	Benefits would be payable to dependent parents of disabled and retired workers.	Same as H.R. 14430.
	(g) Disabled Child's Benefits	
Benefits are provided for the disabled child of a worker provided that the disability begins before age 18.	Benefits would be provided for the disabled child of a worker provided that the disability begins before age 22, rather than age 18.	Same as H.R. 14430.
	(h) Special age-72 payments	
Certain people who reach age 72 before 1972 and who have not worked under social security long enough to get regular benefits can get special payments of: $40 for an individual; $60 for a couple.	The special payments would be increased in 2 steps: Beginning: *Individual* *Couple* January 1970 $48.00 $72.00 January 1972 57.60 86.00	The special benefits would be increased to $44 for an individual and to $66 for a couple in March 1970.
	(i) Lump sum death payment	
Equal to 3 times the worker's benefit amount but not more than $255. Range: $165 to $255.	The $255 limit would be increased to $500.	No provision.
	2. Benefit computations	
All social security benefit amounts are based on the insured worker's average monthly earnings. Nearly all benefits are now based on average monthly earnings after 1950—figured over 5 less than the number of years after 1950 and up to the year the worker reaches age 65 (62 for women), becomes disabled or dies.	The number of years used in figuring the worker's average monthly earnings would be reduced by ⅓ beginning in December 1970, and to his best 10 years out of any 15 consecutive years beginning in December 1972. The average monthly earnings figured over the shortened periods would be adjusted to take account of the length of time the person worked under social security.	No provision.
Average monthly earnings for a man are determined over a period of years ending at age 65, while for a woman it is determined over a period of years ending at age 62, earnings after age 65, or 62, may be substituted for earnings before those ages.	Average earnings for men would be determined over a period of years ending at age 62 as is provided in existing law for women.	Same as H.R. 14430.
	3. Earnings test	
No benefits are withheld on annual earnings of $1,680 or less. For earnings up to $1,200 above $1,680 (i.e., $2,880), $1 is withheld for each $2 of earnings, and for additional earnings $1 is withheld for each $1 of earnings, except that no benefits are withheld for any month in which a person does not earn more than $140 in wages nor render substantial services in self-employment.	No benefit would be withheld on earnings of $1,800 or less. For earnings up to $1,200 above $1,800 (i.e., $3,000) $1 would be withheld for each $2 of earnings, and for additional earnings $3 would be withheld for each $4 of earnings, except that no benefits would be withheld for any month in which a person does not earn more than $150 in wages nor render substantial services in self-employment.	No benefits would be withheld on earnings of $1,800 or less. For earnings above $1,800, $1 would be withheld for each $2 of earnings. However, no benefits would be withheld for any month in which a person does not earn more than $150 in wages nor render substantial services in self-employment.
No provision for automatic increases.	Beginning in 1973, the $1,800 and $150 amounts specified above would be automatically increased as average earnings levels rise.	Same as H.R. 14430.
	4. Disability provisions	
Benefits cannot be paid until after a 6-month waiting period, and are payable only if the disability is expected to last for at least 12 months or to result in death.	The waiting period would be reduced from 6 to 3 months, and the requirement that the disability must be expected to last 12 months or to result in death would be eliminated.	No provision.
Workers must be unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment.	Workers aged 55–64 could qualify if unable to engage in substantial gainful activity (by reason of a medically determinable physical or mental impairment) in their regular work or in any other work in which they have engaged with some regularity in the recent past.	No provision.

COMPARISON OF NEW OMNIBUS PROPOSAL—IDENTICAL TO H.R. 14430—H.R. 14080, AND THE PRESENT SOCIAL SECURITY ACT—Continued

EXISTING LAW—continued	NEW OMNIBUS PROPOSAL—IDENTICAL TO H.R. 14430—continued	H.R. 14080—ADMINISTRATION PROPOSAL—continued
	5. Medicare	
	(a) Financing	
Hospital insurance is financed by contributions from employers, employees, and the self-employed. Supplementary medical insurance is financed by monthly premiums paid by enrollees and matched by the Federal Government. Moneys are deposited in, and benefits and administrative expenses are paid from, 2 separate trust funds, Eligibility for hospital insurance is based on eligibility for cash benefits (except for a special transitional provision) while medical insurance is available to virtually all those over 65.	Beginning July 1970, would eliminate supplementary medical insurance premiums and provide for financing both hospital and medical insurance programs through contributions of employers, employees, and the self-employed, and a matching contribution by the Federal Government. All moneys would go into a combined trust fund, which would pay the benefits and administrative expenses of both programs. Eligibility requirements for both hopsital and medical insurance would be identical to that required under existing law for hospital insurance.	No provision.
	(b) Medicare for disabled beneficiaries	
Medicare is available only to people age 65 and over (without regard to disability).	Would extend medicare, under the combined financing approach described above, to people under age 65 entitled to monthly cash disability benefits. Benefits would begin with the first month for which the individual is eligible for cash benefits and end 12 months after cash benefits cease.	No provision.
	(c) Drug coverage	
Generally, drugs are covered only if they are provided in a hospital or an extended-care facility. Drugs are covered on an outpatient basis only if the drug is one which cannot be self-administered.	Would extend coverage of out-of-hospital prescription drugs under hospital insurance program. Drugs covered would be selected by the Secretary with the advice of an expert committee provided for by the bill. Reimbursement would be made to providers of drugs (pharmacies, etc.) on the basis of acquisition and dispensing allowances. The beneficiary would be required to make a $1 co-payment per prescription or per refill.	No provision.
	6. Military service credits	
Military basic pay has been covered under social security since January 1, 1957. For service from September 1940 through December 1956 noncontributory credits of $160 a month are provided. For service after 1967 noncontributory credits of $100 a month are provided. There are no noncontributory credits for service performed from January 1957 through December 1967.	Noncontributory credits of $100 a month would be provided for service performed from January 1957 through December 1967.	Same as H.R. 14430.
	7. Contribution and benefit base	
The amount of annual earnings on which social security contributions are payable and that can be counted toward benefits is $7,800. No provision for automatic increases.	The amount of annual earnings to be counted for contribution and benefit purposes would be increased as follows: To $9,000 for 1970 and 1971; To $15,000 for 1972; and For years after 1972, the annual earnings amount would be automatically increased (in even-numbered years) as average earnings levels rise.	The amount of annual earnings to be counted for contribution and benefit purposes would be increased to $9,000 for 1972. Beginning in 1974 the base would be automatically increased as wage levels rise.
	8. Contribution rate schedule	

EMPLOYER-EMPLOYEE, EACH (PERCENT)

Year	OASDI	HI	Total
1970	4.20	0.60	4.80
1971–72	4.60	.60	5.20
1973–75	5.00	.65	5.65
1976–79	5.00	.70	5.70
1980–86	5.00	.80	5.80
1987 and after	5.00	.90	5.90

EMPLOYER-EMPLOYEE, EACH (PERCENT)

Year	OASDI	HI	Total
1970	4.20	0.60	4.80
1971–72	4.80	.65	5.45
1973 and after	5.10	.90	6.00

EMPLOYER-EMPLOYEE, EACH (PERCENT)

Year	OASDI	HI	Total
1970	8.4	1.2	9.6
1971–72	8.4	1.8	10.2
1973–74	8.4	1.8	10.2
1975–76	9.2	1.8	11.0
1977–79	9.6	1.8	11.4
1980–86	9.8	1.8	11.6
1987 and after	10.0	1.8	11.8

SELF-EMPLOYED (PERCENT)

Year	OASDI	HI	Total
1970	6.30	0.60	6.90
1971–72	6.90	.60	7.50
1973–75	7.00	.65	7.65
1976–79	7.00	.70	7.70
1980–86	7.00	.80	7.80
1987 and after	7.00	.90	7.90

SELF-EMPLOYED (PERCENT)

Year	OASDI	HI	Total
1970	6.30	0.60	6.90
1971–72	6.90	.65	7.55
1973 and after	7.10	.90	8.00

SELF-EMPLOYED (PERCENT)

Year	OASDI	HI	Total
1970	6.3	0.60	6.9
1971–72	6.3	.90	7.2
1973–74	6.3	.90	7.2
1975–76	6.9	.90	7.8
1977–79	7.0	.90	7.9
1980–86	7.0	.90	7.9
1987 and after	7.0	.90	7.9

	9. Federal contrbiutions	
No provision.	General revenue contributions equaling specified percentages of payroll taxes and gradually increasing over a 10-year period to an amount equal to approximately ⅓ the total cost of the program.	No provision.

Mr. HARTKE. Mr. President, I am especially pleased to cosponsor the social security legislation introduced today by the distinguished Senator from New Jersey (Mr. WILLIAMS). I view this legislation as an intelligent and broad-based attempt to cure many of the inequities that plague our present social security system.

With prices rising today at an annual rate of 7.2 percent, inflation is rapidly eating up the gains of average Americans. But it hits hardest at those groups which have a fixed income. The aged, especially, are cruelly caught in the vise of fixed income and rising costs. Like a prisoner living in an ever-contracting cell, the elderly American living on social security finds his payments increasingly inadequate. Millions of older Americans who worked hard for many years and paid their fair share into social security, now discover that the payments they receive keep them barely above the poverty level.

After a lifetime of supporting the economy of this country, aged Americans deserve to spend their few remaining years in modest dignity.

On June 17 of this year I introduced the Omnibus Social Security Amendments of 1969, S. 2424, which are intended as a modernization of the Social Security Act. In some respects that legislation parallels in its intended effect the legislation introduced here today. However, I believe it is incumbent on all of us in the Senate who hope for improvement in the Social Security Act to lend our support to any legislative efforts which hold out the promise of success.

S. 3101—INTRODUCTION OF A BILL TO PROVIDE FOR THE CARRYOVER OF ADMINISTRATION FUNDS FOR MENTAL HEALTH CENTERS

Mr. DOMINICK. Mr. President, our community mental health centers programs has hit a snag.

Most States are not receiving money, as we intended, to strengthen their staff with qualified personnel and prepare State construction plans.

The source of the difficulty is the varied interpretations which have been given to existing law.

Funds for construction of community mental health centers are allotted to the States under section 202(a) of the Mental Retardation Facilities and Community Mental Health Centers Construction Act. Construction money is available not only for the year in which allotted, but for the "next fiscal year."

Funds for administration of the State plan, however, are being given different treatment. Last year a new provision, section 403(c)(1) was added to the act to provide money to the States for the "proper and efficient administration" of the State construction plan. The amount for each State is 2 percent of the construction allotment for that State, or $50,000, whichever is lower. It can be used to pay up to one-half of each State's administration expenses. Unfortunately, no specific provision was included to permit use of administration money in the fiscal year following the year of allotment.

In short, construction money can carry over 1 additional fiscal year, but administration money—earmarked for qualified planning personnel and oversight—cannot. This seems even more unusual in this instance since the latter is a part of the former.

Aside from the question of carryover, a second roadblock has arisen. Officials at HEW hold that the administration money is only for reimbursement to the States for expenses already incurred. This is in spite of the fact that the law provides for payments "in advance" as well as by reimbursement.

The consequences have been serious, and surely were not contemplated by the Congress. For example, Dr. Hans Schapire, Chief of the Division of Mental Health for Colorado, writes:

> For many months the Mental Health Division of the Colorado State Department of Institutions had been in contact with staff of the Regional Office and with some staff of the National Institute of Mental Health, making repeated inquiries as to guidelines for administration of these funds. In states such as Colorado, the absence of qualified personnel on Central Office staff had been most keenly felt in the painful preparation of the original State Plan for the Construction of Community Mental Health Centers and of its annual revisions. We therefore felt that the 2% would afford us an opportunity to strengthen our state level staff for the purpose of assisting in the reparation of a reliable data base to be utilized in the preparation of the Plan.
>
> Finally on June 26, 1969, we received a letter from Dr. Alan I. Levenson, telling us what our state's allocation for fiscal 1969 was and encouraging us to prepare a brief plan to be submitted to the Regional Office prior to June 30, 1969. This last minute request, which gave us exactly four days including a weekend, in itself presented a hardship to our over-worked staff. However, we did what was requested of us, were able to obtain the support of the State Health Department, which is the single State agency administering the construction funds, and had our proposal in the hands of the Regional Office by June 30. Twenty-four hours later, we were informed by the Regional Office that the funds allocated to us could be used only to reimburse us for expenditures already incurred during the fiscal year 1969. Up to that time, the understanding of the Regional Office staff had been that the administrative allowance of 2% for fiscal year 1969 could be used to meet expenses in the 1970 fiscal year. The reimbursement arrangement was obviously of no help to the Mental Health Division and would have accomplished what Congress never intended to do, namely to replace State funds with Federal funds. Had we accepted the funds under these conditions, we would have had to turn them back to the General Fund of the State of Colorado.

But Colorado is not alone. Only 10 States were able to get the 2 percent administration money in fiscal 1969.

A bill I am introducing today would correct this situation by permitting the carryover of administration money for 1 year.

It might be said this is an advance funding provision to help States develop sound construction plans. Delay in appropriations means delay in State allotments. Indeed, it may be the second session of the 91st Congress before the Labor-HEW appropriations bill is sent to the White House. Four months of fiscal year 1970 have already gone by and the States are without the Federal share of money for administration.

We already have a similar carryover provision under 314(a)(4) of the Public Health Service Act to assist States in connection with comprehensive health planning.

Planning for Community Mental Health Centers deserves no less.

I send my bill to the desk for appropriate reference, and ask unanimous consent that it be printed in the RECORD.

The PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD in accordance with the Senator's request.

The bill (S. 3101), to amend section 403(c) of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, introduced by Mr. DOMINICK, was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the RECORD, as follows:

S. 3101

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the first sentence of section 403(c)(1) of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 is amended—

(1) by inserting "for any fiscal year" immediately after "title II";

(2) by striking out "during such year";

(3) by striking out "for a year" and inserting in lieu thereof "for any fiscal year"; and

(4) by striking out "for such year".

(b) Section 403(c)(1) of such Act is further amended by inserting immediately after the first sentence thereof the following new sentence: "Amounts made available to any State under this paragraph from its allotment or allotments under part A of title II for any fiscal year shall be available only for such fiscal year and for the following fiscal year".

S. 3102—INTRODUCTION OF A BILL RELATING TO FISHERY LOAN EXTENSION

Mr. MAGNUSON. Mr. President, by request, I introduce, for appropriate reference, a bill to amend section 4 of the Fish and Wildlife Act of 1956 as amended, to extend the term during which the Secretary of the Interior can make fisheries loans under the act.

The original authority was provided in 1956 because conventional long-term financing was not readily available to owners of fishing vessels. Banks and other private lending institutions feared the instability of loans based solely on commercial fishing earnings as collateral for repayment. The Small Business Administration expressed reluctance for the same reason.

The Secretary of the Interior was granted the authority as a result of the expertise which could be provided within that Department.

Since December 1956, annual losses have been held to less than 1 percent of the average outstanding balance. The situation confronting the fishing industry is virtually the same as in 1956 and the need is apparent for extension of this authority.

I ask unanimous consent that a letter from the Acting Secretary of the Interior, requesting this proposed legislation, be printed in the RECORD.

The PRESIDENT pro tempore. The

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

The bill (S. 3102) to amend section 4 of the Fish and Wildlife Act of 1956, as amended, to extend the term during which the Secretary of the Interior can make fisheries loans under the act, introduced by Mr. MAGNUSON, by request, was received, read twice by its title, and referred to the Committee on Commerce.

The letter, presented by Mr. Magnuson, is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, D.C., September 19, 1969.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft of a proposed bill "To amend section 4 of the Fish and Wildlife Act of 1956, as amended, to extend the term during which the Secretary of the Interior can make fisheries loans under the Act."

We recommend that this bill be referred to the appropriate committee for consideration and we recommend that it be enacted.

The authority for making fisheries loans was originally provided in 1956 because conventional long-term financing was not readily available to the owners of fishing vessels. Banks and other private lending institutions believed that the fishing industry was generally too unstable for loans that were based solely on fishing vessels as collateral and as a source of earnings for repayment. For the same reason applications for loans from the Small Business Administration had generally been declined. As a result, the authority for making loans of this type was given to the Secretary of the Interior so that expertise in fisheries could be provided. During the period since December 1956, when the first loan was approved, annual losses have been held to less than one percent of the average outstanding balance, largely due to the specialized servicing provided by the fishery specialists handling the program. The situation regarding the availability of credit is about the same as it was in 1956.

This proposed bill merely extends the expiration date of section 4 of the Fish and Wildlife Act of 1956 from June 30, 1970, to June 30, 1980.

The Bureau of the Budget has advised that there is no objection to the presentation of this draft bill from the standpoint of the Administration's program.

Sincerely yours,

RUSSELL E. TRAIN,
Acting Secretary of the Interior.

ADDITIONAL COSPONSORS OF BILLS

S. 1588

Mr. MAGNUSON. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from California (Mr. MURPHY) be added as a cosponsor of S. 1588, to amend the Public Health Service Act to provide for the establishment of a National Institute of Marine Medicine and Pharmacology in the National Institutes of Health.

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

S. 2802

Mr. MAGNUSON. Mr. President, I ask unanimous consent that, at the next printing, the name of the junior Senator from Rhode Island (Mr. PELL) be added as a cosponsor of S. 2802, to assist the States in establishing coastal zone management programs.

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

S. 2804

Mr. MAGNUSON. Mr. President, I ask unanimous consent that, at the next printing, the Senator from Wyoming (Mr. HANSEN) be added as a cosponsor of S. 2804, to permit a compact between the several States relating to taxation of multistate taxpayers.

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

S. 2893

Mr. MOSS. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Oklahoma (Mr. HARRIS) be added as a cosponsor of S. 2893, to amend the act of June 27, 1960—74 Stat. 220—relating to the preservation of historical and archeological data.

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

SENATE CONCURRENT RESOLUTION 44—SUBMISSION OF A CONCURRENT RESOLUTION TO AUTHORIZE THE PRINTING OF A MANUSCRIPT ENTITLED "SEPARATION OF POWERS AND THE INDEPENDENT AGENCIES: CASES AND SELECTED READINGS" AS A SENATE DOCUMENT

Mr. ERVIN (for himself and Mr. HRUSKA) submitted the following concurrent resolution (S. Con. Res. 44); which was referred to the Committee on Rules and Administration:

S. CON. RES. 44

Resolved by the Senate (the House of Representatives concurring), That the manuscript entitled "Separation of Powers and the Independent Agencies: Cases and Selected Readings", prepared for the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary by the Legislative Reference Service of the Library of Congress, be printed as a Senate document.

SEC. 2. There shall be printed for the use of the Senate Committee on the Judiciary one thousand additional copies of the document authorized by Section 1 of this concurrent resolution.

ADDITIONAL COSPONSORS OF A CONCURRENT RESOLUTION

SENATE CONCURRENT RESOLUTION 41

Mr. MANSFIELD. Mr. President, on behalf of the senior Senator; from Alabama (Mr. SPARKMAN), I ask unanimous concent that, at the next printing, the names of the Senator from California (Mr. MURPHY) and the Senator from Pennsylvania (Mr. SCOTT), be added as cosponsors of Senate Concurrent Resolution 41, urging the adoption of policies to offset the adverse effects of governmental monetary restrictions upon the housing industry.

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

ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS OF 1969—AMENDMENTS

AMENDMENT NO. 261

Mr. WILLIAMS of New Jersey. Mr. President, I submit today an amendment to S. 2218 in order to amend Public Law 81–874, the act which provides aid to school districts where the student population is increased by Federal activity. My amendment would expand the definition of Federal activity to include an influx of refugees admitted from another nation to this country. This is an amendment to S. 2218, amendments to the Elementary and Secondary Education Act of 1965.

This measure would amend section 3(b) of the act by authorizing Federal assistance to school districts where free public education was provided to the children of refugees, as defined by the Migration and Refugee Assistance Act of 1962. It also amends section 3(c) of the act by stipulating that such Federal assistance shall be made available only in cases where the number of refugee children accounts for 20 percent or more of the total student population.

Mr. President, this amendment is a companion measure to a bill introduced in the House of Representatives by Representative DOMINICK V. DANIELS, Democrat, 14th District, of New Jersey. Representative DANIELS' district includes Union City and West New York, N.J.: two towns where a sudden and dramatic influx of Cuban refugees has put a tremendous strain on public educational facilities. The need of these communities is great, and the educational need of the children of these refugees from Castro's Cuba is greater still.

In point of fact, the resettled refugee population of Union City is greater than that found in 44 of the 50 States. Because of these extra burdens on the educational system, children find themselves going to school in attics, basements, and even a swimming pool. The school districts must maintain bilingual instructors. In many cases, learning disadvantages are compounded; the children are illiterate in both Spanish and English.

In the face of these serious problems, the Federal Government must assume some of the burden of educating the children of refugees. Entry into this country was a demonstration of American compassion and responsibility for oppressed peoples; now, we must back up our concern with assistance to the school districts where the burden is most acute.

Mr. President, the school districts of Union City and West New York have prepared some statistical materials to illustrate the situation. I ask that they be printed in the RECORD at this point, along with the text of the amendment.

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

The amendment (No. 261) was referred to the Committee on Labor and Public Welfare, as follows:

AMENDMENT NO. 261

At the proper place in the bill, insert the following:

"SECTION 1. Section 3(b) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is amended by striking out the second sentence and inserting in lieu thereof the following: 'The Commissioner shall also determine the number of children (other than children to whom subsection (a) or any other provision of this subsection applies) who were in average daily attendance at the schools of a local educational agency and for whom such agency provided free public education, during such fiscal year,

and who, while in attendance at such schools resided with a parent who was, at any time during the three year period immediately preceding the fiscal year for which the determination is made, a refugee who meets the requirements of section 2(b)(3)(A) and (B) of the Migration and Refugee Assistance Act of 1962.'.

"SEC. 2. Section 2(c)(2) of such Act is amended (1) by inserting before 'subsection (b)' both times it appears the following: 'the first sentence of', and (2) by inserting after 'to whom such subsection' the following: 'or such sentence'.

"SEC. 3. Section 3(c) of such Act is amended by inserting after paragraph (2) the following new paragraph:

"'(3) No local educational agency shall be entitled to receive any payment for a fiscal year with respect to a number of children determined under the second sentence of subsection (b) unless the number of children who were in average daily attendance to whom such sentence applies amounts to 20 per centum or more of the number of children who were in average daily attendance during such year and for whom such agency provided free public education, but in determining the number of such children under such second sentence no child shall be counted with respect to whose education a payment was made under section 2(b)(4) of the Migration and Refugee Assistance Act of 1962.'

"SEC. 4. (a) The center heading of section 3 of such Act is amended by adding at the end thereof '; REFUGEE CHILDREN'.

"(b) The center heading of subsection (b) of section 3 of such Act is amended by adding at the end thereof '; REFUGEE CHILDREN'."

The statistical material, presented by Mr. WILLIAMS of New Jersey, is as follows:

I. DATA SUBMITTED BY BOARDS OF EDUCATION, UNION CITY AND WEST NEW YORK, HUDSON COUNTY, N.J.

City	Total public school enrollment	Number children of Cuban descent	Number Cuban children whose parents are citizens	Number Cuban children whose parents are refugee/noncitizens
Union City	8,655	3,452	390	3,062
West New York	6,102	3,260	386	2,874
Total	14,757	6,712	776	5,936

Survey: Sept. 15, 1969, total public school enrollment, number of children of Cuban descent, number of Cuban children whose parents are citizens, number of Cuban children whose parents are refugee/noncitizens.

Percent of Cuban students in total public school population as of Sept. 15, 1969 ---------- 45.4

Percent of Cuban students whose parents are citizens of the United States_ 12

Percent of Cuban students whose parents are refugee/noncitizens_____ 88

UNION CITY BOARD OF EDUCATION, UNION CITY, N.J.

Elementary schools	Total enrollment	Number children of Cuban descent	Number children whose parents are citizens	Number children whose parents are refugee/noncitizens
Edison	1,337	424	61	363
Gilmore	565	141	12	129
Hudson	623	146	11	135
Jefferson	817	274	43	231
Roosevelt	1,100	681	86	595
Washington	1,035	542	77	465
R. Waters	1,100	553	49	504
Total	6,587	2,761	339	2,422
High schools				
Emerson	995	508	7	501
Union Hill	1,073	183	44	139
Total	2,068	691	51	640
Grand total	8,655	3,452	390	3,062

Survey: As of Sept. 15, 1969, total public school enrollment, number children of Cuban descent, number of children whose parents are citizens, number of children whose parents are refugee/noncitizens.

Percent of Cuban students in Union City public school population as of Sept. 15, 1969 ---------- 40

Percent of Cuban students whose parents are citizens of the United States__ 12

Percent of Cuban students whose parents are refugee/noncitizens_____ 88

CENSUS: SPANISH SPEAKING PUPILS, WEST NEW YORK PUBLIC SCHOOLS, SEPTEMBER 24, 1969

[Spanish speaking includes those who speak only Spanish as well as those who can communicate in English]

Elementary school	Total enrollment	Number children of Cuban descent	Number children whose parents are citizens	Number children whose parents are refugee/noncitizens	Number of Spanish Americans	Number of Cuban Americans	Number of Puerto Ricans	Spanish total
School No. 1	686	238	48	190	13	5	19	275
School No. 3	475	161	18	143	18	12	16	207
School No. 4	751	446	48	398	13	12	14	485
School No. 5	1,496	1,145	116	1,029	36	11	31	1,223
H. L. Bain	1,095	498	57	441	42	18	14	572
Elementary total	4,503	2,488	287	2,201	122	58	94	2,762
High school	1,599	772	99	673	51	20	36	879
Grand total	6,102	3,260	386	2,874	173	78	130	3,641

Percent of Cuban students in West New York public school population as of Sept. 15, 1969 ---------- 54

Percent of Cuban students whose parents are citizens of the United States ---------- 12

Percent of Cuban students whose parents are refugee noncitizens_____ 88

II

1. Forty-four states have fewer resettlements than Union City. The exceptions are: New York, New Jersey, California, Illinois, Massachusetts, Florida, and Puerto Rico.

2. Four states have more than Florida, which has 8,037. The following states have more cuban refugees than Florida: New York (62,591), New Jersey (38,901), California (27,088), Illinois (16,362).

3. U.S. cities with more than 1,000 Cuban refugees:

State	Number of resettlements	Percent of 1960 population
California:		
Los Angeles	18,293	0.74
San Francisco	1,388	.18
Colorado: Denver	1,117	.22
Washington, D.C.	2,076	.27
Florida: Tampa	2,657	.96
Georgia: Atlanta	1,129	.23
Illinois: Chicago	15,062	.42
Louisiana: New Orleans	4,813	.76
Massachusetts: Boston	3,721	0.53
Nevada: Las Vegas	1,055	1.63
New Jersey:		
Elizabeth	3,378	3.13
Hoboken	1,110	2.29
Newark	18,110	4.46
Union City	6,153	11.79
West New York	3,740	10.52
New York:		
Bronx	3,088	.21
Brooklyn	6,706	.25
New York	42,340	2.49
Pennsylvania: Philadelphia	1,762	.08
Texas:		
Dallas	1,518	.22
Houston	1,171	.12

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on October 31, 1969, he presented to the President of the United States the following enrolled bills and joint resolutions:

S. 73. An act to amend the act entitled "An act to authorize the sale and exchange of isolated tracts of tribal land on the Rosebud Sioux Indian Reservation, South Dakota";

S. 267. An act for the relief of Lt. Col. Samuel J. Cole, U.S. Army (retired); and

S.J. Res. 164. Joint resolution to provide for a temporary extension of the authority conferred by the Export Control Act of 1949.

DRAFT HEARINGS—SCHEDULE CHANGE

Mr. KENNEDY. Mr. President, may I announce a schedule and witness change for the hearings on the administration of the Selective Service System. The Subcommittee on Administrative Practice and Procedure began these hearings last week, and will continue them through next week.

I previously announced that the hearings on Tuesday, November 4, would start at 10:30 a.m. Instead, the hearings will begin at 2 p.m., and will be held in room 4200. The previously announced witnesses for November 4, Prof. Gary Wamsley and Prof. James Davis, will appear at that time.

In addition, Mr. Marion S. Barry, executive director of Pride, Inc., of Washington, D.C., will appear as a witness.

JACK ANDERSON ARTICLE ON THE MENACE OF THE PRIVATE PLANE BASED ON IMPERFECT RESEARCH

Mr. DOMINICK. Mr. President, Jack Anderson has given us another example of the shallow depth of the research on which he bases some of his articles that are given nationwide publication. In the newspaper supplement, Parade, of Sunday, October 26, Mr. Anderson's article was titled: "The Growing Menace of the Private Plane." It contains such scare statements as the following opening lines:

An unseen pilot hovers in the crowded skies above the nation's airports. He is there with the official consent of the U.S. government. His name is instant death.

The next time this sinister pilot strikes, the chances are he will be flying a private plane.

Further on in the article, he really demonstrates his disdain for the facts in discussing the tragic accident which occurred on September 9, 1969, near Indianapolis, Ind. Anderson states, flatly:

It was a student, with only 38 hours in the air, who rammed into an airliner in September over the Indianapolis airport while making a practice pass at the runway. The student and 82 persons aboard the airliner were killed.

If he had bothered to check the facts, Jack Anderson would have found that the accident did not happen "over the Indianapolis airport," as he says it did, but actually happened 20 miles away from the airport, a considerable distance outside the traffic pattern of that airport.

Mr. Anderson's language conjures up an image of the private plane deliberately diving into the airliner, seemingly in a race to see who would reach the runway first. Again, this is not borne out by the facts uncovered by the Department of Transportation investigation following the accident. The subsequent findings of this investigation reveal that it is more likely that the descending airliner, flying several times faster than the private plane, struck the light plane which had been flying at a lower altitude than the airliner.

Anderson further demonstrates his lack of knowledge on aviation matters when he makes the following statement:

Few private planes are equipped with radar, to act as extra eyes for the pilot. And few private planes carry transponders, which return a strong, clear signal to air controllers on the ground.

Mr. President, not even the radars carried on our largest commercial airliners are designed to spot other aircraft. Unlike the large, ground-based radars, airborne radar is designed and used to help the pilot avoid bad weather and navigate around thunderstorms.

With regard to the number of planes equipped with transponders, Mr. Anderson should have checked the breakdown between commercial and private aviation. He would have found that 98 percent of all the aircraft in the country consist of general aviation, very few of which are used purely for pleasure. These general aviation aircraft owners have now purchased 10 times as many transponders as all the airline transports in the world added together. If every general aviation aircraft owner with interest in using any one of the 120 proposed hub airports should buy and use a transponder on IFR flights, there would be a complete breakdown in the air traffic control systems. At the present time, if a pilot is flying VFR in the New York or Boston areas with a transponder and asks for radar advice for collision avoidance, the ground operator generally says that they are too busy to give it and then asks that the pilot turn off his transponder as it is interfering with IFR operations. If this is true at the present time, imagine the chaos that would exist if the proposed FAA regulation is adopted requiring all private planes to be equipped with and use a transponder around all hub airports.

The aviation editor of the Wichita Eagle and Wichita Beacon, Mr. Arnold Lewis, did some in-depth checking on the charges of villainy made against private aviation by Mr. Anderson and came up with some interesting findings. For one thing, he discovered that the photograph at the beginning of the Anderson article was apparently intended to depict five of the types of aircraft which constitute "The Growing Menace of the Private Plane." Checking the official FAA records on each of the aircraft pictured, Mr. Lewis found that each one was equipped with transponder, radar, distance measuring equipment, autopilot, redundant communications, and navigation systems, and "in essence were equipped comparably or better than the two commercial jetliners shown in the background."

Mr. Lewis also points out that Jack Anderson appears uninformed on exactly what general aviation is and the progress being made through cooperative efforts of the entire aviation community and Federal Government toward a modern and workable airport-airways system. Or, that private planes, serving 10,000 U.S. airports annually carry as many or more people than all domestic commercial airlines using approximately 650 airports. He points out that indeed, these private planes are waiting for the navigation, air traffic control, and Federal communications system to catch up so equipment they have installed can be used on any airport in the United States. Most businesses and corporations utilizing their own private aircraft today also are heavy users of the commercial airlines. Therefore, whether public or private, air safety is of vital concern to everyone.

Mr. President, I think that Mr. Anderson's article for Parade magazine is a good example of the old axiom which says: "A little knowledge is a dangerous thing." It is doubly true when the shallowness of that knowledge appears in public print.

I ask unanimous consent that Mr. Anderson's article be printed in the RECORD, together with the very well done critique by Mr. Arnold Lewis entitled, "Is Private Plane Villain of Sky, or Victim of Outdated System," published in the Wichita Eagle of October 26, 1969, and a letter to the editor published in the Washington Post of Sunday, November 2, 1969, written by Fletcher Cox, Jr., assistant director, publications and promotion, National Business Aircraft Association, which I believe is very pertinent.

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

[From Parade, Oct. 26, 1969]

THE GROWING MENACE OF THE PRIVATE PLANE

(By Jack Anderson)

WASHINGTON, D.C.—An unseen pilot hovers in the crowded skies above the nation's airports. He is there with the official consent of the U.S. government. His name is instant death.

The next time this sinister pilot strikes, the chances are he will be flying a private plane. In 1968, there were 38 midair collisions, all involving at least one private plane. In another 1128 reported near-misses the overwhelming preponderance of these brushes with death involved private planes. And aviation officials are afraid to guess how many more close calls were never reported. Over the nation's six busiest airports, private aircraft were present in four out of every five near-misses.

Yet the Federal Aviation Administration—the traffic police of the skies—still allows small private planes to cut into the commercial flight patterns and to use the facilities of our great jetports. This is akin to permitting cyclists to use the busy freeways with full rights to take over the traffic lanes.

Today, with airline loads at an all-time peak and private aviation mushrooming, pilots live in constant fear of the airborne fender scrapings that can take a hundred lives in a flash. As airplanes continue to supplant other carriers as the key means of intercity transportation, the dangers multiply. Spokesmen for both the airlines and private aviation say there are solutions to the crisis. But they insist the FAA lacks the courage to order them.

The most timid moves by the FAA to limit the use of major airports has brought storms of protest from the Aircraft Owners and Pilots Association, an effective, heavily financed lobby of private fliers. Whenever they believe their freedom of the skies is in jeopardy, they don't hesitate to use their money and muscle, through AOPA, to bring pressure upon the FAA.

AOPA headquarters has invested heavily in modern equipment, including new-generation computers, to maintain its membership lists and to handle its mails. Yet many private planes, whose owners help pay for AOPA's fancy clerical equipment, aren't equipped to meet the dangers in the skies. It is also beyond contention that many private pilots lack the skill and training to navigate safely in the traffic jams around the big airports. Yet they cut in and out of the traffic patterns, and their presence creates a constant peril.

Meanwhile, more and more private citizens are obtaining pilots' licenses. There are already more than 125,000 private planes in the U.S., and experts expect the number to double in the next decade. Some are used for sport, others for commerce.

While commercial pilots constantly work to keep and improve their skills—they would lose their jobs if they didn't—many weekend fliers are unaware of new regulations and procedures. "It is one thing to be able to learn to fly," said one aviation official, "but that isn't enough. In today's air environment, you must also know the ever-changing rules for flying in terminal airspace."

Many of the FAA rules smack of the days of open cockpits and dashing men in leather helmets and flowing scarves. Air routes are marked by navigation aids or visual checkpoints. If two small planes should be headed for the same destination, each would be expected to fly over the same checkpoints. It is much like sailing a boat from one buoy to another. Should a number of planes con-

verge on the checkpoint at the same time, at roughly the same altitude, danger is inescapable.

Few private planes are equipped with radar, to act as extra eyes for the pilot. And few private planes carry transponders, which return a strong, clear signal to air controllers on the ground. Many private pilots are so unskilled or careless in the use of their radios that they fail to keep the controllers informed of their positions in the air.

Probably the greatest threat to air safety is the private pilot who decides to go on a lark in the skies after drinking. Commercial pilots aren't allowed to drink before flying. But autopsies performed on pilots from 692 fatal private plane crashes in 1968 indicate that as many as 200 had been drinking. Of these accidents, officials said that alcohol was the cause of 45 "beyond a shadow of a doubt." No alcohol was found in the blood of commercial pilots killed in crashes.

The FAA statistics take into account only those private pilots whose blood-alcohol level was .05 percent or higher. Because the effects of alcohol are multiplied at high altitudes, one drink—which would not bring the alcohol level to .05 percent—is often enough to slow a pilot's reflexes.

Airline travelers have frequently been annoyed when their takeoff was held up while a small, private ship taxied up to the runway. But private planes contribute much more distress to the airlines than just delays. FAA files reveal that many crashes and near-crashes are caused by pilots who are preoccupied with training lessons. Strangely enough, FAA rules allow students to practice in the most heavily traveled airlanes. It was a student, with only 38 hours in the air, who rammed into an airliner in September over the Indianapolis airport while making a practice pass at the runway. The student and 82 persons aboard the airliner were killed.

IT MUST STOP

Commercial pilots are acutely aware of the dangers surrounding them. "The mix of large and small planes cannot continue," said Robert Rockwell, a Northwest-Orient captain who also flies his own small plane. " A lot of these little planes are flown by people with little experience, and they are plenty busy just keeping their plane at the right speed and in the right place at the right time. The air is full of smoke and industrial haze, and it's not always easy to spot another plane, especially a small one. Say I want to fly my light plane from Minneapolis to Chicago. It may cost me a little time, but I'll stay away from O'Hare (one of the world's most congested airports) and fly around to an outlying field. I have every right to land at O'Hare, but I don't want to get in the way. It isn't prudent."

As always, the AOPA is vocal in its defense of its members. "For some reason, whenever there's a midair collision between a large commercial liner and a small private plane, it's always the small plane that crashes into the big one, never the other way around, at least according to the press and politicians," Charles Spence, an AOPA official, charged. "In fact, the collision is often the fault of the commercial airliner, as recent reports of the National Transportation Safety Board investigations show. Unfortunately, it takes from a year to a year and a half from the time of a collision until the NTSB's investigation is completed; by then the crash is no longer news and nobody cares."

Spence cited two crashes—one in Urbana, Ohio, in 1967 involving a commercial jet and a small plane; another in Milwaukee, Wis., in 1968 between a commercial prop plane and a private craft. Both were eventually blamed on the commercial pilots.

The overwhelming majority of collisions, however, are traced to errors by private pilots. Indeed, most take place between two private planes. And conditions at many airports, which handle only private craft, are little short of chaotic. Pilots land their planes at whim, often cutting each other off in a race for the runway.

The FAA proposed last year that only planes actually landing or taking off be allowed in the airspace around the nation's 33 busiest airports. The suggestion brought immediate growls of displeasure from the AOPA. The FAA promptly caved in, putting the ban on only five airports. That ban expires in December.

FAA BLAMED

One of the people ouraged by FAA's lack of action is Erny Tannen, president of a broadcasting chain. Following the Indianapolis collision, he wrote FAA Administrator Jack Shaffer: "The FAA is clearly responsible for this and other crashes because of its refusal to take action on recommendations which had been made to the FAA months ago. Some of these recommendations do not require money—just the guts to require small planes to fly in patterns that will keep them completely away from the approaches of the large commercial airplanes." Mr. Tannen's interest is understandable. His son, Richard, was a passenger on the downed Indianapolis airliner.

[Recently, under mounting pressure, the FAA moved to cut midair crashes by proposing restricted zones around the nation's 22 busiest airports in which only electronically equipped aircraft would be permitted to fly under strict air traffic control.]

Meanwhile, every air traveler in the nation moves through the clouds in constant danger of meeting that sinister unseen pilot in a private plane.

[From the Wichita (Kans.) Eagle, Oct. 26, 1969]

IS PRIVATE PLANE VILLIAN OF SKY, OR VICTIM OF OUTDATED SYSTEM?

(By Arnold Lewis)

The private plane—menace or whipping boy?

Despite continuing progress toward developing and updating an antiquated national airport-airways system, the name-calling goes on.

Latest in the periodic verbal bursts of flak at so-called general aviation appears in the Parade Magazine Sunday supplement of The Wichita Eagle and The Beacon.

Authored by Drew Pearson's protege, Jack Anderson, "The Growing Menace of the Private Plane" labels general aviation as primary villain in the turmoil created by overtaxed airports and navigational airways.

"His name is instant death," the article said of the private pilot hovering "unseen . . . in the crowded skies.

Anderson maintains private pilots are involved in four out of five near-misses over the nation's six busiest airports and says they heavily finance a Washington lobby to preserve freedom of the skies.

Apparently unknown to Anderson is exactly what general aviation is and the progress being made through cooperative efforts of the entire aviation community and federal government toward a modern and workable national airport-airways system.

In 1968 there were more than 124,000 "private" planes in the U.S. civil fleet, ranging from small, two-place Cessna 150s in the $10,000 price range, on up to the $4 million to $5 million Boeing 737 business jet.

Serving some 10,000 U.S. airports, private planes annually carry as many or more people than all domestic commercial airlines using approximately 650 airports.

At the upper end of the general aviation fleet, the sophisticated business jet serves as just that, a business tool for corporations large and small, its value often being compared with that of a computer.

At the lower end, two-place trainers turn out an ever-increasing number of pilots, many going on to serve as pilots for the nation's airlines.

In between, uses to which general aviation aircraft are put are as wide and varied as the imagination of their owners.

They patrol petroleum pipelines, provide quick transportation for the sick and injured, haul freight, double the effectiveness and mobility of the businessmen, serve as aerial taxicabs and provide recreation.

The crux of the problem facing aviation today, however, is capacity. Airport and airway navigational and control facilities have just not kept pace with increased aircraft fleets and increased utilization.

Contacted by The Wichita Eagle for their reaction to the Parade article were Frank S. Hedrick, president of Beech Aircraft Corp.; Dwane L. Wallace, chairman and chief executive of Cessna Aircraft Co., and Malcolm Harned, executive vice president and general manager of Lear Jet Industries Inc.

All agreed that use of the nation's airspace was a partnership proposition and noted that considerable rapport had developed this year between general aviation and the public air carriers.

Industrial and government officials are clearly aware of the solution: more concrete for existing airports, new satellite airports for general aviation, additional air traffic controllers, more modern radar and tracking equipment on the ground and in the air, improved navigation systems to provide better separation between aircraft and specific approach and departure corridors at major airports (to segregate aircraft according to class and performance.)

The question being pursued by all parties involved is how to accomplish these goals and to decide who is going to pay the bill—a ticklish and lengthy process when dealing with powerful and varied interest groups.

All sides in the issue understand, however, they will have to "give" a little, both in terms of dollars and in terms of some of the "freedoms" they now enjoy in operation of their aircraft.

Over the long range, the Nixon administration's airport-airways bill, currently before Congress, would go far to relieve the congestion problem.

Based on user charges to finance a major portion of the program, the bill would assess general aviation nine cents per gallon on all aviation fuel (currently two cents nonrefundable), including jet fuel, which is not now taxed federally. It would impose an 8 per cent tax on all airline tickets (currently 5 per cent) and a 5 per cent tax on all air freight way bills.

One alternate proposal has been made by the House Ways and Means Committee, which would include an annual registration fee to all aircraft according to weight, in addition to a seven-cents per gallon fuel tax for general aviation.

It appears, now, that the Nixon bill, in one form or other, will make it through Congress, possibly this year.

In the more immediate future, the Federal Aviation Administration (FAA) is attempting to formulate regulations which would segregate different classes of aircraft in high density hub airport areas to reduce the possibility of in-flight collisions.

Included is a proposal that would require all aircraft be equipped with transponders—an electronic device which returns a positive signal from the aircraft to interrogating ground radar, thus facilitating positive air traffic control identification.

In-flight collisions, such as that of Sept. 9 between an Allegany Airlines DC-9 and a Piper Cherokee which claimed 83 lives, add new fuel to the airport-airways issue.

And, when a small general aviation aircraft is involved, the finger invariably is pointed toward the "little" plane by initial press reports.

Reaction holds the light aircraft had no right to be there, regardless who was at fault.

The Parade article declared: "It was a student with only 38 hours in the air who

rammed into an airliner in September over the Indianapolis airport while making a practice pass at the runway."

Actually the accident occurred some 20 miles southeast of the airport. Subsequent findings suggest it was the airliner that struck the light plane.

In an analysis of the 38 in-flight collisions occurring in the United States during 1968, the National Transportation Safety Board (NTSB), which investigates all fatal air accidents, found FAA's air traffic control system was involved in at least seven.

And in all seven, traffic congestion, control tower visibility and human performance limitations, plus inadequacy of VFR (aircraft operating under "see and be seen" visual flight rules) traffic flow procedures were found contributory to the chain of events leading up to collision.

"In-flight collisions are very rare at airports where traffic flow is directed in a positive and orderly manner," the NTSB declared.

In the analysis, NTSB said six of the 38 collisions occurred on or above an airport, 12 within the airport traffic pattern, five within two miles of the airport and 10 accidents more than five miles from the airport.

The collisions involved 76 individual aircraft and 71 fatalities, although passengers and crew members totaled 246.

Of the aircraft, three were commercial airliners, one a military fighter and two were gliders—the remainder being powered general aviation aircraft. One collision, incidentally, involved two planes being used to herd horses in Wyoming.

Twenty-one aircraft were described as being on pleasure flights, while 20 were engaged in some form of flight instruction.

The NTSB concluded:

"While there was no evidence of adverse weather having been a significant factor in any of the 38 in-flight collision accidents, haze and-or smoke were likely to have been in the area in six instances; precipitation, showery in nature, was probably in the general area in 11 cases.

"All 38 collisions, however, occurred during daylight hours under VFR conditions (ceiling above 1,000 feet and visibility more than three miles).

"It was noted most collisions occurred in areas and periods of greatest general aviation activity and the most likely time and place for collisions to occur would be on bright clear Sunday afternoons in August at uncontrolled airports," NTSB said.

A common misconception among laymen, including the Parade writer, is that radar equipment on aircraft is used for spotting other aircraft.

Stated Parade: "Few private planes are equipped with radar, to act as extra eyes for the pilot."

Nor do any commercial airliners have these extra "eyes." Aircraft radar is for weather avoidance and does not detect other aircraft.

Parade also pointed out that the "private pilot who decides to go on a lark in the skies after drinking . . . is . . . probably the greatest threat to air safety."

It added that autopsies performed on pilots from the 692 fatal general aviation accidents during 1968 "indicate that as many as 200 had been drinking. Of these accidents, officials said that alcohol was the cause of 45 'beyond a shadow of a doubt.'"

As recently as September, however, Bernard Boyle, NTSB chief of the Safety Analysis Division, said he believed only a small percentage of private pilots fly after drinking.

In each of the past three years, he said alcohol has been attributed to 6½ to 7 per cent of fatal private plane crashes.

By way of comparison, the National Safety Council states that alcohol probably is a factor in at least half of all fatal motor vehicle accidents.

Actually, the accident rate of general aviation aircraft is decreasing—5,069, or 1.36 accidents per every one million airplane miles flown in 1968, compared with 6,115, or 1.78 accidents per million miles flown in 1967.

The number of fatal accidents, however, increased from 603, or .18 per million miles flown, in 1967, to 692, or .19 per million miles flown in 1968.

At the same time there was a 9 per cent increase in the general aviation fleet—from 114,186 in 1967, to 124,237 in 1968—and a corresponding 9 per cent increase in the miles flown by general aviation aircraft, according to Aviation Data Service (ADS), Wichita.

Again for comparison, some 26 million (25.5 per cent) of the nation's 102.1 million motor vehicles in 1968 were involved in accidents accounting for 55,200 motor vehicle deaths, according to National Safety Council figures.

There were 14.5 accidents per one million miles driven by motor vehicles and .04 fatalities per million miles driven.

The FAA categorizes all nonairline and nonmilitary aircraft in the United States as general aviation, or "private" aircraft. Its own fleet numbers more than 100.

Of the 24 million general aviation hours flown in 1968, as a point in fact, 69 per cent were for business purposes and 31 per cent could be labeled "personal use of aircraft," according to ADS.

The picture appearing at the top of the Parade article apparently was intended to depict the "private" plane menace.

A check of records maintained on each aircraft flown in the civil system revealed that all aircraft pictured have transponders, radar, distance measuring equipment, autopilots, redundant communications and navigation systems and, in essence, were equipped comparably or better than the two commercial jetliners shown in the background.

The five "private" aircraft in the picture represent a transportation investment by "private" businesses of $7.2 million, of which nearly $1 million is represented by the cost of electronic communication and navigation equipment alone.

Indeed, these private planes are waiting for the navigation, air traffic control and federal communications system to catch up so equipment they have installed can be used on any airport in the U.S.

Most businesses and corporations utilizing their own private aircraft today also are heavy users of the commercial airlines.

Whether public or private, air safety is a vital concern to all.

[From the Washington (D.C.) Post, Nov. 2, 1969]

PRIVATE PLANES AND THEIR SAFETY RECORD

Your edition of Oct. 26 carried the Parade Magazine which published "The Growing Menace of the Private Plane," by Jack Anderson.

Actually, the greatest menace to aviation safety is this kind of inaccurate and sensational writing. It will be a service to the public and to aviation if you will publish the following attempt to undo the damage done by Mr. Anderson and Parade. Here are just five errors of fact:

1. The private airplane and airliner did not collide over the Indianapolis airport, but some 20 miles away from the airport.

2. The private airplane's pilot was not "making a practice pass at the runway." He was making a cross-country flight on a flight plan. So far as has been determined, he was just where he was supposed to be.

3. Airborne radar in civil aircraft does not act as "extra eyes for the pilot." It does not picture other aircraft. Its purpose is to pick out areas of heaviest precipitation in thunderstorms.

4. The FAA "ban" at five airports does not reserve the surrounding airspace only for planes landing or taking off. The "ban" is actually a rule which limits the number of landings and takeoffs each hour under instrument flight rules. FAA instituted the rule to minimize delays (which it has not done), rather than for safety.

5. Present rules do not allow "small private planes to cut into the commercial flight patterns." Federal Air Regulations specifically prohibit any aircraft's "cutting into" the path of any other. Incidentally, there are no "commercial flight patterns."

Both Parade and Mr. Anderson have prejudged the findings of the National Transportation Safety Board, which is trying to establish specifically what did happen in that tragic collision.

This kind of sensationalism threatens aviation safety because it leads to unthinking demands that something—*anything!*—be done, and to hasty steps on the part of FAA in response to public pressure. FAA is rushing ahead right now with its proposed high density "terminal control area" rule, the application of which could actually increase hazards near some airports if not done carefully and deliberately. The "terminal control area" rule will put a greatly expanded umbrella of controlled airspace around certain major hub airports. But aircraft bound for other airports under these control umbrellas may have the airspace they use severely curtailed, in which case the danger of collisions at those airports will increase.

"Private planes" run the gamut from Piper Cubs to intercontinental business jets.

"Private planes" includes the 2,500 aircraft used by members of the National Business Aircraft Association. These aircraft are flown by professional pilots with a minimum of a commercial license and instrument rating. Most of these aircraft have electronic equipment equal to that of the airliners. Many have equipment superior to airliners', and more of it.

Recently, 141 corporate members of NBAA received Flying Safety Awards recognizing the accumulation of more than 552-million accident-free flying miles. More than 530 individual pilots of member companies have flown more than 1 million safe miles, and their cumulative total tops 890 million safe miles.

Mr. Anderson's article is a libel upon such professional pilots of private planes. May we hope for an end to sensationalism about aviation safety and, instead, see some thoroughly researched, well thought out articles to help us reach our major goal of fair, efficient, and safe use of airspace and airports?

FLETCHER COX, Jr.,
Assistant Director, Publications and Promotions, National Business Aircraft Association.
WASHINGTON.

THE PHILADELPHIA PLAN

Mr. ERVIN. Mr. President, on Monday and Tuesday the Subcommittee on Separation of Powers held hearings on the Department of Labor's Philadelphia plan, a controversial effort to increase the percentage of minority group employees in six Philadelphia area construction trades.

Almost 3 months ago, the Honorable Elmer B. Staats, Comptroller General of the United States, declared this plan illegal because it conflicts with title VII of the 1964 Civil Rights Act.

Mr. Staats decided, and I wholeheartedly agree, that the Philadelphia plan constitutes an illegal racial quota system. My distinguished colleague, Senator MCCLELLAN, also adopted this posi-

tion during the hearings and championed it with great skill.

Mr. President, I find it serious indeed that the Department of Labor has chosen to ignore the Comptroller General's decision and to institute the Philadelphia plan in nine other American cities. I find it deplorable that the Department has approved further contracts in Philadelphia under the plan. It is no justification that the Department of Justice supports the Labor Department in these actions.

Under the Budget and Accounting Act of 1921, the decisions of the Comptroller General are to be regarded as "final and conclusive" upon the executive branch of Government. Further, the Comptroller General is directed under that act to make certain that the executive expenditures are consistent with any and all laws.

Nowhere in the act is the executive branch empowered to disregard the decisions of the Comptroller General. Nowhere does that act say that if the Department of Labor disagrees with the Comptroller General's legal reasoning, it can ignore his directives.

Mr. President, I would remind the Senate that the Comptroller General is an arm of the Congress. An affront to him is an affront to us all.

I ask unanimous consent that the Comptroller General's excellent statement before the Subcommittee on Separation of Powers, together with the statement I made at the opening of the hearing, be printed at this point in the RECORD.

The PRESIDING OFFICER. (Mr. ALLEN in the chair) without objection it is so ordered.

STATEMENT OF ELMER B. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES

Mr. Chairman and Members of the Subcommittee: We appreciate this opportunity to appear before your Subcommittee to discuss our position with respect to the revised "Philadelphia Plan." We are concerned about both the legality of the Plan and the situations which appear to have arisen as a result of our endeavors to discharge our statutory duties and responsibilities in connection with the Plan.

I believe the members of the Subcommittee are by now aware of the basic facts, which are (1) that the Department of Labor has issued an order requiring that major construction contracts in the Philadelphia area, which are entered into or financed by the United States, must include commitments by the contractors to goals of employment of minority workers in specified skilled trades; (2) that by a decision dated August 5, 1969, we advised the Secretary of Labor that we considered the Plan to be in contravention of the Civil Rights Act of 1964 and would be required to so hold in passing upon the legality of expenditures of appropriated funds under contract made subject to the Plan; and (3) that the Attorney General on September 22, 1969, issued an opinion to the Secretary of Labor advising him of his conclusion that the Plan is not in conflict with any provision of the Civil Rights Act; that it is authorized by Executive Order No. 11246; and that it may be enforced in awarding Government contracts.

We would like to offer for the record copies of our decision and of the Attorney General's opinion.

The revised Philadelphia Plan was issued on June 27, 1969, with the announcement that it was designed to meet GAO's objections to a lack of specificity in a prior plan. The new plan is frank and direct in stating its purpose. It gives a rundown of the history of alleged discriminatory practices by the Philadelphia construction unions in admitting members; it states that the percentage of minority group membership in the unions and the construction trades is far below the ratio of minority group population to the total Philadelphia population, and it advises that the purpose of the Plan is to achieve greater participation of minority group members in the construction trades.

The Plan states that there shall be included in invitations for bids (IFBS) on both Federal and federally assisted construction contracts in the Philadelphia area, specific ranges of minority group employees in each of six skilled construction trades; that each bidder must designate in his bid the specific number of minority group employees, within such ranges, that he will employ on the job; and that failure of the contractor to "make every good faith effort" to attain the minority group employment "goals" he has established in his bid may result in the imposition of sanctions, which might include termination of his contract.

The primary question considered in our decision of August 5 was whether the revised Plan violated the equal employment opportunity provisions of the Civil Rights Act of 1964.

In the formulation of that decision, we regarded the Civil Rights Act of 1964 as being the law governing nondiscrimination in employment and equal employment opportunity obligations of employers. Therefore we considered the 1964 Act as overriding any administrative rules, regulations, and orders which conflicted with the provisions of that Act or went beyond such law and purported to establish, in effect, additional unlawful employment practices for employers who engaged in Federal or federally assisted construction.

We think the basic policy of the equal employment opportunity part of the Act is set out in pertinent part in section 703(a) as follows:

"It shall be an unlawful employment practice for any employer—

"(1) to fail or refuse to hire * * * any individual * * * because of such individual's race, color, religion, sex, or national origin."

The basic policy of the Act as it relates to federally assisted contracts, is stated in pertinent part in section 601, as follows:

"No person * * * shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Another pertinent provision of the Act is set out in section 703(j), which provides in part as follows:

"Nothing contained in this title shall be interpreted to require any employer * * * to grant preferential treatment to any individual or to any group because * * * of an imbalance which may exist with respect to the total number or percentage of persons of any race * * * or national origin employed by any employer [or] referred * * * for employment by any * * * labor organization * * * in comparison with the total number or percentage of persons of such race * * * or national origin in any community * * * or in the available work force in any community * * *."

This part of the law is known as the prohibition against "quotas"; that is, the prohibition against requiring an employer to hire a specified proportion or percentage of his employees from certain racial or national origin groups.

It seems to have been generally accepted by Labor, Justice and minority group spokesmen that "quotas" are illegal. But in defense of the Philadelphia Plan the Department of Labor argued that the "goals" for minority group employees which would be included in IFBs and in contracts under the Plan could not violate the Civil Rights Act of 1964 because—

1. A quota is a *fixed* number or percentage of minority group members, whereas *ranges* to be established under the Plan are flexible in that the bidder may choose as his goal any number or percentage within the ranges set out in the IFB.

2. Failure to attain the "goals" does not constitute noncompliance, since such failure can be waived if the contractor can show that he made "every good faith effort" to attain the goals.

3. The Philadelphia Plan was promulgated under Executive Order 11246, not under the Civil Rights Act of 1964, and affirmative action programs under the Executive Order may properly require consideration of race or national origin if such consideration is necessary to correct the present results of past discrimination.

4. The Plan provides that the contractor's commitment to specified goals of minority group employment shall not be used to discriminate against any qualified applicant or employee.

In considering these arguments in our decision of August 5 we said that in our opinion the distinction between quotas and goals was largely a matter of semantics. The plain facts are, however, that the Plan sets a definite minimum percentage requirement for employment of minority workers; requires an employer to commit himself to employ at least a corresponding minimum number of minority workers; and provides for sanctions for a failure to employ that number (unless the contractor can satisfy the agency personnel concerned that he has made every good faith effort to attain such number). It follows therefore, that when such sanctions are applied they will be a direct result of the contractor's failure to meet his specified number of minority employees.

In our decision of August 5 we also said that the basic philosophy of the equal employment opportunities portion of the Civil Rights Act is that it shall be an unlawful employment practice to use race or national origin as a basis for hiring, or refusing to hire, a qualified applicant. And we said the Plan would necessarily require contractors to consider race and national origin in hiring.

In reply to the Department's contention that the Plan itself says a contractor's goals shall not be used to discriminate against any qualified applicant or employee, we expressed the opinion that the obligation to make every good faith effort to attain his goals under the Plan will place contractors in situations where they will undoubtedly grant preferential treatment to minority group employees. Later, I will address this point again.

It is our opinion that the legislative history of the Civil Rights Act shows beyond question that Congress in legislating against discrimination in employment recognized the discrimination that is inherent in a quota system, and regarded the term "discrimination" as including the use of race or national origin as a basis for hiring; the assignment of numerical ratios based on race or national origin; and the maintaining of any racial balance in employees.

In considering Labor's contention that it could properly consider race or national origin under affirmative action programs established under Executive Orders, we pointed out that while the term "affirmative action" was included in Executive Order 10925, which was in effect at the time Congress was debating the bill which was subsequently enacted as the Civil Rights Act of 1964, no specific affirmative action requirements of the kind here involved had been imposed upon contractors under authority of that Executive Order at that time. We therefore did not think it could be successfully con-

tended that Congress, in recognizing the existence of the Executive Order and in failing to specifically legislate against it, was approving or ratifying the type or methods of affirmative action which the present Plan imposes upon contractors.

While the Labor Department cited various court cases in support of its position that reverse discrimination may properly be used to correct the present results of past discrimination, our examination of those cases showed that the majority involved questions of education, housing, and voting. We said we could see a *material* difference between the circumstances in those cases and the circumstances which gave rise to the Philadelphia Plan, since in those cases enforcement of the rights of the minority to vote, or to have unsegregated housing, or unsegregated school facilities, did *not* deprive members of the majority group of similar rights, whereas in the employment field, each mandatory and discriminatory hiring of a minority group worker would preclude the employment of a member of the majority group. In those cases which did involve Title VII of the Civil Rights Act of 1964, we found them to be concerned with practices of labor unions or with treatment by employers of their employees in matters of seniority and promotion, and even in such circumstances, we found the courts to be divided between condoning and condeming the practice.

Our decision also pointed out that the effect of the Plan was to require an employer to abandon his customary practice of hiring through a local union if there is a racial or national origin imbalance in the membership of such union, and we concluded that such a requirement would be in violation of section 703(j) of the Act. We cited numerous portions of the legislative history of the Act which supports, we think, the view that Congress intended to prohibit and preclude the sort of program and procedures which are now included in the Philadelphia Plan when it drafted section 703(j).

In this connection we expressed the opinion that it would be improper to impose requirements on contractors to incur additional expenses in affirmative action programs which are designed to correct the discriminatory practices of unions, since such requirements would result in the expenditure of appropriated funds in a manner not contemplated by Congress. And we pointed out that if unions were, in fact, discriminating, they could be required to correct their discriminatory practices under provisions of the National Labor Relations Act, under Title VII of the Civil Rights Act, and under section 207 of Executive Order 11246. We suggested use of one of these remedies.

Finally, we concluded that until the authority for any agency to impose or require conditions in invitations for bids which obligate bidders, contractors, or subcontractors, to consider the race or national origin of their employees or prospective employees, is clearly and firmly established by the weight of judicial precedent, or by additional statutes, we must consider conditions of the type proposed by the revised Philadelphia Plan to be in conflict with the Civil Rights Act of 1964, and we will necessarily have to so construe and apply the act in passing upon the legality of matters involving expenditure of appropriated funds for Federal or federally assisted construction projects.

On August 6, the day after our decision of August 5, the Secretary of Labor held a press conference at which he expressed the opinion that "interpretation of the Civil Rights Act has been vested by Congress in the Department of Justice"; that Justice had already decided that the Philadelphia Plan was not in conflict with the Act; that GAO properly could pass upon whether the Philadelphia Plan violated *procurement* law; and that Labor therefore had no choice but to follow the opinion of Justice and proceed to implement the Plan. For the record, it should be noted that the only Department of Justice opinion Labor had, at the time it issued the revised Plan and at the time the Secretary held his press conference, was one rendered in two short paragraphs by the Assistant Attorney General for the Civil Rights Division. On September 22, 1969, the Attorney General did, however, issue a formal opinion, which was essentially in the form of a critique of our August 5 decision.

The fundamental bases of the Attorney General's opinion are his contentions that the Executive has authority to include in contracts made by the United States or financed with Government assistance any terms and conditions which are not contrary to a statutory prohibition or limitation on contractual authority; that the requirements imposed upon contractors by the Philadelphia Plan are not prohibited by the Civil Rights Act; and that the fact that the Act does not affirmatively require or authorize the imposition of such requirements upon all employers does not preclude their imposition by the Executive upon employers who enter into contracts with the Government or which are financed through Government assistance.

We believe that the argument with respect to the authority of the Executive to include terms and conditions in contracts fails to take into consideration two material factors: first, with respect to contracts executed by the Government, Congress has imposed a number of specific requirements and limitations, both procedural and substantive, entirely independent of and unrelated to the provisions of the Civil Rights Act, but which we believe to be material to the determination of the validity of the Plan; and second, with respect to contracts financed by Federal assistance, Congress has in the several acts authorizing such assistance prescribed the terms and conditions upon which it is to be furnished. With respect to the latter area, we do not believe it could be argued that the Executive has any authority from the Constitution or from any source other than those Congressional acts, and the Attorney General's argument is to that extent inapplicable to federally aided contracts or programs.

Considering the contractual authority of the Federal Government, it is recognized that the Executive agencies may, in the absence of contrary legislative provisions, perform their authorized functions and programs by any appropriate means, including the use of contracts. In doing so, they are bound to observe all statutory provisions applicable to the making of public contracts. The Attorney General's opinion states that the power of the Government to determine the terms which shall be included in its contracts is subject to limitations imposed by the Constitution or by acts of Congress, but that existence of the power does depend upon an affirmative legislative enactment.

Second to the statutory limitation that no contract shall be made unless it is authorized by law or is under an appropriation adequate to its fulfillment (41 U.S.C. 11) the most important congressional limitation on contracting is the requirement that Government contracts shall be made or entered into only after public advertising and competitive bidding, on such terms as will permit full and free competition. The purpose of the advertising statutes is not only to prevent frauds or favoritism in the award of public contracts, but also to secure for the Government the benefits of full and free competition.

The Supreme Court of the United States has adopted the policy, as set out in the procurement laws and regulations issued pursuant thereto, that competitive bidding should obtain the needs of the Government at prices calculated to result in the lowest ultimate cost to the Government. (*Paul* v. *United States*, 371 U.S. 245, 252 (1968).) Even before the decision by the Supreme Court the rule generally applied by my predecessors and at least one of the Attorney General's predecessors, and, so far as I know, never contested by any prior Attorney General, is that the inclusion in any contract of terms or conditions, not specifically authorized by law, which tend to lessen competition or increase the probable cost to the Government, are unauthorized and illegal. The situation in which this rule has been applied have most frequently involved proposals to impose stipulations concerning employment conditions or practices.

In 1890 the Attorney General advised the President as follows, with respect to a request of a labor organization for implementation of the act of June 25, 1868, which provided that eight hours shall constitute a day's work:

"Again sections 3709, etc., require contracts for supplies or services on behalf of the Government, except for prisoners' services, to be made with the lowest responsible bidder, after due advertisement. These statutes make no provision for the length of the day's work by the employees of such contractors, and a public officer who should let a contract for a larger sum than would be otherwise necessary by reason of a condition that a contractor's employees should only work eight hours a day would directly violate the law.

"In short, the statutes do not contain any such provision as would authorize or justify the President in making such an order as is asked. Nor does any such authority inhere in the Executive office. The President has, under the Constitution and laws, certain duties to perform, among these being to take care that the laws be faithfully executed; that is, that the other executive and administrative officers of the Government faithfully perform their duties; but the statutes regulate and prescribe these duties, and he has no more power to add to, or subtract from, the duties imposed upon subordinate executive and administrative officers by the law, than those officers have to add or subtract from his duties.

"The relief asked in this matter can, in my judgment, come only through additional legislation."

On the same principle our Office has held that a contract could not prescribe minimum wages in the absence of specific statutory authority (10 Comp. Gen. 294 (1931)); compliance with the National Labor Relations Act of 1935 could not be required by contract, nor noncompliance therewith be made ground for rejection of a bid (17 Comp. Gen. 37 (1937)); periodic adjustment of minimum wages incorporated in a contract pursuant to the Davis-Bacon Act could not be stipulated in the contract (17 Comp. Gen. 471 (1937)); provisions of a Procurement Division Circular Letter purporting to require contractors to report payroll statistics could not be incorporated in Government contracts (17 Comp. Gen. 585 (1938)); construction contracts could not contain provisions concerning collective bargaining (18 Comp. Gen. 285 (1938)); a requirement for compliance with the Fair Labor Standards Act could not be included in Government contracts (20 Comp. Gen. 24 (1940)); a low bid on a Government contract could not be rejected because the bidder did not employ union labor (31 Comp. Gen. 561 (1952)); construction contracts could not include provisions for a 40-hour workweek and overtime compensation for excess time, when the only pertinent statute merely required overtime compensation for work in excess of eight hours per day (33 Comp. Gen. 477 (1954)); and a clause requiring contractors to comply with wage, hour and fringe benefit provisions re-

sulting from a labor-management agreement could not be included in construction contracts in the absence of statutory authorization (42 Comp. Gen. 1 (1962)).

Of course, many of those proposed requirements were subsequently authorized by Congressional enactment and, together with other similar requirements, are today accepted features of Government contracting in the social-economic area. The point is, that they were not permitted until the Congress, rather than the Executive, had determined that they should be. So far as I know there was no attempt in any of those instances by the Executive branch to disregard the decisions of the Comptroller General.

In the face of this history, we cannot agree that the Attorney General's position that the Executive may impose upon contractors any conditions which have not been specifically prohibited, is correct.

In contending that the Plan is not in conflict with any provision of the Civil Rights Act, the Attorney General attempts to reconcile provisions of the Plan which we feel are irreconcilable. As summarized by the Attorney General, the Plan requires the contractor to set specific goals for minority group hiring, and to make "every good faith effort" to meet these goals. This, however, he says does not require the contractor to discriminate, because the Plan includes the express statement that he may not in attempting to meet his goals discriminate against any qualified employee on grounds of race, color, religion, sex, or national origin. As we stated in our decision of August 5 this is a statement of a practical impossibility. The provision is, in effect, no more than a statement of the provisions of the Civil Rights Act, and it is difficult to avoid the conclusion that the Attorney General is saying that no requirement, obligation or duty can be considered contrary to law if it is accompanied by a statement that in meeting it the law will not be violated.

It should also be noted that the Attorney General confines his argument to consideration of the provisions of Section 703(a) of the act, and ignores section 703(j), which in our view is an express prohibition against imposition of a program such as is included in the Plan.

Finally the Attorney General falls back on the plea that, while the Plan might be clearer if it stated what "good faith efforts" are expected, it must be assumed that the Plan will be so fairly administered that no contractor will be forced to choose between noncompliance with his obligation to achieve his goal and violation of the act. Therefore, he says, it is premature to assert the invalidity of the Plan because of what may occur in its enforcement; any unfairness in administration should be left for judicial remedy.

The foregoing would indicate that the Attorney General does not fully recognize the pressure which the Plan will impose upon contractors to attain their minority group employee goals. A failure to achieve such goals will immediately place the contractor in the role of defendant, and to avoid sanctions he must then provide complete justification for his failure. Furthermore, in the first instance at least, the question whether he made every good faith effort will be determined by the same Federal personnel who imposed the requirement. In our opinion the coercive features inherent in the Plan cannot help but result in discrimination in both recruiting and hiring by contractors subject to the Plan.

In the final sentence of his opinion the Attorney General undertook to advise that the Department of Labor "and other contracting agencies *and their accountable officers*" may rely on his opinion in their administration of Executive Order 11246. We are especially concerned by this statement. In making it the Attorney General appears to have ignored completely section 304 of the Budget and Accounting Act of 1921, 31 U.S.C. 74, which provides that "Balances certified by the General Accounting Office, upon the settlement of public accounts, shall be final and conclusive upon the Executive Branch of the Government."

In this connection, I would like to point out as emphatically as I can that I believe that one of the most serious questions for the Subcommittee's consideration is whether the Executive branch of the Government has the right to act upon its own interpretation of the laws enacted by the Congress, and to expend and obligate funds appropriated by the Congress in a manner which my Office, as the designated agent of the Congress, has found to be contrary law.

In our decision, we informed the Secretary of Labor that the General Accounting Office would regard the Plan as a violation of the Civil Rights Act in passing upon the legality of matters involving expenditures of appropritaed funds for Federal or federally assisted construction. Our jurisdiction in that respect is derived from the authority and duty to audit and settle public accounts which was vested in and imposed upon the accounting officers of the Government by the act of March 3, 1817, 3 Stat. 366, and which was transferred to the General Accounting Office by the Budget and Accounting Act, 1921, 42 Stat. 24. Under section 8 of the Dockery Act of July 31, 1894, 28 Stat. 207, as amended by section 304 of the Budget and Accounting Act (31 U.S.C. 74), disbursing officers, or the head of any Executive departments, may apply for and the Comptroller General is required to render his decision upon any question involving a payment to be made by them, or under them, which decision, when rendered, shall govern the General Accounting Office in passing upon the account containing the disbursement. A similar provision concerning certifying officers and other employees appears at 31 U.S.C. 82d, which also provides that the liability of certifying officers or employees shall be enforced in the same manner and to the same extent as now provided by law with respect to enforcement of the liability of disbursing and other accountable officers. It is within the framework of these authorities that we propose to act in the enforcement of our decision of August 5, 1969.

The Attorney General's opinion concluded with the statement that the contracting agencies and their accountable officers could rely on his opinion. Considering the fact that the sole authority claimed for the Plan ordered by the Labor Department is the Executive order of the President, it is quite clear that the Executive branch of the Government is asserting the power to use Government funds in the accomplishment of a program not authorized by Congressional enactment, upon its own determination of authority and its own interpretation of pertinent statutes, and contrary to an opinion by the Comptroller General to whom the Congress has given the authority to determine the legality of expenditures of appropriated funds, and whose actions with respect thereto were decreed by the Congress to be "final and conclusive upon the Executive Branch of the Government." We believe the actions of officials of the Executive branch in this matter, present such serious challenges to the authority vested in the General Accounting Office by the Congress as to present a substantial threat to the maintenance of effective legislative control of the expenditure of Government funds.

We believe the opinion of the Attorney General and the announced intention of the Labor Department to extend the provisions of the Plan to other major metropolitan areas can only create such widespread doubt and confusion in the construction industry and in the labor field (which may also be shared to a considerable extent by the Government's contracting and fiscal officers) as to constitute a major obstacle to the orderly prosecution of Federal and federally assisted construction. We further believe there is a definite possibility that, faced with a possibility of not being able to obtain prompt payment under contracts for such work as well as the probability of labor difficulties resulting from their efforts to comply with the Plan, many potential contractors will be reluctant to bid. Of course, if this occurs the Plan will result in restricting full and free competition as required by the procurement laws and regulations. Also, those who do bid will no doubt consider it necessary to include in their bid prices substantial contingency allowances to guard against loss.

In addition to recognizing the chaotic situation which could result from use of the Plan by the Executive agencies, I believe I would not be fulfilling my duties and responsibilities if I ignored the detrimental effect upon the competitive bidding process, and the improper use of public funds which the Plan entails.

On September 23, the day following the Attorney General's opinion, Labor issued another revised Philadelphia Plan which explains, *for the first time*, the manner in which the "ranges" of minority group employment goals have been determined, and the criteria for determining whether a contractor has made good faith efforts to attain his goals.

I stress that these matters are set out for the first time in the September revision of the Philadelphia Plan primarily because our decision of August 5 gave no consideration to the adverse effect that these factors, when established, might have upon application of the rules of competitive bidding to the overall Plan.

We fully expect to receive a bid protest in some future procurement which questions inclusion of the Philadelphia Plan in the IFB and the contract, and we realize the effect a decision sustaining such a protest could have on the construction industry, the contracting agencies and the disbursing officers. But we think the question is sufficiently important to justify and require such a decision.

Basically, it has been our position that the law is to be construed as written and enforced in accordance with the legislative intent when it was enacted. We believe this is what the law requires. Also, we are part of the Legislative branch of the Government and we think this approach is the only proper one we can take.

If, following enactment of a law, it should occur that social conditions, economic conditions, the political atmosphere, or any other circumstances should change to such an extent that different treatment should be given, that different objectives should be established, or that different results should be obtained, it has always been our position that the arguments in favor of change should be presented to the Congress—and if the Congress in its wisdom, agrees that social, economic, or political circumstances so dictate, it will enact legislation to permit or require the Executive branch to take necessary action to attain new objectives. This is the very procedure which Congress directed should be followed in this particular situation. As we pointed out in our decision of August 5, 1969, by section 705(d) of the Civil Rights Act of 1964, Congress charged the Equal Employment Opportunity Commission with the specific responsibility of making reports to the Congress and to the President on the cause of and means of eliminating discrimination, and making such *recommendations for further legislation* as may appear desirable.

We concur with the authority of the Executive branch to establish and carry out social programs or policies which are not contrary to public policy, as that policy may

be stated or necessarily implied by the Constitution, by Federal statutes or by judicial precedent. But we do *not* agree that where a statute, such as the Civil Rights Act of 1964, clearly enunciates Federal policy and the methods for enforcing such policy, the Executive may institute programs designed to achieve objectives which are beyond those contemplated by the statute by means prohibited by the statute.

We therefore hope that, as a result of these hearings, there will issue from Congress a clear and unequivocal indication of its will in this matter by which all parties concerned may be guided in their future actions.

This concludes my statement, Mr. Chairman. We will be pleased to answer any questions.

STATEMENT OF SENATOR SAM J. ERVIN, JR.

Today, the Subcommittee on Separation of Powers begins two days of hearings on the Department of Labor's revised Philadelphia Plan, a controversial effort to raise the percentage of minority group members working in six Philadelphia area construction trades.

Over the past three months, the Philadelphia Plan has become the focal point of pressures and discontent which reach far into American society. At this moment, the Labor Department and the Comptroller General of the United States are in complete disagreement about the Plan's legality. The Comptroller General, who believes the Plan conflicts with Title VII of the 1964 Civil Rights Act, has refused to allow any government funds to be spent under the Plan. The Labor Department, supported by the Attorney General, contends that the Plan is legal and intends to implement it in nine other cities, with or without the Comptroller General's approval.

During the next two days, our purpose will not be to debate the wisdom of the Philadelphia Plan, although its wisdom has been challenged in the Congress and in the streets of Chicago, Pittsburgh, and Seattle. We will not assess the social and political consequences which are inherent in any such policy. Rather, we will examine the Plan as it relates to the doctrine of separation of powers and try to determine whether the Labor Department has usurped Congressional authority and violated legislative intent.

We will ask the Labor Department to explain, in clear English, precisely what it means by "affirmative action goal" and by "specific numerical range". That task may not be easy. The Brookings Institution, in a report called *Jobs and Civil Rights*, prepared for the U.S. Commission on Civil Rights some two years ago, aptly summarized the response of Labor Department officials when asked to define such terms:

"Compliance officials", the report found, "do everything they can to avoid directly facing questions involving preferences. The usual response when confronted with this issue is to fall back on the standard semantics that compliance is not so much a matter of set requirements as it is a matter of taking affirmative actions which produce results. . . . The current approach may enable the government to go further than the Congress and public opinion would allow if its goals in this area had to be made more explicit."

Through the controversy over the Philadelphia Plan, one of the Labor Department's recurring arguments has been that the Plan has been misunderstood by its critics. If the Department is sincerely concerned about any misunderstandings, now is the time to clarify them. Now is the time for the Department to be more candid than in the past: to explain its policies in everyday English, not to cloak them in the misleading language which the Brookings report describes. For the Department to persist in using "the standard semantics" would be to leave its policies as unclear and confusing as ever.

I would like to point out that the Labor Department has been something less than cooperative in its dealings with the Subcommittee. On the several occasions in which the Subcommittee requested information from the Department, those requests were either ignored, answered incompletely, or answered after substantial delays. Ordinarily these would be small points, and I do not intend for them to become issues in these hearings. But if the Labor Department has in fact been misunderstood, perhaps this lack of cooperation is partly responsible for that situation.

We will also ask the Labor Department to make clear what is meant by the "good faith effort" which is required of contractors under the Philadelphia Plan. Nowhere in the Plan is that term defined. Does that "good faith effort" compel contractors to discriminate againts workers who are not members of any minority group, workers with seniority in their unions, workers with the immediate skills needed to complete a Federal construction project within the contract deadline? My observation is that it does, in view of the harsh pressures which the Office of Federal Contract Compliance can bring to bear on contractors subject to the Plan.

The Subcommittee wants to be shown that the Philadelphia Plan, in forcing contractors to raise the percentage of minority group employment, does not violate Title VII of the 1964 Civil Rights Act. That act certainly does not authorize any racial quota systems, by whatever names they may be called. At this point, I want to read into the record Section 703(j) of Title VII:

"(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area."

I will also read into the record a section of the interpretative memorandum prepared in 1964 by Senators Clark and Case, the floor managers of Title VII. In their statement, in the CONGRESSIONAL RECORD, volume 110, part 6, page 7213, they stated:

"There is no requirement in title VII that an employer maintain a racial balance in his work force. On the contrary, any deliberate attempt to maintain a racial balance, whatever such a balance may be, would involve a violation of title VII because maintaining such a balance would require an employer to hire or to refuse to hire on the basis of race."

To me, the texts of Title VII and the interpretative memorandum constitute clear evidence that the Philadelphia Plan contravenes the intent of the most avid proponents of the 1964 Civil Rights Act. They show that Executive Order 11246, which was designed merely to guarantee equal employment opportunity regardless of race, has been stretched beyond the limits of reason to lend legal justification to the Philadelphia Plan.

I ask the Labor Department to explain why the Philadelphia Plan does not compel contractors to hire on the basis of race. I ask the Department to show that the Plan does not ignore the intent expressed in the Clark-Case memorandum.

The Philadelphia Plan, according to the Labor Department itself, requires minority group employment of 22 to 26 percent among ironworkers by 1973. It requires 20 to 24 per cent among plumbers, and among pipefitters, and among steamfitters. It requires 19 to 23 per cent among sheetmetal, electrical, and elevator construction workers. These percentages rise every year. It would be a travesty for the Department to claim that they are not based on race.

We want the Labor Department to explain, without resorting to semantic devices, why the Philadephia Plan disregards the intent of Congress that Title VII should not hold contractors responsible for the membership practices of labor unions, practices over which the contractors can exercise absolutely no control.

I want to read another section of the Clark-Case memorandum into the record at this point:

"Question: If an employer obtains his employees from a union hiring hall through operation of his labor contract is he in fact the true employer from the standpoint of discrimination because of race, color, religion, or national origin when he exercises no choice in their selection? If the hiring hall sends only white males is the employer guilty of discrimination within the meaning of this title? . . .

"Answer: An employer who obtains his employees from a union hiring hall through operation of a labor contract is still an employer. If the hiring hall discriminates against Negroes, and sends him only whites, he is not guilty of discrimination—but the union hiring hall would be."

We would like the Labor Department to justify the Philadelphia Plan's apparent conflict with the intent of Congress that Title VII should not interfere with union seniority systems.

In debating Title VII in 1964, Senator Humphrey said that ". . . there is nothing in it that will give any power to the commission or to any court to require hiring, firing, or promotion of employees in order to meet a racial 'quota' or balance."

I believe the Philadelphia Plan requires just such a racial balance or quotas, whether that quota is disguised as a "target", a "goal", a "range", or a "standard". The Brookings Institution report found, in fact, that "the compliance specialist often applies a form of *subjective quota* in deciding how hard to push a given contractor." The report was completed more than two years ago, long before the revised Philadelphia Plan was adopted.

There is something very disquieting in all of this. In a statement made in January 1967, former OFCC Director Edward C. Sylvester admitted that "there is no firm and fixed definition of affirmative action. I would say that in a general way, affirmative action is anything you have to do to get results."

In making this statement, Mr. Sylvester no doubt had the high purpose of giving effect to his desire that all citizens be guaranteed equal employment opportunity according to ability. But his emphasis on results at the expense of procedure concerns me. We seem to have forgotten the admonition of Justice Frankfurter that "the history of American freedom is, in no small measure, the history of procedure." In seeking to raise artificially the percentage of minority group workers in Philadelphia through this misuse of an Executive Order, the Labor Department is establishing a nearsighted precedent. For if we are lax today in adhering to the law, what may happen tomorrow when that practice is adopted by those who would subvert procedure to their own evil purposes? The power to twist procedure is one no good administrator should want and no bad administrator should have. We cannot allow our legal principles to be fritted away by manipulation of the law.

There is another point which concerns me greatly, a point which has largely been ignored in the arguments surrounding the Philadelphia Plan. Section 202(1) of Executive Order 11246 requires Federal contractors to hire and treat their employees "without regard" to their race, color, religion, or national origin. It seems to me that those two words, "without regard", mean exactly what they say. They are clear and unambiguous.

Since all the sections of a law must be construed together, it is in the context of those words, "without regard," that the more general concept of "affirmative action" must be placed. Yes, the Executive Order requires affirmative action, but only affirmative action which is taken "without regard" to race, color, religion, or national origin. It is here that the Philadelphia Plan is fatally defective. It compels contractors to make decisions based precisely on those four considerations. The Plan is in conflict not only with Title VII of the 1964 Civil Rights Act, it also is in conflict with the very Executive Order under which it was created.

Whatever the courts may have decided about considering race as a factor in remedying inequities, those precedents cannot apply to the Philadelphia Plan. The language of Executive Order 11246 places an ironclad ban on racial considerations in employment by Federal contractors. It is no more legal for the Labor Department to reverse the meaning of the words "without regard," than it would be for the Department to mis-spend a Congressional appropriation.

I do not argue that the labor unions are violating the 1964 Civil Rights Act, and I want to make it very plain that this hearing is not designed to criticize labor organizations in any way. However, I must point out—and I am sure that the Labor and Justice Departments are aware—that the 1964 Civil Rights Act gives them ample tools to bring suits against labor organizations if they have sufficient evidence of discrimination and can prove it in open court. It therefore appears to me illogical and unfair that the Department of Labor prefers to attack the alleged problem of exclusion by penalizing the contractors, who play no role in the membership practices of labor organizations.

During the course of the Philadelphia Plan controversy, the Comptroller General has been accused of exceeding his authority in finding the Plan unacceptable because it violates Title VII. I want to comment on that criticism now. Under 31 U.S. Code 65, the Budget and Accounting Act of 1921, the Comptroller General is directed to determine whether "financial transactions have been consummated in accordance with laws, regulations, or other legal requirements." Without question, that statute provides the Comptroller General with the authority to check the Philadelphia Plan against any and all laws, not merely those which deal with procurement.

Finally, the Subcommittee has before it S. 931, a bill introduced by Senator Fannin, which would make Title VII the sole means of enforcement and remedy in the field of equal employment. It would suspend the use of Executive Order 11246. We welcome the comments of our witnesses on that bill.

EVERETT McKINLEY DIRKSEN

Mr. ERVIN. Mr. President, I deeply regret that I was unable to be present at the memorial service for our late colleague, Everett McKinley Dirksen.

Everett Dirksen did not go gentle into that good night.

With advancing years, his light grew even brighter. As illness crept upon him, his spirit, his will, his great intellect raged against the idea of a dying light—until the tragic and sudden end when he could rage no more. If his life had great meaning for those he loved, and who loved him, his absence has greater meaning. Everett Dirksen's empty chair is a symbol of the untruth of that great maxim which in our overzealous modesty or our attempt to avoid duties, we sometimes quote too easily: the adage that "no man is indispensable." I think we who served with him shall find that this man was indispensable and that his place will not be filled. Certainly the Senate will never be the same.

This was a man placed by history, by circumstances, and by his own vast talents in a unique position. It is one of the blessings of our Constitution and our system of government that at a critical moment, such a man is cast into the American political process, to help mold and eventually to help govern it. This Senator from Illinois was one of those who truly helped to govern. He held power, and not just power in a structured, legal sense. Had he chosen that path, he might, I believe, have been President of the United States, for surely he had the requisite qualities of mind and heart and an uncanny sense of the popular will. Rather, his power lay in those incalculable and intangible weapons of experience, of accumulated wisdom, of infinite ability to influence and persuade others to his view.

For the young people, especially those in Illinois, who may find him in their history books, it should be emphasized how proudly this man brought to his national service the sum total of his experiences and his successes under our form of government. As a youth, he knew poverty and he worked hard to achieve his education.

He served in the Army in World War I on the western front where he was constantly exposed to enemy fire, a fact which helped him to develop a unique outlook on life and its brevity. He served 16 years in the House of Representatives and 19 years in the Senate. He was minority leader, a member of the Judiciary and Finance Committees and of the Special Committee on Aging. For the people of Illinois, he performed constant services, officially and unofficially.

Many people have said he was an old-fashioned man. Of one thing we can be sure, his life, while full of rare grace and style, was no anachronism. He was the embodiment of the truth that the greatest fulfillment of man's God-given abilities is realized through meaningful service to his fellowmen and through his relationships with society. In this age, when many about us cry of alienation and irrelevancy, Everett Dirksen's life testifies to total involvement with the social and political processes of our society. He believed deeply that these processes are relevant for the problems of today. Endowed with an innate sense of what is enduring, he did not dismiss modernity.

Devoted to the ideals of constitutional liberty, he fought in the Senate to assure that under our form of government the individual will never be irrelevant.

While he helped to fashion many laws, it might be said that his greatest contribution to freedom was his prevention of passage of ill-advised laws which would have done violence to our political liberty.

He was a family man, a religious man, a professional man, a political man, a man who gloried in the happinesses of life that come with love of friends and family, with the beauties of nature, and with service to his country. We shall not see his like again.

Mrs. Ervin joins me in extending deepest sympathy to Mrs. Dirksen and to members of his family.

OPPOSITION TO JUDGE HAYNSWORTH BASED UPON HIS CIVIL RECORD

Mr. GOODELL. Mr. President, on October 2, I announced publicly that I would vote against the nomination of Judge Clement F. Haynsworth to be Associate Justice of the United States. I urged the President to withdraw his nomination.

At that time, I said that, although I was deeply troubled about the alleged conflicts of interest which had been raised against him, he had not profited from those conflicts of interest directly and I would not vote against him on that basis alone. I said that I opposed him because of his past decisions in the area of civil rights. I reiterate that position today.

I oppose him because we are in the midst of a social revolution in this country. This is a central fact of our time. That revolution is a reaction to the inequality of our past and present society, democratic in concept, but never fully responsive to the needs and rights of all of our people.

On the great social issue of our time, that of civil rights, Judge Haynsworth has been found wanting.

Time and again he has rejected demands of the landmark 1954 decision of the Supreme Court in Brown against Board of Election.

He spoke for segregation when he voted to allow the school doors of Prince Edward County, Va., to remain closed to Negro children, by supporting "freedom of choice" in the public schools in that State's "massive resistance" scheme.

He spoke for segregation when he defended discrimination against Negroes in federally aided hospitals.

I supported the nomination of Judge Burger to be Chief Justice of the United States. I believe that the unanimous decision of the Supreme Court in its ruling on Wednesday calling for immediate integration in Mississippi and rejecting two precedents written by Judge Haynsworth which called for delay is further reason to oppose his nomination. If confirmed, Judge Haynsworth would become the first Justice to breach the Supreme Court's apparently solid front on civil rights matters.

We must heed promptly the just demands of our contemporary American revolution. This imperative requires us to act affirmatively to prevent the appointment of Judge Haynsworth.

Although the President normally should have the broadest latitude in selecting men of his own choice for high office, I believe that a Supreme Court

nominee, who is appointed for life, must be subject to special scrutiny by the Senate. That special scrutiny was afforded last year when President Johnson appointed Justice Fortas to be Chief Justice of the United States.

Judge Haynsworth has failed the test on civil rights. He has been consistently wrong in his judicial capacity on one of the most important issues facing our country.

I again, therefore, urge President Nixon to withdraw the nomination of Judge Haynsworth.

ORDER OF BUSINESS

Mr. MANSFIELD. 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. 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.

NOMINATION OF CLEMENT F. HAYNSWORTH, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. MOSS. Mr. President, in the discussion carried on concerning the nomination of Judge Haynsworth to the U.S. Supreme Court, one often hears that it is unprecedented to question a nomination and that the Senate should accept the President's choice unless it could be shown that the individual is either corrupt or incompetent. Mr. Anthony Lewis has written an article which appeared in the Sunday Times of October 19, 1969, to show that the Senate has very often refused to confirm nominees on grounds other than corruptness or incompetence. For the purpose of illuminating the dialog, I ask unanimous consent that this article be printed in the RECORD.

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

THE SENATE AND THE SUPREME COURT

(By Anthony Lewis)

WASHINGTON.—In their irritation at the opponents of Clement Haynsworth, some Administration officials are now saying that the issue in the confirmation fight is nothing less than the President's right to appoint Supreme Court Justices. The Senate, they argue, is trying to undermine that prerogative; Senators should support a President's choice for the Court unless he can be shown to be corrupt or incompetent.

But history contradicts that narrow view of the Senate's role. In fact, over the years, the Senate in considering nominations to the Supreme Court has rejected "a proportion far higher than for any other Federal office." So says a leading study, Joseph P. Harris's "The Advice and Consent of the Senate."

In the nineteenth century, when senatorial scrutiny was at its most rigorous, 72 men were nominated to the Supreme Court and eighteen of them—one quarter—failed of confirmation. The eighteen does not include a few others who declined the honor.

Nominees were rejected for a variety of reasons, because of their philosophy or politics or ability or temperament. Some lost in formal votes of the Senate; other nominations were withdrawn in the face of opposition.

President Madison, for example, nominated a Connecticut Collector of Customs, Alexander Wolcott in 1811. Charles Warren, the great Supreme Court historian, said the general feeling was that Wolcott was a man of "somewhat mediocre legal ability." For that reason a Senate overwhelmingly of Madison's party rejected the nomination, 24 to 9.

GRANT'S NOMINATIONS

Grant tried three times before he could get a Chief Justice confirmed. His first choice—George H. Williams, his Attorney General—was criticized as a "second-rate" lawyer. His second, Caleb Cushing, a former judge of the Supreme Judicial Court of Massachusetts, was eminently qualified. But Senators were uneasy at the fact that he had been successively a Whig, Democrat and Republican. The opposition eventually found that he had written an innocent letter to Jefferson Davis during the Civil War and used that to rally opinion against him. Both nominations were withdrawn.

Other nominees in the last century were defeated because they were partisan Whigs in Democratic times, or because they had offended Senators, or because in other offices they had followed objectionable policies. No one could read the record without concluding that Senators in those days felt quite free to make their own appraisal of any man chosen to say the last word in our constitutional system.

Today, most Senators would be more sophisticated and more restrained in the use of their confirmation power. Ironic exceptions are Senators Thurmond of South Carolina and Eastland of Mississippi, two of Judge Haynsworth's principal backers, who have not hesitated to oppose anyone suspected of liberal tendencies. They voted against the only three nominees to the Warren Court who were put to a record vote in the Senate, Justices Harlan, Stewart and Marshall.

The question for most members of the Senate in 1969 is not one dimensional. For example, the fact that a nominee is a so-called strict constructionist in constitutional matters would not necessarily make Senators of a different outlook oppose him; it is easy to think of judicial conservatives whose high intellectual qualifications would have smothered the thought of opposition on philosophical grounds.

The point about Judge Haynsworth is that he does not have such high intellectual or legal qualifications. Few would call it a distinguished appointment.

POLICY AND ETHICS

Along with that basic ground for opposition are doubts about policy and ethics. Those who feel the doubts might say that Judge Haynsworth is a man from a narrow background who has not altogether surmounted it in his view of life and the law, and that in his commercial dealings while on the bench he has at best shown insensitivity to the appearance demanded of judges.

In short, the argument against Clement Haynsworth is not that he is an evil man, or a corrupt one, or one consciously biased. It is that he is an inadequate man for a lifetime position of immense power and responsibility in our structure of government. And any Senator who reaches that conclusion is quite entitled, in precedent and in reason, to oppose his confirmation.

WISE WORDS OF ERNEST GRUENING

Mr. YOUNG of Ohio. Mr. President, one of the first Members of either branch of Congress to speak out against our involvement in an ugly civil war in Vietnam was former U.S. Senator Ernest Gruening of Alaska.

As far back as 1964, former Senator Gruening clearly recognized that we were involved in an immoral war in a little faraway Asiatic country of no importance whatever to the defense of our Nation. From that time until the time he left the Senate, Senator Gruening spoke out loud and clear in denouncing our involvement in this land war in Southeast Asia. He was among the small band of Senators and Representatives who repeatedly denounced President Johnson's escalation of that civil war into an undeclared American air and ground war. He was one of two Members of the U.S. Senate who voted against the Tonkin Gulf joint resolution in August of 1964. Citizens of our country are indebted to him for his leadership in helping to bring to their attention the folly of our Vietnam involvement.

On moratorium day, October 15, 1969, former Senator Ernest Gruening addressed five public meetings of citizens who had gathered to urge the Nixon administration to expedite the withdrawal of our forces from Vietnam and to hasten efforts toward peace. He spoke at the Georgetown University Law School, at a public meeting at Farragut Square in Washington, D.C., at Johns Hopkins University in Baltimore, Md., and before a crowd of 10,000 assembled at the city hall in Baltimore.

His speech was a masterly presentation of the case for ending our involvement in Vietnam at the earliest possible date and for bringing more American GI's home, instead of a mere token number that have been brought home to date.

I commend this address to my colleagues, and I ask unanimous consent that it be printed in the RECORD at this point.

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

ADDRESS BY ERNEST GRUENING, MORATORIUM DAY, OCTOBER 15, 1969

If the war in Southeast Asia is to be ended—this totally unjustified, needless, illegal, immoral, monstrous war—it will be ended only by an uprising of the American people, of which, let us hope, today's demonstrations are just the beginning.

For it has long been clear that the war will not be ended by the Executive Branch, which after nine months in office, has failed to carry out its campaign promise to end the war. Meanwhile, our boys are continuing to die, and they are dying in vain, as indeed they have since they were first sent to fight in Southeast Asia. Nor will the war be ended by the Legislative Branch, which could do so by refusing to vote for the military authorizations and appropriations to carry on this war. There are, to be sure, hopeful signs of revolt on the part of a few enlightened Senators and Congressmen, but unfortunately they are still a small minority in each body. There is in my judgment no likelihood that the sound and sane proposals of Senator Goodell of New York or Representative McCloskey, and others to call for the withdrawal of all troops by a date certain will receive the needed majority in the Senate and House, desirable as that would be. I wish I could call the names of this minority for it is an honor list which deserves recognition and acclaim.

As an all-out opponent of our military folly in Southeast Asia, having made, on March 10, 1964, the first full length speech against it made by any public officials, which was entitled "The U.S. Should Get Out of Vietnam", and as one of the two members of the Senate who voted against the Tonkin Gulf Resolution in August of 1964, I have been increasingly convinced that we cannot continue to call this Johnson's war and now, despite nine months of inaction, Nixon's war. Great as was and is their responsibility for this fiasco, responsibility should now be centered in the Congress, which has had the power to end this war and could do so. It is no less than criminal to keep sending our draftees to fight in violation of their consciences, to kill people against whom they feel no grievance, get killed or maimed in the process, with the alternative if they refuse to go, of going to jail for 5 years of hard labor. This is an infamous dilemma to which no American citizen should be subjected, nor indeed, any citizen of a society which calls itself free. And I say to you that any member of Congress, any member of the Senate or House of Representatives, who continues to vote for the authorizations and appropriations to carry on this monstrous war is a participant in the crime, and the blood of everyone of our boys who dies henceforth is on that Senator's or Representative's head who votes to support the continuing slaughter. Carry that message to your Representative or Senator in every Congressional District and in each state. I would say parenthetically, that those gestures of *reforming* the draft proposed at various times on the Hill, and again more recently by President Nixon, on the ground that the present selective service law is unjust, are meaningless. It is the draft itself for *this* war which is unjust and unjustified and is the monstrosity. It makes little difference when our boys are subjected to involuntary servitude, which, incidentally, is forbidden by the Thirteenth Amendment, whether they are made cannon fodder by lot or by any other method; the draft itself, however reformed, is unjust and should be abolished for service in Southeast Asia, an amendment I twice proposed while I was in the Senate.

We can understand how five years ago the members of Congress were misled and deceived by the Executive Branch and so collaborated with it to commit our nation to a disastrous folly which to date has caused the death of 40,000 fine young Americans in combat, some 10,000 more incidental to their being in Southeast Asia, and has wounded over a quarter of a million more, some crippled for life, and the slaughter of hundreds of thousands of innocent civilians, old people, women and children.

But today, after five years of deepening disaster, of continuing loss of life, the squandering of $125 billion so sorely needed for our overdue and neglected problems at home—pollution abatement, crime control, slum clearance, housing, education, conservation, and much else—there is no longer any excuse for any member of Congress to vote to continue this madness.

Let it be clearly understood that this is a war that we cannot win and should not want to win in the conventional military sense. But we *can* win it by a confession of error, by getting out and letting the people of Southeast Asia settle their own problems. *That* would be victory snatched from the jaws of continuing defeat.

Let it be clear also to all that the policies that we have pursued in Southeast Asia not only have not achieved the proclaimed objectives, but that they could not possibly do so. They could not do so because in the first place they were based on falsehood. When President Johnson in his State of the Union Message after election gave the reasons for our presence in Vietnam, namely that we were there in response to a plea for help from the South Vietnamese people to help them repel aggression, he was not telling the truth. The record is completely bare of any such request. On the contrary, we asked ourselves in. But even assuming that such a request had taken place, what kind of saving of the South Vietnamese interest has resulted? Hundreds of thousands of them killed or maimed, millions made refugees, their homes destroyed, their rice paddies laid waste—what nation will ever want to be again saved by us? On the other hand, in regard to the second reason alleged for our being there, namely to stop Chinese expansion into Southeast Asia, we adopted precisely the wrong course. We should instead have supported Ho Chi Minh, a Moscow trained Communist, but pre-eminently a nationalist, who embodied the Vietnamese fear and dislike of the Chinese and under whose leadership the Vietnamese would have resisted Chinese expansion, had it been threatened, which is by no means certain, just as they have throughout their history resisted the invasion of all other outsiders—the French, the Japanese, and now the Americans. Let me say, as one whose opposition to our policy in Southeast Asia long preceded the rising tide of revolt against it, that there can be no peace by negotiation. There is nothing to negotiate. The Southeast Asians who are our adversaries consider that the United States is the intruder, the invader, and the aggressor, a view which the record confirms, and they will not yield. They will insist that we get out. And, why shouldn't we? For those who are talking about finding "an honorable way out" what could be more honorable than to disavow our mistake and our dishonorable course to date and let the people of Southeast Asia determine their own destiny. Whatever that determination, it will be better than one imposed by us in collaboration with the crooked, dictatorial regimes in Saigon, which we have supported for years and none of which would ever have lasted 24 hours without our military and financial support. When we consider the sleazy character of those puppets, who have suppressed all freedoms and jailed their political opponents, it makes the official allegation of wanting to free and save the South Vietnamese, a grotesque mockery. Finally, it should by now be clear that the United States has been misled, tricked, and lied into this war. I have already referred to the falsity of the allegation that we were asked by a friendly government to help it repel aggression, but there was much more deception. During his 1964 campaign for the Presidency, President Johnson asserted not once, but repeatedly, that he would not send American boys to fight a ground war on the continent of Asia. He asserted not once, but repeatedly, that he would not send American boys to do the fighting that Asian boys should be doing. He was swept into office on the basis of what the American people considered solemn pledges, yet all the time he was making these pledges, plans were being matured at the Pentagon to do the very thing he pledged not to do. And, finally, there are the revelations that the Gulf of Tonkin incident was wholly spurious. The hearings of the Senate Foreign Relations Committee and the complete summary in the recently published book by Joseph Goulden, entitled, *Truth is the First Casualty*, make clear how different were the true facts from those presented to the Congress in President Johnson's message to Congress in August 1964, requesting it to approve the White House-drafted, Gulf of Tonkin Resolution. Far from being, as he alleged, a case of an American destroyer on a routine mission in international waters, wantonly attacked without provocation, we learn now that the Maddox was not a destroyer on a routine mission in international waters, but a spy ship like the Pueblo; that she was *not* in international waters, but had penetrated the coastal waters of North Vietnam, and this was moreover happening at a time when the South Vietnamese were staging a raid with ships supplied by us and under our direction on North Vietnam ports, and that the Maddox had received instructions to draw some of the defensive North Vietnamese vessels away. In other words, from the standpoint of the North Vietnamese she was engaged in hostile operations which fully justified their attack upon her. However, even in this attack she was never hit. The allegation that the next day there was a further attack on her and another U.S. destroyer, the C. Turner Joy, was likewise without foundation. In other words, from start to finish the people of the U.S. were misled, lied to and tricked into this war. And so, clearly the most honorable way to end this dishonorable business, is to get out and not sacrifice one single more American boy's life or squander a single American dollar more in the most disgraceful, inexcusable, and disastrous episode in American history.

On top of all this the American people should be informed if they do not already know it, as I fear many do not because of administration propaganda, that our military intervention in Southeast Asia is in violation of every pertinent treaty to which we are a signator, and the Constitution of the United States, Article Six, provides that, and I quote, "all treaties made under the authority of the United States shall be the supreme law of the land".

We are first of all in violation of several provisions of the United Nations Charter, which the United States played so large a part in bringing in to existence.

We are in violation of the SEATO Treaty.

We are in violation of the pledge to support the Geneva accords and hold elections throughout Vietnam. When we reneged on this solemn commitment this reneging coupled with the tyrannical acts of our first puppet, Ngo Diem, caused the civil war in South Vietnam which has been going on ever since.

We are likewise in violation of the Constitution of the United States which gives only the Congress the power to declare war. There is no time for me on this occasion to document all of these violations. I have repeatedly spelled them out in detail in various Senate speeches.

On the whole, our Vietnam misadventure is an unredeemed, shocking story of betrayal of America's finest, noblest traditions, professions, and practices. It is high time we reverted to an America whose leaders' word can be trusted and whose military mission is one of *defense* of our country, and not of global policing with offensive action anywhere at the behest of the Executive.

It is heartening that American youth and others are today mobilizing to try to put an end to this tragic and disgraceful situation. We must all continue to work to achieve that result and turn the course of history back to when our country's policies were those we could, as we once did, esteem, love and cherish.

ORDER OF BUSINESS

Mr. YOUNG of Ohio. 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. GRIFFIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

SELECTIVE SERVICE REFORM

Mr. GRIFFIN. Mr. President, a little earlier, on the floor of the Senate, the distinguished majority leader made a statement clarifying the situation with

respect to the leadership's position regarding draft reform legislation and the possibility that it might be considered in this session.

Another matter, however, was raised in the colloquy which took place on the floor last Thursday—I will say to the majority leader, in passing, that I notified the distinguished assistant majority leader earlier indicating that I would make reference to him and to some remarks which he had made earlier. Accordingly, he is aware of the statement I am about to make. Otherwise, I would not make it.

Last Thursday, the distinguished assistant majority leader made some remarks, and I wish to quote them:

> But I think we perpetrate a fraud on the young people of this country if we think we are acting on draft reform just by eliminating four words in the 1967 act and then say that this is reform, because it is not.

The distinguished assistant majority leader was saying, as I understood him, that President Nixon's proposals for reforming the draft legislation were not reform at all. It is true that President Nixon is asking Congress to make only one legislative change which will involve the repeal of four words; that change would permit the designation of draftees by the random or lottery method of selection. The rest of the President's draft reform program can be implemented by Executive order, and he stands ready to do that. Now I return to the question of whether the President's total program is, or is not, draft reform.

President Nixon announced his draft reform program on May 13—the program for which he seeks cooperation from Congress to put into effect. On May 13, when the program was sent to Congress, the distinguished assistant majority leader (Mr. KENNEDY) made some remarks which I think was very appropriate. He said:

> President Nixon deserves the accolades of all of us for his forthright recognition of the need for reform in our draft. This is a subject high in the minds of our young people; it deserves a place high on our agenda as well.
>
> President Nixon has today sent to Congress a message of great significance—a message calling for basic reforms in the way we select young men for military service.

I quote another part of his remarks:

> President Nixon's proposals embody the reforms we most urgently need—moving to the youngest first, adopting random selection, reducing the period exposure to the draft, insuring that educational deferments do not become de facto exemptions, and others.

I now quote another passage from his remarks:

> There is no reason whatever to delay approval of the President's recommendations, and perhaps to work other needed changes in the draft laws at the same time.

Mr. President, I ask unanimous consent that the full text of Senator KENNEDY'S remarks be printed, so that his complete statement will be available at this point in the RECORD.

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

THE PRESIDENT'S MESSAGE ON SELECTIVE SERVICE REFORM

Mr. KENNEDY. Mr. President, President Nixon deserves the accolades of all of us for his forthright recognition of the need for reform in our draft. This is a subject high in the minds of our young people; it deserves a place high on our agenda as well.

President Nixon has today sent to Congress a message of great significance—a message calling for basic reforms in the way we select young men for military service.

Most young people in the United States know that the draft we have today operates unfairly, unpredictably, and unevenly. They know that avoidance of the draft is not a difficult matter for those with the means—financial and intellectual—to seek out the loopholes. They know also that other young men do not have the means to avoid the draft, and that these young men may be fighting in the jungles of Southeast Asia, and dying there. The most persistent call for basic reforms in the draft comes from these young people themselves, and many educators have long pointed out the cynicism the present system and its resistance to change has engendered in the young people.

But most of those who have studied the draft in any depth, too, have recognized the need for drastic changes. The Burke Marshall Commission, particularly prepared an eloquent call for reform in its 1967 report. The Senate passed in May of 1967 a bill extending the draft for 4 years which permitted the President to make most of the necessary reforms, but this farsighted bill did not survive the conference committee, and the extension bill which did pass the Congress in June of 1967 was harsh and restrictive, actually making matters worse than they were before Congress took up the extension bill.

President Nixon's proposals embody the reforms we most urgently need—moving to the youngest first, adopting random selection, reducing the period of exposure to the draft, insuring that educational deferments do not become de facto exemptions, and others. The proposals come warmly welcomed by those of us who have long urged these reforms. In February, I introduced an extensive bill making these reforms and others; a number of additional Senators and Representatives have done similarly. There is no reason whatever to delay approval of the President's recommendations, and perhaps to work other needed changes in the draft laws at the same time.

President Nixon, in his message, pointed out that we do not now know whether it is feasible to move toward an all-volunteer armed force. A part of the reason is—as I and others have pointed out—that we simply do not have enough information on the costs and implications of a professional army. Until we do, our wisest course is to move swiftly to make the draft fair, predictable, and even.

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

Mr. GRIFFIN. I am happy to yield to the distinguished Senator from New York.

Mr. GOODELL. Mr. President, I commend the junior Senator from Michigan for his statement. I agree with him. I think the Senate should move without delay and consider the President's draft proposals. We may want to make some changes in them.

I agree with the statement of the Senator from Massachusetts that the President has made the essential recommendations for changes in the draft that are most necessary, primarily to give the emphasis to taking the youngest first, letting our young people know in advance the obligations they will have, and the names of those to be inducted called at age 19 or not at all; and second, to select these young men on the basis of a fair and uniform system, such as a lottery. There are other suggestions I have made and that other Senators have made. There is no reason those suggestions could not be added either in this session of Congress or in the session next year. But to say we should delay making these basic and fundamental changes because there are other changes we might want to consider I think is a grave mistake. Also, I think it is an injustice to our young people. The present Selective Service System is demonstrably unfair and should be corrected, and the sooner the better.

I appreciate the fact that the Senator from Michigan has once again called this matter to the attention of the Senate, and particularly to the Democratic leadership which controls this matter.

Mr. GRIFFIN. I thank the distinguished junior Senator from New York for his contribution.

If there is one issue that is a cause of unrest and concern among young people on the campuses—one issue beyond the war in Vietnam itself—that issue is the inequitable draft system.

The point was made in the colloquy Thursday that President Nixon could go ahead and put his reforms into effect by Executive order. That is not true. The key feature of the reform program is a proposal that draftee selections be made on a random or lottery basis. Of course, the other parts of the program are also very important.

An argument was made that without enacting legislation the President could put into effect a kind of substitute for the lottery or random selection method—a substitute conveyor belt system under which birth dates would be used as a basis for selection. It is time that President Nixon could put into effect a substitute; but it is generally agreed by experts that it would not be an adequate substitute. I understand that such a substitute could be something of an administrative monstrosity. It would unfairly discriminate against some young people who happen to be born in one month rather than in another month. I understand that statistically our records indicate there are 19 or 20 percent more births in some months of the year as compared with other months.

As I understand the operation of a substitute system, it not only would discriminate against persons born in certain months, but it would also be poorly understood because it would be very complicated.

It seems to me clear that Congress has a legislative responsibility which it should face up to. The fact that Senators want more comprehensive reform is no justification for doing nothing. Certainly, that approach will not quiet the dissent. For if Congress does nothing we would be fanning the flames of unrest that we see on our campuses today.

Accordingly, I welcome the announcement made by the distinguished majority leader, which is a clarification of the

impression that was left on Thursday. And I commend to the distinguished assistant majority leader (Mr. KENNEDY) the words which he uttered on the floor of the Senate, and which were printed in the RECORD on May 13, the day President Nixon sent this important legislation to Congress.

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

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

CRIME IN THE DISTRICT OF COLUMBIA AND UNITED STATES AGAINST WILLIAM B. McPHERSON

Mr. McCLELLAN. Mr. President, the report of the anticrime committee of the New York branch of the NAACP observed:

> The reign of criminal terror in Harlem must be stopped now. The lives and property of the people are in constant danger by day and by night. This is true whether they be black or white, male or female, young or old. Indeed the old, the weak, and the handicapped are the special prey of marauding hoodlums.
>
> The economic, civic, religious and social life of the community is being strangled. Thousands are so grateful for having reached home without being "mugged" and found their homes not yet burglarized that they dare not "tempt fate" by venturing out at night unless it is absolutely necessary.

What the committee observed of Harlem might equally be observed of the District of Columbia.

Washingtonians, white and black alike, have become thoroughly alarmed by the relentless increase in the city's rate of serious crimes in the last 2 to 3 years. Police classify as serious crimes homicide, rape, assault, robbery, burglary, larceny, and auto theft.

In the first 6 months of 1967, the District's rate stood at just about 31 serious crimes for every 1,000 residents of the city. That represented an increase of 8 per 1,000 over the first half of 1966.

By the first 6 months of this year, the crime rate had shot up nearly 50 percent from 1967—to 45 for each 1,000 people living in the city. The rate is still going up.

Street robberies are up, too. In a typical 24-hour period recently, city police investigated 27 such robberies. Of the victims, one was shot, 13 others assaulted. Most occurred in the central sections of the city, about half of them after dark.

The number of robberies has more than doubled in 2 years. It is now to the point that monthly totals—1,049 in July, 1,226 in August—are higher than the yearly totals for 1960, 1961, 1962, or 1963.

The patterns of robbery vary. A couple of years ago the typical target was the liquor store. But a lot of liquor store owners and other merchants have armed themselves and shown a willingness to fight back.

Last year it was the banks' turn. In some months, more than a dozen banks were hit.

At this point, much of the city's robbery problem is concentrated on stores that are difficult to guard, where the personnel are not likely to be armed. At his recent White House appearance with President Nixon, October 10, District Chief of Police Wilson produced figures showing that Safeway stores in the city were robbed 53 times, the stay-open-late High's Dairy Products stores 156 times.

Chief Wilson told the President:

> [The Safeway Stores] have tried to combat [these robberies] with armed guards. The consequence has been that they have had one armed guard killed and another shot. They have difficulties now hiring them. These holdups range from one individual who holds up a check-out clerk and the manager doesn't know she is held up until he is gone, to an incident two weeks ago in Northeast where five armed men go in and make 100 customers lie on the floor until they rob the store.
>
> This does something to the stores. They can't get competent help to work in the store. It forces the residents of the downtown area to go to the suburbs to shop because they are afraid to go to the neighborhood store.
>
> Safeway will have a quarter of a million dollars in holdups this year.

He then commented on High's robberies:

> It is a favorite of the holdup men. In this case, they tend to hire low-paid women who live in the neighborhood. These women often know who held them up, but they are afraid to tell the police because the man is often back on the street. So it is impossible to find out who held them up.

By the end of 1969, District crime records probably will show more than 15,000 robberies committed during the year.

And they will show some 20,000 burglaries.

Many, possibly more than half, of Washington's burglars are dope addicts. They hit any place, city or suburbs, that appears to be unprotected. They take anything they can carry if it looks salable.

Mr. President, some have suggested that this rise in violence and lawlessness in the District of Columbia and elsewhere in the United States is the product of socioeconomic factors wholly outside of the reach of our criminal justice system. They criticize, too, those of us who suggest that the ill-considered actions of some of our courts have played a substantial part in the creation of this intolerable situation.

Mr. President, I do not suggest for a moment that socioeconomic factors play no part in the complex causation of the commission of crime, but I do suggest that our courts must shoulder their part of the blame, and I should like to now illustrate what I mean by discussing a recent decision of the Court of Appeals here in the District of Columbia, *United States* v. *William B. McPherson*, No. 22-312 decided October 3, 1969.

In December of 1967, two police officers, responding to a housebreaking call, apprehended McPherson in the hallway of an apartment building, carrying a radio that belonged to a resident of the building. The thief was thus caught "redhanded" at the scene of the crime, and in April of the following year he was brought to trial for petty larceny and second degree burglary. After all of the prosecution witnesses had testified, the defendant asked to be released on a Friday evening on bond in order that he might locate certain supposed witnesses for his defense. I note here that his release shows the degree to which the trial judge sought to accord to the defendant all conceivable rights. McPherson was told by the trial judge in no uncertain terms that there would be no excuses for his failure to appear the next Monday for the continuation of his trial. The court observed:

> The COURT. [T]here will be no excuses whatsoever accepted by this Court for your failure to appear. Do you understand?
>
> The DEFENDANT. I will be here. I will be here.
>
> The COURT. No sickness, anything—there is only one thing that can happen to you in the interim, and I am not wishing that upon you. But aside from that, you will be here.
>
> The DEFENDANT. I will.
>
> (Slip opinion at 9)

Nevertheless, the defendant was absent not only on Monday but again on Tuesday. The defense informed the court that efforts to locate McPherson had been unsuccessful and recommended that the judge declare a mistrial since McPherson was the only defense witness and without him there was no defense case. The court, however, chose to continue the trial in the defendant's absence under the authority of Federal Rules of Criminal Procedure, Rule 43, which, in pertinent part, provides:

> In prosecutions for offenses not punishable by death, the defendant's voluntary absence after the trial has been commenced in his presence shall not prevent continuing the trial to and including the return of the verdict.

The trial resulted in the only possible verdict: guilty.

On appeal, however, the District of Columbia court of appeals, in an opinion by Chief Judge David Bazelon, in which Circuit Judge Robinson concurred, reversed McPherson's conviction on the incredible ground that because neither the bail form McPherson signed nor the trial judge himself had specifically and explicitly informed the defendant that the trial could proceed in his absence, his voluntary absence from the trial was not a voluntary waiver of his right not to have a trial proceed without him. This ruling was made in the face of the fact that the only reason for McPherson's absence from the trial was that "the defendant became depressed, for personal reasons, and got drunk." (Slip opinion at 5.)

Circuit Judge Tamn dissented, making the acute observation:

> The real question in this case is not whether the defendant knew that the trial could proceed in his absence but whether he knew that he had a right to be present at the trial and waived it. (Slip opinion at 8)

Mr. President, Chief Justice Warren Burger recently observed that our American system of criminal justice was the "most elaborate system ever designed by

a society. It is so elaborate that in many cases it is breaking down. It is not working." In few areas of the Nation are the Chief Justice's comments more apt than here in the District of Columbia, and the court of appeals decision in McPherson is a classic example of why.

People can argue and propagandists can contend that the actions of the courts in liberalizing the rules of procedure to benefit the criminal and fail to protect society are not having an impact upon lawlessness in this country. Nevertheless, here is a man found guilty, and the court undertaking to accommodate him, at his request, in giving him an opportunity to bring in additional witnesses for his defense with the clear understanding, and the admonition, that nothing would excuse him from being present in court on Monday morning, save one thing—the implication being death—which the judge hoped would not happen.

Instead the guilty man chose to go off and get drunk and to defy the court and did not show up, not only on Monday, but also Tuesday, so that the court went ahead with the trial and the jury returned a vote of guilty.

It was the only verdict that could be returned under the evidence. Yet he goes to the court of appeals in the District of Columbia, and two judges on that court find a flimsy, unrealistic excuse to set aside the conviction.

I am asked why there is throughout this country today a lack of confidence in our system of justice.

Where was there any justice to society in this ruling?

Where will this precedent lead?

If the judge had told him everything that those two appeal judges said he should have told him, I am persuaded they would have found some other excuse to set aside the conviction or to turn the guilty person loose.

There is a responsibility on the part of courts to uphold the law, and not to circumvent it by this sort of illogical reasoning.

I make the statement again that there is an obligation on the courts to enforce the law, and not to circumvent it. There is as much duty on the courts to protect society under the law as there is to see that the accused is given his constitutional rights.

Mr. President, often it is a year or more before someone arrested for a crime here in the District is brought to trial. The 1968 report of the Director of the Administrative Office of the U.S. Courts records that the District of Columbia has the highest number of criminal cases pending and the second highest number of cases pending over 6 months. In median time for disposition from filing of the indictment, the District is exceeded only by Rhode Island and New Jersey, neither of which approach the District in backlog. Because of this time lag, and a number of high court decisions, such as the McPherson case, judges here in the District have no choice but to release arrested persons on bail, including hardened criminals and dope addicts. The young man arrested for armed robbery, as Chief Wilson recently told the President, is "likely to be out on the street almost before the police officer completes the paper work." And these persons remain on the street awaiting trial for long periods of time, time within which they are free to steal and to rob again and again.

Mr. President, we must frankly recognize that a large part of this overload in the criminal justice system is a result of appellate judges, like those in this decision, seizing upon the flimsiest of excuses to require new trials for obviously guilty defendants. This case clearly shows the cost to our society of neither imposing sufficiently strict criminal sentences to isolate the criminal nor rehabilitating him. McPherson's criminal record centered almost exclusively in the District of Columbia, reaches back to 1936. He has been involved in several narcotics violations, but his vocation has been crimes of theft. I suppose that goes along with his narcotic record. He has been arrested some 22 times for larceny, housebreaking, or robbery. The trial judge observed that McPherson had the worst criminal record that he had seen in his 20 months on the criminal trial bench. (Slip opinion at 8.) It shows a history of over 20 convictions and 40 arrests within the span of 28 years. Yet he got special treatment in the court of appeals in the District of Columbia, while society was ignored.

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

Mr. McCLELLAN. I ask unanimous consent to have 3 more minutes.

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

Mr. McCLELLAN. Mr. President, it is senseless for us to argue the role of socioeconomic factors in assessing the blame for this incredible criminal record. It is senseless, too, to punish society by making possible further crime and to punish other defendants by making possible trial delay by ordering new trials in these sorts of cases where error can only be realistically called a product of a ritualistic jurisprudence that substitutes artificial forms for substantial justice. By no stretch of the imagination could the failure of the trial judge here specifically to tell McPherson that the trial could go on without him have been anything but harmless error.

Mr. President, it is this sort of jurisprudence of technicality that is robbing us of safe streets. It is this kind of jurisprudence that is encouraging crime rather than deterring crime. Society deserves greater protection by its courts from crime. Indeed, our courts are everywhere losing that respect so necessary to the rule of law. A recent Harris poll found that a majority of our people attribute the breakdown in law and order to our courts. The courts cannot rightly receive the whole blame. They are not the only ones at fault. Yet this feeling of the people is indeed a sad commentary. It denotes a serious weakness in our peoples' confidence in our system of criminal jurisdiction and casts adverse reflections upon those who administer the system. It is time to bring a halt to these kinds of decisions.

Mr. President, I ask unanimous consent that the text of the court of appeals opinion in United States against McPherson—the case to which I have referred—be printed in the RECORD.

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

[U.S. Court of Appeals for the District of Columbia Circuit, No. 22,312]

UNITED STATES OF AMERICA *v.* WILLIAM B. MCPHERSON, APPELLANT

(Appeal from the U.S. District Court for the District of Columbia, decided October 2, 1969)

Mr. John H. Caldwell (appointed by his court) for appellant.

Mr. Robert P. Watkins, Assistant United States Attorney, with whom *Messrs. David G. Bress*, United States Attorney at the time the brief was filed, and *Frank Q. Nebeker*, Assistant United States Attorney at the time the brief was filed, were on the brief, for appellee. *Messrs. Thomas A. Flannery*, United States Attorney, and *Roger E. Zuckerman*, Assistant United States Attorney, also entered appearances for appellee.

Before BAZELON, *Chief Judge*, and TAMM and ROBINSON, *Circuit Judges*.

BAZELON, *Chief Judge:* Appellant, who was released on bail during his trial for petit larceny and second degree burglary, failed to return to court at the designated time. After a day's delay, his trial was continued without him. He contends that the District Court erred in proceeding with the trial in his absence since he made no competent waiver of his sixth amendment rights. He challenges only his five-to-fifteen-year burglary sentence and concurrent one-year larceny sentence; he raises no objection to the consecutive five-year sentence for bail jumping which was imposed at the same time.

I

In December 1967, two police officers, responding to a housebreaking call, apprehended appellant in the hallway of an apartment building carrying a radio which belonged to a resident of the building. Appellant was taken into custody, and bail was set at $5,000, which appellant was unable to meet. Following a January 3, 1968, preliminary hearing, appellant was indicted on February 28 for second degree burglary, 22 D.C. Code § 1801(b), and petit larceny, 22 D.C. Code § 2202. On March 15, 1968, appellant was arraigned and pled not guilty to both counts. The following week the Court of General Sessions reviewed his conditions for release and reduced money bond from $5000 to $1000. As appellant was still unable to raise bail, his counsel filed a motion on April 1 requesting that appellant be released to the third party custody of Bonabond, Inc.[1] At the commencement of trial on Thursday, April 18, the court reserved ruling on the Motion to Amend Conditions of Release until the following day. After receiving the testimony of the two policemen who had arrested appellant, the trial was adjourned and the jury dismissed until Monday morning.

On Friday, April 19, 1968, the court held a hearing on the bond review motion. The appellant explained that he sought his release in order to locate witnesses for his defense. Bonabond, Inc., expressed its willingness to act as third party custodian for appellant, and the court released appellant to that organization, after informing him he was to appear at 9:45 a.m. on Monday, April 22, 1968. The appellant failed to appear on Monday morning, and a recess to that afternoon likewise failed to produce him. On

[1] Bonabond, Inc., is an arm of the United Planning Organization, Washington's anti-poverty agency, staffed by ex-convicts. Among its functions, it supervises recognizance bonds for selected indigent defendants.

Tuesday morning, defense counsel informed the court that efforts to locate the appellant had been unsuccessful and recommended that the judge declare a mistrial since appellant was the only defense witness and without him there was no defense case. The trial court chose, over defense counsel's objection, to continue the trial in appellant's absence under authority of Rule 43 of the Federal Rules of Criminal Procedure.[2] Following the close of the Government's case, defense counsel's motion for judgment of acquital was denied; counsel then waived his opening statement and simply stated for the record that continued efforts to locate appellant had proved unsuccessful. The trial court then ruled that appellant's absence from trial was voluntary and sent the case to the jury,[3] which returned guilty verdicts on both counts of the indictment. Appellant was apprehended on May 2, 1968. At sentencing hearing on August 2, 1968, the court inquired into the circumstances surrounding the appellant's failure to appear at trial and again ruled that his absence had been voluntary.

II

The right to be present at trial which inheres in the sixth amendment and has been codified by Rule 43 of the Federal Rules of Criminal Procedure, has long been recognized as being of fundamental importance to the just administration of the criminal law. *Pointer v. Texas,* 380 U.S. 400, 405 (1965); *Diaz v. United States,* 223 U.S. 442, 455 (1912); *Cross v. United States,* 117 U.S. App. D.C. 56, 58, 325 F.2d 619, 631, (1963). Faced with a defendant who was not present at a portion of his trial and was thus unable to testify in his own behalf,[4] the courts have the serious responsibility of determining whether "it is clearly established that his absence [was] voluntary." *Cureton v. United States,* —— U.S. App. D.C. ——, 392 F.2d 671, 676 (1968).

To comprehend defendant's story of his search for two witnesses we must attempt to appreciate the environment in which he moves. To men with numbers and addresses in the telephone directory, fixed office hours and secretaries, it may seem dubious that defendant was making an honest and diligent effort to locate witnesses when he was out "on the streets where they generally hang out" from Friday when he was released on bond to Sunday when he went to sleep, "[l]ooking and hoping to see these people or at least learn their residences." Of course, it is uncontroverted that his search did not bear fruit,[5] that he subsequently became depressed for personal reasons and got drunk, and that, although not in hiding, he failed to contact his lawyer or the court and could not be found by Bonabond.

But whatever the implausibility of McPherson's narrative, the voluntariness of his absence from the courtroom must be determined by whether the warning given him was sufficient. As this court made clear in *Cross v. United States, supra,* we will look to the standards set forth in *Johnson v. Zerbst,* 304 U.S. 458 (1938) when the government claims a defendant waived his rights under the sixth amendment and Rule 43. In *Johnson v. Zerbst* the Supreme Court defined constitutional waiver as "an intentional relinquishment or abandonment of a known right of privilege." 304 U.S. at 464 (emphasis added).[6] *Cross* establishes that it is not merely the right to be present but its corollary, that the trial not continue when one is *not* present, which must be intelligently waived.

III

In the present case, the trial judge is to be commended for his insistence in making clear that he expected appellant to be present when the trial resumed.[7] It would be difficult to believe that appellant was unaware that serious consequences would follow his failure to appear. Indeed, appellant as much as acknowledged this by pleading guilty to jumping bail, for which he was sentenced to imprisonment for a term of not less than five years, to run *consecutively* to his five to fifteen year burglary sentence. But the question still remains whether the appellant was apprised that besides bail jumping penalties an additional consequence would be the continuation of trial in his absence, which was tantamount to a guilty plea.

To secure his release on bail, appellant signed Part IV of the "Order Specifying Methods and Conditions of Release" (Bail Reform Act Form No. 2), in which he stated that he understood "the penalties and forfeitures applicable in the event that I . . . fail to appear as required." Yet the only penalty listed on Form No. 2 is that "an additional criminal case may be instituted." There is no specific warning of any other consequences set forth on the form nor was any delivered by the court, advising that if the defendant voluntarily absented himself he would be deemed to have waived his constitutional right to testify and to confront the witnesses against him so that the trial could continue without him.

Absent such warning, it was incumbent on the court to determine whether the appellant knew in fact that his trial would go on without him. Neither defense counsel nor the Government developed facts in the District Court on which to rest an adequate consideration of this issue. Although his claim appears dubious, we are constrained to remand this case to afford appellant the opportunity to develop factual support for his contention that his absence was not truly voluntary since it was not a waiver of a "known right." *Johnson v. Zerbst, supra; Cureton v. United States, supra.*

The judgment below is vacated and the case is remanded; if the District Court concludes that appellant knowingly waived his right to be present at trial, it may reinstate the judgment; otherwise, the appellant must be afforded a new trial at which he will have the opportunity (unless he knowingly and voluntarily foregoes it) to appear and recite his story.

Remanded.

TAMM, *Circuit Judge,* dissenting: The real question in this case is not whether the defendant knew that the trial could proceed in his absence but whether he knew that he had a right to be present at his trial and waived it. The majority seems to recognize this when it speaks of a remand to enable the defendant "to develop factual support for his contention that his absence was not truly voluntary *since it was not a waiver of a 'known right.'*" (Majority opinion at 7; emphasis added.) The right that was involved was the right to be present. Thus it follows that if the defendant knew or should have known that he had a right to be present, his voluntary absence (and there is no doubt that his absence was voluntary) was a waiver of that "known right."

While Rule 43 of the Federal Rules of Criminal Procedure, in implementing the

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[2] Rule 43 provides in pertinent part:

"The defendant shall be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules. In prosecutions for offenses not punishable by death, the defendant's voluntary absence after the trial has been commenced in his presence shall not prevent continuing the trial to and including the return of the verdict."

[3] Because of our disposition of this case, we do not have to reach appellant's contention that in his absence it was plain error for the trial court to give the jury the instruction permitting an inference of guilt from unexplained possession of recently stolen property.

[4] The continuation of the trial in his absence seriously prejudiced appellant, who desired to explain his possession of the goods which the government witnesses identified as having been removed from the apartment building in which appellant was apprehended. There seems to be no doubt that his intention to testify was serious, since he had previously received the trial judge's assurance that he could do so without being impeached by his criminal record. Since no one testified for the defense, the effect of the instruction on the inference which may be drawn from the unexplained possession of recently stolen property was to assure a guilty verdict.

[5] McPherson testified that he learned one witness had died of an overdose of narcotics in Baltimore. When McPherson stumbled upon the other witness, he displayed his determination not to cooperate by shooting at McPherson and fleeing; McPherson claims to know this witness only by sight and not by name.

[6] The *Johnson v. Zerbst* standard of "intelligent and competent waiver," 304 U.S. 458, was applied in that case to the right to be assisted by counsel. This standard has also been held to govern the waiver of other constitutional rights, *e.g.* the fifth amendment privilege against self-incrimination, *Miranda v. Arizona,* 384 U.S. 436, 444 (1966) ["voluntarily, knowingly and intelligently"], *Escobedo v. Illinois,* 378 U.S. 478, 490, n.14 (1964) ["intelligently and knowingly"], and *Proctor v. United States,* — U.S. App. D.C. —, —, 404 F. 2d 819, 821 (1968) ["intelligently and understandingly"]; the right to trial by jury, *Adams v. United States, ex rel. McCann,* 317 U.S. 269 (1942) ["express, intelligent"] and *Patton v. United States,* 281 U.S. 276, 312 (1930) ["express and intelligent"]; and the combination of rights relinquished through a guilty plea, *Boykin v. Alabama,* 395 U.S. 238, 242 (1969) ["intelligent and voluntary"], and *McCarthy v. United States,* 394 U.S. 459 (1969). In the latter case, the Supreme Court explicitly reaffirmed the standard enunciated by *Johnson v. Zerbst,* applying it to guilty pleas under Rule 11 of the Federal Rules of Criminal Procedure, 394 U.S. at 466. In *McCarthy,* defense counsel informed the District Court that the defendant had been advised of the consequences of a guilty plea; defendant then stated that his plea was not a product of threats or promises and that he understood that such a plea waived his right to jury trial. However, after he had been sentenced, defendant moved to set aside his pleas because the trial judge had not personally addressed him to determine that the plea was voluntary. The Court of Appeals affirmed, but the Supreme Court reversed. The Court held that as the defendant's plea amounted to a waiver of his rights to confrontation and trial by jury, "it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts" and "if a defendant's guilty plea is not equally voluntary and knowing it has been obtained in violation of due process and is therefore void." 394 U.S. at 466.

[7] Immediately before the trial court ordered the appellant released on bond, the following exchange took place:

"The COURT. Monday morning at 9:45 there will be no excuses whatsoever accepted by this Court for your failure to appear. Do you understand?

"The DEFENDANT. I will be here. I will be here.

"The COURT. Not sickness, anything—there is one thing that can happen to you in the interim, and I am not wishing that upon you. But aside from that, you will be here.

"The DEFENDANT. I will."

mandate of the sixth amendment, requires a defendant to be "present . . . at every stage of the trial," it permits, "[i]n prosecutions for offenses not punishable by death, the defendant's *voluntary* absence after trial has been commenced in his presence . . . ." FED. R.CRIM.P. 43. (Emphasis added.) We have construed this rule as providing "that if a defendant at liberty remains away during his trial the court may proceed provided it is clearly established that his absence is voluntary. He must be aware of the processes taking place, of his right and of his obligation to be present, and he must have no sound reason for remaining away." *Cureton v. United States,* ——— U.S.App.D.C. ——, ——, 396 F.2d 671, 676 (1968). Moreover, the oft-quoted case of *Johnson v. Zerbst,* 304 U.S. 458 (1938), speaks of a "proper" and "intelligent" waiver as being one that "must depend, in each case, upon the particular facts and circumstances surrounding that case, including background, experience, and conduct of the accused." 304 U.S. at 464. Applying these principles to the present case we find that the appellant was the possessor of the "worst" criminal record that the trial judge had seen in his twenty months on the criminal trial bench. (Sent. Tr. at 7–8) This record shows a history of over 20 convictions and 40 arrests within the span of 28 years. (Sent. Tr. at 7.) His "background" and "experience" were, at the very least, broad. Regarding his conduct, we note that after beginning appellant's non-capital trial in his presence (McPherson had been in jail up to and including his first day of trial), the trial judge permitted McPherson's release for the purpose of locating witnesses. Upon the urging of the Government, however, the judge cautioned the appellant that the trial would resume on Monday morning at 9:45:

"The COURT. [T]here will be no excuses whatsoever accepted by this Court for your failure to appear. Do you understand?

"The DEFENDANT. I will be here. I will be here.

"The COURT. Not sickness, anything—there is only one thing that can happen to you in the interim, and I am not wishing that upon you. But aside from that, *you will be here.*

"The DEFENDANT. *I will.*"

The defendant wasn't there on Monday when a bench warrant was issued, nor on Tuesday when the trial resumed over his counsel's objection. In his absence, he was convicted.

At the time of sentence, McPherson attempted to explain his absence. He said that he fell asleep Sunday night and did not awaken until Monday evening at 4:30 (Sent. Tr. at 5). He related that upon arising he did not attempt to contact anyone nor did he attempt to contact the court or his counsel during the ensuing days of his absence when he was "back in the street" looking for witnesses (Sent. Tr. at 6). Upon his testimony,[8] the court found his absence voluntary. I do likewise. *Cureton,* Rule 43 and the Sixth Amendment have been followed.

I would affirm.

[8] Between the time of conviction and imposition of sentence McPherson was arrested and again brought to jail. While in jail awaiting sentence he wrote a letter to the trial judge apologizing for his poor judgment and explaining, in great detail, the facts surrounding his absence. My reading of that letter convinces me that this appellant had full knowledge of the consequences of his acts and had no intention of returning to the courthouse unless forced. He knew his rights and knew his chances—he chose to take the latter.

TAX REFORM ACT OF 1969—ACTION OF COMMITTEE ON FINANCE

Mr. LONG. Mr. President, on Thursday, October 30, the Committee on Finance considered in executive session a series of miscellaneous amendments and added several of them to the House-passed tax reform bill. Additionally, the committee reconsidered and modified several previously announced decisions—concerning Federal Land Banks, REA cooperatives and health insurance payments.

So that Senators might follow the progress of these executive sessions, I ask unanimous consent that a press release be printed in the RECORD.

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

[A press release from the Committee on Finance, U.S. Senate, Oct. 30, 1969]

TAX REFORM ACT OF 1969

COMMITTEE DECISIONS

The Honorable Russell B. Long (D., La.), Chairman of the Committee on Finance announced today that the Committee on Finance had reached agreement on several additional parts of the House-passed tax reform bill.

A large part of today's executive session was devoted to consideration of amendments offered by Senators Albert Gore (D., Tenn.) and Vance Hartke (D., Ind.) to increase the $600 personal exemption and an alternative approach by Senator Jack Miller (R., Iowa) to provide tax reduction through the use of additional tax credits. The Chairman reported that following a number of record votes on these matters the Committee decided that it would concentrate its attention at tomorrow's meeting on tax cuts worked out through reductions in the tax rate schedules. This is the same approach taken by the House bill.

During the remainder of today's session, the Committee acted on a series of amendments, the substance of which are described in the following paragraphs.

Income of American Employees Abroad.—Under present law, an American citizen who resides in a foreign country for 17 out of 18 consecutive months may exclude from his gross income for Federal tax purposes amounts paid to him from foreign sources up to $20,000 a year. If he is a bona fide resident of a foreign country he may exclude $20,000 a year for the first three years, and thereafter exclude $25,000 a year. At today's meeting, the Committee decided that these $20,000 and $25,000 exclusions should be limited to $6,000. Accordingly, the earned income limitation in existing law in these cases for the future will be limited to $6,000.

Federal Land Banks; Amendment Reconsidered.—The Committee reconsidered the amendment it had added to the bill earlier in its sessions which would have subjected Federal land banks to Federal income tax. (See Committee announcement of October 17, 1969.) Following this reconsideration the Committee decided to omit the provision from its bill.

REA Cooperatives; Amendment Reconsidered.—The Committee also reconsidered the action taken at an earlier session by which rural electrification cooperatives were subjected to tax on income earned on U.S. government bonds purchased with the proceeds of low interest bearing loans which these organizations are authorized to obtain from the Federal government. (See Committee announcement of October 17, 1969.) Following this reconsideration, the Committee decided to omit this provision from its bill.

Recapture of Soil and Water Conservation Expenses.—The Committee agreed to a provision to recapture soil and water conservation expenditures and land clearing expenditures made with respect to farm land. Under the provision, the gain on the sale of land would be treated as ordinary income, rather than as a capital gain, to the extent of the previous specified expenditures with respect to the land. However, there would be no recapture after the land had been held for ten years from the time of the expenditures. For land sold within 10 years there would be a sliding scale of recapture. Where the land was sold prior to the end of the fifth taxable year after the year in which the expenditure was made, there would be a 100 percent recapture; for sales in the sixth through the tenth years the amount would be recaptured as follows:

Year and percent recapture:

6	80
7	60
8	40
9	20
10	0

Medical Insurance; Medicare Amendment Reconsidered.—On October 17, 1969, the Committee approved an amendment to require that payments made under the Medicare and Medicaid programs and payments made by *private* medical insurance carriers must be reported to the Federal tax collector if they aggregate $600 or more during the year. The payments to be reported include those made directly to the health care practitioner who accepts an assignment from his patient and those for which a patient submits bills and is paid for services rendered by the health care practitioner.

At today's meeting the Committee reconsidered this amendment and agreed that the new provisions with respect to private insurance would not be applicable until 1971. Reporting of payments under the Medicare and Medicaid programs, however, will be required beginning in 1970.

Real Estate Depreciation; Binding Contracts.—Under the House bill the use of accelerated depreciation is protected where the taxpayer acquires new real property pursuant to a binding contract in effect on July 25, 1969. No comparable provision protects the purchaser of *used* real estate where the acquisition occurs after July 25, 1969 pursuant to a binding contract in effect prior to that date. The committee added an amendment to allow a purchaser to use 150% of straight line depreciation with respect to *used* real property acquired pursuant to a binding contract in effect on July 25, 1969. Thus, under the Committee's action today, a taxpayer may claim fast appreciation with respect to a building, whether new or used, if he had entered into binding contracts prior to July 25, 1969, for the purchase of the building.

Another amendment was agreed to providing for accelerated depreciation with respect to a building for which the necessary land had been acquired and building plans had been completed before July 25, 1969, but for which the local authorities had failed to grant the necessary approval to permit construction to commence before July 25, 1969, even though application to build had been filed before that date. Under the Committee amendment, accelerated depreciation will be available provided construction commences within one year from the date of filing of the application for the building permit.

Insurance Companies.—The Committee agreed to four amendments with respect to the tax treatment of insurance companies. The first two of these had previously been approved by the Committee and passed by the Senate (H.R. 2767 of the 90th Congress). The substance of the four amendments follows:

Losses.—This amendment provides for loss carryovers where one type of insurance company is converted into another type (for example, where a stock casualty insurance company becomes a mutual company, or a life insurance company, or vice versa). The amount of the loss deduction generally would be limited to the lower of the amount for which the company would qualify before or after the shift.

Spin-off Phase III Tax.—This amendment provides that the so-called "phase three" tax applicable to life insurance companies is not to apply in certain cases merely because a life insurance company distributes to its holding company parent the stock of a subsidiary which it holds. However, in such a case the so-called "phase three" tax is to apply to distributions by the subsidiary, whose stock was distributed, in the same manner as it would apply to distributions by the life insurance company itself.

Contingency Reserves.—This amendment clarifies the deductibility of interest credited to special reserves under contracts of group term life insurance or group health and accident insurance established and maintained for insurance on the lives of retired workers, or for premium stabilization. On approving this legislation the Committee observed that the amendment reiterated its intent, expressed during consideration of the Life Insurance Company Income Tax Act of 1959, that this interest was deductible.

Tax-Free Exchanges of Securities.—This amendment deals with the situation where insurance companies with large holdings of appreciated securities in their investment portfolios have been able to exchange these securities for their own stock without payment of tax on the gain included in the securities surrendered. Under this amendment this sort of exchange in the future will give rise to taxable gain.

Interest on Tax Deficiencies and Refunds.—The Committee agreed to adopt a new provision (recommended by the Internal Revenue Service) which provides a penalty on taxpayers who fail to pay the tax required to be shown on the return at the time they file their return. In general, present law imposes a five percent per month penalty, up to a maximum of 25 percent, in the case of failure to file a return on the date it is due. This provision does not apply if the failure is due to reasonable cause and not due to wilful neglect. Under the Committee provision, this penalty would be expanded to apply if the taxpayer fails to pay the tax due at the same time he files his return. As in the case of the failure to file the return at the time it is due, however, the addition to the tax would not apply if the failure is due to reasonable cause and not due to wilful neglect.

Further, the Committee agreed to increase the penalty for failure to make required deposits of withholding taxes. Under this decision the present penalty of one percent per month (up to a maximum of six percent) would be raised to five percent of the amount due to the Government. This penalty would be added to any deposit of withholding taxes which are not paid at the time they are due. However, it would not apply where the failure to deposit on time is due to reasonable cause and not due to wilful neglect.

Mutual Funds; Unit Investment Trusts.—The Committee approved an amendment to prevent participants in a periodic payment plan to purchase mutual fund shares from being treated as an association taxable as a corporation. However, the Committee included a proviso that its amendment would not apply with respect to an association of persons investing in variable annuity contracts with a life insurance company.

Subpart F Income.—The Committee agreed to an amendment which would make technical corrections in the computation of "subpart F" income, which is taxed to the parent corporation of a foreign subsidiary. Under existing law, foreign base company income (a part of Subpart F Income) does not include any item of income received by a controlled foreign corporation if it is established to the satisfaction of the Secretary or his delegate, with respect to the item, that the creation or organization of the foreign corporation does not have the effect of substantial reduction of income, or similar taxes. The provision adopted by the Committee would clarify this section of existing law by providing that foreign base company income would not include any item of income received by such a foreign controlled corporation if the transaction giving rise to the item of income did not have as one of its significant purposes a substantial reduction of income, or similar taxes.

Private Foundations.—The Committee also agreed to a new provision relating to existing private foundations which would make the divestiture requirement inapplicable if the following conditions are present:

(1) The stock in the company was acquired by the foundation by gift, device or bequest;

(2) The foundation owns ninety-five percent or more of the voting stock of the corporation;

(3) The majority of the governing body of the foundation consists of persons other than the donor or members of his immediate family, taking into account the attribution rules in the bill;

(4) The current business of the corporation is substantially of the same character as the business conducted at the time of the gifts of the stock by the donor;

(5) The corporation does not purchase any stock in another business enterprise which would represent an excess business holding;

(6) The corporation annually distributes to its shareholders 40 percent of its income after taxes; and

(7) The foundation must distribute (or use) for its tax-exempt purpose substantially all of its income.

Mutual Savings Banks; Savings and Loan Associations.—The Committee considered and approved several modifications of the rules relating to investment restrictions applicable, to mutual savings banks and savings and loan associations. Under these modifications the following investments would qualify for purposes of meeting the tests (82 percent of total assets in the case of savings and loan associations; 72 percent of total assets in the case of mutual savings banks) necessary to qualify for the special deduction for additions to bad debt reserves:

(1) Loans secured by redeemable ground rents;

(2) Loans secured by an interest in real property located in an urban renewal area if the urban renewal area is predominately residential; and

(3) Loans made to finance the acquisition or development of land which will become residential property if there is assurance that building will actually occur thereon within a period of three years (with retroactive disqualification of the loan if this does not occur).

The Committee also adopted a provision under which an apartment house with commercial establishments on the first floor would qualify as "residential real property" if 80 percent of the useable space in the building was residential space. It also modified the rules applicable during the transition period over which the 60 percent deduction for bad debts is reduced to 50 percent. (See Committee announcement of October 16, 1969.) During this period it would be permissible if only 50 percent (rather than 60 percent) of the investments of the institution are in qualifying assets. Thereafter, 60 percent of investments must be in qualifying assets just as the House bill would have required. Finally, a one percentage point reduction would be made in the 50 percent deduction for additions to bad debt reserves for each percentage point that qualifying assets fall below the 82 percent test in the case of savings and loan associations. In the case of mutual savings banks, a reduction of 1½ percentage points in the bad debt deduction would be required for every percentage point that qualifying assets fall below the 72 percent test.

Supervisory Mergers of Savings and Loan Associations.—The Committee agreed to an amendment, suggested by the Federal Home Loan Bank Board, clarifying the treatment of bad debt reserves of institutions participating in a tax-free merger under the supervision of the Federal Home Loan Bank Board. Under the amendment the amount in the bad debt reserves would not be restored to income at the time of the merger. The Committee was advised that its amendment reflected the law as the Internal Revenue Service had interpreted it, and in this respect it is merely declaratory of the law.

Charitable Remainder Trusts.—The Committee decided to require a charitable remainder annuity trust or unitrust to distribute at least its current income (other than capital gains) to the income beneficiary, and to provide that in determining the amount of the charitable contribution deduction allowed in the case of a gift of remainder interest in trust, a 5 percent payout to the income beneficiary is to be assumed for valuation purposes if the 5 percent is higher than the payout otherwise determined under the annuity or unitrust rules. This rule strikes a balance between the harshness of imposing an inflexible 5 percent payout requirement which might unduly restrict the trust and the possibility of circumventing the restrictions contained in the private foundation provisions of the bill by providing for a very low income payout. The Committee action was made effective with respect to trusts created after October 9, 1969.

Limitation on Deduction of Interest.—The Committee adopted the Treasury recommendation that the limitation on the interest deduction in the case of individual taxpayers contained in the House bill be deleted pending further study. Generally, this provision of the House bill would have disallowed the deduction of interest on indebtedness incurred to purchase investment assets to the extent the interest exceeded the taxpayer's net investment income and the amount of his long-term capital gains by more than $25,000.

Corporate Mergers—Disallowance of Interest Deduction in Certain Cases.—The Committee generally adopted those provisions of the House bill dealing with the disallowance of the interest deduction on debt issued in connection with corporate mergers. However, it did make several important modifications in this provision. Under the House bill, the interest deduction would be denied for interest on bonds or debentures issued by a corporation to acquire stock in another corporation or to acquire at least two-thirds of the assets of another corporation. This rule, however, only would apply to bonds or debentures which (1) are subordinated to the corporation's trade creditors, (2) are convertible into stock, and (3) are issued by a corporation with a ratio of debt to equity which is greater than two to one, or with an annual interest expense on its indebtedness which is not covered at least three times over by its projected earnings.

First, the Committee adopted a provision authorizing the Internal Revenue Service to issue regulations providing tests for distinguishing generally whether bonds or debentures are in fact debt or equity. Since there is a great variety of situations in which this question can arise, the Committee believed it was appropriate to provide this authority to the Internal Revenue Service so it could

develop rules to take account of the various characteristics of these situations.

The Committee also agreed that it would be appropriate to broaden the subordination test of the House bill so that it applies to obligations which by their terms are subordinated in right of payment to any substantial amount of the corporation's indebtedness. This action would provide for the case where although the obligation is not subordinated to trade creditors it is subordinated to substantial amounts of pre-existing debt.

The Committee also decided that the debt equity and interest coverage tests of the House bill should be revised so as to allow an issuing corporation to have a debt equity ratio of four to one, and to only require the annual interest expense of the corporation to be covered at least two times over by the corporation's projected earnings. The Committee believes these tests more appropriately reflect a reasonable capital structure for a corporation. The Committee further decided to clarify the application of these tests in the case of corporations engaged in the loan business by providing that the amount of the corporation's indebtedness should be reduced by amounts owed to it and the amount of the corporation's annual interest expense should be reduced by its annual interest income.

The Committee also agreed that where the interest deduction was disallowed because the debt equity test was not met or because the earnings of the corporation were not at least two times more than the annual interest expense, the disallowance of the interest deduction would be discontinued after the debt equity test and the earnings test had been met for a period of at least three years. The House bill provides for an exception from the disallowance rule of up to five million dollars a year of interest on obligations which meet the prescribed test. This exemption is reduced by interest on obligations which do not meet one of the three specific tests in the bill. The Committee agreed that the reduction should be limited to interest on obligations issued after December 31, 1967.

In the case of corporate acquisitions the provisions of the House bill only apply where the acquiring corporation obtains at least two-thirds of the assets of another corporation. The Committee agreed to a Treasury recommendation that the two-thirds test should be applied to the operating assets (excluding cash) of the acquired company rather than to the total assets. This would prevent the two-thirds test from being avoided where the acquired company has a large amount of its assets in cash and non-operating properties.

The Committee also decided to make this provision of the House bill inapplicable in the case of an acquisition of a corporation's stock where the total interest of the acquiring corporation in the other corporation does not exceed five percent. This would eliminate deminimus stock acquisitions from the scope of this provision.

The Committee also agreed that this provision of the House bill should be applicable to indebtedness incurred after October 9, 1969. (The date used in the House bill is May 27, 1969). The Committee also agreed that this provision would not apply to the acquisition of additional stock of a corporation where the taxpayer acquired at least 50 percent of the stock on or before October 9, 1969. This would enable a corporation which had achieved practical control of another corporation by this date to acquire the additional stock necessary to give it control for tax purposes. The Committee also agreed to make this provision of the bill inapplicable to the acquisition of stock or assets of a corporation pursuant to a binding contract entered into before October 9, 1969.

Corporate Mergers—Limitation on Installment Sales Provision.—The Committee agreed to the provision of the House bill which provides that bonds with interest coupons attached, in registered form, or which are readily tradeable are, in effect, to be considered payments in the year of sale for purposes of the rule which denies the installment method where more than 30 percent of the sale's price is received in that year. In this connection, however, the Committee agreed to exclude from this treatment bonds or debentures in registered form which are non-transferable, except by operation of law.

The Committee also accepted the Treasury recommendation that the periodic payment requirement of the House bill be deleted, but that the installment method not be available where an obligation is payable on demand. Under the periodic payment requirement of the House bill the use of the installment method would be denied unless the payment of the loan principal, or the payment of the loan principal and interest together, were spread relatively evenly over the installment period.

The Committee also agreed to make these new rules regarding the installment method effective with respect to sales made after October 9, 1969 (the date used in the House bill is May 27, 1969). The Committee further agreed to make the new rules inapplicable in the case of installment sales which are made pursuant to a binding contract entered into before October 9, 1969.

Corporate Mergers—Original Issue Discount.—The Committee accepted with minor modifications the provision of the House bill which provides that in the case of bonds issued at a discount the bondholder and the issuing corporation are to be treated consistently with respect to the original issue discount. Generally, under this provision of the bill, a bondholder is required to include original issue discount in income ratably over the life of the bond. This rule applies in the case of the original bondholder as well as to subsequent bondholders.

The Committee adopted a provision making the ratable inclusion of original issue discount requirement inapplicable in the case of life insurance companies which already accrue discount on a basis which produces essentially the same result as a ratable accrual. This will eliminate the necessity of life insurance companies shifting from one method of accruing original issue discount which has been regularly employed to another method (that prescribed by the bill) where the end result is essentially similar.

The Committee agreed that this provision of the House bill should be applicable to debt obligations issued after October 9, 1969 (the date used in the House bill is May 27, 1969). The Committee also agreed that this provision of the bill should not apply to debt obligations which are issued pursuant to a binding commitment entered into prior to October 9, 1969.

Corporate Mergers—Convertible Indebtedness Repurchase Premiums.—The Committee agreed to the provision of the House bill dealing with the deductability of convertible indebtedness repurchase premiums with a minor modification. This provision of the House bill provides that a corporation which repurchases its convertible indebtedness at a premium may deduct only that part of the premium which represents a cost of borrowing, rather than being attributable to the conversion feature.

The Committee agreed to make this provision applicable to repurchases of convertible indebtedness after October 9, 1969 (the date used in the House bill is April 22, 1969).

TAX REFORM ACT OF 1969—ACTION OF COMMITTEE ON FINANCE

Mr. LONG. Mr. President, on Friday, October 31, the Committee on Finance, in its last day of executive sessions on the Tax Reform Act of 1969, completed its work and ordered the bill reported to the Senate. The committee announced that the tax reductions and increases which the bill provides will culminate in 1972 and will involve approximately $16 billion in revenue. The committee adopted various other recommendations, added amendments, and modified certain previously announced decisions.

So that Senators might be aware of the committee's final action on the tax reform act, I ask unanimous consent that a press release be printed in the RECORD.

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

[A press release from the Committee on Finance, U.S. Senate, Oct. 31, 1969]

TAX REFORM ACT OF 1969

REPORTED TO SENATE

The Honorable Russell B. Long (D. La.), Chairman of the Committee on Finance, announced today that the Committee on Finance had finished its work on the Tax Reform Act of 1969 and had ordered the bill reported to the Senate. He reported that the motion to report was approved by a voice vote with few Senators dissenting. He indicated this was the third most significant tax bill in the nation's history ranking behind only the original income tax act of 1913 and the massive tax cuts in the Revenue Act of 1964. He expressed hope that the technical work necessary to prepare the bill for Senate consideration could be finished within three weeks so that the bill could be acted on promptly by the Senate.

$9 Billion Tax Cuts.—Chairman Long reported that in large measure the $9 billion of individual income tax reductions recommended by the House of Representatives had been approved by the Committee on Finance. The most significant difference involved a transfer from 1971 to 1972 of a portion of the tax reductions the House bill would have provided in the earlier year. He indicated that this was done in order to prevent the bill from having an inflationary impact on the economy in 1971.

Planned Tax Reduction.—Senator Long further indicated that the Senate bill reflected a program of planned tax reduction. He noted that on January 1, 1970, the 10 percent surtax would be reduced to 5 percent and that on July 1, 1970, it would be eliminated entirely. He also indicated that the standard deduction would be increased in 1970 and that the low income allowance—designed to remove 5 million tax returns from the tax rolls—would also become effective in 1970. The combination of these features, he said would involve tax reductions totaling $10.8 billion.

In 1971 he reported the first step in the individual tax rate reductions would take place, and the second step in the increase of the standard deduction would occur. In addition, the so-called phase-out of the low income allowance would itself phase-out over a 2-year period. The combination of these changes plus the final elimination of the surtax and the planned reduction in auto and telephone excise tax rates, would result in further tax reductions for 1971 of $8.1 billion.

In 1972, the full tax rate reductions would become effective, and the final step in the

increase of the standard deduction would be reached. In addition the "phase-out" of the low income allowance would be fully eliminated in 1972. Thus, in 1972 these planned tax reductions and another excise tax reduction would amount to a further $4.4 billion.

Revenue Raising Tax Reform.—In addition to these tax reductions, the Chairman emphasized that tax raising reform features of the bill would hike taxes by $6.5 billion from those who in the past have enjoyed substantial tax preferences. He observed that no industry in America would be left untouched by the bill and that the real estate industry, the oil and gas industry, financial institutions and private foundations had been singled out for particularly stringent treatment.

The Chairman stated his belief that at no time in his experience had the public interest been represented so well in a major tax bill. He praised the members of the Committee who had worked so long and so hard to reach agreement on a tax bill as complicated as the Tax Reform Act of 1969. He expressed confidence that if the full Senate would approach its work on the bill with the same diligence and dedication that the members of the Committee on Finance had displayed, the tax reductions provided by the bill could become the law of the land by Christmas.

A complete description of the day's decisions, with respect to other matter, follows:

Cement Mixers.—The Committee approved an amendment (identical to an amendment which passed the Senate in 1968 too late for the House to act before adjournment) to clarify the excise tax status of cement mixers. Under the Committee amendment, cement mixers would not be subject to the 10 percent excise tax generally applicable to automobile trucks, although the tax would continue to apply to the truck in which the cement mixer is mounted. This amendment reverses a 1967 ruling in which the Internal Revenue Service administratively reversed its long-standing position and announced that cement mixers in the future would be subject to tax.

Vacation Pay.—The Committee also adopted an amendment extending for an additional two years, for taxable years ending before January 1, 1971, the period within which vacation pay may be accrued by employers under rules in effect prior to 1960. The Committee was advised that the Treasury Department would be prepared to recommend permanent legislation within this two-year period to deal with the matter of vacation pay.

Filing of Income Tax Returns and Withholding.—The Committee adopted a number of provisions (all suggested by the Treasury Department) which will relieve many low income taxpayers from filing a tax return, permit more flexibility in the withholding system, and enable the Treasury to increase its assistance to taxpayers by computing their tax for them.

1. The first of these increases the income level at which filing a tax return is required from the present $600 ($1,200 for those age 65) to the new levels of nontaxable income provided by the low income allowance which the Committee also adopted. The filing requirement would be increased to $1,700 for single persons, $2,300 if married or age 65 or over, $2,900 if married and one spouse is age 65 or over, and $3,500 if married and both spouses are age 65 or over. The filing level would remain at $600 for a married couple filing separate returns.

2. The Committee adopted another recommendation that the problem of overwithholding for those with no tax liability (particularly those who work part-time such as students who work during the summer) be solved by eliminating withholding for such persons. This would be accomplished by an employee certifying to an employer that he estimates that he will have no Federal income tax liability for the current year and, in fact, had no income tax liability for the preceding year. This could relieve as many as 10 million persons from overwithholding.

3. The next recommendation was that the Internal Revenue Service be permitted to compute tax liability for taxpayers if they request, regardless of the amount or source of their income, their marital status, the type of tax credits claimed, or whether they itemized their deductions or take the standard deduction. Under present law, only taxpayers who have income less than $5,000, less than $100 of nonwage income, who use the optional tax table an do not use the retirement income credit, may elect to have their tax computed for them by the Internal Revenue Service.

4. The Committee also approved an amendment that the Internal Revenue Service be permitted to provide employers more flexibility in devising withholding systems which fit their particular needs and also match withholding and tax liability. In addition, employers will be permitted to annualize wage payments for withholding purposes to reduce overwithholding where wage payments are not made throughout the entire year as in the case, for example, of professional athletes. Under present law, withholding on wage payments is computed as if the same amount of wages is to be received each payroll period throughout the year.

Under the Treasury proposal, for example, if an employee is to receive wages for only 6 months of the year, his employer could multiply the amount of wages paid in the first month by 6, determine the withholding due on this amount as if it were the total wages for the year, and withhold one-sixth of the annual withholding in each of the six monthly payroll periods.

5. The next recommendation was that the Internal Revenue Service be permitted to prescribe rules for voluntary income tax withholding on payments for services which are not "wages" as defined in the law. *Tax would be withheld on these payments only when the employee requests such withholding.* This provision would reduce the amount of final tax payment (which may be burdensome) for retired persons (or their survivors) receiving pensions, farm and domestic workers, and others who receive payments not now subject to withholding.

6. The Committee also adopted a Treasury recommendation that supplemental unemployment benefits (SUB payments) be subject to withholding.

7. The Internal Revenue Service was authorizing to permit rounding of withholding amounts to the nearest whole dollar. This will aid employers, particularly those whose withholding systems are computerized.

8. Employees who have itemized deductions in excess of the level of deductions on which the withholding tables are based may claim additional withholding allowances under existing law to prevent overwithholding in their cases. However, existing law requires that estimated itemized deductions for the year be no more than the taxpayer's itemized deductions for the preceding year. This effectively prevents the provision from operating for the first year in which the taxpayer has excess itemized deductions even though their existence is clear and need not be verified by similar experience in a prior year. The Committee adopted a recommendation that the prior year requirement be eliminated where the excess itemized deductions are substantiated by court order (such as alimony) or by other evidence which verifies their existence. Also, if the excess itemized deductions would result in a fractional additional withholding allowance, the Committee action would permit a full additional withholding allowance on account of such fractional amount, rather than none as under existing law.

Reimbursement of Certain Casualty Loss Expenditures.—The Committee approved an amendment (the substance of Amendment No. 242, Senator Jack Miller (R., Iowa)) which provides for the exclusion from gross income of amounts received under insurance contracts for increased living expenses necessitated by damage to or destruction of an individual's residence. However under this amendment the taxpayer may exclude only actual extra living expenses resulting from the fire or other casualty which are over and above normal living expenses incurred by the taxpayer and members of his household.

Tax Court.—On motion of the Chairman the Committee added an amendment to the bill to create special procedures for the decision of small tax cases brought by taxpayers to the Tax Court and to change the status of the Tax Court to a legislative court under Article I of the Constitution. The amendment provides that where the taxes at issue are less than $1,000 for any one taxable year the taxpayer may request the court to review his case under a simplified procedure. Under this procedure the decisions will not be treated as precedents for deciding later cases. This provision, which is similar to proposals that had been introduced in both Houses of Congress in recent years, is expected to permit more rapid handling of many small tax cases. The amendment also changes the term of office of a tax court judge to fifteen years from the day he takes office. (Under present law it is twelve years, or the remainder of the term of the vacancy.) Modifications are provided in Tax Court retirement provisions, bringing them more in line with provisions for district court judges. Contempt and subpoena powers are made essentially the same as those of district court judges. The small claims provisions would take effect a year from the date of enactment; other provisions would generally apply as soon as the bill is enacted.

Arbitrage Bonds.—The Committee agreed to provide that State and local government bonds would not be treated as arbitrage bonds, which would cause the interest on the bonds to be taxable, where a portion of the proceeds of the bonds were placed in a reserve fund or a replacement fund. These are funds which are maintained to provide protection for bondholders and the proceeds of the funds generally are invested in Government or corporate securities. For this rule to be applicable, no more than fifteen percent of the proceeds of a bond issue could be placed in such a reserve or replacement fund. In addition, this treatment would not be available if the purpose of placing the proceeds in the fund was to obtain the benefits of arbitraging rather than to protect the bondholders. The Committee had previously dealt with the treatment of arbitrage bonds. (See Committee announcement of October 9, 1969).

Private Foundations.—The Committee modified in some respects the provisions it had previously dealt with regarding requirements that private foundations dispose of excess business holdings. (See Committee announcement of October 28, 1969). In one case brought to the Committee's attention, it was decided to permit a foundation to receive certain securities which are now subject to both a will and a trust without violating the excess business holdings requirements.

In another case brought to the Committee's attention it was decided to require a foundation to dispose of its excess holdings in stages—10 percent of the excess holdings within two years, 25 percent within five years, 50 percent in 10 years, and the remainder by the 15th year—if those excess holdings are in a corporation which owns more than 10 percent of the land area of any major political subdivision in the United

States (a county or city with a population of more than 100,000).

Investment Tax Credit; Transition Rules.—The Committee agreed to two additional transitional rules under which the investment credit will continue to be available in certain situations. The Committee previously had approved a transition rule which continues the availability of the credit in the case of property specified in a binding lease in effect on April 18, 1969 which obligates the lessor or lessee to construct under the terms of the lease. At today's meeting this rule was made applicable where the property is specified in a document filed with a local government authority prior to April 18, 1969. Thus, the investment credit will continue to be available for property which is specified in this manner and which is constructed pursuant to a pre-April 19, 1969, binding lease.

The Committee also agreed to continue the availability of the investment credit for property which would otherwise qualify for this treatment under the plant facility rule previously adopted by the Committee, except for the fact that construction had not commenced at the site of the plant facility. Generally, under this rule the credit will not be available unless the site for the plant facility was acquired prior to April 9, 1969, substantial expenditures were made prior to that date to prepare the site for its intended use (including the acquisition of access and transportation facilities related to the facility), and the taxpayer commences construction of the facility within one year from the time the site for the facility was acquired.

Capital Loss Carrybacks for Corporations.—Under present law, corporations may carry capital losses forward for five taxable years. The Committee decided to allow corporations to carry back their capital losses three years (in addition to the 5-year carryover), conforming the treatment of net operating loss carrybacks and carryovers under present law.

Accumulated Earnings Tax.—In its decisions regarding private foundations, the Committee had previously provided an exception from (1) the accumulated earnings tax (Internal Revenue Code section 531), and (2) the dividend rules (Internal Revenue Code section 303) in the case of redemptions of stock (owned by the foundation) by a closely-held corporation to comply with the new excess business holdings rules. (See Committee announcement of October 28, 1969.) An exception from the *dividend* rules appears in present law in the case of redemptions from an estate to pay death taxes. The Committee amended the bill to provide a similar exception from the *accumulated earnings tax* when a closely-held corporation redeems stock from an estate to pay death taxes.

Nonexempt Membership Organizations; Securities and Commodities Exchanges.—The Committee previously adopted the provision in the House bill which would deny the deduction for expenses incurred in supplying services, facilities or goods to members of a taxable membership organization to the extent that such expenses were not related to income received from the members. In addition to the decisions previously made (see Committee announcement of October 28, 1969), the Committee adopted an amendment making this provision inapplicable to securities and commodities exchanges.

STATEMENT OF PURPOSE OF CONSTRUCTION INDUSTRY FOUNDATION

Mr. SCOTT. Mr. President, the Construction Industry Foundation, headquartered in Philadelphia, Pa., is the first organization ever to represent the entire construction industry. Its purpose is to find fair solutions to the industry's pressing internal problems and to correct abuses and inequities for the benefit of the industry and the public alike.

Mr. President, I ask unanimous consent to place in the RECORD a statement of purpose of the Construction Industry Foundation.

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

CONSTRUCTION INDUSTRY FOUNDATION

The Construction Industry Foundation is the first organization ever to represent the entire construction industry. Its purpose is to find fair solutions to the industry's pressing internal problems and to correct abuses and inequities for the benefit of the industry and the public alike. The Foundation was incorporated May 2, 1969, and is qualified as a non-profit, tax-exempt organization.

Membership in the Construction Industry Foundation is open to architects, engineers, building product manufacturers, suppliers, general contractors, specialty contractors, home builders, labor unions, bank loan officers, building owners and managers, credit managers, insurance companies, surety bondsmen, government officials, and others, *everybody in construction.* Individuals, partnerships, associations, and corporations are eligible to join.

Representation of all of the many distinct components of the industry is important. As the management, legal, and financial problems that the Foundation will consider affect the entire industry, every segment must have the opportunity to participate in seeking fair solutions.

The purposes of the Foundation are:

1. To be a central forum for the mutual review of all problems within the construction industry, and to clarify and improve relationships among all elements of the industry.
2. To conduct research programs.
3. To conduct educational programs.
4. To recommend specific improvements in the documents, laws, and customs applicable to the construction industry.
5. To assemble legal precedents and similar information as a guide to the industry and the public.
6. To educate the professional societies, trade associations, and others representing and serving the public and the industry in developing fair and reasonable agreements and documents.
7. To develop model laws affecting the construction industry. However, the Foundation is not a lobbying organization; it is prohibited by its Articles of Incorporation from attempting to influence legislation.

The Foundation's method of operation is as follows:

1. Each problem accepted for action will be assigned to a project committee composed of Foundation members particularly concerned with the subject.
2. The committee will engage authorities and scholars—experts in a particular field—to analyze the problem and recommend solutions to it.
3. After the consultants have presented their recommendations, there will be a period of dialogue between the consultants and the committee. The solutions judged most promising will be presented to Foundation members for their consideration. At this stage, there will be thorough discussion and negotiation with interested societies and associations.
4. The Construction Industry Foundation will accept a solution.
5. The solution will be implemented by the endorsement and positive action of Foundation members and, through their influence, their affiliates and their trade associations.

The Foundation will seek to solve problems in such areas as: (1) financial practices and the flow of funds within the construction industry; (2) bidding; (3) the quality of plans and specifications; (4) standards for product performance and guarantees; (5) legal liability of all industry groups; (6) guidelines to performance of mechanical systems and other components of a structure; (7) contract language; (8) cost estimates and quantity surveys; (9) professional responsibilities of architects and engineers, and (10) survey and soil exploration hazards.

IS THERE A CONFLICT BETWEEN DOMESTIC LAW AND THE TREATY ON POLITICAL RIGHTS OF WOMEN?

Mr. PROXMIRE. Mr. President, one of the most persistent objections to ratification of the three human rights conventions covering genocide, forced labor, and the political rights of women has been that they would interfere with the force of domestic law. This objection has been most frequently advanced concerning ratification of the treaty guaranteeing political rights for women. The question must be asked, however, Is there any validity to this charge?

Mr. Eberhard P. Deutsch, chairman of the Standing Committee on Peace and Law through the United Nations of the American Bar Association, dealt with this question in hearings before the Senate Foreign Relations Committee in September 1967. In response to a question asked by Senater DODD regarding any citations of Federal or State law that would be overriden by the United States ratifying the treaty, Mr. Deutsch stated: "None whatever, sir."

When asked by Senator DODD why he opposed ratification of the treaty if there is no possibility that the treaty would conflict with domestic law, Mr. Deutsch replied that his opposition was based on the principle that the treaty deals with the domestic affairs of the United States.

Mr. President, as we have proved many times, a treaty cannot interfere with the force of domestic law. A treaty cannot override the Constitution. A treaty cannot override the power of the state to make its domestic laws.

Mr. President, it seems to me to be a contradiction to oppose a treaty on the basis that it "deals with domestic law," after admitting that it cannot possibly interfere with domestic law. Just to say it "deals with domestic law," is not a concrete objection. As long as it does not interfere with domestic law, or preclude changes in domestic law, why should it be considered a threat? I fail to see any rational basis for this argument. To claim a threat once you have recognized that no threat exists does not make sense to me.

Mr. President, it is precisely groundless charges such as this that have delayed ratification of the three human rights conventions. We can no longer accept such arguments. The time has come to look at the facts, to look at the true impact these treaties would have. These treaties cannot interfere with do-

mestic law. They can only expand human rights, not interfere with them. The time for action on them is now. Further delay can no longer be justified.

REGULATION OF ENERGY-PRODUCING RESOURCES

Mr. HATFIELD. Mr. President, the National Association of Regulatory Utility Commissioners—NARUC—recently held its 81st annual convention in Denver, Colo. The October 6 to 9 series of talks and panel discussions were the year's largest gathering of Federal and State utility and transportation regulatory officials with nearly 1,700 persons registered for the sessions.

Among the many subjects discussed was one of vital interest to the State of Oregon. This was the growing shortage of natural gas. Oregon is not a natural-gas-producing State. It is a large consumer and must rely on Southwestern States and western Canada for its supplies.

Natural gas is both a source of heat and a raw material for industry. A lack of adequate supplies at prices industry can pay and remain competitive will curtail economic development.

The fact is that Oregon has already faced disturbing shortages. Full or partial curtailment of supplies occurred on a total of 73 days in calendar 1968. During 39 days of this period the pipeline company was unable to supply so-called interruptible gas, the type of service upon which industry depends. Also, during 4 days within this period no more than firm gas—the basic service used for home heating and cooking—was available.

I should add that Orgeon, unlike many States, does not use natural gas to generate electric power. Thus, our experience in 1968 has an even more ominous aspect about it.

The NARUC convention afforded Mr. Sam R. Haley, Oregon's public utility commissioner, an opportunity, as a panelist, to discuss the growing concern felt in my State, and I am sure in others, over this supply situation. Mr. Haley points out that problem is national and international in scope and will not yield to present attempts to solve it on a case-by-case basis. He makes it clear that a reexamination of the Nation's energy resource policies is long overdue.

Mr. Haley feels that a prerequisite for stable energy supplies is a long range plan for maximum utilization of the energy resources of the United States and Canada. The alternative, he believes, is instability and uneconomic use of resources which will adversely affect consumer and supplier alike. His address was a timely and thoughtful contribution on a matter of national importance. There being no objection, I ask unanimous consent that the address be printed in the RECORD.

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

THE GROWING CONCERN ABOUT GAS SUPPLY: A STATE'S VIEW

(Remarks of Sam R. Haley, Oregon Public Utility Commissioner)

How often, as a state regulator, have you been advised—even admonished: "Don't worry about it, it's a Federal problem," or "It's an industry problem and it will or should be taken care of without regulation."? And how often have you wished you could better evaluate such advice and be more confidant that your acceptance or rejection thereof was in the public interest? Can local interests, including those represented by state regulators, secure or foster some better way of *really* knowing what's what in the energy supply situation than by going it alone on a case-by-case basis? Can the states play, or have the opportunity to play, a more meaningful, effective role in the development of long-range solutions or plans and their application, or at least be advised and kept aware of developments on a systematic basis so that we could better evaluate our positions and coordinate our planning within our areas of responsibility?

As a state regulator I'm concerned about gas supply because I believe I have a responsibility; but I'm not alone and I'm certainly not exclusively responsible. How is the scope of my responsibility defined and how do I coordinate with others who also have a responsibility?

The foregoing questions, and others, are not, so far as Oregon is concerned, hypothetical or academic questions. Our agency is now participating in eight Federal Power Commission or Federal court cases involving, in one was or another, natural gas. We believe the results in these cases could beneficially or adversely affect Oregonians. Oregon is not a gas-producing state and, at present, we are supplied gas from the southwestern portion of the United States and from western Canada.

During calendar year 1968 partial or full curtailment occurred on a total of 73 days; there were 39 days during this period when the pipeline company was unable to supply any interruptible gas and four days within the period when no more than firm gas was available.

Generally speaking we face the following recurring issues at the state commission level:

(1) Whether, or to what extent, we should participate in Federal regulatory and court cases involving producers and pipeline supply costs and prices.

(2) Whether to participate in cases involving alternate supply arrangements for a pipeline.

(3) To what extent do we participate in Federal regulatory and court cases directly involving the locally regulated distributor (such as distributor-pipeline supply relationships)?

(4) How will supply costs be reflected in distributor rates and operations?

Finding answers to these recurring questions (even if one at the state level had all the current and reliable, relevant data at his fingertips), is a difficult and complex exercise. This exercise is even more complex when one also considers our relationships with Canadian suppliers and Canadian regulators.

On the one hand, we concern ourselves with the nature of the demands or markets for natural gas, be they residential, commercial or industrial, and whether the price is elastic or inelastic. Also, we consider the availability of alternative energy sources, such as electric, oil, coal or propane. On the other hand, we attempt to understand the natural gas supply situation. This includes current and long-range requirements, not only of the distributors and the pipeline companies, but of the producers too. Related items of importance in the supply picture are supply supplements (such as underground storage, LNG storage, LNG via tanker and LPG) and supply alternates (such as gas from oil shales, oil sands or coal). The location of the supply, its transportation by tanker or pipeline and the effects of new technology are also important factors to consider. In the case of Oregon, if not many other states of the United States, the existence of Canadian and Alaskan supply is particularly significant.

To state that we are concerned about gas supply is to state the obvious. Manifestations of our individual state's concern are strewn through the reports of cases before the courts and the regulatory bodies, both American and Canadian. It's now time, however, that we act in a more concerted and coordinated fashion.

I'm encouraged that the National Association of Regulatory Utility Commissioners (NARUC) has invited my experienced and knowledgeable fellow panelists to discuss the subject of gas supply with us today. I await eagerly their remarks. Preceding today's presentation and, perhaps, influencing the designation of our subject as a part of this annual program, several other encouraging events have transpired:

First, the Western Conference of Public Service Commissions, at its 1969 annual meeting in May, adopted a resolution treating the subject of gas supply; and, then, following this action by the Western Conference, the NARUC Executive Committee, at its July 1969 meeting, adopted a similar resolution proposing an international agreement between the United States and Canada regarding energy supply. This resolution recognizes that an adequate supply of natural gas and other forms of energy is essential to the welfare of the people of the United States and of Canada; that the public interest requires dependable sources of energy to be assured far in advance of actual need; and that dependable, long-range markets are necessary to the economic planning and operation of energy supply and transmission facilities. Further, the NARUC Executive Committee urged the consummation of an international agreement with Canada: (a) that will establish mutually acceptable general guidelines, including economic conservation and other basic policies, under which imports and exports of natural gas and other forms of energy may be committed on a fixed and continuing basis; (b) that will establish an international agency which would include representatives of affected state regulatory commissions and the Federal Power Commission to administer such agreement and approve or reject specific applications for the import or export of natural gas and other forms of energy between the two nations; and (c) that will resolve such related energy matters as may be deemed in the public interest of both nations.

Prior to the adoption of the resolution just referred to, NARUC, to facilitate the interchange of opinions and ideas of common interest between the regulatory agencies of neighboring countries and those within the United States, had expanded the eligibility for associate membership in NARUC to include such agencies.

On other fronts, significant actions, which I believe to be steps in the right direction, were underway. In July of this year, when neither the National Energy Board of Canada nor the Federal Power Commission had under consideration a case affecting the interests of the other country, members of these agencies, including Commissioner O'Connor, met together. Perhaps he intends to comment on this meeting. It is reported that they canvassed in a general way a number of subjects of broad general interest to them, including the prospects for gas supply in North America. I'm informed that respective procedures of the two agencies in regard to hearings affecting the interests of both countries were discussed in relation to the laws presently governing the conduct of each agency. Such meetings have received fresh impetus from the recent conversations between the President and the Prime Minister of Canada emphasizing the common interest of our two countries in the expansion of cross-border movement of energy.

In August of this year, in response to the invitation of the Cabinet Task Force on Oil Import Control, Canadian authorities sub-

mitted comments including, among others, statements that each country relies on the other for energy supplies; and that large quantities of electric power generated in one country are dependent on water stored in the other country, as in the cases of the Columbia and St. Lawrence Rivers. We know that electric power lines cross back and forth across the border in numerous places and that increasing numbers of both Candian and United States utilities are members of fully interconnected power systems in which energy circulates across the international boundary as required.

In 1968, the United States exported 4.1 billion kwh of electricity to Canada and imported 3.7 billion kwh. A dozen natural gas pipe lines cross the border. Nine of these delivered 1,656 MMcf/d of Canadian gas to United States markets in 1968, while three of them delivered 223 MMcf/d of United States gas to Canada. Several major oil pipe lines cross the border. In 1968, the United States imported some 500,000 b/d of Canadian oil while Canada affords an important market for high-unit-value-oil-product exports from the United States.

The Canadian statement to the Task Force also noted that the international oil and gas pipe lines and power lines are not only arteries of trade of benefit to the whole national economy but also are essential to the energy supply of the localities served in the respective countries. It appears, they stated, that progressively the availability of new supplies of oil and gas on the North American Continent will be in Alaska and Canada. I join them in their opinion that the interest of both of our countries may well rest in developing mutually acceptable policies designed to facilitate arrangements for the most economic and secure development of these resources, including provision for an appropriate reserve capability for emergency purposes relating to transportation as well as to production capacity.

As you know, the Cabinet Task Force on Oil Import Control has been directed by President Nixon to conduct a comprehensive review of the question of oil import controls. The Task Force will soon recommend policy guidelines. Its inquiry is being conducted on the basis of an open record of submissions by interested parties, which submissions can be examined and commented on by others. Parenthetically, I might say, the Oregon Public Utility Commissioner has submitted for consideration a suggested approach for providing a stimulus to domestic production of and exploration for both oil and gas.

In December of 1968, before any contact with the Task Force, in letters to members of Oregon's Congressional delegation, I described the problem of gas supply in this fashion:

"Basically, the problem is a lack of coordinated approaches to natural gas importations from Canada to the Northwest. Such imports have in the past been dealt with on a case-to-case basis. Thus, no coordinated, orderly policy has been developed.

"The two nations have differing national interests in relation to pricing, resource development and market potential. Within each country are differing state and provincial interests. And finally, business and economic interests in both nations differ, between and among themselves. * * *

"Contrasted to this situation within the natural gas industry, Canadian and United States representatives worked out a detailed, comprehensive plan for development of Columbia River resources.

"As Mr. Jones (President, Cascade Natural Gas Corporation) points out (in a speech delivered in Richland, Washington, November 14, 1968): The Columbia River Treaty took 11 years to negotiate and several hundred millions of dollars to implement—and yet, the total energy which will be exported to the U.S. as a result is only one-third the total energy in the form of natural gas now delivered to the U.S. from Canada. * * *"

It becomes more obvious the further one pursues the subject that a concern about gas supply extends beyond local or even Federal boundaries and also becomes a matter of international concern. Furthermore, the subject cannot be limited to gas supply alone. Let us together develop our policy recommendations for the long pull as we separately meet today's particular problems on a case-by-case, ad hoc basis. While I'm not personally certain that the mechanism contemplated by the NARUC resolutions earlier referred to is the best vehicle for the development *or* the administration of a sound energy policy, I do support the objective of these resolutions. At least, their promulgation will crystallize our thinking and precipitate some action that, I trust, will be constructive.

ANNOUNCEMENT OF COMMITTEE OF CONCERN TO PROHIBIT MINORITY PERSECUTION IN THE MIDDLE EAST

Mr. TYDINGS. Mr. President, I wish to bring to the Senate's attention the recent formation of a committee of concern in this country to direct international attention to the tragic series of political trials and executions of Jews, Christians, and other minority groups in Iraq. Presided over by Gen. Lucius D. Clay, former commander of U.S. forces in Europe, and consisting of a large number of prominent Americans, the committee is undertaking the critical task of mobilizing world opinion to prevent further bloodshed and persecution of minorities in the Middle East. In addition, the committee will seek to facilitate the emigration of Jews and other minorities who wish to leave the area.

Mr. President, I ask unanimous consent that the press release announcing the initiation of this noble and terribly worthy project be printed in the RECORD.

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

NEWS RELEASE

NEW YORK, October 18.—The formation of a Committee of Concern to focus world attention on political trials and hangings of Jews, Christians, and other minority elements in Iraq, and discrimination in other Middle East countries, was announced here today by General Lucius D. Clay, corporate executive and former commander, U.S. Forces in Europe. The Committee includes figures in American business, religion, arts and sciences, universities, public affairs, and civil rights.

Announcement of the organization of the Committee follows the execution August 25 in Baghdad of 15 men, including two Jews and two Christians, on charges of spying for the U.S. and Israel. Last January nine Jews, three Moslems, and two Christians were publicly hanged in Iraq after a secret trial on espionage charges.

In his announcement, General Clay explained that the Committee of Concern, of which he is the Chairman, would work to help secure the release of Jews in prison in Iraq, to ensure freedom of movement for the 2,500 Jews in that country, and to facilitate emigration for those who wish to go elsewhere. He pointed out that several countries, including the United States and Canada, had already indicated their willingness to accept refugees from Iraq if the Iraqi authorities would permit them to leave.

General Clay warned that the latest executions might be a prelude to further trials of Jews, Christians, and other unpopular elements in Iraq.

Last January, General Clay declared, the worldwide outcry that followed the executions may have been a factor in the temporary cessation of espionage trials in Iraq. Now, he added, the regime there may be reverting to its old practices because of the slackening off of public interest in the plight of Jews and other minorities there.

Among those who have already joined the Committee of Concern are: Morris B. Abrams, President, Brandeis University; Louis Auchincloss, author; George Ball, former Under-Secretary of State; Dr. Samuel Belkin, President, Yeshiva University; Algernon D. Black, American Ethical Union; Dr. Louis Finkelstein, Chancellor, Jewish Theological Seminary of America; Dr. Nelson Glueck, President, Hebrew Union College—Jewish Institute of Religion; Arthur J. Goldberg, former Supreme Court Justice and former U.S. Ambassador to the U.N.

Also Helen Hayes, actress; William J. vanden Heuvel, attorney; Hubert H. Humphrey, former Vice President; Dr. Homer A. Jack, clergyman; Seymour Martin Lipset, sociologist; Robert Lowell, poet; Archibald Mac Leisch, poet; Arthur Miller, playwright; Robert Merten, sociologist; Robert Murphy, former Under-Secretary of State, and Chairman of the Board, Corning Glass International; Jan Papanek, Chairman, International League for the Rights of Man.

Also Dr. Isador I. Rabi, Nobel laureate; Bayard Rustin, civil rights leader; Theodore Sorensen, attorney; Dr. Thomas Spitz, clergyman; Dr. Frank Stanton, President, Columbia Broadcasting System; Admiral Lewis Strauss, former member, Atomic Energy Commission; Whitney M. Young, Jr., Executive Director, National Urban League.

AUBURN UNIVERSITY UNAFFLICTED BY CAMPUS UNREST

Mr. ALLEN. Mr. President, at the suggestion of officials of the National Association of State Universities and Land-Grant Colleges, Dr. Harry M. Philpott, the distinguished president of Auburn University at Auburn, Ala., has prepared a résumé of university policies relating to campus unrest.

Mr. President, I take pride in the fact Auburn University has not been afflicted with problems stemming from anarchistic student militancy. There are a number of reasons for this. One important reason is that the university has a continuing tradition of giving sympathetic attention to positive ideas and constructive suggestions of students, and another reason is that Auburn University enjoys an affirmative and exceptionally fine leadership under Dr. Harry M. Philpott. In this connection, Dr. Philpott has stated a philosophy for student behavior which I believe is deserving of careful consideration by students and college and university leadership throughout the Nation.

Mr. President, the Auburn response to student militancy is set forth with clarity, preciseness, and in detail in copies of materials identified by titles, as follows. First, "University Policy for Campus Disruptions"; second, "University Undergoes Modification and Change"; third, Excerpts from a speech of September 19, 1969, to the freshman class; and fourth, three newspaper editorials which relate to protests, discipline, and freedom.

Mr. President, I ask unanimous consent that these items and a covering letter from Dr. Philpott be printed in the RECORD.

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

AUBURN UNIVERSITY,
Auburn, Ala., October 23, 1969.

Hon. JAMES B. ALLEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ALLEN: In the light of recent legislation introduced in the Congress relating to campus disruption and unrest, it has been suggested by officials of the National Association of State Universities and Land-Grant Colleges that you might be interested in some of the things that we have done at Auburn to deal with these things and ways in which we have responded to the positive ideas and suggestions of students.

Perhaps I should mention at the outset that we have not been faced with severe unrest or militancy at Auburn. Our students are interested in Viet Nam, ROTC, disciplinary policies, rules for social behavior, and other issues being discussed throughout the country, but they have not made protests in a militant manner. On the other hand, the administration has tried to communicate with our students and to be as responsive as possible to their proposals.

For your information, I am enclosing the following:

1. University Policy for Campus Disruptions.
2. University Undergoes Modification and Change.
3. Excerpts from a speech which I gave on September 19 to the Freshman Class.
4. Three newspaper editorials which relate to protests, discipline, and freedom.

It is my hope that these enclosures will indicate to you that we are very active in working with students in response to their concerns, but have made it clear that disruptions and the interference with the rights of others will not be tolerated at Auburn.

With kindest regards, I am

Sincerely,

HARRY M. PHILPOTT,
President.

AUBURN UNIVERSITY POLICY FOR CAMPUS DISRUPTIONS

I

Essential to any program of higher education is the necessity for order. Of equal importance is respect for the rights of others. It must be made clear that if any disturbance develops, regardless of the inciting cause, Auburn University will take the necessary steps immediately to protect members of the University from personal injury and its property from damage, and to insure that the normal functions of the university are maintained.

Activities which began as innocent pranks too often are transformed rapidly into massive disturbances resulting in personal injury and property damage, even in times of general tranquility. The danger is much greater at a time such as this when tensions and even violent confrontation can develop so quickly on a college or university campus. It is imperative, therefore, that every member of the university community recognize the potential danger and refrain from participating in or contributing to any activity which might be expected to lead to disruption, personal injury, or property damage.

Students engaged in or contributing to any disruptive or destructive activity will be subject to prompt disciplinary action and, if appropriate, to civil action. Those who are not members of the university community and who interfere with its functioning will be brought before the proper civil authorities. For their own protection, students should have their student identification cards with them at all times.

The restatement of this policy carries with it an expression of confidence that all in the University will continue to recognize the importance of self-discipline in the academic community and will conduct themselves so as to reflect credit on the institution. Such behavior has characterized Auburn in the past and will continue to do so in the future.

II

A. Marches, parades, and such similar activities may be permitted:

1. in areas and following routes designated by Auburn University's Chief Security Officer so as not to interfere with the usual University activities;
2. when the right of free and unchallenged movements of persons other than those involved is not violated;
3. when no libelous, slanderous, or obscene language, displays, or actions are a part of the activity;
4. when such activities, or a part thereof, do not tend to incite violence; and
5. where such activities do not involve violation of criminal statutes.

B. Permits for such activities may be secured from the Dean of Students Affairs and must be obtained not later than 24 hours prior to the scheduled event.

C. Students in violation of these policies and procedures shall be subject to action by the courts and/or Auburn University. The University action will be in accordance with the procedures and penalties shown in the student handbook.

D. The responsibility for implementing this policy is with the Office of Student Affairs with the support of University Security personnel and the Office of the Dean of Women.

III

A. When an assembly is to protest or to petition for a hearing of or relief from a grievance, the petition or protest will be received for consideration by the University agency to which it is directed. After the protest or petition has been presented—after the reason for the assembly has been stated—the group will be expected to disperse. When such assemblage, or any other group, does not disperse and interferes with the normal activities of the University, the following procedure will be put into action:

At the decision of the President, the Vice President for Academic and Administrative Affairs, or the Assistant to the President the following action is to be taken as to those persons remaining:

1. Where time and circumstances permit, a petition will be filed before the circuit court in equity in Lee County requesting a preliminary injunction requiring vacation of the premises.
2. Where injunctive relief is not immediately available, or where there is imminent threat to life or property, a criminal charge may be made based on any unlawful conduct observed, such as disorderly, obscene, or boisterous conduct, assault and battery, or destruction of property, or based on the Alabama criminal statutes prohibiting disturbance of a school, or the City of Auburn ordinance prohibiting assembly which interferes with traffic in or about public buildings. Those persons who are not members of the faculty or student body should be charged with trespassing after warning, under the state code. If there is other unlawful conduct, such as obscene or boisterous conduct or any destruction of University property, then these charges should be made also.
3. A combination of injunctive relief and criminal prosecution may be used.

B. While the procedures stated in A–1, 2, 3 are undertaken, the Chief Security Officer shall advise the group as follows: "Your presence here is interfering with the conduct of the affairs of Auburn University by disruption of traffic and prevention of activities necessary to carrying out the educational mission of this institution. You are hereby directed to leave these premises and withdraw from this unlawful assembly, and you are given five minutes to do so. Any of you who fail to do so may be subject to disciplinary and/or criminal proceedings. I encourage and counsel you to disperse, cease this disruptive activity, and resume your usual and normal University activities."

C. Students who fail to leave after the above warning will be given the opportunity to leave and meet with a staff member from the Student Affairs Office.

D. The following general actions will be followed by the Office of Student Affairs personnel, student leaders, University Security personnel, and others who are working with these personnel in case a building or other facility is being occupied:

1. Place Security Officers inside an occupied building or one to which entry has been blocked. These officers are to protect property and persons and to see that anyone who wants to leave can leave.
2. Keep crowds back, making a separation of the occupying group and other students or on-lookers.
3. Give individuals who voluntarily wish to leave every opportunity to do so after the warning has been given and the time limit has expired. Identify those who leave for later questioning.
4. Do not indulge in negotiations, argumentation, vindictive or threatening dialogue with the isolated group.
5. Take photographs and make notes for later identification.

IV

A. During normal office hours, the Office of Student Affairs will be the receiving center for all information concerning potential campus disturbances. Information will be accepted through students, University employees, campus and city police, and from any other sources that are available.

After office hours, the Dean of Student Affairs, or other staff members in the Office of Student Affairs are responsible for notifying the University telephone operator to call student leaders when an emergency situation arises.

Approximately thirty student leaders have agreed to assist in controlling mass demonstrations. They have been informed of their assigned loctaions and their telephone numbers have been listed with the University telephone operators. When called, they will work under the supervision of members of the Student Affairs staff to encourage participants in the disturbance to disperse and, avoiding violence or physical contacts, to discourage entrance into University buildings. Women members, when called, will assemble with the Dean of Women and her staff at the Social Center and be assigned from there.

Upon receiving adequate evidence that an emergency situation exists, the Chief Security Officer will call to duty such extra forces, including auxiliary police, as he may have available. A man will be assigned to fulltime duty at the Campus Police Office to assist in coordinating activities and relaying messages. Campus police will stand shoulder-to-shoulder with Student Affairs staff members and student leaders toward controlling disturbances.

All efforts will be toward establishing and maintaining communications with the gathered students, avoiding animosity, threats, and hostility, and attempting to disperse the gathering before it becomes a violent mob or takes forceful, disruptive, or damaging action.

The police will arrest, and take to jail, students apprehended while committing such acts as throwing rocks, breaking windows, entering University buildings, or committing other acts of violence. Student Affairs staff members may order the arresters of in-

dividuals when they personally observe the committing of such acts. However, the accusers must be prepared to identify positively those accused and to swear out warrants for their arrests.

In the event reason and persuasion fail and the gathering becomes violent, the police will be prepared and will take action to protect life, property, and to preserve the educational mission of the University.

Campus police will alert the city police when an emergency situation exists. City police will position themselves as observers until called upon for asisstance by campus police.

(Part IV was developed in conference with University and City of Auburn personnel, April 4, 1969.)

AUBURN UNIVERSITY UNDERGOES MODIFICATION AND CHANGE

The Auburn University Administration has made and is continuing serious and conscientious efforts to be responsive to the constructive suggestions and ideas presented by students. The University has undergone many changes, some of which do not immediately meet the eye, but which make Auburn University more able to face the challenge of the future.

In the past year, in particular, many changes and innovations have taken place on the campus, many of which have been suggested and recommended by students. Students have had important roles in analyzing curriculum, revising disciplinary procedures and in planning a greatly expanded program of student activities.

Some of the more identifiable changes taking place on the campus during the past year are—

1. In an endeavor to provide a more meaningful curriculum for our students, particularly in the freshman year, the students, faculty and administration have developed several new course sequences which were offered experimentally last year. Growing out of recommendations adopted as a result of the Project '67 self-study, these have now been incorporated in our general studies program to provide greater educational breadth and required in all schools. The program of liberal education will serve as the foundation for professional and departmental major programs, providing what we anticipate will be a more relevant educational experience for our students.

2. In response to questions raised by concerned students, a student-faculty-administration-military science committee was appointed to review the University's mandatory ROTC requirement. The committee's recommendations, after review and endorsement by the University Curriculum Committee and University Senate, were presented to the President, who in turn recommended to the Board of Trustees that ROTC be made voluntary as soon as feasible with full credit toward graduation continued. The Trustees are expected to make a final decision on November 7.

3. In order to increase the efficiency of registration and fee collection, the Registrar's Office and the Business Office worked out a plan where schedules could be distributed and fees paid by mail for the Fall Quarter.

4. The administration approved a recommendation from the University Senate that a pass-fail grading system be started. Under the system, which is now in operation, juniors and seniors with a 1.5 or better grade point average have the option of taking elective courses on a gradeless basis for credit toward graduation. The plan was designed to help students who might want to take courses not required in their curricula without endangering their GPA's.

5. The Student Government, now officially SGA, and other student activities, received and spent a record $279,000 in the student activities budget. Most of the 17 student activities projects are under student control and supervision with the aid of advisors and student-faculty committees.

6. With support from the University Administration, new projects were sponsored by the SGA. Some of them were Free University classes, (utilizing some university faculty and faculties), teacher and course evaluations, an experimental issue of a literary magazine, the Auburn Review, and the Public Affairs Seminar Board, a committee to bring speakers to the campus.

7. Showing concern for a student voice in the University Senate, the SGA president and the AWS president were named ex-officio members of that body.

8. For many years, Auburn students have served on standing University committees. SGA members also served on ad-hoc committees in planning the Union addition, considering the ROTC issue, selecting furniture for Haley Center, proposing a student academic honor code, revising student disciplinary regulations, the planning for the dedication of Haley Center, and others.

9. After concern was expressed by student leaders, a Student Discipline Committee was appointed composed of students, faculty and administration members to review policies pertaining to discipline, to receive and evaluate suggestions and recommendations from individuals and groups, and to make such recommendations to the President as the Committee thought appropriate. This Committee's findings, which were approved by the Student Senate and the President, provide for greater participation by students in disciplinary matters through increased representation on discipline committees. Disciplinary procedures and penalties for such offenses as rioting, disruption of University operations, dishonesty, and possession or use of illegal drugs were clearly defined and have been published in the student handbook.

10. For the first time, a significant number of coeds (about 175) over 21 years of age received permission to live in apartments in town.

11. After requests by coeds, telephones were installed in all girls dormitory rooms.

12. The AWS Legislative Council proposed that an experimental dormitory be set up for juniors and seniors with a 1.0 average. The plan was approved for the dormitory to operate for four quarters with consideration then being given to a further changing of hours for juniors and seniors. The girls in the experimental dorm follow all regulations except they have self-determined hours.

13. Following a recommendation by AWS, all regulations pertaining to girls dress were eliminated and a single dress rule was adopted.

14. After consideration and recommendation by AWS, approval was given whereby curfew hours were extended by thirty minutes for all coeds.

15. In response to suggestions and recommendations, other changes have been made in rules for girls, such as: girls who are 21 years of age will not have to have a "blanket" permission from home, junior and senior coeds will not have to get permission to visit boys' apartments, and freshmen can, for the first time, secure permission to visit boys' apartments. In addition, penalties given for infractions of rules were relaxed to a degree.

Other innovations and modifications have been instituted at the urging of students. Some of them are adding vending machines in the library, a reduction in the physical education requirement from six to three quarters as recommended by Project '67, and adjustments in student activities fee allocations to some projects so that others could be included.

EXCERPTS FROM A SPEECH BY AUBURN UNIVERSITY PRESIDENT HARRY M. PHILPOTT, FRESHMAN CONVOCATION, SEPTEMBER 19, 1969

You must enjoy freedom if you are to gain an education but this does not mean freedom as it is defined by some today. I trust that you did not come to Auburn with the idea of finding here a place "where every person can do his own thing." If so, you are in for a rude shock Monday morning at seven or eight o'clock when we have some antiquated ideas about class attendance and "doing your own thing" calls for more sleep. Freedom does not exist in the absolute for anyone. If we are to have freedoom in the university, we must have safeguards that will prevent its destruction, safeguards that inevitably limit its expression. No freedom can exist without order and order requires that we surrender some of our freedom for the common good.

For example, the university welcomes and encourages differences of opinion, knowing that this is necessary for great understanding. You will be free to advocate your opinions in discussion, debate and peaceful demonstration. However, you will not be free to advocate them in such a fashion that you deny freedom or the right to learn to others. Even as you do not wish to have opinions forced on you by others, you must not expect to be allowed to force your opinions on someone else.

The university relies on cooperation and not power, on diversity with tolerant understanding and not disturbance. It also requires from you commitment and dedication to things which are greater than you—to the ideal. In a society where too many seem totally preoccupied with their petty needs, vanities, and grasping egos, to speak of ideals may sound strange or even novel. I am, however, convinced that the unattainable quest for the ideal, and true and the beautiful is as fundamental to education today as it was in the Agora of Athens where in the shadow of the Acropolis Socrates prodded his students to think on these things.

Because of this, I have a strange sounding final word of advice for you. It is simply this: "Get lost." It does not mean that I want you to disappear but rather a simple reminder of the words of Jesus: "He that would find his life must lose it, and he that loses his life shall find it." Do you want an education? Lose yourself in the pursuit of knowledge and understanding. Do you want to be a constructive member of the human race? Lose yourself in helpful service to others. Do you want to find security and happiness? Lose yourself in great causes and endeavors. Do you want to find meaning and purpose for your life? Lose yourself in the higher purpose of the God who made you. "Get lost."

[From the Birmingham (Ala.) News, Dec. 14, 1967]

THE LIMITS OF CAMPUS PROTEST

Auburn University President Dr. Harry Philpott, suggested recently that much of the current unrest on college campuses is fanned by organized agitators.

Dr. Philpott was not trying to create a "scare" atmosphere in Alabama; he was conveying impressions gained from talks with other colleges' administrators.

His statements raise some pertinent questions: At what point is a university justified in limiting on-campus activities of its students? Are there in fact agitators who seek to stir up a campus; and if so, do they seek to subvert our national government?

A college administrator might say generally that he can in good conscience condone, and in some cases even encourage, peaceful mass protest, by placing it under the heading of "healthy student interest" or academic freedom. As long as the activity does not appreciably interfere with the orderly functioning of the institution, as long

as it is not physically destructive, it generally is no major threat to society.

But the current protestors maintain that in the interest of "a higher morality," the functioning of the school may be impaired and the "lesser morality" of freedom of speech or of action (of those who might want to talk with recruiters for business or the military) may be subjugated.

We would maintain that the moral character of these protesters is being endangered by their insistence on a totalitarian means (forcibly denying other students the right to meet with the representatives of, say, Dow Chemical Co.) to accomplish a democratic end. Justice Holmes pleaded for "freedom even for the thought that we hate," and the demonstrators seem not to see the strength in this principle.

By the same token, of course, students may take the means-end argument to support many of their cases against what they may believe is an oppressively authoritarian administration. And while there may be a need for reformative action on that level, it certainly is not as much a threat to our system of government as are the current demonstrations.

Being a student does not provide a shield for an assault upon our society. A university does not exist to watch placidly over its own destruction, and should not be expected to do so.

Are the campuses being subverted by professional agitators? There is no conclusive evidence available that this is true, and Dr. Philpott took pains not to accuse any particular group of this. But campuses for many reasons are likely places for agitation.

College authorities will tell us there is a tactical pattern to the current protests. One becomes suspicious at the wide geographical area covered by the protests. And the phenomenon is not restricted to a single size school, nor to a single type school.

At least part if not most of the "pattern" probably is attributable to national student groups which openly circulate representatives from campus to campus seeking to sell specific programs. Some of these organizations are quite vocal and articulate, have definite goals (usually under the heading of "student power") and have a secure financial base, which aids mobility.

The aims of these groups are not necessarily destructive. From them a student might gain a greater "national awareness," as a high level administrator at one Alabama institution suggests. There is certainly no reason to deny flatly their presence on the campuses. Yet, because the groups have a national structure they are attractive instruments through which undesirable interests might function. Student units at member schools might be cautious, then, of endorsing blindly every action of parent organizations.

College administrators are faced with the problem of guiding, through dialogue, the vast majority of the restless students who intend no subversion. These students must be warned of the danger that some might seek to exploit them for devious purposes.

Alabama administrators have not been confronted yet with a large wave of student protest. To guard against that ever happening, they must examine their own campuses for possible genuine student grievances, and maintain open channels to all segments of the student body to identify trouble spots.

Too, campus authorities must be prepared to act quickly and decisively if they identify a disturbance as destructive to the campus life. And if the disturbance holds evidence of subversion, from within or outside the institution, they should be prepared to hand this information to the proper investigative officials.

There are insistent reasons why this should be done. Columnist Max Lerner put these reasons bluntly: "Too much thought and passion and concern has been built into the structure of freedom and community on the American campus to be scrapped in the interest of student political anger today."

[From the Anniston (Ala.) Star, Mar. 27, 1967]

PHILPOTT ON FREEDOM

With his admirable incisiveness, Dr. Harry Philpott addressed to the March graduates at Auburn recently deliberations on freedom and discipline that deserve the thoughtful attention of all Americans.

The Auburn University president spoke in a few words volumes of wisdom about freedom and what it means to man, some excerpts here catching the high points:

"This graduating class generally covers a time span on the campus from 1962 to the present. Great events have transpired during this period of time and important issues have occupied your attention. One of the most important themes of concern to all people in this era has been that of freedom.

"On the international scene, we have witnessed the continuation of the struggle for national liberty and the emergence of new nations. Within our own nation and state, there have been various movements seeking freedom from prejudice, freedom from poverty, and freedom from oppression. Within the community of university, students have concerned themselves with their own freedoms. No issue has been of greater concern to administrators and faculty members . . .

"Freedom, as a value or goal, never stands alone—it must always be balanced with responsibility or, to use a term that is not very popular today, with discipline. We delude ourselves when we advocate, discuss, or seek freedom as an absolute. As long as we live in a human society it must be sought within the balancing concept of discipline . . . Freedom without discipline results only in chaos, disorder, and anarchy . . .

"If you will remember only one thing that I have to say today I hope that it will be this. Human history teaches us that men will be disciplined from within or they will be disciplined from without. (Here Dr. Philpott pointed out that the leftist revolution of Russia and Hitler's rightist revolution in Germany succeeded because they provided order—even if by force—to replace existing anarchy).

"All too much of our agitation and discussion today centers on freedom *from* something. Too, little attention is given to the more important aspect of freedom *for* something.

"There is a yearning within all of us also to be our own master. Yet, it is one of the paradoxes of life that we cannot attain this unless we are mastered by something greater than ourselves. It is in losing life that we find it and we become masters only by submitting ourselves to the mastery of a great cause, a great idea, a great faith . . . In the words of Tennyson in 'Oenone,' self-reverence, self-knowledge, self-control, these three alone lead life to sovereign power'."

Dr. Philpott's words put one of our most cherished—and most perishable—possessions, freedom, into meaningful perspective.

[From the Gadsden (Ala.) Times, Mar. 29, 1967]

UNIVERSITY PRESIDENTS SPEAK FOR DISCIPLINE

Youth is a time for questing and testing.

Crusading and missionary zeal are part of its endowment. Rebellion against restraint often seems natural as breathing.

But coupled with this fervor and enthusiasm is a need, perhaps subconscious, for restrictions imposed by authority. Youth may rail against the restrictions—but secretly it welcomes having its prerogatives defined. It recognizes the need for some sort of protection during its questing years.

For this reason we have been totally out of sympathy with the tendency of many universities to refuse to acknowledge any responsibility for establishing and maintaining reasonable standards of ethics and conduct on campus.

It is not the rebelliousness of youth that has so often distressed us, but the acquiescence of the establishment. Capitulation to all the demands of youth is unnatural and unhealthy. And the results may be disastrous.

Therefore, we note with satisfaction the stand of President J. Roscoe Miller of Northwestern University in a specific ruling and of President Harry Philpott of Auburn University in defining a philosophy for student behavior.

Dr. Miller turned down a recommendation by a student-faculty committee that drinking be permitted on campus. The proposal, he said, "runs counter to standards of . . . administration and is clearly not reconcilable with the moral and ethical standards of this university.'

He was not impressed by the committee's plea that the no-drinking rule is constantly violated. True, he acknowledged, but revoking the rule would merely "make an already difficult situation impossible for administrative control."

This is the voice of common sense.

Dr. Philpott brilliantly presented the necessity for discipline in an address to Auburn's pre-Easter graduating class.

"Freedom without discipline results in chaos, disorder and anarchy . . . From history there is a clear proclamation that the one thing human beings cannot endure is chaos and disorder. A society cannot exist without discipline, nor can an individual.

"Human history teaches us that men will be disciplined from within or they will be disciplined from without. To speak of freedom only and forget the necessity of discipline is to forget the recorded experience of mankind."

Dr. Philpott touched on the difference between the desire of youth to be free from something and the more mature desire to be free for something. He concluded:

"It is our hope that you will seek and covet freedom for the creative use of your highest and best talents, for the constructive service of your fellow man and for the fulfillment of God's purpose in your life."

JUDGE CLEMENT HAYNSWORTH

Mr. McGOVERN. Mr. President, the nomination of Judge Clement Haynsworth to the Supreme Court, as is the case with any such nomination, calls for the exercise of one of the Senate's most imposing responsibilities. The obligation to confirm or deny confirmation is equally as demanding as the President's power to nominate the membership of the highest judicial body in the land. It requires our careful attention not only to the judicial philosophy of nominees—which should play a relatively minor role in our analysis—but to their intellectual stature, their personal qualifications, and their sensitivity to issues which can enhance or degrade respect for the law.

It misses the point to describe our investigations as "character assassination." In the case of Judge Haynsworth we must assume that his background was thoroughly examined and considered before he was nominated. It would be an abandonment of responsibility for the Senate to do less prior to confirmation. We have a further obligation to apply our stand-

ards, just as the President has applied his, before we vote, notwithstanding the possibility that our standards may differ from those formulated in the White House.

Of the arguments against confirmation I find quite persuasive Judge Haynsworth's retention of a large block of stock and of corporate office in a company which was bound to, and did, become involved in a controversy before his court. I think it raises serious questions about his judgment.

In the November 1 issue of the New Republic, Yale Law Prof. Alexander Bickel writes of the meaning of this set of circumstances. He points out, correctly, that—

> Judge Haynsworth's honesty and integrity have not been successfully impugned—or impugned at all—and the President is quite right; it would be unfair to drive him off the federal bench. But the Senate is not considering articles of impeachment. It is weighing Judge Haynsworth's qualifications for higher judicial office. The issue is not his honesty but his ethical sensitivity.

Further on, Mr. Bickel suggests that—

> There are two sets of standards of ethical behavior in any profession; a common standard, codified with more or less precision, and a more sensitive standard, which is hopefully the emerging common one. It is desirable to hold nominees for the Supreme Court to the standard of highest ethical sensitivity.

Mr. President, because I believe it provides a most helpful analysis of the questions which should concern us in passing on the Haynsworth nomination, I ask unanimous consent that Mr. Bickel's article, "Does It Stand Up?" be printed at this point in the RECORD.

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

DOES IT STAND UP?

(By Alexander M. Bickel)

Mr. Nixon is the first genuine lawyer-President in over half a century, with the ambivalent exception of FDR—and his professional skills were in evidence as he insisted on the nomination of Judge Clement Haynsworth for the Supreme Court. Mr. Nixon makes the strongest case possible for confirmation. But lawyers are often better than their cases, and the Haynsworth case is ultimately weak.

The President's basic argument is that Judge Haynsworth is a competent—Mr. Nixon thinks a good deal better than competent—lawyer, that his ideological leanings are congenial to the President, and no concern of the Senate, and that the charges of misconduct that have been leveled against Judge Haynsworth have in no instance been supported by proof of dishonesty, impropriety or even the appearance of impropriety. The emphasis, of course, is on the charges of misconduct, and the President says that in no case which Judge Haynsworth sat was there the remotest showing that he had improperly used his influence in a party's behalf, or that he was in any way himself improperly influenced in a party's favor. Judge Haynsworth's choices whether to sit or disqualify himself in various cases where he was alleged to have an interest conformed to standards established by law and by canons of judicial ethics. He is an honest man, the President says, and his integrity is above suspicion. To withdraw the nomination in these circumstances would be unjustifiably and cruelly to "take upon my hands the destruction of a man's whole life, to destroy his reputation, to drive him from the bench and public service."

Judge Haynsworth's honesty and integrity have not been successfully impugned—or impugned at all—and the President is quite quite right; it would be unfair to drive him off the federal bench. But the Senate is not considering articles of impeachment. It is weighing Judge Haynsworth's qualifications for higher judicial office. The issue is not his honesty, but his ethical sensitivity. No more than insensitivity to ethical standards of judicial behavior was shown against Justice Fortas when the Senate, with no thoughts of driving him from the bench, failed to confirm him as Chief Justice. And no dishonesty, no actual influence-peddling was shown against Justice Fortas, even later, in connection with the Wolfson matter, when he was in fact driven from the bench. Just plain honesty and law-abiding conduct are not all we are entitled to demand of men who are to be raised to the highest judicial offices. Judge Haynsworth's transgressions are not comparable to Justice Fortas' in the Wolfson matter, although Justice Fortas' downfall was itself the consequence more of the appearance than the reality of his behavior. But Judge Haynsworth is up for promotion, not banishment.

It is wrong for judges to serve as corporate officers. The Judicial Conference said so in 1963, when it was discovered that some federal judges did hold corporate office. Most did not, of course. Judge Haynsworth was one of those who did, and he quit only when he was told to. Senators who oppose Judge Haynsworth's nomination are right to think that it would be better to have on the Supreme Court men who don't need to be told. It does not follow that they must also wish to banish Judge Haynsworth from public life.

Judge Haynsworth owned a one-seventh interest in a company, Carolina Vend-A-Matic, which did its business right in his judicial circuit. His initial investment was small, but when he sold it in 1963 (he had been an officer of Vend-A-Matic, and he sold out after he was required to resign) it was worth upwards of $400,000, and apparently constituted about half his personal fortune. More than once, Judge Haynsworth sat in cases involving customers of Vend-A-Matic. The contracts with these customers were sizable; in the Deering Milliken case, $50,000, plus another $100,000, Warren Wheeler reports in *The New York Times*, awarded while the litigation involving Deering Milliken was pending before Judge Haynsworth and his colleagues.

What if a judge owned stock in US Steel, as no doubt some do, says the President, defending Judge Haynsworth? US Steel has many customers. Must a judge disqualify himself in every case involving one? If so, says the President, perhaps half the federal judges "would have to be impeached" because they do not disqualify themselves in such cases. But how many federal judges own one-seventh of US Steel? How many have a sizable investment, constituting something like one-half their wordly goods, in a company actively soliciting business right in the judge's jurisdiction, where the company's customers are almost certain to surface in litigation in the judge's court? Besides, the question is not whether Judge Haynsworth should be impeached.

Judges may own stock, and perhaps they should be allowed to manage their own investments rather than being required to put them in trust and thus to insulate themselves from them. But Judge Haynsworth not only a heavy investment in a local business—Vend-A-Matic—resulting in an unusual kind of identification on his part with that business even aside from his directorship in it; he had in addition a diversified and active portfolio, which not unnaturally created a series of disqualification problems for him. Possibly he was right in each instance, other than the Vend-A-Matic cases, in which he did not disqualify himself. But was he right in courting these problems by maintaining an active and diversified portfolio?

A judge does not disqualify himself only when he is consciously aware that his interest in one of the parties would influence him. No man knows himself quite that well, and the public ought not to be asked to rely on such exquisite self-knowledge. Judgment may be influenced in subtler ways, less apparent on the surface of consciousness, and people—especially litigants—may at any rate suspect as much. The law and the practice that seek prophylactic assurance against bias in decision-makers—administrative and executive as well as judicial—address themselves not only, not even chiefly, to the existence in fact of conscious bias, but to the existence of relationships which may possibly cause bias, consciously or otherwise. The test is the sort of surmise that naturally arises out of general human experience, not whether in a given case actual bias can be shown.

Surmises of bias get remoter and remoter, to be sure. It becomes a question of degree, and a difficult one. No judge, not even a pauper, can avoid the problem forever, but it is a judge's duty so to conduct his private affairs that he faces it as infrequently as possible. Judge Haynsworth's Vend-A-Matic connection guaranteed that he would face the disqualification problem in aggravated form, and when, sure enough, he encountered it, he solved it wrongly—not culpably, but wrongly. His active and diversified portfolio guaranteed, moreover, that he would face the problem elsewhere with what one hopes is unusual frequency.

There are two sets of standards of ethical behavior in any profession: a common standard, codified with more or less precision, and a more sensitive standard, which is hopefully the emerging common one. It is desirable to hold nominees for the Supreme Court to the standard of highest ethical sensitivity. In the process, a certain injustice may be done to a perfectly honest man like Judge Haynsworth, who does not quite measure up. This is a price that is paid for raising the general standard. And the injustice, if anything, was inflicted by the nomination. If the appointment fails, Judge Haynsworth may continue to serve honorably where he is. Other judges may, as he has said he will in any event, resort to trusts, buy land, as the President has done, or government bonds, of blue-chip stocks in a few large, impersonal corporations. Disqualification problems will still arise, but more rarely, and not with customers of US Steel or General Motors.

The President was on sounder ground when he urged that senators who disagreed to some extent with Judge Haynsworth's opinions ought not to vote against him for ideological reasons. Ideology is relevant to both Senate and President in the performance of their functions. They are partners in exercising through the appointment process the only available form or direct political control over the Court. When the ideological clash between a nominee and a Senate majority is sufficiently violent, the Senate is well within its rights to reject the nomination, and it has done so in the past. Ideology was one, if only one, of the factors that prevented confirmation of Abe Fortas as Chief Justice.

But President and Senate are partners, and the Constitution gives the President the initiative. In order to refashion the Court so as to please himself, he were to attempt to move it beyond an ideologically moderate position, senators who are of a different mind ought to resist. But Judge Haynsworth is no reactionary. His civil rights record is centrist, although more cautious

than some senators might like. If the Senate demands precisely the ideological profile it would prefer, the appointment process will be in deadlock. Judge Haynsworth should be seen ideologically as falling within that area of tolerance in which the Senate defers to the President's initiative.

The real issue is not judicial philosophy, but ethical standards, and these are equally the Senate's concern as the President's. So the Senate has shown time and again, in passing on nominees for executive offices.

NEEDS CITED FOR NATIONAL TIMBER SUPPLY ACT

Mr. HATFIELD. Mr. President, recently, the Senate Subcommittee on Soil Conservation and Forestry of the Agriculture Committee held hearings on S. 1832, which would enact the National Timber Supply Act. In Oregon, I might remind my colleagues today, the Federal Government owns 51 percent of my State's land. Much of this is in national forests, and is administered by the Forest Service.

Because the lumber industry is of such importance to my State where one out of every five lumber producing trees in the United States grows, and because our Nation is falling behind in meeting its housing goals, I am calling the attention of my colleagues to this bill and the need for its passage. The lumber industry today is in a period of a slack market, and the bill should be considered now, when extreme pressures are absent that were experienced when the lumber prices rose so rapidly last year.

This bill would assist the Forest Service in its management of our lumber producing areas. It would help the lumber industry which employs 85,000 Oregonians to produce enough timber to meet our Nation's growing lumber needs. It would help our homebuilding industry and our many new home buyers by helping keep down the price of new houses.

Although they are not in support of this bill, I think it would benefit the conservation groups who want to protect our timberlands from any encroachment by lumber interests. If we make better use out of lands now classified as commercial timberland, this will lessen pressures for timber in other forest areas. Our country needs pure wilderness areas, where a person can be free from all encroachments of man. We need easily accessible recreation areas, so that a majority of the population can get out into our forests to enjoy their many pleasures. In addition, Oregon must realize the importance of its lumber based industries, and see that those interests are not overlooked in a "cut no trees" campaign. We can protect our wilderness and recreation areas better through intensified management of our timberlands.

Mr. President, I ask that the Senate think seriously about this problem. To those Senators who represent States without timberlands. I remind them of our Nation's housing goals. We must see that sufficient lumber is available—not just in 1970, but also in 1980 and 1990—to meet these housing goals. A decent home for every American should be a prime goal for those of us who are concerned with urban problems. We here in the Senate who represent States with substantial timberlands are aware of the need for this bill, S. 1832, to pass and be put into effect.

I ask that unanimous consent be given to the printing of my statement in support of S. 1832 to the Subcommittee on Soil Conservation and Forestry at the conclusion of my remarks.

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

STATEMENT OF SENATOR MARK HATFIELD

As a cosponsor of S. 1832, the National Timber Supply Act of 1969, I was most gratified that your Subcommittee conducted hearings today on this measure of such fundamental importance to not only the State of Oregon but all other timber producing states of the nation.

While Oregon produces the largest volume of timber products among the fifty states; it is, like every other state, facing a growing crisis in housing its people adequately. There is a direct correlation between the production of lumber, plywood and other wood products and the realization of our national goals of a decent home for every citizen. Unless the Congress acts now to assure optimum production of wood fiber from the vast area of commercial timberlands on the National Forests, we will never be able to fulfill the demands for the timber-based building materials we must have to build 26 million new housing units by 1978.

The forests, as I have indicated, are of critical importance to Oregon. They are the basis for 85,000 jobs in the state; one of every five trees made into lumber and plywood anywhere in the United States are grown in Oregon; three-quarters of those trees are standing on Federal timberlands within the state. It is apparent, therefore, that the destiny of Oregon is directly related to the effectiveness with which the National Forests are managed. S. 1832 provides the means for the Forest Service to attain the high quality timber management practices which are already commonplace among industrial ownerships and on state and Bureau of Land Management commercial timberlands in Oregon.

The Forest Service has demonstrated that it has the skills to do an effective forest management job given the long-range financial assurances it must have to undertake intensified timber growing and harvesting. It would be wrong for the nation to consign these highly qualified and dedicated professionals to the caretaker activity of the past when they have the ability to contribute substantially to both the economic and social well-being of the nation.

Intensified management of Federal lands already classified as commercial timberlands will aid materially in assuring retention of other forest lands for wilderness and primitive areas and I consider this of vital importance.

I support the approach that generally high yield funds should be reinvested in the National Forests that produced the revenue. This would assure that the government gets the best return on its investment.

In conclusion, it is my conviction that S. 1832 should be passed promptly by the Senate and I would urge that the Subcommittee on Soil Conservation and Forestry act with dispatch to move the measure towards the floor for adoption by the Senate. Action should be taken now, while high mortgage rates have caused a temporary lull in demand, if we are to meet the clear needs of the future.

STORAGE AND PRODUCTION OF POISON BULLETS

Mr. NELSON. Mr. President, in 1946, Dr. Theodore Rosebury, a scientist who served as chief of the airborne infection department of Fort Dietrick during the Second World War wrote:

The mere availability of offensive biological weapons constitutes a hair trigger mechanism, ominous in its capability for damage which may possibly be irreversible. The pursuit of a policy of offensive development must foster military rivalry between nations . . . it must tend to stimulate an international race in armaments of mass destruction.

While many proponents of CBW work often argue that defensive research and development is necessary for our Nation's security, it is often difficult to discern the fine line distinction between offensive and defensive research and offensive and defensive weapons. In fact, many contend that the distinction between the two is so fine that to talk in terms of offensive and defensive weaponry is meaningless. However, the military has argued that CBW research and development are necessary so this country can build up adequate defenses in case of a CBW attack.

Last Friday, an article, entitled "20,000 Poison Bullets Made and Stockpiled by Army," written by Robert M. Smith, and published in the New York Times, reported that the U.S. Army had produced and stockpiled bullets filled with the disease germ botulinum. While it is widely known that the United States has experimented with biological weapons, it is a matter of grave concern to find out that munitions have actually been produced and are in our arsenal—ready for use.

It is pretty clear that bullets loaded with infectious diseases are weapons of combat—designed to kill an enemy. Such devices in no way provide a measure of protection to ourselves as would a gas mask or other defensive weapons.

Several months ago, the Senate by a unanimous vote of 91 to zero passed an amendment to the military procurement authorization bill. In that amendment the Senate made known its feelings about the development of systems capable of delivering biological weapons. It was unanimously agreed that we should not continue our work in developing delivery systems specifically designed for biological weapons. The purpose of this provision was to make clear to the Department of Defense that the U.S. Senate does not approve of the use of biological weapons for war. The Senate, in short, was saying to the Department of Defense: If you find it necessary to do research on biologicals so the United States will know what the enemy scientists are capable of doing, and if our research endangers neither people nor the environment, then go ahead and continue research. But what was clear also was that the Senate did not want the Army to go ahead and put these biological weapons into capsules or munitions that could be used against an enemy.

Earlier this month I was encouraged by the news that the Secretary of Defense had recommended to the National Security Council that our work on biological weapons be completely halted. This proposal seems wise and I hope it is accepted.

What seems obvious is that there is disagreement within the Defense establishment about biological warfare weap-

ons. Certainly additional ammunition should not be produced or filled with biological toxins contrary to the clearly expressed opposition of the Senate.

In the Senate- and House-passed amendment on CBW, it was clear that Congress was vitally concerned about CBW. Full reporting of our actions in this areas is necessary. Congress and the public should be informed now about bullets and any other munitions stockpiled that carry disease germs.

Mr. President, 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:

20,000 POISON BULLETS MADE AND STOCKPILED BY ARMY

(By Robert M. Smith)

WASHINGTON, October 30.—The Army has produced and stockpiled more than 20,000 poison bullets.

It is reliably reported that the bullets contain Botulinum—a toxin that produces an acute, highly fatal disease of the nervous system.

A secret memorandum prepared in 1966 by Chemical Corps officers for Secretary of the Army Stanley R. Resor said that thousands of the bullets had been produced and stockpiled at Pine Bluff Arsenal, in central Arkansas.

There is no evidence that the bullets have been used.

It is not known whether the United States is still producing the poison bullets. However, in recent private conversations with other Government officials, Defense Department personnel have indicated that the bullets are, at the least, still stockpiled.

Officially, the Defense officials have shied from the questions of officials in other departments as to what the "special" weapons at Pine Bluff Arsenal are; they refer to them in only the most general terms.

A series of questions concerning the poison bullets was submitted to the Defense Department this afternoon. Col. Rodger R. Bankson, director for defense information, called late in the afternoon and said, "I have no comment on any of your questions."

The National Security Council is now in the final stages of a review of the United States' chemical-biological warfare policies. An interagency staff report has been prepared on chemical-biological warfare, and the report is currently being discussed by high officials of the Pentagon, State Department, Arms Control and Disarmament Agency and other agencies.

President Nixon plans to meet with the National Security Council in early November to consider the issue and to try to formulate a chemical-biological warfare policy.

Reliable sources say that the 1966 memo divided the poison bullets into two types—.38-calibre and "separable." It is not clear what "separable" means. The sources say the memo reported that considerably more than 10,000 bullets of each type were stored at the arsenal.

Knowledgeable sources indicate that the poison bullets could logically serve only one purpose: assassination. To kill an enemy leader with a poison bullet, it would be necessary to do no more than nick him; he would very likely die of botulism, the disease induced by the powerful toxin.

It is not clear whether the United States produced poison bullets before 1965. However, that is the first reference to the bullets that sources familiar with Army weaponry say they have seen.

The year 1965 was when the United States began to send large numbers of combat forces to Vietnam. In 1964, there were 23,300 American troops in Vietnam; in 1965, there were 184,300.

The Hague Convention of 1907—which the United States has signed—prohibits the use, but not the manufacture, of poison weapons. This injunction is repeated in the official Army guide to the rules governing warfare, Army Field Manual 27–10, "The Law of Land Warfare."

"It is especially forbidden," the manual points out, "to employ poison or poisoned weapons." At another point it notes: "It is especially forbidden to employ arms, projectiles or material calculated to cause unnecessary suffering."

The Pine Bluff Arsenal has both biological and chemical production facilities. In the biological area, five officers, four enlisted men and 323 civilians are engaged there in a $7-million-a-year operation centered in a 10-story tower.

The Army has described the biological plant at Pine Bluff as a "pre-production facility." It says that the arsenal produces biological agents to develop the techniques and "hardware" necessary to mass produce the germs if they are needed.

The operation, the Army says, also involves storing some of the germs and toxins the dead but poisonous byproducts of bacteria) in refrigerated "igloos." The igloos, in the north and central portions of the arsenal, are reinforced concrete huts covered with two to three feet of dirt.

There are 273 igloos at the arsenal, plus 32 warehouses, 16 sheds and 72 concrete magazines, but it is not known how many of the igloos are used to store biological agents. Pine Bluff also stores lethal chemical agents.

Presumably the poison bullets are stored in the concrete magazines.

Specific information on bioligical agents is secret. However, Representative Richard D. McCarthy, Democrat of upstate New York and an outspoken critic of United States chemical and biological warfare policy, has said that the disease-bearing weapons that the United States develops, tests and in some instances stockpiles would cause—besides botulism—anthrax, tularemia, Q-fever, and Venezuelan equine encephalitis.

Another Army manual, Technical Manual 3–216, "Military Biology and Biological Agents," discusses the disease botulism in some detail.

The manual says that the mortality rate of botulism is 65 per cent in the United States. However, Americans contract the disease by eating contaminated and improperly cooked food. Presumably, the mortality rate would be higher if the toxin were introduced in a concentrated form and through a bullet wound.

The Army manual says that the symptoms of the disease appear in 12 to 72 hours and that "antitoxin therapy is of doubtful value, particularly when large doses have been consumed." The disease is not contagious.

The manual says that the "through repeated purification procedures [the toxin] has been obtained in a crystalline form and is one of the most powerful toxins known."

"Botulism is an acute, highly fatal disease," the manual continues. "It is characterized by vomiting, constipation, thirst, general weakness, headache, fever, dizziness, double vision and dilation of the pupils. Paralysis is the usual cause of death."

ENVIRONMENTAL QUALITY: PESTICIDES, NUTRIENTS, AND RESOURCE REUSE

Mr. TYDINGS. Mr. President, the public demand for effective action to protect our environment from the indiscriminate and often widespread use of persistent pesticides continues to increase. Our land, water, and wildlife have been severely abused by these pesticides.

The Department of Interior recently released the results of a 2-year study that indicated extensive pesticide residues were to be found in 584 of 590 samples of fish taken from 45 rivers and lakes throughout the Nation.

The focus of public concern is now on DDT, perhaps the best known of all the pesticides. Yet DDT is but a member of the family of chlorinated hydrocarbons, all of which are destructive to our environment. Other chlorinated hydrocarbons are aldrin, dieldrin, and endrin. Like DDT, the use of these pesticides should be curbed.

Last July I introduced a bill that would place a 4-year moratorium on DDT and these three pesticides. While the bill, S. 2747, has little chance of enactment, it has, I hope, contributed to building the momentum required for effective action.

Quite recently a new coalition of conservationists requested the Department of Agriculture to ban the use of DDT. I support this request and ask that a November 1, 1969, article in the Washington Post reporting this action be printed in the RECORD.

Yesterday, the Washington Post published an interesting article entitled "West's Sky-High Lake Tahoe Is Being Polluted by Algae," written by John Berthelsen. Tahoe is one of the most magnificent lakes in the western part of the United States. Yet by unwise, extensive and unplanned development, Lake Tahoe is now seriously endangered. This development leads to nutrient enrichment within the lake. Phosphate and other nutrients pour into the lake and stimulate extensive vegetation. This vegetation increases and eventually depletes the supply of oxygen in the water. When this results, the lake begins to die, or eutrophy, as the ecologists term it.

Nutrient enrichment is a danger to our water resources and must be recognized as such. Our waters may die, not by first destroying the life within but rather by increasing it to the point of suffocation.

I menton this to the Senate for at times during the summer, nutrient enrichment endangers the Upper Estuary of the Potomac. I mention it also because it is probably the primary long term threat to the Chesapeake Bay. As Dr. Donald Pritchard, director of the Chesapeake Bay Institute at the Johns Hopkins University, has said, if the bay is ruined it will first become a jungle rather than a desert. I ask unanimous consent that Mr. Berthelsen's article be printed in the RECORD.

Finally, Mr. President, I invite the attention of the Senate to an article entitled "Meeting the Crisis of America's Environment," written by the distinguished architecture critic of the Washington Post, Mr. Wolf von Eckardt and published in the Sunday, November 2, Post. Mr. von Eckardt notes that the key to restoring the quality of our environment is "the continuous reuse and regeneration" of our resources. The environment is a "system," a single unit of almost infinite resource relationships that are tied together and can be rather easily disturbed or thrown out of balance. We must thus not consider the byproducts

of our society as wastes but rather as resources to be treated and reused again and again. In the environmental system there are no wastes as such, only resources in a less usable form. Until we both accept the concept of resource reuse and in fact act upon it, there is little hope of cleaning our water and air and of restoring the quality of our environment.

I ask unanimous consent that Mr. von Eckardt's article be printed in the RECORD.

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

[From the Washington (D.C.) Post, Nov. 1, 1969]

U.S. BAN ON DDT IS URGED

A new coalition of conservation groups asked the government yesterday to ban the use of the long-lived pesticide DDT which they said was possibly the worst polluter of nature in the world.

"DDT is contaminating the earth," the Environment Defense Fund said as it presented Agriculture Secretary Clifford M. Hardin with a petition requesting that he halt licensing of the pesticide.

"Those participating in the petition included the National Audubon Society, the Sierra Club, the Izaak Walton League, and the Michigan Environment Action Council. The United Auto Workers union backed up the plea.

In addition to its petition to Hardin, the group asked Secretary Robert Finch of the Health, Education and Welfare Department to ban the sale of any foods that show traces of DDT. The department now sets tolerances for limiting the residual DDT that is permitted in foods.

Former Interior Secretary Stewart Udall, leading off the news session, said: "If I can use a baseball parallel, the action on herbicides was a single, the cyclamate ban a double, and the best home run could be a ban on DDT."

[From the Washington Post, Nov. 2, 1969]

WEST'S SKY-HIGH LAKE TAHOE IS BEING POLLUTED BY ALGAE

(By John Berthelsen)

LAKE TAHOE, October 25—This beautiful sky-high lake, nestled into the crook in the imaginary line denoting California's eastern border, is one of the purest in the world.

Its color a deep blue instead of green, it is overshadowed by 10,000-foot Sierra Nevada peaks. A few miles away, the famed Donner party froze to death. But Tahoe does not freeze over because it is so deep.

Big enough to cover the state of Texas with a film of water 8 inches deep, Tahoe itself is only 22 miles long and 12½ miles wide.

It is 1,645 feet deep. This size, however, is being diminished by algae in the water.

"In the past 10 years," says Dr. Charles R. Goldman, director of the Department of Ecology on the Davis campus of the University of California, "fertility in the lake has increased by 75 per cent.

"If this progression continues, the lake will decline rapidly. We already have immense growth of attached algae on rocks in shallow areas. Ten years ago, these algae did not exist."

Oddly, the pollution of Lake Tahoe is coming at a time when the area has made an excellent start in curing its sewage and effluent problems. At one end of the lake, an entire district's sewage is being pumped out of the glacial basin in which the lake lies, down the side of a mountain and into the Indian Creek reservoir, created especially for this purpose.

THROUGH SEVEN PONDS

The effluent and sewage go through a total of seven different settling ponds before they end in the reservoir, and the resultant lake is clean enough to drink out of at the end of the process. Also, though there is now little access to it, Indian Creek is slated to become a recreation site for fishing and boating.

Around Lake Tahoe itself, it is illegal to dump sewage directly into the lake. But it is not sewage that is causing Tahoe's problems. For, according to Goldman and many others, the nutrients that feed trees and make them grow, also will feed vegetation in the lake itself.

These nutrients are being poured into the lake because of the development of the area; highways, shopping centers, recreational areas and housing developments are going up at a terrific rate.

This year within the Tahoe basin, 773 units have been approved by the planning department. Most of them are condiminiums and that many more are expected to be approved in the next year.

Any kind of construction at all strips the cover from the ground. Fir and pine needles, small brush, rotting wood and foliage, are all washed down the steep sides of the basin and end up in the lake, thereby increasing the nutrients on which algae feed.

In the natural geologic aging process, these things are bound to happen. All lakes are constantly in the process of becoming more fertile as their watersheds erode. This process is called eutrophication. As they become more fertile and algae grows, finally resulting in the removal of oxygen from the water, fish and other marine creatures cannot live.

VASTLY ACCELERATED

This process normally takes tens of thousands of years. But it has been vastly accelerated in other lakes, the most notable Lake Erie. Man made it a "dead" lake in one generation.

Lake Tahoe is far from this kind of ruin. Except for the busy beach areas and at the mouths of streams, the water is as pure as it was 100 years ago, according to California sanitarians, and the clarity of the water is as great as it was in 1873 when a 9½-inch dinner plate could be seen at a depth of 108 feet.

But every disturbance of the watershed has its influence on the lake, and eutrophication cannot be reversed. There is almost no way Tahoe can "flush" itself, Goldman adds.

All conservationists and many public officials say the only way to slow the process is to limit development. Goldman, who spent 9 years studying the lake from a research station on location, says the only structures that should be allowed are those which would disturb nothing—hardly even the pine needles.

Tahoe, however, has become one of the glamor locations of the West Coast, with a tremendous surge of population, for a variety of reasons. Nevada shares the coastline with California, and gambling casinos abound on the Nevada side. Californians flock to them, as well as to the superlative ski areas and the natural beauty of the lake itself.

The possibilities for profit have drawn many developers including the Boise Cascade Timber Products Company which created a luxury community called Incline Village. Incline Village has come under fire from every quarter for its cutting away the natural cover and for its use of treated sewage on its golf course.

"The big problem is that most of these developers are major league," said one observer, who does not want to be identified, "and its planning bodies they are dealing with are not. The planners think of progress in terms of money and that is ruining the lake."

The other problem is that until recently there was nobody to control the developers, who busily carved road cuts, ski areas and housing developments into the mountains, and the lake was a tangle of governments shared by two states and half a dozen counties.

In March of 1967, after a year of discussions, a bi-state regional government was formed with the California side having the power to levy taxes, enact ordinances, and police standards and ordinances. The Nevada side has none of these, as of yet.

California's agency, however, is threatened with a suit being brought by developers at the south of the lake, and by one of the counties which border the lake, testing its police power after it stopped the Tahoe, Paradise Co. from cutting trees.

The outcome is eagerly awaited, for conservationists see it as determining Lake Tahoe's fate. The conservationists have picked an inauspicious year—1984—for Tahoe's demise. By that time, they say, the algae in the lake will turn it from blue to green.

But, says one real estate saleswoman at Boise Cascade's Indian Village, if the lake turns green or she runs out of land to sell, she will just move on. There are other lakes in the High Sierra country.

[From the Washington (D.C.) Post, Nov. 2, 1969]

MEETING THE CRISIS OF AMERICA'S ENVIRONMENT

(By Wolf Von Eckhardt)

Next spring the kids on the campuses all across the nation will conduct a teach-in on the crisis of environment.

A special day, still to be announced, will be set aside from routine business. And that day may launch a popular movement to demand a national environment program much as we have a national defense program and on much the same scale.

The teach-in is the idea of Sen. Gaylord Nelson (D.-Wis.) who, like so many of us, had reached the desperation point about the insanity of a society that offers its young no hopeful future, a society that is about to kill its own children, if not by nucelar war, more slowly, by poisonous pollution.

Sen. Nelson announced the teach-in 10 days ago and says the response has been "overwhelming." There will be symposiums, convocations, panel discussions and outdoor rallies among students, scientists and faculty members, as well as labor, conservation, women's and other citizen organizations.

The senator says a Washington office to coordinate the event will be opened next week. But on each campus the students will do their own thing.

At the University of California they are likely to focus on the Santa Barbara oil spills. At Wisconsin they'll mostly talk about the impending death of Lake Erie.

On city campuses, the foremost concern will be the poisoned air. All the teach-ins will endeavor to involve their local community and emphasize local problems.

But the teach-ins will undoubtedly stress that the crisis of the environment cannot be viewed or solved in isolated local fragments—an oil spill in Santa Barbara or DDT-poisoned mother's milk in Boston.

Like national defense, which would hardly be assured by a submarine base here and anti-missile missile there, it must be viewed and attacked in its ecological entirety.

Nor will we get very far with negative police measures, though they are an essential beginning. Air pollution control ordinances, for instance, can at best have only a limited effect, as long as we keep building more freeways and predicate all our metropolitan planning on further proliferation of combustion engines.

What is desperately needed—and as a matter of the highest priority—is a positive national environment policy. The Congressional Conference at which Sen. Nelson first announced the teach-in brought out some premises on which such a policy must be based.

The conference, perhaps the most constructive I have ever attended, was sponsored by about 100 Congressmen and Senators and organized by the Fund for New Priorities in America (a New York-based organization of business and professional people), which had caleld toegther some two dozen bright people, including scientists and journalists.

The new phrase around which most of the discussion evolved, coined by Aaron J. Teller, dean of engineering and science at Cooper Union, was "looping the system."

It means the continuous reuse and regeneration of the water, fuels and chemicals that we now waste because we consider them garbage.

The garbage, of course, is often poisonous and always ugly and is now piling up to such an extent that it is seriously clogging the American way of life. The richer we get, the more garbage. We have reached, as John W. Gardner so eloquently put it, a state of affluent misery—"Croesus on a garbage heap!"

But the stuff isn't really garbage if you look at it rationally. Teller points out, for instance, that, although we are short of sulfur, one of the most important resources of our economy, we dump 12 million tons of the 16 million tons we consume each year into the atmosphere and into our streams. That is an expensive way to cause a lot of damage. The price of sulfur is up from $20 to $40 a ton because of the shortage.

Abatement laws reduce the damage but not the waste, Teller says. One abatement process removes sulphur oxide from power plant stacks and converts it into a new waste—four pounds of waste for every pound of sulfur removed. A typical power plant will build a mound of 150,000 tons of solid waste every year.

The same is true of attempts to put afterburners into automobiles, which waste enough fuel to provide all the power and heating needs of two cities the size of Philadelphia. The afterburner makes the effluent less toxic. But it still wastes the fuel—12 billion gallons a year.

Instead, men like Teller say, we should reuse that sulfur and that carbon monoxide and all the other materials with which we now foul up America.

Teller says: "Pollution and preservation of natural resources are inexorably intertwined by nature, and the ultimate solution must result in the simultaneous solution of both problems. Such a solution must be based on the reality of the ecological system and not merely by policing a fragment. We must loop the system."

The technical machinery for recycling "wastes," insofar as it doesn't already exist, can be researched and developed as easily and quickly as we researched and developed the technical machinery to get to the moon (and probably a lot easier than getting to Mars). The question is how to start. Teller suggested a system of special taxes and tax incentives. But there wasn't much sentiment for that at the Congressional Conference. It is doubtful that a taxride would have gotten us to the Sea of Tranquility or that a tax-manipulated market economy can buy us a livable environment.

Much of the country is sick of oily depletion allowances and at the same time as the conference in the Old Senate Office Building was hearing some doubt about industrial wisdom, another conference in the Interior Department heard one water polluting industrialist after another tell Secretary Walter J. Hickle that he was all in favor of clean water if only someone else will pay for making it clean.

"We the people," it says in the preamble of the Constitution, must provide not only for the common defense, but also promote the general welfare for ourselves and our posterity.

Building new towns, rebuilding the old cities, new fast trains and rapid transit, new order in the metropolitan areas, recreation and amusement parks and greenbelts are therefore part and parcel of the effort of recycling wastes, and cleaning up our air, rivers and lakes. It's all one effort—the design of a human environment.

This is nothing new. More than 30 years ago, under Franklin D. Roosevelt's New Deal, we started all this with the Tennessee Valley Authority, the National Resources Planning Board and the Greenbelt towns. Only the TVA survived.

Too expensive, say the small minds. But far more dangerous is the lofty computer mind that argues that a national environment program would be too cheap to replace our war program in the national economy. The "Report from the Iron Mountain on the Possibility and Desirability of Peace," which found that only ever-accelerating defense production could sustain our national economy, may have been a hoax. But the line of thinking that an environment program is too cheap for economy-sustaining is not.

The military-industrial complex is not convinced that sulfur recycling, rapid transit, new towns, recreation parks, swimmable rivers and breathable air gives them as much benefit for our cost as their ABMs and SSDs and the rest of their deadly alphabet soup.

This should give next spring's teach-in a lot to talk about.

FOREIGN EDITOR OF LOOK CALLS FOR U.S. DISENGAGEMENT FROM VIETNAM NOW

Mr. McGOVERN. Mr. President, the distinguished foreign editor of Look magazine, Mr. J. Robert Moskin, has recently returned from a trip to South Vietnam and from discussions with key persons involved in the negotiations in Paris.

On the basis of his most recent observations and studies, Mr. Moskin has reached the conclusion that we should immediately begin the full-scale withdrawal of all American forces from Vietnam.

As he puts it:

We have absolutely no sane reason left for killing more than 1,000 young Americans before the end of this year. Our present course—spooning out American lives in an infinitely complex, inscrutable Asian game—is inexcusable.

He adds further:

It really doesn't seem to matter whether we march to the transports today or dribble out before the 1970 U.S. elections or over the next three years. The results will be the same—except in the number of the dead.

* * * * *

No one I talked with—certainly no Vietnamese—believes we should stay in Vietnam. Everyone said we should get out. They differed only on the speed with which we should do so. The most militant—sometimes those most scared for their own skins—said in three years. At a conservative estimate of 100 U.S. dead per week, that means 15,600 more coffins.

* * * * *

The simple truth is that the price of keeping South Vietnam non-Communist has been raised to a level the American people are no longer willing to pay. That is a realistic definition of defeat.

* * * * *

If we learn the lesson of Vietnam—that American power has its limitations—this war may at least mark the end of an era and the beginning of a new, less punitive and more imaginative role in the world for the United States.

Mr. President, I ask unanimous consent that the text of this article, which appears in the November 18, 1969, issue of Look magazine, be printed at this point in the RECORD.

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

VIETNAM: GET OUT NOW

(By J. Robert Moskin)

We should get out of Vietnam. That, bluntly and simply, is the conclusion I bring back from my most recent trip to South Vietnam, plus conversations with leaders on both sides of the negotiations in Paris. I have never been a dove over Vietnam, but I cannot close my eyes to these hard facts: We have failed to win the war in the field. Even with 500,000 men there, we cannot win it.

We have also failed to create a Vietnamese Army that can carry on its own struggle. To try to achieve that long shot will cost more tens of thousands of American lives.

And we have failed to help build a popular or democratic or cohesive government in Saigon. The current regime is a military dictatorship that depends wholly on our presence.

I have never been a Vietnam hawk either, but I respect the judgment of four U.S. administrations that called the fate of South Vietnam vital to our national interest.

Now, President Nixon has reversed this judgment, for which 39,000 Americans have died, 250,000 have suffered wounds and about $100 billion have been spent. In his policy-setting May 14 speech, he said, "We are prepared to accept any government in South Vietnam that results from the free choice of the South Vietnamese people themselves." This means our Government no longer believes that it is in our vital national interest to keep South Vietnam free from Communism.

It is a fair standard that young Americans should not be ordered to die unless their sacrifice is vital to their country.

We have absolutely no sane reason left for killing more than 1,000 young Americans before the end of this year. Our present course—spooning out American lives in an infinitely complex, inscrutable Asian game—is inexcusable.

It is difficult to conceive that the present South Vietnamese Government can survive the end of the hostilities or that South Vietnam, even if we go on fighting, will not be Communist-dominated soon after we leave. It really doesn't seem to matter whether we march to the transports today or dribble out before the 1970 U.S. elections or over the next three years. The results will be the same—except in the number of the dead.

In 1967, I traveled for LOOK along the frontier of American power on the western edge of the Pacific Ocean, and came home convinced that our involvement in the future of Asia is irreversible. That conviction remains. We are not about to scurry back into a Fortress America. Our presence across the Pacific is too massive, our interest too deep. But on this latest trip to Vietnam, I saw that we have overreached ourselves. America's historic westward-driving wave has crested.

No one I talked with—certainly no Vietnamese—believes we should stay in Vietnam. Everyone said we should get out. They

differed only on the speed with which we should do so. The most militant—sometimes those most scared for their own skins—said in three years. At a conservative estimate of 100 U.S. dead per week, that means 15,600 more coffins.

Why is South Vietnam's political self-determination still worth dying for? Because, I was told in Washington and Saigon, we have committed our word, and if we leave precipitously, our word will be dishonored. We will lose face. Three years ago, Secretary of State Dean Dusk gave me the same reason for continuing this war. He called it "the credibility of the American commitment."

The Nixon Administration believes we will be "severely hurt" if we "bug out." It wants "a reasonable solution," praying for reasonableness from Hanoi while recognizing that it is against the Communists' interest to be "reasonable."

But by staying, are we telling Thailand, for example, that if it gets into trouble with Thai or North Vietnamese guerrillas, we would help? No one expects, I was told, that we would then send an expeditionary force to Thailand.

The outcome of this "war of national liberation" has no relevance to the chances of having more such wars in the future. Just about every Asia leader knows we have had enough in Vietnam.

Singapore's Prime Minister Lee Kuan Yew told me, "Vietnam was a bad place to draw the line."

Why then are Americans dying today in Vietnam? To give the South Vietnamese time to prepare to govern themselves and defend themselves. Are these reasonable goals?

We thought they were. We thought the South Vietnamese leaders would use the time we helped buy for them—with American lives and money—to good advantage. But they have not.

You need only go out in the countryside to see the failure of the succession of South Vietnamese governments to win the people's loyalty. Go to the upriver village of Dien Ban, about ten miles south of Danang, our great northern base in Quang Nam Province. You can get in safely only by helicopter. Here, American marines have to wear their flak vests in the road just outside their walled compound. This area has been fought over for years; there is still fighting every day. If the refugees were resettled in the countryside, officials fear, they would join the Vietcong.

I visited Dien Ban with the chief of the pacification program, Ambassador William G. Colby, who ranks Quang Nam 28th out of the 14 provinces in security. Terrorist attacks are heavy: government officials and ordinary civilians are being assassinated, wounded, kidnapped. The province chief, an Army of the Republic of Vietnam (Arvin) colonel, figures that the Vietcong have 900 officials of their own in the province. Our side sends out "Political Recon Units" to terrorize and kill VC leaders.

Destruction in Quang Nam Province has been massive. Five years ago, the province had 557 hamlets; only 308 are left. The number of refugees has jumped in five years from 35,000 to 124,000. (One of every 12 people in South Vietnam is a refugee today.) Less than half of the province's rice land is cultivated. Fishermen may not return to shore after 6 p.m. Anyone walking about in the countryside after dusk without a light is shot automatically. In this province of 540,000 people, only one Vietnamese doctor remains, and while I was there, he was vacationing in West Germany. The people in the villages know nothing about the peace negotiations in Paris.

"Ninety percent of the people would cut our throats if they had the chance," a top American in Quang Nam told me.

Ambassador Colby says, "It's been a war between two apparatus, and the people wish they would both go away."

Warren E. Parker, senior U.S. adviser in the province, describes the situation today: "It's like a Cadillac pushing a Model T through a muddy road with four flat tires with a driver who doesn't know where he's going and doesn't really care."

On an island in the river below the provincial capital of Hoi An sits the Xyuen Long Refugee Camp. It vividly tells part of the story of Vietnam's hopelessness. Here live 3,125 refugees. Only 240 are men. Until this summer, these people all lived on another nearby island that was regarded as a VC stronghold. A swift military sweep scooped up the women and children and a few of the men and transferred them to this desolate sand-dune camp. The rest of the men still are hiding with the VC in the tall grass. Moving their families in this manner made no converts, won no friends.

Yet President Nixon found himself able to tell U.S. troops in Vietnam this summer: "I think history may record this as one of America's finest hours."

In Paris, the diplomats debate semantics over whether troop withdrawals should be called "mutual" or "simultaneous." In Saigon, the politicians, fragmented in dozens of parties, struggle for a piece of the spoils. And out in the countryside—where there is firing every night, assassinations repeatedly, where 12-year-old girls carry rifles—you feel that whatever happens in Paris or Saigon, the word will never get down to the bitter, frightened peasants in the fields and the thatch huts. The struggle, the terror, the dying of this desperate 23-year war—in which more than a million people have been killed and wounded—will go on and on. Says a wise American official there, "You can't negotiate an end of this war. We can only negotiate our way out of it."

In a lovely house in the handsome Paris suburb of Verrières-le-Buisson, Mrs. Nguyen Thi Binh, foreign minister of the National Liberation Front's self-appointed Provisional Revolutionary Government, told me much the same thing in more dogmatic terms. An attractive woman, she left a husband, a boy, 13, and a girl, 9, in Vietnam to head the VC delegation in Paris. Wearing a pale pink *ao dai* and black silk trousers, she sat in a sunny upstairs parlor next to a vase of red roses. Her eyes were hard, but she smiled as she talked: "I am, politicially, a woman who resists American aggression for national independence. I am not a Marxist or a bourgeoisie. I love my country. I long for peace to come back so I can lead a normal life with my children."

But there is no hint of compromise: "If the American Government realizes its erroneous policy of aggression and is willing to end the war of aggression, we are ready to discuss with the American Government putting an end to the conflict. . . . If the American Government obstinately pursues its policy of aggression, the South Vietnamese people are resolved to struggle to victory."

Both sides claim they want elections in South Vietnam, and Mrs. Binh says, "The question is how to organize genuinely free, democratic general elections. The first condition is there must be no presence of American troops of aggression—and without foreign interference.

"I consider the Saigon administration has no competence to organize these elections because if the Saigon administration would organize these elections, they would only give birth to another puppet government.

"The Provisional Revolutionary Government has not asked to organize these elections or put forth election laws, and we [advocate] the formation of a provisional government that will organize the election."

That same day, Nguyen Thanh Le, the thin bespectacled spokesman for the North Vietnamese Government, sat in a room behind a heavily guarded stone wall in the Paris suburb of Choisy-le-Roi, puffed English State Express cigarettes, sipped amber tea from a signeted cup and said, "There can be no genuine free election while 500,000 American troops and 60,000 satellite troops remain in Vietnam." He asked if there could have been free elections in France when it was occupied by Hitler's troops.

I asked him why his government, if its objective is to get the United States out, doesn't agree to a cease-fire and simultaneous withdrawal of U.S. and North Vietnamese troops—and then the Americans would be gone.

Le tapped his right forefinger emphatically on his yellow cigarette box and said slowly, "Let me make it simple. Suppose there is a house, and a robber broke in and wrecks the property and killed the wife and children. The master of the house has the obligation to fight back. Simultaneous mutual withdrawal equates the bandit and the master of the house." He added, "The Johnson war is now becoming the Nixon war. Mr. Nixon is even more cunning, more perfidious."

I asked Le about the fear of many that when U.S. forces get out, there would be a bloodbath, especially of anti-Communist Catholics. He called this propaganda of the ruling class. "There are now in South Vietnam many Catholic patriots and many Catholics and people of other religions who participate in the advisory council of South Vietnam and in the leadership of the NLF and the PRG.

"We have no discrimination against any religion. We unite with every patriot to defend the country. So far, those who previously participated in the puppet administration or army, no matter how their pasts were, if they favor the independence, peace and neutrality of South Vietnam, we will cooperate with them and we welcome them."

In Saigon, Sen. Nguyen Gia Hien, who heads South Vietnam's largest Catholic party and who studied at the University of Montana and Iowa State for six years, disagrees. He foresees a massacre. "I'm sure of it. We are not scared of it. The killing is going on now already, not only soldiers but civilians. They will attack anyone who is not working with them—not only Catholics."

The truth is somewhere between a massacre and a welcome. Certainly, the Communists will try to eliminate their most ardent opponents, and asylum will have to be provided for thousands. But this is a problem that will have to be met whether we get out now or later.

Hien's party, a member of President Nguyen Van Thieu's six-party coalition, the so-called National Social Democratic Front, is strongly anti-Communist and consists mostly of refugees from the North. Hien says it was originally subsidized by the late Francis Cardinal Spellman of New York, and Hien had a three-hour meeting last winter with Terence Cardinal Cooke in New York. Today, Hien accepts the eventual withdrawal of U.S. troops. "Withdrawal of the main American force should take about three years. Give us a period of three years. Two years is too quick for us. If after three years we cannot take care of ourselves we have nobody else to blame. If the Communists take over, some people will fly off, and we will be guerrillas. And it will go on again."

Meanwhile, he presses Thieu for social and land reforms. "We can do more for peace by being more liberal, being better organized, less corrupt."

Truong Dinh Dzu, who ran second to the Thieu-Ky ticket in the 1967 presidential elections and who favored talking peace with the Vietcong and creating a coalition government, was thrown into jail. But there are still some political figures in Saigon who advocate what Le and Mrs. Binh call "independence, peace and neutrality." One such group of intellectuals calls itself the Progressive Nationalist Force. Its chairman is Tran Ngoc Lieng, a 46-year-old lawyer. He told me, "We advocate a complete and immediate ceasefire. We call for a government of reconcilia-

tion that will have the responsibility for holding elections in Vietnam." Such a government, he says, would be composed of non-Communist nationalists of both sides, and all its members would have to be acceptable to both sides. This rather idealistic plan would naturally exclude members of the Thieu government as well as the Communists in the PRG.

Although Lieng will not admit it, he is reportedly close to Gen. Duong Van "Big" Minh, who is perhaps the nearest thing South Vietnam has to a popular politician and who has now been allowed to return from exile in Thailand.

Saigon politics is atomized among northerners, southerners, several factions of Buddhists, Catholics, religious sects like the Cao Dai and the Hoa Hao, neutralists and anti-Communists. Splitting these groups are layers upon layers of individual feuds and historical animosities that go back to the period of French rule. And, above all, most of the politicians are out for their own gain.

Says retired Maj. Gen. Edward G. Lansdale, who knows Vietnamese politics. "It's a family quarrel, and a very savage one, as a family quarrel can be."

The feuding factions seem no longer able to get together before it is too late. But if these anti-Communist and non-Communist nationalists do not unite there is no chance that they can survive in the post war political turmoil.

Sen. Tran Van Don, a former general who led the 1963 overthrow of President Ngo Dinh Diem, says, "The problem is not with the NLF. The problem is inside ourselves. . . .

"I don't believe President Thieu can lead the country alone. He needs to rally the army and the people. It is not enough to rally the United States. But he is very proud. He is very jealous of his power. He wants to keep power for himself. I think he would like to become a dictator."

Responsible estimates of the number of political prisoners being held by the Thieu government range as high as 30,000. Many politicans, editors, intellectuals have been jailed by military courts or by "administrative procedures" at the government's whim. They are held for arbitrary lengths of time. The secretary general of the House of Deputies of the National Assembly, Tran Ngoc Chau, says, "Many times people get kidnapped in the streets and taken to places no one knows about."

A woman secretary in the National Assembly was jailed for a month because she has a relative in the Vietcong. A neutralist politician was given a year in prison for calling an illegal meeting—a press conference. A Saigon University professor's two-year sentence for criticizing U.S. policy was suspended; but ten months later, he was still held on the prison island of Poulo Condore. Publisher Nguyen Lau of the Saigon Daily News was sentenced to five years because he talked with a Vietcong agent. (Thirty newspapers have been closed down.) Such cases do not increase confidence in the possibility of free elections.

U.S. Ambassador Ellsworth Bunker does not condone these actions, but he says, "We have to remember they are at war. The war is right on their own soil—right in Saigon."

A courageous lawyer, Tran Van Truyen, 56, who has represented a number of such political defendants, says, "We have a national assembly, the president of the republic elected by a general election. But I tell you we have a seemingly democracy. . . . This government permits no criticism."

Sen. Tran Van Lam, a leader of Thieu's National Social Democratic Front who became South Vietnam's foreign minister in the recent cabinet shuffle, wants the military courts eliminated and all cases tried in civil courts.

Of an American withdrawal, Lam says: "Personally, I think it would be a very good thing. This must be a Vietnamese war."

The government in Saigon is not a popular government. It is basically an army regime, and the people universally fear the army—any army. Hopes that the cabinet changes in September would bring into the government a broader range of civilian views were dashed by the appointment of a right-wing general as prime minister.

The real power behind this government is in the hands of the generals, and Thieu has constantly resisted American pressure to democratize his methods and broaden his political base. What little has been achieved is mainly the result of American persuasion and arm-twisting. Ambassador Bunker, Thieu's confidant, has by all accounts been superb at this. But it has not been enough. A knowledgeable American in Saigon says of Thieu, "He wouldn't have a chance in hell if the Communists weren't pounding at the gates."

The Vietcong obviously want to avoid an election, even if internationally supervised, that would be managed on the rice-roots level by province chiefs, district chiefs, soldiers and police beholden to Thieu. The common guess in Saigon is that the Vietcong's Provisional Revolutionary Government would win 20 to 25 percent of the vote. But since Thieu won in 1967 with only 35 percent, and a major part of that came from the army and the bureaucracy, he has little margin of safety. With the PRG putting up a common front and the Saigon politicians divided, the political struggle threatens to be as hopeless as the military one has been.

Since a political solution that will leave South Vietnam non-Communist is so iffy, it's up to the army, the Arvin, to hold off the Communists. Crucial is the speed with which the Arvin can replace the GI's. The process of preparing the Arvin to take over the fighting is what we mean by "Vietnamization."

U.S. officers now admit that one of the great failures of our military effort has been our neglect of the Arvin. The result of this—plus the Arvin's war weariness, corruption, low pay and the killing off of many of the best officers—is an army that is incapable of defending its country, even if given all the benefits of the United States technology.

Says one American general in a position to judge, "They'll be reasonably self-sufficient in time—three years from now." The question is, can we wait?

When Vietnamization started, no one expected to prepare the Arvin to handle the North Vietnamese Army. The hope was that, in time, it could stand up to the Vietcong. Now, the Nixon Administration dreams of preparing the Arvin to cope with the NVA, too, as a possible alternative to mutual withdrawal.

Of course, even if a cease-fire or peace were arranged and/or American forces withdrawn, there is no way to insure against reinvasion from the North in overwhelming force months after we go.

Ironically, the greatest American hero of the war, Gen. William C. Westmoreland, who commanded our forces there and now is the U.S. Army's Chief of Staff, has become a scapegoat in Vietnam. Some American officers who want to keep fighting today claim that Westmoreland fought the war all wrong, "clobbering everything in sight" in World War II style with big unit battles and massive air support, while the enemy was fighting a semi-guerrilla war.

The military public relations people's new hero is Gen. Creighton W. Abrams, the able current U.S. military commander, whom they love to call "The Spoiler." Abrams' approach is not to wait until the enemy has massed but to hit him as he is preparing his battlefield and gathering his forces from his headquarters safely out of reach in Cambodia.

Abrams told me, "There is a limit to what the United States can do. The solution here has to be Vietnamese." He adds, "I'm in favor of taking out some American troops. There is such a thing as helping too much."

Yet, the fact remains that the Arvin continues to need a great deal of help. It has three main problems. First, it is hated and feared by its own people. One American official in the field tells how a Vietnamese Ranger battalion, supposedly an elite unit, recently went through a village, stealing chickens and belongings. He says with disgust, "You don't make friends that way."

Second, a tremendous effort is needed to train the Arvin's officers and men to handle complex weapons and communications systems, from radios to helicopters. As an American officer told me sardonically, "We'll know we're making progress when we can get a phone call to the Arvin straight."

Third—and most urgent of all—is the problem of leadership. American observers say the Vietnamese, when properly motivated and led, can be excellent soldiers. But the Arvin's officers and even noncoms are too often personally overambitious and corrupt.

All in all, I return from Vietnam this time with a sense of hopelessness, deeper perhaps than the personal despair expressed by Look correspondent Sam Castan before he was killed in combat there in 1966.

Politically and militarily, the South Vietnamese are still, after all these years, not yet prepared to take care of themselves. It would cost more thousands of American lives to give them any chance to do so. Now that our Government no longer judges it vital to our security that South Vietnam not go Communist, what justification is there for further American sacrifices?

The simple truth is that the price of keeping South Vietnam non-Communist has been raised to a level the American people are no longer willing to pay. That is a realistic definition of defeat.

If we learn the lesson of Vietnam—that American power has its limitations—this war may at least mark the end of an era and the beginning of a new, less punitive and more imaginative role in the world for the United States.

RELATIONSHIP BETWEEN AMERICAN BAR ASSOCIATION AND PRESIDENT NIXON

Mr. SCOTT. Mr. President, I ask unanimous consent to have printed in the RECORD a letter from Bernard G. Segal, president of the American Bar Association, to the Washington Evening Star.

The letter is in answer to a column entitled "ABA Waving Nixon Team Pennant," written by Mr. Lyle Denniston, and published in the Star on Friday, September 19, 1969.

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

AMERICAN BAR ASSOCIATION,
Chicago, Ill., October 14, 1969.

Mr. LYLE DENNISTON,
The Evening Star,
Washington, D.C.

DEAR MR. DENNISTON: My attention has been called to your recent *Washington Close-Up* column in which you commented on the relationship between the American Bar Association and the administration of President Nixon. I am responding in the interest of fairness and accuracy, because I believe that in the article you drew certain unwarranted conclusions, and that the article, and especially the headline, created the unjustified impression that the American Bar Association had departed from its traditional position of nonpartisanship.

The facts that this Association is adhering undeviatingly to a strict policy of nonpartisanship. It is true that its work in the public service sphere has expanded greatly in the past fifteen to twenty years, for example, in behalf of the effective administra-

tion of justice including judicial selection, crime control, electoral reform, and legal services to the poor. There is an inevitable convergence of interests of the federal government and the national organization of the legal profession in these and other areas of common responsibility.

This Association has worked closely and harmoniously for many years with successive national administrations of both parties. This has been particularly true in the last four administrations—two Democratic and two Republican. The pattern has been one of cooperative action in problem areas of mutual concern to the legal profession and the government, and at no time has there been any thought or suggestion of partisan purposes on the part of ABA.

The more than 140,000 members of the Association represent every shade of political opinion. Partisanship has no place either in the objectives or in the policy-making of the Association. Throughout its history the officers, members of the Board of Governors, and members of the House of Delegates have come from both major parties.

Your article is, of course, correct that President Nixon has appointed to responsible government posts a large number of lawyers, many of whom were drawn from among the thousands of ABA members active in the Association's professional and public activities. But this has also been true of prior Presidents. Historically, Presidents have relied heavily upon legally trained appointees in filling important executive and administrative posts and as the membership of our Association has continued to grow—currently at the rate of approximately 1,000 per month—more and more of these have come from the ranks of our leaders. In the Congress, a count of a few years ago showed that sixty-seven of the Members of the United States Senate and a majority of the Members of the House of Representatives were lawyers, many of them active in the organized Bar.

We were most appreciative of President Nixon's telegram to the Annual Meeting of the American Bar Association in Dallas, in which he praised the public contributions of the Association. But I believe that the conclusion you draw from the telegram is conclusively negated by the fact that similar messages were also received in person at prior Annual Meetings from President Eisenhower and President Johnson and by telegram from President Kennedy.

In 1955, General Eisenhower in addressing the Association in Philadelphia said:

"To the officers and members of the American Bar Association, I express my grateful acknowledgement of the assistance they have rendered as a public service in aiding me and my trusted advisers in the review of professional qualifications of individuals under consideration for judicial positions. You have helped secure judges who, I believe, will serve in the tradition of John Marshall."

He added his praise for the initiative the ABA had taken on an international basis in the search for world peace under law.

In 1961, a telegram to the ABA Annual Meeting, President Kennedy said:

"I want to express my personal appreciation for the useful assistance which the judiciary committee of your Association . . . is rendering to the Attorney General in evaluating the qualifications for candidates for judicial appointment."

He commended the Association for its "valuable studies in the field of equal justice and equal treatment for minority groups, organized crime, and juvenile delinquency", expressed confidence that it would "rise to these challenges and these opportunities", and asked it "to continue the fine work of this Association in its activities with lawyers throughout the world toward promoting increased respect for law in international matters."

On May 21, 1968, President Johnson, in a prepared statement read to the Board of Governors and the Standing Committee on Federal Judiciary at a meeting in the White House, first thanked the group "for what you are doing for your country"; then spoke of the "very rewarding association" with the Standing Committee on Federal Judiciary whose suggestions and judgments on potential nominees to the Federal Bench, he said, he gave "the closest attention, and the most serious consideration", and added:

"It is very clear to all of us here that you have taken your responsibilities with the serious concern that they deserve, striving to be fair, striving to serve the law and the country and the President."

After listing a whole series of matters in which he said that he had received effective objective help of the ABA, the President concluded:

"I have drawn from you both strength and comfort. Your counsel has been wise and your attitude has been cooperative. I want to pay you all the tribute that I know how to pay this morning, and say again, thank you very much for what you have done."

You correctly reported that I do not regard the assessment of the qualifications of persons under consideration for nomination as Federal judges by the ABA Committee as a "veto power". The Committee never proposes anyone for judicial appointment. Its sole function is to investigate and report to the Department of Justice on the qualifications of those persons whose names are submitted to the Committee by that Department. Almost always, more than one name is submitted for each judicial vacancy that occurs. The Association acts in its professional capacity as the conduit for the opinion, sifted and weighed and objectively appraised, of a cross-section of the judges and lawyers of the community in which the person under investigation practices or presides as a judge. The strength of the Committee is the quality and the fairness of its investigation and reports.

You state that the present administration has given the ABA Committee "a more certain clearance authority than it has ever had before." I point out that in the administrations of Presidents Eisenhower, Kennedy, and Johnson, every Supreme Court appointment beginning with that of Mr. Justice Brennan was submitted to the Committee. For reasons which he stated at length, first at a press conference, and later at a meeting with the ABA Board of Governors and the ABA Judiciary Committee, President Nixon decided to discontinue the practice of his three predecessors in this respect. In every other regard the system is functioning highly satisfactorily; the appointments of judges in the United States Courts of Appeals and District Courts have, during the present administration, been of a very high order; and the cooperation of the Attorney General and Deputy Attorney General, and their staffs, with the Committee has been excellent But the system is not operating any differently in any significant way from that in which it has been operating at least since 1957.

Referring to the creation by the Association in August of the Commission on Campus Government and Student Dissent, the article states that this step was taken "to help get the administration 'off the hook' on the problem of campus unrest." Actually, genesis of the program goes back to a period before the election of President Nixon. As early as May 1968, in an address I delivered at the Annual Meeting of the Atlanta Bar Association in Atlanta, I emphasized the obligation of the legal profession and particularly the American Bar Association to become active in this very matter and expressly urged that the ABA had a duty to make the kind of study and investigation that is now under way. I spoke to the same general effect in other addresses around the country, in press conferences, and in television interviews. You state that my purpose in appointing my predecessor as ABA President, William T. Gossett, as Chairman of the Commission, was to insure that the Commission "would have prestige." I agree that Mr. Gossett brings prestige to the project as do the other members of the Commission. The reason I selected Mr. Gossett, in addition to my confidence in his ability, was that he, too, had demonstrated his belief in the urgency and usefulness of this type of project and had spoken on numerous occasions to this effect.

In conclusion, over a period of years the activities of the Association have been directed increasingly to meeting the public responsibilities that are within the competence of lawyers. There is much more that needs to be done. Obviously, these activities entail cooperation with Federal agencies working on these same problems. The Association's cooperation with the present administration is comparable in kind and degree with that extended to its predecessors.

As a reporter of high professional stature and integrity, you will, I am confident, welcome these observations offered for your information and for the record.

Sincerely yours,

BERNARD G. SEGAL.

ADDRESS BY SENATOR YARBOROUGH BEFORE NATIONAL FEDERATION OF LICENSED PRACTICAL NURSES

Mr. TYDINGS. Mr. President, on September 29 of this year, the distinguished Senator from Texas (Mr. YARBOROUGH) was the keynote speaker at the 20th Anniversary Convention of the National Federation of Licensed Practical Nurses held in Chicago, Ill. It was an excellent address, one which commended the licensed practical and vocational nurses of the Nation for the invaluable services they are providing.

In addition Senator YARBOROUGH dramatized the urgent need to provide adequate incentives to induce more women to enter the nursing profession. As the Senator's remarks pointed out, by 1975 we will experience a grave shortage of nearly a quarter-of-a-million practical and vocational nurses in America.

Mr. President, I strongly commend the address to all Americans who, like myself, are deeply concerned by the medical manpower shortages developing in this country. Therefore, I ask unanimous consent that excerpts from Senator YARBOROUGH'S speech be printed in the RECORD.

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

BEDSIDE NURSING: KEY TO EXPANDED HEALTH CARE

(By Senator RALPH W. YARBOROUGH)

(Excerpts from speech of Senator Ralph W. Yarborough at the National Convention of the National Federation of Licensed Practical Nurses, Chicago, Illinois, 10:30 a.m. on Monday, September 29, 1969)

Madam President, Fellow Americans: Congratiuations to your Federation of Licensed Practical Vocational Nurses on your 20th Anniversary Convention. From a small beginning a fifth of a century ago, you have become a strong national organization. But ten years from now, you will look back on your present organization as a small one. You have now proven yourselves, your value, and the great need of the country for your trained skill. Schools have opened to you, hospitals, nursing homes, all kinds of health

centers cry out for your aid, and you meet today to prepare for a far, far greater score of years, than this very important milestone you mark today.

A rising demand for medical care has made this "A Time for Action" for all medical professions, and I commend you for making this the theme of your convention.

This growing need for care and facilities is already producing changes in the organization of health care, and will cause greater changes in the future. One change has been an expansion of the unit of care from the hospital alone to extended care, home care, outpatient care, rehabilitation, psychiatric and social services, prevention, diagnostic services, and health education.

No longer does "medical care" mean only urgent, emergency treatment at a hospital. Today, that is only one element. Today, we are moving rapidly into treatment of chronic illnesses, especially of the elderly. Alcoholism is finally receiving the attention it deserves as a chronic illness. Out-patient care, clinics, home care and nursing homes are developing as alternatives to a hospital stay. In the case of home care, outpatient care, nursing home care and other new types of care in addition to the conventional hospital, you are the first line of defense against the charge of no help for the ill and afflicted.

Aside from a shortage of facilities, the limiting factor in expansion of all these health services is the shortage of trained manpower. These forms of care depend heavily upon the bedside nurse. That is what you are. Your numbers can multiply many times over the services of one doctor, dentist, and registered nurse. That is why the practical nurse or vocational nurse has become a key to more and better health care.

SHORTAGE OF MEDICAL MANPOWER

We need 50,000 more physicians than we now have, and 80,000 more registered nurses. But hospitals are the largest employers of practical or vocational nurses, and they need 40,000 more to provide the best care. The need for practical and vocational nurses in extended care facilities is even more dramatic. In 1966, they employed 33,600 practical nurses and needed almost 10,000 more. That is a current shortage of some 50,000 practical and vocational nurses needed now. The Bureau of Health Manpower in the Public Health Services estimates that by 1975, the shortage will reach 245,000 of practical and vocational nurses. Yours is a profession where there will never be unemployment; there is a permanent shortage of people to fill a growing number of jobs.

For too long, the field of medical manpower has ignored the education of practical nurses. But recently Congress has awakened and provided for them in vocational education, and 27,000 were graduated from vocational classes in 1968 from 1,150 identifiable courses of practical or vocational nursing. I am proud that in my State of Texas, 22 of our junior colleges have programs of vocational nursing, as it is called under the laws of Texas, where vocational or practical nursing is given status under the law.

Your role in the health team will also come under study when my Health Subcommittee of the U.S. Senate of which I have the honor to be Chairman, takes up manpower training in the allied health manpower education program.

NEED FOR PROFESSIONAL RECOGNITION AND IDENTITY

Another point at which your identity needs to be recognized is in the Federal Civil Service. Present designation of "nursing assistant" by the Civil Service Commission is undergoing revision. A tentative draft of a new job standard for a "patient care technician" is under study. But both terms avoid a clear description of licensed practical or vocational nurses, and lump them with unlicensed people. The Commission informs me that the whole matter is still being explored. By recognizing the existence of your vocation, the government could help advance your standing as a full partner in the medical team. The growing importance of your profession demands that the U.S. Civil Service Commission recognize your profession and give it the status it deserves, just as colleges, junior colleges, hospitals and community colleges and the medical profession already have. The Civil Service Commission should catch up with the rest of the country.

Continuing education in nursing is another means of upgrading your vocational standing. Practical nurses licensed by waiver need to be brought up to full credential status so they can serve as charge nurses in Medicare institutions. In its report last year, the Senate Finance Committee urged the Secretary of Health, Education and Welfare—"to encourage and assist programs designed to upgrade the capabilities of those who are not now sufficiently skilled to qualify in health occupations now in short supply, but who could perform adequately with relatively little additional training."

Pursuant to this, the National Licensed Practical Nurse Education Foundation has a $27,000 grant from HEW to study means of continuing education for practical nurses. One of its major purposes is to help bring waiver licensed Practical-Vocational Nurses to full credential status.

All of us who devote time and thought to improving medical care need to give more time and thought to expanding your numbers, enlarging your capabilities, and using your dedication and knowledge more effectively. The sick and suffering cannot do without you.

President Kennedy said in 1961:

"As long as people are stricken by a disease which we have the ability to prevent, as long as people are chained by a disability which can be reversed, as long as needless death takes its toll, then American health will be unfinished business."

None of us has a more enobling service to contribute than our efforts to finish this unfinished business. To care for the ill, the sick, the afflicted and the disabled is the greatest charity. Nursing is the noblest profession, calling for greater compassion, concern, and tender care than any other. You have chosen God's work on earth as your own. The care you give will return to you riches of the soul and the spirit in addition to the material reward for the time expended. But your service with your soul and spirit is something more precious than jewels and money, something not purchaseable, and that is the service which sets your profession apart from all others. I honor your dedication.

God Bless You.

RECENT VISIT TO UNITED STATES BY PRIME MINISTER GOLDA MEIR, OF ISRAEL

Mr. MURPHY. Mr. President, I am certain that citizens across America were pleased, as was I, by the cordial welcome which our Nation gave to the Prime Minister of Israel, Her Excellency Golda Meir, during her recent visit to the United States, as well as by the obviously constructive results of that visit in contributing to a sincere understanding between our two nations and to a peaceful solution of the problems in the Middle East.

Because we can be proud of the knowledgeable and dignified approach of our President in his meetings with Mrs. Meir, I was deeply gratified to see in the Washington Post on October 28 an advertisement thanking the President for his efforts. The advertisement contains a resolution by the board of directors of the Jewish Federation-Council of Greater Los Angeles. Believing that many Americans will join in the expression of that advertisement, I ask unanimous consent that it be printed in the RECORD.

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

THANK YOU, MR. PRESIDENT

WE COMMEND YOU FOR YOUR EFFORTS TO BRING THE MIDDLE EAST NATIONS TOGETHER IN SEARCH OF PEACE

Resolution

Whereas, the Prime Minister of Israel, Her Excellency Golda Meir, has now completed her official visit to the United States for historic and meaningful discussions with President Richard M. Nixon, and

Whereas, President Nixon, by the cordiality of his reception of the Prime Minister of the State of Israel, and by his expressed sympathy for the attainment of Israel's legitimate aspirations, has evidenced his deep concern for the continued development of a secure and progressive State of Israel which seeks peaceful coexistence with her neighboring States,

Now therefore be it resolved: that the Board of Directors of the Jewish Federation-Council of Greater Los Angeles, on behalf of its organized Jewish Community, does hereby express its sincerest appreciation to President Richard M. Nixon, and warmly commends his Administration for its efforts in bringing the nations of the Middle East together in order to achieve a just and lasting Peace.

As concerned Americans we are thankful that President Nixon is dealing with the volatile problems of the Middle East in a positive manner. His determination to help the nations in the area make peace among themselves will make the ultimate peace a lasting one and will never call for committing one American soldier to the task of preserving freedom. President Nixon's bold stance makes America a true leader for world peace.

Signed by the following:

Ammon Barnes, Beverly Hills, California.

Dr. Eliot Corday, Beverly Hills, California.

Theodore E. Cummings, Los Angeles, California.

Stanley Goldblum, Beverly Hills, California.

Taft B. Schreiber, Universal City, California.

Samuel Schulman, Los Angeles, California.

FORMER DEFENSE DEPARTMENT OFFICIAL POINTS THE WAY OUT OF VIETNAM

Mr. McGOVERN. Mr. President, yesterday's Washington Post contains a most perceptive and valuable analysis of our current dilemma in Vietnam.

Mr. Townsend Hoopes, who served in the Defense Department from January 1965 until February 1969, the period which embraces the major escalation of the war in Vietnam, has authored a new book entitled "The Limits of Intervention."

The Washington Post has wisely reprinted the epilogue of this book, setting forth Mr. Hoopes' views on our current problem in Vietnam and the alternatives that are ahead of us. The course which he recommends is one that I have tried to spell out as best I could for many months. It calls for the disengagement of American forces on a much more rapid time schedule than the administration now seems to have in mind.

I ask unanimous consent that Mr. Hoopes' article be printed at this point in the RECORD, and I earnestly hope that every Member of the Congress will read it.

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

OUR ONLY OUT IN VIETNAM

(By Townsend Hoopes)

(NOTE.—Hoopes served in the Pentagon from January, 1965, to last February, first as Deputy Assistant Secretary of Defense for International Security Affairs and then as Under Secretary of the Air Force. The following is excerpted from the epilogue to his new book "The Limits of Intervention," published by David McKay Co., and is reprinted by arrangement with David McKay Co., Inc. 1969 by Townsend Hoopes.)

In the final 10 months of the Johnson administration—from April 1, 1968, to Jan. 20, 1969—the Vietnam policy struggle between rival coalitions within the U.S. government continued almost unabated, even though the decision of March 31, had they been applied by a President who meant what he said, ought to have resolved it in favor of the moderates. As it was, the fact that the American people promptly endorsed the decisions did put new limits on the debate.

To Washington's surprise, North Vietnam responded quickly and affirmatively to President Johnson's new call for negotiations, accepting the halfloaf of a partial bombing halt as an adequate basis for preliminary talks while adding the significant caveat that the initial meeting could have only one purpose—to determine how and when the bombing of North Vietnam was to be totally stopped. Because Hanoi's acceptance included the essential element of face-to-face contacts, the administration was hardly in a position to refuse, and so had to take the caveat as well.

But there was immediate evidence of confusion and thinly veiled discord inside the administration. Secretary of State Dean Rusk and Presidential Assistant Walt Rostow tried to slow down and, if possible, avoid altogether the kind of initial talks proposed by North Vietnam. Rusk, who was in New Zealand attending a closed meeting of SEATO foreign ministers at the time of the President's speech, reportedly told his colleagues that neither the neutralization of Vietnam nor a coalition government was a workable solution. Returning promptly to Washington, he lost no time in making evident his general distaste for the enterprise, emphasizing the limited purpose of the talks and denigrating the possibility of a total bombing halt.

MUSICAL CHAIRS

On April 3, the United States had offered Geneva as the site for initial talks. North Vietnam, in its response, had proposed the Cambodian capital of Phnom Penh. Although the President had repeatedly said he would "meet anywhere, at any time"—most recently in his speech of March 31—the administration quickly refused Hanoi's proposal.

On April 9, the United States proposed Vientiane, Rangoon, Djakarta and New Delhi. On April 11, Hanoi proposed Warsaw, which had been the site of desultory but undisturbed U.S.-Chinese diplomatic exchanges for a number of years. This, too, the Administration refused. When Hanoi reiterated its preference for Warsaw and lobbied in the world press, Washington thereupon trotted out a further counterproposal consisting of an additional 10 cities: Colombo, Tokyo, Kabul, Katamandu, Rawalpindi, Kuala Lumpur, Rome, Brussels, Helsinki and Vienna. On May 3, North Vietnam proposed Paris.

By this time, the matter had become a travesty, with the American and foreign press charging the U.S. government with "bad faith" and "quibbling." The unedifying spectacle of the American President chivying Hanoi on a location for the talks after having told the world several dozen times that he set no conditions on the time and place of negotiations was painful in Defense Secretary Clark Clifford's memory.

He has opposed Phnom Penh on the grounds that it afforded inadequate communications facilities, but he saw no objection to Warsaw and told the President so. When Paris was finally agreed upon, the President took credit for it and lectured Clifford as follows: "You've got to stand up to the Communists and not give in even on minor points; that's how we got Paris. You wanted to give them Warsaw, etc." Clifford got that LBJ speech at least ten times, but declined to respond because the issue seemed to him *de minimus*.

This fight over where to talk was merely the opening skirmish in the renewed conflict between the opposed coalitions within the administration. The President's speech had brought momentary harmony based, it was apparent in retrospect, on the assumption of the hard-liners that Hanoi would give a negative response, thus creating a situation in which all issues dealt with in the reappraisal could be reopened.

Emerging from a Senate committee hearing in mid-April, Rusk said he had seen "no evidence of restraint" by the other side and emphasized that infiltration was continuing "perhaps at an increasing rate." Gen. Maxwell Taylor was soon sending "innumerable memoranda" to the President telling him how serious were the military consequences of the partial bombing halt. Rostow and the Joint Chiefs of Staff were taking a similar line.

In early June, when enemy rockets were falling again on Saigon, Ambassador Ellsworth Bunker urged retaliatory bombing attacks on Hanoi. In the other side, Clifford in Washington and Averell Harriman and Cyrus Vance in Paris pressed hard for a total bombing halt and thus a a beginning of substantive talks.

The hard-liners were soon arguing that Hanoi's affirmative response showed that North Vietnam was all but beaten; that its coming to Paris reflected the crushing military defeats administered by American firepower in the post-Tet period. With a little more delay and stonewalling so the argument ran, and with steady military pressure, the United States could soon have Hanoi over a barrel and could thus negotiate on far more favorable terms.

That the renewal of these discredited arguments had any force at all was attributable to the fact that the President himself remained instinctively disposed toward military victory and opposed to compromise. In March, he had been reluctantly persuaded of the need to take dramatic steps toward deescalation and disengagement by the arguments of Clifford, Dean Acheson and others and by the irresistible pressure of events. In April and May, it was clear that his conversion had been, at most, intellectual but never visceral; his continued susceptibility to hard-line arguments during the spring, summer and fall amounted to serious backsliding from the major implications of the March 31 decisions and produced an official U.S. posture of acute ambivalence.

He understood that domestic political realities would not sustain a policy of renewed escalation of the bombing or any significant reinforcement of U.S. ground troops, but he remained receptive to the idea that the enemy could be worn down by sustained military pressure even within the newly established limits on resources.

The Johnson administration thus never acquired the necessary unity to redefine the U.S. political objective in Vietnam in the context of the post-Tet realities. Until October, when Clifford, Harriman and Vance succeeded in bringing off a total bombing halt, the bombing effort was not really curtailed but only geographically rearranged; statistically, there was an intensification. On the ground, Gen. Creighton Abrams made a number of sensible adjustments, including a greater emphasis on protecting the populated areas and undertaking fewer cavalier sallies to the uninhabited borderlands, but these changes hardly constituted a dramatic new strategy born of the knowledge that search-and-destroy had failed. They reflected primarily the fact that additional forces could no longer be obtained merely by telephoning the White House.

A RELUCTANT HALT

The President told Clifford in the autumn that his primary purpose was now to leave his successor with "the best possible military posture in Vietnam." Clifford argued that, for the sake of the President's ultimate standing before the bar of history, he ought to want something much broader and more positive, namely, to leave his successor "an ongoing, substantive negotiation firmly committed to ending the war and reducing the American involvement in Vietnam."

The President was finally willing to accept a total bombing halt in late October, but in November and December he was still listening to the siren song of those who clung tenaciously to the prospect of resolving the conflict by military pressure. He was listening despite evidence that the enemy's determination to fight seemed unimpaired and that his capacity to regenerate his forces remained significant.

As the Administration left office, therefore, ambivalence remained at the very heart of its Vietnam policy. Were we in Paris to negotiate a political compromise on the clearly accepted premise that military victory was infeasible? Or were we there to stonewall Hanoi in the belief that, given enough time, we could grind out something resembling a military victory in South Vietnam and thus avoid the dangers, and the further affronts to our prestige, that would attend a compromise political settlement? There were no clear answers to these questions.

At this writing (early August, 1969), the answers to these questions are only a little clearer. President Nixon is on record as believing there can be no military solution, but large murky patches remain on the fabric of American policy in Vietnam. Perhaps understandably, Mr. Nixon has insisted on going through the whole painful learning process at first hand; in any event, he has thus far declined to come down firmly on a clear-cut course of action and has maneuvered skillfully, yet with increasing evidence of improvisation, to avoid a fateful choice.

The choice, basically, is between trying yet again to strengthen and salvage the Thieu regime for the sake of a gradual, far from complete but hopefully honorable American disengagement from a war that might, in such circumstances, continue for years to come; and casting that government aside for the sake of a fairly quick, probably unpalatable political settlement which would, however, permit—indeed require—the prompt and complete withdrawal of American forces. The Nixon administration has not yet bitten the bullet; in fact, it seems to be pursuing a deliberately hedged policy of carrot and stick.

The carrot elements are embodied in the formal U.S. proposal of May 14 that the "major portion" of all foreign forces in South Vietnam be withdrawn within 12 months; the remaining "non-South Vietnamese forces" would thereafter retire to base areas, thereby creating a de facto cease-fire and setting the stage for international supervised elections. The stick elements are embodied in a supposedly tough alternative aimed at threatening the enemy with the grim prospect of interminable war through a combination of strengthening the South Vietnamese army and withdrawing enough

U.S. forces to assure that American public opinion will support the continued participation of the remainder for an indefinite period. This alternative is known as "Vietnamization."

The Nixon administration appears to be experimenting with various combinations of carrot and stick—tabling presumably generous offers in Paris while exerting "maximum military pressure" in South Vietnam in an effort to enlarge the area of Saigon's control before the onset of significant U.S. force withdrawals.

The result thus far is continued stalemate in Vietnam, and deepening deadlock in Paris. Such a result should not be surprising, for, unfortunately, this approach confronts the fundamental weakness of the U.S. bargaining position at this stage of the war.

WAITING US OUT

The Nixon offer of mutual withdrawal plus elections may indeed be generous by past standards, but it depends for success on reciprocal action by Hanoi. But Hanoi gives no indication that it feels the need to make significant concessions (like promising to withdraw its forces) in order to achieve large-scale U.S. troop withdrawals or avoid resumption of the bombing against North-Vietnam.

This position is no doubt based on Hanoi's quite accurate assessment that, nearly 18 months after Lyndon Johnson's proclaimed de-escalation, American public opinion more than ever favors and expects a liquidation of the U.S. war effort (I would go so far as to say that the American people have just about written off this war). The evidence strongly suggests that Hanoi is not going to reciprocate but intends simply to wait us out.

The alternative of "Vietnamization" suffers from similar frailties, for in truth its viability as a threat to the enemy depends far less on augmented material support for Saigon's army than on the long-term retention of significant U.S. combat power (air and ground). Effective "Vietnamization" would probably pose a genuinely bleak prospect for the enemy notwithstanding his determination to return, if necessary, to a strategy of low-level, protracted guerrilla war.

Here again, however, the political situation in the United States palpably deprives this Nixon alternative of any real credibility. Those who still cling to the hope of vindicating the strategy of victory-through-attrition have of course warmed to the concept of "Vietnamization," but they have assumed is would involve a very gradual and carefully calibrated U.S. withdrawal—say 50,000 men per year. Such an assumption seems, however, to stand on a gross misreading of domestic political feasibilities, as President Nixon himself has now substantially conceded.

In his press conference of June 19, when asked what he thought of Clark Clifford's proposal to bring home 100,000 troops in 1969 and all of the remaining combat ground forces by the end of 1970, he expressed the "hope" that his administration could beat the Clifford schedule.

The reply, whether deliberate or accidental, sowed consternation in Saigon and among the supporters of "Vietnamization" at home, for it seemed to make the real situation crystal clear to Hanoi. It has produced stiffened North Vietnamese intransigence in Paris and a protracted lull on the battlefield—a lull rather openly designed to induce larger and faster U.S. troop withdrawals and thus to deprive Mr. Nixon's "tough" alternative of its credibility.

At this writing, then, the United States remains in a tenuous position; its strategy has not succeeded, but the national leadership has thus far refused to accept either the consequence of failure (which is defeat in some degree) or the need to devise a new strategy for carrying on the war. It is very late in the day—much too late—to try a new and different military strategy. But even if it were not, "Vietnamization" would seem an unpromising horse to bet on.

For, so far as one can tell, such a strategy would involve essentially more of the same: further enlargement of the already too large and cumbersome South Vietnamese army, organized in conventional formations, heavily armed with artillery, equipped with helicopters, supported by large-scale U.S. tactical air power and sent out to vindicate the Westmoreland doctrine. The painful trials and frustrations of Vietnam have, momentarily at least, exhausted the intellectual capital of our military leaders and brought American military doctrine to a conceptual impasse. So we limp along, Micawber-like, hoping for something to turn up in Paris or Saigon.

A RISKY COURSE

Beyond the immediate tactical weaknesses of the Nixon administration's apparent posture, there are, I believe, inherent dangers in a policy of substantial, but less than total, withdrawal from Vietnam. Such a policy was perhaps seriously proposed for the first time by McGeorge Bundy in October, 1968. More recently, Clark Clifford argued for it in the July, 1969, issue of Foreign Affairs.

Bundy argued that a withdrawal down to about 100,000 men was now possible without the need to lose "what has been gained in the strategic sense." Clifford argued that withdrawal of all U.S. combat ground forces by the end of 1970 would "be consistent with continued overall military strength"; indeed, he thought it might confront Hanoi with the painful possibility that Saigon could, "with continued, but reduced American support, prove able to stand off the Communist forces."

Yet the idea that the United States can resolve its difficulties in Vietnam through the progressive, but still partial, unilateral withdrawal of its forces rests on two crucial assumptions: (1) either Saigon can really supply substitute power equal to that of the departing U.S. forces or (2) the present and future situations in South Vietnam can be managed at a lower level of aggregate Allied power than has been required in the past.

Clifford has no trouble with the second assumption, arguing cogently that present Allied power is excessive if the aim of military victory is excluded. Nevertheless the two assumptions are in a real sense interdependent, and both are inherently fragile. The first requires a dramatic improvement in the South Vietnamese army that we have not in fact seen over the past seven years; the second requires a belief not only that the North Vietnamese are much weaker than they have been but also that their weakness is now a permanent condition.

Should the U.S. government pursue a course of partial withdrawal in Vietnam while leading the American public to believe all will end well, I am afraid a number of unpleasant shocks, surprises and politically dangerous consequences would arise to confront us. For at best, such a course is a prescription for interminable war; partially disguised by the declining level of U.S. participation, it would in fact require our country to sustain a continuing burden of war casualties and heavy dollar costs that would become explicitly open-ended as we leveled off our forces at 100,000 men or thereabouts.

Sooner or later, and probably sooner, the American people, would reawaken to the fact that they were still committed to the endless support of a group of men in Saigon who represented nobody but themselves, preferred war to the risks of a political settlement and could not remain in power for more than a few months without our large-scale presence. These things are predictable because the Thieu regime is both self-serving and wholly unrepresentative; its strong anticommunist stance (which our support has both nurtured and hardened) bears little or no relation to the vaporous, myth-filled, unideological, village-oriented political sentiments of the vast majority of people who inhabit the noncountry of South Vietnam.

At worst, the course of partial withdrawal would produce a progressive erosion of the military situation in Vietnam, leading downward to a time when we faced the prospect of outright defeat. With U.S. strength reduced to 100,000 men, with no corresponding enemy reduction and with no dramatic improvement in the South Vietnamese government and army developments could seriously threaten the safety of our smaller forces and thus pose the same hard question we faced in 1965—to escalate or liquidate. Were the United States to face, several months or years from now, the serious prospect of military defeat in Vietnam, I believe that fact would strain our capacity for wise choice beyond the breaking point, and that any decision in such circumstances could only further divide our people and imperil our political process.

There is, unfortunately, an unbreakable interconnection between victory and the avoidance of defeat in the Vietnam situation. You really must have the first in order to ensure the second; or, as others have said, if guerrilla insurgents are not totally defeated, then they win. If victory is not possible, defeat in some degree (and by whatever name you arrange to call it) is not avoidable. A concept of partial unilateral withdrawal that tries to have it both ways—to forswear victory yet avoid defeat—is an inherent contradiction. It won't work.

FOR COMPLETE WITHDRAWAL

Deliberate, orderly but complete withdrawal has become, in my judgment, the only practical course open to the United States if we are to restore our foreign policy to coherence, regain our psychological balance, alleviate the deep-seated strife in our society and reorder our national priorities in ways that will win the support of a large majority of our own people. Vietnam is not, of course, the only source of division in America today, but it is the most pervasive issue of our discord, the catalytic agent that stimulates and magnifies all other issues. In particular, there can be no real truce between the generations—no end to the bitterness and alienation of even the large majority of our youth that is neither revolutionary nor irresponsible—until Vietnam is terminated.

A major premise of the Johnson administration's war effort was that a vital U.S. interest was at stake in Vietnam, requiring a total and tireless commitment to cleansing that area of Communist influence. That presumption has now fallen of its own weight—even if one broadens the context to include the argument that an unlimited commitment in Vietnam, though not vital per se, was necessary to safeguard other vital U.S. interests in Asia.

If we can forthrightly acknowledge the basic, unpalatable truth—that our intervention in 1965 was misconceived, that viewed through cold, clear eyes it could not be justified on the grounds that a vital national interest was at stake—then we can bite the bullet in Vietnam. We can acknowledge past failure and the inevitability of some degree of defeat.

We can move to a phased, unilateral and total withdrawal of forces, not as a means of pretending we have discovered a painless way to achieve partial victory or even a settlement consistent with our original objectives but as a means of liquidating an enterprise that is beyond retrieval and a condition that is poisoning the bloodstream of our society; as a means of putting the Thieu government on notice that, after a reasonable period of months, our military forces will no longer be there; as a means of demonstrating beyond words that Saigon must either move deci-

sively to a settlement during the limited time our remaining military presence can provide supplementary leverage or else decide to fight on alone without U.S. troops beside it. The deed once done would, in my judgment, be accepted by American and European opinion and would be adjusted to by Asia without serious repercussions in areas of principal strategic concern to us.

I do not say we should abruptly abandon the South Vietnamese government; I do say we should give it a definitive indication of our intention to be totally gone within a time frame that affords a reasonable period for leaders throughout South Vietnamese society to chart their own course.

Such a U.S. policy would be extremely painful for several strata of South Vietnamese, bring to the surface the root question of whether they could accommodate to the new political uncertainties or would have to leave the country. But only such a policy could push the Thieu group to a serious contemplation of settlement.

If our course is resolute, the chances are fairly good that the submerged factions in South Vietnam will come to accommodation or a balance which will be able to avoid domination of a new government by the National Liberation Front. Almost certainly, there will be major changes in the social order producing a different distribution of political, economic and social power. But Vietnamese society, twisted and torn by the colonial era, the French-Indochina war, the Diem period and the Great American Infusion, clearly needs reorientation and self-rediscovery. For despite our massive economic assistance and its accompanying rhetoric of revolutionary development and social change, our presence and our actions there have in fact tended to confirm and even to strengthen the old order. But that order cannot be upheld except by external military support.

THE PRESTIGE PROBLEM

A severe loss of U.S. prestige in Asia and throughout the world is frequently cited as the compelling reason why we cannot withdraw unilaterally from Vietnam. It is accordingly of central importance to see this problem in perspective, admitting that Americans face a special difficulty here.

Russia, Germany, Japan, France and Britain have all suffered terrible military failures throughout long and checkered histories; some have barely managed to survive the attendant domestic convulsions. But the United States, alone among the powers of consequence now on the world scene, has never known a major defeat. We should be able to understand that, in the nature of things, we could not expect our record to remain permanently unblemished, especially not when our involvement has pervaded the globe in an era of seething change, instability and violence.

Yet the apparent perfection of the past record is admittedly an obstacle to our taking setbacks in stride. Before World War II, a large body of domestic opinion believed implicitly that America was somehow morally superior, and by this fact protected against the terrible disasters that regularly befell less splendid and upright nations. We are, I think, clearer today that such attitudes reflected the immaturity and naivete of a people not yet fully involved in the complexities of the world; we now understand that the life history of any great nation must show over time its fair share of victories and defeats.

Moreover, it is an advantageous truth that mere loss of prestige for a great power is always transient and usually brief. Many times in the past two decades, the Soviet Union has suffered painful rebuffs—in the Greek civil war in 1947; at the Turkish straits the same year; in the Berlin blockade of 1948; in the determined U.S.-U.N. response to the attack on South Korea of 1950, which so badly disrupted Stalin's calculations, and most emphatically in the Cuban missile crisis of 1962. Yet no one would deny that the Soviets quickly recovered from each of these setbacks; no one doubts that they have subsequently projected their foreign policies with undiminished vigor and determination.

PRESIDENTIAL FACE

The point is, the great powers quickly recover from blows to their prestige alone, precisely because of their power. When the world wakes up the next morning, the great power has not quite the scene. It is there, as solid as yesterday, and the world must make new arrangements to cope with it.

As with the Soviet Union, so essentially with the United States. We too have had our share—although a far smaller share—of deflations affecting our prestige since the end of World was II, and they have not affected our fundamental strengths in any way. There was the shooting down of the U–2 over Russia, the besieging of President Eisenhower by Tokyo rioters and the travesty at the Bay of Pigs.

At the time of that last fiasco, President Kennedy gave evidence that he understood the limited requirements of U.S. national prestige and he refused to inflate these by injecting considerations of presidential face. By quickly admitting his own error and by nobly taking on the full burden of responsibility, he enabled the country to see the incident in true proportion and to be steadied by his candor.

I have no trouble in believing that, had he lived, he would have similarly cut off the U.S. involvement in Vietnam—possibly at the time of Gen. Khanh's coup in January, 1964, but in any event well below the astronomical level it finally reached. It was the country's tragedy that Lyndon Johnson tended instinctively to equate the nation's prestige with his own, and that his personal needs were greater than the objective requirements of the nation.

Johnson was at bottom a combination of sentimental patriot and gambled which led him to compound original misjudgments many times over rather than risk the loss of prestige associated with an American "defeat" in Vietnam. Kennedy was too skeptical, too attuned to cold reality (as one admirer said, "too smart an Irish Mick"), not to have foreseen the developing morass. He would, I believe, have overridden the quite predictable military arguments and acted to cut the nation's loss, accepting and absorbing whatever deflation was required in terms of national and presidential prestige and taking such measures as lie within the national power and interest to cushion the consequences in places like Thailand, Korea and Japan.

This is still the road to the recovery of our lost sense of proportion, to the healing of our deep domestic divisions, to the re-establishment of a wise and respected foreign policy.

WATER POLLUTION FUNDS

Mr. KENNEDY. Mr. President, as we approach the decade of the seventies, we must face the failures of the sixties—failures which might have been avoided had our national priorities been ordered more in line with our most urgent problems. One of our most conspicuous failures has been in dealing with one of our most pressing national concerns—water pollution.

We in the Congress—in response to the demands of State and local governments and their citizens—have gone on record time and again during the sixties in favor of an all-out national effort to remove the stigma of pollution from our rivers, lakes, streams, and coastal waters. The legislation passed during the sixties and the programs authorized are both comprehensive and farsighted. But our commitment has been an empty one. It has been one of rhetoric, not of action; of promise, but of no fulfillment. For, throughout the sixties, we have failed again and again to provide the funds to make our commitment real and productive.

The real burden of our failure is carried by State and local governments. For these governments, accepting the word of the Federal Government, proceeded with aggressive and far-reaching programs of pollution control and abatement. In response to new Federal requirements under the 1965 Water Quality Act, States have set standards and enforcement deadlines for polluters. But, when these same States came to the Federal Government for the funds promised under the Clean Waters Restoration Act of 1966, for the construction of the facilities which will make these programs workable, they are sent away empty handed.

Our responsibility in this matter is clear. No longer can we offer programs based on a Federal-State partnership and then default in fulfilling the Federal part of the bargain. No longer can we respond to the demands of our citizens on paper alone.

The 1966 Clean Waters Restoration Act authorized $1 billion in matching grants for the construction of water treatment facilities. The Federal Government has had 4 years to plan and adjust the budget to provide these promised and needed funds.

And so, today, I ask my colleagues to join with me in support of the full $1 billion appropriations for pollution abatement. Such action on our part is demanded if our record in this most critical area of national concern is to be other than a record of failure.

I ask unanimous consent that the letter I have sent to the Members of the Senate be printed at this point in the RECORD.

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

OCTOBER 31, 1969.

DEAR SENATOR: On July 13, 1966, the Senate unanimously approved a five year, $3.5 billion program of matching funds for construction of waste treatment and sewage facilities. This Clean Water Restoration Act of 1966 was hailed across the nation as a giant step in the effort to remove the stain of pollution from our national waters.

Today, we approach the fourth year of the program authorized in 1966. Upon review, we see no evidence of a true commitment to this program by the Federal Government. From the program's first year, the Congress has consistently failed to meet its promises with funds. In Fiscal Year 1968, only $203 million of the $400 million authorized was actually appropriated. In FY 1969, only $214 million of the authorized $700 million was appropriated. And now, as we consider the Budget for FY 1970, we see that, once again, we are short-changing clear waters programs—only $214 million is requested in the face of an authorization of $1 billion.

It is interesting to note that the 1966 Act, as passed, authorized a program significantly larger than that requested by the President. At that time, the Congress responded to the demands of state and local governments, and

our citizens, to launch an effort on all fronts to eliminate pollution from our rivers, lakes, streams and coastal waters.

This year, the House has passed an appropriation of $600 million—$386 million more than that requested in the budget. Many Members of the House worked hard to secure the full $1 billion appropriation, and they almost succeeded—losing by only two votes, 146 to 148.

While the Congress has failed to fulfill its commitment to this program, many states and local governments, taking the word of the Federal Government, have adopted aggressive and long-term pollution abatement programs. Seven of these states have prefinanced the Federal share of these projects and now find themselves faced with a severe fiscal crisis because the Federal Government has been unable to reimburse them.

I write today to ask you to join with me in an effort to make the Congress live up to its word. I ask that you join with me in an effort to secure the total $1 billion appropriation for the programs of the Clean Waters Restoration Act. We have been told that over the next ten to twelve years the cost of pollution abatement for the nation would be some $20 billion. Unless we act now to provide the necessary funds for this year, our record in this most critical area will continue to be one of failure.

In a nation with a Gross National Product approaching the vast, and to most people incomprehensible, figure of $1 trillion, I feel that we can afford to deal with the problems created by our industrial affluence. This is especially true when we see other programs funded at significantly higher levels than I believe our national priorities demand.

The Congress can no longer respond to the needs of our citizens on paper alone. We must make a commitment of funds to the programs we have authorized in response to our citizens' demands. Failure to do so is a failure to fulfill the obligation of our office.

I ask again, that you join me in this effort. This measure will come to the Floor of the Senate in a matter of weeks. I intend to introduce appropriate amendments at that time. If you wish to support this effort requiring the full appropriation, please contact Wayne Owens at ext. 2158.

Thank you for your consideration of this most significant matter.

With best regards.

Sincerely,

EDWARD M. KENNEDY.

THE NATIONAL COMMISSION ON VIOLENCE AND THE GROWING IMPORTANCE OF TELEVISION IN NATIONAL POLITICS

Mr. PEARSON. Mr. President, the National Commission on Violence has come forth with a number of conclusions and recommendations following its lengthy study of our troubled society. None of these is more disturbing in its implications for our political system than the just announced finding that the risk of assassination for our leading public figures is on the rise. This shocking, though not surprising, conclusion has led the Commission to recommend an end to the widespread public contacts that Americans have always expected from their Presidents and leading public officials. The Commission suggests as an alternative that personal contacts with large audiences in the future be limited to large meeting halls where security precautions can be most effective.

Moreover, Mr. President, the Commission recommends that presidential campaigns in the future be oriented primarily toward television as the best and safest way of reaching the voters. To make this concentrated television approach easier to implement the Commission urges the Congress to pass a bill granting free time in the final weeks before election day "to establish a new pattern in presidential campaigning and to reduce significantly the pressure toward personal appearances in all parts of the country."

A few weeks ago the Senate Commerce Communication Subcommittee, chaired by the able Senator from Rhode Island (Mr. PASTORE), held hearings on the relationship of television to modern campaigns for high public office. Focusing primarily on the Campaign Broadcast Reform Act—S. 2876—a measure introduced by the distinguished Senator from Michigan (Mr. HART) and myself and 36 of our colleagues, the hearings clearly demonstrated the fact that in almost every race for important public office television is essential. These extremely valuable and timely hearings also developed substantial evidence to show that the cost of television is the primary reason for the rapid escalation in the price of seeking public office. It is this enormous spurt in the cost of campaigning that is threatening the validity of our most cherished democratic principle: namely, that anyone in America, regardless of his station in life, can aspire to and succeed in obtaining high public office.

I earnestly hope that the violent mood which now hangs over our country like a shroud will soon disappear. Any attempt to hide candidates from direct contact with the public they seek to represent is under most circumstances reprehensible and in any case virtually impossible to prevent given the nature of candidates and the expectations of the American electorate. The best way to reduce the tensions that now confront us is to guarantee everyone a piece of the action. To do this we must keep the entrance fees low enough for every serious candidate to afford. Open competition has always produced the answers our society has required. If this pattern of the past is to continue to work in the future then we must act now to guarantee equality of political access to all those interested. Thus, Mr. President, I commend the National Commission on Violence for its great undertaking and wholeheartedly urge my colleagues to carefully consider its recommendations. For a number of excellent reasons they command our support.

RESTRICTING THE FOUNDATIONS

Mr. GOODELL. Mr. President, the Senate Finance Committee has completed action on H.R. 13270, the Tax Reform Act of 1969. I wish to commend the committee for its efforts to complete this tremendous task in such a short time.

For the past several months, I have followed with great interest and concern proposed changes in the tax treatment of private foundations. Private foundations have traditionally been vital contributors to the development of our society, and I strongly believe that they should be allowed to continue to play their innovative and creative role. In my judgment, punitive attacks upon private foundations which result in a limiting of their effectiveness are not in the public interest.

The Finance Committee has announced a number of reasonable changes in the proposals contained in the House-passed bill. Nonetheless, I feel that some of the committee's decisions will have an unwarranted and undesirable effect. I refer specifically to a newly devised provision limiting the life of nonoperating foundations to 40 years, the imposition of an unnecessarily high filing fee for administration and supervision, a far-reaching definition which includes many organizations as foundations which have never been considered as such in the past, and a complete ban on voter registration activities.

I know that my colleagues will want to examine carefully these proposals and the legislative language of other provisions prior to their being discussed on the Senate floor. At this time, I would like to call attention to three timely and pertinent articles on this subject which recently appeared in the New York Times. Mr. President, I ask unanimous consent that the article by Anthony Lewis, entitled "The Tax Bill and the Foundations," which appeared on October 31, M. A. Farber's "Foundation Aides Call Senate Unit's Curbs Unjustified," which appeared on November 2, and a November 3 New York Times editorial entitled "Punishing the Foundations," be printed in the RECORD.

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

[From the New York Times, Oct. 31, 1969]

THE TAX BILL AND THE FOUNDATIONS

(By Anthony Lewis)

Tax policy in any country is social policy; that is a truism. But it is doubtful that many people realize how much social policy Congress is making—how drastically it may be changing a significant mechanism of American life—in the portion of the pending tax bill devoted to foundations.

A major part of the long, complex bill is devoted to placing new restrictions on the funds and operations of tax-exempt private foundations. The latest provision emerged suddenly this week from the Senate Finance Committee, after virtually no discussion in the hearings in either house; it would require most foundations to put themselves out of business after forty years.

The reasons for Congress's critical attitude are no secret. Some foundation grants have been felt to come too close to political action. There is resentment of what some Congressmen consider Eastern Establishment dominance in the foundation world, a resentment exacerbated by a certain arrogance perceived among foudation executives. Some persons have abused the tax exemption for personal gain, but the larger concern is with the possible concentration of power in tax-free sources of money.

The concern and the resentment have a real basis, and it is right that Congress should act to prevent abuses. But it is also essential to consider the affirmative role of foundations, and to understand before final passage how the legislation may affect that role.

CONTRAST WITH BRITAIN

A quick way to indicate the significance of foundations in this country is to consider the contrasting situation in Britain, where the

tax laws comparatively discourages the existence of foundations and private giving generally. Most universities in Britain are totally dependent on Government funds. So is scientific research. The theater, dance and music look automatically to Government money for their main support beyond box-office receipts.

American foundations are not all that daring; most of them are in fact cautious institutions. But they do offer some alternative to total reliance on Federal Government spending, with all the deadening centralization we have come to know that brings. Foundation support of cancer research or an anti-pollution experiment or a new ballet company may give our society insights that would never be possible otherwise.

The Finance Committee's proposal to end foundation life at forty has its philosophical appeal if designed to protect against encrustation and abuse of power. There are lots of other institutions, inside and outside the Government, that Congress might fruitfully consider abolishing automatically after forty years. Or it could really move against concentration of economic power by tightening the screws on inheritance of property.

But in the legislation as it stands, there is a basic inconsistency. If the forty-year rule is intended to prevent concentration and to diversify sources of funds in our society, the bill should encourage the creation of new foundations to replace the old. But in fact it sharply discourages new ones.

Two provisions are crucial. One discourages gifts of appreciated property, mostly shares that have increased in value over the years, to foundations. The other discourages the owners of closely-held companies from creating foundations based on ownership of their shares.

BILL'S PROVISIONS

If a man bought stock at $10 a share and it is now at $100, present tax law allows him to give the stock to any charity or foundation, deduct the full market value and pay no capital gains tax on the appreciation. The new bill as it passed the House would keep that privilege for churches, schools and other charities but wipe it out for foundations. The Senate committee version cuts that discrimination in half.

As for the man who owns all the stock in a family company and wants to turn it over to a new foundation, both versions of the pending bill would rule that out unless the foundation sells off controlling shares within five years. And that in many cases would be difficult.

These provisions sound technical but are crucial, for one simple reason. The great majority of new foundations have been set up in the past, and would be in the future, by precisely these methods—the gift of appreciated shares and of control in family companies. The great example, of course, the Ford Foundation.

The sum of it is that the bill, as it now stands, is not one that would break up a concentration of economic power and enlarge the number of sources of funds in our society. It would almost certainly reduce the number and the function of private foundations, thus increasing our reliance on the Federal Government. And with the environmental and social problems that now face the United States, we surely do not want to narrow the possible sources of new ideas.

[From the New York Times, Nov. 2, 1969]

FOUNDATION AIDES CALL SENATE UNIT'S CURBS UNJUSTIFIED

(By M. A. Farber)

Foundation officials who have led a year-long drive against "excessive" Government regulation charge that a new Congressional proposal for limiting the life of most grant-making foundations is unjustified and discriminatory.

They say the proposal by the Senate Finance Committee would discourage the financial vitality of current foundations and reduce the strength and "options" of the private sector of society.

Senator Albert Gore, Democrat of Tennessee, who advanced the proposal in committee, has argued that individual foundations should not be permitted to prescribe indefinitely the use of public funds "that would otherwise be paid in taxes." He has also warned against the "retention and concentration of economic power in possibly unproductive hands."

BAN ON FUNDS SCORED

The foundation officials conceded that the Senate Committee's general provisions on foundation reform, voted last week, were less restrictive and an improvement over many features of the bill passed by the House of Representatives in August.

But they attack the committee for placing a flat ban on the use of foundation funds for voter registration drives.

The House bill, under certain conditions, would allow the use of such funds, which have been the main source of support for registration efforts among Southern Negroes.

The Senate committee's proposal on perpetuity, approved last Monday as part of a broad tax reform and relief bill, would force most "nonoperating" foundations to terminate in 40 years. Newly started foundations of this kind would be limited to a life of 40 years.

"Nonoperating" foundations—essentially organizations that make grants to other tax-exempt bodies—include most of the larger, well-known, general-purpose foundations. Examples are the Ford, Rockefeller and Danforth Foundations and the Carnegie Corporation of New York.

The proposal would not apply to "operating" foundations, whose chief objective is running a tax-exempt program of its own. Among these foundations, relatively few in number, are Colonial Williamsburg, the Carnegie Endowment for International Peace and the Russell Sage Foundation, a research group. "Nonoperating" foundations would have several alternatives at the time of their expiration, according to the proposal by the committee.

ALTERNATIVES LISTED

They could dispose of all assets to charity, not including other "nonoperating" foundations; become "operating" foundations themselves, or possibly continue much as they were but pay corporate income tax.

The idea of narrowing the life of foundations has been advocated in the past by Senator Gore and by Representative Wright Patman, Democrat of Texas, who is an analyst and critic of foundations. Both men have publicly favored a termination of particular foundations after 25 years.

But few foundation leaders believe that a life rule will be enacted by Congress. It has not been among the Treasury Department's recommendations on foundations in recent years and, only last summer, the House Ways and Means Committee dropped such a suggestion after considering it.

Only a small number of foundations have ever voluntarily willed themselves out of existence. Perhaps the major one was the Julius Rosenwald Fund.

ON THEIR OWN

Mr. Rosenwald, the president of Sears, Roebuck & Co., said in 1928 that "more good can be accomplished" by expanding foundation funds within a generation "as trustees find opportunities for constructive work" than by "storing up large sums of money for long periods of time."

"Coming generations," he continued, "can be relied upon to provide for their own needs."

Leslie Dunbar, executive director of the Field Foundation, said yesterday that his foundation "was not going to complain" about the Senate committee's 40-year proposal.

"To many of my board of trustees," he said, "it just seems unwise for large amounts of money, as it were, to take on a life of their own. From a pragmatic point of view, it's not necessary to hold that sum of money out."

Most foundation officials who were interviewed took a position against a curtailment on the lives of foundations.

McGeorge Bundy, president of the Ford Foundation, said that "no evidence has been offered which would justify singling foundations out from among all American private institutions—tax-exempt or otherwise—and imposing an arbitrary time limit on them."

The proposal, he said, would "not only end the life of existing foundations, but would tend to prevent new ones from being born. Ultimately it would limit the one vital area in the private sector whose alertness and responsiveness have already brought immense benefit to the American people and whose promise for the future is even greater."

EVIDENCE TO THE CONTRARY

J. George Harrar, the president of the Rockefeller Foundation, said that "if the reason for a limit on the life of foundations is fear that they will not alter their programs to meet the future, the evidence is all to the contrary.

"If the reason is the fear that they may grow in size and number so as to wield disproportionate influence in the society," he continued, "the evidence is again to the contrary. In spite of their relatively rapid recent growth, foundations have grown less rapidly than the national wealth or the gross national product and continue to fall increasingly behind."

Mr. Harrar said that the Senate Finance Committee's proposal, if approved by Congress after Senate debate and signed into law, would have a "depressing effect upon the imaginativeness of foundation management."

A number of foundation leaders stressed that "nonoperating" foundations were desirable because they aided the entire range of tax-exempt activities, including "operating" foundations, and because they had acquired an "expertise" in evaluating appeals for grants.

Manning M. Pattillo, president of the Foundation Center, said:

"We need to have in society a kind of institution which is free to provide funds to other groups to do important things that the Government is incapable of doing either because there is insufficient public consensus or because there is inadequate public awareness of the problem."

Many foundation executives warned that prospective donors to foundations—some of whom might want to establish foundations—would shy away from involvement in institutions with restricted lives.

Moreover, the executives said, the bill discourages gifts to foundations of appreciated property—particularly stocks—through reduced deductions and other methods. But such donations, they assert, are the main assistance to foundation endowments. And grants are primarily made with income from endowments.

Most leaders of major foundations appear to agree that a high payout rate for charity on their assets or income should obviate the need for a curtailment on the lives of foundations.

[From the New York Times, Nov. 3, 1969]

PUNISHING THE FOUNDATIONS

With marginal exceptions, the Senate Finance Committee's decision on tax treatment for foundations betray the same puni-

tive spirit that dominated and disfigured these provisions of the House-approved tax reform bill. Those who know and admire the major philanthropic contributions made by the great foundations and many of their smaller counterparts can only be appalled at the suspicion and hatred of these agencies implicit in the decisions on Capitol Hill.

The key issue now joined by the Senate committee's vote is the proposed upper limit of forty years on a foundation's life. Under the Senate committee proposal, foundations would have the choice of distributing their assets in forty years, or beginning to pay the regular corporate income tax.

If the major foundations are—as we believe them to be—socially useful and constructive agencies, then the arbitrary time limit makes no sense. It is difficult to believe that the United States of 2010 will be such a Utopia that it will not need the creative innovations and leadership in scientific and social research that the great foundations have historically provided.

The Senate Finance Committee improved on the House bill by cutting the proposed tax on foundation income, by permitting foundation financing of educational broadcasting and by slightly easing the House-proposed limitations on foundation "political" activities. But it is astonishing that the legislature of a democratc republic should ban activities to stimulate voter participation in elections through voter registration drives. And the Senate group's prohibition of measures that could be construed as causing the public to support or oppose legislation is so vague it could bar foundation support for any program going much beyond research on cancer or particle physics.

Foundations, including even the largest, have erred at times. In addition some have recently shown more courage than discretion in backing unpopular causes. But neither the actual mistakes of foundations nor the boldness implied in some of their recent social experimentation deserve, in any way, the kind of Draconian punishment the new tax bill threatens to mete out to them. If much of the grab bag of crippling provisions now under consideration by Congress becomes law, the loser will be the United States of America and its best interests today and tomorrow.

SENATE FINANCE COMMITTEE MEETS TAX REFORM DEADLINE

Mr. KENNEDY. Mr. President, last Friday, as I am sure all Members are now aware, the Committee on Finance completed its work on what many experts regard as the most significant tax reform bill in the Nation's history. Within a brief period, the committee will file its report on the bill, and this far-reaching legislation will be ready for debate on the Senate floor.

Mr. President, I commend the distinguished chairman of the committee (Senator LONG) for his extraordinary achievement in so promptly completing committee work on the bill. The bill is ready precisely in accord with the schedule tentatively established during the summer, long before the committee hearings began, and long before the various pressures with respect to the House bill began to accumulate.

In the weeks to come, there will be intense debate over many of the provisions of the committee's bill. For the moment, however, it is a time for congratulations to the distinguished Senator from Louisiana. His tireless efforts over the past 2 months deserve our praise, and all of us who are concerned with the cause of tax justice are in his debt for bringing this major bill to the floor so quickly.

Yesterday, on "Face the Nation," Senator LONG eloquently discussed a number of the most important practical and philosophical aspects of the committee bill. I believe that his comments will be of interest to all of us concerned with tax reform, and I ask unanimous consent that a transcript of the program be printed in the RECORD. In addition I ask unanimous consent to have printed in the RECORD an editorial from yesterday's Washington Post, commending the committee's prompt action and highlighting a number of the most significant provisions of the bill.

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

FACE THE NATION

(Broadcast over the CBS television network and the CBS radio network Nov. 2, 1969, Washington, D.C.)

Guest: Senator Russell B. Long, Democrat of Louisiana.

Reporters: George Herman, CBS news; Walter Mears, Associated Press; Marya McLaughlin, CBS news.

Producers: Sylvia Westerman and Prentiss Childs.

Mr. HERMAN. Senator Long, the Nixon administration has said it will veto any tax reform bill which cuts too deeply into federal income. The bill your committee is coming up with appears to cut more deeply than the House version. Have you received any word from the White House on whether your bill is acceptable or whether it is likely to be vetoed?

Senator LONG. I have no doubt that the bill that we are reporting out of the committee is one that the President would sign. That doesn't mean that it will be in that form when it goes to the President's desk. It may very well pick up some amendments that would cause it not to knock the budget very badly out of balance. That is something we have to worry about, if we get to that.

ANNOUNCER. From CBS Washington, in color, "Face the Nation," a spontaneous and unrehearsed news interview, with Senator Russell Long, of Louisiana, Chairman of the Senate Finance Committee. The committee completed work this week on one of the most comprehensive tax bills in history. Senator Long will be questioned by CBS News Reporter Marya McLaughlin, Walter Mears, Chief of the Senate Staff of the Associated Press, and CBS News Correspondent George Herman. We shall continue the interview with Senator Long in a moment.

Mr. HERMAN. Senator Long, as you have indicated, tax reform is likely to mean tax reduction. That means some more deficit in the fiscal budget, the federal budget. How much deficit do you think that your tax bill is finally going to result in?

Senator LONG. I would put it this way: The bill will result in a surplus next year, and it will result in a balanced budget in the following year. Now, in 1972 and 1973 this bill would cause you to have about a $3 billion-plus deficit in those years, but a lot of things can happen between now and then. For one thing, the war in Vietnam might come to a conclusion, military spending might fall off by even $15 billion, so we might not need so much money then. I really don't think that you and I can look into the future and anticipate what the government revenues are going to be more than two or three years in advance and, that being the case, we have a very responsible bill through year 1972, or up until January 1973. At that time, and that is more than two years from now, we can take another look and see if we need more money.

Mr. MEARS. Senator, does that mean that there may have to be a tax increase bill in one of those years to offset the bill that is now before the Senate?

Senator LONG. It could mean that, unless we find ways to economize in government or unless the war in Vietnam comes to a close. Now, if the war in Vietnam comes to an end, we should have a lot of defense savings, not immediately but after a year, and by 1973 we might be in a position to reduce taxes a lot more than this bill proposes. That is something we will have to see when the time comes. Now, of course, if we proceed to vote a lot of social programs to help the poor and to build a lot of good public works, such as expand on the interstate highway program and things of that sort, it may very well be that the things we do for people in the way of additional spending, over which my committee has very little say or control, it might require more taxes. But I would think that we can vote more taxes in 1972, because I don't think we will be at war in 1972.

Miss MCLAUGHLIN. Senator Long, looking at it from the other side, that maybe you are not cutting enough, the average taxpayer hears that you have got $9 billion and he really thinks he is going to get a little package of money the next time he has to pay his taxes. What have you done for the average taxpayer? Is he ever going to feel this? Is he ever going to see it or is it just a game we're playing?

Senator LONG. Well, let's just talk about what is going to happen as compared to what he is paying now. We have some things in the tax law, laws that are supposed to expire—maybe they do and maybe they don't. We have some of these so-called "temporary taxes" that have been temporary, they have been continued ever since World War II. But let's look at what happens compared to what the man is paying right now. If he is the average fellow, in January his taxes go down by 5 per cent. That is his income tax we're talking about. Then in July his income tax goes down by another 5 per cent. Then in January next year his income tax goes down by another 2 per cent. Then next year his income tax goes down by another 3 per cent. So, over a three-year period, his income taxes go down about 15 per cent. Now, that is what it means to the average fellow. He gets 5 per cent in January, 5 per cent in July of next year. Those are the two big items.

Miss MCLAUGHLIN. I take it, from what you are saying just right now, that you anticipate that we can get this bill through this year?

Senator LONG. That is going to be the case whether this bill passes between now and New Year's or whether it does not pass between now and New Year's. Even if the bill doesn't pass until January or February, it will still have the same effect.

Miss MCLAUGHLIN. Will it pass by New Year's?

Senator LONG. It might and then, again, it might not. That just depends upon how Senators on the floor want to conduct themselves. If they want to know everything that is in this bill, there is no way that we can tell a fellow who doesn't know everything we have done and explain it to his satisfaction between now and January. On the other hand, if they are willing to take some of this on faith and only vote on the important things in the bill, the more striking things, then we could pass the bill, I would hope, by the first of December or at worst by the end of the first week in December, and perhaps we could make it law before January.

Mr. HERMAN. You seemed to indicate in your opening answers that you expect some amendments to be tacked on, on the floor which will cost even more money, which will

reduce federal income even more. What are they?

Senator LONG. It is quite possible that someone might want to vote for an amendment that would raise the personal exemption up to $1,000. And if that happened, then that would mean that, instead of having a balanced budget, then we would be out of balance by $6 billion.

Mr. HERMAN. Is that one you expect to pass? I am looking for those that you think really have a chance, those in fact that you think will pass.

Senator LONG. Well, that has a lot of appeal and it could conceivably happen.

Mr. HERMAN. You think it will?

Senator LONG. I don't think that we will have an amendment that will reduce revenues by that much but then, again, someone may offer that and find he is only about 15 votes short of prevailing and, after making a lot of good speeches—I say "good speeches," a lot of vote-getting speeches, let's put it that way—he may come back and try again with one that would put you just $3 billion a year out of balance, and it may carry. There is no way you can predict what the Senate will do with these things that have a lot of political appeal to a lot of people when they are being voted on on the floor. And there are more reasons than one why you can't predict it. Can I just give you one? One simple example is a fellow who is not on the Finance Committee, he is sitting there on the floor and he is running for office next year, and here is an amendment that would cost the government a lot of revenue but it has a lot of appeal to a lot of people. A fellow like that is sometimes inclined to vote for the amendment where he wouldn't be voting for it if he were the one that had to decide whether it finally becomes law or not. He would vote for it and tell some of us on the Finance Committee, particularly the senior members, "Well, now, that is something you fellows ought to work out in conference. If it is going to cost too much money, see if you can't work it out in conference and bring us down a bill that will think about all of those items. If it is all the same with you, it has a lot of appeal and I am going to vote for it. See what you fellows can work out in conference." When a fellow says that, he means, "Look, if this is going to mean a great big deficit, why don't you take about two-thirds of this thing out in conference and bring a third of it back?" That is the kind of thing they are thinking when they tell you that.

Mr. MEARS. Senator, what about the oil depletion allowance? Do you expect a move to put it back up to the 27.5 per cent level on the Senate floor?

Senator LONG. I told the people of Louisiana, the last four times I ran for office, that I was opposed to cutting the oil depletion allowance. Now, permit me to say this, Mr. Mears. When I was in state government, I led the charge to increase the taxes that the oil companies paid to our state three times what they were when I went to work for the State of Louisiana. But I think that the price not having gone up since that time, and Louisiana having taxed them as much as we think they could afford to pay, the depletion allowance should not be reduced because they are not making enough money to pay that much. I do believe that the Senate is not going to put it back at 27.5 per cent, where it has been and is now, although I expect to vote that way. I would guess it will probably stay about where the Finance Committee put it—I didn't vote to put it there—at 23 per cent. The committee voted that way by majority vote. I think there will be some effort made to reduce it below that. My guess is it will stay about where the committee voted to put it, which is about midway between what the House voted to do and what the existing law happens to be now.

Miss MCLAUGHLIN. Senator Long, there is a sort of bad expression called conflict of interest which is connected with you and with the oil depletion allowance, that you vote certainly for your state, for the oil people in your state, but at the same time you are, in fact, voting for yourself. How do you argue this?

Senator LONG. Well, let's look at the difference between a conflict of interest and an identity of interest. Louisiana produces more oil per acre than any state in the Union. The oil industry provides about 50 per cent of all the money that finances the state government of Louisiana. It accounts for about 40 per cent of all the jobs in Louisiana. Now, most of my income comes from oil. If I were fighting against the oil industry I would be fighting against Louisiana because, insofar as that industry has to cut back on its drilling, insofar as it not being able to pay taxes to a state government, then Louisiana suffers. If the oil industry were to pay more taxes—and there was a time when I thought they certainly should pay a lot more, even in my own state—I would want to see that corrected by the state government where it would do a lot of good for a lot of poor people—and our state is one of the poorer states, relatively speaking—rather than correct it by the federal government up here. Yes, I am in the oil business and if I said that inasmuch as I had some interest in oil production I will not vote on this matter or I will take no part, then that would mean that on a matter that is very important to Louisiana we would have just one Senator up here looking after Louisiana's interests instead of having two Senators.

Mr. HERMAN. How far or how deep does that commitment to the oil industry of Louisiana go? If you felt, for example, that the oil industry was in some way raiding the land, that they were doing something that would pollute the waters, that they were doing something that in the long run would be bad not for the oil companies but for the people of Louisiana, would you support the oil companies or would you—in other words, the interests of the two are not always——

Senator LONG. Well, I voted for that pollution bill a year or two ago and helped to round up the votes for it. Now, nobody was hit as hard by that antipollution bill that President Johnson supported than was the oil industry. I helped to put that bill through and I helped to increase the taxes three-fold on the oil industry at state government level. Now, nobody particularly applauded me for doing that, when I was saying that I can afford to pay this tax, and if I can afford it the other fellows can afford it.

Mr. HERMAN. But isn't it a dangerous doctrine to identify the interests of a state with that of one industry in the state, even if it is the biggest?

Senator LONG. Well, what I was going to say, Mr. Herman, was that I have voted against the oil industry when I thought the industry was wrong. Some time ago Senator Connally said that oil production sold by the barrel should be treated as a capital gain. Now I made a speech against that. That would have been more favorable tax treatment than they were receiving at that time. I thought that they were being treated fairly and that, to do anything more for the industry, would be going too far. But I do know this, that since we got through raising taxes on them, their costs have gone up tremendously. Their cost of labor has about doubled. The cost of materials has more than doubled. The cost of transportation has increased by about 150 per cent. And their price has not gone up to more than $3 a barrel, which was what it was when we started raising taxes on them. They are making less profits on investment than the average for manufacturing. I just don't think that we have a case to further increase their taxes. Now, I have said that, I made my position clear, but I would like to make this clear: My interest is the interest of Louisiana. If there is more money than can be collected out of the oil companies, we would like to collect it on the local level rather than you take it away from them here in Washington, and if we thought they could pay more taxes, we would be taxing them right there in Louisiana.

Mr. MEARS. Senator, there has been some controversy about the number of lobbyists who worked around the committee during the tax bill sessions. You have defended them saying that, if you were a businessman facing this kind of situation, you could send somebody here to represent you. Were the lobbyists effective? Did they change the outcome?

Senator LONG. They do a job, let's put it that way. They see to it that the point of view of those whom they represent is presented, and there are a lot of companies that pay such enormous amount of taxes that they ought to have someone up here looking after their interests. It is very easy for one of us to vote to increase the tax on the telephone company or vote to increase the tax on the bankers, and particularly easy to vote to increase the taxes on some industry if you have nobody in that indusrty in your state. It is very easy for some fellow who represents a state that doesn't produce tobacco to vote to put a tax on ciagarettes, or some fellow who represents a state that produces no oil to vote to increase the taxes on the oil industry. Now, when those people have their taxes increased, they are entitled to either pay somebody to present their side of the argument or to come themselves and try to explain it to people, and they do it both ways. May I say that, on this bill, the so-called vested interests—and we are speaking of the business interests, when we use that term, and I don't regard it as a dirty word at all—they took a very bad beating with regard to this bill, both with regard to what we did in the Senate Finance Committee and with regard to what the House of Representatives did to them. Basically, they are paying about $7 billion more in taxes while everybody else gets his taxes reduced. So I would think that they had a right to be represented. They are paying a lot more taxes and, as one who voted to increase the taxes on the real estate people, for example, I feel better about it that we did hear everything they could say about their side of the argument, and some of them are still going to feel very unhappy. But the fact that we did hear them puts us in a better position than if we didn't hear them at all. May I say that the real estate industry, since I made that reference, is complaining, and I think rightfully so, that they had a right to be better heard than they were heard. When the fellow for the real estate boards appeared, we had an egg timer that says that he has ten minutes and when the ten minutes were up the bell rang and his time was up, and he says that wasn't fair, and I quite agree. I wish we could have heard him longer.

Mr. MEARS. Well, essentially, the bill wasn't changed with the presence of these people, then?

Senator LONG. Out of a tax increase of more than $1 billion, they obtained relief of about $30 million. That would be about a 3 per cent tax relief for an industry that is already suffering, on a $1 billion tax increase. So, as a practical matter, we gave them about as much relief as you could put inside an eyedropper, I guess that would be the size of it.

Miss MCLAUGHLIN. Senator Long, not included in this bill but another tax question is what is going to happen about the surtax.

Senator LONG. We would have the surtax go from 10 per cent down to 5 per cent in

January, and then from 5 per cent down to zero in July. Now, that is most of the first year's tax cut in this bill. You could say that, if we don't pass the bill, the whole thing would expire in January, that is correct. But the government needs the revenue, and that is something I think we must continue——

Mr. HERMAN. Will it pass?

Senator LONG (continuing). We continue it for just six months at 5 per cent.

Mr. HERMAN. Will it pass both houses?

Senator LONG. If they let it come to a vote, it will. It has passed the House twice now, and if the Senate were permitted to vote on it, it would pass the Senate. I am talking about the continuation of half the surtax, 5 per cent of that 10 per cent, from January up until July.

Mr. HERMAN. To round out this tax reform question, let me just ask you, to go back to my opening question, I asked you about deficit, what I really meant was decrease in federal income. When all tax reform considerations are agreed to, when the thing is passed and sent to the White House, how much would you guess that it is going to reduce federal income by reforming tax provisions?

Senator LONG. If you look at the whole bill—now, you're talking about just the front side——

Mr. HERMAN. At the whole bill.

Senator LONG (continuing). And the down side, or are you talking about——

Mr. HERMAN. That's right, on balance how much is it going to reduce federal income?

Senator LONG. Well, on balance the government will be about $6.8 billion better off next year than it would be if we passed no law at all. That is how the federal government stands.

Mr. HERMAN. You mean the whole bill is going to increase income by $6 billion?

Senator LONG. Yes, because of two things: One, we repeal the investment tax credit with this bill, that would get us about $3 billion-plus, let's say roughly $3.5 billion; and then, by virtue of continuing that surtax at a 5 per cent rate of six months, we pick up the better part of $3 billion there. So then you take some reforms that we are putting into effect, and they bring in additional revenue. So, on balance this bill will cause the government to have about $6.8 billion next year more than we would have if we passed no bill. Now, of course, some legislation must be passed in any event.

Miss MCLAUGHLIN. Senator Long, could we talk just a few minutes about the Supreme Court's decision on Mississippi desegregation of schools. What do you see the future effect of that on the public school system in your state, or do you see it having any effect?

Senator LONG. It is difficult to predict just what will happen. The governors and the superintendents of education, and a lot of the school boards think that they have been presented with an absolutely impossible problem. We have many thousands of school children who are not in school in Louisiana right now. I say "many," that would be more than 10,000, a great number. I don't know the precise number. But a great number of parents are unwilling to send their children to school under the conditions required by the Supreme Court. The school boards are doing the best they can with that problem. The Governor of Louisiana made a statement the other day which might be misconstrued. I regard that as a statement of frustration, that he just doesn't know what to do about the situation now, and he just would say, "Well, you tell me what to do. I don't know what we're going to do, how we can live with this." So the people of those southern states, and Louisiana is certainly one of them, feel that the Supreme Court and the Department of Health, Education, and Welfare are trying to force upon them what they think is an answer, but they really don't think that anybody in the Nation who has to live with that kind of problem can live with that answer, certainly if they are required to do it that soon. Senator Stennis has been making the point on the Senate floor that people up north, in cities like Chicago, Detroit, New York, Philadelphia are not doing the kind of thing that some of those people would think is appropriate for the South, and contending that if they think it is all that good they ought to do it, to set the example if nothing else.

Mr. HERMAN. Is this going to have a political impact? Is this going to make any difference to Mr. Wallace's political chances?

Senator LONG. I don't see where it can make any difference any time soon. No one, you or I or anyone else, knows just what the situation will be two or three years from now, and that would be the time Mr. Wallace would be running. He won't be running next year, unless he will be running for Congress.

Mr. MEARS. Senator, while we are on the court, do you support the nomination of Judge Haynsworth?

Senator LONG. I should think that I would vote for Judge Haynsworth, just having heard what I have heard. I have heard nothing that causes me to think the man should not be confirmed. All I can learn about the man would sound like that is an honorable, decent man, doing the best he can as the good Lord gives him the light to see it, and I should think I would vote to confirm him. Now, I thought I would reserve judgment until we have debated that matter on the floor. I am not on the Judiciary Committee. They have been very busy, and we have been very busy. We have been meeting all morning and all afternoon. But I should think I would vote for him.

Mr. MEARS. What do you expect the outcome to be? Do you think the Senate will confirm him?

Senator LONG. Based on what I have heard and the conversations I have heard, that Judge Haynsworth is not going to be confirmed unless President Nixon goes beyond making some eloquent statements, such as he made from the White House, and gets down to working on individual Senators on a head-and-head basis. And I think he has a lot of hard work ahead of him if he hopes to see Judge Haynsworth confirmed.

Mr. HERMAN. Are you saying he hasn't done any of that yet?

Senator LONG. I am sure he has done some of it.

Mr. HERMAN. Not enough?

Senator LONG. He has a lot left to do, I would put it that way, if he wants to see Judge Haynsworth confirmed. In other words, I don't think that anything short of a very determined personal effort to talk to individual Senators by the President is going to assure Judge Haynsworth's confirmation.

Miss MCLAUGHLIN. Senator, we have been promised an eloquent statement from President Nixon on Vietnam pretty soon. Do you have any clues as to what that might be on, if you could give him some advice on Vietnam, could you tell us what that might be?

Senator LONG. I don't think I will offer the President any advice on that. I think he ought to make his own decision. I have offered enough Presidents advice about Vietnam, and I think that——

Miss MCLAUGHLIN. Let me put it another way——

Senator LONG (continuing). President Nixon didn't create this situation, he is doing the best he can in trying to solve it. I have expressed my views on it, and I think they are well known to most everybody, including you, Marya, so I think that it would be better for me just to leave it up to the President to say what he intends to do. I personally have been frustrated that this Nation, having gone in there, did not take the steps that I think could have assured victory, that they were not willing to really fight the war to bring it to an early conclusion, I do not think the American people are willing for this thing to drag out for ten years, so I think we have to either fish or cut bait. We have to either fight it to win it, and I don't think the decision will be made to fight it or win it under this President, just as it was not made under the previous President—that not being the case, we have two choices: we can either get out in a hurry or try to phase out our moving out in such a way that we would hope that the South Vietnamese could carry the burden of combat, at least on the ground if not in the air and at sea——

Mr. MEARS. Senator, what about the demonstrators? Do you agree with Vice President Agnew's assessment of their effect on the Nation and of their character?

Senator LONG. I think Vice President Agnew has the courage to say what he believes and I admire him for doing that. I am one of his admirers, I suppose. I didn't vote for him, but I think a man ought to have the courage to stand up and speak out for what he believes in, and that the Vice President is that kind of an American and I admire him for that. Now, I have had some discourteous things to say about some of these demonstrators myself on occasion. I didn't use the same language, but I suppose I would be subject to criticism myself for speaking out strongly for what I believe. But that is what they are doing, and that is what he is doing, and I think he had every bit as much right to speak out against what they are doing, and moreso, in my book, than they have to do in what they are doing. I personally feel that when our men are fighting on the field of battle, as long as they are there fighting and dying for this country, one does no service to us to weaken this Nation's negotiating power at the peace table by indicating that we ought to give up and pull out unilaterally. I think the President is backing up as much as he thinks we dare to and still honor the commitments we have made.

Mr. HERMAN. Senator, up until last January you were the whip, the assistant leader of the Democrats in the Senate, now another man, Senator Kennedy, is the leader. You expressed no bitterness whatsoever at giving the position over to Teddy Kennedy, can you now look back and give us an assessment of how you think he has done as whip as compared to your own performance?

Senator LONG. I don't think it is fair for me to do that. I think he is doing a good job as majority whip. And, as far as I am concerned, I feel he did me a favor by running for the job, for I have had all I could do during the last several months as Chairman of the Senate Finance Committee and representing Louisiana, looking after the interests of that state and trying to protect the national interests. I am pleased to be relieved of the job.

Mr. HERMAN. Okay. That is about the end of our time, Senator Long. Thank you very much for being with us today on "Face the Nation."

ANNOUNCER. Today, on "Face the Nation," the Chairman of the Senate Finance Committee, Senator Russell Long, of Louisiana, was interviewed by CBS News Reporter Marya McLaughlin, Walter Mears, Chief of the Senate Staff of the Associated Press, and CBS News Correspondent George Herman.

[From the Washington Post, Nov. 2, 1969]

TAX REFORM GOES TO THE SENATE

Congratulations are in order for the Senate Finance Committee for sending the tax-reform bill to the floor on schedule. An immense task remains in checking the language of the bill and writing the report, but if the Senate then moves as expeditiously as the Finance Committee has done it should be

possible to enact the bill before the end of the year. In our view, it would be a serious mistake for Congress to lose the momentum it has now attained by letting the bill go over into the 1970 session.

As it now stands, the Finance Committee bill is better than many supposed it would be. Chairman Russell B. Long had given the impression that his committee might indulge in a tax-cutting spree that would be highly troublesome for the Treasury. The bill that it has finally sent to the Senate would cut income taxes about $9 billion a year, offset by increased revenue amounting to $6.5 billion from reform provisions. But the impact of these cuts would be softened in some measure by postponing the full effectiveness of the reduction until 1972. In this regard the bill is somewhat more conservative than that passed by the House.

The Finance Committee must be given credit for some other improvements in the bill. Especially notable are the more equitable schedules approved for single persons and widowed or divorced taxpayers with dependents. The House had also provided relief for these overtaxed categories, but with a strange discriminatory cutoff against single taxpayers under 35 years of age. At the request of the Treasury, the Finance Committee dropped this objectionable provision and adopted a reduced schedule of rates applicable to all single taxpayers. It would require them to pay 20 per cent more than married couples filing joint returns on comparable incomes (instead of 41 per cent more under present law) and the new head-of-household rates would be about midway between the other two schedules. This equitable and workable solution should easily prevail in the House-Senate conference.

We think the committee was well advised to reject Senator Gore's attempt to substitute a higher personal exemption for the tax cuts in the House bill. The effect would have been regressive and would have further complicated the reconciliation of the House and Senate versions.

The most serious deficiency in the Finance Committee bill comes from the elimination of the House provisions designed to ease the problem of tax-exempt state and municipal bands. The House made a realistic approach to this dilemma by offering a federal subsidy to cover the higher interest rates on bonds made taxable by the states and cities and by limiting the tax preferences that any person may pile up for himself. If the Senate version should stand, some of the wealthiest Americans, drawing millions from tax-exempt interest, would continue to pay not one cent in federal income taxes. Here are provisions that should certainly be restored on the Senate floor or in conference.

The Finance Committee also watered down the House's treatment of depletion allowances for the oil and gas industry, but the relatively narrow gaps between the bills in this area should present no major problem. Likewise the Senate committee was more gentle in its claims upon capital gains, and the conflicting provisions in regard to foundations will require substantial adjustments. No doubt the Treasury will plead for narrowing the gap between the total cuts and increases, but there are no insuperable obstacles in sight. The country appears to be much closer to the achievement of tax reform than seemed possible to many at the beginning of the present congressional session.

PRESIDENT'S PROGRAM FOR THE AMERICAS

Mr. GRIFFIN. Mr. President, in an address to the Inter-American Press Association last Friday night, President Nixon proposed a broad new program for reshaping and strengthening the partnership of all countries in the Western Hemisphere.

It is a program based on mutual interest, mutual help, and mutual respect.

Mr. President, I ask unanimous consent that the text of the President's address be printed in the RECORD.

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

[Text of the President's address to the Inter-American Press Association, Oct. 31, 1969]

ACTION FOR PROGRESS FOR THE AMERICAS

Mr. Chairman, ladies and gentlemen of the Inter-American Press Association, I welcome this opportunity to speak to you and to our neighbors throughout the new world about a matter uppermost in the minds and hearts of all of us. I want to speak to you about the state of our partnership in the Americas. In doing so, I wish to place before you some suggestions for reshaping and re-invigorating that partnership.

Often we in the United States have been charged with an overweening confidence in the rightness of our own prescriptions: occasionally we have been guilty of the charge. I intend to correct that. Therefore, my words tonight are meant as an invitation by one partner for further interchange, for increased communication, and above all for new imagination in meeting our shared responsibilities.

For years, we in the United States have pursued the illusion that we could re-make continents. Conscious of our wealth and technology, seized by the force of our good intentions, driven by our habitual impatience, remembering the dramatic success of the Marshall Plan in postwar Europe, we have sometimes imagined that we knew what was best for everyone else and that we could and should make it happen.

But experience has taught us better.

It has taught us that economic and social development is not an achievement of *one* nation's foreign policy, but something deeply rooted in each nation's own traditions.

It has taught us that aid that infringes pride is no favor.

It has taught us that each nation, and each region, must be true to its own character.

What I hope we can achieve, therefore, is a more mature partnership in which all voices are heard and none is predominant—a partnership guided by a healthy awareness that give-and-take is better than take-it-or-leave-it.

My suggestions this evening for new directions toward a more balanced relationship come from many sources.

First, they are rooted in my personal convictions. I have seen the problems of the Hemisphere at first hand, and I have felt its surging spirit—determined to break the grip of outmoded structures, yet equally determined to avoid social disintegration. Freedom—justice—a chance for each of our people to live a better and more abundant life—these are goals to which I am unshakeably committed. Progress in our Hemisphere is not only a practical necessity but a moral imperative.

Second, these new approaches have been substantially shaped by the report of Governor Rockefeller, who, at my request, listened perceptively to the voices of our neighbors and incorporated their thoughts into a set of foresighted proposals.

Third, they are consistent with thoughts expressed in the Consensus of Vina del Mar, which we have studied with great care.

Fourth, they have benefited from the counsel of many persons in government and out, in this country and throughout the Hemisphere.

And, finally, basically, they reflect the concern of the people of the United States for the development and progress of a Hemisphere which is new in spirit, and which—through our efforts together—we can make new in accomplishment.

I offer no grandiose promises and no panaceas.

I do offer action.

The actions I propose represent a new approach, based on five principles:

First, a firm commitment to the inter-American system, and to the compacts which bind us in that system—as exemplified by the Organization of American States and by the principles so nobly set forth in its charter.

Second, respect for national identity and national dignity, in a partnership in which rights and responsibilities are shared by a community of independent states.

Third, a firm commitment to continued U.S. assistance for Hemisphere development.

Fourth, a belief that the principal future pattern of this assistance must be U.S. support for Latin American initiatives, and that this can best be achieved on a multilateral basis within the inter-American system.

Fifth, a dedication to improving the quality of life in the Western Hemisphere—to making people the center of our concerns, and to helping meet their economic, social and human needs.

We have heard many voices from Latin America in these first months of our new Administration—voices of hope, voices of concern, voices of frustration.

We have listened.

Those voices have told us they wanted fewer promises and more action. They have told us that U.S. aid programs seemed to have helped the United States more than Latin America. They have told us our trade policies were insensitive to Latin American needs. They have told us that if our partnership is to thrive, or even to survive, we must recognize that the nations of Latin America must go forward in their own way, under their own leadership.

It is not my purpose here tonight to discuss the extent to which we consider the various charges right or wrong. But I recognize the concerns, and I share many of them. What I propose tonight is, I believe, responsive to those concerns.

The most pressing concerns center on economic development—and especially on the policies by which aid is administered and by which trade is regulated.

In proposing specific changes tonight, I mean these as examples of the actions I believe are possible in a new kind of partnership.

Our partnership should be one in which the United States lectures less and listens more, and in which clear, consistent procedures are established to ensure that the shaping of Latin America's future reflects the will of the Latin American nations.

I believe this requires a number of changes.

To begin with, it requires a fundamental change in the way in which we manage development assistance in the Hemisphere.

I propose that a multilateral inter-American agency be given an increasing share of responsibilty for development assistance decisions. CIAP—the Inter-American Committee for the Alliance for Progress—could be given this function. Or an entirely new agency could be created. Whatever the form, the objective would be to evolve an effective multilateral framework for bilateral assistance, to provide the agency with an expert international staff and, over time, to give it major operational and decision-making responsibilities.

The Latin American nations themselves would thus jointly assume a primary role in setting priorities within the Hemisphere, in developing realistic programs, and in keeping their own performance under critical review.

One of the areas most urgently in need of new policies is trade. In order to finance their import needs and to achieve self-sustaining growth, the Latin American nations must expand their exports.

Most Latin American exports now are raw materials and foodstuffs. We are attempting to help the other countries of the Hemisphere to stabilize their earnings from those exports, and to increase them as time goes on.

Increasingly, however, those countries will have to turn toward manufactured and semi-manufactured products for balanced development and major export growth. Thus they need to be assured of access to the expanding markets of the industrialized world. In order to help achieve this, I have determined to take the following major steps:

First, to lead a vigorous effort to reduce the non-tariff barriers to trade maintained by nearly all industrialized countries against products of particular interest to Latin America and other developing countries.

Second, to support increased technical and financial assistance to promote Latin American trade expansion.

Third, to support the establishment, within the inter-American system, of regular procedures for advance consultation on all trade matters. U.S. trade policies often have a heavy impact on our neighbors. It seems only fair that in the more balanced relationship we seek, there should be full consultation within the Hemisphere family before decisions affecting its members are taken, not after.

Finally, in world trade forums to press for a liberal system of generalized tariff preferences for all developing countries, including Latin America. We will seek adoption by all of the industrialized countries of a scheme with broad product coverage and with no ceilings on preferential imports. We will seek equal access to industrial markets for all developing countries so as to eliminate the discrimination against Latin America that now exists in many countries. We will also urge that such a system eliminates the inequitable "reverse preferences" that now discriminate against Western Hemisphere countries.

There are three other important economic issues that directly involve the new partnership concept, and which a number of our partners have raised: "tied" loans, debt service and regional economic integration.

For several years now, virtually all loans made under U.S. aid programs have been "tied"—that is, they have been encumbered with restrictions designed to maintain U.S. exports, including a requirement that the money be spent on purchases in the United States. These restrictions have been burdensome for the borrowers, and have impaired the effectiveness of the aid. In June, I ordered the most cumbersome restrictions removed. In addition, I am now ordering that effective November 1, loan dollars sent to Latin America under AID be freed to allow purchases not only here, but anywhere in Latin America. As a third step, I am also ordering that all other onerous conditions and restrictions on U.S. assistance loans be reviewed, with the objective of modifying or eliminating them.

If I might add a personal word, this decision on treating AID loans is one of those things that people kept saying ought to be done but could not be done. In light of our own balance of payments problems, there were compelling arguments against it. But I felt the needs of the Hemisphere had to come first, so I simply ordered it done—showing our commitment in actions, rather than only in words. This will be our guiding principle in the future.

The growing burden of external debt service has increasingly become a major problem of future development. Some countries find themselves making heavy payments in debt service which reduce the positive effects of development aid. I suggest that CIAP might appropriately urge the international financial organizations to recommend possible remedies.

We have seen a number of moves in Latin America toward regional economic integration, such as the establishment of the Central American Common Market, the Latin American and Caribbean Free Trade Areas, and the Andean Group. The decisions on how far and how fast this process of integration goes, of course, are not ours to make. But I do want to stress that we stand ready to help in this effort, if our help should be wanted.

On all these matters, we look forward to consulting further with our Hemisphere partners. In a major, related move, I am also directing our representatives to invite CIAP, as a regular procedure, to conduct a periodic review of U.S. economic policies as they affect the other nations of the Hemisphere, and to consult with us about them. Similar reviews are now made of the other Hemisphere countries' policies, but the United States has not previously opened its policies to such consultation. I believe true partnership requires that we should, and henceforth, if our partners so desire, we shall.

I would like to turn now to a vital subject in connection with economic development in the Hemisphere, namely, the role of private investment. Clearly, each government must make its own decisions about the place of private investment, domestic and foreign, in its development process. Each must decide for itself whether it wishes to accept or forego the benefits private investment can bring.

For a developing country, constructive foreign investment has the special advantage of being a prime vehicle for the transfer of technology. And certainly, from no other source is so much investment capital available. As we all have seen, however, just as a capital-exporting nation cannot expect another country to accept investors against its will, so must a capital-importing country expect a serious impairment of its ability to attract investment funds when it acts against existing investments in a way which runs counter to commonly accepted norms of international law and behavior. And unfortunately, and perhaps unfairly, such acts by one nation affect investor confidence in the entire region.

We will not encourage U.S. private investment where it is not wanted, or where local political conditions face it with unwarranted risks. But my own strong belief is that properly motivated private enterprise has a vital role to play in social as well as economic development. We have seen it work in our own country. We have seen it work in other countries, whether they are developing or developed, that likely have been recording the world's most spectacular rates of economic growth.

In line with this belief, we are examining ways to modify our direct investment controls in order to help meet the investment requirements of developing nations in Latin America and elsewhere. I have further directed that our aid programs place increasing emphasis on assistance to locally-owned private enterprise. I am also directing that we expand our technical assistance for establishing national and regional capital markets.

As we all have seen, in this age of rapidly advancing science, the challenge of development is only partly economic. Science and technology increasingly hold the key to our national futures. If the promise of this final third of the Twentieth Century is to be realized, the wonders of science must be turned to the service of man.

In the Consensus of Vina del Mar, we were asked for an unprecedented effort to share our scientific and technological capabilities.

To that request, we shall respond in a spirit of partnership.

This, I pledge to you tonight: the nation that went to the moon in peace for all mankind is ready to share its technology in peace with its nearest neighbors.

Tonight, I have discussed with you a new concept of partnership. I have made a commitment to action. I have given examples of actions we are prepared to take.

But as anyone familiar with government knows, commitment alone is not enough. There has to be the machinery to ensure an effective follow-through.

Therefore, I am also directing a major reorganization and upgrading of the U.S. Government structure for dealing with Western Hemisphere affairs.

As a key element of this, I have ordered preparation of a legislative request, which I shall submit to Congress, raising the rank of the Assistant Secretary of State for Inter-American Affairs to Under Secretary—thus giving the Hemisphere special representation. This new Under Secretary will be given authority to coordinate all U.S. Government activities in the Hemisphere.

Debates have long ranged, both in the United States and elsewhere, over what our attitudes should be toward the various forms of government within the inter-American system.

Let me sum up my own views.

First, my own country lives by a democratic system which has preserved its form for nearly two centuries. We are proud of our system. We are jealous of our liberties. We hope that eventually most, perhaps even all, of the world's people will share what we consider to be the blessings of a genuine democracy.

We are aware that most people today, in most countries of the world, do not share those blessings.

I would be less than honest if I did not express my concern over examples of liberty compromised, of justice denied or of rights infringed.

Nevertheless, we recognize that enormous, sometimes explosive, forces for change are operating in Latin America. These create instabilities, and bring changes in governments. On the diplomatic level, we must deal realistically with governments in the inter-American system as they are. We have, of course, a preference for democratic procedures, and we hope that each government will help its people to move forward toward a better, a fuller and a freer life.

In this connection, however, I would stress one other point. We cannot have a peaceful community of nations if one nation sponsors armed subversion in another's territory. The Ninth Meeting of American Foreign Ministers clearly enunciated this principle. The "export" of revolution is an intervention which our system cannot condone, and a nation which seeks to practice it can hardly expect to share in the benefits of the community.

Finally, a word about what all this can mean for the world.

Today, the world's most fervent hope is for a lasting peace in which life is secure, progress is possible and freedom can flourish.

In each part of the world, we can have lasting peace and progress only if the nations directly concerned take the lead themselves in achieving it. And in no part of the world can there be a true partnership if one partner dictates its direction.

I can think of no assembly of nations better suited than ours to point the way in developing such a partnership. And a successfully progressing Western Hemisphere, demonstrating in action mutual help and mutual respect, will be an example for the world. Once again, by this example, we will stand for something larger than ourselves.

For three quarters of a century, many of us have been linked together in the Organization of American States and its predecessors in a joint quest for a better future. Eleven years ago, Operation Pan America was launched as a Brazilian initiative. More

recently, we have joined in an Alliance for Progress, whose principles still guide us. Now our goal for the 70s should be a decade of Action for Progress for the Americas.

As we seek to forge a new partnership, we must recognize that we are a community of widely diverse peoples. Our cultures are different. Our perceptions are often different. Our emotional reactions are often different. Partnership—mutuality—these do not flow naturally. We have to work at them.

Understandably, perhaps, a feeling has arisen in many Latin American quarters that the United States "no longer cares."

My answer to that is simple.

We do care. I care. I have visited most of your countries. I have met most of your leaders. I have talked with your people. I have seen your great needs, as well as your great achievements.

And I know this, in my heart as well as in my mind: If peace and freedom are to endure in the world, there is no task more urgent than lifting up the hungry and the helpless, and putting flesh on the dreams of those who yearn for a better life.

Today, we share an historic opportunity.

As we look together down the closing decades of this century, we seek tasks that summon the very best that is in us. But those tasks are difficult precisely because they do mean the difference between despair and fulfillment for most of the 600 million people who will live in Latin America by the year 2000. Those lives are our challenge. Those lives are our hope. And we could ask no prouder reward than to have our efforts crowned by peace, prosperity and dignity in the lives of those 600 million human beings, each so precious and each so unique—our children and our legacy.

AUTHORIZATION FOR SUBCOMMITTEE ON INDIAN EDUCATION OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE TO FILE REPORT AND SUPPLEMENTAL VIEWS BY MIDNIGHT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Subcommittee on Indian Education of the Committee on Labor and Public Welfare be permitted to have until midnight tonight to file its report, together with supplemental views, in accordance with Senate Resolution 80, as extended.

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

Mr. KENNEDY. Mr. President, today the Subcommittee on Indian Education intends to file its final report with the Senate. This report is the culmination of 2 years' work by the subcommittee, work directed by three different chairmen: Senator Robert F. Kennedy, Senator Wayne Morse, and myself.

We have published seven volumes of hearings. We have authorized the publication of five separate committee prints, covering various aspects of our investigations and findings. These prints will be available shortly.

The report which will be filed today makes some 60 separate recommendations. These recommendations were built upon our detailed, extensive findings. The findings tell a story of a national policy failure of major proportions, a failure we simply must correct if American Indian children are to receive decent education. For today they do not—either in Federal schools or public schools. This is particularly shocking in the case of Federal schools, because the Federal Government has assumed the full share of responsibility for the Indian children in these schools. The school buildings, the teachers' salaries, the curriculum—these are all directed by the Federal Government. That they should be less than excellent is a disgrace.

I expect the report to be available late Tuesday or Wednesday. I will tomorrow announce the time and place at which I have asked the other members of the subcommittee to join with me in a presentation and discussion of the subcommittee's findings and recommendations. This presentation and discussion will be open to the press.

Mr. MONDALE. Mr. President, today, after more than 2 years of field investigations and hearings, the Senate Special Subcommittee on Indian Education will submit its final report "Indian Education: A National Tragedy—A National Challenge."

It has been a privilege, and an education, for me to serve on the subcommittee, and to have participated in the investigation which led to this report, which I am convinced will be recognized as the most comprehensive study ever made of Indian education. During the course of its relatively short existence the subcommittee has published seven volumes of hearings, five committee prints and the final report itself.

Much of the credit for this significant report must go to the distinguished Senator from the State of Massachusetts, the Honorable EDWARD M. KENNEDY, who so ably and concernedly guided its work as chairman. Senator KENNEDY picked up the task where his brother, the late Senator Robert F. Kennedy—the subcommittee's first chairman—left it, and has provided the dedicated leadership needed to put together this massive study. Senator Robert Kennedy's dedication to the cause of the American Indian is already a well-known part of history. It is fitting therefore that the report is dedicated to him.

The final report itself makes us all aware of the fact the American Indian is not receiving equal educational opportunities.

The statistics on this subject are so often quoted that they seem to have lost meaning. High dropout rates, high absenteeism, substantial illiteracy, we have heard it all before. The Indian Education Subcommittee went beyond these statistics, though, and asked "Why?" We came up with answers—many of them supplied by the Indian people themselves—which in retrospect seem so basic to any effective educational program that it is embarrassing to our Nation that we have not implemented them before.

Many times in the course of our investigation I have been shocked by the Neanderthal educational approaches used for Indian students and by the insensitivity of school personnel to students of a different culture. I hope this report can be a start in remedying some of the problems we saw in our investigation. After 400 years of failing the Indian, we do not have an easy task before us. But if we decide we want to, we can meet the challenge.

Mr. DOMINICK. Mr. President, today the Senate Special Subcommittee on Indian Education will submit its monumental report entitled "Indian Education: A National Tragedy—A National Challenge."

Mr. President, I have been involved in Indian affairs during most of my years in Congress. I served on the Indian Affairs Subcommittee in the House, and until a few years ago was a member of the Indian Affairs Subcommittee of the Senate Committee on Interior and Insular Affairs.

Now, as ranking Republican on the Indian Education Subcommittee, I must say this has been the most challenging undertaking of all.

The history of our report—the initiation, planning, and development—is that of a deep and sincere concern for the American Indian and his educational problems on the part of both political parties. It is a prime index to congressional effectiveness and cooperation on both sides when faced with a problem of national scope that requires a united approach to reach the objective, that of creating, for the American Indian, an educational program cognizant of his tribal values, willing and flexible enough to constantly reevaluate programs, and with a desire to provide the means for Indians to develop themselves educationally and be on a par with non-Indians in our very competitive society.

The long history of Federal-Indian relations in our society—despite the expenditure of millions of dollars—has not been one of successfully coping with the problem of acculturation or assimilation, as that problem has confronted our American Indians, but rather to attempt solution of the problem as the non-Indian sees it. There has been a myriad of Indian experts, but we have overlooked the development of expert Indians. Solution has been our objective, success has been our goal, but both solution and success have evaded our grasp to this day. As the Senator from Arizona (Mr. FANNIN) so aptly put it in his memorandum on the subject:

> Our efforts have not been in vain, but they have too often been inconclusive.

Past history indicates that faced with policies in the field of Indian affairs not producing the desired result we have changed that policy again and again. Indians—not liking our policy of the moment—need only wait a few years knowing that a new policy was just around the corner. Our Indian policy has been like a child's kaleidoscope, ever changing, and easily changed, by whatever hand was holding it.

Running through this myriad compound of programs and policies, however, was one consistent thread that the hand changing the policy at will was not the hand of the Indians nor was it guided by the Indians. The Government was in the position of a doctor treating a patient who never asked the patient where the pain was located nor how severe it was. This simile—though it may seem unrelated to the subject at hand—is simply to establish what I consider to be one of the most important aspects of this report,

that it was constantly focused on Indian opinion, desires, and goals.

Certainly such a study could have been confined to hearings and conferences with various Government and State officials concerned with their programs for educating the American Indian but such an approach would have overlooked the basic ingredient—necessary to success—the Indian and his knowledge of why the Federal Government Indian education programs were unsuccessful. The very foundation stones that this subcommittee was built on were: First, a coordinated bipartisan approach; and second, listening to the Indian voice of concern and aspiration.

THE NATIONAL INDIAN BOARD OF INDIAN EDUCATION

This, by way of background, explains why I am so delighted that the suggestion of the minority for a National Indian Board of Indian Education was adopted.

Such an approach represents a striking departure from the past. It will give our Indian citizens—with their unique relationship to the Federal Government—a truly meaningful voice in the future of their education programs in the Federal schools.

I ask unanimous consent that recommendation No. 16 be printed at this point in my remarks.

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

RECOMMENDATION NO. 16

The subcommittee recommends that there be established a National Indian Board of Indian Education with authority to set standards and criteria for the Federal schools.

Structurally, this recommendation is patterned after the organization of education in the States, with the National Indian Board of Indian Education as the centerpoint of citizen participation much as is the State Board. It would, as do the counterpart boards in the States, have oversight over the operations of the schools and have authority to set standards and criteria and determine policy within the framework of the law. The National Board would receive funds for its operations.

The National Board would be composed of some fifteen members, representative of the Indian tribes and communities, serving staggered terms of three years. They would be appointed by the President from lists of nominees furnished by the Indian tribes and communities and would be eligible to serve no more than two consecutive terms. At least annually, but more often if necessary, the Board would submit to the Congress and to the President reports and recommendations for administrative action or legislation, thus giving the Indians themselves leverage in effecting change. The National Board could elect to ex officio membership no more than five non-Indian individuals expert in areas of concern to the Board.

The National Board would be authorized to utilize the expertise of the U.S. Office of Education, the Office of Economic Opportunity, and other Federal agencies.

While this recommendation envisions the appointment of the National Board, the subcommittee believes that the matter of election of the members of the National Board merits careful consideration. Therefore, the National Board should be empowered to establish the mechanism for electing the Board, and an equitable means by which such members might be elected. It should submit a plan for election of Board members, to the Congress, and to the President.

If this plan is not rejected by either House of Congress, following the procedure of congressional action as prescribed by law in the case of executive reorganization plans, then the election procedure would be put into effect.

The National Board would also be empowered to participate in the negotiation of contracts with individual tribes and communities to run local school systems for Indians.

The Board would present to the Department of Interior its suggestions for nominees for Assistant Commissioner for Education as well as presenting its views on any candidate that the Department may be considering for the post. Since the Assistant Commissioner for Education would be serving for one or more terms of 4-year duration, the National Board would have the foregoing review responsibilities also with respect to reappointment.

Finally, the National Board would serve in an advisory capacity with respect to Federal education programs involving Indians in the public schools. For example, the Board could review school district use of Johnson-O'Malley funds to assure they were being used for the needs of Indian students.

Mr. DOMINICK. Mr. President, we also suggested that local Indians boards of education be established for Federal Indian school districts, and, in addition, that provision be made for increased parental and community involvement. This was complied with, elevating the Commissioner of Bureau of Indian Affairs to an Assistant Secretary for Indian Affairs. The subcommittee agreed.

I ask unanimous consent that recommendations Nos. 15, 17, and 18 be printed at this point in my remarks.

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

RECOMMENDATION NO. 15

The subcommittee recommends (a) That the position of the Commissioner of the Bureau of Indian Affairs be upgraded by giving him the concurrent title of Assistant Secretary for Indian Affairs; (b) That the Bureau of Indian Affairs be removed from the authority of the Assistant Secretary for Public Land Management and be placed under the authority of this new Assistant Secretary for Indian Affairs.

At present, the BIA is one of four bureaus under the Assistant Secretary for Public Land Management. The four are: the BIA; the Bureau of Land Management; the Bureau of Outdoor Recreation; and the Office of Territories. This Assistant Secretary is thus principally concerned with the conservation, management, and development of some 453 million acres of the nation's public lands, and the administration of mining and mineral leasing on federally owned lands. He is also the focal point of Federal activities related to outdoor recreation.

It is perfectly plain that the present administrative arrangement short-changes the BIA, which must compete with other bureaus (whose interests are diametrically opposed) for the Assistant Secretary's attention.

The present arrangement has resulted in inadequate budget levels, neglect of educational programs and problems, and lack of forceful leadership for improvement. The change in placement and status of the BIA should permit higher budget levels, more effective leadership, and more rapid innovation.

There exist ample precedents for this dual title. For example, in the Department of Housing and Urban Development, the Assistant Secretary for Mortgage Credit is also the Commissioner for Federal Housing. Furthermore, the Commissioner of the BIA, Hon. Louis Bruce, endorsed this step in a meeting with the subcommittee on Oct. 2, 1969.

RECOMMENDATION NO. 17

The subcommittee recommends that Indian boards of education be established at the local level for Federal Indian school districts.

The powers of such local boards would be similar to those powers traditionally held by local school boards. The boards, for example, would have supervision over curriculum and the hiring of faculty in the schools in their districts. Generally, they would have jurisdiction in Indian school districts containing elementary and secondary schools situated in a proper geographic, tribal, or community area. These boards would be either elected by the Indian district in which they would serve, or be appointed by the tribal or community authority there. It is assumed that the method of selection would vary from area to area. Approximately 80 percent of local boards throughout the country are elected.

In keeping with the practice throughout the Nation wherein the overwhelming majority of local school boards are elected, the subcommittee expresses the hope that local Indian boards will likewise be subject to election, keeping in mind that in a minority of areas, as elsewhere in the country, local preference may dictate that the board be appointed.

The local boards would have direct lines of communication with the National Indian Board of Indian Education, and would be empowered to convey to it recommendations for overall policy.

RECOMMENDATION NO. 18

The subcommittee recommends that Indian parental and community involvement be increased.

The BIA has been particularly lax in involving the participation of Indian parents and communities in the education process. Such involvement would have a beneficial effect on the attitude of Indian children toward school and their own education, and could be helpful in bringing about strengthened and enhanced education programs.

In addition, this parental and community involvement at the school level complements the local and national Indian boards recommended above.

Mr. DOMINICK. Mr. President, in its original conception the funds for operating the Council were to come from assessment of all member departments. However, during the 90th Congress, legislation was passed containing language making it unlawful for appropriated funds to be used to finance interdepartmental boards, commissions, councils, committees or similar groups not having prior and specific congressional approval. The Council therefore was without funds for staffing or equipment and Senate Joint Resolution 121 of this Congress was to authorize such funds.

This organization, although quite new, can provide a very useful service to the Federal Government and to the Indian tribes. No other arm of the Federal Government can carry out the necessary functions charged to the Council and certainly the day has come—with our numerous programs—for one organization to be responsible for coordinating them. The reason for the lack of an appropriation for the NCIO as I explained during

the floor debate was technical in nature—the House had not acted on the authorizing legislation—and my reason for discussing the subject at that time was to gain as much support for the appropriation—when it did come before the Senate—as possible.

President Nixon requested $300,000 for the Council in his 1970 budget. This coincides with his statement last fall that—

The right of self-determination of the Indian people will be respected and their participation in planning their own destiny will be actively encouraged. I will oppose any effort to transfer jurisdiction over Indian Reservations without Indian consent. I will fully support the National Council on Indian Opportunity and I will ensure that the Indian people are fully consulted before programs under which they must live are planned.

Before this can be fulfilled, the House must act on the authorizing legislation. I hope that this will occur at the earliest possible date.

Mr. President, there were many other contributions of the minority to this report, but I wanted to specifically refer to the National Indian Board of Indian Education because I think it represents the most significant breakthrough on behalf of the Indian education in decades.

For the record, however, I ask unanimous consent that the supplemental views which list other contributions of the minority be printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. DOMINICK. Mr. President, let me emphasize that while there were some misunderstandings between the minority and majority from time to time, I believe they have been resolved. In my judgment, each Senator made a valuable contribution to our work and in the final outcome, all were given fair consideration to their viewpoints.

All Senators are in agreement on the greater part of the report. There is one major exception—establishment of a Select Committee on the Human Needs of American Indians.

The rationale for the opposition of the minority to such a recommendation is basic. A select committee can only study. It cannot legislate. The American Indian has heard enough about studies. Our subcommittee alone has produced one page of study for every 35 school-age Indian children, aged 5 to 18. Our position is further explained in the supplemental views.

NATIONAL COUNCIL ON INDIAN OPPORTUNITY

One further point. The subcommittee adopted our suggestion for full funding of the National Council on Indian Opportunity. I refer Senators to recommendation No. 12, and ask unanimous consent that it be printed at this point in my remarks.

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

RECOMMENDATION No. 12

The subcommittee recommends full funding of the National Council on Indian Opportunity for fiscal year 1970, and for subsequent years.

The National Council on Indian Opportunity was created by Executive Order 11399 on March 6, 1968. The purpose of the Council as stated in the Executive order is to encourage full use of Federal programs as they relate to Indians, appraise the impact and progress of Federal programs for Indians, and suggest ways to improve such programs.

By including six Indians as members, the Council affords the Indian people, for the first time in the history of Federal-Indian affairs, an opportunity to sit at the highest administrative level and have a direct say in the formulation of policies and programs as they relate to Indians.

President Johnson and President Nixon both have given their strong support to the Council. The National Congress of American Indians, the largest Indian organization in the country, indicated its strong support for this program in a position paper adopted May 6, 1969, in Albuquerque, N. Mex. The NCAI commented that the creation of the Council was:

* * * a milestone in the involvement of Indian people with the administration of this country, and as such it can be a vital mechanism for Indian involvement in their own progress. There is no other like body which gives the Indian people such vital participation in the discussion and solution of their problems. The National Council on Indian Opportunity must be continued and funds appropriated for its continued operation.

As more and more programs for Indians are begun in agencies other than the Department of the Interior, the need for program coordination and appraisal becomes even more acute. Nearly half of the total Federal outlay in Indian Affairs goes to agencies other than the Bureau of Indian Affairs. These departments, whose secretaries, along with the Vice President as chairman, and the Indian members mentioned above, sit on the Council, are: Agriculture, Commerce, Labor, HEW, HUD, and OEO. Additionally, it is expected that the Department of Justice will embark on its first Indian program during fiscal year 1970. In the judgment of the subcommittee, the Council is the only agency equipped with the authority to coordinate all Federal Indian programs.

On September 3, 1969, the Senate passed an authorizing resolution continuing the Council. The resolution is now pending in the House of Representatives and the subcommittee recommends favorable action be taken as soon as possible.

It is expected that another request for funding of the Council will be included in a supplemental appropriations bill to be sent to Congress later this fall. The subcommittee concluded that favorable action on funding the Council is imperative.

SENATOR FANNIN

Mr. DOMINICK. Mr. President, I think it only appropriate that we take note of the initiative of Senator FANNIN in the creation of our subcommittee.

The Senate Special Subcommittee on Indian Education had its beginning during consideration in 1966 by the full committee of possible amendments to the Elementary and Secondary Education Act. One of the prime areas of Committee concern was possible amendments to titles I, II, and III extending the benefits of these titles to Indian children enrolled in Bureau of Indian Affairs schools.

At that time, Senator FANNIN—long sympathetic to Indian problems addressed a letter to Senator Wayne Morse, chairman of the Education Subcommittee, strongly suggesting the creation of a special Subcommittee on Indian Education to supplement the work of Senator Morse's Education Subcommittee. As a result of this primary emphasis, Senate Resolution 165—providing the authorization for a study of matters pertaining to the education and related problems of Indian children—was introduced and subsequently passed the Senate on August 31, 1967. In the report of the Committee on Rules and Administration, Senator FANNIN's memorandum entitled "Need for Special Subcommittee on Indian Education" was included.

Without quoting at great length, I would like to bring to the attention of this body Senator FANNIN's remarks that indicate his depth of knowledge, concern, and penetrating analysis of the subject matter. The Senator pointed out—statistically—the sad plight of the American Indian not only educationally, but in terms of unemployment, housing, life span, infant mortality rates, and then stated that "more troublesome than the statistics we do know are those we do not know." Other areas of emphasis in the memorandum included "such vexing questions as the amount of emphasis the curriculum should give to Indian languages, history and culture" and "the best way to train teachers for these students" and whether past legislation "has worked and whether new approaches are required or a different emphasis desirable." The most moving statement was when the Senator succinctly summarized the position of Congress in these few words:

We cannot legislate in the dark.

Our subcommittee study is done now and before the Congress for consideration. It has been a long and difficult task, the subcommittee ably chaired by the gentleman from Massachusetts. We have managed to bring together one of the most comprehensive pictures of Indian education ever made and we have presented the case thoroughly documented with recommendations possible of accomplishment. A great deal of effort has been expended by all concerned, tremendous interest has been shown on the part of Congress, the Federal and State Governments, Indians, specialists in the field, and the general public—during the life of the subcommittee and its investigations.

Our task was to study the problem of Indian education—in all its scope and complexity—with particular emphasis placed on Indian concern, opinions and aspirations. As we stated in the introduction to our report:

The ultimate test of this report is whether or not we have listened, understood, and given voice to their concern and aspirations.

EXHIBIT 1

SUPPLEMENTAL VIEWS

The undersigned minority members of the subcommittee gave support to the study and report, consistent with the historic sponsorship and support of constructive action in education on a bipartisan basis.

CONTRIBUTIONS OF THE MINORITY

We are particularly gratified to note that some earlier misunderstandings between the minority and majority have been dispelled and that in drafting this report full and fair consideration was given to proposals advanced by the minority. As a result, some important major recommendations by Republican members were included in the report as finally approved. These include—

(1) Recommendation No. 16 that there be established a National Indian Board of Indian Education with authority to set standards and criteria for Federal schools;

(2) Recommendation No. 17 that Indian boards of education be established at the local level for Federal Indian school districts;

(3) Recommendation No. 15 that the Commissioner of Indian Affairs be upgraded to Assistant Secretary and that the Bureau of Indian Affairs be upgraded accordingly;

(4) Recommendation No. 6 for the presentation to Congress of a comprehensive Indian education act to meet the special needs of Indian children both in Federal and public schools;

(5) Recommendation No. 12 for full funding for the National Council on Indian Opportunity;

(6) Recommendation No. 52 that Johnson-O'Malley funding should not be conditioned by presence of tax-exempt land;

(7) Recommendation No. 9 that the HEW Civil Rights Enforcement Office investigate discrimination against Indians in schools receiving Federal funds;

(8) Recommendation No. 18 that Indian parental and community involvement be increased;

(9) Recommendation No. 20 that the Departments of Interior and Health, Education, and Welfare, together with the National Council on Indian Opportunity, devise a joint plan of action to develop a quality education program for Indian children;

(10) Recommendation No. 25 that BIA boarding school guidance and counseling programs be substantially expanded and improved;

(11) Recommendation No. 37 to strengthen title III (developing institutions) of the Higher Education Act to include recently created higher education institutions for Indians on or near reservations;

(12) Recommendation No. 38 to expand the Education Professions Development Act, the Higher Education Act, and the Vocational Education Act to include BIA schools and programs;

(13) Recommendation No. 58 that State and local communities should enocurage and facilitate increased Indian involvement in the development and operation of education programs for Indian children;

(14) Recommendation No. 59 to appoint Indians to U.S. Office of Education advisory groups; and

(15) Recommendation No. 60 that the BIA should have the same responsibility to the U.S. Office of Education for set-aside funds under Federal grant-in-aid education programs as do the States for similar programs.

In addition, the minority was also responsible for minor and technical contributions to the report.

Finally, we take especial pride in the key role in the creation of the subcommittee played by Senator Paul Fannin, of Arizona, the subcommittee's ranking minority member during the 90th Congress. As the late Senator Robert F. Kennedy stated at the opening hearing on December 14, 1967:

The stimulation for the establishment of this subcommittee came from my colleague, Senator Fannin, of the State of Arizona, who has always been interested in Indian education.

OPPOSITION TO RECOMMENDATION FOR SENATE SELECT COMMITTEE

While endorsing the greater part of the report, we do take exception to the recommendation that there be established a Senate Selection Committee on the Human Needs of the American Indian.

A Senate select committee is not a legislative committee. It may only investigate and study and is not empowered to consider and report legislation. Thus, the recommended select committee would mean yet more additional studies of Indian problems. There is a surfeit of such studies.

The Indian Education Subcommittee, over a period of more than 2 years, has produced six volumes of hearings and a volume of appendix, five committee prints, 14 consultant reports, and a final report. This comes to a total of approximately one page of study for every 35 school-age Indian children, aged 5 to 18.

In addition, the subcommittee is recommending that other studies be undertaken—by the White House Conference on American Indian Affairs and by the National Indian Board of Indian Education. However, these studies possess a significantly different dimension, for they will be studies conducted by Indians about Indian problems, whereas the select committee would be just another in a series of governmental study efforts dominated by non-Indians. By utilizing studies by Indians about Indians instead of surveys by government bodies or by non-Indian academicians, we will be making the transition from reliance on Indian experts, as at present, to a reliance upon expert Indians. The latter course seems the wisest and in the best tradition of government by the consent of the governed.

A PLEDGE

For too many years study after study and report after report have been issued looking toward improvement of the lot of our Indian citizens which, while resplendent with promise, have come to naught. We stress realization over promise, especially as concerns what is perhaps the most important recommendation contributed by the Republican membership of the subcommittee; namely, a means to achieve the guidance by Indians themselves of the education of their own children through national and local Indian boards of education.

To achieve these goals, we pledge to work for realization of the recommendations contained in this report so that the education of Indian children shall be, in accord with the precepts set forth by President Abraham Lincoln, of, by, and for the Indian people.

PETER H. DOMINICK.
GEORGE MURPHY.
WILLIAM B. SAXBE.
RALPH T. SMITH.

Mr. MURPHY. Mr. President, I want to associate myself with Senator DOMINICK's remarks, particularly with his praise of Senator FANNIN, a real expert on Indian education and other Indian problems.

It was at the urging of Senator PAUL FANNIN of Arizona that the Senate Labor and Public Welfare Committee created the Indian Education Subcommittee. This landmark report being filed in the Senate today and appropriately titled "Indian Education: A National Tragedy—A National Challenge," is a result of extensive hearings, field investigations, and work by the subcommittee under the chairmanship first of the late Senator Robert Kennedy, who was succeeded by Senator EDWARD KENNEDY. I am particularly grateful for the leadership by the ranking Republican member of the Subcommittee, Senator DOMINICK of Colorado.

There are approximately 600,000 Indians in America today, 400,000 of whom live on or near reservations in 25 States. California has the second largest Indian population in the Nation. It is estimated that approximately 100,000, or one-sixth of the total Indian population in the country, reside in California.

Statistics regarding the "first American" are shocking. They show that 50 percent of Indian youngsters drop out before completing high school;

Among our largest tribes, the Navajos, there is a 30-percent illiteracy rate; and

The overall educational achievement of the Indian is only 5 years.

Evidence continues to grow regarding the correlation between educational achievement and earning levels. Therefore, it is not surprising that economic statistics are similarly depressing. They reveal:

That the average Indian income is $1,500, which is 75 percent below the national average;

That his unemployment rate is 40 percent, which is 10 times the national average;

That the incidence of tuberculosis among Indians is seven times the national average; and

That his lifespan is considerably less than the national average.

These statistics are true despite a doubling of appropriations for Indian programs during the last decade and a growth of a Bureau that today has 16,500 employees, one for every 36 Indians in the United States. Although I wish these statistics were not true in California, I regret that the California statistics, although better than the national average, nevertheless confirm the depths of the Indian education problems. For example, a 1966 report by the State Advisory Commission on Indian Affairs found that high schools with large Indian enrollments had a dropout rate three times higher for Indians than non-Indians. Some schools reported dropout rates for Indians ranging from 30 percent to 75 percent.

I was only appointed to the Indian Education Subcommittee this year, and shortly after my appointment, I testified before the Committee making two major recommendations. I called for: First, the restoration of Johnson-O'Malley funds to California Indians, and second, a transfer of the administration of Indian education from the Bureau of Indian Affairs in the Interior Department to the Department of Health, Education, and Welfare.

In my testimony, I labeled the restoration of Johnson-O'Malley funds to California as the most pressing need in Indian education in my State. The California State Legislature has memorialized Congress to restore Federal services including Johnson-O'Malley funds to California Indians. Incidentally, I am working closely with Secretary Finch and Governor Reagan in an effort to restore some Indian health services which are also direly needed by California Indians.

I described the need and traced the loss of Johnson-O'Malley funds in California as follows:

The most pressing need in my state is for the restoration of Johnson-O'Malley funds. The Johnson-O'Malley program provides financial aid to states for educational programs for Indians, California's eligibility for the program was finally terminated in 1958. Although there were various reasons for the phasing out of the Johnson-O'Malley program in California, including the feeling that California would adequately fill the

gap resulting from the loss of these federal funds and give the Indians an adequate education and the belief that the federal government would terminate the reservation policy nationwide, the statistics, experience and events since the phasing out of the Johnson-O'Malley program in California show neither has occurred.

In addition, my examination of the other arguments advanced in support of the ending of the Johnson-O'Malley funds in California convinced me that they are equally erroneous. That the Johnson-O'Malley funds are vitally needed in California is generally agreed. For as the State Advisory Commission on Indian Affairs in a June, 1967 report noted, the Indians in California "have become lost in the 'big picture' of education in California . . . The solution to the above-stated problems and deficiencies encountered in the education of California Indian students can be found in a re-implementation of the Johnson-O'Malley program in California."

Since the phasing out of the Johnson-O'Malley program, the record indicates that the California Indian both educationally and economically was not only failing to hold his own with his contemporaries but is actually falling further and further behind. When the reason or rationale for a law no longer exists, the law itself should not exist either. This should also apply to the Johnson-O'Malley exclusion of California Indians.

It is estimated that since fiscal year 1953–54, the state of California and the California Indians have lost $3.5 million because of the ending of the Johnson-O'Malley program. In 1953, California's percentage of the nationwide Johnson-O'Malley funds of approximately $2.6 million was 12 per cent. With the total federal funds now reaching approximately $8 million, a 12 per cent share for California would come to $960,000. While California might not actually receive this amount, it is clear that substantial sums would be forthcoming which would help meet the great educational needs that do exist.

There is no question that the Johnson-O'Malley funds could be put to tremendous use in my State for there is a great need, for example, for an assignment within the State department of education of a person to be employed as an Indian education expert. With the restoration of this program, I am confident that the State would move ahead and create such a post.

I am pleased, Mr. President, that the Indian Education Subcommittee has followed my recommendation by urging that Johnson-O'Malley funds should be based on need and on evidence that the funds will be used to meet those needs. The case for returning Johnson-O'Malley funds has been made long ago. I urge the Bureau of Indian Affairs to restore Johnson-O'Malley funds to California immediately. Mr. President, today I have sent the following telegram to BIA Commissioner Bruce once again urging restoration of Johnson-O'Malley funds to my State:

Indian Education Subcommittee has filed its Report in the Senate today documenting once again the critical need for restoration of Johnson-O'Malley funds to California. Once again I urge the Interior Department to restore Johnson-O'Malley funds to my state. Such action would indicate that the Bureau of Indian Affairs is taking the Indian Education Report seriously and I am sure would be welcomed by all members of the Indian Education Subcommittee.

On the important issue of administration, I, as previously indicated, urged the transfer of Indian Education to the Department of Health, Education, and Welfare. Indian health has already been transferred to HEW and the improvement of Indian health programs has been significant in its new home. However, there was and is considerable concern, disagreement, and suspicion by the Indians on this issue. Every time someone tries to come to grip with the problem of administration, the bogeyman of termination has been raised and spread among the Indians. The Indians fear that the Federal Government's special-relationship and services that they receive will be terminated. Vice President AGNEW emphatically told the Indians at the recent conference at Albuquerque, N. Mex., that the administration opposed termination. I am hopeful that we might bury this fear so that whatever action is needed to improve the present conditions of the American Indian and the present organizational structure will take place. Personally, I am convinced that the Indians themselves will ultimately agree with my recommendations of transferring Indian education programs to HEW.

Our committee thus faced a dilemma. Change and administrative shakeup was greatly in order. Yet the smokescreen of termination prevented us from getting agreement by the Indians and prevented us from resolving this critical issue.

I am pleased that the Republicans on the committee came up with a creative solution to this impasse. First, we proposed and the committee adopted as its recommendation the upgrading of the Commissioner of Indian Affairs to that of Assistant Secretary of Interior and Commissioner of Indian Education. This upgrading will give the Commissioner of the Bureau of Indian Affairs direct access to the Secretary of Interior rather than going through layers of bureaucracy at the Interior Department. This upgrading will give the Commissioner direct line authority over BIA schools, thus cutting away additional bureaucrat layers of noneducational experts at the working and field levels.

Second, we recommended and the committee accepted as part of their recommendations, the establishment of a National Indian Board of Education.

The basic idea here is that BIA, or Federal Indian schools, should have a school board with powers and responsibility comparable to the State boards of education. The importance of this board in the eyes of the subcommittee can be seen by the fact that board members would be appointed by the President of the United States. Also, the subcommittee hopes that this board, a proposed White House conference, and an adequately funded National Council on Indian Opportunity will provide the mechanism and leadership necessary to resolve the question of organization and other important Indian education issues.

Third, the minority recommended and the subcommittee adopted a proposal for the creation of local school boards which would be analogous to local boards of education across the country. President Johnson 2 years ago directed the establishment of local Indian boards of education at BIA schools. For all practical purposes, the bureaucracy completely ignored this presidential directive as the subcommittee found that only two, I believe, of these boards were actually established.

Mr. President, the intent of these minority proposals is to allow the Indians to control their own destiny, to run their own schools. Throughout hearings the Rough Rock Demonstration School in Arizona was cited and applauded as the most exciting experiment in Indian education, and it should be noted that the creation of this school resulted primarily from agencies and organizations outside of BIA.

Mr. President, the Indians have always recognized the importance of education. Mr. Rupert Costro, president of the American Indian Historical Society, which is located in California, pointed this out in testimony before the subcommittee as follows:

In our contact with the whites, we have always and without fail asked for one thing. We wanted education. You can examine any treaty, any negotiations with the American Whites. The first condition, specifically asked for by the Indian tribes, was education. What we got was third-rate, lefthanded, meager, miserly unqualified training, with the greatest expenditure of federal funds and the least amount of actual education for the Indian himself.

Mr. President, the challenge has been laid before us. As I said before the Indian Education Subcommittee earlier, I intend to do whatever I can to bring about a substitution of results and performances for the rhetoric and promises that have been made to the American Indian for over a century.

Finally, Mr. President, I ask unanimous consent that the committee's discussion of the Johnson-O'Malley Act, its recommendations with respect to this act, and the committee's recommendation dealing with the question of administration of Indian education be printed in the RECORD.

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

JOHNSON-O'MALLEY ACT, APRIL 16, 1934

The Johnson-O'Malley act authorized the Secretary of Interior to contract with State or territories for the education, medical attention, agricultural assistance, and social welfare of Indians in the State.[1] In 1936 the act was amended to its present form. The amendment expanded the contracting authority of the Secretary of the Interior, giving him the authority to contract with State universities, colleges, schools, or with any appropriate State or private corporation, agency, or institution.

The intent of the act as expressed in the identical reports submitted to each House of Congress, was to "arrange for the handling of certain Indian problems with those States in which the Indian tribal life is largely broken up and in which the Indians are to a considerable extend mixed with the general population." [2] The report noted that in many areas Indians are mixed with the white population, and therefore "it becomes advisable to fit them into the general public school scheme rather than to provide separate schools for them." [3] The act thus gave legislative authority to the Bureau's policy of gradually turning over its education function to the public schools. The act also facilitated Federal-State cooperation by making con-

Footnotes at end of article.

tracts negotiable at the State level rather than the local. It has become one of the primary means of Federal subsidization of Indian education.

In 1935, California became the first State to contract for and under Johnson-O'Malley, and by 1940, contracts had also been negotiated with Arizona, Minnesota, and Washington.[4] By 1951, 14 States and five districts within States were receiving $2,505,933 in Johnson-O'Malley funds. The estimated expenditure for fiscal 1969 is $11,552,000, or approximately $174 per student.[5]

Since the act's inception, the number of Indian students in public schools has increased to about two-thirds of all Indian students. Although the act brought about increased enrollment of Indians in public schools, its success in meeting the educational needs of those students is open to serious question.

Why hasn't the Johnson-O'Malley act dealt adequately with the needs of Indian students? The problem lies not so much with the act itself, as with the manner in which it has been interpreted. For though the language of the act is broad, its interpretation has been narrow, and therefore the intent of the legislation has not been realized.

The Bureau of Indian Affairs, for example, has adopted a more restricted eligibility requirement than that suggested by Congress. Congressional intent was to service Indians in States "in which the Indian tribal life is largely broken up and in which the Indians are to a considerable extent mixed with the general population." [6] The Bureau's policy is to serve Indian children (one-fourth or more Indian blood) "whose parents live on or near Indian reservations under the jurisdiction of the Bureau of Indian Affairs." The policy statement declares that "the tax-free status of land where the parents live will be the major consideration in determining the eligibility of the children." [7]

Despite the act's expressed intent to deal only with Indian needs, the Johnson-O'Malley money has been traditionally used by school districts to supplement their general operating budget, thus benefiting all their students. The Code of Federal Regulations (1958) sanctions this use by stating that Johnson-O'Malley money can be used to meet the financial needs of those school districts which have "large blocks of nontaxable Indian-owned property * * * and relatively large numbers of Indians which create situations which local funds are inadequate to meet."

Use of the money for "meeting educational problems under extraordinary and exceptional circumstances" is limited by regulation to those districts which receive Public Law 81–874 money to meet partial costs of normal school operation. (Public Law 81–874 funds provide "in lieu of taxes" money to districts which, because of the presence of tax-exempt land, need additional money for normal school operations.) With the inclusion of Indians in Public Law 81–874 in 1958, that law took care of some of the basic support money heretofore provided by Johnson-O'Malley. Yet the policy of the Bureau continues to place the tax-exempt status of land as the prime determiner of Johnson-O'Malley eligibility rather than educational need.[8]

The Johnson-O'Malley money not used for basic support (operation and maintenance) is used to provide lunches, transportation, administrative costs and—occasionally—special instructional services. Twenty to twenty-five percent of Johnson-O'Malley expenditures are for school lunches for Indian students, as compared to 3.8 percent of Title I, ESEA, expenditures for feeding programs. About 5 percent of the annual expenditure is for administration, and amount generally in the line with expenditures for administration under the ESEA. For example, Indian Education directors in State departments of education which hold Johnson-O'Malley contracts are paid out of the Johnson-O'Malley appropriation. The Bureau reports that in 1969, it budgeted 30 percent of the funds for "special services."

In some States, special services means providing bus service for Indian children. In others it means buying volleyball standards and tumbling pads. Some use it to pay off the mortgage on a bus, increase teacher salaries, or hire attendance officers. In a few cases it is used to hire teacher aides and provide libraries and study halls for Indians. There is no detailed accountability of the use of the money.

Today, 35 years after it was originally adopted, it is still highly questionable if the Johnson-O'Malley Act is fulfilling the intent of Congress. It is true that more Indians are in public schools, but it is doubtful if the needs of these Indian children are being met any more than they were 35 years ago.

Conflict With Public Law 874

One of the main problems with the act has been the conflict between it and Public Law 874. Public Law 874 provides funds for school districts which educate large numbers of children whose parents live or work on tax-exempt property. The law became applicable to Indians in 1958, and since that time, school districts educating Indian children have received compensation for the nearby presence of tax-exempt reservations.

Congress never intended that duplicate payments should be made to the same school for the same purpose by two different Federal agencies. But often, both Public Law 874 and Johnson-O'Malley money do just that. The Federal regulation permits such use of Johnson-O'Malley money when Public Law 874 funds are insufficient for general school operations.[9] Few local administrators are likely to admit they have enough money for normal school operations when they know they can get more, and thus Johnson-O'Malley is continually drained for normal operating budget purposes.

Dr. Alphonse Selinger of the Northwest Regional Educational Laboratory testified before the subcommittee that he had encountered at least one principal who admitted giving passing grades to Indian students only to keep them in school so the district could receive Johnson-O'Malley money. Officials from two different schools told Dr. Selinger there was very little they could do for Indian children, so they kept them in the school for the additional funds they brought into the system.[10]

Generally, though, the regulation limits Johnson-O'Malley funds to districts not qualifying under Public Law 874 and to those Public Law 874 districts in which there are "educational problems under extraordinary and exceptional circumstances." (To qualify under Public Law 874 a district must meet a 3-percent impact requirement and have a minimum daily attendance of 10 federally connected pupils.) [11] In practice, the money is used as a budget-balancing device for those districts receiving Public Law 874 money. Johnson-O'Malley makes up the difference between a district's education expenditures and its revenues after Public Law 874 has been included.[12]

When Public Law 874 became applicable to Indians in 1959, the Johnson-O'Malley budget suffered considerably. The 1959 Johnson-O'Malley appropriation of $7,953,000 was cut to $5 million in 1960. Although Johnson-O'Malley and Public Law 874 serve different functions, Public Law 874 was, and continues to be, interpreted by BIA officials as replacement money for Johnson-O'Malley.

The problem with a school district replacing Johnson-O'Malley funds with Public Law 874 aid is that there is no guarantee the Public Law 874 money will be used to benefit Indian students. Such money goes to the school district itself, and any benefit received by Indian children would only be indirect. Johnson-O'Malley funds, though, are supposed to aid only Indian children.[13]

Congress also has no control over the use of Public Law 874 money. School districts apply it in their operating budget as they see fit. The Federal Government is prohibited from setting standards for its use or requiring, for example, that it be used for special Indian needs.

Excludes Many Indians

A most important problem with Johnson-O'Malley is that, as presently administered, it excludes from participation Indians who have left the reservation. Thousands of such Indians now live in urban areas, where Indian children attend public schools. Their needs are being ignored just as much there as in rural areas. In Minneapolis, Minn., for example, an estimated 10,000 Indians live in the city. The Indian dropout rate in the city's public school system is more than 60 percent.[14] Some 45,000 Indians live in California cities.[15] The Indian dropout rate in public schools throughout the State is about 70 percent.[16] Most urban school districts are not eligible for either Johnson-O'Malley or Public Law 874 because the Indian parents do not live or work on tax-exempt reservations. Thus there Indians are not eligible for the special-needs funds Congress intended for them.

A special case exemplifying Johnson-O'Malley problems can be found in California, where some 80,000 Indians are now without Johnson-O'Malley assistance. The first State to enter into a contract with the BIA under this act, California has since had its Johnson-O'Malley program phased out. It was completely terminated in 1958.

The reasons for the withdrawal of services are many. Many people, including BIA personnel, were under the impression that the termination policy espoused in the midfifties would lead to termination of all Indian aid policies, and California seemed as good a place as any to start cutting programs. There were some who claimed Indians were already receiving an adequate education in California without Federal funds. Others were led to believe—falsely—that Public Law 874 and Public Law 815 would adequately replace Johnson-O'Malley funds. Then in 1953, California's annual Johnson-O'Malley funding of $318,000 was reduced by $50,000. The California appropriation was reduced another $50,000 every year until by 1958, nothing was appropriated.

Noting such evidence as the fact that California high schools with relatively large Indian enrollments have dropout rates three times higher for Indians than for non-Indians, California has sought the return of Johnson-O'Malley money. California educators have argued that many Indians have educational problems requiring special attention and that Public Law 874 has not replaced the need for Johnson-O'Malley funds. But the BIA appears to be following a policy of "once withdrawn, always withdrawn," and thus California Indians continue without the moneys for programs to meet their special needs.[17]

Three other eligible States west of the Mississippi are not under Johnson-O'Malley State contracts. Oregon terminated its contract after being led to believe that Public Law 815 and Public Law 874 would take care of the education of the Indian, and that the BIA intended to terminate all services to Indians shortly anyway. Utah terminated its contract because officials felt the State could get more money under Public Law 874 than Johnson-O'Malley.[18]

In 1969, Wyoming sought a State contract for its Indians, but has been unable to get approval from the Bureau's Washington office. Wyoming school officials claimed their plan called for liaison people between Indian communities and school districts to assist in developing better relationships between the

Footnotes at end of article.

two groups. The Wyoming State education superintendent said the BIA completely rewrote the State's proposed plan, and that the "watered-down" version offered in its place was hardly worthwhile.[19] Bureau officials have indicated their reluctance to give Wyoming Johnson-O'Malley money because they contend that Public Law 874 money is adequately serving the needs of Indians in Wyoming public schools.[20]

Complaints are innumerable regarding the administration of Johnson-O'Malley. For one thing, the levels of aid are extremely uneven. In 1967–68, Alaska received $690 per Johnson-O'Malley pupil while Oklahoma received $37. Arizona received $236 per pupil while neighboring New Mexico received $135. Even within States, the levels vary greatly. In 1966–67, Santa Fe County, N. Mex., received $310 per Johnson-O'Malley pupil, while McKinley County (Gallup), N. Mex., received $41. According to Dr. Anne M. Smith, anthropologist and author of "Indian Education in New Mexico," "It has not proved possible to discover on what policy basis the allocation of funds is made.[21]

One State, Arizona, has been reducing State aid to districts which receive Johnson-O'Malley funds. Several States were doing the same thing with regard to Public Law 847 money, but the courts ruled against the practice. (See, for example, *Shephard* v. *Godwin*, 280 F. Supp. 869, 1968) BIA officials are hopeful the Arizona legislature will resolve the problem before court action is necessary.

Poor Accountability

A major problem with the Johnson-O'Malley program is poor accountability of the funds administered. The legislation requires the State or contracting district to submit an annual report showing expenditures, but far too often these reports are summary and undetailed. Except for a school enrollment data form, there is little uniformity in reporting techniques. One State, for example, will report transportation expenditures under basic support, whereas another State will report such expenditures under special services. In neither case is an explanation of the purpose of the transportation given. The special services sections are almost entirely devoid of meaningful explanations of the services provided.

The reports also provide no evaluation of the previous year's programs. There is apparently never any attitudinal or achievement testing to test the effect, if any, the Johnson-O'Malley programs in particular school districts are having upon Indian students.

Utilizing the Amendment

The Bureau of Indian Affairs has not been particularly creative in using the expanded contracting authority granted by the 1936 amendment to the act for educational projects. This amendment authorized the Bureau to contract Johnson-O'Malley projects with State universities, and institutions. In the past the amendment has been used for such contracts as those with: (1) The Idaho Elks Rehabilitation Center at Boise for the care of Alaska native children in specialized schools; (2) The Utah School for the Deaf and Blind, for its Indian patients; and (3) The Salvation Army Booth Memorial Home at Anchorage for the care of native children and eligible adults.

In recent years, the contracting authority has been used for more innovative programs. Johnson-O'Malley money went to the Rough Rock Demonstration School, for example, since it was a nonprofit corporation. A contract was negotiated with the University of Alaska to develop a model of a cultural and educational center for Alaskan natives. And most recently, a contract has been negotiated with the United Tribes of North Dakota, set up as a nonprofit corporation, for the operation of a training center.[22]

Footnotes at end of article.

Lack of Indian Participation

Johnson-O'Malley is supposed to serve the needs of Indian students, but Indians rarely get an opportunity to decide how the money should be spent. The proposals are usually drawn up by school administrators of white, middle-class backgrounds who direct the money toward general school operations or problem-solving techniques which might work for the middle-class student, but not the Indian. The people who are affected most by the law have little to say about how the money should be used to help their children.

New Approaches by the BIA

In recent years, the Bureau has looked at Johnson-O'Malley a little more imaginatively than in the past, and has funded a few programs which deal more specifically with the needs of Indian students. A home-visitation program in Oklahoma, for example, is working to improve relations between the Indian home and the school. A night study hall for Indians was established in Nevada. Teacher workshops designed to help teachers in dealing with the special needs of Indian students have become more common. A resource center which sends out a circuit rider is now operating in Alaska. In an attempt to get away from the institutional boarding school concept, Johnson-O'Malley money is also being used to set up a home boarding program so that students can live-in with families. Bureau officials also have their sights on Johnson-O'Malley kindergarten programs as well as model school programs for each State with a Johnson-O'Malley contract.

To streamline Johnson-O'Malley procedures, the Bureau tries to confer regularly with State education officials so that the States can share information and hear new Johnson-O'Malley approaches. Two field men, one in Albuquerque and one in Aberdeen, devote a good share of their time to working with State directors and tribal groups in helping them formulate the best possible Johnson-O'Malley budget. The field men are also expected to meet with tribal groups and consider their recommendations for Johnson-O'Malley usage. Bureau officials report that funding for this kind of activity is low, and that such activity often has to be conducted on a limited basis.

THE TRANSFER POLICY

Despite evidence of the failure of the public schools to provide Indian students with an adequate education and despite the absence of a commitment by local, State or National authorities to provide Indians with an equal education, the Bureau of Indian Affairs continues its policy of transferring Indians into public schools. Between 1930 and the present, the number of Indian students attending public schools has increased from one-half to two-thirds of all Indian students enrolled in schools. In 1926, about 37,700 Indian students were in public schools.[23] In 1968 there were about 90,000.* Nine States (California, Idaho, Michigan, Minnesota, Nebraska, Oregon, Texas, Washington, and Wisconsin) had assumed complete responsibility for educating Indians within their States.

1. Analysis

The transfer procedure employed by the Bureau has been discretionary. When the Bureau felt a public school was ready to handle Indian students, the change was effected. The transfer was often a gradual process, involving a phasing out of the educational services at the Indian school.

RECOMMENDATION NO. 48

Johnson-O'Malley Act

The subcommittee recommends that each state applying for a Johnson-O'Malley contract should be required to submit a definite plan for meeting the needs of its Indian students.

Too often the plans submitted by States are vague and meaningless, specific programs are rarely outlined, and there appears to be no concerted attack on the problems of the Indian. State plans should detail the use for which Johnson-O'Malley money will be put, and explain how the JOM contribution fits into the statewide plan for helping meet the special needs of Indian students.

RECOMMENDATION NO. 49

The subcommittee recommends that better accountability and evaluation procedures should be instituted at the State and local levels.

The Bureau of Indian Affairs should require improved evaluation components at the State and local levels. The only accountability measures now are a State's annual report, which vary tremendously in quality and content. Some uniform data collection technique should be established, and States should be required to report the results of their JOM programs rather than just the fact that such programs were in operation.

It is a fair measure of the BIA's lack of concern for the education of Indian children in public schools that the subcommittee could find no evidence of any serious effort by the BIA to assure that JOM funds were used for educational programs for Indian students. The funds are given to local public school districts, which often use the money for general educational purposes rather than the special needs of Indian students. The subcommittee cannot emphasize too strongly that these funds are to be used for the education of Indian children only, and that the BIA should condition their release upon that purpose with proper accountability.

RECOMMENDATION NO. 50

The subcommittee recommends that Indians should be involved in the planning, executing and evaluating of Johnson-O'Malley programs. A State or district's JOM plan should be subject to the approval of the Indian participants.

The Bureau of Indian Affairs, as a prerequisite to JOM contract approval, should require Indian participation in the planning, execution, and evaluating of JOM plans. Indians should be involved at both the local and State levels in formulating the JOM budget request, and in seeing that the plan is carried out. All proposals and plans must be approved by those Indians participating.

RECOMMENDATION NO. 51

The subcommittee recommends that technical assistants should be hired by the BIA to work with local agencies, State departments of education and Indian participant groups in helping to identify special Indian needs and in developing programs which would meet those needs.

The assistants should be Indians who can serve as special consultants to the parties involved in order that the best possible JOM contract can be negotiated. They should not be desk-bound nor assigned to such an expansive territory that they are unable to get out into all parts of the field.

RECOMMENDATION NO. 52

The subcommittee recommends that Johnson-O'Malley funding should not be conditioned by presence of tax-exempt land.

The criteria for approval of a Johnson-O'Malley contract should be: (a) an exhibited need for programs aimed at meeting the special needs of Indian students, and (b) a proposal which details how those needs will be met. The presence of nontaxable Indian land should not have any bearing in determining the eligibility of children for JOM money. When the law originally was passed, congressional intent was for the act to serve primarily those Indians who were "to a considerable extent mixed with the general population." That intent has not been fulfilled.

RECOMMENDATION NO. 53

The subcommittee recommends that the expanded contracting authority authorized

by the Act's 1936 amendment should be utilized for the development of curriculum relevant to Indian culture and the training of teachers of Indian students.

Only in recent years has the Bureau shown some creativity in utilization of the expanded contracting authority. This amendment offers far greater potential for innovative educational projects than has been demonstrated. It could be a very good vehicle, for example, to improve curriculums for Indian students, and to train teachers who will be teaching Indian students. Universities and nonprofit corporations might be contracted to develop special curriculums which recognize Indian culture, and to develop and institute teacher-training programs which include a recognition that teachers of Indian students have special responsibilities.

RECOMMENDATION NO. 54

The subcommittee recommends that tribes and Indian communities should be added to the list of agencies with which the Bureau of Indian Affairs can negotiate Johnson-O'Malley contracts and that full use be made of this new contracting authority to permit tribes to develop their own education projects and programs.

The subcommittee has found that very few Indian tribes and communities have developed educational plans which identify problems and establish goals. However, the subcommittee was impressed by the fact that Indian communities have a better understanding of their education needs and problems than the schools that serve them. The schools rarely understand the Indian community and cultural differences, and the Indian community rarely has any influence on the school. Johnson-O'Malley contracts with Indian tribes and communities could do much to break down these barriers, and place the initiative and responsibility for change and improvement in the hands of those who best understand the problems.

Johnson-O'Malley contracts with Indian tribes and communities could serve a variety of important purposes. For example, tribal surveys and factfinding efforts to determine educational needs; the development of education plans and goals; developing effective liaison between Indian parents and public schools; developing Indian education leadership; planning, funding, implementation and evaluation of special education programs for Indian children in cooperation with public school districts; education programs and projects run directly by the tribe itself (for example, summer school programs).

The basic responsibility for development of this program should be vested in the National Indian Board of Education. It will require close coordination with the development of strong Indian school boards on those reservations with Federal schools.

An important and promising precedent for this tribal-contracting approach has recently been initiated by the Indian Health Service. The Indian community health representative program is worthy of careful study by the National Indian Board of Education to determine its applicability to the field of Indian education.

ADMINISTRATION OF INDIAN EDUCATION

The most difficult question confronting the subcommittee was what organizational changes are necessary if Indian schools are to become "models of excellence" in terms of both program and Indian control. The subcommittee has found that the Bureau of Indian Affairs suffers from a severe bureaucratic malaise, which militates against change and innovation as well as actively discourages Indian control. The present structure of the Federal school program, as an integral part of the Bureau of Indian Affairs, places primary control over educational decisionmaking in the hands of area directors and noneducators. It destroys educational leadership and rewards mediocrity. It is therefore not possible to conceive of change and improvement in the present structure. If an exemplary program is to be developed, it will require a radical and comprehensive reorganization.

The subcommittee recommends (a) That the position of the Commissioner of the Bureau of Indian Affairs be upgraded by giving him the concurrent title of Assistant Secretary for Indian Affairs, (b) That the Bureau of Indian Affairs be removed from the authority of the Assistant Secretary for Public Land Management and be placed under the authority of this new Assistant Secretary for Indian Affairs.

At present, the BIA is one of four bureaus under the Assistant Secretary for Public Land Management. The four are: the BIA; the Bureau of Land Management; the Bureau of Outdoor Recreation; and the Office of Territories. This Assistant Secretary is thus principally concerned with the conservation, management, and development of some 453 million acres of the nation's public lands, and the administration of mining and mineral leasing on federally owned lands. He is also the focal point of Federal activities related to outdoor recreation.

It is perfectly plain that the present administrative arrangement short-changes the BIA, which must compete with other bureaus (whose interests are diametrically opposed) for the Assistant Secretary's attention.

The present arrangement has resulted in inadequate budget levels, neglect of educational programs and problems, and lack of forceful leadership for improvement. The change in placement and status of the BIA should permit higher budget levels, more effective leadership, and more rapid innovation.

There exist ample precedents for this dual title. For example, in the Department of Housing and Urban Development, the Assistant Secretary for Mortgage Credit is also the Commissioner for Federal Housing. Furthermore, the Commissioner of the BIA, Hon. Louis Bruce, endorsed this step in a meeting with the subcommittee on Oct. 2, 1969.

The subcommittee recommends that there be established a National Indian Board of Indian Education with authority to set standards and criteria for the Federal schools.

Structurally, this recommendation is patterned after the organization of education in the States, with the National Indian Board of Indian Education as the centerpoint of citizen participation much as is the State Board. It would, as do the counterpart boards in the States, have oversight over the operations of the schools and have authority to set standards and criteria and determine policy within the framework of the law. The National Board would receive funds for its operations.

The National Board would be composed of some fifteen members, representative of the Indian tribes and communities, serving staggered terms of three years. They would be appointed by the President from lists of nominees furnished by the Indian tribes and communities and would be eligible to serve no more than two consecutive terms. At least annually, but more often if necessary, the Board would submit to the Congress and to the President reports and recommendations for administrative action or legislation, thus giving the Indians themselves leverage in effecting change. The National Board could elect to ex officio membership no more than five non-Indian individuals expert in areas of concern to the Board.

The National Board would be authorized to utilize the expertise of the U.S. Office of Education, the Office of Economic Opportunity, and other Federal agencies.

While this recommendation envisions the appointment of the National Board, the subcommittee believes that the matter of election of the members of the National Board merits careful consideration. Therefore, the National Board should be empowered to establish the mechanism for electing the Board, and an equitable means by which such members might be elected. It should submit a plan for election of Board members, to the Congress, and to the President.

If this plan is not rejected by either House of Congress, following the procedure of congressional action as prescribed by law in the case of executive reorganization plans, then the election procedure would be put into effect.

The National Board would also be empowered to participate in the negotiation of contracts with individual tribes and communities to run local school systems for Indians.

The Board would present to the Department of Interior its suggestions for nominees for Assistant Commissioner for Education as well as presenting its views on any candidate that the Department may be considering for the post. Since the Assistant Commissioner for Education would be serving for one or more terms of 4-year duration, the National Board would have the foregoing review responsibilities also with respect to reappointment.

Finally, the National Board would serve in an advisory capacity with respect to Federal education programs involving Indians in the public schools. For example, the Board could review school district use of Johnson-O'Malley funds to assure they were being used for the needs of Indian students.

The subcommittee recommends that Indian boards of education be established at the local level for Federal Indian school districts.

The powers of such local boards would be similar to those powers traditionally held by local school boards. The boards, for example, would have supervision over curriculum and the hiring of faculty in the schools in their districts. Generally, they would have jurisdiction in Indian school districts containing elementary and secondary schools situated in a proper geographic, tribal, or community area. These boards would be either elected by the Indian district in which they would serve, or be appointed by the tribal or community authority there. It is assumed that the method of selection would vary from area to area. Approximately 80 percent of local boards throughout the country are elected.

In keeping with the practice throughout the Nation wherein the overwhelming majority of local school boards are elected, the subcommittee expresses the hope that local Indian boards will likewise be subject to election, keeping in mind that in a minority of areas, as elsewhere in the country, local preference may dictate that the board be appointed.

The local boards would have direct lines of communication with the National Indian Board of Indian Education, and would be empowered to convey to it recommendation for overall policy.

The subcommittee recommends that the Assistant Commissioner for Education of the Bureau of Indian Affairs be given the responsibilities of a superintendent of Federal schools, having direct line control over the operation of the schools, including budgets, personnel systems, and supporting services. It also recommends that the term of office of the Assistant Commissioner be limited to 4 years, subject to reappointment.

This would place the Federal school system outside of area office and reservation agency control, and leave the Federal school

Footnotes at end of article.

system as an autonomous unit within the BIA. Furthermore, it would permit the Assistant Commissioner much greater authority to negotiate with State and local school boards and agencies for augmented Indian education programs in the public schools.

The subcommittee urges that the Assistant Commissioner for Education retain decisionmaking authority over policy matters, and delegate only ministerial functions to his subordinates.

FOOTNOTES

* Division of Public School Relations, Bureau of Indian Affairs.

[1] 48 Stat. 596.

[2] H. Rept. 864, Mar. 2, 1934, and S. Rept. 511, Mar. 20, 1934.

[3] Ibid.

[4] Felix Cohen, "Handbook of Federal Indian Law," 1940 ed., p. 241.

[5] BIA Branch of Public School Relations.

[6] H. Rept. 864, Mar. 2, 1934.

[7] Indian Affairs Manual, 62 IAM 3.5.

[8] Indian Affairs Manual, 62 IAM 3.25.

[9] 62 IAM 3.27.

[10] Hearings before the Senate Subcommittee on Indian Education, pt. VI.

[11] Impacted areas legislation report and recommendation, prepared for Senate Subcommittee on Education by the U.S. Department of Health, Education, and Welfare, August 1965, pp. 537–538.

[12] Interview with Charles Zellers, BIA Assistant Commissioner for Education, May 22, 1969.

[13] 48 Stat. 596 (Johnson-O'Malley Act).

[14] Minnesota State plan for the education of Indian children, Minnesota Department of Education, 1969.

[15] "The Education of American Indian: An Evaluation of the Literature," Brewton Berry, p. 25.

[16] Ibid., p. 29.

[17] A Johnson-O'Malley educational program for California Indians, State Advisory Commission on Indian Affairs, June 1967.

[18] Ibid.

[19] Interview with Wyoming State Superintendent of Education, June 1969.

[20] Op. cit., interview with Zellers.

[21] Anne Smith, Indian Education in New Mexico, University of New Mexico, 1968.

[22] Interview with J. Leonard Norwood, BIA Acting Commissioner, June 1969.

[23] "The Problem of Indian Administration," Lewis Meriam, p. 416.

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

Mr. WILLIAMS of New Jersey. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2917.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States, which were to strike out all after the enacting clause, and insert:

That this Act may be cited as the "Federal Coal Mine Health and Safety Act of 1969".

DECLARATION OF PURPOSE

SEC. 2. Congress declares that—

(a) the first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource—the miner;

(b) The occupationally caused death, illness, or injury of a miner causes grief and suffering, and is a serious impediment to the future growth of this industry;

(c) there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal mines in order to prevent death and serious physical harm, and in order to control the causes of occupational diseases originating in such mines;

(d) the existence of unsafe and unhealthful conditions and practices in such mines cannot be tolerated;

(e) the operators of such mines with the assistance of the miners have the primary responsibility to prevent the existence of such conditions and practices in such mines;

(f) the disruption of production and the loss of income to operators and miners as a result of a coal mine accident or occupationally caused disease unduly impedes and burdens commerce; and

(g) it is the purpose of this Act to provide for the establishment of mandatory health and safety standards and to require that the operators and the miners comply with such standards in carrying out their responsibilities.

DEFINITIONS

SEC. 3. For the purpose of this Act, the term—

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

(b) "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a place in a State and any place outside thereof, or within the District of Columbia or a possession of the United States, or between points in the same State but through a point outside thereof;

(c) "State" includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands;

(d) "operator" means any owner, lessee, or other person who operates, controls, or supervises a coal mine;

(e) "agent" means any person charged with responsibility for the operation of all or part of a coal mine or the supervision of the employees in a coal mine;

(f) "person" means any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization;

(g) "miner" means any individual working in a coal mine;

(h) "coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities;

(i) "work of preparing the coal" means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal, lignite, or anthracite, and such other work of preparing such coal as is usually done by the operator of the coal mine;

(j) "imminent danger" means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated;

(k) "accident" includes a mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of, any person;

(l) "inspection" means the period beginning when an authorized representative of the Secretary first enters a coal mine and ending when he leaves the coal mine during or after the coal-producing shift in which he entered; and

(m) "Panel" means the Interim Compliance Panel established by this Act.

MINES SUBJECT TO ACT

SEC. 4. Each coal mine, the products of which enter commerce, or the operations or products of which affect commerce, shall be subject to this Act, and each operator of such mine and every person working in such mine shall comply with the provisions of this Act and the applicable regulations of the Secretary promulgated under this Act.

INTERIM COMPLIANCE PANEL

SEC. 5. (a) There is hereby established the Interim Compliance Panel, which shall be composed of five members as follows:

(1) Assistant Secretary of Labor for Labor Standards, Department of Labor, or his delegate;

(2) Director of the Bureau of Standards, Department of Commerce, or his delegate;

(3) Administrator of Consumer Protection and Environmental Health Service, Department of Health, Education, and Welfare, or his delegate;

(4) Director of the Bureau of Mines, Department of the Interior, or his delegate; and

(5) Director of the National Science Foundation, or his delegate.

(b) Members of the Panel shall serve without compensation in addition to that received in their regular employment, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of duties vested in the Panel.

(c) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare, Secretary of Commerce, the Secretary of Labor, and the Secretary of the Interior shall, upon request of the Panel, provide the Panel such personnel and other assistance as the Panel determines necessary to enable it to carry out its functions under this Act.

(d) Three members of the Panel shall constitute a quorum for doing business. All decisions of the Panel shall be by majority vote. The Chairman of the Panel shall be selected by the members from among the membership thereof.

(e) The Panel is authorized to appoint as many hearing examiners as are necessary for proceedings required to be conducted in accordance with the provisions of this Act. The provisions applicable to hearing examiners appointed under section 3105 of title 5 of the United States Code shall be applicable to hearing examiners appointed pursuant to this subsection.

(f) (1) It shall be the function of the Panel to carry out the duties imposed on it pursuant to sections 202 and 305 of this Act and to provide an opportunity for a hearing, after notice, at the request of an operator of the affected mine or the representative of the miners of such mine. Any operator or representative of miners aggrieved by a final decision of the Panel under this subsection may file a petition for review of such decision under section 106 of this Act. The provisions of this section shall terminate upon completion of the Panel's functions as set forth under sections 202 and 305 of this Act. Any hearing held pursuant to this subsection shall be of record and the Panel shall make findings of fact and shall issue a written decision incorporating its findings therein in accordance with section 554 of title 5 of the United States Code.

(2) The Panel shall make an annual report, in writing, to the Secretary for transmittal by him to the Congress concerning the achievement of its purposes, and any other relevant information (including any recommendations) which it deems appropriate.

TITLE I—GENERAL

HEALTH AND SAFETY STANDARDS; REVIEW

SEC. 101. (a) The Secretary shall, in accordance with the procedures set forth in this section, develop, promulgate, and revise, as may be appropriate, mandatory safety standards for the protection of life and the prevention of injuries in a coal mine, and shall, in accordance with the procedures set

forth in this section, promulgate the mandatory health standards transmitted to him by the Secretary of Health, Education, and Welfare. No mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners below that afforded by the standards contained in title II and III of this Act.

(b) In the development of such mandatory safety standards, the Secretary shall consult with interested Federal agencies, representatives of States, appropriate representatives of the coal mine operators and miners, other interested persons and organizations, and such advisory committees as he may appoint. In addition to the attainment of the highest degree of safety protection for the miner, other considerations shall be the latest available scientific data in the field, the technical feasibility of the standards, and experience gained under this and other safety statutes.

(c) The Secretary of Health, Education, and Welfare shall, in accordance with the procedures set forth in this section, develop and revise, as may be appropriate, mandatory health standards for the protection of life and the prevention of occupational diseases of coal miners. Such development and revision shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In the development of mandatory health standards, the Secretary of Health, Education, and Welfare may consult with appropriate representatives of the operators and miners, other interested persons, the States, advisory committees, and, where appropriate, foreign countries. Mandatory health standards which the Secretary of Health, Education, and Welfare develops or revises shall be transmitted to the Secretary, and shall thereupon be published by the Secretary as proposed mandatory health standards.

(d) The Secretary shall publish proposed mandatory health and safety standards in the Federal Register and shall afford interested persons a period of not less than thirty days after publication to submit written data or comments. In the case of mandatory safety standards, except as provided in subsection (e) of this section, the Secretary may, upon the expiration of such period and after consideration of all relevant matter presented, promulgate such standards with such modifications as he may deem appropriate. In the case of mandatory health standards, except as provided in subsection (e) of this section, the Secretary of Health, Education, and Welfare may, upon the expiration of such period and after consideration of all relevant matter presented to the Secretary and transmitted to the Secretary of Health, Education, and Welfare, direct the Secretary to promulgate such standards with such modifications as the Secretary of Health, Education, and Welfare may deem appropriate and the Secretary shall thereupon promulgate such standards.

(e) On or before the last day of any period fixed for the submission of written data or comments under subsection (d) of this section, any interested person may file with the Secretary written objections to a proposed standard, stating the grounds therefore and requesting a public hearing on such objections. As soon as practicable after the period for filing such objections has expired, the Secretary shall publish in the Federal Register a notice specifying the proposed standards to which objections have been filed and a hearing requested.

(f) Promptly after any such notice is published in the Federal Register by the Secretary under subsection (e) of this section, the Secretary, in the case of mandatory safety standards, or the Secretary of Health, Education, and Welfare, in the case of mandatory health standards, shall issue notice of, and hold a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearings, the Secretary who held the hearing shall make findings of fact which shall be public. In the case of mandatory safety standards, the Secretary may promulgate such standards with such modifications as he deems appropriate. In the case of mandatory health standards, the Secretary of Health, Education, and Welfare may direct the Secretary to promulgate the mandatory health standards with such modifications as the Secretary of Health, Education, and Welfare deems appropriate and the Secretary shall thereupon promulgate the mandatory health standards. In the event the Secretary or the Secretary of Health, Education, and Welfare determines that a proposed mandatory standard should not be promulgated or should be modified, he shall within a reasonable time publish his reasons for his determination.

(g) Any mandatory standard promulgated under this section shall be effective upon publication in the Federal Register unless the Secretary specifies a later date.

(h) Proposed mandatory safety standards for surface coal mines shall be developed and published by the Secretary not later than twelve months after the enactment of this Act.

ADVISORY COMMITTEES

SEC. 102. (a) The Secretary may appoint one or more advisory committees to advise him in carrying out the provisions of this Act. The Secretary shall designate the chairman of each such committee.

(b) Advisory committee members, other than employees of Federal, State, or local governments, shall be, for each day (including travel time) during which they are performing committee business, entitled to receive compensation at rates fixed by the Secretary but not in excess of the maximum rate of pay for grade GS–18 as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5 of the United States Code, be fully reimbursed for travel, subsistence, and related expenses.

INSPECTIONS AND INVESTIGATIONS

SEC. 103. (a) Authorized representatives of the Secretary shall make frequent inspections and investigations in coal mines each year for the purpose of (1) obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of accidents, and the causes of diseases and physical impairments originating in such mines, (2) gathering information with respect to health and safety standards, (3) determining whether an imminent danger exists in a coal mine, and (4) determining whether or not there is compliance with the mandatory health and safety standards or with any notice or order issued under this title. In carrying out the requirements of clauses (3) and (4) of this subsection, no advance notice of an inspection shall be provided the operator of a mine. In carrying out the requirements of clauses (3) and (4) of this subsection in each underground coal mine, such representatives shall make inspections of the entire mine at least four times a year.

(b) (1) For the purpose of making any inspection or investigation under this Act, the Secretary or any authorized representative of the Secretary shall have a right of entry to, upon, or through any coal mine.

(2) The provisions of this Act relating to inspections, investigations, and records shall be available to the Secretary of Health, Education, and Welfare to enable him to carry out his functions and responsibilities under this Act.

(c) For the purpose of carrying out his responsibilities under this Act, including the enforcement thereof, the Secretary may by agreement utilize with or without reimbursement the services, personnel, and facilities of any Federal agency.

(d) For the purpose of making any investigation of any accident or other occurrence relating to health or safety in a coal mine, the Secretary may, after notice, hold public hearings, and may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) In the event of any accident occurring in a coal mine, the operator shall notify the Secretary thereof and shall take appropriate measures to prevent, to the greatest extent possible, the destruction of any evidence which would assist in investigating the cause or causes thereof. In the event of any accident occurring in a coal mine where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activity in such mine.

(f) In the event of any accident occurring in a coal mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal mine, and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representative, in consultation with appropriate State representatives, when feasible, of any plan to recover any person in the mine or to recover the mine or to return affected areas of the mine to normal.

(g) If a miner or an authorized representative, if any, of the miners believes that a violation of a mandatory health or safety standard exists, or an imminent danger exists, in a mine, he may notify the Secretary or his authorized representative of such violation or danger. Upon receipt of such notification the Secretary or his authorized representative may make a special investigation to determine if such violation or danger exists.

(h) At the commencement of any inspection of a coal mine by an authorized representative of the Secretary, the authorized representative, if any, of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the Secretary on such inspection.

FINDINGS, NOTICES, AND ORDERS

SEC. 104. (a) If, upon any inspection of a coal mine, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the area throughout which such danger exists, such representative shall determine an order requiring the operator of the mine or his agent to cause immediately all persons, except those referred to in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such imminent danger no longer exists.

(b) If, upon any inspection of a coal mine, an authorized representative of the Secretary

finds that there has been a violation of any mandatory health or safety standard but the violation has not created an imminent danger, he shall issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or subsequently extended, an authorized representative of the Secretary finds that the violation has not been totally abated, and if he also finds that the period of time should not be further extended, he shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to cause immediately all persons, except those referred to in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that the violation has been abated.

(c) (1) If, upon the inspection of a coal mine, an authorized representative of the Secretary finds that any mandatory health or safety standard is being violated, and if he also finds that, while the conditions created by such violation do not cause imminent danger, such violation is of such nature as could significantly and substantially contribute to the cause or effect of a mine accident, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health and safety standards, he shall include such finding in the notice given to the operator under subsection (b) of this section. Within ninety days of the time such notice was given to such operator, the Secretary shall cause such mine to be reinspected to determine if any similar such violation exists in such mine. Such reinspection shall be in addition to any special inspection required under subsection (b) of this section, or section 105. If, during any special inspection relating to such violation or during such reinspection, a representative of the Secretary finds such similar violation does exist, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with the provisions of the mandatory health or safety standards, he shall forthwith issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (d) of this section, to be withdrawn from, and to be debarred from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) If a withdrawal order with respect to any area in a mine has been issued pursuant to paragraph (1) of this subsection, thereafter a withdrawal order shall promptly be issued by a duly authorized representative of the Secretary who finds upon any following inspection the existence in such mine of violations similar to those that resulted in the issuance of the withdrawal order under paragraph (1) of this subsection until such time as an inspection of such mine discloses no similar violations. Following an inspection of such mine which discloses no similar violation, the provisions of paragraph (1) of this subsection shall again be applicable to that mine.

(d) The following persons shall not be required to be withdrawn from, or prohibited from entering, any area of the coal mine subject to an order issued under this section:

(1) any person whose presence in such area is necessary, in the judgment of the operator, to eliminate the condition described in the order;

(2) any public official whose official duties require him to enter such area;

(3) any representative of the employees of such mine who is, in the judgment of the operator, qualified to make coal mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the conditions described in the order; and

(4) any consultant to any of the foregoing.

(e) Notices and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any mandatory health or safety standard and, where appropriate, a description of the area of the coal mine from which persons must be withdrawn and prohibited from entering.

(f) Each notice or order issued under this section shall be given promptly to the operator of the coal mine or his agent by an authorized representative of the Secretary issuing such notice or order, and all such notices and orders shall be in writing and shall be signed by such representative.

(g) A notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the Secretary.

(h) (1) If, upon any inspection of a coal mine, an authorized representative of the Secretary finds (A) that conditions exist therein which have not yet resulted in an imminent danger, (B) that such conditions cannot be effectively abated through the use of existing technology, and (C) that reasonable assurance cannot be provided that the continuance of mining operations under such conditions will not result in an imminent danger, he shall determine the area throughout which such conditions exist, and thereupon issue a notice to the operator of the mine or his agent of such conditions, and shall file a copy thereof, incorporating his findings therein, with the Secretary and with the representative of the miners of such mine, if any. Upon receipt of such copy, the Secretary shall cause such further investigation to be made as he deems appropriate, including an opportunity for the operator or a representative of the miners, if any, to present information relating to such notice.

(2) Upon the conclusion of such investigation and an opportunity for a hearing upon request by any interested party, the Secretary shall make findings of fact, and shall require that either the notice issued under this subsection be canceled, or that an order be issued by such authorized representative of the Secretary requiring the operator to cause all persons in the area affected, except those persons referred to in subsection (d) of this section, to be withdrawn from, and be prohibited from entering, such area until the Secretary, after a hearing affording all interested persons an opportunity to present their views, determines that such conditions have been abated.

(i) If, based upon samples taken and analyzed and recorded pursuant to section 202(a) of this Act, the applicable health standard established under section 202(b) of this Act is exceeded and thereby violated, the Secretary or his authorized representative shall find a reasonable period of time within which to take corrective action to reduce the average concentration of respirable dust to the miners in the area of the mine in which such standard was exceeded, and shall issue a notice fixing a reasonable time for the abatement of the violation. During such time, the operator of such mine shall cause samples described in section 202(a) of this Act to be taken of the affected area during each production shift. If, upon the expiration of the period of time as originally fixed or subsequently extended, the Secretary or his authorized representative finds, based upon such samples or upon an inspection, that the violation has not been totally abated, he shall issue a new notice of violation if he finds that such period of time should be further extended. If he finds that such period of time should not be further extended, he shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to cause immediately all persons, except those referred to in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until the Secretary or his authorized representative determines through such test procedures conducted in such area as he may require, including production and sampling, that the violation has been abated.

REVIEW BY THE SECRETARY

SEC. 105. (a) (1) An operator notified of an order issued pursuant to section 104 of this title, or any representative of miners in any mine affected by such order or any modification or termination of such order pursuant to section 104(g), may apply to the Secretary for review of the order within thirty days of receipt thereof or within thirty days of its modification or termination. The operator shall send a copy of such application to the representative, if any, of persons working in the affected mine. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a hearing, at the request of the applicant or a representative of persons working in such mine, to enable the applicant and the representatives of persons working in such mine to present information relating to the issuance and continuance of such order.

(2) The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code.

(b) Upon receiving the report of such investigation, the Secretary shall make findings of fact, and (1), in the case of an order issued under subsection (a) of section 104 of this title, he shall find whether or not the imminent danger as set out in the order existed at the time of issuance of the order and whether or not the imminent danger existed at the time of the investigation, and (2), in the case of an order issued under subsection (b), (c), or (i) of section 104 of this title, he shall find whether or not there was a violation of any mandatory health or safety standard as described in the order and whether or not such violation had been abated at the time of such investigation, and upon making such findings he shall issue a written decision vacating, affirming, modifying, or terminating the order complained of and incorporate his findings therein.

(c) In view of the urgent need for prompt decision of matters submitted to the Secretary under this section, all actions which the Secretary takes under this section shall be taken as promptly as practicable, consistent with the adequate consideration of the issues involved.

(d) Pending completion of the investigation required by this section, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any order issued under section 104 of this title, together with a detailed statement giving reasons for granting such relief. The Secretary may issue a decision granting such relief, under such conditions as he may prescribe, only after a hearing in which all parties are given an opportunity to be heard.

JUDICIAL REVIEW

SEC. 106. (a) Any decision issued by the Panel under section 5 or the Secretary under section 105 of this Act shall be subject to judicial review by the United States court of appeals for the circuit in which the effected mine is located, upon the filing in such court within thirty days from the date of such decision of a petition by the oper-

ator or a representative of the miners aggrieved by the decision praying that the decision be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the other party and to the Secretary or the Panel, as appropriate, and thereupon the Secretary or the Panel, as appropriate, shall certify and file in such court the record upon which the decision complained of was issued, as provided in section 2112, title 28, United States Code.

(b) The Court shall hear such petition on the record made before the Secretary of the Panel, as appropriate. The findings of the Secretary or the Panel, as appropriate, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any such decisions or may remand the proceedings to the Secretary of the Panel, as appropriate, for such further action as it may direct.

(c) Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the court may, after due notice to, and hearing of, the parties to the appeal from a decision of the Secretary or the Panel, as appropriate, except a decision from an order issued under section 104(a) of this title, issue all necessary and appropriate process and grant such other relief as may be appropriate pending final determination of the appeal.

(d) The judgment of the court shall be subject only to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the Secretary's or Panel's decision.

POSTING OF NOTICES AND ORDERS

SEC. 107. (a) At each coal mine there shall be maintained an office with a conspicuous sign designating it as the office of the mine and a bulletin board at such office or at some conspicuous place near an entrance of the mine, in such manner that notices required by law or regulation to be posted on the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any notice or order required by this title to be given to an operator shall be delivered to the office of the affected mine, and a copy shall be immediately posted on the bulletin board of such mine by the operator or his agent.

(b) The Secretary shall cause a copy of any notice or order required by this title to be given to an operator to be mailed immediately to a duly designated representative of persons working in the affected mine, and to the public official or agency of the State charged with administering State laws, if any relating to health or safety in such mine. Such notice or order shall be available for public inspection.

(c) In order to insure prompt compliance with any notice or order issued under section 104 of this title, the authorized representative of the Secretary may deliver such notice or order to an agent of the operator and such agent shall immediately take appropriate measures to insure compliance with such notice or order.

(d) Each operator of a coal mine shall file with the Secretary the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the Secretary. Each operator of a coal mine shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine and such official shall receive a copy of any notice, order, or decision issued under this Act affecting such mine. In any case, where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the Secretary the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a health or safety official under this subsection shall not be construed as making such official subject to any penalty under this Act.

INJUNCTIONS

SEC. 108. The Secretary may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order, in the district court of the United States for the district in which a coal mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent (a) violates or fails or refuses to comply with any order issued under section 104 of this title or decision issued under this title, or (b) interferes with, hinders, or relays the Secretary or his authorized representative in carrying out the provisions of this Act, or (c) refuses to admit such representative to the mine, or (d) refuses to permit the inspection of the mine, or an accident, injury, or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the Secretary, or (f) refuses to permit access to, and copying of, records. Each court shall have jurisdiction to provide such relief as may be appropriate: *Provided,* That no temporary restraining order shall be issued without notice unless the petition therefor alleges that substantial and irreparable injury to the miners in such mine will be unavoidable and such temporary restraining order shall be effective for no longer than seven days and will become void at the expiration of such period: *Provided further,* That any order issued under this section to enforce an order issued under section 104, unless set aside or modified prior thereto by the district court granting such injunctive relief, shall not be in effect after the completion or final termination of all proceedings for review of such order as provided in this title if such is determined on such review that such order was invalid.

PENALTIES

SEC. 109. (a) The operator of a coal mine in which a violation occurs of a mandatory health or safety standard or who violates any provision of this Act shall by order be assessed a civil penalty by the Secretary which penalty shall not be more than $10,000 for each such violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense. In determining the amount of the penalty, the Secretary shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation. No penalty shall be assessed under this subsection pending the final termination, expiration, or completion of all proceedings, administrative or judicial, for review of an order or decision under this title.

(b) Upon written request made by an operator within thirty days after receipt of an order assessing a penalty under this section, the Secretary shall afford such operator an opportunity for a hearing and, in accordance with the request, determine by decision whether or not a violation did occur or whether the amount of the penalty is warranted or should be compromised.

(c) Upon any failure of an operator to pay a penalty assessed under this section, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty, and such court shall have jurisdiction to hear and decide any such action.

(d) Whoever knowingly violates or fails or refuses to comply with any order issued under section 104(a) of this title or any final decision on any other order issued under this title shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both, except that if the conviction is for a violation committed after the first conviction of such person, punishment shall be by a fine of not more than $20,000 or by imprisonment for not more than one year, or by both.

(e) Whenever a corporate operator violates a mandatory health or safety standard of this Act, or violates any provision of this Act, any director, officer, or agent of such corporation who authorized, ordered, or carried out such violation shall be subject to the provisions of subsection (a). Whenever a corporate operator knowingly violates or fails or refuses to comply with any order issued under section 104(a) of this title or any final decision on any other order issued under this title, any director, officer, or agent of such corporation who authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the provisions of subsection (d).

(f) Whoever knowingly makes any false statements or representations in any application, records, reports, plans, or other documents filed or required to be maintained in accordance with this Act or any mandatory health or safety standard of this Act or any order issued under this Act shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or both.

ENTITLEMENT OF MINERS

SEC. 110. (a) If a mine or portion of a mine is closed by an order issued under section 104, all miners working during the shift when such order was issued who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift. Whenever an operator violates or fails or refuses to comply with an order issued under section 104, all miners employed at the affected mine who would be withdrawn or prevented from entering such mine or portion thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated.

(b) (1) Compensation shall be paid under this subsection in respect of total disability of an individual from complicated pneumoconiosis which arose out of or in the course of his employment in a coal mine, and in respect of the death of any individual who, at the time of his death, was suffering from complicated pneumoconiosis which so arose. For purposes of this subsection, if an individual who is suffering or suffered from complicated pneumoconiosis was

employed for ten years or more in a coal mine there shall be a rebuttable presumption that his complicated pneumoconiosis arose out of or in the course of such employment, but this sentence shall not be deemed to affect the applicability of the first sentence of this paragraph in the case of claims under this subsection on account of death or total disability of an individual when such individual has not worked for as much as ten years in a coal mine. For purposes of this subsection, any individual who suffers from complicated pneumoconiosis shall be deemed to be totally disabled.

(2)(A) Subject to the provisions of subparagraph (B), compensation shall be paid under this subsection as follows:

(i) In the case of total disability, the disabled individual shall be paid compensation during the disability at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS–2, who is totally disabled is entitled at the time of payment under the provisions of Federal law relating to Federal employees' compensation (section 8112, title 5, United States Code).

(ii) In the case of death, compensation shall be paid to the widow at the rate the deceased individual would receive such compensation if he were totally disabled.

(iii) In the case of an individual entitled to compensation under clause (i) or (ii) of this subparagraph who has one or more dependents, his compensation shall be increased at the rate of 50 per centum of the compensation to which he is so entitled under clause (i) or (ii) of this subparagraph if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three dependents.

(B) Notwithstanding subparagraph (A), compensation under this paragraph shall be reduced by an amount equal to any payment which the payee receives under the workmen's compensation, unemployment compensation, or disability insurance laws of his State, and the amount by which such payment would be reduced on account of excess earnings under section 203 (b) through (l) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act.

(3)(A) The Secretary of Labor shall enter into agreements with the Governors of the States under which the State will receive and adjudicate claims under this subsection from any resident of the State and under which compensation will be paid as provided by this subsection from grants made to pay compensation under this subsection. Such Governor shall implement the agreement in such manner as he shall determine will best effectuate the provisions of this subsection. The Governor shall make such reports to the Secretary of Labor, subject to such verification, as may be necessary to assure that Federal grants under this subsection are used for their intended purpose.

(B) The Secretary of Labor shall make grants under this subsection to States with which he has an agreement under subparagraph (A) in the amount necessary to enable them to pay the compensation required by this subsection.

(4) If the Secretary of Labor is unable to enter into an agreement under paragraph (3), or if the Governor of the State requests him to do so, he shall make payments of compensation directly to residents of such State as required by this subsection. The administrative provisions for carrying out the Federal employees' compensation programs which are contained in sections 8121, 8122 (b), and 8123 through 8135, title 5, United States Code, shall apply with respect to claims under this paragraph.

(5) No claim under this subsection shall be considered unless it is filed (1) within one year after the date an employed miner received the results of his first chest roentgenogram provided under section 203 of this Act, or, if he did not receive such a chest roentgenogram, the date he was first afforded an opportunity to do so under such section, or (2) in the case of any other claimant, within three years from the date of enactment of this Act, or, in the case of a claimant who is a widow, within one year after the death of her husband or within three years from the date of enactment of this Act, whichever is the later. Payment of compensation under this subsection shall commence with the date the claim is filed.

(6) No compensation shall be paid under this subsection to the residents of any State which, after the date of enactment of this Act, reduces the benefits payable to persons eligible to receive compensation under this subsection, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(7) For purposes of this subsection—

(A) The term "coal mine" includes only underground coal mines.

(B) The term "complicated pneumoconiosis" means an advanced stage of a chronic coal dust disease of the lung which (i) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (ii) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, (iii) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (i) or (ii) if diagnosis had been made in a manner described in clause (i) or (ii).

(C) The term "dependent" means a wife or child who is a dependent as that term is defined for purposes of section 8110, title 5, United States Code.

(D) The term "widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion, who has not remarried.

REPORTS

SEC. 111. (a) All accidents, including unintentional roof falls (except in any abandoned panels or in areas which are inaccessible or unsafe for inspections), shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such accidents, roof falls, and investigations shall be kept and the information shall be made available to the Secretary or his authorized representative and the appropriate State agency. Such records shall be open for inspection by interested persons. Such records shall include man-hours worked and shall be reported for periods determined by the Secretary, but at least annually.

(b) Every operator of a coal mine and his agent shall (1) establish and maintain, in addition to such records as are specifically required by this Act, such records, and (2) make such reports and provide such information, as the Secretary may reasonably require from time to time to enable him to perform his functions under this Act. The Secretary is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by this Act, all records information, reports, findings, notices, orders, or decisions required or issued pursuant to or under this Act may be published from time to time and released to any interested person, and shall be made available for public inspection.

TITLE II—INTERIM MANDATORY HEALTH STANDARDS

COVERAGE

SEC. 201. The provisions of sections 202 through 205 of this title shall be interim mandatory health standards applicable to all underground coal mines until superseded in whole or in part by mandatory health standards promulgated by the Secretary, and shall be enforced in the same manner and to the same extent as any mandatory health standard promulgated under the provisions of section 101 of title I of this Act. Any orders issued in the enforcement of the interim standards set forth in this title shall be subject to review as provided in title I of this Act.

DUST STANDARD AND RESPIRATORS

SEC. 202. (a) Each operator of a coal mine shall take accurate samples of the amount of respirable dust in the mine atmosphere to which the miners in the active workings of such mine are exposed. Such samples shall be taken by any device approved by the Secretary and the Secretary of Health, Education, and Welfare and in accordance with such methods, at such locations, at such intervals, and in such manner as the Secretaries shall prescribe in the Federal Register within sixty days from the date of enactment of this Act and from time to time thereafter. Such samples shall be transmitted to the Secretary at his expense in a manner established by him, and analyzed and recorded by him in a manner which will assure application of the provisions of section 104(i) when the standard established under subsection (b) of this section is exceeded. The results of such samples shall also be made available to the operator. Each operator shall certify to the Secretary at such intervals as the Secretary may require as to the condition of the mine atmosphere in the active workings of the mine, including, but not limited to, the average number of working hours worked during each shift, the quantity of air regularly reaching the working places, the method of mining, the amount and pressure of the water, if any, reaching the working faces, and the number, location, and type of sprays, if any, used.

(b)(1) Effective on the operative date of this title, each operator shall maintain the average concentration of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed at or below 4.5 milligrams per cubic meter of air (if measured with an MRE instrument over several shifts) or an equivalent amount of dust (if measured with any other instrument approved by the Secretary and the Secretary of Health, Education, and Welfare). In the case of an operator who requests an extension of time beyond the operative date of this title in which to reduce such average concentration of respirable dust to or below 4.5 milligrams per cubic meter of air (or its equivalent) and demonstrates to the satisfaction of the Panel that he is undertaking maximum efforts to so reduce such average concentration but is unable to do so because it is not technologically feasible for him to do so, the Panel may grant such operator no more than ninety days for such purpose.

(2) Effective six months after the operative date of this title, the limit on the level of dust concentration shall be 3.0 milligrams of respirable dust per cubic meter of air (if measured with an MRE instrument over several shifts) or an equivalent amount of dust (is measured with any other instrument approved by the Secretary and the Secretary of Health, Education, and Welfare). In the case of an operator who requests an extension of time beyond the effective date of this paragraph in which to reduce the average concentration of respirable dust to or below 3.0 milligrams per cubic meter of air (or its equivalent) and demonstrates to

the satisfaction of the Panel that he is undertaking maximum efforts to so reduce such average concentration but is unable to do so because it is not technologically feasible for him to do so, the Panel may grant such operator no more than six months for such purpose.

(3) Beginning six months after the operative date of this title, the Secretary of Health, Education, and Welfare shall reduce the limit on the level of dust concentration below 3.0 milligrams of respirable dust per cubic meter of air (if measured with an MRE instrument over several shifts) or an equivalent amount of dust (if measured with any other instrument approved by the Secretary and the Secretary of Health, Education, and Welfare) as he determines such reductions become technologically attainable.

(c) Respirators or other breathing devices approved by the Secretary and the Secretary of Health, Education, and Welfare shall be made available to all persons whenever exposed to concentrations of dust in excess of concentrations of dust permitted by subsection (b). Use of respirators shall not be substituted for environmental control measures. Each underground mine shall maintain a supply of approved respirators or other breathing devices adequate to deal with occurrences of concentrations of respirable dust in the mine atmosphere in excess of the limit prescribed in this section.

(d) As used in this title, the term "MRE instrument" means the gravimetric dust sampler with four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

MEDICAL EXAMINATIONS

SEC. 203. (a) The operator of an underground coal mine shall cooperate with the Secretary of Health, Education, and Welfare in making available to each miner working in an underground coal mine an opportunity to have, at least once every five years, beginning six months after the operative date of this title, a chest roentgenogram to be provided by the Secretary of Health, Education, and Welfare with funds derived under section 401(c) of this Act. Each worker who begins work in a coal mine for the first time shall be given, as soon as possible after commencement of his employment, and again three years later if he is still engaged in coal mining, a chest roentgenogram; and in the event the second such chest roentgenogram shows evidence of the development of pneumoconiosis the worker shall be given, two years later if he is still engaged in coal mining, an additional chest roentgenogram. Such chest roentgenograms shall be given in accordance with specifications and to the extent prescribed by the Secretary of Health, Education, and Welfare and shall be supplemented by such other tests as the Secretary of Health, Education, and Welfare deems necessary. The films shall be read and classified in a manner to be prescribed by the Secretary of Health, Education, and Welfare and the results of each reading on each such person and of such tests, shall be submitted to the Secretary and to the Secretary of Health, Education, and Welfare, and at the request of the worker, to his physician. Such specfications, readings, classifications, and tests shall, to the greatest degree possible, be uniform for all underground coal mines and coal miners in such mines.

(b) Any miner, who, in the judgment of the Secretary of Health, Education, and Welfare based upon such reading, shows substantial evidence of the development of pneumoconiosis shall, at the option of the miner, be assigned by the operator, for such period or periods as may be necessary to prevent further development of such disease, to work either (1) in any active working place in a mine where the mine atmosphere contains concentrations of respirable dust of not more than 2.0 milligrams per cubic meter of air if measured with an MRE instrument or not more than an equivalent amount of dust if measured with any other instrument approved by the Secretary and the Secretary of Health, Education, and Welfare, or (2) in an area of the mine containing more than such 2.0 milligrams, or its equivalent, provided the miner wears respiratory equipment approved by the Secretary and the Secretary of Health, Education, and Welfare. Within one year after the enactment of this Act, any miner who shows evidence of the development of pneumoconiosis shall be assigned by the operator for such period or periods as may be necessary to prevent further development of such disease, to work, at the option of the miner, in any working section or other area of the mine, where the average concentration of respirable dust in the mine atmosphere to which the miner is exposed during each shift is at or below 1.0 milligrams of dust per cubic meter of air or to whatever lower level the Secretary of Health, Education, and Welfare determines is necessary to prevent any further development of such disease. Any miner so assigned shall receive compensation for such work not less than the regular rate of pay received by him immediately prior to his assignment.

DUST FROM DRILLING ROCK

SEC. 204. The dust resulting from drilling in rock shall be controlled by the use of permissible dust collectors or by water or water with a wetting agent, or by any other method or device approved by the Secretary which is at least as effective in controlling such dust. Respiratory equipment approved by the Secretary and the Secretary of Health, Education, and Welfare shall be provided persons exposed for short periods to inhalation hazards from gas, dusts, fumes, or mist. When the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

DUST STANDARD WHEN QUARTZ IS PRESENT

SEC. 205. In coal mining operations where the respirable dust in the mine atmosphere of any active working place contains more than 5 per centum quartz, the Secretary of Health, Education, and Welfare shall prescribe an appropriate formula for determining the applicable dust standard under this title for such working place and the Secretary shall apply such formula in carrying out his duties under this title.

TITLE III—INTERIM MANDATORY SAFETY STANDARDS FOR UNDERGROUND COAL MINES

COVERAGE

SEC. 301. (a) The provisions of sections 302 through 317 of this title shall be interim mandatory safety standards applicable to all underground coal mines until superseded in whole or in part by mandatory safety standards promulgated by the Secretary under the provisions of section 101 of title I of this Act, and shall be enforced in the same manner and to the same extent as any mandatory safety standard promulgated under title I of this Act. Any orders issued in the enforcement of the interim standards set forth in this title shall be subject to review as provided in title I of this Act.

(b) The Secretary may, upon petition by the operator, waive or modify the application of any mandatory safety standard to a mine when he determines such application will result in a diminution of safety to workers in such mine, but any action taken by the Secretary under this subsection shall be consistent with the purposes of this Act and shall not reduce the protection afforded miners by it.

(c) Upon petition by the operator, the Secretary may modify the application of any mandatory safety standard to a mine. Such petition shall state that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded miners by such standard. Upon receipt of such petition the Secretary shall publish notice thereof and give notice to the representative, if any, of persons working in the affected mine and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a hearing, at the request of such representative or other interested party, to enable the applicant and the representative of persons working in such mine or other interested party to present information relating to the modification of such standard. The Secretary shall make findings of fact and publish them in the Federal Register.

ROOF SUPPORT

SEC. 302. (a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof-control plan and revisions thereof suitable to the roof conditions and mining system of each mine and approved by the Secretary shall be adopted and set out in printed form within sixty days after the operative date of this title. The plan shall show the type of support and spacing approved by the Secretary. Such plan shall be reviewed periodically, at least every six months by the Secretary, taking into consideration any falls of roof or ribs or inadequacy of support of roof or ribs. No person shall proceed beyond the last permanent support unless adequate temporary support is provided or unless such temporary support is not required under the approved roof control plan. A copy of the plan shall be furnished the Secretary or his authorized representative and shall be available to the miners or their authorized representatives.

(b) The method of mining followed in any mine shall not expose the miner to unusual dangers from roof falls caused by excessive widths of rooms and entries or faulty pillar recovery methods.

(c) The operator shall provide at or near the working face an ample supply of suitable materials of proper size with which to secure the roof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof boltholes are being drilled, roof bolts are being installed, and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. Supports knocked out, except in recovery shall be replaced promptly.

(d) When permitted, installed roof bolts shall be tested in accordance with the approved roof control plan. Roof bolts shall not be recovered where complete extractions of pillars are attempted, where adjacent to clay veins, or at the locations of other irregularities, whether natural or otherwise, that induce abnormal hazards. Where roof bolt recovery is permitted, it shall be conducted only in accordance with methods prescribed in the approved roof control plan and shall be conducted by experienced miners and only where adequate temporary support is provided.

(e) Where miners are exposed to danger from falls of roof, face, and ribs the operator shall require that examinations and tests of the roof, face, and ribs be made before any work or machine is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately.

VENTILATION

SEC. 303. (a) All coal mines shall be ventilated by mechanical ventilation equipment installed and operated in a manner approved by an authorized representative of the Secretary and such equipment shall be examined daily and a record shall be kept of such examination.

(b) All active underground workings shall be ventilated by a current of air containing not less than 19.5 volume per centum of oxygen, not more than 0.5 volume per centum of carbon dioxide, and no harfmul quantities of other noxious or poisonous gases; and the volume and velocity of the current of air shall be sufficient to dilute, render harmless, and to carry away, flammable or harmful gases and smoke and fumes. The minimum quantity of air in any mine reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms shall be nine thousand cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line shall be nine thousand cubic feet a minute. The minimum quantity of air in any mine reaching each working face shall be three thousand cubic feet a minute and, in the case of a mechanized mine, there shall also be a minimum velocity of one hundred feet per minute passing to within five feet of the working face and over any miner operating electrical equipment at the working face. The Secretary or his authorized representative may require in any coal mine a greater quantity and velocity of air when he finds it necessary to protect the safety of miners. Within three years after the operative date of his title, the dust level in intake aircourses shall not exceed 0.25 milligram per cubic meter of air. In robbing areas of anthracite mines, where the air currents cannot be controlled and measurements of the air cannot be obtained, the air shall have perceptible movement.

(c)(1) Properly installed and adequately maintained line brattice or other approved devices shall be used from the last open crosscut of any entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive, and noxious gases, dust, and explosive fumes, unless the Secretary or his authorized representative permits an exception to this requirement. When damaged by falls or otherwise, they shall be repaired promptly.

(2) The space between the line brattice or other approved device and the rib shall be large enough to permit the flow of a sufficient volume of air to keep the working face clear of flammable, explosive, and noxious gases, dust, and explosive fumes.

(3) Brattice cloth used underground shall be of flame-resistant material.

(d)(1) Within three hours immediately preceding the beginning of a coal-producing shift, and before any workmen in such shift enter the underground areas of the mine, certified persons designated by the operator of the mine shall examine a definite underground area of the mine. Each such examiner shall examine every underground working place in that area and shall make tests in each such working place for accumulations of explosive gases with means approved by the Secretary for detecting explosive gases and shall make tests for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary; examine seals and doors to determine whether they are functioning properly; examine and test the roof, face, and rib conditions in the underground working places; examine active roadways, travelways, and all belt conveyors on which men are carried, approaches to abandoned workings, and accessible falls in sections for hazards; examine by means of an anemometer or other device approved by the Secretary to determine whether the air in each split is traveling in its proper course and in normal volume; and examine for such other hazards and violations of the mandatory health safety standards, as an authorized representative of the Secretary may from time to time require. Belt conveyors on which coal is carried shall be examined after each coal-producing shift has begun. Such mine examiner shall place his initials and the date at all places he examines. If such mine examiner finds a condition which constitutes a violation of a mandatory health or safety standard or any condition which is hazardous to persons who may enter or be in such area, he shall indicate such hazardous place by posting a "DANGER" sign conspicuously at all points which persons entering such hazardous place would be required to pass, and shall notify the operator of the mine. No person, other than an authorized representative of the Secretary or a State mine inspector or persons authorized by the mine operator to enter such place for the purpose of eliminating the hazardous condition therein, shall enter such place while such sign is so posted. Upon completing his examination such mine examiner shall report the results of his examination to a person, designated by the mine operator to receive such reports at a designated station on the surface of the mine, before other persons enter the underground areas of such mine to work in such coal-producing shift. Each such mine examiner shall also record the results of his examination with ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard.

(2) No person (other than certified persons designated under this subsection) shall enter any underground area, except during a coal-producing shift, unless an examination of such area as prescribed in this subsection has been made within eight hours immediately preceding his entrance into such area.

(e) At least once during each coal-producing shift, or more often if necessary for safety, each underground working section shall be examined for hazardous conditions by certified persons designated by the mine operator to do so. Such examination shall include tests with means approved by the Secretary for detecting explosive gases and with a permissible flame safety lamp or other means approved by the Secretary for detecting oxygen deficiency.

(f) Examination for hazardous conditions, including tests for explosive gases, and for compliance with the standards established by, or promulgated pursuant to, this title shall be made at least once each week, by a certified person designated by the operator of the mine, in the return of each split of air where it enters the main return on pillar falls, at seals, in the main return, at least one entry of each intake and return aircourse in its entirety, idle workings, and, insofar as safety considerations permit, abandoned workings. Such weekly examination need not be made during any week in which the mine is idle for the entire week; except that such examination shall be made before any other miner returns to the mine. The person making such examinations and tests shall place his initials and the date at the places examined, and if hazardous conditions are found, such conditions shall be reported promptly. Any hazardous conditions shall be corrected immediately. If a hazardous condition cannot be corrected immediately, the operator shall withdraw all persons from the area affected by the hazardous condition except those persons whose presence is required to correct the conditions. A record of these examinations, tests, and actions taken shall be recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

(g) At least once each week, a qualified person shall measure the volume of air entering the main intakes and leaving the main returns, the volume passing through the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms, the volume being delivered to the intake end of each pillar line, and the volume at the intake and return of each split of air. A record of such measurements shall be recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

(h)(1) At the start of each coal-producing shift, tests for explosive gases shall be made at the face of each working place immediately before electrically operated equipment is energized. Such tests shall be made by qualified persons. If 1.0 volume per centum or more of explosive gas is detected, electrical equipment shall not be energized, taken into, or operated in, such working place until such explosive gas content is less than 1.0 volume per centum of explosive gas. Examinations for explosive gases shall be made during such operations at intervals of not more than twenty minutes during each shift, unless more frequent examinations are required by an authorized representative of the Secretary. In conducting such tests, such person shall use means approved by the Secretary for detecting explosive gases.

(2) If the air at an underground working place, when tested at a point not less than twelve inches from the roof, face, or rib, contains 1.0 volume per centum or more of explosive gas, changes or adjustments shall be made at once in the ventilation in such mines so that such air shall contain less than 1.0 volume per centum of explosive gas. While such ventilation improvement is underway and until it has been achieved, power to face equipment located in such place shall be cut off, no other work shall be permitted in such place, and due precautions will be carried out under the direction of the agent of the operator so as not to endanger other active workings.

If such air, when tested as outlined above, contains 1.5 volume per centum or more of explosive gas, all persons shall be withdrawn from the portion of the mine endangered thereby, and all electric power shall be cut off from such portion of the mine, until the air in such working place shall contain less than 1.0 volume per centum of explosive gas.

(i) If, when tested, a split of air returning from active underground workings contains 1.0 volume per centum or more of explosive gas, changes or adjustments shall be made at once in the ventilation in the mine so that such returning air shall contain less than 1.0 volume per centum of explosive gas. Such tests shall be made at four-hour intervals during each shift by a qualified person designated by the operator of the mine. In making such tests, such person shall use means approved by the Secretary for detecting explosive gases.

(j) If a split of air returning from active underground workings contains 1.5 volume per centum or more of explosive gas, all persons shall be withdrawn from the portion of the mine endangered thereby, and all electric power shall be cut off from such portion of the mine, until the air in such split shall contain less than 1.0 volume per centum of explosive gas. In virgin territory, if the quan-

tity of air in a split ventilating the active workings in such territory equals or exceeds twice the minimum volume of air prescribed in subsection (b) of this section, if the air in the split returning from such workings does not pass over trolley or power feeder wires, and if a certified person designated by the mine operator is continually testing the explosive gas content of the air in such split during mining operations in such workings, it shall be necessary to withdraw all persons and cut off all electric power from the portion of the mine endangered by explosive gases only when the air returning from such workings contains 2.0 volume per centum or more of explosive gas.

(k) Air which has passed by an opening of any abandoned area shall not be used to ventilate any active working place in the mine if such air contains 0.25 volume per centum or more of explosive gas. Examinations of such air shall be made during the pre-shift examination required by subsection (d) of this section. In making such tests, a certified person designated by the operator of the mine shall use means approved by the Secretary for detecting explosive gases. For the purposes of this subsection, an area within a panel shall not be deemed to be abandoned until such panel is abandoned.

(l) Air that has passed through an abandoned panel or area which is inaccessible or unsafe for inspection shall not be used to ventilate any active working place in such mine. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any active working place in such mine, except that such air, if it does not contain 0.25 volume per centum or more of explosive gases, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries.

(m) A methane monitor approved by the Secretary shall be installed and be kept operative and in operation on all electric face cutting equipment, continuous miners, longwall face equipment, and loading machines, and such other electric face equipment as an authorized representative of the Secretary may require. Such monitor shall be set to deenergize automatically any electric face equipment on which it is required when such monitor is not operating properly. The sensing device of any such monitor shall be installed as close to the working face as possible. An authorized representative of the Secretary may require any such monitor to be set to give a warning automatically when the concentration of explosive gas reaches 1.0 volume per centum and automatically to de-energize equipment on which it is installed when such concentration reaches 2.0 volume per centum.

(n) Idle and abandoned areas shall be inspected for explosive gases and for oxygen deficiency and other dangerous conditions by a certified person with means approved by the Secretary as soon as possible, but not more than three hour, before other employees are permitted to enter or work in such areas. However, persons, such as pumpmen, who are required regularly to enter such areas in the performance of their duties, and who are trained and qualified in the use of means approved by the Secretary for detecting explosive gases and in the use of a permissible flame safety lamp or other means for detecting oxygen deficiency are authorized to make such examinations for themselves, and each such person shall be properly equipped and shall make such examinations upon entering any such area.

(o) Immediately before an intentional roof fall is made, pillar workings shall be examined by a qualified person designated by the operator to ascertain whether explosive gas is present, such person shall use means approved by the Secretary for detecting explosive gases. If in such examination explosive gas is found in amounts of 1.0 volume per centum or more, such roof fall shall not be made until changes or adjustments are made in the ventilation so that the air shall contain less than 1.0 volume per centum of explosive gas.

(p) A ventilation system and explosive gas—and dust control plan and revisions thereof suitable to the conditions and the mining system of the mine and approved by the Secretary shall be adopted by the operator and set out in printed form within ninety days after the operative date of this title. The plan shall show the type and location of mechanical ventilation equipment installed and operated in the mine and such other information as the Secretary may require. Such plan shall be reviewed by the operator and the Secretary at least every six months.

(q) Each operator of a coal mine shall provide for the proper maintenance and care of the permissible flame safety lamp by a person trained in such maintenance and before each shift care shall be taken to insure that such lamp is in a permissible condition.

(r) Where areas are being pillared on the operative date of this title without bleeder entries, or without bleeder systems or an equivalent means, pillar recovery may be completed in the area to the extent approved by an authorized representative of the Secretary if the edges of pillar lines adjacent to active workings are ventilated with sufficient air to keep the air in open areas along the pillar lines below 1.0 volume per centum of explosive gas.

(s) Each mechanized mining section shall be ventilated with a separate split of intake air directed by overcasts, undercasts, or the equivalent, except an extension of time, not in excess of six months may be permitted by the Secretary, under such conditions as he may prescribe, whenever he determines that this subsection cannot be complied with on the operative date of this title.

(t) In all underground areas of a mine, immediately before firing each shot or group of multiple shots and after blasting is completed, examinations for explosive gases shall be made by a qualified person with means approved by the Secretary for detecting explosive gases. If explosive gas is found in amounts of 1.0 volume per centum or more, changes or adjustments shall be made at once in the ventilation so that the air shall contain less than 1.0 volume per centum of explosive gas. No shots shall be fired until the air contains less than 1.0 volume per centum of explosive gas.

(u) Each operator of a coal mine shall adopt a plan within sixty days after the operative date of this title which shall provide that when any mine fan stops, immediate action shall be taken by the operator or his agent (1) to withdraw all persons from the working sections, (2) to cut off the power in the mine in a timely manner, (3) to provide for restoration of power and resumption of work if ventilation is restored within a reasonable period as set forth in the plan after the working places and other workings where explosive gas is likely to accumulate are reexamined by a certified persons to determine if explosive gas in amounts of 1.0 volume per centum or more exists therein, and (4) to provide for withdrawal of all persons from the mine if ventilation cannot be restored within such reasonable time. The plan and revisions thereof approved by the Secretary shall be set out in printed form and a copy shall be furnished to the Secretary or his authorized representative.

(v) Changes in ventilation which materially affect the main air current or any split thereof and which may affect the safety of persons in the coal mine shall be made only when the mine is idle. Only those persons engaged in making such changes shall be permitted in the mine during the change. Power shall be removed from the areas affected by the change before work starts to make the change and shall not be restored until the effect of the change has been ascertained and the affected areas determined to be safe by a certified person.

(w) The mine foreman shall read and countersign promptly the daily reports of the preshift examiner and assistant mine foremen, and he shall read and countersign promptly the weekly report covering the examinations for hazardous conditions. Where such reports disclose hazardous conditions, the mine foreman shall take prompt action to have such conditions corrected. The mine superintendent or assistant superintendent of the mine shall also read and countersign the daily and weekly reports of such persons.

(x) Each day, the mine foreman and each of his assistants shall enter plainly and sign with ink or indelible pencil in a book provided for that purpose a report of the condition of the mine or portion thereof under his supervision which report shall state clearly the location and nature of any hazardous condition observed by them or reported to them during the day and what action was taken to remedy such condition. Such book shall be kept in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard.

(y) Before a mine is reopened after having been abandoned, the Secretary shall be notified and an inspection made of the entire mine by an authorized representative of the Secretary before mining operations commence.

(z) (1) In any coal mine opened after the operative date of this title, the entries used as intake and return air-courses shall be separted from belt haulage entries, and each operator of such mine shall limit the velocity of the air coursed through belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of explosive gas, and such air shall not be used to ventilate active working places. Whenever an authorized representative of the Secretary finds, in the case of any coal mine opened on or prior to the operative date of this title which has been developed with more than two entries, that the conditions in the entries, other than belt haulage entries, are such as to adequately permit the coursing of intake or return air through such entries, (1) the belt haulage entries shall not be used to ventilate, unless such entries are necessary to ventilate active working places, and (2) when the belt haulage entries are not necessary to ventilate the active working faces, the operator of such mine shall limit the velocity of the air coursed through the belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entires, and to insure that the air therein shall contain less than 1.0 volume per centum of explosive gas.

(2) In any coal mine opened on or after the operative date of this title, or, in the case of a coal mine opened prior to such date, in any new working section of such mine, where trolley haulage systems are maintained and where trolley or trolley feeder wires are installed, an authorized representative of the Secretary shall require a sufficient number of entries or rooms as intake air courses in order to limit, as prescribed by the Secretary, the velocity of air currents on such haulageways for the purpose of minimizing the hazards associated with fires and dust explosions in such haulageways.

COMBUSTIBLE MATERIALS AND ROCK DUSTING

SEC. 304. (a) Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active underground workings or on electric equipment therein.

(b) Where underground mining operations create or raise excessive amounts of dust, water, or water with a wetting agent added to it, or other effective methods approved by an authorized representative of the Secretary, shall be used to abate such dust. In working places, particularly in distances less than forty feet from the face, water, with or without a wetting agent, or other effective methods approved by an authorized representative of the Secretary, shall be applied to coal dust on the ribs, roof, and floor to reduce dispersibility and to minimize the explosion hazard.

(c) All underground areas of a mine, except those areas in which the dust is too wet or too high in incombustible content to propagate an explosion, shall be rock dusted to within forty feet of all faces, unless such areas are inaccessible or unsafe to enter or unless an authorized representative of the Secretary permits an exception. All cross cuts that are less than forty feet from a working face shall also be rock dusted.

(d) Where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all underground areas of a mine and maintained in such quantities that the incombustible contents of the combined coal dust, rock dust, and other dust shall be not less than 65 per centum, but the incombustible content in the return aircourses shall be no less than 80 per centum. Where explosive gas is present in any ventilating current, the per centum of incombustible content of such combined dusts shall be increased 1.0 and 0.4 per centum for each 0.1 per centum of explosive gas, where 65 and 80 per centum, respectively, of incombustibles are required.

(e) Subparagraphs (b) through (d) of this paragraph shall not apply to underground anthracite mines subject to this Act.

ELECTRICAL EQUIPMENT

SEC. 305. (a) One year after the operative date of this title—

(1) all electric face equipment used in a coal mine shall be permissible and shall be maintained in a permissible condition, except that the Secretary may permit, under such conditions as he may prescribe, nonpermissible or open-type electric face equipment in use in such mine on the date of enactment of this Act, to continue in use for such period (not in excess of one year) as he deems necessary to obtain such permissible equipment: *Provided, however,* That the provisions of this paragraph shall not apply to any mine which is not classified as gassy; and

(2) only permissible junction or distribution boxes shall be used for making multiple power connections inby the last open crosscut or in any other place where dangerous quantities of explosive gases may be present or may enter the air current.

(b)(1) Four years after the operative date of this title all electric face equipment used in mines exempted from the provisions of section 305(a)(1) of this Act shall be permissible and shall be maintained in a permissible condition, except that the Secretary may, upon petition, waive the requirements of this paragraph on an individual mine basis for a period not in excess of two years if, after investigation, he determines that such waiver is warranted. The Secretary may also, upon petition, waive the requirements of this paragraph on an individual mine basis if he determines that the permissible equipment for which the waiver is sought is not available to such mine.

(2) One year after the operative date of this title all replacement equipment acquired for use in any mine referred to in this subsection shall be permissible and shall be maintained in a permissible condition, and in the event of any major overhaul of any item of equipment in use one year from the operative date of this title such equipment shall be put in and thereafter maintained in a permissible condition, if, in the opinion of the Secretary, such equipment or necessary replacement parts are available.

(3) One year after the operative date of this title all hand held electric drills, blowers and exhaust fans, electric pumps, and other such low-horsepower electric face equipment as the Secretary may designate which are taken into or used inby the last open crosscut of any coal mine shall be permissible and thereafter maintained in a permissible condition.

(4) During the term of the use of any nonpermissible electric face equipment permitted under this subsection the Secretary may by regulation provide for use of methane monitoring devices, under such conditions as he shall prescribe, which will automatically deenergize electrical circuits providing power to electrical face equipment when the concentration of explosive gas in the atmosphere of the active workings permits, in the opinion of the Secretary, a condition in which an ignition or explosion may occur.

(c) A copy of any permit granted under this section shall be mailed immediately to a duly designated representative of the employees of the mine to which it pertains, and to the public official or agency of the State charged with administering State laws relating to coal mine health and safety in such mine. After the operative date of this title, whoever knowingly, in the case of a manufacturer, distributes, sells, offers for sale, introduces, or delivers in commerce any new electrical equipment used in coal mines, including, but not limited to, components and accessories of such equipment which fails to comply with the specifications or regulations of the Secretary, or, in the case of any other person, removes, alters, modifies, or renders inoperative any such equipment prior to its sale and delivery in commerce to the ultimate purchaser, shall, upon conviction, be subject to the sanctions in section 109(f) of this Act.

(d) Any coal mine which, prior to the operative date of this title, was classed gassy and was required to use permissible electric face equipment and to maintain such equipment in a permissible condition shall continue to use such equipment and to maintain such equipment in such condition.

(e) All power-connection points, except where permissible power connection units are used, outby the last open crosscut shall be in intake air.

(f) The location and the electrical rating of all stationary electric apparatus in connection with the mine electric system, including permanent cables, switchgear, rectifying substations, transformers, permanent pumps and trolley wires and trolley feeders, and settings of all direct-current circuit breakers protecting underground trolley circuits, shall be shown on a mine map. Any changes made in a location, electric rating, or setting shall be promptly shown on the map when the change is made. Such map shall be available to an authorized representative of the Secretary and to the miners in such mine.

(g) All power circuits and electric equipment shall be deenergized before work is done on such circuits and equipment, except when necessary for trouble shooting or testing. Energized trolley wires may be repaired only by a person qualified to perform such repairs and the operator of such mine shall require that such person wear approved and tested insulated shoes and wireman's gloves. No work shall be performed on medium and high-voltage distribution circuits or equipment except by or under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the persons who perform such work, except that, in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons. Locks or tags shall be removed only by the persons who installed them or, if such persons are unavailable, by persons authorized by an agent of the operator.

(h) All electrical equipment shall be frequently examined, tested, and properly maintained by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected. A record of such examinations shall be kept and made available to an authorized representative of the Secretary and to the miners in such mine.

(i) All electric conductors shall be sufficient in size and have adequate current-carrying capacity and be of such construction that the rise in temperature resulting from normal operation will not damage the insulating materials.

(j) All electrical connections or splices in conductors shall be mechanically and electrically efficient and suitable connectors shall be used. All electrical connections or splices in insulated wire shall be reinsulated at least to the same degree of protection as the remainder of the wire.

(k) Cables shall enter metal frames of motors, splice boxes, and electric compartments only through proper fittings. When insulated wires other than cables pass through metal frames the holes shall be substantially bushed with insulated bushings.

(l) All power wires (except trailing cables on mobile equipment, specially designed cables conducting high-voltage power to underground rectifying equipment or transformers, or bare or insulated ground and return wires) shall be supported on well-installed insulators and shall not contact combustible material, roof, or ribs.

(m) Except trolley wires, trolley feeder and bare signal wires, power wires and cables installed shall be insulated adequately and fully protected.

(n) Automatic circuit-breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and circuits against short circuit and overloads. Three-phase motors on all electric equipment shall be provided with overload protection that will deenergize all three phases in the event that any phase is overloaded.

(o) In all main power circuits disconnecting switchces shall be installed underground within five hundred feet of the bottoms of shafts and boreholes through which main power circuits enter the underground portion of the mine and at all other places where main power circuits enter the underground portion of the mine.

(p) All electric equipment shall be provided with switches or other controls that are safely designed, constructed and installed.

(q) Each ungrounded, exposed power conductor that leads underground shall be equipped with suitable lightning arresters of approved type within one hundred feet of the point where the circuit enters the mine. Lightning arresters shall be connected to a low-resistance grounding medium on the surface which shall be separated from neutral grounds by a distance of not less than twenty-five feet.

(r) No device for the purpose of lighting any underground coal mine of flame which has not been approved by the Secretary or his authorized representative shall be permitted in any underground coal mine, except under the provisions of section 311(d) of this title.

(s) An authorized representative of the Secretary may require in any coal mine that face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency.

TRAILING CABLES

SEC. 306. (a) Trailing cables used underground shall meet the requirements established by the Secretary for flame-resistant cables.

(b) Short-circuit protection for trailing cables shall be provided by an automatic circuit breaker or other no less-effective device approved by the Secretary of adequate current interrupting capacity in each ungrounded conductor. Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected.

(c) When two or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting a trailing cable to the wrong size circuit breaker.

(d) No more than two temporary splices shall be made in any trailing cable, except that if a third splice is needed during a shift it may be made during such shift, but such cable shall not be used after that shift until a permanent splice is made. In any case in which a temporary splice is made pursuant to this subsection such splice shall, within five working days thereafter, be replaced by a permanent splice. No temporary splice shall be made in a trailing cable within twenty-five feet of the machine, except cable reel equipment. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used. As used in this subsection, the term "splice" means the mechanical joining of one or more conductors that have been severed.

(e) When permanent splices in trailing cables are made, they shall be—

(1) mechanically strong with adequate electrical conductivity and flexibility;

(2) effectively insulated and sealed so as to exclude moisture; and

(3) vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket.

(f) Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections. Trailing cables shall be adequately protected to prevent damage by mobile machinery.

(g) Trailing cable and power cable connections to junction boxes shall not be made or broken under load.

GROUNDING

SEC. 307. (a) All metallic sheaths, armors, and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded. Metallic frames, casing, and other enclosures of electric equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded effectively. Methods other than grounding which provide equivalent protection may be permitted by the Secretary.

(b) The frames of all offtrack direct current machines and the enclosures of related detached components shall be effectively grounded or otherwise maintained at safe voltages by methods approved by an authorized representative of the Secretary.

(c) The frames of all stationary high-voltage equipment receiving power from ungrounded delta systems shall be grounded by methods approved by an authorized representative of the Secretary.

(d) High-voltage lines, both on the surface and underground, shall be deenergized and grounded before work is performed on them, except that repairs may be permitted, in the case of energized surface high-voltage lines, if such repairs are made by a qualified person in accordance with procedures and safeguards, including, but not limited to, a requirement that the operator of such mine provide, test, and maintain protective devices in making such repairs, to be prescribed by the Secretary prior to the operative date of this title.

(e) When not in use, power circuits underground shall be deenergized on idle days and idle shifts, except that rectifiers and transformers may remain energized.

UNDERGROUND HIGH-VOLTAGE DISTRIBUTION

SEC. 308. (a) High-voltage circuits entering the underground portion of the mine shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the Secretary. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and overcurrent.

(b) High-voltage circuits extending underground and supplying portable, mobile, or stationary high-voltage equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all high-voltage equipment supplied power from that circuit, except that the Secretary or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electrical equipment if such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length. Within one hundred feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the Secretary or his authorized representative may permit such devices to be installed at a greater distance from such portion of the mine if he determines, based on existing physical conditions, that such installations will be more accessible at a greater distance and will not pose any hazard to the miners.

(c) The grounding resistor, where required, shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than 100 volts under fault conditions. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(d) High-voltage, resistance grounded, wye-connected systems shall include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity and the fail safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken.

(e)(1) Underground high-voltage cables used in resistance grounded, wye-connected systems shall be equipped with metallic shields around each power conductor, with one or more ground conductors having a total cross-sectional area of not less than one-half the power conductor, and with an insulated internal or external conductor not smaller than No. 8 (AWG) for the ground continuity check circuit.

(2) All such cables shall be adequate for the intended current and voltage. Splices made in such cables shall provide continuity of all components.

(f) Couplers that are used with high-voltage power circuits shall be of the three-phase type with a full metallic shell, except that the Secretary may permit, under such guidelines as he may prescribe, couplers constructed of materials other than metal. Couplers shall be adequate for the voltage and current expected. All exposed metal on the metallic couplers shall be grounded to the ground conductor in the cable. The coupler shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(g) Single-phase loads such as transformer primaries shall be connected phase to phase.

(h) All underground high-voltage transmission cables shall be installed only in regularly inspected aircourses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are six and one-half feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with trolley and other low-voltage circuits.

(i) Disconnecting devices shall be installed at the beginning of branch lines in high-voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when the switches are open.

(j) Circuit breakers and disconnecting switches underground shall be marked for identification.

(k) In the case of high-voltage cables used as trailing cables, temporary splices shall not be used and all permanent splices shall be made in accordance with section 306(e) of this title. Terminations and splices in all other high-voltage cables shall be made in accordance with the manufacturer's specifications.

(l) Frames, supporting structures, and enclosures of portable or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment shall be effectively grounded to the high voltage ground.

(m) Power centers and portable transformers shall be deenergized before they are moved from one location to another, except that, when equipment powered by sources other than such centers or transformers is not available, the Secretary may permit such centers and transformers to be moved while energized, if he determines that another equivalent or greater hazard may otherwise be created, and if they are moved under the supervision of a qualified person, and if such centers and transformers are examined prior to such movement by such person and found to be grounded by methods approved by an authorized representative of the Secretary and otherwise protected from hazards to the miner. A record shall be kept of such examinations. High-voltage cables, other than trailing cables, shall not be moved or handled at any time while energized, except that, when such centers and transformers are moved while energized as permitted under this subsection, energized high-voltage cables attached to such centers and transformers may be moved only by a qualified person and the operator of such mine shall require that such person wear approved and tested insulated wireman's gloves.

UNDERGROUND LOW- AND MEDIUM-VOLTAGE ALTERNATING CURRENT CIRCUITS

SEC. 309. (a) Low- and medium-voltage power circuits serving three-phase alternating current equipment shall be protected by

suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the Secretary. Such breakers shall be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

(b) Low- and medium-voltage three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from that circuit, except that the Secretary or his authorized representative may permit ungrounded low- and medium-voltage circuits to be used underground to feed such stationary electrical equipment if such circuits are either steel armored or installed in grounded rigid steel conduit throughout their entire length. The grounding resistor, where required, shall be of the proper ohmic value to limit the ground fault current to 25 amperes. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(c) Six months after the operative date of this title, low- and medium-voltage resistance grounded, wye-connected systems shall include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity and the fail safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(d) Disconnecting devices shall be installed in conjunction with the circuit breaker to provide visual evidence that the power is disconnected. Trailing cables for mobile equipment shall contain one or more ground conductors having a cross sectional area of not less than one half the power conductor and, six months after the operative date of this title, an insulated conductor for the ground continuity check circuit. Splices made in the cables shall provide continuity of all compounds.

(e) Single phase loads shall be connected phase to phase.

(f) Circuit breakers shall be marked for identification.

(g) Trailing cable for medium voltage circuits shall include grounding conductors, a ground check conductor, and ground metallic shields around each power conductor or a grounded metallic shield over the assembly; except that on machines, employing cable reels, cables without shields may be used if the insulation is rated 2,000 volts or more.

TROLLEY AND TROLLEY FEEDER WIRES

SEC. 310. (a) Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than 2,000 feet and near the beginning of all branch lines.

(b) Trolley wires and trolley feeder wires shall be provided with overcurrent protection.

(c) Trolley and trolley feeder wires, high-voltage cables and transformers shall not be located inby the last open crosscut and shall be kept at least 150 feet from pillar workings.

(d) Trolley wires, trolley feeder wires, and bare signal wires shall be insulated adequately where they pass through doors and stoppings, and where they cross other power wires and cables. Trolley wires and trolley feeder wires shall be guarded adequately (1) at all points where men are required to work or pass regularly under the wires; (2) on both sides of all doors and stoppings, and (3) at man-trip stations. The Secretary or his authorized representatives shall specify other conditions where trolley wires and trolley feeder wires shall be adequately protected to prevent contact by any person, or shall require the use of improved methods to prevent such contact. Temporary guards shall be provided where trackmen and other persons work in proximity to trolley wires and trolley feeder wires.

FIRE PROTECTION

SEC. 311. (a) Each coal mine shall be provided with suitable firefighting equipment adapted for the size and conditions of the mine. The Secretary shall establish minimum requirements for the type, quality, and quantity of such equipment, and the interpretations of the Secretary relating to such equipment in effect on the operative date of this title shall continue in effect until modified or superseded by the Secretary. After every blasting operation performed on a shift, an examination shall be made to determine whether fires have been started.

(b) Underground storage places for lubricating oil and grease shall be of fireproof construction. Except for specially prepared materials approved by the Secretary, lubricating oil and grease kept in face areas or other underground working places in a mine shall be in portable, fire proof, closed metal containers.

(c) Underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps shall be housed in fireproof structures or areas. Air currents used to ventilate structures or areas enclosing electrical installations shall be coursed directly into the return. All other underground structures installed in a mine shall be of fireproof construction.

(d) All welding, cutting, or soldering with arc or flame in all underground areas of a mine shall, whenever practicable, be conducted in fireproof enclosures. Welding, cutting, or soldering with arc or flame in other than a fireproof enclosure shall be done under the supervision of a qualified person who shall make a diligent search for fire during and after such operations and shall immediately before and during such operations, continuously test for explosive gas with means approved by the Secretary for detecting explosive gas. Welding, cutting, or soldering shall not be conducted in air that contains 1.0 volume per centum or more of explosive gas. Rock dust or suitable fire extinguishers shall be immediately available during such welding, cutting, or soldering.

(e) Within one year after the operative date of this title, fire suppression devices meeting specifications prescribed by the Secretary shall be installed on unattended underground equipment and suitable fire-resistant hydraulic fluids approved by the Secretary shall be used in the hydraulic systems of such equipment. Such fluids shall be used in the hydraulic systems of other underground equipment unless fire suppression devices meeting specifications prescribed by the Secretary are installed on such equipment.

(f) Deluge-type water sprays or foam generators, automatically actuated by rise in temperature, or other effective means of controlling fire shall be installed at main and secondary belt conveyor drives. Such sprays or foam generators shall be supplied with a sufficient quantity of water to control fires.

(g) Underground belt conveyors shall be equipped with slippage and sequence switches. The Secretary shall, within sixty days after the operative date of this title, require that devices be installed on all such belts which will give a warning automatically when a fire occurs on or near such belt. The Secretary shall prescribe a schedule for installing fire suppression devices on belt haulageways.

(h) On or after the operative date of this title, all conveyor belts acquired for use underground shall meet the requirements established by the Secretary for flame-resistant conveyor belts.

MAPS

SEC. 312. (a) The operator of an active underground coal mine shall have, in a surface location chosen to minimize the danger of destruction by fire or other hazard, an accurate and up-to-date map of such mine drawn on such scale as the Secretary may require. Such map shall show the active workings, all worked out and abandoned areas, excluding those areas which have been worked out or abandoned before the effective date of this paragraph which are inaccessible or cannot be entered safely and on which no information is available, entries and aircourses with the direction of airflow indicated by arrows, elevations, dip of the coalbed, escapeways, adjacent mine workings within one thousand feet, mines above or below, water pools above, and oil and gas wells, either producing or abandoned, located within five hundred feet of such mine, and such other information as the Secretary may require. Such map shall be made or certified by a registered engineer or a registered surveyor of the State in which the mine is located. As the Secretary may by regulation require, such map shall be kept up to date by temporary notations, and such map shall be revised and supplemented at intervals on the basis of a survey made or certified by such engineer or surveyor.

(b) The coal mine map and any revision and supplement thereof shall be available for inspection by the Secretary or his authorized representative, by coal mine inspectors of the State in which the mine is located, and by persons working in the mine and their authorized representatives and by operators of adjacent coal mines. The operator shall furnish to the Secretary or his authorized representative, or to the Secretary of Housing and Urban Development, upon request, one or more copies of such map and any revision and supplement thereof.

(c) Whenever an operator permanently closes such mine, or temporarily closes such mine for a period of more than ninety days, he shall promptly notify the Secretary of such closure. Within sixty days of the permanent closure of the mine, or, when the mine is temporarily closed, upon expiration of a period of ninety days from the date of closure, the operator shall file with the Secretary a copy of the mine map revised and supplemented to the date of the closure. Such copy of the mine map shall be certified as true and correct by a registered surveyor or registered engineer of the State in which the mine is located and shall be available for public inspection.

BLASTING AND EXPLOSIVES

SEC. 313. (a) Black blasting powder shall not be stored or used underground. Mudcaps (adobes) or other unconfined shots shall not be fired underground.

(b) Explosives and detonators shall be kept in separate containers until immediately before use at the working faces. In underground anthracite mines, (1) mudcaps or other open, unconfined shake shots may be fired, if restricted to battery starting when explosive gas or a fire hazard is not present, and if it is otherwise impracticable to start the battery; (2) open, unconfined shake shots in pitching veins may be fired, when no explosive gas or a fire hazard is present, if the taking down of loose hanging coal by other means is too hazardous; and (3) tests for explosive gas shall be made immediately before such shots are fired and if explosive gas is present when tested in 1.0 volume per

centum, such shot shall not be made until the explosive gas content is reduced below 1.0 per centum.

(c) Except as provided in this subsection, in all underground areas of a mine only permissible explosives, electric detonators of proper strength, and permissible blasting devices shall be used and all explosives and blasting devices shall be used in a permissible manner. Permissible explosives shall be fired only with permissible shot firing units. Only incombustible materials shall be used for stemming bore-holes. The Secretary may, under such safeguards as he may prescribe, permit the firing of more than twenty shots and allow the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock. This section shall not prohibit the use of compressed air blasting.

(d) Explosives or detonators carried anywhere underground by any person shall be in containers constructed of nonconductive material, maintained in good condition, and kept closed.

(e) Explosives or detonators shall be transported in special closed containers (1) in cars moved by means of a locomotive or rope, (2) on belts, (3) in shuttle cars, or (4) in equipment designed especially to transport such explosives or detonators.

(f) When supplies of explosives and detonators for use in one or more working sections are stored underground, they shall be kept in section boxes or magazines of substantial construction with no metal exposed on the inside, located at least twenty-five feet from roadways and power wires, and in a dry, well rock-dusted location protected from falls of roof, except in pitching beds, where it is not possible to comply with the location requirement, such boxes shall be placed in niches cut into the solid coal or rock.

(g) Explosives and detonators stored in the working places shall be kept in separate closed containers, which shall be located out of the line of blast and not less than fifty feet from the working face and fifteen feet from any pipeline, powerline, rail, or conveyor, except that, if kept in niches in the rib, the distance from any pipeline, powerline, rail, or conveyor shall be at least five feet. Such explosives and detonators, when stored, shall be separated by a distance of at least five feet.

HOISTING AND MANTRIPS

SEC. 314 (a) Every hoist used to transport persons at an underground coal mine shall be equipped with overspeed, overwind, and automatic stop controls. Every hoist used to transport persons shall be equipped with brakes capable of stopping the fully loaded platform, cage, or other device used for transporting persons, and with hoisting cable adequately strong to sustain the fully loaded platform, cage, or other device for transporting persons, and have a proper margin of safety. Cages, platforms, or other devices which are used to transport persons in vertical shafts shall be equipped with safety catches that act quickly and effectively in an emergency, and the safety catches shall be tested at least once every two months. Hoisting equipment, including automatic elevators, that is used to transport persons shall be examined daily. Where persons are regularly transported into or out of a coal mine by hoists, a qualified hoisting engineer shall be on duty while any person is underground, except that no such engineer shall be required for automatically operated cages, platforms, or elevators.

(b) Safeguards adequate, in the judgment of an authorized representative of the Secretary, to minimize hazards with respect to transportation of men and materials shall be provided.

(c) Hoists shall have rated capacities consistent with the loads handled and the recommended safety factors of the ropes used. An accurate and reliable indicator of the position of the cage, platform, skip, bucket, or cars shall be provided.

(d) There shall be at least two effective methods approved by the Secretary of signaling between each of the shaft stations and the hoist room, one of which shall be a telephone or speaking tube.

(e) In order to be capable of stopping with the proper margin of safety each locomotive and haulage car used in an underground coal mine shall be equipped with automatic brakes, or shall be subject to speed reductions or other safeguards approved by the Secretary.

EMERGENCY SHELTERS

SEC. 315. The Secretary or an authorized representative of the Secretary may require in any coal mine that rescue chambers, properly sealed and ventilated, be erected at suitable locations in the mine to which men could go in case of an emergency for protection against hazards. Such chambers shall be properly equipped with first aid materials, and adequate supply of air and self-contained breathing equipment, an independent communication system to the surface, and proper accommodations for the men while awaiting rescue, and such other equipment as the Secretary may require. A plan for the erection, maintenance, and revisions of such chambers shall be submitted by the operator to the Secretary for his approval.

COMMUNICATIONS

SEC. 316. A two-way communication system, approved by the Secretary, shall be provided between the surface and each landing of main shafts and slopes and between the surface and each working section that is more than two hundred feet from a portal.

MISCELLANEOUS

SEC. 317. (a) (1) While pillars are being extracted in any area of a mine, such area shall be ventilated in a manner approved by the Secretary or his authorized representative. Within six months after the operative date of this title, all areas which are or have been abandoned in all mines, as determined by the Secretary or his authorized representative, shall be ventilated by bleeder entries or by bleeder systems or equivalent means or sealed, as determined by the Secretary or his authorized representative, except that the Secretary may permit, on a mine-by-mine basis, an extension of time of not to exceed six months to complete such work. Ventilation of such areas shall be approved only where the Secretary or his authorized representative is satisfied that such ventilation can be maintained so as to, continuously, dilute, render harmless, and carry away explosive gases within such areas and to protect the active workings of the mine from the hazards of such gases. When sealing is required, such seals shall be made in an approved manner so as to isolate with explosion-proof bulkheads such areas from the active workings of the mine. In the case of mines opened on or after the operative date of this title, or in the case of working sections opened on or after such date in mines opened prior to such date, the mining system shall be designed, in accordance with a plan and revision thereof approved by the Secretary and adopted by such operator, so that, as each working section of the mine is abandoned, it can be isolated from the active workings of the mine with explosion-proof seals or bulkheads. For the purpose of this paragraph, the term "abandoned" as applied to any area of a mine shall include, but not be limited to, areas of a mine which are not ventilated and inspected regularly, areas where mining has been started but not completed, areas where future mining is still possible, and areas that are deserted.

(2) Each operator of a coal mine shall take reasonable measures to locate oil and gas wells penetrating coalbeds or any underground area of a coal mine. When located, such operator shall establish and maintain barriers around such oil and gas wells in accordance with State laws and regulations, except that such barriers shall not be less than three hundred feet in diameter, unless the Secretary or his authorized representative permits a lesser barrier consistent with the applicable State laws and regulations where such lesser barrier will be adequate to protect against hazards from such wells to the miners in such mine, or unless the Secretary or his authorized representative requires a greater barrier where the depth of the mine, other geologic conditions, or other factors warrant such a greater barrier.

(b) Whenever any working place approaches within fifty feet of abandoned workings in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within two hundred feet of any other abandoned workings of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within two hundred feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least twenty feet in advance of the face of such working place and shall be continually maintained to a distance of at least ten feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing face will not accidentally hole through into abandoned workings or adjacent mines. Boreholes shall also be drilled not more than eight feet apart in the rib of such working place to a distance of at least twenty feet and at an angle of forty-five degrees. Such rib holes shall be drilled in one or both ribs of such working place as may be necessary for adequate protection of persons working in such place.

(c) Smoking shall not be permitted underground, nor shall any person carry smoking materials, matches, or lighters underground. Smoking shall be prohibited in or around oil houses, explosives magazines, or other surface areas where such practice may cause a fire or explosion. The operator of a coal mine shall institute a program, approved by the Secretary, at each mine to insure that any person entering the underground portion of the mine does not carry smoking materials, matches, or lighters.

(d) Persons underground shall use only permissible electric lamps approved by the Secretary for portable illumination. No open flame shall be permitted in any underground mine except as specifically authorized by this Act.

(e) The Secretary shall prescribe the manner in which all underground working places in a mine shall be illuminated by permissible lighting while persons are working in such places.

(f) (1) At least two separate and distinct travelable passageways which are maintained to insure passage at all times of any persons, including disabled persons, and which are to be designated as escapeways, at least one of which is ventilated with intake air, shall be provided from each working section of a mine continuous to the surface escape drift opening, or continuous to the escape shaft or slope facilities to the surface, as appropriate, and shall be maintained in safe condition and properly marked. Mine openings shall be adequately protected to prevent the entrance into the underground portion of the mine of surface fires, fumes, smoke, and flood water. Adequate and readily accessible escape facilities approved by the Secretary or his authorized representative, properly maintained, and frequently tested shall be immediately present at or in each escape shaft or slope to allow all persons, including disabled persons, to escape quickly to the surface in the event of an emergency.

(2) Not more than twenty miners shall be allowed at any one time in any mine until a connection has been made between the two mine openings, and such work shall be prosecuted with reasonable diligence.

(3) When only one main opening is available, owing to final mining of pillars, not more than twenty miners shall be allowed in such mine at any one time, except that the distance between the mine opening and working face shall not exceed five hundred feet.

(4) In the case of all coal mines opened on or after the operative date of this title, and in the case of all new working sections opened on or after such date in coal mines opened prior to such date, the escapeway required by this subsection to be ventilated with intake air shall be separated from the belt and trolley haulage entries of the mine for the entire length of such entries to the beginning of each working section, except that the Secretary or his authorized representative may permit such separation to be extended a greater or lesser distance so long as the safety of the miners is assured.

(g) After the operative date of this title, all structures erected on the surface within one hundred feet of any mine opening shall be of fireproof construction. Unless structures existing on or prior to such date located within one hundred feet of any mine opening are of such construction, fire doors shall be erected at effective points in mine openings to prevent smoke or fire from outside sources endangering men working underground. These doors shall be tested at least monthly to insure effective operation. A record of such tests shall be kept and shall be available for inspection by interested persons.

(h) Adequate measures shall be taken to prevent explosive gases and coal dust from accumulating in excessive concentrations in or on surface coal-handling facilities, but in no event shall explosive gases be permitted to accumulate in concentrations in or on surface coal-handling facilities in excess of limits established for explosive gases by the Secretary within one year of the operative date of this title, and coal dust shall not accumulate in excess of limits prescribed by or under this Act. Where coal is dumped at or near air-intake openings, provisions shall be made to prevent the dust from entering the mine.

(i) Every operator of a coal mine shall provide a program, approved by the Secretary, of training and retraining of both qualified and certified persons needed to carry out functions prescribed in this title.

(j) Whenever the Secretary finds that a mine liberates excessive quantities of explosive gases during its operations, or that a gas ignition or explosion has occurred in such mine which resulted in death or serious injury at any time during the previous five years, or that there exists in such mine other especially hazardous conditions, he shall provide a minimum of twenty-six spot inspections of all or part of such mine each year at irregular intervals by his authorized representative.

(k) An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that the face equipment, including shuttle cars, be provided with substantially constructed canopies or cabs to protect the operators of such equipment from roof falls and from rib and face rolls.

(l) The opening of any mine that is declared inactive by its operator or is abandoned for more than ninety days, after the operative date of this title, shall be sealed in a manner prescribed by the Secretary. Openings to all active coal mines shall be adequately protected to prevent entrance by unauthorized persons.

(m) Each mine shall provide adequate facilities for the miners to change from the clothes worn underground, to provide the storing of such clothes from shift to shift, and to provide sanitary and bathing facilities. Sanitary toilet facilities shall be provided in the active workings of the mine when such surface facilities are not readily accessible to the active workings.

(n) Arrangements shall be made in advance for obtaining emergency medical assistance and transportation for injured persons. Emergency communications shall be provided to the nearest point of assistance. Selected agents of the operator shall be trained in first aid and first aid training shall be made available to all miners. Each mine shall have an adequate supply of first aid equipment located on the surface, at the bottom of shafts and slopes, and at other strategic locations near the working faces. In fulfilling each of the requirements in this subsection, the operator shall meet at least minimum standards established by the Surgeon General. Each operator shall file with the Secretary a plan setting forth in such detail as the Secretary may require the manner in which such operator has fulfilled the requirements in this section.

(o) A self-rescue device approved by the Secretary shall be made available to each miner by the operator which shall be adequate to protect such miners for one hour or longer. Each operator shall train each miner in the use of such device.

(p) The Secretary shall prescribe improved methods of assuring that miners are not exposed to atmospheres that are deficient in oxygen.

(q) Each operator of a coal mine shall establish a check-in and check-out system which will provide positive identification of every person underground and will provide an accurate record of the miners in the mine kept on the surface in a place chosen to minimize the danger of destruction by fire or other hazard. Such record shall bear a number identical to an identification check that is securely fastened to the lamp belt worn by the person underground. The identification check shall be made of a rust resistant metal of not less than sixteen gauge.

(r) The Secretary shall require, when technologically feasible, that devices to suppress ignitions be installed on electric face cutting equipment.

(s) Whenever an operator mines coal in a manner that requires the construction, operation, and maintenance of tunnels under any river, stream, lake, or other body of water, such operator shall obtain a permit from the Secretary which shall include such terms and conditions as he deems appropriate to protect the safety of men working or passing through such tunnels from cave-ins and other hazards. Such permits shall require, in accordance with a plan to be approved by the Secretary, that a safety zone be established beneath and adjacent to any such body of water that is, in the judgment of the Secretary, sufficiently large to constitute a hazard. No plan shall be approved unless there is a minimum of rock cover to be determined by the Secretary based on test holes drilled by the operator in a manner to be prescribed by the Secretary.

(t) The Secretary shall require that developed and improved devices and systems for the monitoring and detection of mine safety conditions and for the protection of the individual miner be acquired by each operator of a coal mine and that such devices and systems be used as soon as they become available.

(u) All haulage equipment acquired by an operator of a coal mine on or after one year after the operative date of this title shall be equipped with automatic couplers which shall couple by impact and uncouple without the necessity of men going between the ends of such equipment. All haulage equipment without automatic couplers in use in a mine on the operative date of this title shall also be so equipped within four years after the operative date of this title.

(v) An adequate supply of potable water shall be provided for drinking purposes in the active workings of the mine, and such water shall be carried, stored, and otherwise protected in sanitary facilities.

(w) The Secretary shall send a copy of every proposed standard or regulation at the time of publication in the Federal Register to the operator of each coal mine and the representative of the miners at such mine and such copy shall be immediately posted on the bulletin board of the mine by the operator or his agent, but failure to receive such notice shall not relieve anyone of the obligation to comply with such standard or regulation.

(x) An employee, the duties of whose position are primarily the inspection of coal mines, including an employee engaged in this activity and transferred to a supervisory or administrative position, who attains the age of fifty years and completes twenty years of service in the performance of those duties may, if the Secretary recommends his retirement and the Civil Service Commission approves, voluntarily retire and be paid an annuity. Any such employee who attains the age of sixty years and completes fifteen years of service may voluntarily retire on an annuity, unless the Secretary determines that such retirement would not be in the best interests of the program and, in such case, the Secretary may extend such employee's service on an annual basis. An employee who retires under this subsection shall be entitled to annuity of 2½ per centum of his average pay multiplied by his total service, except that the annuities shall not exceed 80 per centum of his average pay. As used in this subsection, the terms "employee", "average pay", and "service" have the meaning ascribed to those terms in subchapter III, chapter 83, title 5, United States Code, and the provisions of that subchapter respecting payment and adjustment of annuity, survivor annuities, and related matters, shall apply with respect to employees retiring under this subsection.

(y) (1) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representatives of miners by reason of the fact that such miner or representative (A) has notified the Secretary or his authorized representative of any alleged violation or danger pursuant to section 103(g) of this title, (B) has filed, instituted, or counsel to be instituted any proceeding under this Act, or (C) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(2) Any miner or a representative of miners who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) of this subsection may, within thirty days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party, to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue an order requiring the person committing such violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to, the

rehiring or reinstatement of the miner or representative of miners to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein. Any decision issued by the Secretary under this paragraph shall be subject to judicial review in accordance with the provisions of this Act. Violations by any person of paragraph (1) of this subsection shall be subject to the civil penalties provisions of this Act.

(3) Whenever an order is issued under this subsection, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

DEFINITIONS

SEC. 318. For the purpose of this title and title II of this Act, the term—

(a) "certified person" means a person certified by the State in which the coal mine is located to perform duties prescribed by such sections, except that, in a State where no program of certification is provided or where the program does not meet at least minimum Federal standards established by the Secretary, such certifications shall be by the Secretary;

(b) "qualified person" means, as the context requires, an individual deemed qualified by the Secretary to make tests and examinations required by this Act; and an individual deemed, in accordance with minimum requirements to be established by the Secretary, qualified by training, education, and experience, to perform electrical work, to maintain electrical equipment, and to conduct examinations and tests of all electrical equipment.

(c) "permissible" as applied to—

(1) equipment used in the operation of a coal mine, means equipment to which an approval plate, label, or other device is attached as authorized by the Secretary and which meets specifications which are prescribed by the Secretary for the construction and maintenance of such equipment and are designed to assure that such equipment will not cause a mine explosion or a mine fire,

(2) explosives, shot firing units, or blasting devices used in such mine, means explosives, shot firing units, or blasting devices which meet specifications which are prescribed by the Secretary, and

(3) the manner of use of equipment or explosives, shot firing units, and blasting devices, means the manner of use prescribed by the Secretary;

(d) "rock dust" means pulverized limestone, dolomite, gypsum, anhydrite, shale, talc, adobe, or other inert material, preferably light colored, 100 per centum of which will pass through a sieve having twenty meshes per linear inch and 70 per centum or more of which will pass through a sieve having two hundred meshes per linear inch; the particles of which when wetted and dried will not cohere to form a cake which will not be dispersed into separate particles by a light blast of air; and which does not contain more than 5 per centum of combustible matter or more than a total of 3 per centum of free and combined silica (SIC_2) or, where the Secretary finds that such silica concentrations are not available, up to 5 per centum of free and combined silica;

(e) "coal mine" includes areas of adjoining mines connected underground;

(f) "anthracite" means coals with a volatile ratio equal to 0.12 or less;

(g) "volatile ratio" means volatile matter content divided by the volatile matter plus the fixed carbon;

(h)(1) "working face" means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is done,

(2) "working place" means the area of a coal mine inby the last open crosscut,

(3) "working section" means all areas of the coal mine from the loading point of the section to and including the working faces,

(4) "active workings" means any place in a coal mine where miners are normally required to work or travel;

(i) "abandoned areas" means sections, panels, and other areas that are not ventilated and examined in the manner required for active underground working places;

(j) "electric face equipment" means electric equipment that is installed or used inby the last open crosscut in an entry or a room;

(k) "registered engineer" or "registered surveyor" means an engineer or surveyor registered by the State pursuant to standards established by the State meeting at least minimum Federal requirements established by the Secretary, or if no such standards are in effect, registered by the Secretary;

(l) "low voltage" means up to and including 660 volts; "medium voltage" means voltages from 661 to 1,000 volts; and "high voltage" means more than 1,000 volts;

(m) "average concentration" means a determination which accurately represents the atmospheric conditions with regard to respirable dust during a full working shift; such determination shall be the result of applying valid statistical techniques to the minimum necessary measurement of respirable dust; and

(n) "respirable dust" means only dust particulates 5 microns or less in size.

TITLE IV—ADMINISTRATION

RESEARCH

SEC. 401. (a) The Secretary and the Secretary of Health, Education, and Welfare, as appropriate, shall conduct such studies, research, experiments, and demonstrations as may be appropriate.

(1) to improve working conditions and practices, prevent accidents, and control the causes of occupational diseases originating in the coal-mining industry;

(2) to develop new or improved methods of recovering persons in coal mines after an accident;

(3) to develop new or improved means and methods of communication from the surface to the underground portion of the mine;

(4) to develop new or improved means and methods of reducing concentrations of respirable dust in the mine. Such research shall consist primarily, but not exclusively, of (I) studies of the relationship between coal mine environments and occupational diseases of coal mine workers; (II) epidemiological studies to (i) identify and define positive factors involved in the diseases of coal miners, (ii) provide information on the incidence and prevalence of pneumoconiosis and other respiratory ailments of coal miners, and (iii) develop criteria on the basis of which coal mine standards can be based; (III) medical prevention and control of diseases of coal miners, including tests for hypersusceptibility and early detection; (IV) evaluation of bodily impairment in connection with occupational disability of coal miners; (V) development of methods, techniques, and programs of effective rehabilitation of coal miners injured or stricken as a result of their occupation; and (VI) setting the requirements, extent and specifications for the medical examinations provided in section 203 of this Act, and utilizing and studying the material, data, and findings of such examinations for the preparation and publication, from time to time, of reports on all significant aspects of the diseases of coal miners as well as on the medical aspects of injuries other than diseases, which are revealed by the research carried on pursuant to this subsection;

(5) to study the relationship between coal mine environments and occupational diseases of coal mine workers; and

(6) for such other purposes as it deems necessary to carry out the purposes of this Act.

(b) To accomplish the objectives established in subsection (a), the Secretary shall distribute funds available to him under this section as equally as practicable between himself and the Secretary of Health, Education, and Welfare. Activities under this section in the field of coal mine health shall be carried out by the Secretary of Health, Education, and Welfare, and activities under this section in the field of coal mine safety shall be carried out by the Secretary of the Interior. In carrying out activities under this section the Secretaries of Health, Education, and Welfare and of the Interior may enter into contracts with, and make grants to, public and private agencies and organizations and individuals. No research shall be carried out, contracted for, sponsored, cosponsored, or authorized under authority of this Act, unless all information, uses, products, processes, patents, and other developments resulting from such research will (with such exception and limitation, if any, as the Secretary or the Secretary of Health, Education, and Welfare may find to be necessary in the interest of national security) be available to the general public.

(c) There is hereby authorized to be appropriated for each fiscal year such sums as may be needed to carry out the purposes of section 203(a) and of this section.

(d) No payment may be required of any coal miner in connection with any examination or test given him pursuant to subsection (a) of section 203. Where such examinations or tests cannot be given due to the lack of adequate medical or other necessary facilities or personnel in the locality where the miner resides, arrangements shall be made to have them conducted in such locality by the Secretary of Health, Education, and Welfare, or by an appropriate and qualified person, agency or institution, public or private, under an agreement or arrangement between the Secretary of Health, Education, and Welfare and such person, agency or institution. Such examinations and tests shall be conducted in accordance with the provisions of subsection (a) of section 203. The operator of the coal mine shall reimburse the Secretary of Health, Education, and Welfare, or such person, agency or institution, as the case may be, for the cost of conducting each such examination or test and shall pay whatever other costs are necessary to enable the miner to take such examinations or tests.

(e) If the death of any active miner occurs in any coal mine, or if the death of any active or inactive miner occurs in any other place, the Secretary of Health, Education, and Welfare is authorized to provide for an autopsy to be performed on such miner, with the consent of his surviving widow or, if he has no such widow, then with the consent of his next of kin. The results of such autopsy shall be submitted to the Secretary of Health, Education, and Welfare and, with the consent of such survivor, to the miner's physician or other interested person. Such autopsy shall be paid for by the Secretary of Health, Education, and Welfare.

(f) On and after the operative date of this title, the standards on noise prescribed under the Walsh-Healy Public Contracts Act, as amended, in effect October 1, 1969, or any such improved standards as the Secretary may prescribe shall be applicable to each coal mine and each operator of such mine shall comply with them. Beginning six months after the operative date of this title, at intervals of at least every six months thereafter, the operator of each mine shall conduct, in a manner prescribed by the Secretary, tests by a qualified person of the noise level at the mine and certify the results to the Secretary.

If the Secretary determines, based on such tests or any tests conducted by his authorized representative, that such standards on noise are exceeded, such operator shall immediately undertake to install protective devices or other means of protection to reduce the noise level in the affected area of the mine, except that the operator shall not require the use of any protective device or system which the Secretary or his authorized representative finds will be hazardous or cause a hazard to the miners in such mine.

TRAINING AND EDUCATION

SEC. 402. The Secretary shall expand programs for the education and training of coal mine operators, agents thereof, and miners in—

(1) the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in coal mines; and

(2) in the use of flame safety lamps, permissible methane dectectors, and other means approved by the Secretary for accurately detecting gases.

ASSISTANCE TO STATES

SEC. 403. (a) The Secretary, in coordination with the Secretaries of Labor and of Health, Education, and Welfare, is authorized to make grants to any State, in which coal mining takes place—

(1) to conduct research and planning studies and to carry out plans designed to improve State workmen's compensation and occupational disease laws and programs, as they relate to compensation for pneumoconiosis and injuries in coal mine employment; and

(2) to assist the States in planning and implementing other programs for the advancement of health and safety in coal mines.

(b) Grants under this section shall not extend beyond a period of five years following the effective date of this Act.

(c) Federal grants under this section shall be made to States which have a plan or plans approved by the Secretary.

(d) The Secretary shall approve any plan which—

(1) provides that reports will be made to the Secretary, in such form and containing such information, as may reasonably be necessary to enable him to review the effectiveness of the program or programs involved, and that records will be kept and afford such access thereto as he finds necessary or appropriate to assure the correctness and verification of such reports;

(2) provides such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting for Federal funds paid to the State;

(3) contains assurances that the State will not in any way diminish existing State programs or benefits with respect to pneumoconiosis and related conditions; and

(4) meets any additional conditions which the Secretary may prescribe by rule in furtherance of the provisions of this section.

(e) The Secretary shall not finally disapprove any State plan, or modification thereof, without affording the State reasonable notice and opportunity for a hearing.

(f) The amount granted any State for a fiscal year under this section may not exceed 80 per centum of the amount expended by such State in such year for carrying out such programs, studies, and research.

(g) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and each of the succeeding fiscal years for carrying out this section, the sum of $1,000,000.

EQUIPMENT

SEC. 404. The Secretary is authorized, during the period ending five years after the date of enactment of this Act, to make loans to operators of coal mines to enable them to procure or convert equipment needed by them to comply with the provisions of this Act. Loans made under this section shall have such maturities as the Secretary may determine, but not in excess of twenty years. Such loans shall bear interest at a rate which the Secretary determines to be adequate to cover (1) the cost of the funds to the Treasury, taking into consideration the current average yields of outstanding marketable obligations of the United States having maturities comparable to the maturities of loans made by the Secretary under this section, (2) the cost of administering this section, and (3) probable losses. In carrying out this section, the Secretary shall to the extent feasible use the services of the Small Business Administration pursuant to agreements between himself and the Administrator thereof.

INSPECTORS; QUALIFICATIONS; TRAINING

SEC. 405. The Secretary may, subject to the civil service laws, appoint such employees as he deems requisite for the administration of this Act and prescribe their duties. Persons appointed as authorized representatives of the Secretary under the provisions of this section shall be qualified by practical experience in the mining of coal or by experience as a practical mining engineer and by education. Such persons shall be adequately trained by the Secretary. The Secretary shall seek to develop programs with educational institutions and operators designed to enable persons to qualify for positions in the administration of this Act. In selecting persons and training and retraining persons to carry out the provisions of this Act, the Secretary shall work with appropriate educational institutions and operators in developing and maintaining adequate programs for the training and continuing education of persons, particularly inspectors, and, where appropriate, shall cooperate with such institutions in the conduct of such programs by providing financial and technical assistance.

EFFECT ON OTHER LAW

SEC. 406. (a) No State law in effect upon the effective date of this Act or which may become effective thereafter, shall be superseded by any provision of this Act or order issued or standard promulgated thereunder, except insofar as such State law is in conflict with this Act or with any order issued or standard promulgated pursuant to this Act.

(b) The provisions of any State law or regulation in effect upon the effective date of this Act, or which may become effective thereafter, which provide for more stringent health and safety standards applicable to coal mines than do the provisions of this Act or any order issued or standard promulgated thereunder shall not thereby be construed or held to be in conflict with this Act. The provisions of any State law or regulation in effect upon the effective date of this Act, or which may become effective thereafter, which provide for health and safety standards applicable to coal mines for which no provision is contained in this Act or any order issued or standard promulgated thereunder, shall not be held to be in conflict with this Act.

ADMINISTRATIVE PROCEDURES

SEC. 407. Except as otherwise provided in this Act, the provisions of sections 551–559 and sections 701–706 of title 5 of the United States Code shall not apply to the making of any order or decision made pursuant to this Act, or to any proceeding for the review thereof.

REGULATIONS

SEC. 408. The Secretary is authorized to issue such administrative regulations as he deems appropriate to carry out any provision of this Act.

OPERATIVE DATE AND REPEAL

SEC. 409. The provisions of title I and III of this Act shall become operative 90 days after enactment. The provisions of title II of this Act shall become operative six months after enactment. The provisions of the Federal Coal Mine Safety Act, as amended, are repealed on the operative date of titles I and III of this Act, except that such provisions shall continue to apply to any order, notice, or finding issued under that Act prior to such operative date and to any proceedings related to such order, notice, or findings. All other provisions of this Act shall be effective on the date of enactment of this Act.

SEPARABILITY

SEC. 410. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

REPORTS

SEC. 411. (a) Within one hundred and twenty days following the convening of each session of Congress, the Secretary shall submit through the President to the Congress and to the Office of Science and Technology an annual report upon the subject matter of this Act, the progress concerning the achievement of its purposes, the needs and requirements in the field of coal mine health and safety, the amount and status of each loan made under section 404, a description and the anticipated cost of each project and program he has undertaken under section 401, and any other relevant information, including any recommendations he deems appropriate.

(b) Within one hundred and twenty days following the convening of each session of Congress, the Secretary of Health, Education, and Welfare shall submit through the President to the Congress, the Secretary, and to the Office of Science and Technology an annual report upon the health matters covered by this Act, including the progress toward the achievement of the health purposes of this Act, the needs and requirements in the field of coal mine health, a description and the anticipated cost of each project and program he has undertaken under section 401, and any other relevant information, including any recommendations he deems appropriate. The first such report shall include the recommendations of the Secretary of Health, Education, and Welfare as to necessary health standards, including his recommendations as to the maximum permissible individual exposure to coal mine dust during a working shift.

SPECIAL REPORT

SEC. 412. (a) The Secretary shall make a study to determine the best manner to coordinate Federal and State activities in the field of coal mine health and safety so as to achieve (1) maximum health and safety protection for miners, (2) an avoidance of duplication of effort, (3) maximum effectiveness, (4) reduce delay to a minimum, and (5) permit most effective use of Federal inspectors.

(b) The Secretary shall make a report of the results of his study to the Congress as soon as practicable after the date of enactment of this Act.

And amend the title so as to read: "An act to provide for the protection of the health and safety of persons working in the coal mining industry of the United States, and for other purposes."

Mr. WILLIAMS of New Jersey. Mr. President, I move that the Senate disagree to the amendment of the House on S. 2917 and agree to the conference requested by the House thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. WILLIAMS of New Jersey, Mr. RANDOLPH, Mr. PELL, Mr. NELSON, Mr. MONDALE, Mr. EAGLETON, Mr. CRANSTON, Mr. JAVITS, Mr. PROUTY, Mr. SCHWEIKER, Mr. SAXBE, and

Mr. SMITH of Illinois conferees on the part of the Senate.

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 PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move that the Senate adjourn until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 1 o'clock and 40 minutes p.m.) the Senate adjourned until Tuesday, November 4, 1969, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate November 3, 1969:

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Lt. Gen. John J. Davis, U.S. Army, of Kansas, to be an Assistant Director of the U.S. Arms Control and Disarmament Agency.

U.S. MARSHAL

George A. Locke of Washington to be U.S. marshal for the eastern district of Washington for the term of 4 years, vice James E. Atwood.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 3, 1969:

DEPARTMENT OF DEFENSE

Robert Louis Johnson, of California, to be an Assistant Secretary of the Army.

U.S. ARMY

The following-named officer, under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and repsonsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be general

Lt. Gen. Lewis Blaine Hershey, [redacted], Army of the United States.

The Army National Guard of the United States officer named herein for promotion as a Reserve commissioned officer of the Army, under provisions of title 10, United States Code, sections 593(a) and 3392:

To be major general

Brig. Gen. Sylvester T. DelCorso, [redacted] Adjutant General's Corps.

U.S. MARINE CORPS

The following-named officers of the Marine Corps Reserve for permanent appointment to the grade of major general:

Douglas J. Peacher
Charles T. Hagan, Jr.

The following-named officers of the Marine Corps Reserve for permanent appointment to the grade of brigadier general:

John R. Blandford
William J. Weinstein
Harold L. Oppenheimer

IN THE AIR FORCE

The nominations beginning Edward F. Abbey, to be major, and ending Martin G. Rubin, to be major, which nomination were received by the Senate and appeared in the CONGRESSIONAL RECORD on October 13, 1969.

IN THE ARMY

The nominations beginning William L. Nichols, to be lieutenant colonel, and ending Donald D. Zana, to be first lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 30, 1969; and

The nominations beginning John P. Lewis, to be major, and ending James R. Powell, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on October 8, 1969.

IN THE NAVY

The nominations beginning Thomas C. Adams, to be commander, and ending Stephen L. Zwick, to be commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 22, 1969.

IN THE MARINE CORPS

The nominations beginning John W. Alber, to be lieutenant colonel, and ending Dennis A. Williams, to be first lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 22, 1969; and

The nominations beginning Lorenza T. Baker, to be second lieutenant, and ending Wayne P. Thompson, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on October 8, 1969.

HOUSE OF REPRESENTATIVES—*Monday, November 3, 1969*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

He that dwelleth in the secret place of the Most High shall abide under the shadow of the Almighty.—Psalm 91: 1.

Almighty and Everlasting God, above the disturbances of our busy days and the disorders of our troubled times we would come to Thee seeking the calm of Thy holy presence. In the secret place of the Most High we would dwell, lifting our hearts unto Thee, praying for the guidance of Thy spirit and the direction of Thy wisdom as we face the experiences of another day.

Help us to serve our country with persistent faithfulness and patient fidelity that we may keep our Nation the hope of the world and the channel of peace for our generation. By Thy grace may we continue to work for the day when nation shall not lift up sword against nation, neither shall they learn war any more.

In the spirit of the Prince of Peace we pray. Amen.

THE JOURNAL

The Journal of the proceedings of Friday, October 31, 1969, was read and approved.

ROGERS ASKS DISSENTERS TO TAKE NOTE OF RETURNING HIJACKERS

(Mr. ROGERS of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROGERS of Florida. Mr. Speaker, I hope that those who preach against and demonstrate for the overthrow of our Government will take note of the return of six Americans who hijacked planes and had them flown to Cuba.

These people, who turned their backs on their homeland, quickly realized the blessings of life in the United States compared to life under the Communist dictatorship of Fidel Castro. And it must be realized that these six returned to the United States even though they now face possible death sentences.

I think this thoroughly repudiates the propaganda that life in Cuba today is anything short of a depression level.

I hope that those who denounce the United States will take careful note of what those who have left America and experienced life in a Communist country have to say now.

CONSENT CALENDAR

The SPEAKER. This is Consent Calendar day. The Clerk will call the first bill on the Consent Calendar.

PROVIDING FOR THE CONVEYANCE OF CERTAIN REAL PROPERTY OF THE FEDERAL GOVERNMENT TO THE BOARD OF PUBLIC INSTRUCTION, OKALOOSA COUNTY, FLA.

The Clerk called the bill (H.R. 7618) to provide for the conveyance of certain real property of the Federal Government to the Board of Public Instruction, Okaloosa County, Fla.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. ASPINALL. Mr. Speaker, reserving the right to object, and I shall have to object under the rules for the consideration of such legislation unless there is a good case made here at this time in reference to the legislation to show why we should pass this bill by unanimous consent when there are objections from two departments of the Government and the other department defers to the two departments that do object.

Mr. BENNETT. Mr. Speaker, will the gentleman yield?

Mr. ASPINALL. I yield to the gentleman.

Mr. BENNETT. Mr. Speaker, the bill, H.R. 7618, is a bill to provide for the conveyance of real property of the Federal Government to the Board of Public Transportation of Okaloosa County, Fla.

Over 50 percent of the real property in this county, Okaloosa County, is occupied by the Federal Government. Of the 26,000 public school students, 17,000, the vast majority, are dependents of military or civil service employees in the area.

During our hearings on this conveyance, and I am the chairman of the Real Estate Subcommittee handling this matter, and the bill is not for myself but it is for the gentleman from Florida (Mr.